

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**North American Electric)
Reliability Corporation)**

Docket No. RR06-1-000

MOTION FOR CLARIFICATION OF THE ISO/RTO COUNCIL

Pursuant to Rule 212 of the Commission’s Rules of Practice and Procedures, 18 C.F.R. §§ 385.212 (2005), the ISO/RTO Council (“IRC”)¹ hereby moves for clarification of the Commission’s July 20, 2006 order in the above captioned proceeding with regard to one issue related to governance.

¹ The IRC was formed by the nine functioning Independent System Operators (“ISOs”) and Regional Transmission Organizations (“RTOs”) in North America in April 2003. It is comprised of the Independent System Operator operating as the Alberta Electric System Operator (“AESO”), California Independent System Operator, Inc. (“CAISO”), Electric Reliability Council of Texas (“ERCOT”), the Independent Electricity System Operator of Ontario (“IESO”), ISO New England, Inc. (“ISO-NE”), Midwest Independent Transmission System Operator, Inc. (“MISO”), New York Independent System Operator, Inc. (“NYISO”), PJM Interconnection, L.L.C. (“PJM”), and Southwest Power Pool (“SPP”). The IRC’s mission is to work collaboratively to develop effective processes, tools and standard methods for improving competitive electricity markets across North America. In fulfilling this mission, it is the IRC’s goal to provide a perspective that balances reliability standards with market practices so that each complements the other, thereby resulting in efficient, robust markets that provide competitive and reliable service to customers.

The AESO and IESO are not subject to this Commission’s jurisdiction. While the AESO and IESO concur with this Motion for Clarification, this concurrence should not be construed as agreement or acknowledgement that their organizations are subject to this Commission’s jurisdiction. ERCOT has elected not to be a signatory to this filing.

I. Summary and Statement of Issues

A. Summary and Background

In its July 20, 2006 Order² (“ERO Order”), the Commission made clear that as part of the North American Electric Reliability Council’s (“NERC”) compliance filing, NERC must create a separate segment in its Registered Ballot Body (“RBB”), and Standards Committee, for ISOs and RTOs, and NERC must address the IRC’s request for a waiver from the NERC Rules of Procedure discounting the votes of RBB, and Standards Committee, segments with fewer than ten (10) members voting.³ The Commission noted that with respect to the second directive, NERC may propose and justify an alternative approach to granting an ISO/RTO-only segment a waiver of the vote discounting rule.⁴ Specifically, the Commission ruled that:

We agree with the California ISO and the ISO/RTO Council that the unique interests of ISOs and RTOs are not adequately represented when combined in a single element with Regional Entities and regional reliability organizations [for purposes of the registered ballot bodies and standards committee]. Therefore, we require NERC to create a segment for ISOs and RTOs and address the ISO/RTO Council’s request for a waiver from the provision weighting the vote of segments with fewer than ten members. Alternatively, NERC may propose and justify an alternative approach.⁵

² *North American Electric Reliability Corporation*, 116 FERC ¶ 61,062 (2006) (*hereinafter* referred to as the “ERO Order”).

³ ERO Order at P 90 (emphasis added). The IRC raised this matter in its comments to NERC’s ERO Application, because an ISO/RTO-only segment would have only nine (9) members. *See* Comments of ISO/RTO Council at 13-14.

⁴ *Id.*

⁵ *Id.*

On July 27, 2006, in a correspondence from the President and CEO of NERC to its members⁶, NERC implied that it interpreted the Commission's order as permitting NERC to develop an "alternative approach" to the Commission's first directive (*i.e.*, creating a separate RBB, and Standards Committee, segment for ISOs/RTOs). As discussed further below, such an interpretation is at odds with the clear requirement provided in the specific direction of the Commission in paragraph 90 of its ERO Order.

Commission confirmation, at this time, that NERC is to establish a separate RBB, and Standards Committee, segment for ISOs and RTOs – just as NERC has done for the Members Representatives Committee ("MRC") – would benefit NERC and stakeholders by ensuring that resources are used most efficiently in reviewing and commenting on NERC's actions in responding to the Commission's compliance directives (of which there are many).

B. Statement of Issue

The IRC respectfully moves for clarification, in the following area.

The Commission should confirm that paragraph 90 of its ERO Order directed, *without qualification*, NERC to establish, at this time, a separate segment for ISOs and RTOs on the RBB, and Standards Committee, just as NERC has done for its Members Representative Committee ("MRC"). In so doing, the Commission would thereby confirm that NERC's compliance activities with regard to paragraph 90 of its Order are to be devoted to addressing the IRC's concerns with NERC discounting the votes of an ISO/RTO-only segment that would have less than ten (10) members and therefore always be subject to the vote discounting rule. The basis for this motion is set forth below.

⁶ See Attachment A, Question #3 under "Governance".

II. Background

A. NERC Application to be Certified as the ERO

On April 4, 2006, the North American Electric Reliability Council and North American Electric Reliability Corporation (collectively “NERC”) filed their application for certification as the ERO (“Application”). NERC’s Application included two proposals that are pertinent to this motion for clarification.

First, NERC’s Bylaws provide for twelve (12) sectors for the NERC Member Representatives Committee (“MRC”). One of these twelve (12) sectors is for “independent system operator/regional transmission organization.”⁷ The MRC: (a) elects the independent trustees; (b) votes on amendments to the Bylaws; and (c) provides advice and recommendations to the ERO Board with respect to the development of annual budgets, business plans and funding mechanisms, and other matters pertinent to the purpose and operations of the Corporation.⁸

Second, NERC’s Rules of Procedure (“ROP”) specify the establishment of sector segments for voting on the Registered Ballot Body (“RBB”) and Standards Committee. NERC proposed that the RBB and Standards Committee would consist of nine (9) segments. Contrary to its approach in establishing the MRC, NERC proposed that Independent System Operators and

⁷ See Application at Exh. B (NERC Bylaws) at art. II, §4a.x (“Independent system operator/regional transmission organization — This sector includes any entity authorized by the Commission to function as an independent transmission system operator, a regional transmission organization, or a similar organization; comparable entities in Canada and Mexico; and the Electric Reliability Council of Texas or its successor. This sector also includes organizations that represent the interests of such entities.”).

⁸ See *id.* at art. VIII, §1.

Regional Transmission Organizations should be grouped with regional reliability organizations with respect to the RBB and Standards Committee segments.⁹

B. IRC Comments on these Two Proposals

With regard to the NERC proposal to establish a separate sector for ISOs and RTOs in the MRC, the IRC supported NERC's proposal, as appropriately reflecting the unique perspective of ISOs and RTOs with regard to Reliability Standards. The IRC observed specifically how NERC's proposal appropriately continues to rely on the Joint Interface Committee (which consists of NERC, NAESB and the IRC) for coordinating work on Reliability Standards and wholesale electric business practices.¹⁰

The IRC continued its comments by noting the arbitrary and capricious nature of treating ISOs and RTOs differently in the RBB and Standards Committee – by grouping ISOs/RTOs with regional reliability organizations – than in the MRC (in which ISOs and RTOs have their own a

⁹ See Application at Exh. C, at ROP § 305 (discussing establishment of RBB segments) at ROP § 306 (discussing establishment of Standards Committee).

¹⁰ See Application at Exhibit C, Appendix 1, p. 9 (acknowledging that the “Joint Interface Committee” (“JIC”), which is staffed by representatives of NERC, NAESB, and the ISO/RTO Council, will work to ensure that the development of wholesale electric business practices and reliability standards is harmonized and that every effort is made to minimize duplication of effort between NERC and the North American Energy Standards Board (NAESB).”) It should be emphasized, however, that the JIC serves to coordinate work among these three entities; it does not provide the IRC with any vote or decisional role on the content of any particular standard.

The JIC was established in a Memorandum of Understanding between North American Energy Standards Board and North American Electric Reliability Council, dated November 30, 2002 and filed in Docket No. RM01-12 on December 16, 2002, and later modified on May 15, 2003 to include the IRC. See Comments of the North American Energy Standards Board on the Second Technical Conference for Docket No. RM05-30-000, Docket No. RM05-30-000 (filed Dec. 22, 2005).

separate segment).¹¹ The IRC explained how ISOs/RTOs performed very different functions from regional reliability organizations, and why grouping ISOs/RTOs with these entities would create an inherent conflict of interest and otherwise arbitrarily dilute ISOs/RTOs vote.¹² In addition, the California ISO (“Cal ISO”) (also commenting individually) noted that, given the amount of electricity delivered by ISOs and RTOs and the total miles of high voltage transmission lines overseen by ISOs and RTOs, failing to treat ISOs and RTOs as a separate segment in the RBB or the Standards Committee violates the requirements for balanced decisionmaking. Cal ISO also observed that the Energy Policy Act of 2005 (FPA 215) and Order No. 672 support treating ISOs and RTOs as separate and unique entities with respect to Reliability Standards.¹³

In addition, the IRC argued that if the Commission provided ISOs and RTOs with their own separate RBB, and Standards Committee, segment, NERC needed to reconsider its vote discounting rule for segments with less than ten (10) members vote, because there are only nine (9) functional ISOs and RTOs, at this time. The IRC identified how such a “numbers-based” rule was unduly discriminatory as applied to RTOs and ISOs which collectively comprise over two-thirds of the North American interconnections. Moreover, the IRC noted that application of the voting discounting rule to this segment represented poor public policy given the unique

¹¹ Comments of ISO/RTO Council at 9-13.

¹² *Id.*

¹³ *See* Comments of the California Independent System Operator Corporation at 4-10

nature of ISOs and RTOs and their “front line” role in implementing mandatory Reliability Standards.¹⁴

C. The Commission’s July 20 Order

In the ERO Order, the Commission made two findings agreeing with the IRC. First, the Commission concurred with the IRC about the need for independent system operators and regional transmission organizations to have distinct representation on the ERO’s RBB and Standards Committee. The Commission stated that:

We agree with the California ISO and the ISO/RTO Council that the unique interests of ISOs and RTOs are not adequately represented when combined in a single element with Regional Entities and regional reliability organizations [for purposes of the registered ballot bodies and standards committee]. Therefore, we require NERC to create a segment for ISOs and RTOs and address the ISO/RTO Council’s request for a waiver from the provision weighting the vote of segments with fewer than ten members. Alternatively, NERC may propose and justify an alternative approach.¹⁵

Second, elsewhere in the ERO Order, the Commission expressed its preference that, absent any greater justification from NERC, the different ERO voting bodies – *i.e.*, the MRC, RBB and Standards Committee – should share a consistent structure. As observed by the Commission in its Order,¹⁶ NERC had already proposed a separate segment for the ISOs and RTOs in the MRC.

D. NERC Response to the ERO Order

¹⁴ See Comments of ISO/RTO Council at 13-14.

¹⁵ ERO Order at P 90 (emphasis added).

¹⁶ ERO Order at P 62.

On July 27, 2006, the President and CEO of NERC issued a “Request for Comments” (see Attachment A), asking interested parties to “assist NERC in responding to the Commission’s questions and concerns”, as expressed in the ERO Order. In pertinent part, NERC posed the following question:

If NERC separates the ISOs/RTOs into a separate segment for voting on standards, should that segment be subject to the segment weight discounting rule (each entity gets 10 percent of a segment vote)? Should the same rule apply for regional entities and/or regional reliability organizations? (emphasis added).¹⁷

Then, on August 8, NERC’s Department of Standards communicated with the Standards Authorization Committee, indicating that its proposal to respond to paragraph 90 of the Order is to separate ISOs and RTOs into a tenth segment. As a result, while the Department’s August 8 communication to the Standards Authorization Committee indicates that NERC is proposing going down a path to establish a separate RBB and Standards Committee segment for ISOs and RTOs as is required by paragraph 90, it appears that NERC has otherwise misinterpreted the ERO Order, through its July 27 correspondence, as permitting NERC to develop a governance structure that might not include a separate segment for ISOs/RTOs on the RBB and Standards Committee.

On August 11, 2006, the IRC responded to NERC’s July 27 correspondence, explaining why establishment of a separate segment for ISOs/RTOs on the RBB and Standards Committee was required by the ERO Order.

¹⁷ NERC requested responses to the governance issues raised in its Request for Comments by August 11, 2006.

III. Motion for Clarification

In its July 27 correspondence, NERC's request for comments implies an interpretation of the ERO Order that is plainly at odds with the Order's plain language. For the reasons discussed below, the Commission should confirm that NERC is to establish a separate segment in the RBB, and Standards Committee, for ISOs and RTOs through issuance of a clarification order. While the Department of Standards' recent proposal appears to interpret the ERO Order correctly, the Commission's issuance of a Clarification Order will benefit NERC and stakeholders by ensuring that their resources are used most efficiently to respond to the Commission's compliance directives.

A. A Plain Reading of the ERO Order Makes Clear that NERC Should Re-File its Bylaws and Rules of Procedure with a Separate Sector for ISOs and RTOs in Each.

The plain language of the Commission's Order directs NERC to establish a separate segment for ISOs and RTOs in the RBB, and Standards Committee, just as NERC had already done so for the MRC in its originally-filed ERO Application. The ERO Order at Paragraph 90 states that the Commission "require[s]" NERC to "create a segment for ISOs and RTOs" (emphasis added). The next part of the sentence adds that NERC is required to "address the ISO/RTO Council's request for a waiver from the provision weighting the vote of segments with fewer than ten members" (emphasis added). The Commission concluded its directive that NERC could consider "alternative approaches".

If the Commission intended NERC to consider alternative approaches to establishing a separate segment for ISOs and RTOs in the RBB, and Standards Committee, the Commission need only have said so. Instead, the Commission clearly stated that NERC is "to create" a

separate segment – a clear directive that is responsive to the IRC and Cal ISO’s comments about the shortcomings associated with grouping ISOs and RTOs with other entities in the RBB, and Standards Committee, segments.¹⁸ The Commission’s suggestion that NERC may consider “alternative approaches” makes sense when applied only to its directive to NERC to “address” the question of how to weight the votes from RBB, and Standards Committee, segments with less than ten (10) members voting. Such an allowance confirms that the Commission intended NERC to have some latitude in “addressing” the concerns raised by the IRC regarding the vote weighting matter. Because the problems associated with discounting the vote of RBB, and Standards Committee, segments with less than ten (10) members became “ripe” when the Commission directed the establishment of an ISO/RTO only segment¹⁹, the Commission’s decision to allow NERC to address those issues reflects the Commission’s view that NERC should consider fully the implications of the Commission’s requirement that there be an ISO/RTO-only segment – something NERC had not had the opportunity to do before being required to establish such a segment – *i.e.*, one with less than (10) members.

B. Clarification is Warranted At This Time.

Commission confirmation that NERC should establish a separate segment for ISOs and RTOs on the MRC, RBB, and Standards Committee is warranted at this time. First, despite the fact that the Commission’s ERO Order is clear with regard to NERC creating a separate segment for ISOs and RTOs, NERC’s July 27 correspondence suggests that NERC *might* go down a different path in making its compliance filing. Second, there are a large number of issues

¹⁸ See Comments of ISO/RTO Council at 13-14.

¹⁹ See IRC Comments at 13-14.

before NERC in responding to the Commission's compliance directives. Not least of these issues is the need for NERC to address the IRC's concerns that with the creation of a separate segment for ISOs/RTOs, NERC must avoid the inherent arbitrariness and discriminatory nature of discounting the votes of ISOs and RTOs simply because they belong to a segment with less than ten (10) members. Commission clarification of its ERO Order would greatly benefit NERC and stakeholders by ensuring that the many issues NERC must resolve on compliance are dealt with in the most efficient manner possible.²⁰

IV. Conclusion

WHEREFORE, for the foregoing reasons, the IRC respectfully requests that the Commission grant the instant Motion for Clarification.

Respectfully submitted,

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²⁰ The IRC reserves the right to comment upon the application of the proposed discounting rule to the newly created ISO/RTO segment. As of the time of the preparation of this Motion, the Issue is not yet ripe for consideration as NERC has not addressed this issue. The IRC will address the issue in response to a NERC filing on this matter.

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