

April 14, 2005

Mr. Edward A. Schwerdt
Executive Director
Northeast Power Coordinating Council
1515 Broadway, 43rd Floor
New York, NY 10036-8901

RE: ROLE OF THE REGIONAL COUNCILS – STAKEHOLDERS OUTREACH II

Dear Mr. Schwerdt:

This letter is submitted on behalf of the ISO/RTO Council (IRC), in response to your request of March 24 for stakeholder input with regard to the “What” requirements for Regional Criteria Development, and Compliance and Enforcement.

CONTEXT

Following the July 2, 2004 request by the Regional Managers Committee (RMC) for stakeholder input regarding the future role of the Regional Reliability Councils (RRCs), the IRC submitted its recommendations on August 18. The subsequent October 5 report of the Regional Managers Committee was approved and endorsed by the Members of NERC, which led to your present request regarding follow-up activities. From the IRC’s perspective, the report’s documentation and recommendations are generally compatible with the recommendations made by the IRC, and constitute an effective basis for the defining the future role of the RRCs.

Our general comment is to support the inclusion of the requirements listed in your request of March 24. We have added a number of specific comments.

The assumed context of our comments includes the RMC Report’s fundamental principles and associated clarifying elements for reliability assurance organizations, respecting open and inclusive membership, fair and balanced governance, independence and compliance.¹ We note that these principles are derived from draft U.S. electricity legislation, and are intended to assure a logical transition for the RRCs to the role given in this legislation.²

1. Common Requirements For Open Process Regional Criteria Development

Requests for new criteria development or revisions to criteria

The RMC report identifies three classes of entities eligible to become members or participate in an RRC’s activities: (1) all entities that use, own or operate the bulk power system within the RRC boundary; (2) regulatory agencies with jurisdiction within the RRC boundary; and (3) entities outside the RRC whose reliability might be impacted.³

¹ Examination of the Future Role of the Regional Reliability Councils and Assessment of Eastern Interconnection Regional Reliability Council Boundaries (“RMC Report”); Regional Managers Committee; October 5, 2004; p. 5-6. Documentation, including the RMC Report and the IRC submission may be found at <http://www.nerc.com/~filez/roleofregions.html>.

² Ibid. p. 1-2.

³ Ibid. p. 5.

The IRC recommends that requestors for new or revised criteria be limited to these classes of entities, who collectively represent a broad range of interested and informed parties, and the public interest generally.

The decision on approving the development of a new or revised standard need not be uniform among the RRCs (e.g. whether or not to include a SAR phase).

Drafting groups assigned

The process for assigning drafting teams need not be uniform among the RRCs.⁴

Comment processes

The commenting process likewise does need not be uniform among the RRCs.

The IRC, in its August 18 submission, stressed the importance of ensuring there are no adverse impacts of any RRC's reliability criteria on entities outside the RRC's footprint.⁵ Moreover, the IRC stated that it is essential that the RRC attest to NERC that new RRC criteria do not have such adverse impact. Accordingly, a RRC's comment process must include the active solicitation of potential impacts on entities outside the RRC's footprint.

Reviewed with NERC standards for consistency

The IRC supports the need for such a review. As stated in the IRC's August 18 submission, at p. 2, "We also believe it is appropriate to continue to require a standalone Regional standard to be no less stringent than any corresponding NERC standard, including any applicable Regional difference."

Approval process

The IRC in its August 18 submission stated at p. 2:

"We support, with qualification, the current provision for a Regional standard to receive final approval through the Region's own approval process; that is, not to require subsequent approval by NERC. The qualification we recommend adding is as follows:

- The region developing the regional standard must have a standard development process that explicitly accommodates input from all regions whose reliability would potentially be impacted by the proposed standard. Additionally, any potentially impacted Region would have recourse to the NERC dispute resolution process.⁶
- The region developing the regional standard must submit a statement to NERC attesting that the standard fully meets the NERC criteria for Regional standards."⁷

⁴ The IRC's submission of August 18, 2004 stated: "RRCs' processes for developing and enforcing standards need not be uniform across all RRCs. Where a RRC's current process or approach is effective, there should not be a requirement to change it solely to provide uniformity." The submissions of the IRC and other parties may be found at <http://www.nerc.com/~filez/roleofregions.html>.

⁵ IRC August 18 submission, p. 2.

⁶ **At this time, we would modify this statement to the effect that a potentially impacted Region should have recourse to an inter-regional dispute resolution process, i.e. not necessarily NERC's process.**

⁷ Footnote 1 of the IRC's August 18 submission noted: "A regional difference is an integral part of a NERC standard, and may be more or less stringent than the main part of the standard. See the NERC Reliability Standards Process Manual, version 2.1, March 11, 2003, pages 20-22, located at ftp://ftp.nerc.com/pub/sys/all_updl/oc/stp/BOT-Approved-Revisions-to-RPSM-Version-2.1.pdf."

Appeals process

As indicated previously, a region that is potentially impacted by a proposed or approved regional standard should have recourse to an inter-regional dispute resolution process. This is an essential safeguard if regional standards are to be approved in the Region and not by NERC.

2. Common Requirements For Regional Compliance And Enforcement

Identification of NERC standards/regional criteria monitored for compliance

We recommend giving both the RRC, under delegated authority, and NERC itself, the authority to identify specific NERC standards and Regional criteria to be monitored for compliance. NERC, as delegator of compliance authority, should not be prevented from directing what should be complied with, consistent with NERC's overall responsibility for reliability standards.

Establish regional compliance monitoring and NERC oversight groups

The IRC's August 18 submission, at p. 2, states: "The IRC supports the RRCs having delegated authority from NERC for enforcement of compliance with NERC standards. Consistent with NERC being the single point of responsibility for reliability standards, such delegation should come directly from NERC, i.e. not be undertaken unilaterally by a RRC, or imposed by a regulatory authority."

NERC should retain oversight of compliance monitoring regarding NERC standards. NERC should also have oversight regarding the performance of the RRCs under delegated authority from NERC, for example regarding the conduct of compliance processes. There is not a need for NERC to have oversight of compliance monitoring with respect to (standalone) regional reliability criteria/standards. However, certain RTO organizations that also perform NERC compliance functions as RROs may benefit from the monitoring of additional criteria by NERC to ensure independence.

Compliance monitoring

An essential requirement for effective compliance is that all entities to which reliability standards are intended to apply, are in fact required to comply with them. The RMC Report, in clarifying the principle of open and inclusive membership, stated: "All entities that use, own or operate the bulk power system within the RRC boundary are eligible for membership".⁸

The objective must be to ensure that all such entities are in fact required to comply with all applicable NERC standards and Regional criteria. The IRC's August 18 submission stated:

"The absence of reliability legislation in the U.S. clearly complicates the objective of having mandatory and enforceable standards throughout the U.S. Provincial regulatory frameworks in Canada are either currently meeting this objective or judged capable of becoming so with relatively minor legislative or regulatory changes.

It is recognized that fully meeting the objective in the U.S. may in fact not be achievable in the absence of new legislation, especially for entities and jurisdictions beyond FERC's direct authority. The IRC recommends that all ISO/RTOs seek the inclusion of language in their Tariffs that mandates compliance to NERC reliability standards and Regional reliability standards that the Regions develop and enforce. For Regions without ISO/RTOs, Reliability Authorities, regulatory authorities, NERC and the RRCs should proceed actively and in a coordinated manner to meet the objective to the extent possible, rather than waiting for a failsafe solution.

⁸ At p. 5.

A multi-pronged approach would seem appropriate. It might include:

- A requirement by FERC that (jurisdictional) transmission providers and network customers must comply with NERC and RRC standards as part of meeting the condition in their Order No. 888 *pro forma* Open Access Transmission Tariff (OATT) to follow “Good Utility Practice”;⁹
- Removing any authority gaps in reliability frameworks in Canada and Mexico;
- Developing the MOU among NERC, the RRCs, and the regulatory authorities in the U.S., Canada and Mexico, regarding their respective roles in establishing non-compliance with standards, administering sanctions and hearing appeals;
- Increasing effort to get all relevant entities to enter voluntarily into contractual agreements respecting reliability (such as those used in WECC) or into the membership agreements used in other RRCs.”

The IRC reaffirms the importance, in the absence of U.S. reliability legislation, of taking such steps to maximize the number of entities required to comply with NERC/ Regional standards.

Confidentiality

The IRC recommends that a common set of considerations should apply to NERC and the RRCs in this regard.

Confirmation of alleged violation

The IRC recommends that a common set of considerations should apply to NERC and the RRCs in this regard.

Sanctioning mechanism

The IRC recommends that for the period prior to the enactment of U.S. reliability legislation there be no requirement for uniformity of sanctioning mechanisms across all RRCs. Where a RRC’s current sanctioning mechanism is effective, there should not be a requirement to change it solely to provide uniformity.

Appeals process

There clearly needs to be a dispute resolution and appeals process within the Region respecting a finding by a RRC of the violation of a NERC standard or Regional criterion. Such a process should be backed up by provision for appeal to an appropriate regulatory authority (e.g. FERC or provincial regulator or court). In addition, we believe that no public posting of violations of standards should be made until the appeals process is completed: in the event of inappropriate disclosure, judicial remedies should be available to the aggrieved party.

In conclusion, the IRC appreciates the opportunity to provide input to the RMC and awaits the results of the current exercise.

Sincerely,

[original signed by Jim Torgerson]

⁹ FERC specified this approach in its Policy Statement on Matters Related to Bulk Power System Reliability, issued April 19, 2004 [see <http://www.ferc.gov/whats-new/comm-meet/041404/E-6.pdf>].