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Before The
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Good afternoon Chairman Wellinghoff and Commissioners. My name is Nancy Saracino and I am the Vice President, General Counsel and Chief Compliance Officer for the California Independent System Operator. I am responsible for overseeing the California ISO's corporate compliance program, including the organization's compliance with the mandatory reliability standards. The California ISO applauds the Commission for holding this technical conference and engaging the electric industry in this important dialogue.

The Commission is confronting an important and complex series of questions about the structure and effectiveness of the regulatory framework for electric reliability. Congress developed a regulatory scheme for reliability standards development and enforcement that does not follow a more traditional regulatory framework. Rather, Congress adopted a hybrid approach that contemplates a strong industry role in establishing and enforcing standards in the first instance with oversight and approval by the Commission. In some ways, this hybrid structure makes the Commission's job more challenging than the job faced by agencies implementing more prescriptive regulatory schemes because it requires the Commission to strike the right balance between giving deference to industry-developed standards and exercising independent review and oversight.

In making my remarks to the Commission, I would like to note that my perspective is informed by the core mission of my organization – to reliably and efficiently operate the grid under our control. The California ISO must be able to manage the grid reliably at all times and have the necessary resources, requirements and standards in place to allow us to deliver the service that California expects of us and every other balancing authority and public utility within its borders.

When the California ISO engages in the process to develop and refine the standards that govern our operations, we seek a result that will protect reliability by providing clear, effective rules and enforcement consequences. We do not engage in the standards development process with the purpose of drafting standards that merely constitute the “lowest common denominator.” In the long-run, that will not promote reliability. Likewise, the California ISO does not believe that constantly tweaking reliability standards “down to the last word” or focusing on administrative requirements and less important individual sub-requirements is the best approach to promoting reliability. Such an approach only bogs down the standards development process, stymies the timely development of needed standards, and detracts resources from focusing on higher priority standards and issues.

Rather, the California ISO seeks reliability standards that (1) are sufficiently informed by and reflect industry experience and expertise, (2) are technically sound, (3) clearly delineate what the requirements are and who is properly accountable for meeting them, (4) are workable within the context of the competitive electricity markets that we operate, and (5) provide certainty and clear enforcement consequences. The California ISO also believes that the Commission should place greater confidence in the results of the NERC-sponsored standard development process, unless that process results in standards that clearly do not promote reliability. This would not cause the Commission to compromise the integrity of its regulatory responsibilities, but would recognize that industry participants and the entities responsible for operating the transmission grid and related facilities are well-positioned to craft effective and workable reliability standards given their experience and expertise and the fact that they are the entities that will actually have to implement these standards.

In the course of examining reforms to the standards development process, we should all keep one key question in mind: are our actions helping to protect reliability?

Compliance is not synonymous with reliability. If we are trying to incent the kind of behavior, decisions and investments that support a reliable grid, focusing our resources and staff time on documentation and compliance with requirements that have little to do with reliable operations undermines our effectiveness. Doing so also erodes the confidence that the grid operators must have in their judgment and competence to operate the grid. It also undermines the important process of self-examination and event analysis that is key to the learning and mitigation measures needed to avoid problems in the future.

How the standards have been enforced since 2007 is an important indication of how well they are designed and whether the focus and emphasis are in the right

places to support a robust and reliable electric system. Some of the data emerging from recent compliance trends in the west indicates that the majority of violations – and at times a vast majority – have minimal impact on reliability. On one hand this can be viewed as a good thing because it means the converse is true, namely that very few violations have had a severe impact on reliability. The data also reveals, however, that the focus of the compliance and enforcement efforts has been on documentation and other behavior and actions that do not deserve -- and should not be getting -- the same level of attention and commitment of resources as those behaviors that directly and significantly impact reliability.

We should translate these lessons from the experience with audits and enforcement back into the standards development process. Some of the themes apparent in the Commission's questions to this panel – resolving ambiguity, prioritizing the focus on standards development and refinement, and improving responsiveness and timeliness – may well be aided by a more pragmatic approach that allows us to spend more time where it counts -- focusing on improving reliability and developing higher priority standards -- and less on compliance through paperwork.

Revision to the standards development process should start with improving the engagement between NERC, the Commission, and industry participants.

The Commission's frustration with the industry's delay in responding to directives is understandable. But one of the most important things the Commission can do at this point is to reexamine how best to exercise its authority over the process. Before posing the question how can the standards development process better account for and timely respond to Commission directives, the question that first needs to be addressed is what is the most effective means for the Commission to carry out its statutory responsibilities and approve reliability standards tailored to protect the bulk power system, while working within the framework that provides for the consensus-driven approach sponsored by NERC.

In preparing for this panel, I sought input from those engaged in the standards development process. That input was unanimous in the conclusion that the NERC-sponsored process, while not perfect, is the most effective way to achieve optimal design of reliability standards. NERC has offered improvements to the process which have promise for addressing the symptoms of the problem. But until the Commission and NERC resolve the tension inherent in the statutory scheme between deference to the electric reliability organization's expertise and the Commission's independent authority, merely addressing the symptoms will not be sufficient. The industry would benefit from the two organizations themselves bringing clarity and certainty to the process rather than leaving it to the courts. We urge the Commission to consider how to engage more effectively with NERC

in designing and approving effective standards. We encourage NERC and the Commission to devote the necessary resources and time to resolve this matter sooner rather than later.

Certainly, the Commission's role in setting and enforcing reasonable timeframes, along with establishing expectations for the quality and effectiveness of industry input, is key to driving performance. The industry should also be held to account for its participation in and support for the improvements in the standards development process. We need to ensure we are providing the right resources with the right experience to do the job, and expect greater responsiveness.

The California ISO also believes there are process revisions that the Commission could immediately implement to improve industry participation and the quality of the standards that are being approved. First, the Commission should lengthen the timeframes for responding to Notices of Proposed Rulemaking ("NOPR") that propose new reliability standards. These are important issues and, unless there is an imminent threat to reliability, parties should be given sufficient time to submit informed and thoughtful comments that will benefit the Commission in its decision making process.

Second, the Commission should consider staging its reliability standards NOPRs, orders and final rules in order of priority. There are numerous instances where the Commission has issued multiple NOPRs and orders on the same day, with industry comments on or responses to these orders being due at the same time or in close proximity to each other. This compressed timeframe unnecessarily stretches industry resources and makes it difficult to provide high quality input on all of the items for which the Commission seeks comments. Finally, when the Commission does remand standards to NERC, it must provide NERC with sufficient time to conduct a robust stakeholder process to assess the potential revisions to any standard and re-submit workable standards.

Without improvements in these fundamental areas, and without developing a better understanding of the source of the flaws in the standards development process, we risk wasting time solving peripheral issues where addressing the core problem would be more effective. This is an important and complicated assessment, and the California ISO stands ready to commit whatever resources and expertise is needed to assisting with a resolution.