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NERC supports the Commission’s proposal, in the NOPR, to approve 83 of 107 proposed reliability standards, including six of the eight regional differences, and the NERC *Glossary of Terms Used in Reliability Standards*, and to also recognize as “good utility practice” the remaining 24 proposed standards that are pending approval subject to NERC’s submittal of additional information.⁴ NERC also supports the Commission’s proposal to direct NERC to complete the necessary improvements to the proposed reliability standards through the established NERC standards development process.⁵

NERC requests that the Commission, in accordance with its authority under in Section 215(d)(1) of the Federal Power Act (“FPA”)⁶ and Section 39.5 of its regulations⁷, approve the reliability standards as proposed in the NOPR. The comments that NERC is submitting in this filing support the Commission’s proposed actions and respond to questions posed by the Commission in the NOPR.

modify or replace proposed standards filed by NERC in its April 4, 2006 *Petition*. The Commission included the 20 revised standards in Docket No. RM06-16-000 and established a new docket for the three new standards (Docket No. RM07-3-000). *Petition of the North American Electric Reliability Council and North American Electric Reliability Corporation for Approval of Proposed Reliability Standards*.

⁴NOPR, PP 1 and 7-9.

⁵NOPR, P 10.

⁶16 U.S.C. 824o.

⁷18 C.F.R. § 39.5.

II. NOTICES AND COMMUNICATIONS

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III. BACKGROUND

A. Reliability Policy Framework

The Energy Policy Act of 2005⁸ entrusted the Commission with the duties of approving and enforcing rules to ensure the reliability of the nation’s bulk power system. The new law added Section 215 to the FPA requiring the Commission to issue rules for the certification of an ERO that would be charged with developing and enforcing mandatory reliability standards, subject to Commission approval. Section 215 also gave the Commission the regulatory responsibility to approve standards that protect the reliability of the bulk power system. In executing its responsibilities to review, approve and enforce mandatory reliability standards, the

⁸Energy Policy Act of 2005, Pub. L. No. 109-58, Title XII, Subtitle A, 119 Stat. 594, 941 (2005 (to be codified at 16 U.S.C. § 824o)).

Commission is authorized to approve those proposed standards that meet the criteria detailed by Congress:

The Commission may approve, by rule or order, a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.⁹

The Commission launched its implementation of Section 215 by issuing Order No. 672 on February 3, 2006, establishing criteria for the certification of a single ERO and the procedures under which the ERO may propose new or modified reliability standards for Commission review.¹⁰ Section 39.5(a) of the Commission's regulations requires the ERO to file with the Commission for approval each reliability standard the ERO proposes to become mandatory and enforceable in the United States, and each proposed modification to a reliability standard. When evaluating proposed reliability standards, the Commission is expected to give "due weight" to the technical expertise of the ERO, but not to defer to the ERO with regard to the impact of reliability standards on competition. The Commission provided guidance in Order No. 672 on the factors the Commission will consider when determining whether proposed reliability standards meet the statutory criteria.¹¹

Acting on an application submitted by NERC in April 4, 2006, the Commission, on July 20, issued its ERO Certification Order certifying NERC as the ERO responsible for developing and enforcing Commission-approved mandatory reliability standards. In response to directives in the ERO Certification Order, NERC modified certain of its bylaws, rules of procedure and

⁹Section 215(d)(2) of the FPA.

¹⁰*Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, 71 FR 8662 (Feb. 17, 2006), FERC Stats. & Regs. Regulations Preambles ¶ 31, 204 (2006), *order on reh'g*, Order No. 672-A, 114 FERC ¶ 61,328 (2006).

¹¹*See* Order No. 672 at PP 320-36.

other documents as originally submitted with its application for certification, and made three separate compliance filings. The first compliance filing, addressing governance issues, was filed on September 18, 2006¹² and was approved by the Commission on October 30, 2006¹³, thereby enabling NERC Corporation to proceed with the timely enrollment of members and the formation of the Member Representatives Committee. On October 18, NERC made a second compliance filing addressing non-governance issues.¹⁴ Commission action on the second compliance filing is pending. On November 29, 2006, NERC made a third compliance filing addressing the *pro forma* delegation agreement and related compliance program issues.¹⁵

In a separate but related proceeding, the Commission has been preparing to review and approve reliability standards proposed by NERC to be made mandatory and enforceable in the United States. NERC filed a petition for approval of 102 existing reliability standards on April 4, 2006.¹⁶ Anticipating the filing of these standards, in September 2005 the Commission had directed its Staff to begin evaluating NERC's existing standards. On May 11, 2006 the Commission issued the *Staff Preliminary Assessment of Proposed Reliability Standards* ("Staff Assessment") and solicited comments from bulk power system owners, operators and users and

¹²*Compliance Filing of the North American Electric Reliability Council and the North American Electric Reliability Corporation Addressing Governance Issues and Request for Expedited Treatment* (Docket No. RR06-1-002).

¹³North American Electric Reliability Corporation, *Order on Rehearing and Clarification; Order on Compliance Filing*, 117 FERC ¶ 61,126 (2006).

¹⁴*Compliance Filing of the North American Electric Reliability Council and North American Electric Reliability Corporation Addressing Non-Governance Issues* (Docket No. RR06-1-003).

¹⁵*Additional Compliance Filing Of The North American Electric Reliability Council And The North American Electric Reliability Corporation Addressing Compliance Monitoring And Enforcement Program And Pro Forma Delegation Agreement* (Docket No. RR06-1-004).

¹⁶North American Electric Reliability Council and North American Electric Reliability Corporation, *Petition for Approval of Reliability Standards* (Docket RM06-16-000).

other stakeholders.¹⁷ NERC filed comments in support of the Staff Assessment and indicated in those comments how NERC was addressing the issues identified in the Staff Assessment through its standards development process.¹⁸

On August 28, 2006, NERC filed a second petition for the approval of proposed reliability standards, submitting 16 new standards for approval and revisions to 11 reliability standards previously submitted on April 4, 2006.¹⁹ Of the 16 new standards submitted, eight were Critical Infrastructure Protection cyber security standards. The Commission is proposing to address the Critical Infrastructure Protection cyber security standards through a separate proceeding, and has issued a Staff assessment to solicit industry comment on those standards by February 12, 2007.²⁰

On November 15, 2006 NERC filed a third petition for the approval of three additional new standards addressing system operating limits, and revisions to add measures and compliance specifications to 20 previously filed standards.²¹ The three new standards on system limits have been deferred for future consideration by the Commission.²²

In summary, the Commission has under consideration within the NOPR 107 proposed reliability standards that NERC has submitted for approval, including revisions to certain

¹⁷*Notice of Comment Period*, Docket No. RM06-16-000 (May 11, 2006).

¹⁸*Comments of the North American Electric Reliability Council and North American Electric Reliability Corporation on Staff Preliminary Assessment* (Docket No. RM06-16-000).

¹⁹*Petition of the North American Electric Reliability Council and North American Electric Reliability Corporation for Approval of Proposed Reliability Standards* (Docket RM06-16-000).

²⁰*Notice of Comment Period*, Docket No. RM06-22-000 (December 11, 2006).

²¹*Petition of the North American Electric Reliability Council and North American Electric Reliability Corporation for Approval of Proposed Reliability Standards* (Docket RM06-16-000).

²²*Facilities Design, Connections and Maintenance Reliability Standards*, Docket No. RM07-3-010 (November 27, 2006).

previously filed standards. Issuance of the NOPR places the Commission on the threshold of another major milestone leading toward the enforcement of mandatory reliability standards in the United States. In the NOPR, the Commission has fairly determined the benefits of approving the standards, as set forth in NERC's petitions for approval. The Commission has given due consideration to the extensive record of industry debate and consensus-building in developing those standards, to the Staff Assessment, and to the responses by NERC and other commenters to the Staff Assessment. The NOPR proposes a reasonable exercise of the Commission's authority to approve the proposed standards and lays out an approach that will enable NERC to fulfill its duties as the ERO and to help ensure the reliability of the nation's bulk power system.²³

B. Status of ERO Implementation

NERC assures the Commission that it is ready to begin enforcing those mandatory reliability standards that may be approved by the Commission prior to summer 2007 as a result of this proceeding. NERC is currently operating as the ERO and has the necessary rules and procedures in place to develop and enforce Commission-approved mandatory reliability standards, and to carry out the other responsibilities of the ERO, as detailed in NERC's application for certification, as approved by the Commission in the ERO Certification Order, and as implemented by NERC in its compliance filings to the ERO Certification Order.

NERC has commenced operations under its Commission-approved business plan. In August 2006, NERC filed with the Commission its 2007 ERO Business Plan and Budget, which included business plans and budgets for the eight regional reliability councils that are candidates

²³NOPR, PP 5-9.

to become the regional entities.²⁴ On October 24 2006, the Commission conditionally accepted the ERO and regional entity budgets and approved the proposed assessments to owners, operators and users of the bulk power system to fund the statutory activities of NERC and the regional entities in 2007.²⁵ The Commission also accepted NERC's 2007 business plan, with the Commission deferring consideration of the business plans of the proposed regional entities, pending review of the proposed delegation agreements between NERC and the regional entities. Based on the Commission's order, NERC (or in one region, the regional entity as NERC's agent) has issued invoices to owners, operators, and users of the bulk power system and has begun to collect revenues to support its operation in 2007. Additionally, as described in its 2007 ERO Business Plan and Budget, NERC has increased its staffing level and organized its resources in order to fulfill its responsibilities as a successful ERO.

On November 14, NERC issued a solicitation for enrollment in membership of NERC. As of this filing, there are more than 300 registered members of NERC in the various stakeholder segments. The election of the first Member Representatives Committee of NERC is scheduled for January 12-23, 2007, and its first meeting will take place on February 12, 2007.

The NERC standards program is now fully operational under the ERO rules. Several years before Section 215 of the FPA was enacted, NERC had developed its procedures and

²⁴*Request Of The North American Electric Reliability Corporation For Acceptance Of Its 2007 Business Plan And Budget And The 2007 Business Plans And Budgets Of The Regional Entities And For Approval Of Proposed Assessments To Fund Budgets* (Docket No. RR06-3-000).

²⁵*Order Conditionally Accepting 2007 Business Plan and Budget of the North American Electric Reliability Corporation, Approving Assessments to Fund Budgets and Ordering Compliance Filings*, 117 FERC ¶61,091 (October 24, 2006).

format for reliability standards,²⁶ and in 2004 the NERC Board of Trustees adopted 90 reliability standards that became effective on a voluntary basis in April 2005. In its July 2006 ERO Certification Order, the Commission found that NERC's proposed reliability standards development procedure provides for reasonable notice and opportunity for public comment, due process, openness, and a balance of interests in developing reliability standards.²⁷ Participation in the NERC standards development process is open to any person or entity with a legitimate interest in the reliability of the bulk power system. NERC's standards development process considers the comments of all stakeholders and requires a vote of stakeholders to approve a reliability standard before the standard is submitted to the Commission. The 19 new and 31 revised reliability standards that NERC has filed since issuance of the ERO Certification Order fully demonstrate the capacity and competence of NERC to develop standards as the ERO and to meet the high expectations outlined by the Commission in the NOPR.²⁸

NERC and the regional entities have also completed major steps in the development of a compliance monitoring and enforcement program in order to be prepared to enforce mandatory standards by June 1, 2007. NERC established a precursor compliance monitoring and enforcement program in 1999, based on the voluntary operating guides and planning standards that were in place at the time. NERC has now developed and filed with the Commission (on November 29, 2006) a uniform compliance monitoring and enforcement program to define the

²⁶NERC's *Reliability Standards Development Procedure* was approved in June 2002 and NERC was accredited as an American National Standards Institute ("ANSI") standards developer in March 2003.

²⁷ERO Certification Order at PP 268 and 270.

²⁸See NOPR, PP 83-88.

processes NERC and regional entities will use in enforcing mandatory standards.²⁹ Additionally, NERC and the regions are currently registering responsible entities that will be held accountable for compliance with reliability standards. NERC expects to complete the registration process by March 2007.

NERC has worked extensively with the regional entity candidates for nearly a year to achieve a high degree of uniformity and consistency among the regional entities with regard to the delegation of their statutory functions. On November 29, 2006, NERC also filed the revised *pro forma* delegation agreement with the Commission.³⁰ On the same date, NERC filed a request to approve seven delegation agreements.³¹ On December 21, 2006, NERC made a supplemental filing requesting approval of a proposed delegation agreement with the Florida Reliability Coordinating Council.³² NERC anticipates that the regional delegation agreements will be approved and executed prior to June 2007, including any modifications directed by the Commission, as the final step in establishing a robust program to enforce mandatory reliability standards.

²⁹*Additional Compliance Filing of the North American Electric Reliability Council and the North American Electric Reliability Corporation Addressing Compliance Monitoring and Enforcement Program and Pro Forma Delegation Agreement*, Docket RR06-1-004 (filed November 29, 2006).

³⁰*Id.*

³¹*Additional Compliance Filing and Request of the North American Electric Reliability Corporation to Approve Regional Delegation Agreements*, Dockets RR07-1-000 through RR07-7-000 (filed Nov. 29, 2006). NERC filed proposed agreements with Texas Regional Entity, a Division of the Electric Reliability Council of Texas; Midwest Reliability Organization; Northeast Power Coordinating Council; Cross Border Regional Entity, Inc.; ReliabilityFirst Corporation; SERC Reliability Corporation; Southwest Power Pool, Inc.; and Western Electricity Coordinating Council.

³²*Request by the North American Electric Reliability Corporation to Approve Proposed Delegation Agreement with Florida Reliability Coordinating Council*, Docket RR07-8-000 (filed Dec. 21, 2006).

In summary, NERC has demonstrated it has the procedures, resources, and capabilities to successfully perform all the ERO functions, including the development of technically excellent reliability standards and the ability to monitor and enforce compliance with those standards. NERC understands the high expectations of the Commission and is able to meet those expectations.

IV. DISCUSSION OF MAJOR ISSUES OUTLINED IN THE NOPR

In this Section, NERC is providing detailed comments on the following issues from the NOPR:

- The Commission's proposal to approve 83 reliability standards to become effective by June 2007. (NOPR, P 1; *see* Section IV.A below.)
- Whether there should be a validation period for imposition of financial penalties. (NOPR, PP 90-93; *see* Section IV.B below.)
- Referring standards improvements identified by the Commission to the NERC standards development process. (NOPR, PP 7-9; *see* Section IV.C below.)
- Proper framing of directives to improve reliability standards. (*see* Section IV.D below.)
- Decision framework for approval of proposed reliability standards. (NOPR, PP 76-83; *see* Section IV.E below.)
- Jurisdiction for enforcement of reliability standards. (NOPR, PP 42-71; *see* Section IV.F below.)
- Approach to registration of joint action agencies and similar entities. (NOPR, PP 50-53; *see* Section IV.G below.)
- Standards to be held pending further information. (NOPR, PP 116-123; *see* Section IV.H below.)
- Priorities for standards development. (NOPR, PP 83-89; *see* Section IV.I below.)
- References to regional reliability organization and regional entity within standards. (NOPR, PP 54-59; *see* Section IV.J below.)

- Reliability functional model. (NOPR, PP 44-48; *see* Section IV.K below.)
- Identifying applicable bulk power system owners, operators and users in standards. (NOPR, PP 35-36; *see* Section IV.L below)
- Publication of standards. (NOPR, PP 39-41; *see* Section IV.M below.)

In Attachment A to this filing, NERC provides responses to specific questions posed in the NOPR.

A. Proposal to Approve 83 Reliability Standards

NERC concurs with the Commission’s conclusion that 83 of the standards proposed by NERC meet the criteria of being “just, reasonable, not unduly discriminatory or preferential, and in the public interest”, as intended by Congress and specified in Section 215 of the FPA and Part 39 of the Commission’s regulations, and should therefore be approved and made effective as mandatory reliability standards.

Without placing into question the Commission’s authority and duty to independently review each proposed reliability standard it approves, NERC believes that the first three of these criteria have been addressed in large part by the adherence to NERC’s standards development procedure, which has been certified by the ANSI as satisfying its criteria of being open, inclusive, balanced, and fair. Owners, operators, and users of the bulk power system that must comply with the standards, as well as the end-users who benefit from a reliable supply of electricity and the public in general, are assured that NERC standards are just, reasonable, and not unduly discriminatory or preferential because the standards are developed through a procedure that has the following attributes:

1. Notice — Public notice is given for all standards development actions.
2. Openness and transparency — Development of the standard is fully transparent and open to participation by all interested parties.

3. Inclusiveness — Reasonable consideration is given to every comment concerning a proposed standard.
4. Balance and fairness — Stakeholders approve the standard using a voting procedure that gives equal weight to each of ten voting segments representing the diverse interests of bulk power system owners, operators, and users, as well as end-users of electricity and regulators.³³

These provisions of NERC’s standards development procedure ensure that substantial opportunity exists for all potentially affected parties to comment if they believe the proposed standard may not be just and reasonable, or may be unduly discriminatory or preferential. Further, by filing the written record of development for each standard, including the resolution of each comment, with the Commission, NERC has given the Commission strong evidence that the 83 standards the Commission proposes to approve are, in fact, just, reasonable, and not unduly discriminatory or preferential.

The remaining portion of the statutory test is whether the standard is “in the public interest.” NERC believes this criterion provides the Commission with broad discretion to review and approve a standard. Implicit in the “public interest” test is that a standard is technically sound and ensures an adequate level of reliability. Collectively, the reliability standards must provide a comprehensive and complete set of technically sound requirements that establishes an acceptable threshold of performance necessary to ensure reliability of the bulk power system. Achieving the objective of ensuring an adequate level of reliability necessitates adoption of a complete set of standards addressing all aspects of bulk power system design, planning, and operation that have a material effect on reliability, and each of which is technically effective in achieving an adequate level of reliability. NERC believes the Commission’s proposal to approve 83 of NERC’s existing standards as the base set of standards to be enforced as NERC begins

³³See Section 300 and Appendix 3A to the NERC Rules of Procedure, which set forth the details of NERC’s reliability standards development procedure.

operating as the ERO meets this objective and will achieve an adequate level of reliability as required by law. To adopt fewer of the existing standards would both create potential reliability risks and communicate that some aspects of reliability are not viewed as important enough to be the subject of mandatory and enforceable standards under the FPA.

Moreover, NERC believes the Commission's proposal to place the 83 standards into effect by June 2007 ensures the near-term reliability of the bulk power system, while providing the best possible approach for establishing the ERO as a strong and effective force to maintain reliability. NERC's paramount role as the ERO is to maintain the reliability and security of the bulk power system by acting, once a violation of a standard has been identified, to mitigate and correct the noncompliant behavior prospectively. This function can only be accomplished if the standards are in effect as Commission-approved mandatory standards subject to enforcement by NERC and the regional entities. Having mandatory standards in place with clear accountability for compliance with those standards by June 2007 ensures that the ERO will be able to affirmatively mitigate any noncompliant performance of bulk power system owners, operators, and users going into the summer of 2007. The approach proposed by the Commission is the best approach to assure that the reliability of the bulk power system is being addressed in the near-term and as well as for the future.

Even if it is believed that there is some degree of ambiguity in some of the standards, making the standards mandatory enables NERC and the regional entities to respond to questionable performance by clarifying to the responsible entity, and others, on a going forward basis what behavior would constitute compliance with the standard. Thereafter, all participants would know how NERC and the regional entities were interpreting the standard. This information would become part of the public record and thus help to eliminate any ambiguity as

to what constitutes compliant and noncompliant behavior under the standard. In contrast, if the standards remain voluntary or temporarily unapproved, NERC and the regional entities will lack a legal basis to compel corrective behavior.

The Commission correctly concludes in the NOPR that the industry cannot at this point, on the heels of the August 2003 Northeast blackout and the enactment of reliability legislation in 2005, defer implementation of mandatory reliability standards while waiting for the standards to be perfected.³⁴ It should also be understood that perfecting the standards is not an end point, nor is it a goal that can be achieved in a short time period. Perfecting the standards is a continuous objective of the NERC standards development process.

Placing the 83 proposed standards into effect now will also serve to create a solid foundation on which to improve and expand the standards and to address the Commission's objectives, without reopening for further debate the underpinnings of standards that have already been approved by stakeholders and utilized in practice by the industry. In other words, putting the existing standards into effect now reinforces the need to develop superior standards and improve upon the existing ones, rather than repeating past debates on the validity of the existing standards.

In fact, the pending approval of the 83 standards has already provided reliability benefits, as many bulk power system owners, operators, and users are engaged in raising the quality of their reliability-related operations, such as ramping up their internal compliance programs and accountability within their organizations, reviewing which standards apply to them, and ensuring they are compliant. Delaying the effective date of the standards would suggest to these entities that they "stand down" until the standards are approved.

³⁴NOPR, PP 7-9.

Placing the 83 proposed standards into effect now will also facilitate a smooth transition to implementation of a consistent set of mandatory standards across North America. NERC's standards were previously established as mandatory in Ontario and New Brunswick by virtue of legislation in those provinces. Legislation establishing a framework for enforcing mandatory reliability standards was adopted in Québec in December, and similar legislation is now pending in Manitoba. NERC has memoranda of understanding regarding enforcement of mandatory reliability standards with the Ontario Energy Board, the Quebec Régie de l'énergie, the Nova Scotia Utilities and Review Board and the Canadian National Energy Board. In addition, NERC has received letters regarding the status of mandatory standards from the British Columbia Utilities Commission, the Alberta Department of Energy, and the Manitoba Ministry of Energy. While a number of factors have contributed to the progress being made in Canada towards implementing mandatory, enforceable reliability standards, one important influence has been the emphasis the Commission has placed on having mandatory standards in place within the United States by June 2007. Placing the 83 proposed standards into effect as the Commission proposes will continue that forward momentum and will allow NERC and the regional entities to begin enforcing a common base of standards seamlessly across North America sooner rather than later.

B. Validation Period for Financial Penalties

In its application for certification as the ERO, NERC proposed that the Commission allow a trial period of approximately six months for the collection of penalties for violations of mandatory reliability standards. Given the current timeline for Commission approval of the standards, this proposal would have resulted in financial penalties for violations being collected beginning January 1, 2008. NERC proposed that during the six month trial period it would

determine and report violations of standards to the Commission and would calculate and report the penalties that would have been assessed, but would not actually collect the penalties.³⁵

The Commission proposes in the NOPR to reject the proposed trial period and instead make financial penalties applicable immediately upon the mandatory standards becoming effective. The Commission also indicates, however, that the ERO may under certain circumstances employ discretion in imposing penalties during the first six months.³⁶ NERC understands and supports the importance the Commission places on the ERO having the ability to impose a financial penalty if a bulk power system owner, operator, or user violates a mandatory reliability standard that is in effect, especially for egregious behavior. However, NERC continues to believe that a validation period for the compliance process and the calculation of penalties would prove beneficial, for the reasons described below. To address the Commission's concerns with the concept of a trial period for financial penalties, NERC proposes a modified approach.

Specifically, NERC proposes that rather than instituting a blanket exemption from the collection of financial penalties for a six-month trial period (as NERC originally proposed), the Commission should authorize NERC and the regional entities to exercise discretion to calculate but not collect financial penalties in the case of most violations, through December 31, 2007. At the same time the Commission should specify that in a situation in which an entity violates a clear and well-understood standard that causes a significant disturbance on the bulk power system, or in the face of other aggravating circumstances such as repeated or intentional

³⁵See *Electric Reliability Organization Transition Plan*, page 12, included as Exhibit F to NERC's April 4, 2006 application for certification as the ERO.

³⁶See NOPR, P 93. The Commission cites as an example withholding assessment of penalties to entities that are new to NERC and the reliability standards.

violations, the ERO and the regional entities will have the authority and responsibility to hold the offending entity fully accountable for the violation, by the assessment of financial penalties as warranted by the particular reliability standard violated and the provisions of the *ERO Sanctions Guidelines*.

A number of factors support use of a general validation period. The newness of the compliance enforcement program encompasses the recently developed NERC uniform compliance monitoring and enforcement program that is pending Commission approval and has not been implemented by the regional entities.³⁷ Further, with NERC and the regional entities in the process of expanding their compliance monitoring and enforcement program staffs in order to be prepared to fulfill their increased responsibilities as the ERO and under delegation agreements, respectively, many of the compliance personnel at NERC and the regional entities are newly hired or reassigned from other functions. The *ERO Sanctions Guidelines* and the penalty matrix are new. The recently developed violation risk factors (which will be a primary component in determining the base range of a penalty) are new, have not yet been approved by the Commission and therefore have not previously been applied. Additionally, NERC's November 15, 2006 petition for approval of 20 revised standards introduces new levels of non-compliance in those standards.³⁸ Finally, initiating operations under the mandatory standards with the collection of penalties as the rule rather than the exception may increase the risk of numerous legal challenges occurring in the early stages of implementing mandatory standards, whereas NERC would expect a rapid decline in such challenges after its proposed seven-month validation period.

³⁷See Section III.B above.

³⁸See *Petition of the North American Electric Reliability Council and North American Electric Reliability Corporation for Approval of Proposed Reliability Standards* (Docket RM06-16-000).

In consideration of the newness of the compliance enforcement process and the calculation of penalties within approved *ERO Sanctions Guidelines*, as well as the expanded list of entities being monitored for enforcement, NERC and the regional entities would, under this proposal, calculate appropriate financial penalties for all violations but in most cases withhold the actual collection of penalties. The offending entity would be informed as to what the calculated penalty is. The violation and the withheld penalty would be reported to NERC (if initially determined by a regional entity) and the Commission. The violation and the calculated penalty would also be posted on the regional entity and NERC websites, with a notation that it is being withheld during the validation period. This approach would provide the entity that violated the standard, and the industry, with a warning as to what the penalty for the violation would have been. It would also indicate to the responsible entity, and to other owners, operators and users that another similar offense will be dealt with more severely, i.e., by the imposition of the applicable financial penalty.

Under this proposal, rights would be reserved to the regional entity, NERC and the Commission to impose and collect a penalty for any case during the validation period in which an entity's noncompliant behavior was egregious, deliberate, repeated, resulted in severe consequences, or for other aggravating factors.³⁹ Such an approach would provide NERC, the regional entities, and the industry the opportunity to validate the newly formed compliance processes and penalty calculations, while at the same time assuring the Commission and other

³⁹NERC's Rules of Procedure and *ERO Sanctions Guidelines* already allow consideration of mitigating circumstances in the determination of penalties. Therefore, NERC believes it can implement the validation period for penalties without the need to amend its existing, applicable ERO Rules. Under NERC's modified proposal, the general expectation would be that warnings would be issued in most cases during the validation period, but that after the end of the validation period warnings would become the exception rather than the rule and imposition of financial penalties would become the rule rather than the exception.

interested parties that responsible entities will be held accountable for severe, deliberate or repeated violations during the validation period.⁴⁰

Accordingly, NERC requests that the Commission approve this modified proposal for a validation period through December 31, 2007.⁴¹

If the Commission rejects this modified proposal for a validation period, with the result that the assessment of penalties immediately becomes the norm rather than the exception, it becomes even more imperative that NERC and the regional entities be able to exercise broad discretion in the setting of those penalties. It is important that this discretion not be limited to small entities or entities that are new to NERC standards. This broader discretion is necessary (and therefore NERC believes use of a validation period would be preferable), because, as noted above, the newness is not limited to the introduction of mandatory reliability standards and registration of additional entities.

All of these factors strongly suggest a trial “shakedown” period with respect to calculation and application of financial penalties will benefit the regional entities, NERC and the Commission, as well as all classes of bulk power system owners, operators, and users.

NERC’s request for a validation period for collection of penalties is consistent with the importance NERC places on forward-looking mitigation of noncompliant behavior in the early stages of ERO implementation. It is more important in the initial months of implementation of

⁴⁰NERC recognizes that this proposal will give NERC and the regional entities substantial discretion in determining when to impose financial penalties during the validation period. However, the due process interests of an entity against which a penalty is actually assessed are protected by the right to appeal the finding of violation and imposition of the penalty to the Commission. See Section 410 of the NERC Rules of Procedure and Section 39.7(e) of the Commission’s regulations (18 C.F.R. § 39.7(e)).

⁴¹NERC assures the Commission that it will be prepared to determine and collect financial penalties upon the effective date of the standards, should the Commission reject NERC’s proposal for a modified trial period.

the mandatory standards for NERC and the regional entities to be able to identify and correct noncompliant behavior prospectively than it is to collect a penalty. At the same time, the prospect of a penalty being collected when warranted in cases of egregious, deliberate or repeated violations – which would be allowed under NERC’s modified proposal – should also serve as a strong incentive to bulk power system owners, operators and users to achieve compliance with the mandatory standards during the validation period.

C. Directing Standards Development to the Standards Process

NERC commends the Commission for entrusting to NERC’s standards development process the necessary near-term improvements that have been identified for certain reliability standards as well as the long-term maintenance and development of reliability standards. NERC is very encouraged that, as the Commission identifies areas for improvement in the standards and sets priorities in the NOPR, it also proposes to direct that each of these modifications be made through the stakeholder process embodied in the NERC *Reliability Standards Development Procedure*. This approach is fully appropriate and fulfills Congress’ intention that reliability standards and revisions to standards would be developed through an industry process that was inclusive of all interested stakeholders, in that the rules of the ERO must:

...provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards.⁴²

The Commission’s regulations and NERC’s Rules of Procedure clearly establish that neither NERC nor the Commission, on their own volition, may develop or modify a reliability

⁴²Section 215(c)(2)(D) of the FPA.

standard. Rather, the scope of the Commission's authority is to approve or remand a standard, and to direct the development of or modification to a standard.⁴³

To underscore the importance NERC places on the Commission directing all necessary improvements to the standards to the stakeholder process embodied in the *Reliability Standards Development Procedure*, NERC requests that the Commission provide a directive in the final order in this proceeding requiring NERC to address both the Commission's concerns with the existing standards and all comments filed in this rulemaking proceeding suggesting specific improvements to the standards. NERC eagerly anticipates this opportunity, and indeed believes it is NERC's responsibility in accordance with its own Rules of Procedure to consider all comments suggesting improvements to the standards, including those provided by commenters in this NOPR proceeding. Here NERC concurs with the Commission's statement in the NOPR that:

the responsibility for the technical adequacy of the proposed Reliability Standards falls squarely on the ERO, and we expect the ERO to monitor the effectiveness of the proposed Reliability Standards and inform us if any Reliability Standard proves, in practice, to be inadequate in protecting and improving Bulk-Power System reliability.⁴⁴

The NERC standards development procedure specifies that the positions advanced by individual commenters can be exposed to the views and considerations of other stakeholders. If the Commission acts on the views expressed on specific standards by individual commenters in this rulemaking, it may encourage others to avoid participating in the NERC process and instead wait until a proposed new or modified standard reaches the Commission approval stage to express their views on the standards. Most importantly, although NERC believes it is obligated

⁴³See FPA Section 215(d)(4) and (d)(5), Section 39.5(e) and (f) of the Commission's regulations, and Section 300 and Appendix 3A of NERC's Rules of Procedure.

⁴⁴NOPR, P 9.

to consider all comments on standards provided during this NOPR proceeding into its standards process, no commenter should be entitled to have its comments on a specific standard resolved by the Commission in this NOPR proceeding.

Referring all comments to the NERC standards process for resolution is consistent with NERC's obligation to facilitate an open stakeholder process for the development of reliability standards. In the NERC process all comments and objections on a proposed new or revised standard are given fair consideration and are either resolved to the satisfaction of the commenter, or reasons are stated as to why the commenter's recommendation should not be adopted. NERC regularly receives dozens, and in some cases hundreds, of comments on proposed standards and addresses them in an open and transparent process that has given confidence to stakeholders that their views will be fairly considered. Incorporating all comments on specific standards submitted in this NOPR proceeding into the process of improving the standards on a forward-looking basis would be an ordinary and appropriate part of the NERC standards development process.

Of course, considering each comment in the standards process does not mean that each comment will necessarily be adopted as presented. It does mean, however, that each comment will be given due consideration and that a response will be provided that represents the collective expertise and consensus of the industry. In many cases, the concerns of a commenter will be consistent with improving reliability in a cost-effective and practical manner, and will be readily adopted by the industry. In other cases, there may be technical reasons that adoption of a comment is not practical or does not improve reliability, or the cost may be prohibitive compared to the reliability benefit. In cases where the collective expertise and consensus of the industry do not agree with the commenter, reasons will be provided for not adopting the comment.

With regard to the specific directives of the Commission to modify standards and set priorities, NERC is committed to resolving the concerns of the Commission and meeting the Commission's expectations. NERC will use its standards process to apply the industry's collective expertise to achieve the Commission's objectives and to reach consensus in addressing the issues raised by the Commission. This matter is discussed further in Section IV.D below.

D. Commission Directives to Improve Reliability Standards

To be consistent with the Commission's authority to direct the development or modification of standards, but not to set the standards, it is essential that the final rule adopted in this proceeding state the directives to improve the standards in the form of an objective to be achieved or concern or deficiency to be resolved within the standard, and not prescribe a particular requirement, metric, or specific language to be used. For the Commission to prescribe a particular requirement, metric, or specific language to be used would, in effect, constitute setting the standard and would countermand the open standards process that the Commission has approved and that is required by law.

This concern is exemplified by a recent experience NERC had in implementing a directive of the Commission in the ERO Certification Order to add a tenth segment to the Registered Ballot Body for regional entities and regional reliability organizations. While many, but not all, stakeholders agreed with this approach, the form of the Commission's directive did not allow NERC to put the question to the stakeholders through NERC's established process. In order to retain the confidence and acceptance of stakeholders in the open standards process, it is important that the standards development procedure, which requires a comment period and a stakeholder vote, be followed when making a change to fundamental tenets of the standards development procedure. An explicit directive from the Commission to make a particular

modification to the standards procedure or stakeholder segment representation places NERC in the position of having to choose between complying with an order of the Commission or following a Commission-approved ERO rule of procedure. The NERC Board of Trustees opted of course to comply with the Commission's ERO Certification Order on this point, but did so with serious apprehension that the changes were not made through the established stakeholder procedure.

NERC anticipates that a similar conundrum can be created for the ERO with regard to any Commission directives to improve standards, if the directive is stated as a particular requirement or metric that must be included in the standard. These comments are not intended in any way to limit the Commission's proper exercise of its jurisdiction or to limit its proposed direction and advice. In a majority of cases, the directives in the NOPR to improve standards are stated appropriately as a reliability objective to be achieved or as a deficiency or concern to be resolved in the standard, and not as specific language to be incorporated. Examples of appropriately framed directives include the following:

- (153) NERC should consider whether a frequency deviation of 20 milliHertz lasting longer than the 15 minute recovery period should be used to define a significant deviation in frequency. The Commission is aware that this approach is consistent with the Balancing Authority ACE Limit (BAAL) presently being field tested. The major difference between the proposal and the BAAL is that the proposal is aimed at preserving the historic frequency performance of the system.
- (163) ...the Commission proposes to direct that NERC submit a modification to BAL-002-0 that: ...(2) develop[s] a continent-wide contingency reserve policy; (3) includes a Requirement that measures response for any event or contingency that causes a frequency deviation; ...
- (194) The Commission proposes that BAL-005-0 include a Requirement that addresses the amount of automatic generation control a balancing authority must have, prior to a contingency, to ensure that load variations and changes in schedules can be accommodated without frequency deviations beyond an appropriate threshold.

- (224) Thus, the ERO should provide guidance clarifying the triggering event for an entity to take action pursuant to CIP-001-0.
- (259) NERC should work from these components to develop modifications to COM-002-0 that will implement Blackout Report Recommendation No. 26.
- (262) ...we propose to direct that NERC submit a modification to COM-002-1 that: (4) requires tightened communications protocols, especially for communications during alerts and emergencies.
- (387) [W]e propose to direct that NERC submit a modification to FAC-003-1 that: (1) the ERO develop a minimum vegetation inspection cycle that allows variation for physical differences, as discussed above...
- (701) We ... believe that a Requirement to verify accuracy of system dynamics models should be a part of this Reliability Standard.
- (722) Therefore, we propose that NERC develop a Requirement for a consistent approach to controllable load forecast and verification as well as reporting of the associated accuracy, error and bias of controllable load forecast.

On the other hand, some of the directives proposed in the NOPR do not follow this approach and could potentially create conflicts for NERC between following its Commission-approved standards development procedure and complying with an order of the Commission. NERC requests that the Commission state all directives to improve standards in the form of an objective to be achieved or a deficiency to be addressed in the standard. This approach will allow a range of practical solutions to be considered and a best solution to be approved through the standards process. NERC has identified the following proposed directives as being of concern in this regard:

- (153) To achieve NERC's measurement approach, we propose that NERC modify Requirement R3.1, which currently requires that a balancing authority carry at least enough contingency reserve to cover "the most severe single contingency," to include enough contingency reserve to cover any event or single contingency, including a transmission outage, which results in a significant deviation in frequency from the loss or mismatch of supply either from local generation or imports.

-- An improved directive would be: The Commission directs NERC to resolve the ambiguity noted by the Staff Assessment that Requirement R3.1 could be subject to multiple interpretations, one limited to only the

loss of generation, whereas another interpretation would also consider the loss of supply resulting from a transmission or generation contingency.

- (157) Demand Side Management or Direct Control Load Management should be on the same basis as conventional generation or any other technology. Accordingly, the Commission proposes to direct NERC to modify BAL-002-0 to include a Requirement that explicitly allows demand side management as a resource for contingency reserves.
 - An improved directive would be: The Commission directs NERC to modify BAL-002-0 to allow Demand Side Management or Direct Control Load Management to be a resource for contingency reserves on a comparable basis as conventional generation or any other technology, consistent with maintaining a reliable bulk power system.
- (227) Accordingly, the Commission proposes to direct NERC to modify the Reliability Standard to require an applicable entity to contact appropriate federal authorities, such as the Department of Homeland Security, in the event of sabotage within a specified period of time.
 - This directive, in addition to specifying language to be included in the standard and thereby circumventing the standards process, also would suggest that a North American standard would require entities in other nations such as Canada or Mexico to report to the U.S. Department of Homeland Security.
- (438) This Requirement to submit data for grandfathered and non-Order 888 point-to-point transmission service is not included in INT-001-1 or any other Version 1 Reliability Standard in the INT group. These transactions, if not reported, will create a gap in reliability assessment and transaction curtailment provisions and may result in adverse impact on reliable operation of the Interconnection. Therefore, the Commission proposes to direct that NERC retain this important Requirement.
 - In the standards development process this issue was discussed at great length and the vast majority of commenters and voters agreed there was no reliability merit in this requirement. In fact, such data are not used today by the NERC Interchange Distribution Calculator for reliability. While it may be appropriate that this issue be reconsidered in the revisions to the standards, a Commission directive to include a requirement that the collective expertise and the consensus of the industry have determined to be unnecessary for reliability constitutes “setting the standard”.
- (480) [W]e propose to direct that NERC submit a modification to INT-006-1 that: (1) makes it applicable to reliability coordinators and transmission operators; and (2) requires reliability coordinators and transmission operators to review composite transactions from the wide-

area reliability viewpoint and, where their review indicates a potential detrimental reliability impact, communicate to the sink balancing authorities necessary transaction modifications prior to implementation.

-- These proposed improvements would be better stated as recommendations for consideration. Once again, there may be good reasons why these proposed changes are not valid.

- (667) [W]e propose to direct that NERC submit a modification to MOD-010-0 that: (1) adds a new requirement for transmission owners to provide the list of contingencies they use in performing system operation and planning studies; and (2) expands the applicability section to include the planning authority.

-- In addition to being an explicit modification to a standard, there may be a need to better understand the reliability need for transmission owners to provide a list of contingencies they are using and who should have access to that list.

- (1065) The Commission proposes that footnote (a) be modified in the revised Reliability Standard as recommended by TIS and that the normal facility rating be in accordance with Reliability Standard FAC-008-1 and normal voltages be in accordance with Reliability Standard VAR-001-1.

-- Once again, this proposed directive, as written, does not allow vetting of the proposal through the standards process and fair consideration of alternative views.

NERC is committed to being responsive to each directive of the Commission to improve the standards and will provide modifications to the standards that meet the Commission's objectives. NERC will keep the Commission apprised of the progress in completing those modifications.

NERC anticipates that many of the concerns the Commission points out in the NOPR with the standards are already understood and acknowledged by the industry. The resolution of these issues is expected to be straightforward. However, there are other areas where the Commission proposes a specific directive on a particular standard that is well beyond the bounds of current utility practice. Often these recommendations are derived from the Staff Assessment or are based on a limited number of comments to the Staff Assessment. NERC anticipates that

the issue of concern with respect to these standards will be addressed, but the results may be somewhat different than anticipated by the Commission. NERC believes that in all cases the standards development process will produce improvements to the reliability standard that will be beneficial to reliability, and that in all cases the results will meet the Commission's objectives or provide a superior outcome to that outlined in the NOPR. NERC outlines below several areas in which the results may be somewhat different than the Commission's expectations as outlined in the NOPR, although NERC believes the ultimate results will be superior to those proposed by the Commission with regard to reliability benefit and practicality:

- (157) Demand Side Management or Direct Control Load Management should be on the same basis as conventional generation or any other technology. Accordingly, the Commission proposes to direct NERC to modify BAL-002-0 to include a Requirement that explicitly allows demand side management as a resource for contingency reserves.
 - NERC notes that not all resources, including demand side management and load controls, have the same electrical characteristics with regard to responsiveness to contingencies. It would be proper to construct the requirements to require contingency reserves that meet certain criteria necessary for the reliability of the bulk power system, without discriminating as to the type of resource. But it would not be technically correct to say that all resources are equivalent with regard to ability to provide contingency reserves.
- (197) ... the Commission proposes to direct that NERC submit a modification to BAL-005-0 that: (1) includes Requirements that identify the minimum amount of automatic generation control or regulating reserves a balancing authority must have at any given time ...
 - NERC cautions that establishing a minimum quantity or percent of generation that must be under automatic generation control or regulating reserves would be an arbitrary constraint that would not add to reliability. Each balancing authority must have sufficient resources under automatic control to meet its control performance standard in BAL-001. Having fewer resources will result in the balancing authority failing to meet the control standard. Having excess resources under regulation is a business decision but does not improve reliability. The amount and characteristics of resources necessary to be under regulation varies widely based on the resource portfolio and operating characteristics of the particular system. NERC requests that, rather than requiring a minimum quantity or percent

of generation that must be under automatic generation control, the Commission direct the question to NERC for resolution in the standards process whether such a requirement would have a reliability benefit, and if so what criteria should be used.

- (258) Accordingly, we propose directing NERC to add a Requirement that the reliability coordinator assess and approve actions that have impacts beyond the area views of transmission operators and balancing authorities.
 - Taken as a literal directive to add this requirement to a standard, nearly every action of a transmission operator or balancing authority has an impact on the interconnection outside that area's views. Therefore, the reliability coordinator would be required to assess and approve nearly every operational action of a transmission operator and balancing authority. In addition to being impractical, this requirement would likely bring challenges regarding the authority of one entity to control the assets of another. Taken together, the entire body of standards establishes safe boundaries within which transmission operators, balancing authorities, and others may operate. This issue would be better stated as a directive to NERC to consider through the standards process what actions of transmission operators and balancing authorities should be under the oversight of the reliability coordinator to ensure the reliability of the bulk power system, and then to develop such requirements.
- (273) Consistent with NERC's comments, the Commission proposes that this Reliability Standard should be modified to clarify that load shedding should be capable of being implemented as soon as possible and much less than 30 minutes.
 - This directive would presume that all manual load shedding can be performed remotely by supervisory control. In many systems shedding load requires actions by field personnel, who must be dispatched to a site. Although shedding greater amounts of load in seconds or minutes may have reliability benefit, the amounts of load that must be under remote supervisory control and the timing requirements should be vetted through industry experts and based on good utility practice.
- (299) [T]he Commission proposes to direct that NERC submit a modification to EOP-003-0 that (1) specifies the minimum load-shedding capability that should be provided and the maximum amount of delay before load shedding can be implemented...
 - While significant improvements can be made in the EOP standards to establish criteria for the provision of load-shedding capability, requiring a specific minimum amount of load (MW) or percentage of load that must be capable of being shed and the maximum amount of time delay is as likely to reduce reliability as it is to increase it. It is very important that

load shedding capabilities, both manual and automatic, be carefully designed to the electrical characteristics of the local system and loads. Wielding load shedding as a tool for operators to preserve reliability should not be viewed as a blunt instrument in which more is better and faster is better — after all, the immediate consequence of load shedding is a large number of customers are in the dark. NERC requests that the Commission direct NERC to review industry best practices and propose requirements to ensure that adequate load-shedding capabilities are required by the standards to protect the reliability of the bulk power system without causing adverse impacts of unnecessary shedding of firm load.

- (336) Further, the Commission proposes to direct NERC to modify the standard to include a Requirement that all reliability coordinators have full backup control centers since they are essential to Bulk-Power System reliability. In addition, the Commission is interested in comments on what other entities should have full backup centers for reliability such as balancing authorities and large transmission operators.
 - This proposed directive presumes that the only way to achieve highly reliable and independent backup capability to perform reliability coordinator functions in an emergency is to have a redundant control center. While that may be an option, it may not be the only one for achieving the necessary reliability objective. The standard should be modified to define the backup functionality performance results expected, not how an entity would propose to meet the requirements.
- (387) [W]e propose to direct that NERC submit a modification to FAC-003-1 that: ... (2) removes the applicability to transmission lines operated at 200 kV and above so that the Reliability Standard applies to Bulk-Power System transmission lines that have an impact of reliability as determined by the ERO.
 - While this proposal may have merit with respect to reliability compared to the enormous cost that will be incurred, it is a question that should be vetted through the standards process to better understand what will be gained in terms of impacts to the reliability of the bulk power system. The current applicability of the standard to 200 kV and above transmission lines was debated extensively by the industry and any change to this requirement should be vetted again.

It is important that all comments and Commission directives be addressed through the standards process where all stakeholders will have a fair opportunity to debate the standard and to vote on the final result. While the exhaustive vetting of standards may sometimes seem time-

consuming, in fact, the stakeholder process embodied in NERC's standards development procedure has yielded a significant foundational set of reliability standards, some of which were developed in a very short time frame.

NERC recognizes that as the Commission gives due weight to the technical expertise of the ERO and the industry by directing the improvements back to the standards process, the Commission will also be placing a great deal of responsibility on NERC to address the Commission's identified concerns. NERC has already established plans to make improvements to the reliability standards and has begun to mobilize industry resources toward that end as part of its standards development work plan.⁴⁵ The responsibility for the technical adequacy of the proposed reliability standards falls squarely on NERC. NERC believes it will be able to meet the Commission's high expectations with regard to improving the standards and ensuring that the standards are adequate for protecting bulk power system reliability.

E. Decision Framework for Approval of Proposed Reliability Standards

NERC commends the Commission for clearly and effectively articulating an excellent decision-making framework for the review and approval of proposed reliability standards. The framework outlines four actions the Commission may take in exercising its statutory authority to review and approve proposed reliability standards, to remand standards to the ERO for additional work, or to direct the development of a standard or modification to a standard:

1. Approve a proposed reliability standard and designate an effective date.
2. Approve a proposed reliability standard, designate an effective date, and direct the ERO to develop improvements or address concerns with the standard through the standards process.

⁴⁵See *Informational Filing on the North American Electric Reliability Council and North American Electric Reliability Corporation's Reliability Standards Development Plan 2007-2009*, Docket RM06-16-000, filed December 1, 2006.

3. Hold a proposed reliability standard as pending and request modifications or additional information from the ERO.
4. Remand the proposed standard to the ERO for additional work.⁴⁶

NERC believes this framework is consistent with the authority Congress granted the Commission and is also consistent with the role of the ERO in implementing an open standards development process. This framework also provides a workable mechanism in which standards approval can be coordinated with jurisdictions in Canada. NERC fully supports and endorses this framework and requests that the Commission continue to follow this decision framework for the review and approval of reliability standards in the future. By taking this approach, the Commission has appropriately established itself as the “gatekeeper” of mandatory reliability standards. At the same time, under this framework the Commission does not cede any of its authority to direct the development or improvement of standards.

F. Jurisdiction for Enforcement of Mandatory Reliability Standards

1. The Commission Should Not Define the Full Reach of its Jurisdiction in this Rulemaking

In the NOPR, the Commission proposes to define the scope of its Section 215 jurisdiction over bulk power system owners, operators, and users for the purpose of enforcing mandatory reliability standards.⁴⁷ At issue is how to define correctly the boundary of the bulk power system, with respect to both the entities that are covered by the Commission’s Section 215 authority and the scope of the facilities that may be part of the bulk power system. The Commission proposes the following language to define the jurisdictional boundary:

⁴⁶NOPR, PP 76-82.

⁴⁷NOPR, PP 42 ff.

The Commission proposes that, for the initial approval of proposed Reliability Standards, the continued use of NERC's definition of bulk electric system as set forth in the NERC glossary is appropriate. However, we interpret the term "bulk electric system" to apply to all of the > 100 kV transmission systems and any underlying transmission system (< 100 kV) that could limit or supplement the operation of the higher voltage transmission systems. It would also include transmission to all significant local distribution systems (but not the distribution system itself), load centers, and transmission connecting generation that supplies electric energy to the system. If there is a question concerning which underlying transmission system limits or supplements the operation of the higher voltage transmission system, the Commission propose[s] that the ERO would provide the final determination on a case by case basis.⁴⁸

What the Commission has proposed is a significant expansion over what the industry has historically regarded as the bulk system, both in terms of the facilities covered and the entities involved. The Commission has a right and indeed is obligated to take affirmative action to define and preserve its jurisdiction to the full extent of the law. NERC concurs with the Commission that Congress intended to give the Commission broad jurisdiction over the reliability of the bulk power system. However, NERC does not believe this is the right time for the Commission to define the full extent of its jurisdiction or that the approach proposed in the NOPR is the right way to do so. In addition, NERC does not believe it is legally necessary for the Commission to extend its jurisdiction to the limits in a single step.

Instead, the Commission should make clear in this docket that its jurisdiction is at least as broad as the historic NERC definition of "bulk electric system" and that the Commission will use that definition for the near term. The Commission should also make clear that it is not deciding in this docket the full scope of its jurisdiction and is reserving its right to consider a broader definition.

NERC does not believe it promotes overall reliability or is helpful to the formation of a strong and effective ERO and the inauguration of a new regime of mandatory reliability

⁴⁸NOPR, P 68.

standards for the Commission to decide the ultimate parameters of its authority at this time and in this particular rulemaking. The focus of the rulemaking should be the approval of an initial set of reliability standards for enforcement by NERC and the regional entities for the core set of owners, operators and users that can have the most significant impact on the reliability of the bulk power system.

Fortunately, the scope of that core set of owners, operators and users has already been clearly defined — the scope is based on the definitions of the “bulk electric system” and “responsible entities” provided in the NERC *Glossary of Terms Used in the Reliability Standards*, the “Applicability” sections and substantive requirements of the standards themselves, and NERC’s registration of specific entities that are responsible for compliance with the standards.

Furthermore, to expand the scope of the Commission’s jurisdiction and the scope of the standards in this NOPR proceeding, beyond the existing definitions, and expect that the standards would now somehow apply to a broader set of facilities or entities, would be an unanticipated expansion of the reach of the existing standards implemented with insufficient due process. The existing standards under consideration by the Commission were developed and approved through NERC’s standards process with the intention that the standards as written would apply based on the industry’s historical conception of the bulk electric system. It would be inappropriate to assume that the requirements of the existing reliability standards, as vetted and approved by stakeholders, would be relevant to an expanded set of entities or an expanded scope of facilities under a broader definition of the bulk power system.

The impact of expanding the scope of the Commission’s jurisdiction and the reach and applicability of the standards without the benefit of a full vetting of the proposed expanded

boundaries of the bulk power system could have a detrimental impact on reliability. The expanded scope could dilute the effectiveness of the resources NERC and the regional entities are putting in place to monitor the compliance of entities known to be important to reliability and that are already understood to fall within the jurisdictional reach of the standards. NERC and the regional entities must be disciplined in monitoring the compliance of all entities whose actions are known to materially impact the reliability of the bulk power system. Instantly expanding the scope of the bulk power system to potentially thousands of additional entities without a rigorous technical analysis of what constitutes material impact to the bulk power system would negatively impact the effectiveness of the ERO and the regional entities as they begin to implement the compliance monitoring and enforcement program.

There is also a risk of thousands of small entities, heretofore not subject to NERC standards, being forced to become compliant when there is no reasonable justification for incurring the costs of doing so in terms of incremental benefit to the reliability of the bulk power system. Defining the edges of the Commission's jurisdiction on a hypothetical basis is likely to involve conjecture regarding the possible impacts of individual smaller entities on the reliability of the bulk power system and to lead to a large number of unproductive disputes by entities on the margin.

NERC's approach to moving forward with the enforcement of mandatory reliability standards is a practical one: to register the specific entities that NERC will hold accountable for compliance with the standards. The registration will identify all entities that are materials to the reliability of the bulk power system. Such registration is readily achievable and is an entirely sufficient starting point from which to begin enforcement of reliability standards. Registration is based on the facts and circumstances of each entity with regard to how it is organized and its

reliability responsibilities. Registration requirements are straightforward in many cases (*e.g.*, the existing reliability coordinators), and can be readily resolved based on the specific facts in more complex cases. NERC has established registration criteria to identify all entities with a material impact on the reliability of the bulk-power-system. The criteria will be further refined or expanded as necessary based on approved reliability standards and further determinations of materiality to the bulk power-system. The current registration criteria are provided for information as Attachment B to these comments.

NERC maintains its most important role is to mitigate noncompliant behavior regardless of an entity's registration. Further, all that NERC and the Commission give up by using the registration approach is, at most, "one penalty, one time" for an entity. That is, if there is an entity that is not registered and NERC later discovers that the entity can have a material impact on the reliability of the bulk power system, NERC has the ability to add the entity, and possibly other entities of a similar class, to the registration list and to direct corrective action by that entity on a going forward basis.⁴⁹ Thereafter, of course, the entity would also be subject to other sanctions.

As the Commission notes in the NOPR, the continued use of the term "bulk electric system" during the initial implementation of mandatory standards, while the industry works through the standards process to better define applicability in the standards themselves, is reasonable.⁵⁰

⁴⁹See Section 500 of the NERC Rules of Procedure.

⁵⁰NOPR, P 68.

2. History of the Definitions

Although several definitions of the “bulk electric system” have been used over the past decade, in 2004 NERC consolidated those historical concepts into a single definition of bulk electric system as now set forth in the NERC *Glossary of Terms Used in Reliability Standards*:

As defined by the regional Reliability Organization, the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load with transmission source are generally not included in this definition.

By comparison, the definition of “bulk-power system” in Section 215(a)(1) of the FPA is:

(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and (B) electric energy from generating facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy.

Based on its experience as a participant in the negotiations leading to the reliability legislation, NERC believes that there was no intentional distinction made at that time between “bulk power system” (as defined in Section 215) and the “bulk electric system” (as represented by the definition in the NERC *Glossary of Terms*). Recent discussions with stakeholders who also participated in those negotiations confirm NERC’s believe that there was no distinction intended. Moreover, NERC is not aware of any documentation that suggests a distinction was intended.⁵¹

⁵¹Congress produced no conference report for the new reliability legislation. The definition of bulk power system in Section 215 of the FPA is similar to the definition in the first iteration of the reliability legislation, introduced as a part of H.R. 1828 on May 17, 1999:

The term ‘Bulk-Power System’ means all facilities and control systems necessary for operating an interconnected transmission grid (or any portion thereof), including high-voltage transmission lines, substations, control centers, communications, data, and operations planning facilities, and the output of generating units necessary to maintain transmission system reliability. (Section 601(a)).

NERC understood the intent of the legislation to be to provide for certification of an ERO with authority to enforce mandatory reliability standards. Whether or not the scope of the reliability standards should be expanded beyond the scope of the bulk electric system as understood in the industry simply was not a focus of the legislation. Even the phrase used in the statutory definition of “bulk-power system” that it “does not include facilities used for the local distribution of electricity” appears to have been included in the legislation as a “savings clause” for the authority of State and local regulatory authority. It was not intended (as is now being proposed in the NOPR, P 62) as a cornerstone of the definition of “bulk-power system”.

3. Future Actions to Consider a Broader Definition

As the Commission does move forward at some point to define the breadth of its jurisdiction to ensure the reliability of the bulk power system, there are a number of complex and as yet unresolved issues that will need to be addressed. NERC Council’s mission and standards were historically focused on avoiding system failures that could cascade in uncontrolled fashion. NERC Council did not historically establish requirements associated with the obligation to serve end use customers and the reliability of that service at the meter. Such requirements have historically been the purview of the States and local jurisdictions. The adequacy of electric power supply and of the delivery system, and the trade offs between reliability of electric service to end use customers and the cost of service to those customers, have historically been the purview of the States and local jurisdictions.

It is unclear at this time what criteria would be used to distinguish which aspects of service reliability to end-use customers should be ascribed to adequacy, which Congress clearly

intended would be the purview of the States,⁵² versus the reliability of bulk power system supply and delivery. For example, the question of how much redundancy or margin is needed in the gray area between transmission and distribution to avoid load being lost due to a contingency, or interrupted when supplies are short, is typically a question of how much customers are willing to pay (or a State or local regulator believes they should pay) for a given level of reliability. A recent example in this regard is the outage during the summer of 2006 in the Consolidated Edison distribution system, in which a large number of customers lost service. A historical perspective would clearly place these outages in the realm of “local distribution”. Yet the language proposed in the NOPR seems to redefine the boundary of the “bulk-power system”, and the Commission’s jurisdiction, to include such events because these facilities are connected to and impact the bulk-power system.

NERC believes that establishing a reasonable understanding of the full scope of the bulk-power system is a very complex matter that should be arrived at based on deliberate consideration and input from all quarters. The NOPR does not specify what basis and process the Commission used to arrive at its proposed definition. With the great complexity of these issues, the Commission, the States, and all other stakeholders would benefit tremendously from a deliberate dialogue on these matters. Questions that might be discussed include:

- To what extent does the reliability of the bulk power system come into question if a line or transformer has a forced outage and customers lose service? Is there a certain magnitude of an outage of such facilities that is relevant to the bulk power system? Or is the obligation to serve a matter that is entirely left to the States?
- What does it mean for a facility connected to the bulk power system to have a material impact on the bulk-power system? Impact on the bulk power system could conceptually be extended down to the smallest piece of end-use electricity-using equipment, as all electrical load is connected to and affects the bulk power

⁵²See FPA, Section 215(i).

system in some physical way. The real questions are, what is a “material impact” on the reliability of the bulk power system and what facilities have a “material impact” on the reliability of the bulk power system? One aspect of materiality could certainly be described in terms of causing cascading or uncontrolled failures, as in NERC’s historical definition. Should materiality of impacts also be defined in terms of the types or amounts of load served?

- How should the tradeoffs between reliability and cost be evaluated? For instance, the suggestion in the NOPR that all distribution systems should have the ability to provide continuous communications with the bulk power system operators⁵³ could lead to imposition of an unreasonable cost burden on thousands of very small systems that could not possibly have a measurable effect on the bulk-power system outside of their local areas.

Clearly it was the intention of Congress that there are some parts of the electric system that are not covered by the Commission’s jurisdiction over reliability — for instance the reliability of service to an individual residence. On the other hand, NERC has developed a definition of the “bulk electric system” based on facilities with a nominal voltage of at least 100 kV, excluding radial facilities to load and including any additional facilities designated as critical by the regional entity. The extent of the Commission’s jurisdiction clearly must fall somewhere between these extremes — but where? During earlier phases of the Commission’s implementation of the new reliability legislation, some commenters criticized the Commission for not defining central terms relevant to the Commission’s jurisdiction. NERC understands the Commission’s desire to provide a clearer definition of the boundary of its jurisdiction. However, it is not necessary for the Commission to define the full reach of its jurisdiction at this time in this rulemaking. It is sufficient for the Commission at this time to acknowledge that it is still working to define the full reach of its jurisdiction, with the understanding that the jurisdiction at least includes the core concept of the “bulk electric system” as defined in the NERC *Glossary of Terms Used in Reliability Standards* and supplemented by the NERC registration criteria used to

⁵³NOPR, P 252.

identify those entities with a material impact on reliability. That historical definition was in existence and being followed by the industry when Congress passed the reliability legislation, and that is where the Commission should begin.

Although NERC agrees it is important for the Commission to have working definitions of these central jurisdictional terms, NERC believes it is unnecessary for the Commission to define the outer edges of its jurisdiction at this time and in this rulemaking. Instead, NERC requests that the Commission, for the near-term, declare in its final order in this proceeding approving the 83 reliability standards that its jurisdiction is at least that which is presently required by the NERC reliability standards that the Commission is approving, consistent with the definition of “bulk electric system” in the NERC *Glossary of Terms Used in the Reliability Standards*, and inclusive of the list of registered entities to be provided by NERC and approved by the Commission. Determining the outer edges of the Commission’s jurisdiction under Section 215 must ultimately involve an analysis of technical issues that are better left for further, more comprehensive analysis, at least in the first instance, by technical experts who can advise the Commission on the impact on reliability of the actions or inactions of a much larger number of entities and facilities than have historically been subject to reliability standards.

Reaching an acceptable definition that satisfies the intent of Congress, provides for a reliable bulk power system, and respects the rights and authorities of the States and local jurisdictions will requires a full and deliberate discussion and more information than is currently available to the Commission. NERC offers to facilitate this discussion and to develop the additional information that the Commission needs to appropriately define the full scope of the “bulk-power system” and thus of the Commission’s jurisdiction over reliability. Accordingly,

NERC requests that the Commission direct NERC to undertake the following activities and report the results back to the Commission:

1. Reconcile the definitions of “bulk electric system” and “bulk-power system” into a single term (preferably “bulk-power system” to employ the term used in Section 215) through the standards development process.
2. Increase the granularity of the “Applicability” section of each reliability standard to clearly identify entities and facilities that can have a material impact on the reliability of the bulk power system with regard to the requirements in each standard. This work would be completed in accordance with NERC’s *Reliability Standards Development Work Plan 2007-2009* through the standards development process. NERC concurs with the Commission’s statement in the NOPR that “parties concerned that a proposed reliability standard would apply more broadly than the statute allows may raise their concerns in the context of the specific reliability standard.”⁵⁴
3. Evaluate the experience of the compliance enforcement program and overall performance of the bulk power system to determine the effectiveness of the registration process in identifying all entities that can materially impact the reliability of the bulk power system are on the list. Report the results to the Commission and modify the registration procedures and criteria accordingly.
4. Complete a study on the scope and meaning of reliability of the bulk power system, addressing the questions raised above in these comments and other questions. Vet the study through a diverse set of stakeholders, including the States and entities that may be on the margin of the Commission’s jurisdiction.
5. Survey regional entities to develop an ERO-approved list of facilities that are identified as part of the bulk power system. Report the results to the Commission, while maintaining the confidentiality of the information as necessary to protect critical infrastructure.

G. Registration of Joint Action Agencies and Similar Entities

In response to the Commission’s questions as to whether a joint action agency should be allowed to accept responsibilities for compliance with standards on behalf of its members, and whether a joint action agency may divide the responsibilities for compliance with its members⁵⁵,

⁵⁴NOPR, P 53.

⁵⁵NOPR PP 236-237.

NERC answers yes to both. NERC also notes that this model of shared responsibilities between a central entity and its members also applies in the case of an independent system operator, a regional transmission organization, a generation and transmission (“G&T”) cooperative or other organizational structure.

NERC recognizes that existing organizational structures and relationships are much more complex than the descriptions or responsibility areas provided in the NERC *Reliability Functional Model*. The reality is that many of the responsibilities for ensuring a reliable bulk power system are shared among entities, both laterally and vertically. In many cases these shared responsibilities are spelled out in contracts, service agreements, market protocols, operating guides, and other documents. In some cases the shared responsibilities may simply be accepted practice.

One of the new challenges introduced by the advent of mandatory reliability standards is determining which entity should be held accountable for the violation of a standard when there is a sharing of responsibilities for a particular reliability function. For example, a central organization may perform some of the functions of a load-serving entity, such as shedding load upon a directive of the transmission operator, but the member organizations may perform other functions of a load-serving entity such as preparing and submitting load forecasts. One approach to this issue would be to allow the central organization to accept responsibility for reporting of all compliance information and to hold the central entity accountable for all violations related to that function. It is not, however, always the case that the central entity will desire to accept the responsibilities for a function in their entirety; and in some cases the central entity may be legally prohibited from doing so. There are many situations in which a member entity does not wish, to or is unable, to delegate its responsibilities upward.

One solution that has been suggested is to assign the obligations to comply with standards at the individual requirement level. Presently there are well over 1,000 requirements in the standards the Commission is considering for approval. While this approach may help clarify responsibilities, it would be administratively impossible at the outset for the ERO and regional entities to manage compliance enforcement with that degree of complexity in a responsibility tracking matrix.

The Commission proposes to direct NERC to develop procedures which permit a joint action agency or similar organization to accept compliance responsibility on behalf of its members. In response, NERC proposes the following procedure, and has updated its entity registration criteria to reflect these changes. NERC believes this approach will satisfy the Commission's objectives and the needs of entities that share responsibilities for the reliability of the bulk power system with others.

1. Each "central" organization, such as a joint action agency, G&T cooperative, independent system operator, or regional transmission organization should be able to register as being responsible for compliance for itself and collectively on behalf of its members. In doing so, the central organization must individually list in the compliance registry all of its member organizations for which it is accepting compliance responsibility.
2. Each member within a central organization may separately register to be accountable for a particular reliability function defined by the standards (e.g. transmission operator, generator operator, load-serving entity, distribution provider, etc.) This is true even if the central organization offers to accept that responsibility and does so for other members.
3. If the central organization and a member organization cannot agree that one organization or the other is responsible, or if the parties agree that the responsibilities for a particular reliability function should be split, then NERC should register both entities concurrently. In this case both entities will be registered and both entities will have been notified of their obligations to comply with the standards. NERC and the regional entities will then have the authority to find either organization or both accountable for a violation of a standard, based on the facts of the case and circumstances surrounding the alleged violation.

4. NERC and the regional entities would not provide oversight of contracts or other documents used to delineate responsibilities, but would consider such documents in the investigation of a violation, to the extent they are useful as part of the factual determination of accountability for a violation of a standard. NERC and the regional entities should not become party to the agreements by reviewing and approving the agreements.

With the approach outlined above, NERC believes it can meet the Commission's proposed directive to develop a procedure which permits a joint action agency or similar organization to accept compliance responsibility on behalf of their members. This approach will be filed with the Commission for approval with the final registration criteria and list of entities on the compliance registry.

H. Standards to Be Held Pending Further Information

NERC concurs with the Commission's proposal to hold the remaining 24 reliability standards (mainly fill-in-the-blank regional standards) as pending at the Commission until further information is provided and to require that bulk power system owners, operators and users follow these pending standards "good utility practice" pending approval.⁵⁶ NERC will be providing the additional information to allow these standards to become mandatory, as outlined in the three-year work plan.⁵⁷

NERC agrees with the Commission's proposal that NERC and the regional entities can monitor compliance with these pending standards using the ERO's authority pursuant to Section 39.2(d) of the Commission's regulations requiring users, owners, and operators to provide information related to data gathering, data maintenance, reliability assessments and other "process"-type functions. NERC believes this approach is necessary to ensure that there will be

⁵⁶NOPR, P 10.

⁵⁷*Informational Filing on the North American Electric Reliability Council and North American Electric Reliability Corporation's Reliability Standards Development Plan 2007-2009*, Docket RM06-16-000, filed December 1, 2006, at pages 4-32 of "Volume II List of Projects."

no “gap” during the transition from the current voluntary reliability model to enforcement of mandatory reliability standards.

I. Priorities for Standards Development

NERC acknowledged in its original petition for approval of mandatory standards that many of the proposed standards needed additional work.⁵⁸ NERC agrees with the Commission that there is a need for significant improvement in many of the proposed standards and that work still remains to address recommendations from the 2003 Northeast blackout.⁵⁹

To that end, on November 30, 2006 NERC filed its *Reliability Standards Work Plan 2007 - 2009* with the Commission in Docket RM06-16-000, for informational purposes. The work plan details a comprehensive program to improve all the standards. Prior to the filing, NERC modified the work plan to ensure that issues listed by the Commission in the NOPR as high priority will be addressed earlier in the plan schedule. The work plan incorporates proposed directives from the NOPR and other improvements suggested in the Staff Assessment.

The work plan is an adaptive management tool for effectively coordinating the development of reliability standards for the bulk power system, and will necessarily be revised from time to time as work progresses and priorities are adjusted. NERC will also use the work plan to report progress in accordance with the milestone schedule provided in the work plan. It should be noted that there is significant uncertainty regarding the technical outcomes of the standards to be addressed under the work plan, and that developing consensus standards requires substantial vetting of many issues. Some of the projects require technical studies, analysis, and

⁵⁸See North American Electric Reliability Council and North American Electric Reliability Corporation, *Petition for Approval of Reliability Standards* (Docket RM06-16-000), filed April 4, 2006, at pages 83-95.

⁵⁹NOPR, PP 6 and 97-99.

field testing to determine appropriate criteria and to validate them in a real setting. The work plan incorporates a reasonable time estimate for completion of each project, but with the degree of uncertainty that exists at the onset of developing a standard, some of the projects can be expected to be completed more quickly than projected and some will take more time.

NERC is pleased that the Commission did not propose specific deadlines in the NOPR for completing the directives to improve the standards, although there were several references to a one-year target for high priority standards.⁶⁰ NERC will strive to meet any priorities and targets established by the Commission in the final rule adopted in this proceeding. However, NERC requests that the Commission not state specific delivery dates, because developing consensus standards on complex technical matters within fixed time frames may not be realistic in all cases. NERC is committed to working expeditiously on these high priority projects and regularly reporting progress to the Commission. NERC's intent is to provide strong accountability for the revision and development of standards. NERC will report the reasons for any delays in the schedule and will work to ensure that no unnecessary delays occur due to lack of attention or effort.

NERC is concerned that the Commission suggests in the NOPR that it may direct some early modifications to the standards that appear to provide quick results.⁶¹ The impact of such an approach would be to delay work that is more important — because of the procedural requirements for the standards development process, making even simple changes can affect the ability to carry on work on more important projects. NERC can make such changes quickly for a particular standard if there are no other changes to that standard. However, the work plan

⁶⁰See, e.g., NOPR, P 85.

⁶¹NOPR, P 86.

contemplates that almost every standard is to be upgraded; modifying each standard in multiple steps would add significant delay to the overall work plan. Such an approach would also be discouraging to the industry, which has been working with the standards in a “band aid” mode for several years and is now anxiously anticipating getting the standards finalized and right for permanent use.

In addition to addressing the Commission’s directives in the final rulemaking, the 2007-2009 work plan will achieve the following objectives:

- Address remaining blackout recommendations requiring new or revised standards.
- Address prior comments from industry, Commission Staff and others suggesting improvements to each standard.
- Add specificity and clarity to the “Applicability” section of each standard to ensure that all owners, operators, and users that have a material impact on the reliability of the bulk power system can be clearly specified in the registration of responsible entities.
- Remove regional entities and regional reliability organizations from the standards and replace them with the applicable bulk power system owner, operator, or user functions.
- Address quality issues to ensure each standard has a clear statement of purpose, and has outcome-focused requirements that are clear and measurable.
- As needed, adjust the technical requirements and performance metrics of the standards to provide an adequate level of reliability of the bulk power system.
- Ensure measures and compliance elements are aligned to support the requirements within the standard and to follow definitions outlined in the standards template.
- Eliminate all “fill-in-the-blank” regional standards by replacing them with North American standards or, where appropriate, regional reliability standards.
- Reorganize the standards more logically based on topic and remove redundancies.
- Address other pending proposals for new standards.

NERC is pleased that the Commission has incorporated the work plan into this proceeding by noticing receipt of the plan and requesting industry comment by January 3, 2007,

concurrent with the closing of the NOPR comment period. NERC looks forward to addressing any comments the Commission may receive regarding the work plan.

J. References to Regional Reliability Organization in Standards

NERC understands the Commission's concern in the NOPR regarding regional reliability organizations and regional entities not being bulk power system owners, operators and users.⁶² NERC believes it can address the Commission's concern by removing references to regional reliability organizations and regional entities from the standards, with the exception of retaining the regional entities as the compliance enforcement authorities. This work is one of the items listed in the three-year work plan.

NERC requests that the Commission reconsider its proposal to direct that the ERO be listed as the Compliance Monitor (or Compliance Enforcement Authority to use the terminology employed in the NERC Uniform Compliance Monitoring and Enforcement Program document) in each reliability standard.⁶³ NERC believes it will be clearer to the bulk power system owners, operators, and users, and is consistent with the delegation agreements, to designate the regional entity as the Compliance Monitor (Compliance Enforcement Authority) in almost all standards. This would also be helpful to distinguish those few standards that are monitored directly by NERC, in which case NERC is designated as the Compliance Monitor (Compliance Enforcement Authority).

K. Reliability Functional Model

Because the NERC *Reliability Functional Model* is so closely linked with applicability of the reliability standards, the Commission proposes to require the ERO to submit any future

⁶²NOPR, PP 54-57.

⁶³NOPR, P 58.

modifications to the *Reliability Functional Model* that may affect the applicability of the reliability standards for Commission approval.⁶⁴ NERC understands the value in the Commission approving the *Reliability Functional Model* and any future changes to it.

NERC developed the *Reliability Functional Model* to support a reasonable and practical approach to understanding the applicability of a reliability standard. In the ERO Certification Order, the Commission, in the context of addressing NERC's proposed compliance registry, found that "NERC's functional approach provides a reasonable means to ensure that the proper entities are registered and that each knows which Commission-approved reliability standard(s) are applicable to it."⁶⁵ The Commission agreed with NERC that identifying specific functional categories of entities that comprise users, owners and operators of the bulk power system provides a useful level of detail and appears to be more practical than simply identifying an applicable entity as a user, owner or operator.⁶⁶

NERC cautions, however, that because the *Reliability Functional Model* represents a general, guiding framework for understanding responsibilities for reliability of the bulk power system, the Commission should not expect the *Reliability Functional Model* to become a precise prescription for reliability that is applicable in all organization frameworks. It is up to the stakeholders, through the standards process, to propose requirements that both achieve the reliability objectives and allow flexibility with regard to organizational structures and business models. Therefore, the Commission should not have the expectation, as it directs NERC to address the concerns of commenters, that every detail or ambiguity in the *Reliability Functional Model* can be conclusively resolved to arrive at a single, universally accepted organizational or

⁶⁴NOPR, P 48.

⁶⁵ERO Certification Order at P 689.

⁶⁶*Id.*

business model for the provision of a reliable bulk power system. Increasing the specificity too far can have the undesirable effect of dictating organizational structures and could exceed the scope of the ERO's mission to propose reliability standards.

NERC will submit any changes to the *Reliability Functional Model* to the Commission for approval as requested. Commission oversight will increase the value of this reference document as it is used to support the development of "Applicability" sections in the mandatory reliability standards. While the *Reliability Functional Model* will not function as a legally binding document like reliability standards, the Commission's approval of this reference document and of any changes to the *Reliability Functional Model* will support the development of high quality, enforceable and technically sufficient standards.

It must be clear, however, that the *Reliability Functional Model* is a guide and that the obligations of responsible entities are formally defined in the standards. The *Reliability Functional Model* was never intended to be normative. The development of the *Reliability Functional Model* did not go through the same due process as, and is not itself, a standard. Rather, it is a guiding reference that applies at a conceptual level. The details and mandatory requirements in practice are addressed in the standards and through registration where there is an opportunity to incorporate the facts of each case.

Some commenters suggest that any future modification to the *Reliability Functional Model* could affect the categories of entities that must comply with a particular reliability standard, without the benefit of the open, stakeholder process required when the ERO develops a modification to a reliability standard. NERC believes that is precisely why the *Reliability Functional Model* should not be used to establish obligations under Section 215 of the FPA or the Commission's regulations. All obligations should be established within Commission-

approved reliability standards, including the *Glossary of Terms Used in Reliability Standards*. To underscore this point, NERC believes that if the *Reliability Functional Model* had separate validity, it would have to be updated with each revision to standards. However, that is not the case, nor is it an appropriate use of the *Reliability Functional Model*. The standards speak for themselves and stand on their own with regard to the establishment of mandatory performance requirements for the reliability of the bulk power system. The *Reliability Functional Model* is a guide to understanding the functions and relationships upon which the standards and the compliance registry are developed and should not be viewed, even as it is approved by the Commission in the future, as defining requirements or the applicability of reliability standards. That task is reserved for the reliability standards and the associated *Glossary of Terms Used in Reliability Standards* that have been vetted through the standards process.

L. Identifying Applicable Bulk Power System Owners, Operators and Users in Standards

NERC concurs with the Commission's proposal to modify the text of Section 40.1(b) of its regulations⁶⁷ to require that each reliability standard identify the subset of users, owners, and operators to which that particular reliability standard applies.⁶⁸ NERC believes this requirement is currently established by the NERC Rules of Procedure and the *Reliability Standards Development Procedure*, which is Appendix 3A to the Rules of Procedure. The template for a reliability standard in the *Reliability Standards Development Procedure* specifies that each standard shall identify the bulk power system owners, operators, and users to which the standard applies:

⁶⁷18 C.F.R. §40.1(b).

⁶⁸NOPR, P 36.

Applicability — Clear identification of the functional classes of entities responsible for complying with the standard, noting any specific additions or exceptions. If not applicable to the entire North American bulk power system, then a clear identification of the portion of the bulk power system to which the standard applies, such as a region or interconnection. Any limitation on the applicability of the standard based on electric facility requirements should be described.

The NERC 2007 - 2009 standards work plan incorporates a task to enhance the applicability section of each standard as follows:

The term “owner, operator and users of the bulk power system” defines the statutory applicability of the reliability standards. NERC’s Reliability Functional Model further refines the set of owners, operators, and users by identifying categories of functions that entities perform so the applicability of each standard can be more clearly defined. Applicability is clear if a standard precisely states the applicability using the functions an entity performs. For example, “a generator operator shall verify the reactive power output capability of each generating unit” states clear applicability compared with a standard that states “a bulk power system user shall verify the reactive power output capability of each generating unit.” The use of the Reliability Functional Model in the standards narrows the applicability of the standard to a particular class or classes of bulk power system owners, operators, and users. A standard is more clearly enforceable when it narrows the applicability to a specific class of entities than if the standard simply references a wide range of entities, e.g., all bulk power system owners, operators, and users.

In determining the applicability of each standard and the requirements within a standard, the drafting team should follow the definitions provided in the NERC Glossary of Terms Used in Reliability Standards and should also be guided by the Reliability Functional Model.

In addition to applying definitions from the Reliability Functional Model, the revised standards must address more specific applicability criteria that identify only those entities and facilities that are material to bulk power system reliability with regard to the particular standard. For example, the drafting team may determine that only generators above 20 MW may be material with regard to a particular standard. The drafting team may choose to indicate a nominal voltage level or other criteria to indicate transmission facilities that are relevant to the reliability of the bulk power system in the context of a particular standard. The drafting team should consider other clarifications to applicability, such as

transmission operators that perform bulk power system switching or transmission owners with special protection systems.⁶⁹

M. Publication of Standards

NERC can successfully implement the Commission's proposal to modify Section 40.3 of its regulations⁷⁰ to require NERC to maintain in electronic format that is accessible from the Internet the complete set of reliability standards that have been developed by the ERO and approved by the Commission.⁷¹ NERC currently maintains a public website displaying the existing, voluntary reliability standards for access by users, owners and operators of the bulk power system. Once the proposed reliability standards are approved by the Commission, NERC will modify its website to distinguish which standards have been approved by the Commission for enforcement in the United States.

NERC also concurs with the Commission's proposal to modify Section 40.2(a) of its regulations⁷² and will provide to the Commission a copy of all approved reliability standards for posting in its Public Reference Room. NERC agrees with the Commission that neither the text nor the title of an approved reliability standard should be codified in the Commission's regulations. Rather, as indicated above, each applicable user, owner or operator of the bulk power system would be required to comply with Commission-approved reliability standards that are available in the Commission's Public Reference Room and on NERC's website.

⁶⁹*Informational Filing on the North American Electric Reliability Council and North American Electric Reliability Corporation's Reliability Standards Development Plan 2007-2009*, Docket RM06-16-000, filed December 1, 2006, at page 11.

⁷⁰18 C.F.R. §40.3.

⁷¹NOPR, PP 39-42.

⁷²18 C.F.R. §40.2. *See* NOPR at PP 37-38.

V. CONCLUSIONS AND ACTIONS REQUESTED OF THE COMMISSION

In conclusion, NERC applauds the actions proposed by the Commission in the NOPR as a significant step toward establishing mandatory reliability standards to ensure the reliability of the bulk power system. NERC has provided comments in support of the Commission's proposed actions and stands ready to assist the Commission in achieving this significant milestone.

In these comments, NERC has requested that the Commission take several specific actions in the final rule in this proceeding, which are summarized here:

1. The Commission should approve 83 of the 107 proposed reliability standards, including six of the eight regional differences, and the NERC *Glossary of Terms Used in Reliability Standards*.
2. The Commission should adopt NERC's modified proposal for a validation period for the application of financial penalties.
3. The Commission should refer the additional work on the standards that the NOPR specifies is needed to NERC to develop through the standards process. The Commission should direct that each comment and task specified by the Commission or submitted by a stakeholder in this NOPR proceeding should be addressed through the Commission-approved NERC *Reliability Standards Development Procedure*.
4. The Commission should frame directives to improve the standards in the form of an objective to be achieved or an issue or concern to be addressed in the standard. The Commission should not require specific language or a particular metric or solution to be used in the standard, because such a directive would circumvent the standards process and may result in less than optimal solutions or standards that adversely impact reliability through unintended consequences.
5. The Commission should adopt its proposed decision-making framework for the review and approval of proposed reliability standards.
6. The Commission should not attempt, in this rulemaking, to define and apply the full reach of its jurisdiction over the bulk power system under Section 215, but rather should proceed at this time in a manner consistent with the boundaries of the bulk electric system as historically understood in the electric industry.
7. The Commission should conclude that a joint action agency should be allowed to accept responsibilities for compliance with standards on behalf of its members, and should be allowed to divide the responsibilities for compliance with its members.
8. The Commission should hold the 24 remaining proposed standards (mainly fill-in-the-blank standards) as pending at the Commission, until the Commission receives the necessary additional information, and direct that applicable bulk power system

owners, operators and users continue to follow these 24 proposed standards as “good utility practice” pending further review and approval.

9. The Commission should allow NERC to continue to work on further development and improvement of reliability standards in accordance with the NERC *Reliability Standards Work Plan 2007 – 2009*.
10. The Commission should reconsider its proposal to direct that the ERO be listed as the Compliance Monitor (Compliance Enforcement Authority) in each reliability standard; instead, the regional entity should be designated as the Compliance Monitor (Compliance Enforcement Authority) in almost all standards.
11. The Commission should adopt its proposal that future changes to the NERC *Reliability Functional Model* that may affect the applicability of reliability standards should be submitted to the Commission for approval.
12. The Commission should adopt its proposal to modify 18 C.F.R. §40.1(b) to require that each reliability standards identify the subset of users, owners and operators of the bulk power system to which that particular reliability standard applies.
13. The Commission should adopt its proposals (i) to modify 18 C.F.R. §40.3 to require NERC to maintain in electronic format that is accessible from the Internet the complete set of reliability standards that have been developed by the ERO and approved by the Commission; and (ii) to modify 18 C.F.R. §40.2(a) to require NERC to provide a copy of all approved reliability standards for posting in the Commission’s Public Reference Room.

Respectfully submitted,

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ATTACHMENT A

NERC'S RESPONSES TO SPECIFIC QUESTIONS POSED BY THE COMMISSION IN THE NOPR

(52) In addition, the Commission solicits comment on whether, despite the existence of a threshold in a particular standard (e.g., generators with a nameplate rating of 20 MW or over), the ERO or a Regional Entity should be permitted to include an otherwise exempt facility, e.g., a 15 MW generator, on a facility-by-facility basis, if it determines that the facility is needed for Bulk-Power System reliability. If so, what if any process should the ERO or Regional Entity provide when making such a determination?

NERC Comment: NERC believes that the determination to include an otherwise exempt facility in the applicability of a standard must be made through the standards process and made a part of the reliability standard. For example, a standard would need to explicitly state that it applies to all generators 20 MW and greater, except where a smaller generator is determined by the Transmission Operator, Transmission Planning Authority, Resource Planning Authority, Planning Coordinator, or Reliability Coordinator to have a significant impact on the reliability of the bulk power system. To do otherwise would constitute the setting of requirements applicable to one or more facilities or entities without following the due process specified by law, the Commission's regulations, and NERC's rules of procedure.

(56) While it is important that the existing regional reliability organizations continue to fulfill their current roles during the transition to a regime where Reliability Standards are mandatory and enforceable, we do not understand why, once the transition is complete, a regional reliability organization should play a role separate from a Regional Entity whose function and responsibility is explicitly recognized by section 215 of the FPA. We seek comment on whether there is any need to maintain separate roles for regional reliability organizations with regard to establishing and enforcing Reliability Standards under section 215.

NERC Comment: NERC agrees with the Commission that a regional reliability organization performing functions on behalf of its members that are users, owners and operators of the Bulk-Power System does not itself create a legal basis for requiring regional reliability

organization to comply with Reliability Standards. To address this issue, NERC has proposed in its 2007–2009 standards development work plan to replace all requirements currently addressed to regional reliability organizations with requirements addressed to functional classes of bulk power system owners, operators, and users, such as planning coordinators, reliability coordinators, or resource planning authorities. However, NERC does believe that, in some cases, regional reliability organizations will continue to perform reliability assurance functions and provide member services beyond establishing and enforcing Reliability Standards in accordance with ERO delegation agreements. As such, there will continue to be a need to recognize the separate roles played by these regional reliability organizations.

(71) The Commission solicits comment on this interpretation and whether the Regional Entities should, in the future, play a role in either defining the facilities that are subject to a Reliability Standard or be allowed to determine an exception on a case-by-case basis.

NERC Comment: NERC’s response to this question has been provided in Section IV.F, Jurisdiction for Enforcement of Mandatory Reliability Standards.

(89) The Commission solicits comment on its prioritization proposal.

NERC Comment: As stated above in Section IV.I, Priorities for Standards Development, NERC has filed its *Reliability Standards Development Plan: 2007 – 2009* and the Commission has noticed the plan for comment in this proceeding. NERC has taken the Commission’s priorities into account in developing the work plan and made modifications accordingly. NERC believes the work plan appropriately reflects the prioritized and staggered approach recommended by the Commission. As stated previously, NERC believes it would be an inefficient use of resources and cause an unnecessary delay in other higher priority work to make quick changes to standards that appear to be relatively minor or “administrative” in nature. NERC’s work plan addresses a comprehensive set of improvements to each standard that exceed

those proposed by the Commission. It would be disruptive and cause significant delays to the overall work to divide the improvements within a standard into more than one project over differing time horizons. It is most efficient and effective to make all the proposed modifications to a standard in a single, coordinated effort.

(107) The Commission seeks comment on whether the retention time periods specified in various Standards proposed by NERC are sufficient to foster effective enforcement.¹ The Commission also seeks comment on what, if any, additional records retention requirements should be established for the proposed Reliability Standards.

NERC Comment: The compliance data retention requirement is a defined element in the reliability standard template. All data retention requirements, even those that are currently missing, will be reviewed and updated as part of the standards work plan. NERC requests that the Commission not attempt to fix specific data retention requirements on the basis of comments received during the NOPR proceeding. NERC would prefer that the Commission direct those comments and any goals the Commission may have with regard to data retention back to NERC for resolution through the standards development process.

(175) Therefore, the Commission invites comments whether BAL-003-0 appropriately addresses frequency bias setting during normal as well as emergency conditions and should a requirement be added for balancing authorities to calculate the frequency response necessary for reliability in each of the interconnections and identify a method of obtaining that frequency response from a combination of generation and load resources.

¹Notably, the Commission elsewhere imposes records retention requirements to facilitate effective enforcement. For example, in Order No. 677, FERC Stats. & Regs. 31,218 (2006), the Commission amended 18 CFR Parts 35 and 284 by extending certain sellers' record retention requirement from three to five years so as to bring the record retention requirement in line with the five year limitations period applicable where the Commission might seek to impose civil penalties for violations of the anti-manipulation rule, 18 CFR Part 1c. In the reliability context, the civil penalty statute of limitations period for both the Commission and ERO and regional entities will also be five years. See Order No. 672 at P 487.

NERC Comment: NERC notes that BAL-003-0 will be replaced soon by the new balancing standards that have recently undergone field testing and are now approaching ballot. NERC would prefer that the Commission direct the questions regarding frequency bias to NERC for consideration in the standards development process to determine if there are further improvements that can be made to the emerging new balancing standards. NERC cautions that frequency bias, which is a control parameter used in automatic generation control, is distinctly different from primary (*e.g.* governor) frequency response. The former is presently over-compensated across the interconnections and NERC is not aware of any balancing areas that are under-compensated. In fact, moving the requirement for the frequency bias setting to be actual bias may in fact reduce control performance. Primary (*e.g.* governor) frequency response is a different matter, as some studies have shown a gradual decline over several decades. NERC is addressing this issue through the introduction of a request for new standard on frequency response that is currently being evaluated.

(182 and 184) Although the WECC time error correction procedure is not before us for consideration, since the WECC procedure appears more effective, the Commission seeks comment whether it should require that NERC adopt Requirements similar to those in the WECC automatic time error correction procedure.

NERC Comment: NERC notes that the WECC procedure for time error correction is in lieu of an equivalent procedure contained within the business practices of the North American Energy Standards Board. In the development of the Version 0 reliability standards, the industry agreed that the portion now appearing in BAL-004-0 is necessary for reliability but the instructions for implementing a time error correction were more appropriately addressed as business practices.

(207) We invite comments as to whether accumulation of large amount of inadvertent imbalances is a concern to the industry and if so, options to address the accumulation.

NERC Comment: NERC reiterates that the performance requirements of relevance to reliability are addressed in BAL-001 and BAL-002, and will soon be addressed in the new standards proposed to replace them. However, should the Commission wish to direct consideration of limits on the amount of inadvertent imbalances, NERC requests such a directive be in the form of an issue to be resolved or reliability objective to be achieved, rather than a specific requirement to set a fixed limit on inadvertent accumulation. If such a directive is given, NERC will address it through its standards development process.

(247) Accordingly, we seek comment on the specific requirements or performance criteria for telecommunications facilities.

NERC Comment: NERC believes the question posed by the Commission should be considered in the review and upgrade of the standards, in accordance with the work plan, but should not be stated as a specific directive. Considering the Commission's question through the standards development process will allow a broader industry debate on redundancy and performance criteria for telecommunications facilities and avoid potential conflicts with requirements established in the telecommunications industry and by the Institute of Electrical and Electronics Engineers.

(248) Further, assuming we direct NERC to develop such specific requirements, the Commission also seeks comment whether the modified Reliability Standard should provide requirements that also consider the relative role of applicable entities.

NERC Comment: As stated previously in these comments, NERC believes there is a significant opportunity to be more specific regarding the applicability of each standard and has incorporated this issue into the standards work plan. Ultimately the applicability of a standard

will depend on (i) whether an entity is a bulk power system owner, operator, or user; (ii) for what function(s) the entity is registered for in the compliance registry; (iii) what role the entity has with regard to reliability of the bulk power system; and (iv) which facilities are relevant to the reliability of the bulk power system.

(335) Thus, the Commission believes that provision for backup capabilities should be an explicit Requirement. Such backup capability, at a minimum, must: (1) be independent of the primary control center; (2) be capable of operating for a prolonged period of time; and (3) provide for a minimum set of tools and facilities to replicate the critical reliability functions of the primary control center.² The Commission proposes that NERC modify the standard accordingly. In addition to the three capability requirements identified above, the Commission is interested in comments from industry concerning other specific capabilities.

NERC Comment: NERC believes that the three proposed requirements outlined by the Commission, as well as all others suggested by commenters, are best addressed through the standards development process.

(336) Further, the Commission proposes to direct NERC to modify the standard to include a Requirement that all reliability coordinators have full backup control centers since they are essential to Bulk-Power System reliability. In addition, the Commission is interested in comments on what other entities should have full backup centers for reliability such as balancing authorities and large transmission operators.

NERC Comment: NERC believes the proposed requirement outlined by the Commission, as well as all others suggested by commenters, are best addressed through the standards development process.

(381) In response to the USDA Forest Service's comments, we believe that any potential issues regarding minimum clearances on National Forest Service lands should be dealt with on a case-by-case basis. The Commission seeks comments whether another approach would be more appropriate.

²Facilities examples include telecommunications, backup power supplies, computer systems, and security systems.

NERC Comment: NERC agrees with the Commission's proposed approach to this issue.

(420) We believe that this Reliability Standard should, as a minimum, provide a framework for the transfer capability calculation methodology including data inputs, and modeling assumptions. We seek comments on the most efficient way to make the above information transparent for all participants.

NERC Comment: NERC believes that the transparency of such information is a business practice matter that should be addressed through the North American Energy Standards Board.

(656) We seek comments on how TRM is currently calculated and allocated across the paths, and what would be a recommended approach for the future.

NERC Comment: NERC is presently developing new standards that will document acceptable methods for the calculation of TRM and other transfer capability parameters and requests that all comments received on this matter be offered as input through the standards development process.

(685) The Commission seeks comment whether it is reasonable to permit entities to estimate dynamics data if they are unable to obtain unit specific data for any reason.

NERC Comment: NERC believes this standard can be made less ambiguous by specifying conditions under which it would be acceptable to use manufacturers' design data or to estimate the dynamic characteristics of a generating unit, versus completing other forms of verification. NERC will add this question to the list of issues considered in the upgrade of these standards.

(694) We also seek comments on any incompatibility between our requirements under FERC Form 715 and MOD-014-0.

NERC Comment: NERC has no specific comment, except to request that all comments from others be directed to the standards development process for consideration.

(778) The Commission solicits comments on the benefits and appropriateness of required “hands-on” training using simulators in dealing with system emergencies as identified in the training related recommendations made in studies of major outages.

NERC Comment: NERC believes there can be significant value gained by training operating personnel for emergencies under realistic conditions, such as can be achieved with training simulators. NERC requests that all comments from others on this matter be directed to the standards development process for consideration.

(1029) The Commission solicits comment on potentially overlapping matters addressed in Reliability Standards TOP-007-0 and TOP-008-0. The title and the purpose of TOP-007-0 state that it ensures that SOL and IROL violations are being reported, but we believe that only Requirement R1 relates to reporting. The remaining requirements in TOP-007-0, R2, R3 and R4, go beyond reporting of violations and provide that the transmission operator will take actions on its own or as directed by the reliability coordinator. We observe that proposed Reliability Standard TOP-008-0 addresses the same subject. In fact, Requirement R1 of TOP-008-0 is similar to Requirement R3 of TOP-007-0. It appears that both Reliability Standards deal with the same subject, but more emphasis is placed on reporting in TOP-007-0. If two separate Reliability Standards address similar topics, the purpose statement should succinctly capture the intent of each Reliability Standard.

NERC Comment: NERC recognizes there may be some redundancies and awkward relationships among the various standards, which are the result of the translation from the previous operating policies where each policy was treated as a separate set of concepts. The 2007–2009 standards work plan filed with the Commission addresses work to be done to eliminate redundancies and better organize the requirements across standards so as to provide a more logical presentation to users of the standards.

(1060) We seek comments on whether transmission planners and planning authorities are currently able to obtain and validate resource information on new generation and retirements for assessments over the ten year planning horizon. If transmission planners and planning authorities currently experience difficulty obtaining this information, how should this potential information gap be addressed?

NERC Comment: NERC and the regional reliability organizations have generally not had problems obtaining the data and information required for reliability assessments. While some of these data and information requirements are currently included in standards that apply to regional reliability organizations, NERC believes that, given its authority and responsibility as the ERO, it will be successful in obtaining all the data and information it needs to conduct reliability assessments by requesting these data and information through the regional reliability organizations without the need to include these requirements in standards. Regional reliability organizations will, in turn, request all necessary data and information from their members, relying on the authority of the ERO to require the submission of these data and information in a timely fashion. In the event that a regional reliability organization encounters difficulty or resistance in obtaining any ERO-requested data or information from a bulk power system user, owner, or operator within its footprint, the ERO will contact the entity directly. If the entity still refuses to provide the requested data, the ERO will turn to the Commission for its assistance. Because of the short-term planning horizon that is evident today in some areas, information on planned resources and transmission will be very general.

(1099) Category C3 of TPL-003-0 involves a situation in which two single contingencies occur, with manual system adjustments permitted after the first contingency to prepare for the next one. Proposed Reliability Standard IRO-005-0 requires that the manual system adjustments be implemented as soon as possible and no later than 30 minutes after the first contingency has occurred. Should the second contingency occur before the manual system adjustments can be completed, the local area and potentially the system would be exposed to risk of cascading outages. Recognizing this risk and its potential consequences, some entities plan and operate their systems so that they are able to withstand the simultaneous occurrence of the two contingencies for major load pockets.³ The Commission solicits comments on the value and appropriateness of including such a requirement in TPL-003-0.

³Two entities are Consolidated Edison Company of New York and Public Service Electric and Gas.

NERC Comment: This matter is an issue recognized as needing clarification in the upgrade work to the TPL standards. NERC welcomes comments from others for consideration in the development of these revisions in accordance with the standards development work plan. Also, NERC recently approved several new FAC standards that address system limits based on multiple contingencies where stability of the grid is affected. (These standards are part of a separate Commission docket.) Work on the TPL standards will take these new FAC standards into account. NERC is also developing a proposal for a transmission availability data system that will provide a quantitative (probabilistic) basis for judging the likelihood of various multi-element contingencies, which will be helpful in determining

(1144) The Commission is interested in comments concerning NERC's assertion that all load serving entities are also purchasing-selling entities.

NERC Comment: NERC has no further comment on this matter but would welcome consideration of comments from others in the review and upgrade of the standards on voltage control and reactive power.

(1146) We are also interested in comments on the acceptable ranges of net power factor range at the interface that the load serving entities receive service from the Bulk-Power System during normal and extreme load conditions.

NERC Comment: NERC would be interested in the comments received regarding acceptable ranges for load power factors for consideration in the review and upgrade of the standards on voltage control and reactive power.



Statement of Compliance Registry Criteria (Revision 2)

Summary

Since becoming the Electric Reliability Organization (ERO), NERC has initiated a program to identify candidate organizations for its compliance registry. The program, conducted by NERC and the current NERC regional councils, will also confirm the functions and information now on file for currently-registered organizations.

This document describes how NERC will identify organizations — particularly smaller or relatively (electrically) isolated entities — that may be candidates for registration.

Entities responsible for funding NERC and the regions have been identified in the budget documents filed with FERC. This document does not address that issue.

Background

In 2005, NERC and the regional councils conducted a voluntary organization registration program limited to balancing authorities, planning authorities, regional reliability organizations, reliability coordinators, transmission operators, and transmission planners. The list of the entities that were registered constitutes what NERC considered at that time as its compliance registry.

NERC has recently initiated a broader program to identify additional organizations potentially eligible to be included in the registry and to confirm the information of organizations currently on file. NERC believes this is a prudent activity at this time because:

- As of July 20, 2006, NERC was certified as the ERO created for the U.S. by the Energy Policy Act of 2005 (EPAct) and FERC Order 672. NERC has also filed with Canadian authorities for similar recognition in their respective jurisdictions.
- FERC's Order 672 directs that owners, operators and users of the bulk power system shall be registered with the ERO and its designees (i.e., regional entities with delegated authority – regional entities).
- As the ERO, NERC has also filed its current reliability standards with FERC and with Canadian authorities. When these are substantially accepted and approved by FERC and appropriate Canadian authorities, they will no longer be voluntary, and organizations that do not fully comply with them may face penalties or other sanctions determined and levied by NERC or the regional entities.
- NERC's reliability standards include compliance requirements for additional reliability function types beyond the six types registered by earlier registration programs.

- Based on selection as the ERO, the extension and expansion of NERC's current registration program¹ is the means by which NERC and the regional entities will plan, manage and execute reliability standard compliance oversight of owners, operators, and users of the bulk power system.
- Organizations listed in the compliance registry are subject to NERC's and the regional entities' compliance and enforcement programs.

Statement of Issue

As the ERO, NERC intends to comprehensively and thoroughly protect the reliability of the grid. To support this NERC will include in its compliance registry each entity that it concludes is needed to accomplish that goal. However, the potential costs and effort of ensuring that every organization potentially within the scope of "owner, operator, and user of the bulk power system" becomes registered while ignoring their impact upon reliability, might be disproportionate to the improvement in reliability that would reasonably be anticipated from doing so.

Prior to the date that the FERC approved Reliability Standards become enforceable, NERC wishes to identify as many organizations as possible that may need to be listed in its compliance registry. Identifying these organizations is necessary and prudent at this time for the purpose of determining resource needs, both at the NERC and regional entity level, and to begin the process of communication with these entities regarding their potential responsibilities and obligations. NERC and the regional entities believe that primary candidate entities can be identified at this time, while other entities can be identified later, as and when needed. Selection principles and criteria for the identification of these initial entities are required. The first draft of this list will become the "Initial Non-binding Organization Registration List". Once FERC makes the approved Reliability Standards enforceable, this list, and any changes made to the list up to that time, will become the NERC Compliance Registry.

Resolution

NERC and the regional entities have identified two principles which they believe are key to the entity selection process. These are:

1. There needs to be consistency between regions (i.e., regional entity system footprints) and across the continent with respect to which entities are registered, and;
2. Any entity reasonably deemed material to the reliability of the bulk power system should be registered, irrespective of other considerations.

To address the second principle the regional reliability councils, working with NERC, will identify and register any entity that they deem material to the reliability of the bulk power system.

In order to promote consistency, NERC, the regional reliability councils and, once they are established, the regional entities and cross-border regional entities (CBREs), intend to use the following criteria as the basis for determining whether particular entities should be identified as candidates for registration. All organizations meeting or exceeding the criteria will be identified as candidates.

¹ See: NERC ERO Application; Exhibit C; Section 500 – Organization Registration and Certification.

The following four groups of criteria (Sections I-IV) plus the statement in Section V will provide guidance regarding an entity’s registration status:

- Section I determines if the entity is an owner, operator, or user of the BPS and, hence, a candidate for organization registration. Entities not meeting these criteria are exempt from registration and do not need to be considered against criteria in II or III.
- Section II uses NERC’s current functional type definitions to provide an initial determination of which functional entity types the entity should be registered for.
- Section III lists the criteria regarding smaller entities that NERC has filed with FERC; they can be used to deselect entities otherwise selected pursuant to criteria I and categorized via criteria II.
- Section IV lists the criteria for Joint Action Agency and Joint Action Agency Member Registration

I. Entities meeting one or more of the following criteria ² are (i) owners, operators, and users of the bulk power system and (ii) candidates for registration:

All entities meeting the criteria established by NERC’s approved definition of bulk electric system:

“As defined by the Regional Reliability Organization, the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition.”³

II. Registration candidate entities identified in Part I above will be categorized as registerable into one or more appropriate functional entity types pursuant to review of the entity against the following function type definitions:

Function Type	Acronym	Definition/Discussion
Balancing Authority	BA	The responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a BA area, and supports Interconnection frequency in real-time.
Distribution Provider	DP	Provides and operates the “wires” between the transmission system and the end-use customer. For those end-use customers who are served at transmission voltages, the Transmission Owner also serves as the DP. Thus, the DP is not defined by a specific voltage, but rather as performing the Distribution function at any

² The definitions of “Bulk Power System” and “User, Owner, and Operator” are being considered in FERC’s pending rulemaking on NERC’s reliability standards. Depending on the outcome of the rulemaking, these criteria may need to be adjusted.

³ To the extent radial facilities fall under the applicability of approved reliability standards (e.g. vegetation management, etc.), owners of these facilities should be included in the registry.

Function Type	Acronym	Definition/Discussion
		voltage.
Generator Operator	GOP	The entity that operates generating unit(s) and performs the functions of supplying energy and interconnected operations services.
Generator Owner	GO	Entity that owns and maintains generating units.
Load-Serving Entity	LSE	Secures energy and transmission service (and related interconnected operations services) to serve the electrical demand and energy requirements of its end-use customers.
Planning Authority	PA	The responsible entity that coordinates and integrates transmission facility and service plans, resource plans, and protection systems.
Purchasing-Selling Entity	PSE	The entity that purchases or sells and takes title to energy, capacity, and interconnected operations services. PSE may be affiliated or unaffiliated merchants and may or may not own generating facilities.
Reliability Coordinator	RC	The entity that is the highest level of authority who is responsible for the reliable operation of the bulk power system, has the wide area view of the bulk power system, and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations in both next-day analysis and real-time operations. The RC has the purview that is broad enough to enable the calculation of interconnection reliability operating limits, which may be based on the operating parameters of transmission systems beyond any Transmission Operator's vision.
Reserve Sharing Group	RSG	A group whose members consist of two or more Balancing Authorities that collectively maintain, allocate, and supply operating reserves required for each BA's use in recovering from contingencies within the group. Scheduling energy from an adjacent BA to aid recovery need not constitute reserve sharing provided the transaction is ramped in over a period the supplying party could reasonably be expected to load generation in (e.g., ten minutes). If the transaction is ramped in quicker, (e.g., between zero and ten minutes) then, for the purposes of disturbance control performance, the

Function Type	Acronym	Definition/Discussion
		areas become a RSG.
Resource Planner	RP	The entity that develops a long-term (generally one year and beyond) plan for the resource adequacy of specific loads (customer demand and energy requirements) within a PA area.
Transmission Owner	TO	The entity that owns and maintains transmission facilities.
Transmission Operator	TOP	The entity responsible for the reliability of its local transmission system and operates or directs the operations of the transmission facilities.
Transmission Planner	TP	The entity that develops a long-term (generally one year and beyond) plan for the reliability (adequacy) of the interconnected bulk electric transmission systems within its portion of the PA area.
Transmission Service Provider	TSP	The entity that administers the transmission tariff and provides transmission service to transmission customers under applicable transmission service agreements.

III. Registration candidate entities categorized in Part II, above, as being registerable as an LSE, DP, GO, GOP or TOP may be removed from the registration candidates list if they do not meet the following criteria:

III(a) Load-serving Entity:

- III.a.1 Load-serving entity peak load is > 25 MW and is directly connected to the bulk power (>100 kV) system, or;
- III.a.2 Load-serving entity is designated as the responsible entity for facilities that are part of a required underfrequency load shedding (UFLS) program designed, installed, and operated for the protection of the bulk power system, or;
- III.a.3 Load-serving entity is designated as the responsible entity for facilities that are part of a required undervoltage load shedding (UVLS) program designed, installed, and operated for the protection of the bulk power system.

[Exclusion: A load-serving entity will not be registered based on these criteria if responsibility for compliance with reliability standards has been transferred by acceptable contract to another entity, G&T cooperative or municipal joint action agency.]

III(b) Distribution Provider:

- III.b.1 Distribution provider system serving >25 MW of peak load that is directly connected to the bulk power system.

[Exclusion: A distribution provider will not be registered based on this criterion if responsibility for data sharing and reporting to NERC and regional entities have been transferred by acceptable contract to another entity, such as an load-serving entity, balancing authority, transmission operator, G&T cooperative, or municipal joint action agency.]

Or;

- III.b.2 Distribution provider is the responsible entity that owns, controls, or operates facilities that are part of any of the following protection systems or programs designed, installed, and operated for the protection of the bulk power system:

- a required UFLS program.
- a required UVLS program.
- a required special protection system.
- a transmission protection system.

[Exclusion: A distribution provider will not be registered based on these criteria if effective control and responsibility for maintenance and operation have been transferred by acceptable contract to another entity, such as an load-serving entity, balancing authority, transmission operator, G&T cooperative, or municipal joint action agency.]

III(c) Generator Owner/Operator:

- III.c.1 Individual generating unit > 20 MVA (gross nameplate rating) and is directly connected to the bulk power system, or;
- III.c.2 Generating plant/facility > 75 MVA (gross aggregate nameplate rating) or when the entity has responsibility for any facility consisting of one or more units that are connected to the bulk power system at a common bus with total generation above 75 MVA gross nameplate rating, or;
- III.c.3 Any generator, regardless of size, that is a blackstart unit material to and designated as part of a transmission operator entity's restoration plan, or;
- III.c.4 Any generator, regardless of size, that is material to the reliability of the bulk power system.

[Exclusion: A generator owner/operator will not be registered based on these criteria if effective control and responsibility for maintenance and operation of the generator/generation have been transferred by acceptable contract to another entity, such as a load-serving entity, G&T cooperative or municipal joint action agency.]

III(d) Transmission Owner:

- III.d.1 An entity that owns an integrated transmission element associated with the bulk power system 100 kV and above, or lower voltage as defined by the

regional entity/CBRE necessary to provide for the reliable operation of the interconnected transmission grid; or

III.d.2 An entity that owns a transmission element below 100 kV associated with a facility that is included on a critical facilities list that is defined by the regional entity/CBRE, or;

III.d.3 Ownership of radial transmission facilities serving load centers and transmission connecting generation that supplies electric energy to the system where NERC Reliability Standards are applicable (e.g. vegetation management, system protection maintenance and testing) are included in this definition.

[Exclusion: A transmission owner will not be registered based on these criteria if responsibility for maintenance and operation of the transmission elements has been transferred by acceptable contract to another entity, such as a load-serving entity, G&T cooperative or municipal joint action agency.]

IV. Joint Action Agency or Similar Organization and applicable Member Registration.

IV(a) In its Rules of Procedure, NERC provided for the ability to register Joint Action Agencies and Generation and Transmission Cooperatives on behalf of its members. This section provides additional guidance for registration of Joint Action Agencies, Generation and Transmission Cooperatives and similar organizations performing functions on behalf of members of the organization.

IV(b) Joint Action Agency (JAA) (or Similar Organization) Registration

IV.b.1 A JAA (or similar organization) may register as a Registered Entity (see Registered Entity Requirements below) on behalf of one or more its members. A JAA registering on behalf of a member must accept compliance reporting responsibility for all the Reliability Standards applicable to the functions that member(s) performs. The JAA shall provide the Regional Entity an annual "Agency Member Registry" which shall identify all members for which the JAA has registered, the type(s) of functions performed by these members, and the Reliability Standards for which the Joint Action Agency assumes responsibility

IV(c) Individual Member Registration

IV.c.1 A member of a JAA may choose to register as a separate Registered Entity (see Registered Entity Requirements below) and assume compliance reporting responsibility for the Reliability Standards required of the function for which they are registering. Any JAA members who register as Individual Members shall inform the JAA and the applicable Regional Entity that they have registered as a Registered Entity.

IV(d) Dual Registration

IV.d.1 Both the JAA and its member may choose to register for the same function as a Registered Entity. For such dual registration, NERC will not make any assumptions regarding compliance responsibility for a particular standard or requirement of a standard. A JAA and its member(s) in this

case should have written agreements that specify which functional operations, duties, obligations, standards, or even individual standard requirements each is responsible for when sanctions are applied due to a violation. NERC or an approved Regional Entity will request the appropriate compliance reporting information from both the JAA and its members. The JAA and its member must determine the appropriate entity to provide the necessary compliance information including identifying and recommending the appropriate location for any on-site compliance audits. In the event no response is received, both the JAA and its members will be found in violation of the standard or requirement. In the case of a violation identified during a compliance audit of dual registered entities (JAA and Member), the entity (JAA or member) who is receives the violation will be identified in the violation report and the entity (JAA or Member) who is responsible per the agreement(s) between the two will receive the sanction or penalty.

IV(e) Registered Entity Compliance Reporting Requirements

IV.e.1 An individual member Registered Entity or a JAA on behalf of its members who have registered under the JAA is responsible for submitting the documentation needed by the Regional Entity to assess compliance with the Reliability Standards. The Registered Entity is responsible for submitting all data (such as periodic reporting, self certification etc.) as needed by the Regional Entity in support of the Annual Compliance Monitoring and Enforcement Program. On-site compliance audits of the Registered Entity will be determined by NERC and the Regional Entity.

IV.e.2 For confirmed violations with Reliability Standards, the Regional Entity shall issue sanction and penalties (see Note 1 below) directly to the Registered Entity. If the Registered Entity is a Joint Action Agency, the Joint Action Agency shall have its own process and mechanism for collection of sanctions and penalties from its members for which the Joint Action Agency has assumed registration.

Note 1. As discussed in the NERC Sanctions Guidelines Section 3.11, for a violation that is attributable to a member(s) that is registered under a Joint Action Agency, the penalty or sanction determined for the violation will bear reasonable relation to the violation as incurred by that member(s) and not the JAA.

V. If NERC or a regional entity encounters an organization that is not listed in the compliance registry, but which should be subject to the reliability standards, NERC or the regional entity is obligated and will add that organization to the registry, subject to that organization's right to challenge.

Notes to the above Criteria

1. The above are general criteria only. The regional entity or CBRE considering registration of an organization not meeting (e.g., smaller in size than) the criteria may propose registration of that organization if the regional entity or CBRE believes and can

*reasonably demonstrate*⁴ that the organization is a bulk power system owner, or operates, or uses bulk power system assets, and is material to the reliability of the bulk power system. Similarly, the regional entity or CBRE considering not registering an organization that meets the criteria may propose that the organization not be registered if the regional entity or CBRE believes and can reasonably demonstrate that the bulk power system owner, operator, or user does not have a material impact on the reliability of the bulk power system.

2. Organizations may challenge their registration within the compliance registry. Organizations not identified using the criteria may be nominated for registration. Organizations not identified using the criteria, but wishing to be registered, may request that they be registered. For further information refer to: NERC ERO Application; Exhibit C; Section 500 – Organization Registration and Certification; Part 1.3.
3. Distribution providers and load-serving entities meeting the criteria above may be exempt from registration if another entity (such as (i) a generation or transmission cooperative, or similar joint-action agency, or (ii) another balancing authority or transmission operator) is registered in lieu of each such load-serving entity or distribution provider registering individually, provided the entity registered accepts the reliability responsibilities through agreement or other mechanisms.
4. A given entity may be part of a class of entities that individually are unlikely to have a material impact on the reliability of the bulk power system, but that in aggregate could have such an impact. This is adequate grounds for registration of the entity and other entities in the class, irrespective of other considerations.
5. Organizations will be responsible to register and to comply with approved reliability standards to the extent that they are owners, operators, and users of the bulk power system. NERC's ERO application includes implicit proposal of the following principles regarding registration:
 - Organizations listed in the compliance registry are responsible and will be monitored, etc, for complying with approved mandatory reliability standards; NERC and regional entities will not monitor nor hold those not in the registry responsible for compliance with the standards.
 - Required compliance by a given organization to the standards will begin the later of (i) certification of NERC as the ERO; (ii) inclusion of that organization in the compliance registry, and (iii) approval by the appropriate governmental authority of mandatory reliability standards.

If NERC or a regional entity encounters an organization that is not listed in the compliance registry, but which should be subject to the reliability standards, NERC or the regional entity is obligated and will add that organization to the registry, subject to that organization's right to challenge.

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⁴ The reasonableness of any such demonstration will be subject to review and remand by NERC itself, or by any agency having regulatory or statutory oversight of NERC as the ERO (e.g., FERC or appropriate Canadian authorities).