

March 28, 2012

Via E-mail

Mr. Albert DiCaprio
Chairman, ISO RTO Council (IRC), SRC
955 Jefferson Avenue
Valley Forge Corporate Center
Norristown, PA 19403-2497

Re: IRC Level 1 Appeal of Interpretation of BAL-002

Dear Al,

On February 17, 2012 you filed, on behalf of the IRC and North West Power Pool (NWPP), a Level 1 appeal related to processing of an interpretation of BAL-002 under the NERC standards development process and the Rules of Procedure Section 300. In its appeal, IRC is contending that there has been inaction relative to the processing of the interpretation.

Level 1 Appeals are managed within the current NERC Standards Process Manual (SPM), dated September 3, 2010, as follows:

Any entity that has directly and materially affected interests and that has been or will be adversely affected by any procedural action or inaction related to the development, approval, revision, reaffirmation, or withdrawal of a reliability standard, definition, variance, associated implementation plan, or interpretation shall have the right to appeal. This appeals process applies only to the NERC reliability standards processes as defined in this manual, not to the technical content of the standards action.

The burden of proof to show adverse effect shall be on the appellant. Appeals shall be made within 30 days of the date of the action purported to cause the adverse effect, except appeals for inaction, which may be made at any time.

The final decisions of any appeal shall be documented in writing and made public.

The appeals process provides two levels, with the goal of expeditiously resolving the issue to the satisfaction of the participants.

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Level 1 Appeal

Level 1 is the required first step in the appeals process. The appellant shall submit (to the Director of Standards) a complaint in writing that describes the procedural action or inaction associated with the standards process. The appellant shall describe in the complaint the actual or potential adverse impact to the appellant. Assisted by staff and industry resources, as needed, the Director of Standards shall prepare a written response addressed to the appellant as soon as practical but not more than 45 days after receipt of the complaint. If the appellant accepts the response as a satisfactory resolution of the issue, both the complaint and response shall be made a part of the public record associated with the standard.

Data Request

As vice president and director of standards and training, part of my review included issuing a data request to the NERC standards staff involved in the handling of various aspects of the matter along the lines of the questions posed in the appeal letter. The response is attached.

Findings***Timeliness of the Appeal***

The Standards Process Manual calls for the filing of the appeal within 30 days of the date of the action purported to cause the direct material adverse impact. The Standard Processes Manual provides that appeals for cases of alleged inaction may be made at any time. Accordingly, this appeal is timely.

Adverse Impact

The primary goal of an Interpretation Drafting Team (IDT) is to pursue clarity on the meaning of a reliability standard. If the interest of reliability cannot be served by an interpretation of the existing language of the standard, then the IDT may reasonably conclude that a new or revised standard is required to address the concern expressed in the Request for Interpretation (RFI). It is equally possible under NERC's processes for no answer to be discernible to a given question(s) posed in an RFI. Based on the review of the record contained in the responses to the RFI, it is clear that action did occur relative to the RFI and that the IDT attempted to answer the questions posed but could not.

IRC notes in its appeal letter that a combination of the inaction on the interpretation plus the December 1, 2011 FERC Order Approving Stipulation and Consent Agreement regarding a settlement in the PacifiCorp case involving the BAL-002-0 standard that:

The Balancing Authorities (BAs) are held responsible for responding to disturbances and are held responsible for complying with BAL-002. The lack of response to an approved RFI and the associated, once-balloted Interpretation can materially impact: (i) how BAs control for Disturbance Control Standard (DCS) events, and (ii) how much reserve existing markets potentially will be required to carry.

NERC concludes that it is not an adverse impact for BAs to be held responsible for how those BAs manage responses to events on their respective systems because of alleged inaction on any interpretation. It is always possible that an interpretation cannot be developed under the rules governing interpretations. As explained below, that was the case here.

Allegation of Inaction

On the basis of alleged inaction, the appeal fails because a review of the NERC Staff responses to the data request reveals an IDT was formed, and the product of its deliberations was balloted with the industry. The results of the ballot were not sufficient to provide an indication that an interpretation was feasible.

Additionally, it is clear from the record provided by NERC staff that there was substantial action related to this request. There were delays in the periods when the policy and practices for handling interpretations were being modified by the NERC Board of Trustees and the Standards Committee; however, the final analysis reveals that action was taken, ballots were conducted and, in the end, the RFI was deemed no longer eligible for interpretation under the modified rules for handling interpretations.

Accordingly, NERC concludes that there has been no “inaction” as alleged.

Recommended Next Step

Given the difficulty in interpreting the existing language of the standard, NERC recommends to the IRC and NWPP that they consider developing and submitting a Standard Authorization Request to the Standards Committee to address their concern.

Sincerely,



Herb Schrayshuen
Vice President and Director, Standards and Training

cc: Mr. Jerry Rust, President, NWPP
Mr. Ken Peterson, Chair, Board of Trustees Standards Oversight and Technology Committee
Mr. Allen Mosher, Chair, Standards Committee
Mr. Gerry Cauley, President and CEO, NERC
Mr. David Cook, General Counsel, NERC
Ms. Holly Hawkins, Associate General Counsel, NERC
Mr. Ken Lotterhos, Associate General Counsel and Director of Enforcement, NERC
Mr. Michael Moon, Director Compliance Operations, NERC
Mr. Andrew Rodriguez, Director Standards Development, NERC
Ms. Maureen Long, Director Standards Process, NERC
Ms. Laura Hussey, Manager Standards Process, NERC
Mr. Andrew Dressel, Attorney, NERC

Attachments:

1. IRC Appeal letter dated 2-17-2012
2. Response of NERC Staff to first information request dated 3-17-2012