

Comments of the Edison Electric Institute

For The NERC Board of Trustees

Vancouver

August 4, 2011

On behalf of our member companies, the Edison Electric Institute (EEI) is very pleased to offer the following comments in advance of the upcoming meetings of the NERC Member Representatives Committee and the Board of Trustees. EEI member companies serve over 70% of electricity customers in the United States. EEI views on bulk power system reliability are informed by its CEO Task Force on Reliability, the CEO Business Continuity Task Force, and the Reliability Executive Advisory Committee. We look forward to an active discussion in Vancouver that continues to consider enhancements to NERC's functions in light of past experience and future challenges.

Summary

Regarding compliance and enforcement, the outline of various short-term actions described in Item 3a in the Compliance Committee agenda suggest a start toward a set of initial proposals aimed at reducing the flood of paperwork associated with processing very minor violations having no impact on reliability. Longer term, EEI strongly encourages the Board of Trustees and NERC management to initiate a coordinated and comprehensive design review of the Compliance Monitoring and Enforcement Program (CMEP). Such a review should include careful consideration of the incentive structures within CMEP for efficiently supporting bulk power system reliability, and that the program itself is managed efficiently and effectively for all entities within the ERO enterprise. Such a review should yield a strategy and overall plan, milestones, and timeline to implement all aspects in a concerted, phased-in transition over the shortest feasible time period. Both NERC and the regions must participate and fully support this activity.

On Compliance Application Notices (CANs), the Compliance Application Notice (CAN) tool has beneficial potential as a useful tool that provides informal compliance guidance through a transparent process. EEI applauds the compliance operations group within NERC for its initiative to provide an array of guidance tools. However, the increasing volume of recently issued CANs has troubled companies, including CAN-0016 (CIP-001) and CAN-0008 (PRC-005).

Criticisms go both to process and outcomes, especially concerns that the CANs materially change the requirements of the standard. Rapid increase in the volume of new CANs also significantly affects companies internal compliance process management, especially where newly issued CANs influence audit preparations. EEI strongly recommends that the Board of Trustees ensure that process and due process controls are adopted to improve the tool's usefulness. EEI agrees with a recently developed discussion paper sent to NERC by several trade associations that provides more detailed presentation of various recent problems, and a recommendation that NERC form a task force that can quickly identify and implement process improvements.

Regarding the bulk electric system project, EEI believes that there is merit in considering changing the threshold criterion for smaller generating units. Many of these units are far more dependent on the transmission network and do not have a role in supporting network reliability, it is reasonable to consider that these units are presumed unnecessary for reliability unless specified as such by NERC, including for example blackstart units and reliability must run units. The change being considered would likely affect a very small amount of generation in North America. Given the timeline for this project and the FERC filing deadline, the Board of Trustees should seek a detailed presentation and report no later than the November meeting.

EEI also generally supports the proposed 2012 budget and business plan and the changes made during the past several weeks, which begins our detailed comments.

2012 Budget and Business Plan

EEI generally supports the progress in refining the final proposed budget and business plan for 2012. We believe that revisions made over the course of the summer have significantly sharpened the focus of several program areas and better identified priorities, especially for the situation awareness and critical infrastructure protection programs. EEI also appreciates various changes that recognize the important need to aggressively manage costs overall, while continuing to work hard to improve efficiency in the core program areas. The final document also improves transparency by better describing various projects and initiatives, and general budget assumptions used to build the budget. We encourage NERC to sustain its efforts to make the best use of limited resources and to continue seeking efficiency gains through process improvements across the NERC enterprise.

Compliance Monitoring and Enforcement

EEI applauds NERC for commitments to develop a 'find-and-fix' tool that would prevent as many as 50% of potential violations from entering the enforcement 'pipeline,' and looks forward to supporting all necessary FERC approvals. By itself, this tool will begin to relieve

three serious short-term issues, the growing backlog and the upward pressure on personnel and other resources presently required to manage minor reliability matters, and restoring a focus and priority on aspects directly benefiting reliability. EEI strongly encourages NERC and all the regions to make commitments to the shared goal of a strong and efficient compliance enforcement program that emphasizes a stronger recognition of risk-based design principles and the critical importance of companies' internal management and reliability compliance programs. A stronger embrace of these principles, including the risk-based reliability compliance proposal, should be accompanied by the recognition that the quality and quantity of paperwork and documentation bears almost no relation to bulk power system reliability.

Item 3a of the Compliance Committee agenda for next week includes a brief description of the process recommendations that NERC may include in a filing at FERC next month. Based on the brief description, EEI cannot offer full support at this time, however, the description of the "enforcement discretion" element seems to generally reflect a "find and fix" approach. We look forward to seeing the specific details of the proposal with sufficient time to provide useful comments to NERC in advance of the filing.

However, as with all processes "the devil is in the details." Any new processes developed by NERC to reduce the input to the pipeline must be designed to accomplish the goal. Pressure for more and more paperwork must be resisted if a find and fix tool is to work. At this point, EEI believes that incremental changes to the Compliance and Enforcement Program will not accomplish the goal of controlling and ultimately reducing the violations backlog. The truly minor paperwork violations need to be dealt without creating more paper than needed.

Clarity of Reliability Standards

Equally as important to NERC moving to a risk-based compliance monitoring and enforcement program is the need to ensure all Reliability Standards are clear, and that compliance with the Standards is well understood by the industry, NERC, FERC and the auditors. A tenet of any regulatory body is to implement rules and regulations that are clear and well understood by those it regulates. While all involved in the implementation of the "version 0" Reliability Standards were well intentioned, the implementation of these Standards in a mandatory compliance environment has proven to be a challenge, because what seemed clear in theory, or in the more forgiving give-and-take voluntary environment, is not clear in actual use in a mandatory compliance environment that requires an exact, common understanding of a standard by all involved.

This tension as resulted in the industry requesting greater clarity of Reliability Standards via formal American National Standards Institute (ANSI) interpretation process and Standards Authorization Requests. Unfortunately, these vehicles take time to achieve the necessary

refinement and approvals to clarify or improve a Reliability Standard. EEI suggests that any process implemented to address the issue of clarity must be one that includes all the necessary regulatory approvals, otherwise the results, like many of the current Compliance Application Notices (discussed in more detail below) and Alerts, lead to greater confusion and less certainty. Thus, EEI strongly encourages NERC to focus its resources on improving and expediting formal processes that can definitively clarify Reliability Standards with all necessary approvals.

For example, the NERC Standards Committee will likely propose a “rapid response” process to expedite requests for clarification quickly through an ANSI process and to FERC for formal approval. EEI believes such a tool has merit. Such a process provides the industry, NERC, auditors and FERC with a permanent solution that allows all to move forward with a common understanding of a Reliability Standard.

Compliance Application Notices / CANs

EEI has previously recommended that NERC develop systems and tools to support companies’ abilities to improve their understanding of how to achieve compliance. It is very important that companies understand how NERC intends to ‘call balls and strikes’ and such systems and tools would be valuable for providing clearer understanding. This can be challenging to the extent that reasonable people can disagree on the meaning of various requirements, various ‘umpires’ may not have uniform practices, and recognition that companies may demonstrate compliance through various means that offer equivalent evidence of performance or competency. NERC initiated an informal process to provide Compliance Application Notices (CANs) on the idea that such notices would improve both the consistent application of these requirements, and the transparency of the compliance process.

EEI is convinced that the many ‘umpiring’ issues can and should be addressed through formal auditor training and certification, and repeats the recommendation that NERC establish this certification as soon as possible. The ‘take home test’ issues can and should be addressed through a longer-term process to incorporate greater reliance on performance- and competency-based compliance and enforcement policies and practices, and away from an emphasis on paperwork and documentation.

EEI applauds the initiative and commitment of NERC compliance operations staff. However, the results of recent activities prompt EEI to conclude that the process needs some attention by the Board of Trustees for several reasons. The number of proposed CANs is dramatically increasing, yet another call on limited company resources, and a challenging management problem in cases where companies are seeking to prepare enormous volumes of documentation in advance of audits, and coordinating that preparation across multiple business units.

Apparently, there are no criteria for determining whether a compliance-related question merits a CAN, since all CAN requests to date have resulted in development. The process and due process is informal and has changed, and it is unclear how NERC staff takes into consideration stakeholder comments in final decisions. For example, recently in CAN-0008 that addresses an issue relating to PRC-005, EEI understands that NERC set aside the overwhelmingly supported views contained in 18 of 21 sets of submitted comments, which recommended that NERC not take the action reflected in the later released CAN. And finally, after final issuance of a CAN there is no explicit check or validation to ensure that the CAN does meet a strong need to clarify a legitimate issue of interpretation and does not materially change the content of a standard. The present remedies include seeking a formal interpretation or approaching NERC staff informally to discuss and seek content changes.

In response to a recently issued CAN-0016 on the subject of sabotage reporting procedures and following discussion with NERC staff, last week EEI requested an interpretation of CIP-001 R1. CAN-0016 states that a company will be found out of compliance with CIP-001 R1 if its sabotage reporting procedures contain an explicit condition that limits applicability of the procedures to BES facilities.

As a practical matter, all electric companies experience widely varying amounts of vandalism, theft, tampering, and other mischievous or harmful acts taken against its people, facilities, and equipment. A current example is the growing copper theft epidemic. These matters are taken very seriously. Managements work through their internal security departments and with state and local law enforcement to appropriately address these chronic problems. Company personnel are trained to recognize and report these activities through their chains of command.

In light of these considerations, EEI has several short- and long-term recommendations around the theme of CANs, compliance guidance, and forbearance:

First, CAN-0016 must be revised such that companies will not be found in violation if their sabotage reporting procedures limit the scope of such procedures to BES facilities. As these comments are written, EEI understands that NERC is reviewing the CAN to eliminate the jurisdictional issue and return to an emphasis on the procedures.

Second, and also short-term, NERC should consider providing a role for the Board of Trustees in the CAN process, including both the Standards Oversight and Technology Committee, and the Compliance Committee. NERC should allow a remedy where companies can seek correction or amendment of a CAN, which should involve these committees. Companies should not be required to return to the lengthy interpretations process, and wait on a FERC decision, to resolve what may be a simple straightforward question.

Third, to the extent the CAN process continues, both process and due process must be strengthened. Input and comments offered on proposed CANs should influence a final decision. NERC must also clarify how CANs will and will not be used for making compliance determinations. EEI agrees with a discussion paper that presents these issues and recommends a limited purpose task force that will develop process and due process improvements.

Fourth, the ‘front door’ to the CAN process appears to need better definition. EEI is convinced that many questions being presented as CAN requests ultimately involve questions of forbearance, where a particular requirement may not be absolutely clear and unambiguous, and unable to produce consistent demonstrations of compliance. NERC staff and regional compliance staff should be trained to ask whether the ambiguity in question does in fact raise a potential reliability problem, or whether such questions should be directed to the standards development process through the Standards Committee. EEI agrees that consistent inter-regional approaches to compliance and enforcement are the goal, but achieving this goal has some practical limits, especially in cases where the boundary between ‘ball’ and ‘strike’ is not scientifically precise.

Fifth, and longer term, NERC must build a clearer roadmap that informs the use of the various tools, including in this case CANs, formal interpretations, and standards development. After listening to a recent NERC webinar on CANs, EEI understands that there is virtually no difference between a formal interpretation and a CAN. Companies should not be forced into indifference between an interpretations process that may take years to complete through FERC, and a CAN process that does not have a consistently applied process that benefits from subject matter expertise.

Sixth, and longer term, as previously stated NERC must create an auditor training and certification program. We have made this recommendation previously and carry it forward here. EEI strongly believes that this CAN issue is partially rooted in the diversity with which auditors and other compliance personnel have been prepared to address various issues, as well as the previously stated forbearance issue.

Seventh, and longer term, NERC needs a broad array of learning tools to allow companies to understand case precedent and how precedent informs judgment calls for compliance ‘balls and strikes.’ Dismissal letters, Notice of Penalty dockets, compliance guidance letters, webinars and workshops, all play a role to assist NERC and the companies in understanding how to achieve compliance.

Bulk Electric System / Adequate Level of Reliability

In Order No. 743 and 743-A, FERC directed NERC to file a definition of “bulk electric system.” Rather than ordering detailed directives, FERC left to NERC several issues for resolution, including the contours of the basic definition, and the process for allowing exceptions. EEI understands the project is on track for a timely compliance filing at FERC early in 2012.

One important threshold issue has recently emerged, where the project team is considering a change that could affect a significant amount of small generation facilities. The concept being discussed is that units greater than 20 MVA that are not associated with multi-unit plants greater than 75 MVA would be excluded under the threshold BES definition. The foundation for jurisdiction in Section 215 states that the Bulk Power System includes “...electric energy from generation facilities needed to maintain transmission system reliability.”

Accordingly, for such a category of smaller units that would be subject to a presumption of exclusion with the definition being revised consistent with this criterion and based on a preliminary review of generator unit and plant data, EEI understands that this group consists of approximately 950 units comprising 33,000 MW of nameplate generation that would otherwise be subject to NERC registration requirements.

- Overall, the North American interconnected network includes 7,000 plants with 1,123,255 MW nameplate capacity. The 7,000 plants consist of 19,700 separate generating units.
- The 950 smaller units that would fall within the criterion being considered by the project team are comprised of small hydro and wind facilities, small customer-owned generation and cogeneration facilities, and older thermal units whose service is limited to backup or peaking purposes. They comprise approximately five percent of the 19,700 total units in North America. They are dispersed somewhat evenly across the country, however, over one-third of these units and related capacity reside within WECC. Ownership is also dispersed across investor-owned, cooperative, municipal and other governmental authorities, and industrial customers.
- Within this set of 950 units, there also are many units that are interconnected at voltages beneath the general 100 kV system threshold, or are not required for critical functions such as blackstart or as defined “reliability must run” units. EEI does not have statistics that identify these units, however, we believe that the number of units that might be potentially affected by the change being considered is likely to be a much smaller subset of the 950 units.

Therefore, EEI believes that there is merit in the change being considered within the context of this project. For the most part, these units are far more dependent on the interconnected

transmission network, rather than being necessary for the reliability of the network. Therefore, it may be useful to consider that the exception be based on a presumption that excludes the units, accompanied by criteria that would define whether the units must be included. This would avoid the need to create another exceptions process that the vast majority of units would need to navigate. EEI strongly urges NERC to create the simplest feasible exception/inclusion process applicable uniformly across all regions and thereby avoid creating another process styled on the Technical Feasibility Exceptions (TFE) process.

EEI also recognizes the challenge of considering the change within this project. NERC must present a compelling case to achieve FERC approval and prepare that case as part of the filing early next year. While time is very tight, EEI recommends that the Board of Trustees seek a detailed presentation and discussion at a time that coincides with the comment and stakeholder balloting of the project, and no later than its November meeting.

Regarding the Adequate Level of Reliability (ALR) project, EEI briefly carries forward previous comments that Section 215 does not define its purpose as preventing customer loss of load or other customer-based impacts. Virtually all customer loss of load is based on distribution system-related events that are addressed by state utility commissions.

EEI is aware of two NERC initiatives focusing on the issue. First, the MRC has formed an ALR policy advisory group under its BES/ALR policy group. EEI understands that this group is on track to deliver recommendations to the ALR drafting task force to inform a revised ALR definition that may be presented to the Board of Trustees at its February 2012 meeting. Second, the Standing Committee Coordination Group (SCCG) has recently formed an ALR drafting task force. Since this second group is only in process of formation, it is understood that this second group plans to coordinate with the MRC group in developing the ALR definition for consideration by the Board of Trustees.

Finally, EEI believes that the BES/ALR discussions suggest that NERC should consider whether it is timely to begin a generic review of the entity registration criteria. Bulk power system characteristics are in constant change and the criteria are largely the result of a carryover from general precedent. Consideration of a project to review and make recommendations would be worthwhile.

FAC-003 / Vegetation Management

EEI appreciates the interest of the Board of Trustees regarding the status of this important standard under development, and understands that the revised standard is virtually complete and may be ready for approval by the Board of Trustees in the next several weeks. Revised FAC-003 will be the first significant mandatory standard that contains a performance-, risk-, and

competency-based defense in depth design approach. The drafting team has labored diligently through many challenges and some mid-course corrections to arrive at a conclusion strongly supported by stakeholders. The standard seeks to ensure that companies have sufficiently clear requirements to practice a defense in depth approach without micro-managing requirements for companies, and to move away from ‘lowest common denominator’ requirements. This approach will improve the standard’s ability to allow consideration of the very broad differences in vegetation types, growth rates, terrain, winds, and a host of other factors, and to measure compliance more on actual performance and management competencies, and not proficiency in documentation and paperwork. EEI recognizes the leadership of Richard Dearman (TVA) in his role as drafting team chairman and to the members of the drafting team for their dedication and hard work to complete a very challenging project.

The standard does not resolve a serious constraint that challenges companies’ abilities to perform work: transmission right-of-way (ROW) access. Order No. 693 addressed the access issues indirectly through its directive for the standard to specify minimum clearance distances, and the proposed revised standard offers a strong technical basis for defining these distances. While the revised standard responds to the FERC directive, it does not solve the underlying ROW access issue.

This has been a serious problem facing companies for many years, especially gaining access to federal lands in the United States through agencies such as the Forest Service and the Bureau of Land Management, and is an especially acute problem in the western states. The challenge to plan and efficiently manage ROW vegetation in the present circumstances, where there is little or no certainty regarding whether or when access might be acquired from a local office of a federal agency, or what conditions might be attached to such access, present a serious reliability issue that must be fixed. This problem forces many companies to use far more aggressive vegetation management practices to mitigate vegetation-related risks, and to further mitigate by reconfiguring transmission, which would not be practiced but for the access problem. Order No. 693 states that FERC will use a “case by case approach” for addressing the access issue, but does not explain what this means. EEI strongly believes that commitment and effective actions by the federal government far greater than ‘case by case’ are needed, and welcomes a practical discussion on the issues and fixing the problem.



Policy Input to the NERC BOT and MRC

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:

- **Compliance Enforcement Improvement Initiatives (MRC 6)** – NERC Standards and Audits should not be “one size fits all”. NERC should expedite the Risk-Based Reliability Compliance concept. There needs to be more focus on the reliability of the BES, rather than the enormous reporting and administrative drain that is being forced upon Registered Entities. For example, a “documentation only” violation should not be treated the same as a BES reliability violation. NERC needs to respond to violations in proportion to the seriousness of the violation. In addition, a large, industrial-owned generator, which is part of a larger industrial complex and serves internal load, should not be treated the same as a large utility generator when the impact on the BES is not comparable. While it is in the best interest of the industrial company with generation to adhere to various standards and regulations to keep the generator well maintained and safely generating power in order to keep the internal production process running, power generation is not the core business of the industrials. The administrative burden and continuous reporting to several regulatory agencies required by NERC Standards is an economic drain and can be nonproductive. These companies are resource constrained and are forced to pull internal resources from other areas of the company or facilities to work on these projects. Several of these resources are actual plant maintenance and operating personnel, who are pulled from their plant activities to complete documentation. In addition, these same industrial customers who are rate payers of a utility are economically impacted by the cost of “reliability”, passed through in the respective utility’s rates. In essence, industrials that are also NERC Registered Entities pay for their own costs of reliability as well as other utilities’ costs for reliability.
- **MRC BES/ALR Policy Issues Task Force Report to the Board (MRC 8)** – The NERC Standards Committee selected a BES Standards Drafting Team (SDT) made up of industry experts that cover a wide cross section of NERC’s stakeholders. The SDT is working very hard to propose a definition of the BES that satisfies the FERC time line. The SDT’s recommendations following the first posting include, among other things, increasing the threshold for inclusion in the BES from 20 MVA to 75 MVA. The SDT found very broad industry support for this recommendation. The SDT believes that a very large number of entities will be swept into the BES if the threshold is left at 20 MVA under a “bright line” test. The SDT understands that some generating units less than 75 MVA should be in the BES. However, the SDT believes that they should be included using the “inclusion” process rather than forcing a large number of generators that should not be in the BES to use the “exclusion” process to be excluded. In essence, the exclusion process assumes that generators between 20 and 75 MVA are “guilty” until they prove themselves innocent while the inclusion assumes those generators are innocent until someone else clearly demonstrates that they are actually critical for the

reliability of the BES. Further, the SDT does not agree with NERC staff preliminary analysis that asserted that raising the threshold would increase the excluded units from about 5% to 20%. ELCON urges NERC to carefully study an analysis presented to NERC by the American Public Power Association showing that raising the threshold would only increase the exclusions from about 4% to around 8% -- and then some of these excluded units would be included using the inclusion process. The SDT is in the process of developing technical justifications for its preliminary findings. Unfortunately, it appears that some FERC and NERC staff already have made up their minds that the SDT's final work will be unacceptable. The MRC's BES Subcommittee discussed this situation at its June 29th call and concluded that the MRC should let the SDT do its job. It simply is premature for the MRC to make decisions about the possible final product of the SDT before there is anything to evaluate. NERC staff should be encouraged to express any continuing concerns, thoughts and ideas through written submissions to the SDT following the approved Standards Process. These submissions should be considered by SDT 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.

- **Compliance Application Notices in the Context of Standards and Interpretations Development (MRC 9)** – The concept behind the development of Compliance Application Notices (CANs) is sound and was supported by a wide range of NERC stakeholder segments in early 2010. However, as the concept was actually developed, significant concerns have been raised. ELCON believes that CANs should not rewrite Standards and enforcement should not be based on CANs. Yet, NERC staff clearly said at a meeting of the Trade Associations on July 7th that auditors are expected to use CANs in their audits. It is challenging for the registered entities to keep abreast of all the projects changing and creating new Standards, much less keeping up with CANs and Interpretations, which they are audited against. NERC is, and should continue to be, a stakeholder driven organization that is fair, balanced, open and inclusive. NERC staff, no matter how competent and well intended, should not be able to develop CANs outside of process that can result in violations without carefully and completely considering comments of stakeholders – along the lines of the ANSI-approved Standards Development Process. At an absolute minimum, CANs should include any negative comment posted in the CAN development process that has not resolved the concern of the commentor. Unless there are significant changes to the CAN process, ELCON will be forced to recommend that CANs be eliminated and enforcement should be based only on Standards that are developed and approved by NERC Stakeholders.



Electric Power Supply Association
Advocating the **power** of competition

**NERC Board of Trustees
Vancouver, British Columbia
August 4, 2011
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 Vancouver British Columbia, Canada. EPSA commends the MRC leadership, the BOT and NERC management for recognizing the value of stakeholders' policy input for MRC and BOT meetings and how that input can play an important role in NERC's successful evolution as the Electric Reliability Organization (ERO).

In his July 7 letter to MRC Chair Bill Gallagher, Board Chair John Q. Anderson provided 3 issues on which the BOT seeks comment. Herein, EPSA responds to two of the three issues highlighted by the BOT Chair.

Compliance Enforcement Improvement Initiatives

The ERO is seeking to employ initiatives that will increase the efficiency of compliance enforcement. As highlighted in the BOT policy input letter, the thrust of this initiative is to reduce the violation caseload due to heightened concerns from both industry and regulators about the growth in the backlog. EPSA shares the concerns that have been expressed by stakeholders about the efficiency of the compliance enforcement process and supports the ERO making this issue area a priority.

While EPSA looks forward to seeing the meeting presentations on compliance enforcement efficiency it will offer views herein on the current effort. The effort is afoot in three areas: reducing the current violation caseload; promoting the risk based reliability compliance (RBRC) approach; and changes to the Rules of Procedures (RoP). While EPSA is generally supportive of the first two areas, some

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.

of the proposed RoP changes, specifically new RoP language, cause concern for EPSA about the ERO's priorities.

The ERO's pursuit of the efficiency and effectiveness of the compliance and enforcement program is appropriate and should continue to be stressed as a priority. Managing compliance and enforcement is necessary for the ERO to meet its core mission and therefore needs to be strengthened into a mature process with a defined scope. Currently, EPSA believes the program is adding programs and proposing rule changes that will promote enhancement rather than degradation of existing processes. The current taxonomy for determining changes for programs, processes and rules should be for material problems and should not undermine ERO efficiency. The BOT should be provided a material showing for such changes prior to approving them. Therefore to ensure reducing the violation caseload, the RBRC approach and ROP changes should all be evaluated regarding their material need and ability to increase ERO efficiency.

Violations Caseload

EPSA applauds NERC's efforts to accelerate the pace of processing violation that are either documentation related or have no material impact to Bulk Electric System (BES) reliability. The appropriate direction for the ERO should be to end excessive processing of violations that do not have a material effect on reliability and that unnecessarily drain ERO resources. The administrative citation process (ACP) first filed by NERC on January 31, 2011 was a good first step, however to date the program has not materially started to lessen the violation backlog. Consequently, the ERO needs to evaluate and understand why a greater number of violations are not being eliminated from the backlog. The contemplated September filing with the Commission should address this need so that if the new changes do not lessen the backlog, the program/process/rules can be amended accordingly.

Risk Based Reliability Compliance

Since the July 6, 2010 FERC reliability technical conference, NERC has refined its focus on the reality that not all issues can be addressed as high priority matters; ultimately, actions need to be driven by risks to bulk power system reliability. This theme has informed the BOT meetings that followed the technical conference. Importantly, the concept now has a structure and approach embodied by the RBRC effort and the current draft whitepaper that details the program, how it will work and recommendations on next steps to implement the proposal.

EPSA is encouraged by the RBRC process and how it focuses the ERO on issues material to reliability and increases efficiencies associated with lessons learned. This effort remains measured and is proceeding in an efficient manner.

Proposed New Rules of Procedure

NERC has posted draft RoP revisions for sections 400, 1002 and 1502 that propose to simplify documents, make for more consistent use of defined terms, move provisions to different sections or consolidate sections, provide greater consistency among different documents that address the same topic and create conforming cross references. Additionally, the proposed changes create new authorities to fine entities for not responding to data requests and increase penalties for violations if the entity engages in “frivolous or dilatory action” during a hearing.

EPSA supports efforts to clean up the RoP by making the language more efficient and concise. However, EPSA is concerned about resources being expended on new RoP proposals that address infrequent and immaterial issues.

The new RoP proposals have been characterized during their rollout as rules that will be used infrequently because data requests generally are responded to and hearings occur without delay. Therefore EPSA is concerned that precedent setting proposed RoP address items that rarely happen and are not significant. In light of recent ERO priority and resource discussions, making immaterial RoP changes for infrequent events heightens EPSA’s concern. New rules should be considered only if there is sufficient justification for the changes. Moreover, the ERO should be focused on material priorities.

RoP Changes Do Not Mesh With Other ERO Efforts

The proposed RoP changes do not align with other ERO efforts and will potentially cause conflicts. All EPSA members currently report to the Generator Availability Data System (GADS) and have been engaged in the changes currently underway to the system. The primary reason members have participated under the voluntary system is so that they have the opportunity to view the results. Currently, GADS is seeking mandatory reporting by using the RoP Section 1600.

During the review of the GADS process it was noted that, while the focus had been on the Section 1600 procedure perhaps outreach and discussion needs to occur with entities that were not reporting. Ensuing discussions shed light on how information system changes and sufficient notice to both new and old GADS participants would be needed to ensure successful implementation. In essence sufficient outreach and informing new GADS participants of the program will prove more important to its success than engaging the RoP 1600 procedure.

The GADS experience thus far and going forward with the Section 1600 procedure will be hampered by the new proposed RoP. The ERO is asking entities to make system changes to a data system for which those same entities have no experience and have no knowledge of its value to them. Under the new proposed RoP changes those same entities face potential fines for not reporting to a system for which they have never had the opportunity to examine the value of. In EPSA’s view the new RoP changes will undermine successful GADS implementation.

Compliance Action Notices (CANs)

The Compliance Application Notice (“CAN”) Process document states that “The CAN, while it cannot modify or interpret a reliability standard, was created in response to feedback from industry suggesting a need for insight into how the ERO determines compliance.” As stated, CANs cannot modify or interpret the reliability standard, however, EPSA members find in practice that CANs have the potential to go beyond clarification and in effect rewrite Standards

NERC states that “[t]he advantages of issuing a CAN are significant. Registered entities will have visibility into how compliance will be applied, and the compliance application will be consistent across auditors and regions.” However, in practice the CAN’s process allows industry limited input over a short time frame without transparent explanation. The process has raised further concerns when CANs propose additional requirements and/or different interpretations from how industry has understood a Standard. Every time there is an amendment to, or difference between a CAN and industry compliance practices, entities must either change compliance programs or face potential violations or both. Therefore, so long as CANs revise and/or redefine the standards, the CANs program will not fulfill their intended promise of increasing ERO clarity and efficiency.

New Approach

The CAN process is valuable but like any new program needs to identify and correct areas of concern, so that the program can effectively go forward. Currently, the process has gotten ahead of the policy goals of the program and CANs are being processed before they are sufficiently filtered to ensure that they support rather than compete with Standards and Interpretations. When a potential CAN is found to overlap with the Standards or Interpretations Process then it should be filtered and evaluated in that context, rather than continuing in the CAN process. Therefore, the CANs process needs a new approach to ensure that potential CANs stand separate and distinct from potential or existing Standards and Interpretations, and is transparent regarding the CAN genesis and CAN comments.

Developing consistent audit practices helps identify vague Standard language. CANs should be used to identify rather than interpret unclear Standard language. Auditor feedback can be used to inform the Standard process about Standards in need of revision and the language can be properly clarified through the stakeholder process. The experience from the compliance operations team can be efficiently used for determining Standard revision priorities and providing drafting teams with the evidence uncovered in the field. Alternatively, the information could help facilitate the interpretation process to produce stakeholder vetted and enforceable interpretations.

Potential CANs should identify the individual who raised the need for the CAN. The individual and his/her affiliation should be a transparent part of the CAN process. The process can also be improved if negative comments stay with CANs so that industry stakeholders, regulators and regions, including auditors can see where approved CANs have been questioned and concerns expressed.

The CANs process needs to be changed so that the program can achieve the efficiencies for which it was originally intended. The CANs process needs to filter out CANs that have been identified with concerns that affect the Standards and Interpretation processes. Going forward any potential CAN needs to be assessed and vetted so before it can be slotted for appropriate process. In addition, the program should add transparency to identify CANs origins and so that CANs retain their history once approved.

Sincerely,

/s/

Jack Cashin

Director, Regulatory Affairs

Electric Power Supply Association

**COMMENTS OF ASSOCIATED ELECTRIC COOPERATIVE, INC.,
BASIN ELECTRIC POWER COOPERATIVE, INC., AND
TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.
IN RESPONSE TO JOHN Q. ANDERSON'S JULY 7, 2011 LETTER**

Associated Electric Cooperative, Inc. ("Associated"), Basin Electric Power Cooperative, Inc. ("Basin Electric"), and Tri-State Generation and Transmission Association, Inc. ("Tri-State") (collectively, the "G&T Cooperatives") respectfully submit these comments regarding the North American Electric Reliability Corporation's ("NERC") Compliance Application Notice ("CAN") process in the context of coordinating CANs with Standards and Interpretations Development. The comments are submitted in response to the July 7, 2011 letter from John Q. Anderson, NERC Board of Trustees Chairman, to William Gallagher, Chairman of the NERC Member Representative Committee, regarding policy input to the NERC Board of Trustees. The G&T Cooperatives greatly appreciate NERC's desire to enhance the compliance process and willingness to entertain comments from Responsible Entities regarding improvements to that process. This willingness is evidenced by the existence of the CAN process as well as the recently formalized CAN Process document. Nonetheless, the G&T Cooperatives are concerned that CANs are being used improperly as a vehicle to implement new or modified reliability requirements. NERC should revise its CAN procedures to ensure that it carefully considers whether a potential topic is appropriately designated as a CAN issue or whether it would be more appropriately addressed through the Standards or Interpretations Development process and that it addresses it in the proper manner.

I. NERC SHOULD USE CANs ONLY TO CONVEY COMPLIANCE GUIDANCE, NOT TO ESTABLISH NEW REQUIREMENTS.

NERC should revise its CAN process to ensure that it uses CANs only to convey compliance guidance, and not to establish new reliability or documentation requirements. NERC can establish new requirements only through the issuance of reliability standards. FPA Section 215 requires that “[t]he Electric Reliability Organization shall file each reliability standard or modification to a reliability standard that it proposes to be made effective under this section with the Commission.”¹ Pursuant to FPA Section 215, NERC is required to follow the Standards Development process and obtain FERC approval prior to enacting and enforcing new reliability standards or modifying existing reliability standards. NERC cannot implement new reliability standards through the issuance of CANs. Consistent with FPA Section 215, NERC notes in each CAN that “The document is designed to convey compliance guidance from NERC’s various activities. It is not intended to establish new requirements under NERC’s reliability standards or modify the requirements in any existing NERC reliability standard.” NERC also states that CANs are to assist NERC’s Compliance Operations, Regional Entities and Responsible Entities with compliance by providing consistency and transparency.² As a result, NERC should revisit its draft CAN process to ensure that CANs provide only compliance guidance and do not exceed their permissible scope. Any other modifications should be reserved for the Standards and Interpretations Development processes.

¹ 16 U.S.C. § 824o(d) (2006).

² “Compliance Application Notices,” available at <http://www.nerc.com/page.php?cid=3|22|354>.

II. SEVERAL DRAFT CANS IMPERMISSIBLY ATTEMPTED TO ESTABLISH NEW REQUIREMENTS.

In several instances, NERC has issued draft CANS that go beyond the permissible scope of a CAN (to convey compliance guidance) and attempt to establish new requirements or modify existing requirements under the FERC-approved reliability standards. Rather than assisting Responsible Entities in their compliance efforts, these draft CANS have modified the Responsible Entities' compliance obligations. An appropriate CAN process would ensure that the guidance provided through the CAN process clarifies and provides guidance concerning the reliability standards and that other issues such as necessary modifications or additions to the reliability standards are considered and approved through the proper Standards and Interpretations Development processes. The following five examples illustrate instances in which draft CANS exceeded their permissible scope and necessitated responses by Responsible Entities.

A. CAN-0007

In draft CAN-0007, NERC qualified the obligation to revoke access rights requirements under reliability standard CIP-004 R4.2 so that Responsible Entities would be required to revoke the Critical Cyber Asset access rights of persons who do not "routinely" need such access. The introduction of the word "routinely" into the clarification of CIP-004 R4.2 expanded the scope of the reliability standard by requiring that the Responsible Entity maintain personnel access rights to Critical Cyber Assets only for those persons who routinely exercise those access rights. The FERC-approved reliability standard does not require that Responsible Entities revoke access for personnel who do not require routine access; it requires revocation of access only for personnel

who “no longer require” access to Critical Cyber Assets.³ Consequently, the draft CAN impermissibly expanded the scope of the reliability standard.

Further, in draft CAN-0007, NERC proposed to clarify that Responsible Entities must include such elements in their revocation of access plans even though it acknowledged that such elements do not fall within the scope of CIP-004-2 and CIP-004-3:

Reliability Standards CIP-004-2 and CIP-004-3 do not address the revocation of access to secondary systems and tools that are not CCAs. Revocation of access to secondary access systems and tools that are not within the scope of CIP-004-2 and CIP-004-3 must be included in the registered entity’s revocation of access plan.

As noted above, NERC is required to follow the Standards Development process and obtain FERC approval prior to enacting new reliability standards or modifying existing reliability Standards. Because the above-quoted paragraph of CAN-0007 proposed to incorporate into the reliability standard elements that are not currently within its scope, it would exceed NERC’s statutory authority with respect to the development and modification of reliability standards.

B. CAN-0012

In draft CAN-0012, NERC proposed to require that Responsible Entities perform periodic activities prior to the Effective Date of a reliability standard. Draft CAN-0012 stated that “Where a Standard’s requirements include a requirement for a periodic action or event, the first occurrence of the recurring requirement *must be completed by the registered entity prior to the Effective Date of the standard.*” (Emphasis added.) It further stated that “The reliability

³ Reliability Standard CIP-004 R4.2 provides that “The Responsible Entity shall revoke such [authorized cyber or authorized unescorted physical] access to Critical Cyber Assets within 24 hours for personnel terminated for cause and within seven calendar days for personnel who no longer require such access to Critical Cyber Assets.”

objective is to ensure periodic actions or events required by a Standard have been completed during the registered entity's 'Substantially Compliant' or otherwise identified ramping up period to demonstrate that the registered entity is compliant upon the Standard's Effective Date."

The proposed CAN went beyond the plain language of the reliability standards, none of which states that a Responsible Entity must perform a periodic activity no later than the Effective Date of the reliability standard. For example, Critical Infrastructure Protection ("CIP") Reliability Standard CIP-007 states that "[t]he Responsible Entity shall perform a cyber vulnerability assessment of all Cyber Assets within the Electronic Security Perimeter at least annually." Reliability Standard CIP-008 requires that the Cyber Security Incident response plan address a "[p]rocess for ensuring the Cyber Security Incident response plan is tested at least annually." Reliability Standard CIP-009 states that "[t]he recovery plan(s) shall be exercised at least annually." These Reliability Standards do not state that the annual activity must be conducted on or before the Effective Date of the Reliability Standard.

Further, NERC based its statements in Draft CAN-0012 on the definition of the terms "substantially compliant" and "compliant" included in the Implementation Plans for the CIP Reliability Standards. According to the referenced Implementation Plans, "substantially compliant" means that "an entity is well along in its implementation to becoming compliant with a requirement, but is not yet fully compliant." "Compliant" means that "the registered entity meets the full intent of the requirements and is beginning to maintain required 'data,' 'documents,' 'documentation,' 'logs,' and 'records.'" As a result, it is clear that a Responsible Entity is not required to have conducted all compliance-related activities during its "substantially compliant" period. Thus, it is not required to have conducted its periodic activities prior to the "compliant" date. Further, because the Reliability Standards requiring a Responsible Entity to

conduct periodic activities within a specified timeframe do not state that the activity must be conducted on or before the Effective Date, the entity is only required to conduct those activities after the Effective Date. Accordingly, Draft CAN-0012 impermissibly established new requirements that are not included in the FERC-approved Reliability Standards.

C. CAN-0016

In draft CAN-0016, NERC proposed to require that Responsible Entities include non-Bulk Electric System (“non-BES”) facilities in their Sabotage Reporting Procedures to be compliant with reliability standard CIP-001 Requirement 1. The proposed CAN exceeded NERC’s authority under FPA Section 215, which states that the purpose of the Electric Reliability Organization (NERC) is “to establish and enforce reliability standards for the bulk-power system.” The bulk-power system is defined to include “facilities and control systems necessary for operating an interconnected electric energy transmission network,” and “electric energy from generation facilities needed to maintain transmission system reliability.” The definition specifically excludes “facilities used in the local distribution of electric energy.” While NERC has since revised the definition of BES, the definition in effect at the time NERC issued the draft CAN was limited to those facilities and control systems necessary for operating an interconnected electric energy transmission network (i.e. the bulk-power system).

As proposed, draft CAN-0016 expanded the scope of facilities subject to the requirements of CIP-001 to include all facilities owned or operated by Responsible Entities. Such facilities include “facilities used in the local distribution of electric energy” that were specifically excluded from the ERO’s jurisdiction in Section 215, as well as facilities that may be entirely unrelated to transmission or generation. Pursuant to Section 215, the authority delegated to NERC as the ERO is limited to facilities comprising the bulk-power system. NERC does not

have the authority to unilaterally expand its jurisdiction beyond that provided for under Section 215. Consequently, draft CAN-0016 impermissibly attempted to sweep non-BES facilities under NERC's jurisdiction.

D. CAN-0017

In draft CAN-0017, NERC proposed to require a Responsible Entity to either implement a technical solution that forces the use of passwords with at least six characters and a combination of alpha, numeric and "special" characters and that are changed at least annually, or to submit a Technical Feasibility Exception ("TFE"). NERC's proposal went beyond the proper scope of a CAN and was inconsistent with Section 215 of the FPA because CIP-007 R5.3 permits a Responsible Entity to implement either a technical control or a procedural control that satisfies the password requirement.

CIP-007 does not require Responsible Entities to implement a technical solution under CIP-007 R5.3 that forces passwords to be a minimum of six characters, consist of a combination of alpha, numeric, and "special" characters, and to be changed at least annually or more frequently based on risk. Requirement R5 provides that "The Responsible Entity shall establish, implement, and document technical and procedural controls that enforce access authentication of, and accountability for, all user activity and that minimize the risk of unauthorized system access." Therefore, Requirement R5 contemplates the use of both technical and procedural controls, and does not require only the use of technical controls.

Requirement R5.3 of CIP-007 also does not require a Responsible Entity to implement a technical solution that forces passwords to meet the requirements of R5.3. Requirement R.5.3 states, "At a minimum, the Responsible Entity shall require and use passwords, subject to the following, as technically feasible:" The plain language of the requirement mandates the

Responsible Entity to require passwords to meet the criteria described in sub-requirements R5.3.1 and R5.3.2 only if it is technically feasible to do so. Consequently, if a Responsible Entity's password technology permits a user to create a password that meets the requirements of R5.3, but does not require it to do so, CIP-007 and Requirement R5.3 would permit a Responsible Entity to implement procedural controls that require the use of compliant passwords. Therefore, a Responsible Entity that implements a combination of technical and procedural controls that result in requiring compliance with the password criteria is fully compliant with Requirement R5.3. Draft CAN-0017 was inconsistent with CIP-007 Requirements R5 and R5.3 because it proposed to require a Responsible Entity to either establish a technical solution that forces the use of passwords that meet the criteria of R5.3 or request a TFE, which eliminates the option of complying with Requirement R5.3 through a combination of technical and procedural controls.

E. CAN-0030

In draft CAN-0030, NERC proposed to require attestations to demonstrate an entity's compliance during the audit period in certain situations. Specifically, NERC proposed to require attestations signed before a notary public: (1) when evidence is not available or is not complete due to events outside of the entity's control and (2) to support an entity's assertion that an event or situation did not occur. Draft CAN-0030 modified the documentation that Responsible Entities are required to submit to NERC and the Regional Entities, both in scope (to prove negatives) and in nature (affidavits sworn before notary publics). The reliability standards only require that Responsible Entities record events that occurred, not events that did not occur. Consequently, the draft CAN exceeded the permissible scope of a CAN.

III. CONCLUSION

Wherefore, Associated, Basin Electric, and Tri-State respectfully request that the NERC Board of Trustees revise the CAN process to reinforce the permissible scope of CANs and ensure that NERC uses CANs only to convey compliance guidance.

Respectfully submitted,

BRUDER, GENTILE & MARCOUX, L.L.P.

/s/
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July 25, 2011

ISO/RTO Council's (IRC) Policy Input to Board of Trustees Compliance Application Notices in the Context of Standards and Interpretations Development (MRC 9)

Introduction

The IRC strongly supports the proposition that clarity in the standards regime leads to more effective implementation and administrative efficiency in the oversight process. To the extent CANs are used to provide guidance to auditors, there is value in achieving consistency in administration of the Compliance Monitoring and Enforcement Program (CMEP). Accordingly, the IRC supports the CANs program provided it is implemented consistent with this goal – i.e. to provide non-exclusive guidance to Compliance Enforcement Authority (CEA) auditors and the regulated community with respect to acceptable means of compliance. However, thus far the program has not achieved this goal. Instead it has inadvertently created inefficiencies through duplication of effort and misapplication of the guidance documents as standard interpretations, which has led to uncertainties regarding the scope or application of a standard and to concerns that NERC is not following its own rules. These points are discussed below.

ISO/RTOs' Input

1) CANs have been initiated when formal Interpretations are being developed in parallel

The IRC agrees with the Standards Committee's recent request to the NERC Compliance staff to stop all work on CANs for which there is a parallel interpretation effort on-going (Ref. Letter from Allen Mosher to Tom Galloway dated June 13, 2011). Such duplicative efforts are an inefficient use of resources, create the potential for overlapping and conflicting outcomes, and needlessly insert an additional process into the mix when there is a corresponding proceeding occurring pursuant to the FERC approved NERC Rules of Procedure. In that letter, the Standards Committee proposed a coordinated approach between NERC's Compliance staff and Standards Development staff to process requests for interpretation to ensure each request is addressed by either an interpretation or a CAN, but not both. Endorsement of the Standards Committee's request and proposal will mitigate these risks and inefficiencies. Accordingly, the IRC respectfully requests that the Board direct NERC staff to adopt the SC's proposed actions to prevent parallel interpretation and CAN developments.

In the unlikely events that it is deemed necessary and appropriate to develop a CAN as an interim guideline to assist compliance assessment while the interpretation of a request is being developed, we recommend that the CAN developer and the interpretation developer coordinate their proposed responses to avoid presenting conflicting positions, and that such parallel efforts be clearly communicated to the industry to convey the following key messages:

- The reason for proceeding with the two processes in parallel;
- The CAN serves as an interim guideline only; it will be superseded when the interpretation is approved by the regulatory authorities. At that time, the CAN will be rescinded.

2) CANs are being used by enforcement personnel as the exclusive means for compliance

Contrary to the concept of issuing “guidance” to auditors, which establishes examples of evidence to demonstrate compliance, CANs are being used by the CEA auditors as the exclusive means of demonstrating compliance. The measures in a standard perform the role of describing acceptable means of demonstrating compliance. Therefore, as an initial matter, CANs must be consistent with measures in terms of scope. Measures are not exclusive – *i.e.* entities are allowed to demonstrate compliance by other means – therefore, CANs should not be stipulating exclusive means of assessing compliance, and cannot limit alternative means of assessing compliance. Furthermore, they must be consistent with the substantive scope of the measures. CANs cannot encompass the universe of acceptable means of compliance, nor should they attempt to do so. The key point of compliance is achieving the intent and expected outcome of a standard/requirement and entities should not be precluded from achieving the expected outcome in a manner that is best suited to their particular circumstances. Again, CANs should only be used as non-exclusive guidance as to what may be acceptable means of demonstrating compliance. This is especially true since, unlike formal Interpretations, CANs do not provide the same procedural and substantive values and protections applied in the standards/interpretations.

3) CANs have expanded the Standards’ requirements and/or jurisdiction

There are cases where CANs appear to exceed the scope of the relevant Standards/requirements by either introducing new substantive rights/obligations, or by exceeding NERC’s jurisdictional authority. Industry filed comments in response to the draft versions of these CANs, noting the above described concerns, but apparently the CAN developer chose to move forward with the CANs without revising them to address the jurisdictional/authority issues. The potential problems associated with CANs and the lack of process to adequately manage/mitigate these issues, clearly demonstrates that there is a need for the establishment of a transparent and effective means of providing adequate checks and balances to ensure such issues are fully vetted and subject to appropriate sequential reviews in a manner that will facilitate appropriate outcomes. We propose that the Board develop a guideline similar to that adopted for interpretations to ensure that CANs stay within the intent of the stipulated requirements and associated compliance elements, and not introduce new or expand on existing requirements or measures.

4) CANs should be developed within a formal process and not exclusively by NERC enforcement personnel

Unlike the FERC approved Request for Interpretation process, CANs are being developed by NERC with little due process for industry and other interested parties. Recently, NERC began posting draft CANs for comment. However, to date, the issuance of CANs by NERC has been pursuant to what is essentially a unilateral process that does not provide adequate due process. Although NERC issues draft CANs for comment, the process is not transparent and does not provide for appeals.¹

All comments filed in response to a CAN should be posted publicly and NERC should provide responses to all comments. In addition, if NERC elects to proceed with a CAN in a form that does not address industry comments, NERC must provide a process for industry to appeal that decision; presently, there is no mechanism for dispute.

Summary

Based on the CANs development process and the use of CAN's to date, it is the IRC's position that at a fundamental level the process is being misused to provide standard interpretation rather than guidance for assessing compliance. This use of CANS is inconsistent with the FERC-approved standard interpretation process.

Even if used correctly as suggested guidance, rather than enforceable interpretations, CAN development should be an open and inclusive process and responsive to issues raised by industry. On several occasions, it appears NERC has not taken industry comments into account in any meaningful way, as evidenced by the absence of substantive response, either in terms of revisions that address the comments or a substantive explanation as to why NERC declined to make such revisions. In some situations, no apparent weight has been given to comments from significant industry input on a common issue.

The issues identified above are contrary to the intent of the CAN program, appear to create compliance issues for NERC given the current use of CANS, and create ambiguities in terms of understanding the scope of Standards and how compliance will be assessed against the rights and obligations established in applicable standards and requirements.

Recommendations

¹ NERC has recently begun issuing a summary table of select comments and abbreviated responses, but this is inadequate from a due process perspective.

The IRC recommends the following improvements to the CAN process:

- Utilize CANs explicitly as non-exclusive guidance.
- Avoid parallel standard interpretation and CAN development
- Ensure CANs stay within the intent of the stipulated requirements and associated compliance elements and do not introduce new or expand on existing requirements or measures
- Develop CANs within a formal process and not exclusively by NERC enforcement personnel

**Policy Input on Compliance Application Notices (CAN)
on behalf of
Edison Electric Institute (EEI)
Electric Power Suppliers Association (EPSA)
Electricity Consumers Resource Council (ELCON)
National Rural Electric Cooperative Association (NRECA)
July 28, 2011**

Summary

Industry agrees and appreciates that CANs often provide guidance on how NERC plans to assess compliance with standard language. In addition, industry supports the effort to encourage consistency among auditors and across regions.

The CAN Process document states that “The CAN, while it cannot modify or interpret a reliability standard, was created in response to feedback from industry suggesting a need for insight into how the ERO determines compliance.” As stated, CANs cannot modify or interpret a reliability standard including the Applicability, Requirements and Measures sections; however, registered entities are finding, in practice, that they do. While there is value in the concept of clarifying how auditors will view the standard language, the CANs overreach their purpose by in essence rewriting or interpreting standards.

It should be noted that industry does not object to NERC issuing guidance. Industry objects to guidance that interprets or changes the meaning of a standard outside of the standard development process. The objection is to guidance that is not properly informed, not sufficiently vetted, inefficiently developed and creates greater conflict than it resolves.

Therefore, it is timely to revisit the CAN program and its underlying goals. The most effective way to conduct such an evaluation is to establish a task force on this issue.

Process Problems

Guidance is Not Enforceable. The CANs are designed to instill consistent auditor judgment. While industry appreciates the efforts toward consistency, a CAN is not enforceable. FERC Order 706A states “A guidance document, however, is not binding and cannot be the subject of an enforcement action, unless it is incorporated into a Reliability Standard.”¹

CANs as Standards and Standard Interpretations. Some CANs clarify too prescriptively, thereby imposing additional requirements not provided for in the language of a standard (e.g. CAN-0015). CANs have been known to interpret standards in a way that is contrary to their original intent as understood by industry entities (e.g. CAN-0008). CANs are not the appropriate means by which to impose new requirements or change the interpretation of industry established and agreed upon reliability standards.

NERC states that CANs do not change or usurp the reliability standards. Industry agrees that CANs *should* not change or usurp the reliability standards, but in some cases the CAN does indeed go beyond the

¹ Mandatory Reliability Standards for Critical Infrastructure Protection, 123FERC¶61,174, at P15 (2008) (“Order 706A)

standard language. For instance, CAN-0015 references standards language in EOP-002-2.1 and IRO-006-1.4 requiring the use of the NERC Reliability Coordinator Information System. Similarly, IRO-002-2 and IRO-003-2 do not specify a tool, but note that registered entities may rely upon the NERC Inter-regional Security Network to accomplish their requirements. The language for these standards does not require that entities have a back-up tool in place in the event the relied upon NERC Tool becomes unavailable. Nonetheless, CAN-0015 plainly adds the expectation of a back-up tool for compliance when a relied upon NERC Tool is unavailable. Nine commenters raised concern about this change in scope. NERC opted to retain the CAN language.

Further complicating matters is that the most controversial CANs go beyond providing audit guidance and into jurisdictional and legal grounds. In CAN-0016 on CIP-001, NERC states that an entity that excludes from its Sabotage Reporting Procedure "any of its facilities from its procedure, including but not limited to non-BES facilities;" would be non-compliant. The question of whether non-BES facilities are subject to the standard goes to a jurisdictional question that should be resolved in the standard development process where appropriate legal and technical analysis can be completed.

CAN-0008 on PRC-005 and pre-June 2007 evidence goes beyond legal grounds. NERC cannot require evidence from a time before the standard was mandatory and enforceable, even to demonstrate that all relays in place were tested relays on or before June 18, 2007. The standard language does not state that relays must have been tested. There is an equally legitimate interpretation of the standard in which an entity established a protection system maintenance and testing program including details of testing intervals and last test date and in which evidence gathering occurred upon testing going forward from the mandatory and enforceable date.

CANs as a basis for potential violations. Industry recognizes that CANs, in and of themselves, cannot be violated. The concern is that a CAN will be justification for a standard violation. Therefore, an entity could be issued a CAN-backed violation of a standard, but not receive an additional violation to the CAN. The bottom-line problem is that an entity can be found in violation of a standard requirement based on language that was never approved by industry, the BOT or FERC.

Guidance. Industry agrees and appreciates that the CANs provide some guidance on how NERC plans to assess compliance to standard language. The concern arises when enforcement action is taken based on a NERC position that is contrary to a legitimate alternative entity perspective. The CAN process does not yet have a way to fairly resolve conflicting positions before there is a compliance challenge. There is no real appeal process. Entities that object to a CAN position may:

- 1 - Request an interpretation – Many CAN issues are also in the interpretation process seeking resolution. However, the current program enables a final CAN to remain in place until the interpretation is complete thus giving no relief to a pending or potential compliance conflict.
- 2 - Request a SAR – Currently, some CAN issues are under consideration in standard revision projects. While a standard revision is desirable, like with interpretations the current program allows for the CAN to remain in place until the standard revision is complete thus giving no relief to a pending or potential compliance conflict.
- 3 - Contest a violation - this mechanism is likely to be utilized. Unfortunately, this is inefficient and undesirable. Resolving the conflict at the end of the process misses the opportunity to address the conflict before time-consuming and costly case-by-case hearing processes are completed.
- 4- Provide NERC with persuasive technical reasoning to change the CAN – with all due respect, the industry comments submitted to the current CANs raised significant concerns that were not addressed. The CAN process does not set parameters or criteria for what is "persuasive", so industry is not confident that this is a viable option.

Undermining the Standards Process. Standards were written by industry professionals and entities that understand the operational and technical reasons that support the standard language. In practice however, vague standard language has been uncovered where the writers have failed to fully explain what they assumed was implicit. CANs are now being used to provide guidance to auditors in cases of vague standard language without the benefit of the operational and technical input provided in the standards development process.

The CAN process provides for stakeholder comments in their drafting stages, however that input is limited compared to that in the standard development process for, among other reasons, limited industry resources are already focused on standards development and compliance efforts, and the fact that CANs are not intended to modify or interpret standards. Without a robust stakeholder process to provide the operational/technical context behind the standards, the CANs do not benefit from the technical and legal considerations used to develop standards.

No Evidence Guidance. NERC has taken the stance that it will not tell entities how to comply. This decision means that judging the “how” requires flexibility in expectations and effort on behalf of auditors to understand the entities basis underlying their compliance program. However, the CANs have been known to take away from this flexibility and instead impose steadfast evidentiary requirements.

Lack of Judgment in Context. By design, the CANs make a blanket judgment about standard language, thus removing the flexibility for situational context.

Auditor Experience vs. Operator Experience. CAN interpretations are based on auditor’s observations in the field rather than operational activities in the field. In some instances this has resulted in auditors using CANs to impose unreasonable obligations that are not based on operational realities.

Late Guidance. CANs are being released after entities for several years in some instances have relied on their own reading of a standard. For CANs to now provide new interpretations and/or new requirements after the fact, disrupts and frustrates industry efforts to come into compliance with standards. CANs are causing revisions to other NERC compliance programs, thereby decreasing overall compliance effectiveness, which ultimately undermines reliability.

The Need for Process Changes

Future Potential Legal Conflict. CANs are not developed through a formal stakeholder process, they are not mandatory and enforceable, yet auditors use CANs to find compliance violations. Therefore complying entities find the compliance programs that they built on their understanding of the standard language can be second guessed by CANs. It is only a matter of time before these differences of opinion will be tested, challenged and potentially lead to litigation.

NERC states that “[t]he advantages of issuing a CAN are significant. Registered entities will have visibility into how compliance will be applied, and the compliance application will be consistent across auditors and regions.” The problem arises when CANs propose additional requirements and/or different interpretations from how industry has understood the standard. Every time there is an amendment to or difference between a CAN and industry compliance practices, entities must either change compliance programs and practices or face potential violations or both. So long as CANs continue to be used to revise and/or interpret the standards, CAN-based judgments that go beyond the content of the standard will be and are

ripe for litigation. Litigation is not the most efficient or the preferred method to improve either reliability or compliance with NERC standards.

Potential Process Changes

Alternate Approach. CANs should not be used to clarify unclear standard language, but the information gathered at the audit level is useful. The proper way to clarify the language is through revision of the standard language through the stakeholder-driven standard development process. Using the auditor analysis that informs the CANs can also be used to inform the standard revision process, help determine standard revision priorities and provide drafting teams with the evidence uncovered in the field.

In addition, the evaluations currently informing the CAN development could be constructively used to inform the interpretation process by helping to facilitate the interpretation process to produce stakeholder vetted and enforceable interpretations. NERC makes great effort to state that CANs are not a replacement for interpretations. Industry agrees. Interpretations are stakeholder informed/approved and BOT and FERC approved. However, CANs are creating conflict and confusion around the interpretation process for several reasons. First, CANs are offered up in the same breath as an interpretation. In fact, entities that submit an interpretation request are offered a CAN as an alternative. The lines between the two are blurred even though the development process is completely different.

One justification for CANs is that the interpretation process takes too long. However, some issues are more complex than others and require more time and broader input than the CAN process can provide. Rushing them into the CAN process creates the inefficiency of parallel programs and efforts. There is no justification for the introduction of a parallel process that unnecessarily takes up industry resources and limits due process. Therefore, increasing the efficiency of the interpretations process would lessen the need for CANs.

Recognizing that the standard development process can be time consuming, the CANs could be recast to provide an interpretive discussion for auditors in terms of intent or reliability concern/justification behind a standard rather than a prescriptive interpretation on how to comply with a standard. Offering guidance to auditors on the reliability intent behind the standard language would be useful and relate more closely to reliability goals.

Next Steps

Formation of a Task Force. Opportunity exists to take a focused look at the CAN program and propose revisions. The joint trade associations propose that immediately following the August MRC/BOT meetings, the BOT direct formation of a task force to report back at the February MRC/BOT meetings, with a status update at the November meetings. The task force should consist of no more than 10 members from various stakeholder groups, NERC and RE staff. The final report plan should be determined by the task force itself; however, the constructive ideas already in discussion (Standards Committee proposal, Compliance and Certification Committee proposal, etc.) will be useful for the task force to consider. All the ideas currently in development have merit, but to create an effective compliance guidance program, it is prudent to understand the issues and complicating concerns as well as to consider all the proposals together within the bigger context of the comprehensive NERC paradigm.



MIDWEST RELIABILITY ORGANIZATION
BOARD OF DIRECTORS

POLICY INPUT TO NERC BOARD OF TRUSTEES

AUGUST 4, 2011

Pursuant to the NERC Board of Trustee's request for policy input from the NERC Member Representative Committee for the upcoming August 4, 2011 meeting, the Midwest Reliability Organization ("MRO") Board of Directors respectfully submits the following for consideration by the NERC Board of Trustees.

I. Compliance Enforcement Improvement Initiatives (MRC 6)

NERC and the Regions recently established the Administration Citation Process that has helped to abbreviate and expedite the enforcement procedures. MRO has seen benefits from the Administration Citation Process as our settlements have been reduced to about 20% of all violations. Streamlining of the record to be filed, along with our own internal process improvements, has increased our violation completion rate to above 60%. In the future, MRO believes that new tools will require more thorough roll-out procedures and training so that Regions can adopt these tools more consistently and gain the most benefit as we move towards a more practical and effective approach in the compliance and enforcement area.

That said, currently every single violation, regardless of its significance or impact on the bulk-electric system, requires a formal Notice of Penalty filing. This is having a counterproductive effect on the Registered Entities and is truly the root of the issue to be resolved. Registered Entities who strengthen their compliance programs and procedures (e.g., by instituting more and tighter internal controls) will often find and self-report small infractions before they become bigger issues. However, the current process rewards these entities with a barrage of bureaucratic enforcement processes. This backwards approach creates disincentives for good performers who regularly self report by treating them with enforcement through a time-consuming process (to the Registered Entity), when in fact we should focus more on, and exert greater enforcement





authority over, those entities which lack strong compliance programs and controls and pose more risk.

While “quick fixes” are attempting to address the “backlog,” MRO suggests a new path to bring immediate relief on the administrative matters and point us in the right direction for the long term. MRO believes that any proposal from NERC needs to include the following:

1. Increased rigor of NERC and the Regions’ compliance approach of the “CMEP” by adopting standardized practices for audit-related work which would measure the strength of the Registered Entities internal controls and corrective action programs that address performance and compliance. This would shape the scope of NERC and the Regions’ work based on significance and risk.
2. Require better and more comprehensive training and testing of Regions and NERC staff which is designed and delivered by qualified professionals in audit, compliance, and risk assessments.
3. Permit discretion on matters where insignificant infractions are “found and fixed” within strong corrective action programs of the Registered Entity to score and record; thus, reserving enforcement for more serious matters. With discretion through a more rigorous approach, Regions and NERC will have more flexibility to keep-up with the changing risk landscape in the industry.

The time seems right then, especially as we approach the fifth year of compliance with mandatory Reliability standards, to recalibrate the CMEP and encourage Registered Entities to institute or further enhance management systems and assure their performance.

II. Compliance Application Notices in the Context of Standards and Interpretations Development (MRC 9)

Compliance Application Notices (CANs) should be limited in scope to generally address the evidence suitable to demonstrate compliance with standards. Alternately, MRO supports having application guides to accompany standards - similar to how other industries approach the issue of





providing more clarity on standards. While many of the existing standards require more clarity through revised language; application guides, developed by the subject matter experts from the industry, are the best solution to reduce the number of interpretations and eliminate the need for CANs. Application guides, while not authoritative, can provide needed clarity and assistance to the industry.

MRO proposes a uniform manner in applying the standards for enforcement purposes. For example, in applying a standard, the following steps should be followed by NERC and the Regions:

1. Consider the plain language of the standards (authoritative)
2. Consider the essential purpose of the standard (authoritative)
3. Consider regulatory orders, interpretations, past enforcement proceedings (authoritative)
4. Consider Regional Standards related to a specific standard (authoritative)
5. Consider application guides (or CANs) (non-authoritative)

In this way, NERC can develop and maintain a consistent application of the Reliability Standards across the continent, which has been lacking to date.





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**NPCC Board of Directors Policy Input to the
August 3, 2011 NERC Member Representatives Committee
and August 4, 2011 NERC Board of Trustees Meetings**

1. Compliance Enforcement Improvement Initiatives

- a. NPCC supports implementation of the proposed compliance auditing and enforcement improvement initiatives
- b. NPCC recommends that, as part of the implementation of these compliance initiatives, due consideration be given to the ongoing work of the Compliance and Certification Committee's Risk-Based Reliability Compliance Working Group
- c. NPCC also suggests that, to enhance consistency, ERO-wide training and documentation be developed that clearly defines the terms and describes the processes

2. MRC BES/ALR Policy Issues Task Force Report

- a. NPCC supports the concurrent second postings of the BES definition and the BES Technical Principles for Demonstrating BES Exceptions with the consideration of comments received
- b. NPCC continues to support a BES Definition and Technical Principles for Demonstrating BES Exceptions that respects the statutory limits imposed under FPA 215 to not include facilities used in the local distribution of electric energy as established by applicable regulatory authorities
- c. NPCC supports consistency between the BES definition and the Compliance Registry Criteria and would not support a potential BES definitional change for individual generating unit applicability (from 20 to 75 MVA) without sound technical justification that clearly demonstrates that no reliability impacts result from the change

3. Compliance Application Notices in the Context of Standards and Interpretations Development

- a. NPCC supports the current CANs process and provided suggestions for improvement to the process during the posting periods, and supports the processing of numerous Requests for Interpretation being developed by NERC
- b. NPCC supports the activities of the NERC Standards Committee currently underway to produce a process to expedite revisions identified by stakeholders during Requests for Interpretations "RFI" processing
- c. NPCC supports the ongoing need to reach out to stakeholders through workshops and webinars to clarify and provide notifications of CANs and RFIs, and provide transparency to these processes and promote broad industry wide awareness

As approved by the NPCC Board of Directors at its July 28, 2011 Meeting

**National Rural Electric Cooperative Association (NRECA)
Policy Input to the NERC Board of Trustees (BOT)
July 25, 2011**

NRECA appreciates the opportunity to provide policy input to the NERC BOT regarding several issues that will be discussed at the August 3/4 MRC and BOT meetings.

Compliance Enforcement Improvement Initiatives (MRC 6)

- NRECA supports NERC's efforts regarding enforcement discretion, streamlining NOPs, and reviewing dismissals of potential violations.
- These initiatives will make better and more efficient use of NERC, RE and stakeholder resources. Many stakeholders are struggling to keep up with the amount of NERC-related documents that require review and/or comment. In many cases stakeholders are only able to review a subset of the documents that requires their attention. This means that NERC (and FERC) are not hearing the perspectives of all stakeholders that have valuable information to provide on a myriad of important issues.
- NRECA continues to support the find and fix concept, in addition to the warning, parking and speeding ticket treatment for violations. Find and fix aligns with a warning ticket and would involve no formal finding of a violation. Parking and speeding tickets aligns with less serious violations that offer the potential violator the opportunity to choose a quick/accelerated compliance/enforcement process if they prefer such an option. The normal compliance/enforcement procedures would also be available if desired by the potential violator. The key concept here is that not all violations need to be handled the same and that the core focus should be on those potential violations that pose a significant risk to BES reliability.
- NRECA continues to support the elements of the risk-based reliability compliance model that was previously introduced by Tom Burgess of FirstEnergy. It appears that some of those elements are beginning to be addressed and implemented and we are supportive of that action.
- NRECA strongly encourages NERC to continue to explore steps to reduce burdens on stakeholders, RE and NERC staff, while focusing on the issues that are most critical to BES reliability.
- It is critical to ensure FERC understands that NERC is not in any way reducing the importance of BES reliability, but rather refocusing stakeholder, RE and NERC resources on those standards and compliance/enforcement efforts most critical to BES reliability.

MRC BES/ALR Policy Issues Task Force Report to the Board (MRC 8)

- NRECA strongly urges the BOT, MRC and NERC/FERC staff to let the BES Definition Drafting Team do the job it was assigned to complete. Potential interference from entities outside of the standards development process is not acceptable and may end up causing a delay in the

completion of the work assigned. This could result in the need for a request to FERC for an extension of time, which is not desired. It is key for all entities to participate as directed in the Standards Process Manual and related Standards Committee guidance documents.

- Where the BES Definition Drafting Team is addressing issues identified by stakeholders, it is important for the drafting team to hear the positions of all parties in the formal comment process and to then allow the drafting team to provide the technical support or justification needed to support their decisions.
- The BES Definition Drafting Team's scope of work is limited to the definition, and does not include making revisions to the NERC Statement of Compliance Registry Criteria. It is important for all interested parties to understand this limited scope of work.

Compliance Application Notices in the Context of Standards and Interpretations Development (MRC 9)

- Several final CANs have exceeded providing compliance audit guidance and have actually interpreted or changed the original meaning of an existing reliability standard outside of the standards development process. This is unacceptable and these missteps must be corrected.
- There needs to be a priority placed on developing a permanent solution to address the vague and unclear language that exists in standards – CANs are not that solution. The appropriate solution is to fix such language in the formal standards development process or through formal interpretations.
- It is unacceptable for an entity to be found in violation of a standard based on a CAN, which does not go through the standards development process, nor does it gain approval from the Registered Ballot Body (RBB), the BOT or FERC.
- The basis for any violation and resulting penalty must be from a standard or interpretation that has received approval from the RBB, the BOT and FERC.
- NRECA strongly supports and encourages the BOT, MRC and NERC leadership to support the formation of a task force to further explore and address CAN-related issues.
- NRECA may supplement these CAN-related comments with a document that provides more detailed comments and recommendations. We hope to submit those comments jointly with other industry trade associations by Friday, July 29.

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REGIONAL ENTITY MANAGEMENT GROUP

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TIM GALLAGHER – RFC

STACY DOCHODA – SPP

MARK MAHER – WECC

Date: July 22, 2011

Memo to: NERC Board of Trustees

From: Tim Gallagher, REMG Chair

Subject: Regional Entity Report for the August Board Meeting

Compliance and Enforcement Improvement Initiatives

The Regional Entities support efforts to streamline processes and send the “right” messages to the industry about improving reliability. Adding greater efficiencies to the processes currently used is certainly a necessary and laudable goal, but we must also take a step back and holistically examine our compliance and enforcement activities for improvements. Therefore, in addition to streamlining the enforcement process, we offer the following key considerations for the Trustees as the compliance and enforcement activities are reviewed:

- Significance. We must focus our attention on the users, owners, and operators and standards that pose the greatest risk to reliability and those who have the greatest opportunity to improve reliability performance
- Compliance Program and Controls. We must do more to recognize and measure the benefits from registered entities having strong corrective action programs to find and fix small problems before they become more serious and we must take steps to properly incent such behavior.
- NERC and Regional Training. In order for any initiatives to reach their maximum effectiveness, the ERO will need to provide rigorous training and roll out procedures.
- Discretion. A level of discretion must be provided to the Regional Entities, in both the monitoring and the enforcement processes, so that administrative violations are not clogging the process and misallocating resources away from more significant reliability matters.

Regional Delegation Agreement (RDA) Metrics

NERC and the Regional Entities have worked collaboratively on the proposed draft set of RDA metrics that are on the NERC BOT agenda. This set of metrics tracks the Regional Entities’ and NERC's performance of key processes under the RDA. These metrics will be useful to identify

year-over-year performance, resource and process improvement needs, and they meet the requirements of the Commission's Order and guide NERC and the Regional Entities on the administrative obligations of the RDA. In addition, the Regional Entities acknowledge a responsibility for more than process performance and are collaborating with NERC to develop metrics that will measure the impact of NERC and the Regional Entities on reliability.

2012-2015 Budgets and Business Plans

The Regional Entities collectively believe that we duly prepared, vetted, obtained requisite Regional approval for, and submitted 2012-2015 business plans and budgets that appropriately balance the need for resources to properly fulfill our duties against the costs and burdens of doing so. We seek the Board's approval of these documents for Commission review.

Compliance Application Notices (CAN)

The Regional Entities appreciate the efforts made by NERC to add greater clarity and transparency in the field application of Reliability Standards through its CAN process. We would like to clarify that CANs are not a definitive guide to applications of Reliability Standards, but rather serve as one of several inputs that are to be considered given the varying facts and circumstances, geography, and technical configurations we encounter in the field.

Proposed Changes to Compliance Monitoring and Enforcement Program (CMEP) and Rules of Procedure (ROP)

As revisions and changes to the CMEP and ROP are being developed and considered any changes made must add clarity, resolve inconsistencies, or add efficiencies. Changes that do not achieve these objectives must be questioned and carefully considered before they are approved and implemented.

NERC Sector 4 – Federal or Provincial Utility
Policy Input to NERC Board of Trustee Request of July 7, 2011
July 22, 2011

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.

1. Compliance Enforcement Improvement Initiatives (MRC 6)

Sector 4 members support a goal of improving compliance enforcement and look forward to engaging with NERC and industry to develop and implement improvements. In particular, the improvements should reduce administrative activities that are unrelated to the reliability of the BES. The reductions and improvements should be for both NERC and industry workload, and ultimately focus efforts on critical high priority issues. This can be accomplished through a focus on identifying and fixing areas of non-compliance, giving credit for self-identification and correction of problems, using an expedited traffic ticket type of enforcement mechanism for minor incidents, and putting effort into ensuring that major issues are given the priority they require.

2. MRC BES/ALR Policy Issues Task Force Report to the Board (MRC 8)

Sector 4 members support the efforts of the Bulk Electric System (BES) Standard Drafting Team (SDT) to determine the impacts that a change in the BES threshold criteria for individual generating units from 20 MVA to 75 MVA might have to the reliability of the BES. Once the potential impacts are identified, possible policy issues can be analyzed.

3. Compliance Application Notices in the Context of Standards and Interpretations Development (MRC 9)

Sector 4 can appreciate the effort and priority that NERC staff is placing on developing CANs in an effort to provide more consistency and transparency. However, we view the development of CANs as only a stopgap measure that has the potential to provide considerable risk to industry and NERC, especially if the CAN conflicts with current industry approach and understanding of the requirement. Also, any compliance violations that may result from the use of a CAN may not be recognized in some jurisdictions.

Lastly, Sector 4 would like NERC to provide more rigor in their review of industry comments by providing written feedback on why comments are, or are not, addressed.

4. NERC Rules of Procedure

NERC Sector 4 – Federal or Provincial Utility
Policy Input to NERC Board of Trustee Request of July 7, 2011
July 22, 2011

Although policy input was not requested on the Rules of Procedure (ROP) revision effort currently underway, Sector 4 is concerned that ROP's could be used to create mandatory requirements that are outside of the standard development and enforcement process. Specifically, Sector 4 is concerned that the "Alert" process is being improperly used to create requirements outside of the standards development process. Another example is Section 414, "Imposition of Fines for Failure to Provide Information Requested Pursuant to the Rules of Procedure", whereby fines unrelated to Electric Reliability Standard enforcement are being contemplated. The establishment of requirements and fines, outside of the Standard development and enforcement process could create serious jurisdictional problems for Sector 4 members. While we bring this to the Board of Trustee's attention through these comments, we will also work through the ROP comment process to raise similar concerns.

On behalf of the NERC Sector 4 Members -
Sincerely,

Anthony H. Montoya
Western Area Power Administration
Chief Operating Officer



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SERC Board of Directors' Policy Input to NERC Board of Trustees August 2011

General

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 the NERC Board of Trustees for the August 2011 Board of Trustees and Member Representative Committee meetings.

Compliance Enforcement Improvement Initiatives

As one of the first significant steps to improving the compliance and enforcement processes, SERC applauds the development and utilization of the Administrative Citation Process (ACP). SERC has found the ACP useful in processing relatively minor violations in a more effective manner.

Building upon the ACP success, the ERO is encouraged to further streamline compliance and enforcement processes, and SERC believes significant opportunity to do so still exists. SERC believes the administrative burden of the current approach outweighs the reliability value being achieved for some activities. SERC members are demonstrating their commitment to a successful regional entity by advancing a SERC budget with a 38% increase driven largely by the resource demands necessary to fulfill SERC's CMEP obligations. This cost trajectory simply is not sustainable when a commensurate improvement in reliability is not evident.

As the concept of discretion is further developed, SERC believes it should be defined broadly and should be available for situations involving uncertain enforcement outcomes and inconsequential impact to the Bulk Electric System (BES). In addition, while it may be implemented differently, use of discretion should be available in both the compliance and the enforcement processes. A Regional Entity's use of discretion should be transparent to NERC, but care must be exercised to ensure the reporting obligation is not overly burdensome. SERC acknowledges and accepts as realistic that use of discretion could properly result in different outcomes for similar or same situations though the process is consistently applied.

Bulk Electric System (BES) and Adequate Level of Reliability (ALR) Policy Issues

As communicated in its May 2011 Policy Input, SERC continues to believe in a BES definition that stays true to the scope established in Section 215. NERC's work on the BES definition should include assets which have a discernible likelihood of impacting reliable operation of the bulk network system. Similarly, the definition should avoid the likely conflict that will develop if the new definition expands scope to include distribution operations and assets. The definition must be one that is sufficiently clear and capable of being readily applied by industry without undue implementation burdens. Finally, care should be taken to ensure the exception criteria and supporting implementation processes do not become unnecessarily complicated.

With that overarching policy approach, SERC supports a 75MVA threshold for generation. A strong technical justification for setting the threshold at either 75MVA or at 20MVA has not been brought forth. It is clear, however, that significant overhead costs exist for the responsible entity when subjected to strong compliance review. Given the lack of technical justification and the higher overhead costs, it would appear imprudent to set the generation threshold at 20MVA.

Of particular interest is the generator applicability that has been utilized over the years in various SERC regional procedures which have provided guidance for SERC reliability reporting and analysis. Prior to mandatory enforcement, most of those regional procedures contained a generator applicability threshold greater than 20MVA. After the commencement of mandatory enforcement, SERC had to modify some of those documents to align with the 20MVA registration criterion. Even today, when the Regional Entity has the authority to set a criterion, SERC generally still uses a generator threshold of 75MVA.

Compliance Application Notices (CANs) in the Context of Standards and Interpretations Development

SERC believes that ERO efforts to get industry input on draft CANs have improved the content and usability of the guidance. The ERO is to be complimented on this effort to improve the CAN process and the quality of the guidance being issued.

SERC believes that CANs, as guidance, provide one method by which compliance to a standard might be achieved. To the extent that a reliability standard does not clearly communicate expectations for compliance, a formal Interpretation of the Reliability Standard is the only enforceable means by which a definitive conclusion of expectations can be reached. CANs should generally state one method, but not the only method, of compliance. Also, CANs should not impose additional requirements, and the ERO should avoid presenting CANs as such. For example, if the CAN guidance is included in a Reliability Standards Audit Worksheet, the ERO is effectively making the CAN a de facto enforceable requirement.

The standards development process is the best place to clarify the intent of a standard. The mere fact that CANs are needed is a clear indication that the current standards are not sufficiently clear for the purpose of establishing clear expectations. SERC continues to support the ongoing efforts to improve the quality and clarity of the standards produced or being produced by the standards development process.

Compliance Monitoring and Enforcement Plan (CMEP) Proposed Changes

While not a specific item for which policy input has been requested, many SERC members are concerned with a proposed CMEP change currently posted for comment. The draft changes appear to indicate that non-regional entity personnel can be added to audit teams without limitation or qualification. The justification to modify the current method of audit team selection is unclear. SERC asks that the justification for such a change be provided. Absent clear justification, SERC disagrees with the proposed changes to audit team composition.

SPP RE Board of Trustees' Policy Input to the NERC Board of Trustees July 25, 2011

Compliance Enforcement Improvement Initiatives

SPP RE strongly encourages NERC to work with FERC to continue NERC's efforts to implement compliance enforcement improvement initiatives. Resources at the registered entities, regional entities and NERC should be free to focus on the highest priority reliability issues. Limited reliability resources should not be squandered on a legalistic enforcement process for low risk violations. Emphasis should be shifted to mitigation and away from processing thousands of low risk violations. Significant deference should be afforded to the FERC approved risk factors by the REs, NERC and FERC so that low risk factor requirements automatically receive less formal processing without re-justification of the low risk. Enforcement processing and penalties should be reserved for cases where required to effect mitigation or to provide a deterrent.

For more information on SPP RE's experience with the current state of violations please see the attached letter from SPP RE General Manager, Stacy Dochoda, to NERC President and CEO, Gerry Cauley.

MRC BES/ALR Policy Issues Task Force Report to the Board

The SPP RE Trustees are not aware of the reasons being put forth to support a criteria of 75 MVA for generators to be defined as BES elements. Currently, NERC's registration criteria includes generators at 20 MVA and above. In the absence of a compelling reason for the criteria of 75 MVA, the SPP RE supports a definition which would match the current registration criteria of 20 MVA for generators. There are several categories of smaller units which are significant for reliability including black-start units, reliability must run units and aggregations of small units such as wind farms.

Compliance Application Notices in the Context of Standards and Interpretations Development

The SPP RE Trustees express their support for the NERC Compliance Application Notice (CAN) process. CANs have two significant purposes. First, they provide transparency to industry on how an ERO compliance enforcement authority will monitor compliance with a NERC Reliability Standard; and they establish consistency in the application of compliance criteria across all compliance enforcement authorities.

Regional Entity (RE) auditors are required to monitor reliability standards. However, standards are not always clear. Auditors have to do the best they can with the standards as written. At the

beginning of the program, each RE conducted audits without knowing much about other RE's practices. The need for consistency among REs became quickly apparent.

RE auditors and NERC began working together to share how they were monitoring the standards. Several non-public guidance documents were issued by NERC with directions to the REs for addressing monitoring issues. Several REs including SPP RE advocated for the guidance documents to be made public. Eventually, these efforts led to the development of CANs.

Without CANs, the industry would lack understanding of auditors' compliance expectations. Auditors cannot ignore approved standards and have to make calls in the field. No one in the REs wants to interpret standards or override that process; we also have no ability to call a moratorium on monitoring standards that aren't clear. Given the choices we have today between transparency with the CANs and no transparency without, the SPP RE supports the NERC CAN process.

Reliability Standard Development

SPP RE is concerned about the pace of reliability standard development, particularly in the area of improving existing standards. SPP RE supports efforts to streamline and expedite the standard development process.

MEMORANDUM

From: John DiStasio
Tim J. Arlt
John Twitty
Terry Huval

To: Dave Nevius, Secretary
NERC Member Representatives Committee

Subject: Response to Request for Policy Input

Date: July 25, 2011

This response is submitted on behalf of the MRC's State and Municipal and Transmission Dependent Utility Sectors ("SM-TDUs") to the letter dated July 7, 2011 from NERC Board Chairman John Q. Anderson to Mr. Bill Gallagher, acting in his capacity as 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 meetings to be held August 3 and 4, 2011.

This response addresses the three topics raised in Mr. Anderson's July 7 letter:

- NERC's efforts to improve compliance enforcement efficiency through increased enforcement discretion and a reduced violation caseload (MRC 6);
- NERC's efforts to develop a new definition of the Bulk Electric System (BES) responsive to FERC Order Nos. 743 and 743-A (MRC 8); and
- NERC's development and coordination of Compliance Application Notices (CANs) (MRC 9).

1. Compliance Enforcement Improvement Initiatives (MRC 6)

SM-TDU sector utilities support reform of the enforcement process to reflect a "risk-based" approach to establishing priorities for compliance and enforcement activities and urge the Board to develop and adopt compliance enforcement initiatives that will (i) refocus industry efforts on achieving reliability excellence through attention to matters that pose risks to the reliability of the bulk power system; (ii) reduce regulatory burdens on users, owners, and operators; and (iii) improve caseload processing to reduce the enforcement backlog that is now pending before NERC. Above all, SM-TDUs urge a new focus among NERC, the regions and registered entities on activities posing the greatest risk to the BES. Further, SM-TDUs support investing the regional entities and NERC with the discretion to determine that certain low level violations do not warrant the initiation of enforcement action or formal procedures, where prospective compliance is confirmed and the alleged violation is not part of a pattern of non-compliance.

Establishing a lower tier for minor violations that do not pose a significant risk to the BES is critical in focusing NERC's and the industry's limited resources on matters that genuinely threaten grid reliability. We are hopeful that efforts to reduce the backlog will also facilitate the issuance of lessons learned concerning past violations.

SM-TDUs are reviewing the materials and concepts outlined in the agenda package for the Board's Compliance Committee. Our initial assessment is that the three-tiered structure outlined therein is quite promising. We look forward to working with NERC and its other stakeholders to refine these proposals and will support NERC's efforts to garner regulatory approval.

SM-TDUs are reviewing the information outlined in the Risk-Based Reliability Compliance (RBRC) Working Group's draft deliverable to NERC (Document RBRC-13), and reserves comment on the mechanics of the proposed approach to enforcement discretion until additional details are made available.

2. Bulk Electric System/Adequate Level of Reliability Policy Issues and Task Force Report (MRC 8)

It is SM-TDUs' understanding that the Bulk Electric Definition Standards Drafting Team (BES SDT) is expected to propose revising the threshold criteria for including individual generating units in the BES from 20 MVA to greater than or equal to 75 MVA in capacity. SM-TDUs support this proposed increase, and believe that smaller units having a gross nameplate capacity of less than 75 MVA generally have a minimal impact on the BES. It is, however, critically important that the industry and the BES SDT fully develop and articulate the technical rationale in support of changes to the BES definition.

SM-TDUs understand that at this time the processes governing the development of the highly technical/substantive BES definition and exemption study criteria and the process-oriented Rules of Procedure reforms are proceeding independently of one another. Though SM-TDUs do not object to a bifurcated approach, SM-TDUs support a path for development of the BES definition and the exemption process which ultimately will bring both of these important elements together for concurrent balloting. Both the BES definition and exemption study criteria should be approved by the NERC registered ballot body and become part of NERC's reliability standards. The process for obtaining an exemption should become part of the NERC Rules of Procedure, approved by the Board after notice and comment.

3. Compliance Application Notices in the Context of Standards and Interpretations Development (MRC 9)

SM-TDUs support the use of CANs, which it views as a helpful tool to resolve uncertainty surrounding certain reliability standards. SM-TDUs urge NERC to keep two fundamental principles in mind when issuing CANs. The first is that they should not supplant the formal interpretation process, or be used to forestall needed reform for ambiguous standards. Both the interpretation process and the standards development process used to secure formal revision to the standards employ the full ANSI process, and benefit from formal consideration

of stakeholder comments, unlike the CANs. SM-TDUs do not view a CAN as more than a stopgap measure when formal clarification of or revision to a standard is needed.

Second, SM-TDUs urge NERC to specify that CANs do not necessarily establish exclusive parameters for compliance, to the extent the CANs detail one or more means by which compliance with a given standard may be achieved. SM-TDUs recognize that the disclaimer associated with each CAN specifies that the CAN does not substitute for standards or establish a definitive interpretation. However, that disclaimer is given limited credence in the field, where registered entity practices that are inconsistent with a CAN may become a red flag for auditors. In addition, SM-TDUs recommend adding to the disclaimer the language highlighted below:

*This document is designed to convey compliance guidance from NERC's various activities. It is not intended to establish new requirements under NERC's Reliability Standards or to modify the requirements in any existing NERC Reliability Standards. **To the extent this document specifies means by which compliance with the applicable standard may be achieved, it is not designed to identify all such means.** Compliance will continue to be determined based on language in the NERC Reliability Standards as they may be amended from time to time. Implementation of this compliance application notice is not a substitute for compliance with requirements in NERC's Reliability Standards.*

Finally, SM-TDUs note that NERC recently began to embed an electronic link for each CAN adjacent to the underlying reliability standard(s). SM-TDUs believe that straightforward improvements such as this will do much to further NERC's goals of improved clarity and transparency, by ensuring ease of access to all relevant documentation related to a specific standard, which in turn will assist registered entities in their compliance efforts. Similar links for RSAWS, effective dates, VRFs, VSLs, lessons learned and NERC alerts would add significant value for all users, owners and operators of the bulk electric system.

Thank you for the opportunity to provide this input.