

**Discussion Paper for Regional Delegation Agreement Workshop and
Invitation for Comments
October 26, 2009**

I. Background

A fundamental component of the ERO's operation is the reliance on Regional Entities to carry out significant reliability functions. Under Section 215(e)(4) of the Federal Power Act, Congress specifically provided for the ERO to have the ability "to delegate authority to a Regional Entity for the purpose of proposing reliability standards to the ERO and enforcing reliability standards." This ability to delegate is conditioned on the Regional Entity having (i) an independent, balanced stakeholder or hybrid board structure; (ii) the ability to develop and enforce reliability standards; and (iii) rules to assure independent, fairly representative and balanced decision making; equitable allocation of reasonable charges for funding operations; fair and impartial enforcement; due process in the development of standards; and recognition with applicable governmental authorities in Canada and Mexico. Section 215(e)(4) further provides that the ERO and the Commission will rebuttably presume that a proposal for delegation to a Regional Entity with an interconnection-wide footprint should be approved. Delegation agreements must be approved by FERC before they can become effective.

On November 29, 2006, NERC filed with FERC a *pro forma* delegation agreement to carry out its authority under Section 215(e)(4), along with eight proposed delegation agreements with the following Regional Entities: Florida Reliability Coordinating Council (FRCC); Midwest Reliability Organization (MRO); Northeast Power Coordinating Council: Cross Border Regional Entity, Inc., predecessor in interest to Northeast Power Coordinating Council, Inc. (NPCC); ReliabilityFirst Corporation (RFC); SERC Reliability Corporation (SERC); Southwest Power Pool, Inc. (SPP); Texas Regional Entity, a Division of the Electric Reliability Council of Texas (Texas RE); and Western Electricity Coordinating Council (WECC). These agreements included these common provisions:

- Representations by the Regional Entity that they have the legal authority to enter into the agreement, and have the necessary standards development and compliance enforcement procedures.
- Representations by NERC that it has legal authority to enter into the agreement and that it has been certified as the ERO.
- Covenants by NERC and the Regional Entity to maintain their respective qualifications to be the ERO or a Regional Entity.
- Delegation of authority to propose Reliability Standards and Regional Variances, and to develop Regional Reliability Standards under specified processes.
- Delegation of authority to enforce Reliability Standards within specific geographical boundaries and pursuant to a specified Compliance Monitoring and Enforcement Program (CMEP).

- Provision for other delegation related services to be performed by the Regional Entity in furtherance of NERC's responsibilities as the ERO or in support of delegated functions.
- Provision for funding by NERC of the Regional Entity's delegated activities.
- A three-year term.

FERC approved these delegation agreements on April 19, 2007, and they went into effect May 2, 2007 (May 16, 2007 for Texas RE).

With the third anniversary of the delegation agreements coming up next May, NERC and the Regional Entities have developed a work plan and have begun discussions to develop the next generation of delegation agreements. In addition, the recently-completed Three-Year ERO Performance Assessment elicited substantial comment from stakeholders about matters to be addressed in the delegation agreement and the ERO Rules of Procedure, and these comments will be taken into account in developing the revised delegation agreements.

II. Workplan

NERC and the Regional Entities have developed the following timeline for the development of the new delegation agreements, with several opportunities for stakeholders to provide input:

November 4, 2009	First Stakeholder Workshop
November 5, 2009	NERC seeks BOT approval for extension of existing delegation agreements through May 2, 2011
November 2009	NERC files with FERC request for approval to extend existing delegation agreements to May 2011
November 30, 2009	Deadline for written comments concerning Key Areas of Discussion (Below)
January 15, 2010	NERC and Regional Entities post for comment draft delegation agreements
February 16, 2010	Second Stakeholder Workshop (After NERC BOT meeting)
February 26, 2010	Comment deadline on January 15, 2010 posting
March – April 2010	NERC and Regional Entities finalize agreements, taking into consideration stakeholder comments and

Regional Entities seek approvals from their respective Boards

May 4, 2010

NERC seeks BOT approval for new delegation agreements

May 21, 2010

Goal for filing new delegation agreements with FERC

III. Key Areas of Discussion

NERC and the Regional Entities intend to work collaboratively, assisted by input from stakeholders, to develop an effective and efficient version of the next-generation regional delegation agreement. But the delegation agreement is not an end in itself. Our overarching objective must be to create a program that sustains and improves the reliability of the bulk power system of North America.

When we did the last version of the delegation agreement, we were looking forward and only imagining what it would be like to implement a program of delegated activities under Section 215 of the Federal Power Act. This time, we have considerable experience to inform our judgments about what is likely to work and what probably won't. NERC and the Regional Entities now have a track record in implementing the CMEP. We also have experience in developing and getting regulatory approval of the NERC and Regional Entity business plans and budgets. We have a body of experience as well on organization registration. NERC has obtained Commission approval of almost 100 reliability standards, as well as subsequent revisions to a number of those standards. We have lesser, but still informative, experience with moving regional reliability standards from concept through regulatory approval.

Going forward, development of the ERO and Regional Entities will be significantly informed by the findings and the commitments in our recently completed Three-Year ERO Performance Assessment. That assessment, which was ultimately shaped and approved by the NERC BOT, had considerable input from the Regional Entities and from stakeholders. In the Assessment Report, in response to input from the Regional Entities, stakeholders, and NERC's own insights, NERC made 18 pages of promises about what it planned to do over the next few years. Some of those promises involved the delegation agreements, and as we move forward many of those commitments form the initial framework for these discussions.

With the foregoing background in mind, NERC and the Regional Entities mapped out the following key areas of focus:

- **Clearly defined roles and responsibilities** - Many of the inefficiencies in our processes and disputes between and among NERC, the Regional Entities, and the industry appear to be the result of a lack of common understanding of roles and responsibilities within the ERO.

- What does it mean to delegate authority?
- What should be an appropriate and efficient level and means of oversight by NERC?
- How should policy decisions be made, when and by whom?
- To what extent does oversight include or require a direct review of operational decisions?
- Does a single delegation model apply equally to all delegated functions and delegation- related services?
- How do we address FERC's expectations regarding the need for oversight in particular areas?
- Within compliance and enforcement, how and at what level should determinations be made, reviewed, published and filed with FERC?

- **Firmly established decisional processes** - Complementing the need for well defined roles and responsibilities, NERC and the Regional Entities all agree on the need for a clear decisional process. Although we all agree that working collaboratively to achieve consensus generally produces the best results, there is a real-world probability that differences of professional judgment will arise between and among NERC and the Regional Entities.
 - What limitations should exist on the discretionary decision-making by Regional Entities?
 - At what level, and by what process, should decisions reached by NERC management, or by NERC and Regional Entity managements jointly, require confirmation by the NERC BOT or an appropriate BOT committee?
 - When and how should NERC directives be developed and communicated to Regional Entities? How should input from the Regional Entity be gathered? How should disagreements be resolved?
 - What process should govern to allow for escalation and resolution of disputes that might arise between NERC and one or more Regional Entities or among Regional Entities?
 - With respect to enforcement decisions, what considerations should come into play in establishing the record for Regional Entity decision-making?
 - What is the appellate process, if any, afforded when NERC and the Regional Entities are in disagreement?

- **Metrics** – NERC and the Regional Entities agree as to the need to establish a framework and process for establishing and tracking a common set of appropriate metrics as a measure of our respective performance both to identify areas of improvement and to provide information to the BOT, the industry and FERC.
 - What activities or data are appropriate to measure?
 - How frequently should metrics be reviewed?
 - What process should be used to set performance benchmarks/goals?
 - How should proposed metrics be analyzed to understand their implications and avoid unintended consequences?

- What is the relationship between these metrics and annual and long term business plans and budgets?
 - Beyond publication of metrics results, what mechanisms, if any, should be used when NERC or a Regional Entity falls short of agreed-upon performance goals?
- **Consistency** – A significant area of concern raised by the stakeholders throughout the first three years of the ERO has been consistency. Areas to address include, but are not necessarily limited to, the establishment of a single CMEP, agreement to use a single set of Reliability Standard Audit Worksheets (RSAWs), common forms and communications.
 - Beyond the specific proposals listed above, should there be a general standard of consistency embodied in the delegation agreement, and if so, what would it say and how would it be enforced?
 - Should “operational guides” or expanded RSAWs be created for each standard that clearly identify the expectations of compliance so that all stakeholders understand them and all Regional Entities evaluate them consistently?
 - When would it still be appropriate or required to recognize regional differences?
 - What other specific activities could be addressed today to ensure consistency?
- **Other Functions** – The functional areas covered under the current delegation agreements (compliance enforcement, registration, certification, standard setting, budget and finance) may warrant clarification or revisiting. Beyond the functional areas currently identified in the delegation agreements, NERC and the Regional Entities are exploring what other areas make sense to provide for in the delegation agreements either as delegated functions and/or delegation-related services.
 - Should organization certification be handled regionally or on a continent-wide basis?
 - How should registration criteria and decisions be made, and what is the appropriate process for handling appeals of those decisions?
 - How should we provide for other functions (situational awareness, event analysis, training and education)? What is the role of the Regional Entities? How should this be addressed in the Delegation Agreements?
- **Other Important Areas**
 - *Multi-regional Registered Entities* – How can NERC and the Regions provide reasonable accommodations for those entities which operate across several Regional Entities in order to provide for consistent implementation of the delegated functions?
 - *International Implementation* – How do we ensure that the delegation agreement is consistent with the ERO’s rights and obligations in Canada

and Mexico? How can we ensure standards are enforceable across North America?

- *Other Changes* - What related changes to the ROP and CMEP should we be addressing in conjunction with the delegation agreement revisions?

IV. Invitation for Comments

Stakeholders are encouraged to provide comments concerning the Key Areas of Discussion at the November 4, 2009 workshop. Written comments regarding the Key Areas of Discussion may also be submitted in writing by November 30, 2009 and should be directed to Courtney.Camburn@nerc.net.