

January 17, 2012

Mr. Scott Helyer, Chair Elect
NERC Member Representatives Committee
Vice President, Transmission
Tenaska, Inc.
1701 E. Lamar Blvd.
Arlington, Texas 76006

Re: Policy Input to NERC Board of Trustees

Dear Scott:

First, congratulations for being elected to lead the Member Representatives Committee (MRC) in 2012. Bill Gallagher did an outstanding job, so you have a tough act to follow.

After carefully reviewing the agenda for the February 8, 2012 MRC meeting, I would appreciate receiving policy input from the committee members on the following activities, priorities, or other areas of interest:

Update on ERO Enterprise Strategic Planning – Following the November Board of Trustees (Board) meeting, NERC and the Regional Entities rededicated efforts to coordinate a collaborative network, the ERO Enterprise, that brings together their collective leadership, experience, judgment, skills, technology, and duly delegated statutory responsibilities for the purpose of ensuring the reliability of the bulk power system (BPS). As the strategic planning of the ERO Enterprise continues into the New Year, the Board would welcome feedback on how to best identify priority areas of interest, common objectives and responsible business practices. Gerry Cauley will review 2011 performance with the Corporate Governance and Human Resources Committee (CGHRC) at its meeting on February 8, 2012, and plans to present proposed 2012 goals for Board approval at its February 9 meeting. The Board welcomes MRC input on these 2012 goals, as well as longer-term strategic directions for the ERO Enterprise, by way of written policy input as well as open discussion at the MRC meeting on February 8.

Find, Fix, Track, and Report Initiative – NERC and the Regional Entities continue to employ a comprehensive and integrated risk control strategy that differentiates and addresses compliance issues according to their significance to the reliability of the BPS. As NERC and the Regional Entities increase their enforcement discretion in the implementation of compliance and enforcement activities, the Board is interested in hearing the committee members' perspective on the implementation of the Find, Fix, Track, and Report (FFT) process. Your input will also assist NERC in preparation for its six month status report to the Federal Energy Regulatory Commission.

Generator Operator (GO)/Transmission Operator (TO) Issues – NERC has suspended work on the entity registration guidance directive intended to clarify those standards and requirements applicable to GO/GOPs that would be registered as TO/TOPs. NERC will consider the following two outcomes prior to making any further decision to resume work on compliance guidance for the GO/TO initiative:

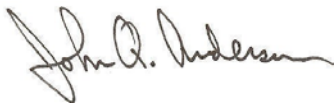
- 1) Guidance from the Board on the proposed revision of FAC-001, FAC-003 and PRC-004 (Standards Project 2010-07).
- 2) The final FERC approval of the NERC compliance filing concerning the upheld registry of Cedar Creek and Milford Wind as TO/TOP with appropriately scoped applicable standards.

The Board is particularly interested in policy input on the standards being presented for approval at its February 8 meeting, as well as any comments on the overall issue.

Rules of Procedure Changes — The Board would like to hear of any concerns the committee has with the general direction of the proposed substantive changes to the Rules of Procedure that the Board will consider for approval at its meeting on February 8. Are these changes, to date, effectively addressing the issues raised during previous MRC and Board meetings?

Thank you in advance for providing written comments to Dave Nevius, MRC secretary (dave.nevius@nerc.net) and Holly Mann (holly.mann@nerc.net) **by January 30, 2012** so they can be packaged and sent to the Board members in advance of the meeting.

Thank you,



John Q. Anderson, Chair
NERC Board of Trustees

cc: NERC Board of Trustees
Member Representatives Committee
Regional Executives



NERC Board of Trustees Policy Input – Canadian Electricity Association February 9, 2012

The Canadian Electricity Association (“CEA”) appreciates this opportunity to provide policy input to the NERC Board of Trustees. CEA’s comments do not address any of the specific issues identified in NERC Chairman John Q. Anderson’s letter dated January 17, 2012, but another matter that is of particular importance to Canadian industry members.

In these comments, CEA focuses exclusively on recent NERC proposals regarding the optimal means for improving the NERC standards development process. CEA believes that the representation of the unique perspective of NERC’s Canadian members is warranted, in view of the recent introduction from NERC staff of a draft proposal for an alternative process, the strong reaction from stakeholders, and the strong likelihood that deliberations at the February 2012 sessions will shape the timing and scope of efforts to modify the process going forward. CEA’s goal is to help ensure that the discussions and decisions of the February meetings are based on a fully informed understanding of those elements of the NERC standards process which are essential for purposes of NERC’s relationship with entities in Canada.

Accordingly, CEA wishes to express strong support – and to echo the applicable principles set forth in the Joint Trade Associations’ policy input – for retaining the criteria enabling registered entities to actively and effectively participate in the standards process with respect to drafting the technical content and voting on a proposed standard.

Indeed, the basis for the enduring acceptance of and support for the NERC model among CEA members is the stakeholder-driven, collaborative and consensus reaching process for the development of standards, whereby stakeholder experts draft, comment on, and ballot a standard, NERC approves it, and the applicable governmental authorities ultimately accept or reject it for adoption in their respective jurisdictions, or remand it to NERC for further review. This process presents the opportunity for active, effective participation by Canadian stakeholders and industry experts. It ensures that Canadian stakeholders are included in the development of standards applied in their respective jurisdictions, and that the specific content of a standard is determined by the expertise of industry stakeholders who best understand how the interconnected bulk power system is planned, designed, built, operated and maintained.

Likewise, the principle of a stakeholder-driven process has been and remains critical to the acceptance of the NERC model by the applicable governmental authorities in Canada responsible for electric reliability oversight. In fact, this principle is expressly enshrined in frameworks governing the development and adoption of reliability standards in various Canadian jurisdictions – whether these frameworks are structured through legislation, regulation, or direct agreements or Memoranda of Understanding (“MOUs”) with NERC.

Various frameworks in Canada explicitly recognize the importance of effective participation by industry stakeholders in the development of reliability standards. The excerpts below from various MOUs executed between NERC, Regional Entities – where applicable – and the

following Canadian entities clearly illustrate this principle:

Independent Electricity System Operator (“IESO”)

“The signatories recognize the importance of the involvement of Ontario market participants ... and the IESO in the development of NERC reliability standards...The IESO’s statutory objects, inter alia, include participating in ‘the development by any standards authority of standards and criteria relating to the reliability of the transmission systems’ and ‘to establish and enforce standards and criteria relating to the reliability of transmission systems.’”

Régie de l’énergie (Québec)

“NERC and NPCC undertake to develop electric power transmission reliability standards applicable to Québec in accordance with their procedures, namely the NERC Reliability Standards Development Procedure and the NPCC Regional Reliability Standards Development Procedure. To this end, NERC and NPCC undertake, within the framework of their respective procedures, to take note of the comments and opinions submitted by the Québec reliability coordinator, the electric power carriers and users of electric power transmission services in Québec.”

Saskatchewan Power Corporation

“The Parties acknowledge the importance of the active participation of any electricity sector participants from the Province of Saskatchewan in the Reliability Standards development process.”

CEA therefore emphasizes that any plan to improve the standards process which limits stakeholders’ ability to actively participate therein would require consultation with Canadian governmental entities and may constitute a violation of NERC’s obligations to Canadian entities, as prescribed in provisions such as those cited above.

CEA recognizes that the existing standards development process may stand to benefit from targeted enhancements. At the same time, CEA does not believe that the process suffers from inherent flaws which are so severe as to warrant a wholesale overhaul. Moreover, CEA cautions against the adoption of process modifications that potentially sacrifice the technical quality of standards for the sake of procedural expediency.

For the immediate purposes of the Board’s February meeting – where there will likely be extensive discussion on NERC staff’s draft proposal for an alternative process and on what next steps are necessary for pursuing changes to the existing process – CEA wishes to convey the above information so that the Board’s deliberations with the MRC can rest on secure assumptions of what process improvements will be compatible with the various reliability frameworks in place in Canadian jurisdictions.

CEA thanks the Board for considering these comments and looks forward to discussing these matters further in Phoenix.

CEA Contact:

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Canadian
Electricity
Association

Association
canadienne
de l’électricité

NERC Board of Trustees

Phoenix

February 9, 2012

Policy Input of the Edison Electric Institute

On behalf of our member companies, Edison Electric Institute (EEI) is pleased to offer the following brief policy input in advance of next week's NERC Board of Trustees meeting in Phoenix. EEI's views on NERC and bulk power system reliability are shaped by its CEO Task Force on Reliability, CEO Task Force on Business Continuity, and the Reliability Executive Advisory Committee. We look forward to a productive discussion of the issues in Phoenix.

NERC STRATEGIC DIRECTION

EEI appreciates the Board of Trustees seeking policy input on the 2012 and longer term strategic direction of the NERC corporate enterprise. We offer the following observations to inform this critically important discussion:

- EEI appreciates that the Board of Trustees seeks to continuously sharpen the strategic focus on the enterprise. Companies organize the full range of their management decisions around such plans, and we urge the Board to ensure that the plan governs management decisions throughout NERC and the regions. We generally agree with the strategic goals in the draft plan. In future discussions, we look forward to discussing with NERC management and the Board of Trustees the metrics that will be developed to inform decisions on measuring success.
- In addition, we ask that the Board consider incorporating in the strategic plan a more clearly stated basis or background statement to recognize the overall strong and resilient state of the bulk power system. The broad range of issues identified in the U.S. – Canada Blackout Report (April 2004) have been addressed. Enforcement of mandatory standards has been put in place, including methods to emphasize vegetation management, system awareness and communication, emergency procedures, personnel training, and system protection. Since enactment of Section 215 in 2005, NERC has a solid record of achievement in standing up as the Electric Reliability Organization, approving the initial set of mandatory standards, and maintaining leadership on addressing critical technical issues.

- We also ask that NERC recognize that NERC must set clear limits for itself and anticipate that a much more disciplined approach to evaluating reliability risks will support the definition of these limits. Sharpening the definition of reliability risks will also help NERC decisions on cutting or postponing those projects that distract from higher priority work.
- A critically important fundamental for NERC strategic planning rests within the explicit language of Section 215, which recognizes that unexpected events take place on the system, that the core mission of the Electric Reliability Organization is to set standards that seek to control the effects of such events. The bulk electric system is planned and operated with significant levels of redundancy in anticipation of an enormous range of contingencies. For decades, system planning and operations have recognized that sudden disturbances or unanticipated events --- equipment failure, human error, and weather --- will take place and challenge the electric industry.
- Timely root cause analyses, sharing lessons learned and best practices, and providing feedback to standards development, must all continue to improve. However, the ERO role should be limited to its core competencies of coordinating, and when appropriate, performing the event analysis. NERC should allow the industry itself, from the full information of timely-released event analysis reports to determine lessons learned and best practices. EEI believes that this division of labor is appropriate and will allow the ERO to concentrate on its core mission of standards development, compliance and enforcement and assessments.
- On technical matters, EEI believes that appropriate strategic emphasis for resources should be placed on system protection and critical infrastructure protection. Both of these areas involve highly complex matters, evolving technologies, considerable costs, and the strong need for careful attention to ensuring that reliability risks are clearly defined, and solutions tailored to those risks. More in-depth discussion of the broad range of activities and technical work should be organized by NERC management and coordinated through the standing technical committees.
- We are also convinced that NERC needs to continue improving its own program management and administration. Both core program areas, standards development, and compliance and enforcement, are becoming overwhelmed with process and paperwork, which EEI believes now comprises at least several hundred million dollars of overheads that contribute very little to bulk power system reliability.

FIND, FIX, TRACK, REPORT (FFTR)

EEI applauds the Board of Trustees for supporting this critical initiative. Compliance and enforcement comprises almost 50% of the ERO enterprise-wide budget. The paperwork and administrative processes have become overgrown with unnecessary matters that provide little benefit for reliability. FFTR is an important first step in providing much needed relief.

- The recently issued NERC survey should help inform decisions on whether FFTR is providing relief and what regional differences may exist in the program deployment.

We also look forward to providing more detailed comments on FFTR to NERC by February 23 in response to a recent announcement that such comments are being solicited.

- NERC should continue to aggressively seek to reduce cost overheads and find the right methods and tools to ensure that costs are reduced. FFTR results should achieve cost savings at NERC, within the regions, and for the companies. We urge NERC to seek from companies more specific information on cost savings.
- Initial statistics suggest that some regions are beginning to use FFTR. EEI looks forward to the regions reporting their experiences to date at the upcoming meetings.
- Training for compliance program area personnel to ensure process consistency across the various regions is a critical piece of this overall process.

In addition to FFTR, we understand that NERC compliance operations initiated a process that in the future might allow for varying the frequency or intensity of various audits and other compliance activities, depending on an “entity assessment” that NERC will perform. NERC staff recently announced a series of focus group activities to help shape this process. EEI urges NERC to carefully develop this tool with clearly stated goals and objectives, and with reasonable due process and transparency. While companies envision that this tool may support successful implementation of more tailored risk-based application of compliance activities, information to date suggests that the tool and how it will be applied must be much more clearly defined and communicated to companies.

GENERATOR OWNER/ TRANSMISSION OPERATOR ISSUES

EEI appreciates the efforts of the team members of Project 2010-07 and NERC staff to review reliability aspects associated with generator requirements at the transmission interface. This project is an important step in the continuing consideration of registration and applicability issues that have been raised in various recent FERC orders. The project drafting team analyzed and identified reliability-based areas of improvement. The resulting revisions present well-founded approaches to a reliability question. The ballot results indicate strong industry support for these revisions. In considering approval, the Board should also be aware that Exelon submitted a level 1 appeal of the FAC-003 ballot and that the Board will not be voting on this standard at this meeting.

In addition, we understand that there a narrow jurisdictional issue may arise in the context of FAC-001, where under certain circumstances, the proposed revisions could impose Section 215 requirements on generators prior to any actual interconnection taking place with the bulk electric system and to becoming FERC jurisdictional. this could wrongly pre-judge the generator interconnection issues, and expand jurisdiction beyond the statutory provisions of Section 215 of the FPA. Careful consideration should be given that these revisions do not create a contradiction with FERC Order No. 2003 and Order No. 2006 regarding generator interconnection requirements to the Transmission Owner/Transmission Operator as well as

any confidentiality provisions imposed under these rules. We ask that the Board consider this potential issue in its consideration of approving the standards.

RULES OF PROCEDURE CHANGES

Last month, trade associations provided joint comments on a broad range of proposed changes to the Rules of Procedure (ROP). Along with specific comments on the detailed ROP changes, trade associations stated strong concern about the lack of transparency in the process and the failure by NERC to include the rationale for seeking the ROP changes. Given the size and scope of the proposed changes, and the apparent discretionary nature of the changes, trade associations' comments stated a strong belief that NERC should state the reasons that changes are being proposed, including the reliability or management issue that is being addressed.

We appreciate that NERC has provided an explanation of the proposed ROP changes, a summary of the comments and the response taken, as well as a redline of the proposed changes. This is a major step toward the transparency sought by stakeholders to enable us to better respond to the proposed changes. We recognize that this involved a significant effort by NERC staff. We appreciate that staff made changes to some of the ROP in response to the comments filed, particularly withdrawal of the proposal to impose penalties for failure to respond to a data request, modification of the provision on certification of questions to the Board of Trustees Compliance Committee and deferral of the request for Board approval of Appendix 8 concerning events analysis.

Our initial impressions are that we support the changes now being proposed. However, due to the sheer volume of the redline text of the ROP changes that was released on January 30 and the press of other business, we have not had a chance to review the proposed changes in depth with member companies. Therefore, we ask the BOT to defer approval of the proposed changes for a short period to enable stakeholders time to adequately review the proposed changes and convey any remaining concerns to NERC staff and the Board. We recommend that NERC set a deadline of Friday, February 17 for receiving stakeholder views.

STANDARDS DEVELOPMENT PROCESS

EI endorses a separately submitted February 2 statement of principles on changes to the NERC standards development process. EI believes that the process is improving but still needs further improvements. Defining strategic reliability priorities must continue being refined. Threshold decisions on the need for new or significant modifications to standards can be strengthened. Balloting and commenting can be made more efficient without sacrificing ANSI principles. Debates over VSLs and VRFs can be time consuming efforts without offering much incentive for strong reliability performance.

Further specifics:

The results-based design approach needs to continue and grow. While some drafting teams are incorporating these design principles, others may be challenged. More work is needed to ensure that the results-based design is incorporated in the entire standards catalog. Longer term, we envision that achieving the goals of both results-based approaches for standards development and significant enforcement forbearance as delivering significant efficiency gains.

The standards development project pipeline has far too many projects underway for efficient outcomes. Threshold decisions needs to be improved to better identify the need for standards and their priorities.

Drafting processes should continue to strengthen their project management and increase their use of legal and regulatory support. The recent addition of a quality review has provided important value to the process. Defined milestones and deadlines are needed for all projects.

Along with improvements to the front-end, EEI also strongly believes that NERC should improve its advocacy at FERC by improving the presentation of the technical merits of its various proposals filed at FERC. NERC staff already performs an enormous amount of work in assembling the various filings, however, pre-filing conferences and substantive justifications of the new ERO-approved standards would be invaluable to FERC staff and commissioners' assistants who are overwhelmed with issues and filings.



Policy Input to the NERC BOT and MRC – February 8, 2012

The Electricity Consumers Resource Council (ELCON) is pleased to offer the following policy input to the NERC Member Representatives Committee and the Board of Trustees.

In addition to the specific replies to issues listed by NERC Chairman John Q. Anderson, ELCON raises two high-level concerns:

1. Large industrial electricity consumers need a reliable supply of electricity, but it must be at competitive prices. Increasingly, compliance with the growing numbers of NERC standards requires tremendous quantities of resources at increasing costs – particularly as it seems they are *de facto* zero-tolerance standards. Commissioner David Wright, Vice Chairman of the South Carolina Public Services Commission and current President of the National Association of Regulatory Utility Commissioners, was recently quoted as saying that consumers will be asked to pay new costs of between \$2.2 and \$4.1 trillion dollars in the “near future,” primarily for new regulations and infrastructure.¹ Industrial consumers simply cannot stand such cost increases and remain competitive in worldwide markets. NERC must do its part and find ways to balance compliance to necessary standards with consumer costs.
2. While entities required to be in compliance with NERC standards want clear and concise standards, increasingly they are concerned that NERC staff, rather than industry stakeholders, are making unilateral determinations that in essence become mandatory actions. The approved ANSI-approved standards development process should be followed to the greatest degree possible. The NERC Board and staff should give greater consideration to input from the stakeholders.

Responses to specific issues raised in Chairman Anderson’s letter:

Enterprise Strategic Planning – ELCON believes that the overall state of the bulk power system is strong and resilient. Increasingly, detailed joint comments have been filed with NERC on a variety of critical issues by a broad range of stakeholder groups. While certainly more needs to be done, these joint comments, at least to ELCON, suggest that industry stakeholders are working together and are united in their beliefs that radical changes are not needed. Yet, NERC seems intent on pushing significant changes without appropriate counsel and input from stakeholders. As a specific example, NERC proposed a “CEO summit” on improving the standards development process. That “summit” is now being reconsidered, although NERC staff suggest that “clarifications are to follow.” That could be interpreted as positive. But then a conference call scheduled by NERC staff only created further confusion. Industry is being asked to provide input upfront on what direction such a summit should take and what issues should be pursued if a big meeting (no longer a “summit”) is held (maybe in

¹ “Urgency of NARUC Call For EPA Rule Flexibility Rises With Rate Recovery,” remarks of NARUC President David Wright, *Inside EPA’s Clean Energy Report*, January 19, 2012.

April). ELCON questions the need and value of such a summit or big meeting. Specific ways to improve the NERC standards process already have been proposed and should be explicitly addressed before incurring the costs and efforts of such a big meeting.²

Find, Fix, Track, and Report (FFTR) – ELCON applauds the BOT for supporting this critical initiative. Compliance and enforcement comprises almost 50% of the enterprise-wide NERC budget. The FFTR process should help reduce paperwork and administrative costs that do not actually benefit reliability. NERC should continue to aggressively seek to reduce compliance and enforcement costs.

Generator Operator/Transmission Operator Issues (GOTO) – The GOTO directive that created a firestorm is being postponed pending some form of review or other input. We hope that this is a positive sign. NERC staff did not participate in the GOTO drafting team's efforts or provide the team with any input until very late in the process, and now they are trying to impose significant changes. ELCON consistently has said that NERC staff should be encouraged to express their thoughts and ideas through timely written submissions. These submissions should be considered just like any other comments. However, NERC is, and should continue to be, a stakeholder driven organization that is fair, balanced, open and inclusive. NERC staff should be sensitive to the wide range of stakeholder positions as it prepares its comments and not take sides on any issue.

Finally, ELCON believes that FERC's orders are clear that registration of GOs/GOPs as TOs/TOPs must involve a fact specific analysis of each GO/GOP to determine the materiality of the GO/GOP to the reliability of the bulk electric system. While NERC has suspended work on the interim directive (#2001-CAG-001), it is not clear what, if any, aspects of the directive NERC will seek to implement after it receives (1) "Guidance from the Board on the proposed revision of FAC-001, FAC-003 and PRC-004 (Standard Project 2010-07)" and (2) "The final FERC approval of the NERC compliance filing concerning the upheld registry of *Cedar Creek* and *Milford Wind* as TO/TOP with appropriately scoped applicable standards." To ensure that any subsequent NERC action on this overall issue is lawful, NERC must abandon any attempt to implement a bright-line test for registering GOs/GOPs as TOs/TOPs. FERC's orders involving *Cedar Creek* and *Milford Wind* are clear that registration of GOs/GOPs as TOs/TOPs must involve a ***fact specific analysis*** of each GO/GOP to determine the materiality of the GO/GOP to the reliability of the bulk electric system.

Rules of Procedure (ROP) Changes –Chairman Anderson's letter states that "The Board would like to hear of any concerns the committee has with the general direction of the proposed substantive changes to the Rules of Procedures that the Board will consider for approval at its meeting on February 8." ELCON is concerned about both the specific changes proposed and the entire process being taken relating to proposed changes to the ROP. We are not alone. Concerns have already been expressed by many other stakeholders. In fact, a broad range of trade associations provided joint comments on a range of proposed changes including: specific comments on the detailed ROP changes, a strong concern about the lack of transparency in the process, and a failure by NERC to include the rationale for seeking the ROP changes. The joint

² See for example comments presented at the FERC Reliability Technical Conference on November 29, 2011, FERC Docket No. AD12-1-000.

trade groups' comments are still germane and are attached to the Policy Input for this meeting by the Edison Electric Institute. We urge the NERC staff to respond specifically to the various comments already filed before taking any further actions. In addition, the final version of proposed ROP changes should be posted at least two weeks prior to NERC Board meetings in order to allow stakeholders a meaningful opportunity to review and provide comments prior to submission to the Board for approval.

With respect to the specific changes proposed in Agenda Item 9, ELCON offers the following comments. Because of the short time available to prepare the following comments (the final version of the ROP changes was posted only 3 days ago), the comments are not comprehensive and silence on any proposed change should not be construed as acquiescence.

Section	Comment
ROP § 202; Appendix 4C § 1.1.9	Although the definition of “Confirmed Violation” was changed, the term “Confirmed Violation” remains inconsistent with the definition since the definition includes settlements, which can be resolved with the Registered Entity neither admitting nor denying a violation.
ROP §§ 403.15 & 409.1	<p>The proposed revisions that would allow “a regional entity” to appeal the outcome of a hearing completed pursuant to the regional entity’s own hearing process is flawed. Pursuant to ROP § 403.15, the “regional entity hearing process shall be conducted before the regional entity board or a balanced committee established by and reporting to the regional entity board as the final adjudicator” (emphasis added). The regional board or designated hearing committee is not the “final adjudicator” if a regional entity is allowed to appeal the outcome of a hearing. The insertion of “regional entity” in ROP § 403.15 is also inconsistent with the more limited insertion of “regional entity acting as the compliance enforcement authority” in ROP § 409.1. Regardless, allowing the regional entity (or subgroup therein) to appeal its own decisions is fundamentally incompatible with the appeal process set forth in Section 409, which governs appeals from final decisions of regional entities. It is axiomatic that decisions that a regional entity can appeal are not final.</p> <p>Contrary to the “Justification/Notes” in the Summary Matrix, the Regional Entity Hearing Body is not a wholly “independent tribunal” because its authority to act stems from delegated power from the Regional Entity. If such tribunals were wholly independent, they would be devoid of any enforcement powers. The proposed revisions, which would allow the Regional Entity to appeal the decision it delegated to another entity, essentially also results in rendering the hearing body impotent. It would eliminate the value of the hearing process at the regional entity level because it effectively grants the regional entity veto power over its own decision. Thus, the regional entity references in the last paragraph of ROP § 403.15 and in ROP § 409.1 should be deleted.</p>

ROP §§ 407 & 413	The proposed insertion of “including penalties, sanctions and remedial action directives that are specified by a regional entity hearing body final decision” in Section 407.1 should be deleted. In addition, Section 413 should be deleted in its entirety. They should be deleted because they refer to a “regional entity hearing body final decision,” which is not a defined term and creates ambiguity. Moreover, if the use of this phrase is intended to distinguish a “regional entity hearing body final decision” from anything other than the “final decision” of the regional entity, it is fundamentally contrary to the hearing process. See comments to ROP §§ 403.15 & 409.1, above.
Appendix 4B, <i>passim</i>	The deletion of the term “remedial actions” from Appendix 4B could be construed to mean that remedial actions required by NERC or the regional entity are different from other enforcement mechanisms such as penalties and sanctions. As explained above, NERC’s only enforcement authority is to enforce compliance with reliability standards. Moreover, “[a]ny penalty imposed under [FPA § 215] shall bear a reasonable relation to the seriousness of the violation and shall take into consideration the efforts of such user, owner, or operator to remedy the violation in a timely manner.” (16 USC § 824o(e)(6)). Regardless of whether it is called a penalty, sanction or remedial action, any enforcement action taken by NERC must be to enforce compliance with a reliability standard and must be “reasonable.” Appendix 4B should therefore clarify that “remedial actions” mandated by NERC or the regional entity will be treated in the same manner as other enforcement actions.
Appendix 4B, § 3.3.1	All enforcement activities under FPA § 215 must be directly tied to enforcing compliance with reliability standards, and all penalties must bear a “reasonable relation to the seriousness of the violation.” (16 USC § 824o(e)(6)). The proposal in Section 3.3.1 to “take into account” the compliance history of affiliated entities in the penalty determination process violates both of these principals. The actions of an affiliate do not bear upon whether an entity violated a reliability standard. Moreover, the actions of an affiliate does not influence whether a penalty is reasonable in relation to the seriousness of an entity’s own violation. In fact, affiliates often do not remain static, and an entity’s current affiliates may not have been affiliates at the time of the alleged violation. Accordingly, the following sentence should be stricken from this section: “In evaluating the violator’s compliance history, NERC or the regional entity will take into account previous violations by affiliates of the violator, particularly violations of the same or similar reliability standard requirements, and will evaluate whether any such prior violations reflect recurring conduct by affiliates that are operated by the same corporate entity or whose compliance activities are conducted by the same corporate entity.”

Appendix 4C, § 5.11	<p>The “Special Procedures for an Enforcement Action Against an ISO/RTO” proposed in Appendix 4C, § 5.11 are unlawful because they are discriminatory and grant preferential treatment to ISOs and RTOs. FERC can only approve a rule that is “just, reasonable, not unduly discriminatory or preferential.” (16 USC § 824o(f)). Section 5.11 of Appendix 4C should therefore be deleted in its entirety.</p>
Appendix 4C, §§ 1.1.30 & 3.5	<p>The proposed insertion of “or may have” in the definition of Self-Report in Section 1.1.30 should be deleted because it is ambiguous and conflicts with the definition of Self-Report in Section 3.5. Requiring an entity to submit a self-report whenever it “may” have violated a reliability standard would be unenforceable because there is no benchmark to determine when an entity would be deemed to believe it “may” have violated a Reliability Standard. Moreover, the proposed revision could be interpreted to permit a penalty assessment for not submitting a self-report even if there is no actual underlying violation of a reliability standard, which is contrary to FPA § 215. Finally, the proposed revision would substantially increase administrative costs and burdens because it would shift the burden of conducting the initial review of a potential violation from the registered entity to the regional entity.</p> <p>The Summary Matrix clarifies that a Registered Entity is not required to submit a Self-Report whenever it believes it may have, but is not certain, that it has violated a Reliability Standard. This clarification should be included the ROP to avoid unnecessary confusion and dispute in the future.</p>
Appendix 4C §§ 3.0, 5.0 & 6.0	<p>Proposed revisions in Appendix 4C would allow the Compliance Enforcement Authority (“CEA”) to “collect documents, data and information in the manner it deems most appropriate, including requesting that copies be made of Documents, data and information and removing those copies from the Registered Entity’s location in accordance with appropriate security procedures...” (This quote appears in Sections 3.0, 5.0 and 6.0 of Appendix 4C). The proposed revisions do not provide any protection against unjustified information collection burdens under the Paperwork Reduction Act of 1995 and does not account for other basic rights afforded regulated entities. (<i>See</i> the discussion regarding Section 800 and Appendix 8, above). The proposed language is also unlawful, as it would bestow the CEA with practically unfettered discretion in the area of access and data collection. The caveat that the information collection must conform to security procedures and “other safeguards as appropriate” (<i>id.</i>) is insufficient. There is a statutory limitation on the boundaries of what NERC, and even FERC, can collect. For example, an administrative agency is prohibited from going on a general “fishing expedition” for information as it “deems most appropriate,” including searching both relevant and irrelevant documents, hoping to uncover a violation. (<i>See, e.g., FTC v. American Tobacco Co.,</i></p>

	<p>264 U.S. 298 (1924)). Under FERC’s regulations, the standard for providing information is not whether the CEA deems it “appropriate.” Rather, FERC’s regulations are clear that a registered entity is only required to provide “such information as is necessary to implement Section 215 of the Federal Power Act.” (18 C.F.R. § 39.2(d)). FPA § 215, in turn, states that the purpose of NERC and the regional entity is “to establish and enforce reliability standards.” (16 U.S.C. § 824o(a)(2)). The CEA’s power to collect information is therefore limited to ensuring compliance with the reliability standards. Thus, the proposed language should be revised to “collect copies of documents, data and information necessary to establish and enforce reliability standards.”</p>
Appendix 4C, § 5.7	<p>The first sentence of this section granting the CEA the right to appeal the decision of the regional entity’s hearing body should be deleted. (See comments to ROP §§ 403.15 and 409.1, above).</p>
Appendix 4C, Attachment 1(1)	<p>The statement that “NERC or a Regional Entity may take the steps described in this section where a registered entity in the United States fails to provide, in a timely manner and in the form requested, information requested by NERC or a Regional Entity in connection with a compliance monitoring or enforcement process” is too broad that it leaves room for enforcement actions outside the scope of NERC’s jurisdiction. FERC’s regulations provide that a registered entity is only required to provide “such information as is necessary to implement Section 215 of the Federal Power Act.” (18 C.F.R. § 39.2(d)). FPA § 215 unambiguously states that the purpose of NERC is “to establish and enforce reliability standards.” (16 U.S.C. § 824o(a)(2)). NERC’s, and therefore a regional entity’s, power to collect information is therefore limited to establishing compliance with and enforcing reliability standards. To the extent Attachment 1 would penalize a registered entity for action or inaction unrelated to a violation of a reliability standard approved by FERC, including “fail[ing] to produce the requested information,” it violates FPA § 215 and is unlawful. Therefore, the data collection process should be clarified to ensure a link between the “monitoring” and “enforcement” and an enforceable Reliability Standard.</p> <p>Finally, “[a]ny penalty imposed under [FPA § 215] shall bear a reasonable relation to the seriousness of the violation and shall take into consideration the efforts of such user, owner, or operator to remedy the violation in a timely manner.” (16 U.S.C. § 824o(e)(6)). Against this jurisdictional backdrop, “Step 2” and “Step 3” of the proposed Process for Non-Submittal of Requested Data in Attachment 1 to Appendix 4C are clearly unenforceable. Specifically, in Step 2, NERC or the regional entity cannot “implement a compliance monitoring process directed to the Registered Entity,” or “apply a Reliability Standard violation at the severe violation severity level,” or impose any other penalty if the registered entity at issue did not violate a reliability standard. That is,</p>

	<p>“Step 2” and “Step 3” can only be lawful if used by NERC or the regional entity to enforce compliance with reliability standards. Moreover, if a registered entity violates an applicable reliability standard, any corresponding penalty must bear a reasonable relation to the seriousness of the violation of that reliability standard, including efforts to remedy the violation of the reliability standard.</p>
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Conclusion:

Due to both the number of and significance of the comments by both ELCON and others, we urge the BOT NOT to take action on February 9th on the proposed changes to the ROP.

**NERC Board of Trustees
Phoenix, Arizona
February 9, 2012
Policy Input of the Electric Power Supply Association**

On behalf of its member companies, the Electric Power Supply Association (“EPSA”)¹ appreciates the opportunity to provide policy input in advance of next week’s NERC Member Representatives Committee (“MRC”) and Board of Trustees (“BOT”) meetings in Phoenix. EPSA supports the BOT, NERC management and MRC leadership for recognizing the value of stakeholders’ policy input in advance of the MRC and BOT meetings and how that input can play an important role in informing the BOT leadership on issues impacting the Electric Reliability Organization’s (“ERO”) evolution.

In his January 17 letter, BOT Chair John Q. Anderson highlighted for MRC Chair Scott Helyer the activity, priority and policy issues on which the BOT seeks comment. Herein, EPSA responds to those noted areas of interest. The comments remain consistent with the last two EPSA policy submissions in preparation for the MRC and BOT meetings regarding strategic direction and priorities. NERC, as an organization, should be focused on programs and processes that materially support reliability and increase the ERO’s efficiency and effectiveness. Program and process development and deployment should be supported by material evidence of their need and value. The new Find, Fix and Track (“FFT”) initiative serves as an example of a valuable program that can be measured and is showing success. EPSA continues to be concerned about a multitude of other new programs that create duplicative, unclear processes that could undermine ERO efficiency and effectiveness. Actions such as these undermine the ERO goal of instilling a high degree of trust among stakeholders. They are contrary to the shared goal of a strong ERO.

Update on ERO Enterprise Strategic Planning

EPSA looks forward to Gerry Cauley’s review of 2011 ERO performance and his release of the organization’s 2012 goals at the Corporate Governance and Human

¹ EPSA is the national trade association representing competitive power suppliers, including generators and marketers. Competitive suppliers, which, collectively, account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities serving power markets. Each EPSA member typically operates in four or more NERC regions, and members represent over 700 registered entities in the NERC registry. EPSA seeks to bring the benefits of competition to all power customers. The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

Resources Committee (“CGHRC”). The January 24 inclusion with the MRC meeting materials give some indication of the 2012 presentation. The 2011 review should reveal valuable information about the ERO’s measurable progress. As EPSA has asserted in the past, a measured evaluation is important in setting priorities and areas of emphasis for 2012 and beyond. Issue areas should demonstrate value to reliability efforts and to improving the ERO organization. The January 24 inclusion makes no mention of how 2011 results influenced the 2012-2015 ERO Enterprise Strategic Plan. Moreover, the 2012 Strategic Goals do not list any specific measurable goals.

The Commission notes in its NERC Business Plan and Budget Order (Docket No. RR11-7-000) that the ERO’s principal goals for 2012 include:

- (1) developing clear, results-based reliability standards;
- (2) promoting a culture of industry learning and reliability excellence;
- (3) providing effective measures of reliability and risk performance;
- (4) facilitating effective management of critical infrastructure tasks;
- (5) ensuring effective and timely compliance and mitigation;
- (6) providing an effective and efficient ERO enterprise; and,
- (7) instilling a high degree of trust and confidence in the ERO.

EPSA believes that the last two goals result from the effective management and successful achievement of the first five. If the first five have specific measurable goals for 2012 it will make formulating 2013 goals a much more efficient process.

Find Fix, Track and Report Initiative

EPSA thanks the BOT for supporting and acting on this critical process improvement that will increase organizational efficiency and allow for more emphasis on reliability initiatives. Compliance and enforcement represent a significant amount of the ERO’s annual resource commitment including a significant effort on compliance aspects with little risk to reliability. Initiatives like FFTR that streamline documentation requirements and violation processing, are a positive first step. EPSA supports the ERO’s continued efforts and believes continued emphasis on the additional steps and phases of the initiative will promote success for this priority initiative. Because the compliance resource commitment makes up half of the NERC budget, initiatives that will bring compliance spending more in balance with the other five ERO goal areas is the right approach. The recently issued NERC FFT survey should help inform decisions on program successes and aspects in need of adaptation. EPSA believes that ensuring consistent coordination of this program will be the cornerstone of its success. EPSA encourages the ERO to continue to provide and stress training for compliance program area personnel. This should be considered a priority area for resources.

Generator (GO)/Transmission Operator (TO) Issues

EPSA has long been engaged on the “GO/TO” issue, noting in its May of 2009 BOT policy input the need for the ERO to make the issue a priority. As such, EPSA is pleased to see that Project 2010-07, Generator Requirements at the Transmission interface (GO/TO project) revisions of FAC-001 and -003, and PRC-004, are before the BOT for approval at the Phoenix meeting. Approving this Standard is the appropriate next step. The GO/TO project drafting team analyzed and identified reliability-based areas of improvement. The resulting standard revisions present well founded approaches to resolving reliability issues.

EPSA members supported and participated in the Standards process that drew on technical expertise and honored comments from the breadth of industry segments and stakeholders. We applaud the work of the Standards Drafting Team (“SDT”) for completing Project 2010-07 with consensus support across Bulk Power System segments.

EPSA appreciates that NERC suspended the Compliance Process Directive. This will better facilitate clear consideration of Project 2010-07. In addition, there are those that cite the Commission decision on the individual registrations of Cedar Creek and Milford as having broader compliance impacts rather than reliability implications. EPSA believes that the Cedar Creek and Milford compliance filing is an individual case about those units. Those cases should remain focused on the units in question and not be part of the BOT’s consideration of Project 2010-07. Approving the Project 2010-07 standard revisions will ensure that NERC supports incremental improvements to Reliability Standards.

Rules of Procedure Changes

EPSA, in conjunction with the other trade associations, provided joint comments on a broad range of proposed changes to the Rules of Procedure (“ROP”). Much of the comments reassert points made in prior EPSA comments (August of 2011) and joint trade comments (December of 2011). Those comments state that the ROP changes to date do not effectively address issues raised during the two previous MRC and BOT meetings. Along with comments on the specific ROP changes, trade associations expressed their strong concern over the lack of transparency in the process and the failure by NERC to include the rationale for seeking the ROP changes. At the August meeting, NERC promised to share the rationale and conduct further discussion at the November meeting. EPSA is encouraged that it appears that supporting rationale has been included in the January 29 posting to the BOT meeting materials. While EPSA appreciates the posting there has not been sufficient time to review the materials. Given the importance of these changes it is important that the ERO give sufficient time for stakeholder input and BOT review so that appropriate final decisions can be reached.

Standards Development Process

EPSA endorses the February 2, 2012 Trade Association Standards Development Principles submitted by APPA to the BOT as part of its policy input and looks forward to the discussion at the Phoenix meeting on this priority topic. The principles lay out an appropriate template for identifying inefficiencies in the standards development process that can be changed. Such an identification process will allow for continual improvement evaluation measures.

Sincerely,

/s/

Jack Cashin

Director, Regulatory Affairs

Electric Power Supply Association

ISO/RTO Council's (IRC) Policy Input to Board of Trustees

1. Update on ERO Enterprise Strategic Planning

The Board would welcome feedback on how to best identify priority areas of interest, common objectives and responsible business practices.

The Board welcomes MRC input on the 2012 goals, as well as longer-term strategic directions for the ERO Enterprise, by way of written policy input as well as open discussion at the MRC meeting on February 8.

IRC's Input

The IRC believes that identification of priority areas should be based first on identified/measured impacts on real time system reliability; and secondly on identified/measured risks to that real time reliability.

The IRC supports longer-term initiatives that are based on:

- Providing guidance that presumes Industry support and is verified by the ERO.
- Light handed "regulations," using Guides and Lessons Learned.
- Evaluating the relationship of reliability and of standards to responsible entities in the context of the restructured Industry.

2. Find, Fix, Track, and Report Initiative

IRC's Input

The IRC fully supports the FFT initiative on the basis that the initiative:

- Enhances reliability by recognizing proper behavior and encouraging reliability entities to resolve the reliability impact by quickly correcting any errors that occur, and by expeditiously applying any lessons learned.
- Enhances reliability by allowing the ERO to better deploy its resources on critical reliability issues, as opposed to diluting the effectiveness of these resources by deploying them on matters having a weaker link to reliability.
- Increases consistency of behavior and compliance enforcement, and leads to better transparency of the process.

The IRC suggests that FFT could become even more effective if:

- The ERO, in its six-month status update to FERC, seeks the Commission's recognition of the current FFT initiative.
- The FFT initiatives be further streamlined to a set of simple high-level transparent rules that can be applied by the compliance enforcement authorities and responsible entities to

reduce subjectivity in compliance decisions, and further reduce scrutiny of low-impact events, and in so doing free up resources to review and assess high-impact events.

- The FFT process were better reflected in determining the reliability risk of individual entities. The FFT process recognizes that self-reported, self-resolved incidents are indications of a self-healing organization that is improving reliability. However, the IRC notes that when it comes to computing the “reliability risk” of an entity, it appears so far that self-reported, self-corrected incidents would be viewed the same as non-corrected violations. The ERO should consider eliminating the self-reported, self-corrected incidents from this reliability risk calculation.

3. Rules of Procedure (ROP) Changes

The Board would like to hear of any concerns the committee has with the general direction of the proposed substantive changes to the Rules of Procedure that the Board will consider for approval at its meeting on February 8. Are these changes, to date, effectively addressing the issues raised during previous MRC and Board meetings?

IRC’s Input

Appendix C:

- While the proposed changes to the ROP do address some of the issues identified by the IRC and industry groups, including the major trade associations, in the comments submitted to NERC on December 21, 2011, NERC has retained unnecessary provisions that also raise material legal concerns. In the case of Appendix C, section 5.11, the IRC comments raised fundamental questions concerning NERC’s authority under US federal law. **As detailed below, the IRC repeats the request it and others made in December 21 comments that the Board of Trustees not adopt ROP changes related to ISO/RTO direct assignment of penalties (see Appendix 4C, Section 5.11 and related provisions).**
- ***Problems with Proposed ROP Relating to ISO/RTO Direct Assignment of Monetary Penalties***

As originally proposed, the changes to Appendix 4C, section 5.11 inappropriately and impermissibly limited, and attempted to regulate, the rights granted by FERC to ISOs/RTOs to directly assign certain monetary penalties to specific member companies. Despite NERC addressing a number of the legal issues identified by the IRC and other industry groups, the provisions continue to have serious flaws. Specifically, the proposed language inappropriately and impermissibly: (a) expands NERC’s oversight role to review the legal adequacy of ISO/RTO filed-rates; (b) confuses the rights Third Parties have to intervene in the enforcement proceeding in those situations where the ISO/RTO and the ERO enter

into a Settlement Agreement, and (c) maintains a legally inaccurate definition of an ISO/RTO.

- ***NERC's Proposal to Review the Legal Adequacy of ISO Tariffs and Governing Documents Incorrectly Presumes NERC Has Authority Under Section 205 of the Federal Power Act.***

NERC's proposal requires ISOs and RTOs to present to NERC for review and agreement that their tariffs and/or contracts provide for the right to allocate a penalty to a third party that caused the penalty. This proposal puts NERC in the position of making a legal determination of whether the ISOs and RTOs have the legal rights to assign a penalty.

This determination puts NERC in the legally impermissible position of a rate regulator, infringing upon the ISO/RTOs' rights under Section 205 of the Federal Power Act to allocate certain costs to its customers. In the 2008 Guidance Order, FERC made clear that NERC's role is simply to determine whether third parties caused or contributed to the alleged violations. In other words, did companies other than the ISOs/RTOs, through their acts or omissions, play a material role in the event that NERC alleges results in an ISO/RTO being deemed to be in violation of a Standard?

NERC has already represented to the Commission that it will undertake a "root cause" analysis in enforcement proceedings to determine the actual cause of a violation so that reliability may be improved rather than simply stopping the inquiry at the Registered Entity.¹ Therefore, NERC's stated rationale for conducting such legal determinations – *i.e.*, that NERC would avoid undertaking substantial work in understanding the role other companies played in events resulting in alleged violations of Reliability Standards – is plainly at odds with NERC's prior comments to FERC, and as importantly, at odds with enforcing Standards in a manner that improves reliability.

- ***NERC Confuses the Rights of Third Parties When the ISO/RTO and the ERO Elect to Settle an Alleged Violation***

The proposed revisions confuse a Third Party's right to participate in a root cause analysis and an enforcement proceeding with the participation of a third party in a settlement. As

¹ See generally NERC Comments (Docket AD07-12) at 7-10; see *id.* At 8 ("NERC submits that the presumption (unless and until proven inaccurate) should be that these detailed investigative, hearing and appeal processes will result in identification of (all of) the entities whose actions caused or contributed to a reliability standard violation."); See also Reliability Standard Compliance and Enforcement in Regions with Regional Transmission Organizations or Independent System Operators (2008 Guidance Order), 122 FERC ¶ 61,247 at P9 (Both at the technical conference and in written comments filed afterwards, NERC stated that *it is committed* to uncovering the root causes of Reliability Standard violations.")

noted, NERC is conducting a root cause analysis, making an independent assessment about the role third parties played in a violation without assigning a penalty allocation amount to them. The latter is FERC's role, exercised in connection with a Section 205 filing by an ISO or RTO to assign the penalty.

When understood that way, a Settlement Agreement *simply addresses*: (1) the ERO and the ISO/RTO settling on whether or not there was a violation of the Standard that applies to the ISO/RTO and (2) the penalty amount, mitigating & corrective actions. It is therefore incorrect to include in the Rules of Procedure a requirement that any third party that is participating in an enforcement proceeding ***must consent*** to any settlement agreement.

- ***The ROP incorrectly define ISOs/RTOs***

Third, the definition of ISOs and RTOs proposed for the ROP continues to be legally incorrect. As presented in the proposed ROP revisions, the definition states:

ISO/RTO: A FERC-approved independent transmission system operator or regional transmission organization with exclusive and independent authority under section 205 of the Federal Power Act (16 U.S.C. 824d) to propose rates, terms and conditions of transmission service provided over the facilities it operates.

If the intent is to limit the definition of ISO/RTO to those organizations located in the United States, the definition should be revised to state: An independent system operator or regional transmission organization approved by the FERC or the Public Utility Commission of Texas.

The additional language is incorrect as Section 205 rights are not the controlling element of an entity's legal designation under FERC Orders No. 888 or 2000. Rather, an ISO or RTO may have exclusive 205 rights over certain parts of a tariff and joint 205 rights, or may not have 205 rights at all, over other parts.

Based on their review, the IRC strongly urges the Board to reject these ROP changes at this time.

Appendix 8: The Withdrawal of Appendix 8 from Board of Trustees' Consideration is proper.

- In addition, the IRC supports NERC withdrawing the proposed Appendix 8 ("Event Analysis") from the ROP. The proposed modifications related to Appendix 8 conflict with the Operating Committee-endorsed process. NERC did not coordinate the ROP changes with the Operating Committee, and NERC did not explain why such a high level of detail on the EA program was needed in the ROP.

General Comments: Improvements are needed for how NERC proposes changes to the ROP.

- Finally, and as a general matter, the IRC urges the Board to direct NERC to adopt protocols that would establish greater transparency around ROP development.
- While the IRC appreciates NERC's recent efforts to better explain the basis and substance of proposed sets of changes, small additional efforts to facilitate stakeholder input in this area would yield great improvements in prioritizing changes and improving final work product. Most importantly, prior to presenting ROP changes for industry review and comment, NERC should explain the "problem" being sought for resolution, what adverse impacts this "problem" is creating, and how NERC's proposed solution is effective in addressing it.

The IRC proposes that NERC:

1. Publish a regulatory schedule with quarterly updates of planned ROP changes.
2. Seek CCC (or other appropriate committee) input to flag any potential significant issues prior to publishing actual language for review/comment.
3. Add webinar/committee presentations contemporaneous with posting of proposed changes.
4. Consider extending comment periods for proposed ROP changes.
5. Improve prioritization of work effort by reviewing ROP changes, CANs, Standards, and Data Requests scheduled for comment in any particular calendar quarter.

ISOs/RTOs have extensive experience with managing stakeholder processes for filing rule/tariff changes with the FERC and can be available to discuss improvements to the ROP change process in more detail. The steps outlined above will give the industry the opportunity for advance input, which is likely to result in a better end product. Additionally, this type of coordination would also minimize or avoid public disagreement between NERC and the industry at the MRC, BOT or FERC level. Finally, this approach should also result in the timely release of a "finalized" product; stakeholders should not be given a 3-4 day window, as is the case for this BOT meeting, to provide the BOT with input on ROP changes. There may be other areas in which the IRC would have liked to offer its support, or conversely, to express questions or concern.

4. Interpretation for Approval

IRC's Input

The IRC would like to note its support of the **COM-002 R2 Interpretation**. The IRC's Standards Review Committee (SRC) submitted the Request for Interpretation over two years ago. It garnered over 94% industry approval and should be approved by the BOT at its February meeting.



The Large Public Power Council

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MEMORANDUM

From: William Gaines, CEO, Tacoma Utilities, on Behalf of the Large Public Power Council

To: Dave Nevius, Secretary
NERC Members Representatives Committee

Subject: Response to Request for Policy Input

Date: February 2, 2012

The Large Public Power Council (LPPC¹) submits this response to the letter dated January 17, 2012 from NERC Board Chairman John Q. Anderson to Scott Helyer, acting in his capacity as Chairman of the NERC Member Representatives Committee (MRC). LPPC has reviewed and concurs with the policy input submitted by the State-Municipal and Transmission Dependent Utility sectors (SM-TDUs) on topics to be discussed by the NERC MRC and the NERC Board of Trustees at their respective meetings on February 8th and February 9th, 2012. Additionally, LPPC supports the February 2, 2012 Trade Association Standards Development Principles. We provide these separate comments to elaborate on our concerns with the proposed changes to the NERC Rules of Procedure (ROP).

The changes proposed to the ROP would radically modify the dynamics of the enforcement process. LPPC appreciates NERC staff's rationale for the proposed revisions articulated in the matrix that was posted for the first time this past Monday. Unfortunately, insufficient time remains for the industry to adequately respond to the rationale presented by NERC staff, or suggest compromise language that would meet the objectives of NERC staff while addressing industry concerns.

In particular, the proposed revisions would provide the Regional Entity with the right to appeal the decision of a Regional Entity hearing body. Providing the Regional Entity with the same appeal rights as afforded to the registered entity runs counter to the spirit of the

¹ LPPC represents 25 of the largest state and municipal utilities in the nation, with members that own approximately 90% of the transmission assets owned by non-federal public power utilities. The council's members are listed below.

Austin Energy (TX) • Chelan County PUD (WA) • Clark Public Utilities (WA) • Colorado Springs Utilities (CO) • CPS Energy (TX)
Electricities of North Carolina, Inc. (NC) • Grant County PUD (WA) • IID (CA) • JEA (FL) • Long Island Power Authority (NY)
Los Angeles Department of Water and Power (CA) • Lower Colorado River Authority (TX) • MEAG Power (GA) • Nebraska Public Power District (NE)
New York Power Authority (NY) • Omaha Public Power District (NE) • OUC (FL) • Platte River Power Authority (CO)
Puerto Rico Electric Power Authority (PR) • Sacramento Municipal Utility District (CA) • Salt River Project (AZ) • Santee Cooper (SC)
Seattle City Light (WA) • Snohomish County PUD (WA) • Tacoma Public Utilities (WA)



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enforcement process reflected in Section 215 of the Federal Power Act. Under section 215, the appeals process begins when a penalty is assessed against a registered entity, who then has the opportunity to appeal the penalty. No other right of appeal is contemplated. This makes sense, because the statutory structure provides the entities that are subject to enforcement appropriate due process, while securing the finality of the decision-making process. Appeals from a Regional Entity to NERC should be no different. It is inappropriate to modify the Rules of Procedure in a manner that would allow the Regional Entity to file an appeal with NERC every time that it disagrees with the finding of that Regional Entity's hearing body.

In explaining this proposed revision, NERC staff points out that the hearing body of a Regional Entity is a tribunal separate from and independent of the Regional Entity's Compliance Program, and for this reason the Regional Entity should have appellate rights commensurate with those of the registered entity. NERC staff also argues that the Regional Entity must have the ability to bring any disputed matter to NERC for ultimate disposition.

On the first point, the very purpose of the hearing process is to provide the registered entity with a fair, independent, and nondiscriminatory process when contesting the findings of a Regional Entity. Accordingly, it stands to reason that the hearing body would be independent from the Regional Entity compliance program. The existing version of the ROP recognizes that the purpose of the hearing process is to protect the due process rights of the registered entity. Providing the Regional Entities with unconditional appellate rights undermines these rights. Because registered entities have limited resources, the decision to take a matter to hearing will not be taken lightly. Allowing a Regional Entity to appeal the decision of a Regional Entity hearing body significantly reduces the likelihood of a timely resolution of the issues, and has a "heads I win, tails you lose" quality, since it holds the potential of undermining litigated results, and creates a strong disincentive for registered entities to pursue their rights. Indeed, as a practical matter, the proposed changes may render the hearing process meaningless by compelling registered entities to risk spending limited time and resources in endless litigation when a Regional Entity files an appeal.

On the second point, NERC staff proposes other revisions to the ROP that ensure NERC's role in the Regional Entity hearing process, in particular the authority to review and process final decisions of Regional Entity's hearing body. This right would apply even when no party appeals the decision of the hearing body, and would allow NERC to modify any hearing body decision when necessary to ensure consistency in violation and penalty determinations among Regional Entities. Given the proposed addition of this language to the ROP, providing the Regional Entity with separate and additional unconditional appeal rights unreasonably tilts the hearing process in favor of the Regional Entity, and goes further than is necessary to protect NERC's interests.

Austin Energy (TX) • Chelan County PUD (WA) • Clark Public Utilities (WA) • Colorado Springs Utilities (CO) • CPS Energy (TX)
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LPPC urges the NERC Board to defer taking any action on the proposed revisions to the ROP at this time so as to provide the industry and NERC staff with additional time to develop a more balanced approach that meets the needs of all involved.

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POLICY INPUT TO NERC BOARD OF TRUSTEES

FEBRUARY 2, 2012

Pursuant to the NERC Board of Trustee's request for policy input from the NERC Member Representative Committee for the upcoming February 8, 2012 meeting, the Midwest Reliability Organization ("MRO") Board of Directors respectfully submits the following for consideration by the NERC Board of Trustees.

ERO Enterprise Strategic Planning

MRO generally supports the NERC strategic direction in finding ways to provide more value in improving reliability and security of the bulk power system. However, MRO is concerned with the significant number of priorities that NERC has identified and suggests core emphasis in the following areas:

1. Standards

The Standards-setting process needs to be revised to deliver better, faster results while continuing to leverage the technical expertise of the industry.

NERC and the Regional Entities should devote more time to working with industry technical leaders in the development of application guides to clarify standards and assure that they are well understood and applied rigorously across North America. Subject Matter Experts from the MRO Region have developed application guides which have provided positive results in reducing the number and severity level of violations. Providing better clarity on expectations will also lower costs of compliance for the ERO enterprise and the Registered Entities.

2. Recognizing Risk in the Compliance Monitoring and Enforcement Program (CMEP)

MRO suggests the program place much more emphasis on measuring the strength of the Registered Entity's corrective action and internal risk control programs to determine the level of "reliance" Regional Entities can place on Registered Entities. MRO is concerned that any proposed approach which fails to account for measuring corrective action and risk control programs will not result in a true "risk based" program. Once an approach and corresponding program is established, a strong roll-out plan to ensure the revised program is properly implemented and discretion is handled in a principled and fair manner by the Regional Entities and NERC staff is required. Proper discretion follows a well-designed risk-based approach.





3. Reducing Costs of Compliance

The current approach of implementing the Compliance Monitoring and Enforcement Program has driven compliance costs to unsustainable levels. These costs are reflected in higher annual budgets for NERC and the Regional Entities but do not reflect the time and costs that the industry devotes to compliance. While the FFT process will most likely result in cost savings for NERC and the Regional Entities, more effort is needed to reduce end-to-end compliance costs in the industry. The implementation of a “risk based” approach to compliance will increase rigor and substantially reduce overall administrative burdens. This approach would emphasize strong Registered Entity internal corrective action programs and management risk controls for ongoing assurance that Bulk Power System (BPS) risks are being addressed and improvements made to reliability and security – resolving small matters before they become significant.

4. Event Analysis

Event Analysis is the “low hanging fruit” for improving reliability. An event allows for a practical examination of the application of the standards and concomitant insight into their effectiveness. Therefore, Event Analysis is the natural and necessary companion to the development and improvement of standards. MRO generally supports NERC’s efforts in the Event Analysis area. MRO would like to see a more accelerated roll-out and training for root cause analysis and defining what constitutes a complete and rigorous Event Analysis. Additionally, MRO is generally concerned that the past compliance and enforcement approach has squelched more opportunities for sharing lessons learned. Perhaps this can be discussed in the future to find alternatives to share lessons learned more quickly while maintaining the integrity of the compliance and enforcement program.

5. Improve and Clarify Roles

MRO suggests that NERC consider a standard business model to drive results, clarify roles, and reduce duplication. For example, MRO supports a “franchisor-franchisee” type business model where the roles are clearly defined through the model. NERC, as the “franchisor,” leads the industry for standards development, trains and equips the Regional Entities (as “franchisees” via the delegation agreement), and provides oversight to assure uniformity and fairness. As “franchisees,” the Regional Entities are essentially the “front lines” to the Registered Entities who handle all the “day to day” matters. NERC’s role in the field would be dedicated to large scale system events, effective oversight, and assuring more uniformity through training and procedures to support the Regional Entities. This type of business model can leverage both a North American view through NERC and a more local view through the Regional Entities.





Find Fix, Track, and Report Initiative

MRO supports and has actively participated in the Compliance Enforcement Initiative which includes the “Find, Fix, Track and Report” or FFT process. As of January 1, 2012, MRO has accounted for almost 20% of the 325 FFT remediated issues filed by NERC and the Regions at the Federal Energy Regulatory Commission.

MRO believes that the FFT Process appropriately recognizes that all possible violations must be recorded and addressed by the Registered Entity. In order to satisfy MRO’s public trust obligation, MRO conducts an independent assessment of risk on all possible violations, even the violations that appear to be “minor” ones, and ensures that all instances of noncompliance are mitigated. This reduces risk and improves BPS reliability. If MRO determines that the violation is a “minor” one, it manages the violation through the FFT process. The FFT process benefits the ERO by scaling the record requirements with the actual risk posed by a possible violation, thereby allowing MRO to spend more time on material matters and less time on “minor” and administrative violations which pose little risk to the BPS.

The FFT process, as Phase One of the Compliance Enforcement Initiative, is a step in the right direction, but more needs to be done. MRO supports the ERO’s efforts underway to develop Phase Two of the Compliance Enforcement Initiative which should provide better alignment between the materiality and the significance of instances of noncompliance, with the enforcement process being reserved for matters material to the reliability of the BPS. This approach should also result in additional cost savings for Registered Entities by reducing paperwork and administrative burdens related to mitigation and external reporting.

The success of the ERO lies with realizing that the hallmark for reliability is not that interconnections are error free, but that those errors and other operating anomalies won’t create a cascading outage. The technical regulatory regime must recognize this reality and allow the industry to correct the small matters outside of enforcement as part of its commitment to “operational excellence.” Key features of “operational excellence” are strong corrective action programs and embedded risk controls (i.e. internal assurance). The regulatory regime should align with the drive to “operational excellence.” However, without an alternative to the full enforcement process where everything is processed administratively regardless of actual risk posed by the individual facts and circumstances, we will remain focused on achieving compliance through enforcement only, rather than driving “operational excellence.”





In summary, MRO continues to strongly support the NERC Compliance Enforcement Initiative and the next phases must focus on “significance” and reducing end-to-end compliance costs for Registered Entities.

Generator Operator (GO)/Transmission Operator (TO) Issues

MRO believes that the careful application of NERC’s existing registration principles and criteria would resolve the issues resulting from the Cedar Creek and Milford Wind proceedings. MRO is concerned that the failure to follow existing registration principles and criteria will result in an improper Transmission Operator (TOP) designation which will cause confusion and degrade the reliability of the bulk electric system. MRO believes the Commission was clear that the Cedar Creek and Milford Wind proceedings were to be narrowly applied to the particular situation and therefore, NERC should not pursue further efforts on this matter and instead, provide guidance and tighter oversight on the existing registration criteria.

For example, in its Statement of Compliance Registry Criteria (Revision 5.0), NERC states it will apply certain principles to determine whether an entity meets the registration criteria. The first principle notes “NERC must identify the owners, operators, and users of the bulk power system who have a material impact on the bulk power system through a compliance registry. NERC and the Regional Entities will make their best efforts to identify all owners, users and operators who have a material reliability impact on the bulk power system in order to develop a complete and current registry list.” See [NERC’s Statement of Compliance Registry, Version 5.0](#) (emphasis added). The significance of “material reliability impact” is clear, not only from its repetition in the principles for registration criteria, but also because the lack of a material reliability impact can result in a Registered Entity being excluded from a functional designation. A Registered Entity which meets the criteria for various functions may nevertheless be excluded from registration by the Regional Entity, if the Regional Entity “believes and can reasonably demonstrate to NERC that the bulk power system owner, operator, or user does not have a material impact on the reliability of the bulk power system.”

Moreover, MRO is concerned about the unintended consequences that may flow from improper registration. In the MRO Region, these entities as Generator Owners (GOs), Generator Operators (GOPs) and Transmission Owners (TOs) have obligations to communicate with the TOPs which operate the transmission system connected with the long generation lead. If these GO, GOP and TO entities are improperly classified as TOPs, those communication obligations





would become an obligation to communicate with itself. This was certainly not the intent of registration. The loss of communication would be an unintended consequence of registering an entity with a single long generator lead as a TOP and it would adversely impact reliability.

Going forward, MRO believes that concerns such as those raised by Cedar Creek and Milford can be avoided through proper application of the existing NERC Registration Criteria. MRO believes that Standards Project 2010-07 (Generator Requirements at the Transmission Interface) is a step in the right direction to resolving the matter in the future.

Rules of Procedure Changes

MRO is pleased with the work that has been done to improve the Event Analysis process. The Event Analysis process recently developed by collaborative work of the Operating Committee and the Planning Committee through the Event Analysis Working Group provides expectations and clarity about the categories of events to be reviewed and the level of analysis required. MRO believes that this work reflects NERC's role as a learning organization. It is important to allow future events to continue to shape and refine the Event Analysis process leading to continuous improvement by the ERO.

However, embedding this fundamentally technical analysis process in the Rules of Procedure, a legal model, makes cementing the process more important than having a process with appropriate flexibility to ensure robust lessons learned - lessons which have a direct, positive impact on reliability. Inclusion in the Rules of Procedure may limit future legitimate avenues of inquiry in an Event Analysis due to the restrictive and legal nature of the Rules of Procedure. Moreover, inclusion in the Rules of Procedure will certainly stifle the evolution and improvement of the Event Analysis process due to the processes required to change Rules of Procedure. In short, it's too early to memorialize the Event Analysis process in the Rules.

MRO encourages the Board of Trustees to leave the Event Analysis process in a collaborative environment so that the goals of real and robust lessons learned are met through the event analysis process and the reliability of the bulk power system is improved. In its comments on the Rules of Procedure submitted to NERC, MRO has suggested that to the extent NERC and the Board of Trustees desire to define the major event and investigative processes conducted by NERC and FERC, the change to the Rules of Procedure should focus on Section 807 – Analysis of Major Events and Appendix 8 – Blackout and Disturbance Response Procedures. The Event





Analysis process for lesser events conducted by the Regional Entities and Registered Entities should simply be referenced.

Therefore, MRO recommends that the Rules of Procedure exclude detailed Event Analysis process at this time. MRO supports a defined, transparent Event Analysis process so Registered Entities have clarity about expectations and the public has assurance that events will be analyzed in a timely, thorough manner.

Midwest Reliability Organization appreciates the NERC Board of Trustees consideration of its comments.





NORTHEAST POWER COORDINATING COUNCIL, INC.
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**NPCC Board of Directors Policy Input to the
February 8, 2012 NERC Member Representatives Committee
and February 9, 2012 NERC Board of Trustees Meetings**

1. ERO Enterprise Strategic Planning

- a. NPCC supports the transitioning of the ERO's reliability enhancement strategy from an intensive document-based compliance enforcement regime, to a risk-based reliability performance focused approach included in the draft Strategic Plan
- b. NPCC recommends the expeditious development of risk-based standards, the expansion of reliability performance focused compliance efforts, increased ERO Enterprise-wide staff training and informational workshops for industry, enhanced communications and tracking of applications of lessons learned from a robust events analysis program, development of meaningful reliability metrics based on technically sound reliability assessments, and the efficient leveraging of NERC, Regional Entity, and industry resources to achieve these objectives

2. Find, Fix, Track and Report Initiative

- a. NPCC continues to support implementation of the Find, Fix, Track and Report (FFT) procedure as a forward advancement in NERC's continuing efforts to improve the efficiency and effectiveness of the ERO's compliance processes for Possible Violations that pose lesser risks to the Bulk Power System
- b. NPCC suggests that NERC use the six month status report filing to also recommend that FERC act to approve FFTs filed in the future, in order to document regulatory closure with regard to mitigated Possible Violations
- c. NPCC recommends that NERC accelerate its auditor training and industry informational webinars and workshop programs to introduce an FFT approach to the auditing process in the last quarter of 2012

3. Generator Owner (GO)/Transmission Owner (TO) Issues

- a. NPCC supports limiting applicability of FAC-001 Interconnection Standard to Generator Owners interconnecting a third party facility to the GO's existing facility
- b. NPCC also supports the limited applicability of FAC-003 for those GO/GOPs with interconnections greater than 1 mile, and the clarifying language in PRC-004 for coordination of protection related to generating facilities
- c. NPCC continues to recommend that requiring GO/GOPs to register as TO/TOPs is not the appropriate mechanism to address any potential reliability gaps at the interface

4. Rules of Procedure Changes

- a. NPCC supports the removal of some of the administrative details from the ROP and recommends further elimination of such implementation specifics to allow for innovation and operational efficiencies within a consistent, continent-wide context
- b. NPCC strongly supports the ROP changes which accommodate an all independent member Hearing Body for compliance matters

5. Expedite Dissemination of Technical Information and Lessons Learned from Event Analyses and Investigations

- a. NPCC is concerned with the delay in disseminating to the industry potentially critical lessons learned from significant events that are under multi-party investigation and recommends that NERC prioritize the early release of such reliability related information
- b. NPCC recommends that NERC expedite the development of processes that would allow for the confidential sharing of detailed technical data associated with system events to those industry experts that could utilize such information to effectuate reliability enhancements in other registered entities

*Approved by NPCC Board of Directors
At its February 1, 2012 Meeting*

**National Rural Electric Cooperative Association (NRECA)
Policy Input to the NERC Board of Trustees (BOT)
February 2, 2012**

NRECA appreciates the opportunity to provide policy input to the NERC BOT regarding several issues that will be discussed at the February 8/9 MRC and BOT meetings.

Update on ERO Enterprise Strategic Planning

- Stay focused on core mission – standards development and compliance/enforcement.
- Maintain ANSI accreditation.
- Don't get distracted by smaller issues that don't impact BES reliability.
- Implement the FFTR/Compliance Enforcement Initiative Phases 2 and 3 as soon as possible.
- Work with industry on standards development process revisions and further focus and implementation of results-based standards.
- Support industry's efforts to complete work on the CIP standards.
- Take steps necessary to gain FERC approval of the recently approved Phase 1 BES definition and provide needed support to the drafting team for completion of Phase 2.
- Take steps needed to focus CANs on providing guidance and not expanding or interpreting standards outside the standards development process
- Increase frequency and depth of training for auditors employed or contracted by the Regional Entities. Offer stakeholders the opportunity to receive the same training.
- Ensure that work on the Adequate Level of Reliability (ALR) definition is completed in a timely manner and that the result is a product that provides stakeholders appropriate criteria for standard development.
- Continue to support the key stakeholder-driven roles of the Standards and Compliance and Certification Committees. Both committees are critical to NERC's role as the ERO.
- NRECA and its members stand ready to contribute to NERC's success in achieving its goals.

Find, Fix, Track and Report Initiative

- Positive first step so far, but more work is required by NERC and the Regional Entities to continue advancing this initiative.
- To date, FFTRs have helped to clear some potential violation backlog issues.
- NRECA is pleased that some minor and/or documentation potential violations have been addressed without a finding of a violation or assessing a penalty.
- NERC and the Regional Entities need to implement Phase 2 and 3 as soon as possible to provide increased material benefit to stakeholders.

Generator Operator/Transmission Operator Issues

- BOT should approve SDT work product on the GO/TO issues (Project 2010-07) and quickly file it with FERC for regulatory approval.
- Strong industry support for Project 2010-07 demonstrated in ballot results.
- No reliability issues identified that would necessitate the registration of GO/GOPs as a TO/TOPs.
- NERC directive not needed to resolve issues that are being addressed today through Project 2010-07.

Rules of Procedure

- For all future ROP changes proposed by NERC for stakeholder comment, there must be detailed evidence and support provided for the proposed changes prior to the 45-day comment period. Without this evidence and support it is challenging for industry to understand why changes were proposed and it does not help industry to provide constructive and targeted comments on such changes.
- NRECA is willing to work with NERC to develop a needed transparent process for NERC to use when addressing industry comments on ROP issues.
- Specific language should not be included in the ROP making Events Analysis mandatory. These issues can be properly handled outside of NERC's governance documents.
- NRECA remains strongly opposed to the NERC proposal to increase from 10 to 50 the number of NERC members required to request an ROP modification. We understand the ROP is being changed to align with the NERC Bylaws. Instead, NERC should consider if the Bylaws should be changed to align with the ROP.

Standard Development Process Improvements

- NRECA is a signatory to the "February 2, 2012 Trade Association Standards Development Principles" policy input comments that are being submitted separately from this document.
- NRECA strongly believes that NERC and industry need to first identify problems/causes of inefficiencies in the standard development process and then develop responsive solutions. Any changes/improvements must be in response to identified problems/causes, and not in response to unsupported assertions or anecdotal reports.
- NRECA believes that standards development process improvements need to be addressed in a collaborative manner in order to effectively address the problems experienced to date. The MRC along with a working group it will form should endeavor to organize the effort and define the high-level goals, priorities and expectations for standard development process revisions. The work product from this effort will guide the NERC SC and its Process Subcommittee in their efforts to more fully develop a revised standard development process based on an assessment of problem

causes, while maintaining credible components of the current standard development process.

Barry R. Lawson
Associate Director, Power Delivery & Reliability
National Rural Electric Cooperative Association (NRECA)
703.907.5781
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January 31, 2012

Via Electronic Mail

John Q. Anderson, Chair
NERC Board of Trustees
c/o Dave Nevius, MRC Secretary
dave.nevius@nerc.net

Re: Policy Input to NERC Board of Trustees

Dear Mr. Anderson,

ReliabilityFirst Corporation ("ReliabilityFirst") appreciates your request for policy input on the Find, Fix, Track, and Report Initiative and the Rules of Procedure Changes in your letter dated January 17, 2012. Given that the Find, Fix, Track, and Report Initiative and the NERC Rules of Procedure are important matters that impact ReliabilityFirst's day-to-day operations, ReliabilityFirst respectfully provides the following input for the consideration of the NERC Trustees. These comments represent the views of our organization and are not intended to necessarily reflect those of our collective stakeholders within the Region.

A. Find, Fix, Track and Report (FFT) Initiative

ReliabilityFirst believes that the FFT initiative is a watershed moment in the evolution of the ERO regulatory model. Although the FFT is labeled as an "Enforcement Initiative," we consider the FFT as the first major initiative to review the data obtained during the first four plus years of mandatory enforcement, to determine whether the value gained (increased reliability) as measured against the expenditure of resources and time by the Regions and Registered Entities made sense and whether that gain in reliability could be obtained in a more effective, efficient and timely manner, or, perhaps, certain enforcement actions, and subsequent registered entity actions, produced no gains in reliability at all. ReliabilityFirst hopes that programs like FFT will be implemented over time across all ERO programs.

ReliabilityFirst, consistent with the stated goals of the FFT initiative, has utilized the FFT where the facts and circumstances warrant (approximately 50% of our Regional enforcement actions are now resolved through use of the FFT) which has further improved our ability to focus time and resources proportionately based on the risk posed by the violation. ReliabilityFirst continues to be a steady and significant contributor to the total number of FFTs NERC files each month with the Commission. ReliabilityFirst, however, cautions both NERC and the Regions that the FFT is a means not an end; placing too much emphasis solely on FFT *volume* may have a detrimental effect on responding to more serious violations. We believe all would agree that such an outcome is counter to the stated goal of the FFT, namely the saving of Regional and Registered Entity resources on minor matters in order to free those resources up to work on the more important and serious matters.

The brevity of the information necessitated by FFT spreadsheet format makes it critical that clear, concise and comprehensive information is given detailing the nature of the violation, the risk posed and the mitigating activities undertaken, making it clearly understandable about why the decision was made to utilize the FFT as the final disposition of the issue. This is important to NERC and FERC, each of which provides oversight of the use of FFT, and also to other Registered Entities so that they can be assured of equitable treatment under this program. If on its face, an issue seems complex and serious, inclusion in the FFT may create confusion or questions absent a clear and sufficient explanation when the FFT is submitted. Furthermore, again to avoid confusion and conflict, we must address the misconceptions we run into with Registered Entities, such as an FFT designation being a prerequisite to receive a zero dollar penalty is false (zero dollar penalties are available across all FFT/NOP filing mechanisms) by openly communicating with Registered Entities and/or FERC.

ReliabilityFirst supports the identified Phase 2 of the FFT initiative, namely the use of auditing teams to identify FFT candidates immediately at time of issue detection. However, ReliabilityFirst believes that the subsequent savings in time and resources, either at the Regional or Registered Entity level, although greatly appreciated by all, is again a step in the right direction but should not be the end point. For example, future initiatives should include provisions to exercise judgment and discretion and decline to pursue those matters that are “technically” violations but clearly have no impact on reliability.

Another future initiative, and one that we feel is essential, is to invest time in reviewing the nature and risk and harm posed by the issues being filed in the FFT (and filed through other disposition methods prior to the FFT) to determine whether certain standards or requirements are effectively contributing to reliability. Similar to the valuation of whether certain enforcement actions are contributing to reliability, the same valuation activity should occur for individual standards and requirements. Those that do not contribute to reliability effectively should be examined for modification, addition or deletion. Continued focus on enforcement or auditing initiatives alone will not solve the ultimate problem; if some standards and requirements have no appreciable impact on reliability and remain in force, Registered Entities will incur costs to comply.

It is incumbent upon the ERO and the Regions to provide feedback to industry as to the measured value to reliability that all ERO and Regional activities provide.

B. Rules of Procedure Changes

The NERC Rules of Procedure (RoP) and its Appendices are critical documents to the ERO enterprise. These documents govern the Regions’ day-to-day work while simultaneously providing clarity and guidance to the Registered Entities of the various ERO compliance processes and requirements. Consequently, NERC should limit modifications to these important documents to only those instances where the modification is necessary to both clarify and add greater efficiency to NERC and the Regions’ work. The comments that follow are based upon the proposed modifications to RoP that were posted and publicly available at the time of this writing.

After analyzing and discussing the proposed modifications with NERC staff, other Regions, stakeholders, and various industry trade associations, ReliabilityFirst does not believe that the proposed modifications meet this important criteria (other than the limited revisions that are necessary to address pending FERC orders). More fundamentally, ReliabilityFirst respectfully question the need to, at this time, open and revise numerous rules impacting and relating to the hearing process given collective inexperience of both

NERC and the Regions with the hearing process to date.¹ We further question the advisability of incorporating the elements of the event analysis process in the Rules at this time.

ReliabilityFirst suggests that the Board consider allowing NERC staff and the Regions to obtain experience with both the hearing process and related processes so an understanding of any current rule deficiencies, to the extent that there are any, may be better identified and future revisions may be developed simultaneously and considered and discussed from a more informed basis. We provided specific comments related to this topic in a public response we made to NERC during the open comment period for these revisions.

We strongly support the events analysis process effort that NERC has undertaken. In fact, Jacquie Smith of our staff chairs the group charged with developing and implementing it. However, we feel the process is not yet mature enough to incorporate into the Rules of Procedure. Seeking formal FERC approval of the process elements via the Rules will complicate the need to make necessary adjustments as we employ and learn more about this important process. We also believe that industry implementation of the process should remain voluntary as opposed to a mandatory requirement in the Rules. For these reasons, we ask the Board to carefully consider making the proposed changes at this time.

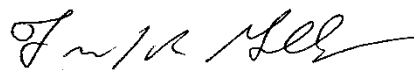
C. Conclusion

ReliabilityFirst appreciates the NERC Board of Trustees consideration of ReliabilityFirst's suggestions. Although ReliabilityFirst does maintain serious concerns about proceeding with the currently proposed rules, ReliabilityFirst would like to note its appreciation for NERC staff's outreach and hard work to date in attempting to develop and revise the proposed Rules of Procedure. However, at the end of the day, ReliabilityFirst believes that there is presently no compelling reason to immediately proceed with any of the revisions at this time (other than those limited revisions that address FERC orders).

If you have any questions, please do not hesitate to contact me.

Very truly yours,

RELIABILITYFIRST CORPORATION



Timothy R. Gallagher
President & CEO

cc:

L. Jason Blake – ReliabilityFirst Corporation, General Counsel
Gerry Cauley – North American Electric Reliability Corporation, President & CEO
ReliabilityFirst Corporation Board of Directors

¹ ReliabilityFirst is unaware of any Region that has completed all steps involved in a hearing and, to the best of ReliabilityFirst's knowledge; only one Region (ReliabilityFirst) has entered the Comment stage of a hearing.

NERC Sector 4 – Federal or Provincial Utility
Policy Input to NERC Board of Trustee Request of January, 2012
February 2, 2012

The North American Electric Reliability Corporation (NERC) Sector 4 members appreciate the opportunity to provide written input to the NERC Board of Trustees. Sector 4 held a conference call among its members to discuss the request for policy input and shared several emails to coordinate this input.

More than five years have passed since NERC's certification as the Electric Reliability Organization ("ERO"), and it is clear that – amidst the many milestones achieved – NERC is confronting a broad array of challenges. For some time, participants at NERC have engaged in a series of discussions and initiatives to streamline the ballooning workload which NERC currently shoulders and to identify the principal priorities which NERC ought to address.

In the spirit of these endeavours, Sector 4 members offer support for focusing NERC's activities on its core responsibilities and objectives, and recommend measures for ensuring NERC remains capable of functioning effectively as an international standard-setting organization with the backing of its Canadian stakeholders.¹

We offer the following principles for a vision of NERC looking ahead:

A Focus on Standards Development

- NERC's paramount focus is delivering on its core responsibility of developing clear, robust and cost-effective reliability standards for the Bulk Electric System ("BES").
- Industry stakeholders are able to participate actively and effectively in the NERC standards development process, and are not overwhelmed or unduly pressured by unreasonably stringent project timelines or an impracticably high volume of concurrent standard projects.
- Participants are focused on developing technically excellent, risk-based and results-based standards aimed at the greatest reliability risks on a timely, but not an unnecessarily accelerated basis.
- Time set aside for improving existing standards is roughly commensurate with that spent developing new standards.
- NERC will effectively triage pending and ongoing standard projects.
- Concurrent projects on different versions of the same standard will be avoided.
- Ad hoc and/or standing initiatives do not distract NERC from fulfilling its primary responsibilities in standards development.

An Effective International Standard-Setting Body

- NERC functions effectively as an independent, international standard-setting body, free from the exertion of undue influence or pressure by any single governmental authority, and in a manner consistent with the August 2005 *Bilateral Principles For An Electric Reliability Organization That Can Function On An International Basis*.

¹ This policy input represents the views of Sector 4 members exclusively. However, Sector 4 members wish to acknowledge contributions from the Canadian Electricity Association to this document.

NERC Sector 4 – Federal or Provincial Utility
Policy Input to NERC Board of Trustee Request of January, 2012
February 2, 2012

- NERC achieves an effective balance in not imposing excessive requirements on entities subject to the jurisdiction of one governmental authority when seeking to fulfill the directives of another authority.
- NERC respects the boundaries of its enforcement authority (or lack thereof) in Canadian jurisdictions.
- NERC continually pursues, measures, and reports on actions to improve its effectiveness and efficiency.
- Applicable governmental authorities remain mindful of the potential impacts of their directives on other North American jurisdictions.
- ERO resources are efficiently managed and allocated, with resource levels reflecting corresponding priority levels for program areas.
- Clarity exists regarding the separation of functions and responsibilities between NERC and other organizations such as the North American Transmission Forum, such that duplication of efforts is avoided.

Non-Standards Activities

- The NERC ROP are exercised in a manner which does not seek to impose reliability obligations on registered entities outside of the standards process.
- Applicable governmental authorities, NERC and stakeholders give careful consideration to resource constraints and prospects for “mission creep” when new ad hoc and/or standing initiatives are contemplated.
- Ad hoc and/or standing initiatives do not distract NERC from fulfilling its primary responsibilities in standards development.
- NERC as the ES-ISAC is able to share timely and actionable information to bulk power system users, owners and operators in the event of an imminent security incident.
- Canadian and U.S. authorities consult and coordinate in the sharing of timely and actionable threat information with each other, NERC and industry stakeholders.

On behalf of the NERC Sector 4 Members -
Sincerely,

Anthony H. Montoya
Chief Operating Officer
Western Area Power Administration

SERC Board of Directors Policy Input to NERC February 2012

SERC Reliability Corporation (SERC) continues to be pleased with and supportive of the continued advances being made by the Electric Reliability Organization (ERO). The SERC Board of Directors appreciates the opportunity to provide policy input to NERC for the February 2012 Board of Trustees and Member Representatives Committee meetings.

ERO Enterprise Strategic Planning

- SERC is generally pleased with the strategic focus that NERC and the Regional Entities have placed on implementing the ERO model. Maintaining the proper balance of independence from stakeholders with connection to stakeholders needs to be a continuous objective.
- While recognizing that NERC and the Regional Entities are nine different corporations involved in various activities, SERC believes that joint strategic planning among NERC and the Regional Entities, particularly for statutory responsibilities, is an important starting point. While joint strategic planning is good, important and necessary, SERC encourages NERC and the Regional Entities to work closely together to develop operational plans that will more consistently and efficiently deliver execution of ERO responsibilities.
- SERC representatives will look forward to hearing about NERC's 2012 goals in the Board of Trustees committee meetings. SERC desires for its corporate goals to be aligned and coordinated with NERC.

Find, Fix, Track, and Report Initiative

- FFT has been a positive example of a timely and effectively-deployed ERO program. While there are opportunities for improvement, the fact that the initial phase of FFT was scoped, developed and delivered in less than a year is worthy of acknowledgement and praise.
- The current deployment of FFT has had limited impact on reducing the registered entity and regional entity compliance and enforcement staff work load because the level of review and detail required to assess, substantiate and defend the election of the FFT approach has been on the order of what is required for more substantial matters. SERC would hope that this work load would be streamlined as FFT matures.
- Additionally, building upon the initial deployment of FFT to the enforcement function, SERC recommends the deployment without delay of FFT concepts to the audit function. Audit teams need the ability to find, fix, track and report appropriate items which are observed during an audit. While the initial phase of FFT use in enforcement deserves celebration, much work remains to fully focus scarce resources on those reliability issues which have the greatest impact and risk. The deployment of FFT in all phases would allow the redeployment of scarce resources to the reliability issues and have the greatest impact.
- SERC members appreciate the additional FFT outreach efforts that have been extended. Stakeholders would like to continue to see more outreach and transparency on identifying items which would qualify. If we as an industry want the FFT process and other such processes to be used to improve and maintain the reliability of the grid, then the stakeholders need to understand clearly the rules and criteria.

Generator Operator (GO)/Transmission Operator (TO) Issues

- The current GO/TO issues are the symptom of a bigger problem. That is, the ERO's methods for administering reliability requirements are founded upon the application of reliability standards and the associated requirements to pre-defined reliability functions. Until such time as the ERO's methods recognize the application of individual reliability requirements to individual registered entities, unnecessary application of reliability requirements to some registered entities will continue to exist.
- The administrative burden to achieve such a method of application could be extremely high. NERC should consider conducting an analysis of the cost to implement a registration process and standards application method such that individual entities are required to demonstrate compliance only for those reliability requirements which are directly applicable to that entity.
- Alternatively, NERC should develop more specificity and granularity in the "Applicability" section of the standards. Standards should not apply broad requirements to reliability functions just because they "might" be responsible for a certain requirement in certain business configurations.

Rules of Procedure Changes

- Generally, NERC's Rules of Procedures have a significant focus on implementation details, and the proposed changes continue that approach. Rules of Procedure which contain detailed process steps constrict the ability of registered entities and regional entities to cut through red tape and bureaucracy and focus on the important matters. Often when changes are made, unproven implementation details are included. While hardwiring implementation details in the Rules of Procedure can provide process certainty, it also limits ability to flexibly adjust to changing conditions and often stifles innovation and improvement. As NERC modifies its Rules of Procedure, consideration should be given to including in the Rules of Procedure authorizing program/activity definitions, scope, objectives, and high level roles and responsibilities. Implementation details can be placed in a more flexible program guide that might be modified more easily. To increase understanding of the broader Rules of Procedures, the initial program guide could still be developed and published in parallel to the Rules of Procedure changes.

SPP RE Board of Trustees' Policy Input to the NERC Board of Trustees February 3, 2012

The Southwest Power Pool Regional Entity (SPP RE) respectfully submits the following recommendations regarding the Compliance Application Notice (CAN) development process for consideration by the NERC Board of Trustees.

Background

The SPP RE is supportive of the purpose of CANs: to enhance consistency among auditors across the Electric Reliability Organization (ERO) and provide industry with transparency for audit preparation and development of effective internal controls. The SPP RE also recognizes and appreciates NERC's efforts to-date to improve the CAN development process. Without diminishing the oversight role of NERC, the SPP RE recommends greater involvement of the eight regional entities in the development of CANs throughout the development process. The regional entities can offer their detailed knowledge of the standards, technical expertise, and broad experience with registered entities. The SPP RE submits the following recommendations.

Recommendation

1. Involve the regional entities to identify points of confusion or error as the CAN is initially drafted prior to submittal to the industry for comment. The regional entities can also assist NERC in addressing entity comments and ensuring technical accuracy as the CAN is finalized.
2. Ensure all comments submitted by the industry and the regions are evaluated as the CAN is developed. The recommended improvement includes automated entry of comments into a database similar to how standards comments are received, acknowledgement of comments received, and posting of comments upon closing of the comment period to allow submitters to confirm their comments have been received.
3. Afford the regional entities a longer period of time to review and comment on the draft CAN prior to submission to the industry for comment. The current five day period is too short.
4. Permit the regional entities an opportunity to review and voice technical concerns to the near-final CAN and NERC's response to submitted comments following NERC's incorporation of industry comments. A review period of two weeks is recommended.

MEMORANDUM

TO: Dave Nevius, Secretary
NERC Member Representatives Committee

FROM: Tim J. Arlt
John DiStasio
Bill Gallagher
John Twitty

DATE: February 2, 2012

SUBJECT: Response to Request for Policy Input

The MRC's State and Municipal and Transmission Dependent Utility Sectors (SM-TDUs) appreciate the opportunity to respond to the January 17, 2012 letter from NERC Board Chairman John Q. Anderson to Mr. Scott Helyer, acting in his capacity of the Chairman of the NERC Member Representatives Committee (MRC) requesting policy input on topics to be discussed by the NERC MRC and the NERC Board of Trustees at the February meetings.

This response addresses all four topics raised in Mr. Anderson's January 17 letter:

- Update on ERO Enterprise Strategic Planning
- Find, Fix, Track and Report Initiative
- Generator Operator (GO)/Transmission Operator (TO) issues
- Rules of Procedure Changes

1. Update on ERO Enterprise Strategic Planning

SM-TDUs strongly support the three strategic goals proposed by NERC in the *DRAFT Electric Reliability Organization Strategic Plan 2012-2015* (MRC Agenda Item 6, Attachment 1, page 3). It is our hope and expectation that NERC's draft Strategic Goals will focus the ERO Enterprise on its statutory mission, which is to establish and enforce reliability standards that provide for reliable operation of the bulk-power system. To achieve this mission, we agree that NERC must focus on: (1) Standards and Compliance, (2) Risks to Reliability, and (3) Coordination and Collaboration. These goals appropriately recognize the need to balance NERC's obligation to develop and enforce compliance with reliability standards with its responsibility to remain a learning

organization that provides effective feedback to the industry on the reliability risks we face in the planning, design, operation and maintenance of the bulk power system. The SM-TDUs overwhelmingly agree that greater efficiencies in NERC's standards development and enforcement process can be achieved through collaboration between NERC, the regions and industry stakeholders. NERC has also made great strides toward restoring the appropriate balance between enforcing the reliability standards and implementing initiatives aimed at fostering reliability excellence through learning. Most notably, the Find, Fix, Track, and Report initiative (discussed below) should enable the industry to resolve minor violations of reliability standards efficiently and effectively through mitigation. We encourage NERC to continue to develop ways to provide feedback and lessons learned to the industry in a manner that fosters greater collaboration going forward. However, much work remains to be done.

We also believe that a roadmap should be developed that provides more detail with respect to how NERC expects to achieve these priority goals over the course of the year.

Draft Strategic Goal 1a) provides that the ERO Enterprise will:

- a) *Develop clear, reasonable and technically sound mandatory reliability standards in a timely and efficient manner.* These standards establish threshold requirements for ensuring the bulk power system is planned, designed, operated, and maintained in a manner that minimizes risks of cascading failures, avoids damage to major equipment, or limits interruptions of bulk power supply.

The SM-TDUs believe that achieving this goal, which might be better framed in terms of minimizing risk of instability, uncontrolled separation or cascading outage (recognizing some interruptions of the bulk power system may be unavoidable), is vital to ensure reliability excellence. We are concerned that the timelines and complexity embedded in the existing standard development process threatens our ability to achieve it. Accordingly, the SM-TDUs support an effort to reform the standards development process by making it more streamlined, while retaining the stakeholder involvement necessary to ensure that the resulting standards account for the wide diversity among registered entities and how the bulk electric system is operated and planned. To that end, we endorse and incorporate by reference the standards development principles and recommendations developed by industry trade associations that provide a starting point to improve the NERC standards development process.¹

¹ See the February 2, 2012 *Trade Association Standards Development Principles*, submitted separately. The Trade Associations supporting these principles and recommendations include the American Public Power Association, Edison Electric Institute, Electric Power Supply Association, Electricity Consumers Resource Council, Large Public Power Council, National Rural Electric Cooperative Association, and Transmission Access Policy Study Group.

Draft Strategic Goals 1b) and 1c) provide that the ERO Enterprise will:

- b) *Be a strong enforcement authority that is independent, without conflict of interest, objective and fair.* The ERO will retain and refine its ability to use standards enforcement when warranted and impose penalties and sanctions commensurate with risk.
- c) *Promote a culture of compliance with mandatory reliability standards across the industry.* The ERO will support the industry by identifying procedures, practices and controls to address reliability risks resulting from noncompliance.

The SM-TDUs believe that striking the appropriate balance in these goals with NERC's commitment in Goal 3 to operate as a transparent, collaborative, efficient, and cost-effective enterprise will result in a more common sense and sustainable compliance regime, and will ultimately result in greater reliability than a regimen focused solely on bringing down the enforcement hammer. We also firmly believe that *promotion of a culture of reliability excellence*, as set forth in Goal 2c), must have equal status with *promotion of a culture of compliance* (Goal 1c).

As noted above, NERC has implemented some important initiatives in support of its compliance and enforcement goals, such as FFTR. We also encourage NERC to ensure that auditors determine compliance based on whether a registered entity achieved the reliability objectives set forth in the standard, as opposed to the manner in which it achieved compliance. In particular, the audit approach adopted by a regional entity should focus on whether the registered entity is achieving the specific reliability objectives set forth in each requirement on a sustained basis. Experience shows that a narrow, prescriptive reading of reliability requirements, measures and compliance elements by auditors can elevate the development and preservation of documentation of compliance above other activities that are far more vital to actually ensuring reliable operations.

2. *Find, Fix, Track and Report Initiative*

SM-TDUs applaud NERC for its September 30, 2011 FERC filing and implementation of its proposal to exercise discretion in dealing with lesser risk enforcement matters. Under this initiative, minor administrative, documentation-related, and other violations that pose a lesser risk to reliability need to be addressed quickly and simply, so that NERC, the Commission and the industry can refocus their attention on actual and potential reliability issues that pose a significant risk to reliable operation of the bulk power system. SM-TDUs joined with others in the industry in strongly urging the Commission to accept NERC's petition as a well-designed first step in recognizing a significant and growing problem of resource misallocation in the ERO compliance and enforcement program.

While developing and initiating FFTR was a major step forward, more needs to be done to make it truly effective in achieving the efficiencies that are our shared goal for this important effort. Analysis of the initial months of FFTR implementation reveal significant differences among regions in the application of FFTR. While a number of factors could contribute to these differences, we are concerned that the widely disparate percentages of application of FFTRs versus NOPs among the regions signals inconsistency in the criteria being used by various regions in assessing eligibility for FFTR. As NERC moves toward submission to FERC of its promised six-month report on FFTR, it should focus on mechanisms to achieve wider use and greater consistency in the application of FFTR across the NERC footprint.

Beyond fuller, fairer and more consistent application of FFTR, SM-TDUs support extension of the risk-based approach reflected in FFTR to the audit context. As envisioned in the FFTR filing, NERC should focus on training auditors so that FFTR decisions can be made in the field, thereby increasing the savings and efficiencies for all involved, while freeing up registered entity resources to focus on reducing risks to reliability. Smarter, more risk-informed auditing should be an integral part of the next stage of NERC's Compliance Enforcement Initiative.

3. *Generator Operator (GO)/Transmission Operator (TO) Issues*

SM-TDUs draw a number of lessons learned from the controversies that have arisen with respect to Generator Owners and Operators (GOs and GOPs) that also operate BES transmission voltage interconnection facilities, thereby leading NERC to register these entities as Transmission Owners (TOs) and/or Transmission Operators (TOPs). As an initial matter, we offer no opinions as to the Compliance Filings and other directives issued by FERC in its Milford and Cedar Creek orders, except some regret that NERC and its stakeholders were unable to reach consensus on both the nature and extent of the potential reliability gap(s) and the procedural mechanisms available to address these gaps before so much ink had been spilled.

As a starting point, the Ad Hoc GO-TO Task Force did a very good job defining the nature of this potential reliability gap, including a list of specific Requirements that should be applicable to GOs/GOPs that own and operate BES voltage interconnection Facilities. The Ad Hoc GO-TO Task Force's work was completed in November 2009. Unfortunately, NERC and industry resource constraints led the Standards Committee to make a difficult decision in early 2010 to delay initiation of formal development work on Project 2010-07, Generator Requirements at the Transmission Interface. The GO-TO standard drafting team (SDT) sought and received approval to begin development on an informal basis, until full support by NERC staff could be provided beginning in 2011. Since that time, the SDT moved expeditiously to reach industry consensus in support of a technically robust set of revised reliability standards, in which specific existing Requirements have been revised to extend their applicability to GOs and GOPs that own certain transmission voltage interconnection Facilities. This work appears to be nearly complete.

Most notably, the SDT developed and publicly posted a March 2011 [White Paper](#), followed by a June 2011 [Background Resource \(White Paper\)](#) document. In conjunction with the October 2011 formal posting and comment period, the SDT posted a September 30, 2011 [Technical Justification](#) document. Each of these documents addressed the applicability-based approach adopted by the SDT, the specific requirements the SDT concluded should apply to generators that own BES voltage interconnection Facilities, as well as those potential requirements that should not apply to GOs or GOPs. Most recently, on December 8, 2011, the SDT posted a revised [Technical Justification Resource Document](#) in which the SDT reviewed additional standards that NERC staff had proposed to apply to Generator Owners and Generator Operators in NERC *Compliance Process Directive #2011-CAG-001 Regarding Generator Transmission Leads*, as well as standards cited in FERC's *Order Denying Compliance Registry Appeals of Cedar Creek Wind Energy and Milford Wind Corridor Phase I* (135 FERC ¶ 61,241).²

To quote directly from the December 8, 2011 Technical Justification Resource Document:

The SDT reviewed all of these standards and requirements again and continues to find clear and technical reliability-based reasons that support not adding Generator Owner and Generator Operator requirements to the standards. The chart below indicates where else (the Ad Hoc Report, the NERC Directive, or the FERC Order) the standards addressed were discussed. While both the NERC Directive and FERC Orders address specific requirements within these standards, the SDT has found it useful to address each standard as a whole. Often, requirements within a standard, or even from standard to standard, work in concert to ensure that there are no reliability gaps, whereas a review of a requirement in isolation might give the impression that there is a gap.

SM-TDUs agree with the SDT's approach and with the systematic and collaborative approach used to resolve technical and other issues. Notably, the SDT has acknowledged that the configuration of certain generator interconnection Facilities may merit either registration of the owner/operator as a TO/TOP or the adoption of a case-specific list of additional Requirements that should be applicable to specific Facilities owned or operated by the GO/GOP. However, these special cases are unusual exceptions to the general rule and should not be included in Reliability Standards applicable to a broad class of entities. The most urgent task for these special cases is to reach agreement as to the technical studies required to determine whether the operation or misoperation of specific Facilities may have a material impact on the reliable operation of the Bulk Electric System. Where studies of specific Facilities and their impact on the BES identify a material impact, case-specific registration by requirement is called for.

² Each of these SDT Technical Documents is posted on the Project 2010-07 web page at: http://www.nerc.com/filez/standards/Project2010-07_GOTO_Project.html

4. Rules of Procedure Changes

SM-TDUs recognize that the level of stakeholder involvement in changes to NERC's Rules of Procedure (ROP) is inherently less than in the standards development process. However, we do ask that the Board direct staff to adopt two procedural steps to ensure constructive stakeholder review and efficient use of NERC and industry resources. First, NERC should develop and post a clear rationale for each proposed change to the ROP before, or if necessary, contemporaneously, with the posting of the proposed modification, placing primary emphasis on explaining *why* the change is needed, not just *what* is being changed. Second, we ask that the final version of proposed changes be posted at least ten working days prior to NERC Board meetings, to allow the industry a constructive opportunity to review and if necessary, submit comments prior to Board adoption.

We appreciate that NERC has twice posted (in June and November 2011) different versions of proposed changes to the Rules of Procedure, before posting of the final version on Monday, January 31. We also appreciate the improvements NERC made between the three postings in response to stakeholder comments, particularly the second posting's removal of the previously proposed fines for failure to provide information, and in the final posting, the deferral of consideration of changes to Appendix 8. We also appreciate NERC's decision to defer action on many minor technical changes to the ROP. However, a number of state and municipal utilities continue to voice concerns that proposed section 403 would allow the Regional Entity to appeal the decision of a Regional Entity hearing body. While NERC explained that the Regional Entity hearing body is an independent tribunal that is separate from the Regional Entity Compliance Program, this explanation misses the point that providing the Regional Entity with an automatic right to appeal adds one more layer of cost and uncertainty for the registered entity.

While NERC did not adopt all stakeholder suggestions, these actions left no doubt that NERC seriously considered stakeholder comments. Further, the just-distributed matrix identifying the actions taken and responses to stakeholder comments is very helpful in facilitating an understanding of NERC's thinking, even where we still may not agree with the proposed change. Posting of an earlier version of the matrix in November might have improved the quality of the dialog at earlier stages of the process.

We appreciate the recently extension of time to submit these comments in light of the late posting, but the few days allowed did not permit the full analysis of the final ROP changes and consultation with our members that the invitation to provide policy input on such far reaching changes merits. In the future, we hope that ROP changes to be presented to the NERC Board will be posted sufficiently in advance of the date when policy input is requested so as to afford a full opportunity for industry input.

NERC's recent approval and submission to FERC of Rules of Procedure modifications as part of NERC's January 25, 2012 Bulk Electric System Definition filing

provides a similar case in point. While ROP changes to support processing of case-by-case exemptions were posted for industry notice and comment in October, the final set of ROP changes, which include significant modifications from the previously posted version, were not publicly posted until January 12, 2012, three work-days prior to Board of Trustees January 18, 2012 special meeting to approve the filing.

Thank you for the opportunity to provide this input.

From: Mosher, Allen [<mailto:AMosher@publicpower.org>]

Sent: Thursday, February 02, 2012 12:04 PM

To: Dave Nevius; Holly Mann

Cc: Dworzak, David; Lawson, Barry R.; Jack Cashin; ggrace@awea.org; Hindin, Barbara; Fama, Jim; Gray, Mark; John Anderson; Nancy Bagot; Kathleen Goodman; Mohre, Dave L.; Metro, Patti; Mitchell, Nathan; Stephen Pelcher; Laura Lewis; Cindy Bogorad; Jonathan Schneider; Bonnie A. Suchman

Subject: February 2, 2012 Trade Association Standards Development Principles

Dear Dave and Holly,

Please find attached to this message Policy Input from the Trade Associations concerning reform to the NERC Standards Development Process. Each of the supporting Trade Associations may supplement the Standards Development Principles attached to this message in our respective comments.

NERC and its core program areas should seek continuous improvement. There is a growing recognition that the standards development process is time-consuming, cumbersome and resource-intensive in ways that are not necessary to ensure clear and effective standards that account for the wide diversity among registered entities and how the bulk electric system (BES) is operated and planned. Significant discussion has taken place at FERC, NERC and with industry over the past year around ways to make such process improvements. As a result of those discussions, the Trade Associations have developed the following principles and recommendations to support an initiative to make significant improvements to the standards development process.

The Trade Associations supporting these principles and recommendations include:

- American Public Power Association
- Edison Electric Institute
- Electric Power Supply Association
- Electricity Consumers Resource Council
- Large Public Power Council
- National Rural Electric Cooperative Association and
- Transmission Access Policy Study Group

Please do not hesitate to contact me should you have any questions.

Allen Mosher

Vice President, Policy Analysis and Reliability Standards

American Public Power Association

NERC Standards Development Process Improvement General Principles and Recommendations

NERC and its core program areas should seek continuous improvement. There is a growing recognition that the standards development process is time-consuming, cumbersome and resource-intensive in ways that are not necessary to ensure clear and effective standards that account for the wide diversity among registered entities and how the bulk electric system (BES) is operated and planned. Significant discussion has taken place at FERC, NERC and with industry over the past year around ways to make such process improvements. As a result of those discussions, the Trade Associations have developed the following principles and recommendations to support an initiative to make significant improvements to the standards development process.

The Trade Associations supporting these principles and recommendations include the American Public Power Association, Edison Electric Institute, Electric Power Supply Association, Electricity Consumers Resource Council, Large Public Power Council, National Rural Electric Cooperative Association, and Transmission Access Policy Study Group.

1. Areas for Improvement: The standards development process should be improved in four specific areas:

- ❖ Clarity on the reliability objectives, technical parameters, scope and the relative priority of the standards project
- ❖ The drafting process (developing the specific technical content of the standard)
- ❖ Standards project management and workflow
- ❖ Formal balloting and commenting

2. Policy Leadership: The NERC Member Representatives Committee should organize a small group of senior level industry leadership representing a range of stakeholders to meet with the NERC CEO, the chair of NERC Standards Oversight and Technology Committee and the chair of the stakeholder Standards Committee to decide on the approach for making improvements to the four process areas.

Standards development process improvements need to be strongly aligned with problems experienced to date. The NERC Member Representatives Committee (MRC) should serve as the group to organize such meetings and ensure their success. Decisions will be made by April 1, 2012. These meetings will provide hi-level goals, priorities and expectations to the NERC process subcommittee of the NERC Standards Committee for timely, specific action.

- 3. Due Process: As required by the FERC-approved process, standards development process changes must be balloted by stakeholders and approved by the Board. Our goal is final NERC Board of Trustees approval at the November 2012 meeting.**

The Board of Trustees and the MRC will be provided detailed status reports at both the May and August meetings.

Work should be planned and ballots scheduled to ensure that the Board of Trustees has a package for approval at the November meeting.

- 4. Technical Excellence: Control of the drafting and technical content of reliability standards should be the responsibility of experienced industry technical experts.**

Both the complexity of planning and operating the BES, and the broad diversity of how the BES is planned and operated across the interconnected network, demand that industry subject matter experts hold this critical responsibility.

NERC and regulatory staff are welcome to contribute subject-matter expertise on the same basis as other experts. Technical writers and legal/compliance expertise have a pivotal role in the standards development process to ensure process efficiencies, clarity and enforceability.

- 5. Balloting and Commenting: The standards development process should be closely reviewed to determine areas where it can be condensed to increase efficiency without jeopardizing technical excellence and consensus.**

The current formal comment and ballot process can be significantly improved; however, the balloting process must ensure that individual entities can actively participate, vote and ensure their concerns are addressed.

Efficiency gains can be captured without sacrificing ANSI Principles of openness, transparency, balance of interests, or due process.

- 6. Compliance and Enforcement: In tandem with this initiative, both NERC and FERC *must* continue to focus on changing the policies and practices of the compliance and enforcement program area.**

FERC policy and case decisions and the program practices at NERC and each Regional Entity need to continue to pursue reliability risk-based approaches to monitoring and enforcement.

Despite recent initiatives, the costs of paperwork and documentation are high and rising, do not support BES reliability, and their costs in no way correspond to the levels of risks addressed by entities that plan and operate the BES.