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NORTH AMERICAN ELECTRIC RELIABILITY COUNCIL

Princeton Forrestal Village, 116-390 Village Boulevard, Princeton, New Jersey 08540-5731

July 22, 2002

Mr. Keith M. Sappenfield, II
Regional Director–US Regulatory Affairs
EnCana Power
1200 Smith Street, Suite 900
Houston, Texas 77002

Dear Mr. Sappenfield, II:

Response to Comments ANSI Accreditation Application

We have reviewed the comments you provided on the North American Electric Reliability Council (NERC) application for accreditation as a standards developer by the American National Standards Institute (ANSI). Our responses to your comments are enclosed.

We note that many of your comments are similar to issues raised by you, and a few others, during either the course of the development of the NERC standards process or in the industry forums that discussed the standards development responsibilities of industry organizations. NERC has responded with the rationale regarding why the NERC standards process was developed and the industry consensus upon which it is based. We believe it provides an effective consensus process that is fair, open, balanced, and inclusive of all participants.

The industry is embracing the new standards development process as evident by the positive and interested discussions, workshops, and committee meetings. Equally exciting is the number of persons volunteering their support and participation. In just three months, over 400 persons have registered for the Registered Ballot Body, individuals who represent all the segments of the industry. Of these, 266 have already chosen one of the nine industry segments in which they will participate.

We request that you join in supporting our application for ANSI accreditation as a standards developer.

Sincerely,


Enclosure

EnCana Power's Comments

Application for Accreditation and Proposed Operating Procedures submitted by the North American Electric Reliability Council (NERC). Comment deadline: July 7, 2002

EnCana Power (ECP) hereby submits comments on the above application by NERC. These comments include issues, concerns and suggested revisions to NERC Operating Procedures. NERC's Application for ANSI accreditation and Proposed Operating Procedures (Application) should be revised to address all issues and concerns identified by all commenting parties below before accreditation by ANSI is granted.

ECP's issues and concerns and ECP's suggested revisions are listed below by general issue topics.

1. NERC's proposed Operating Procedures for development of Organization Standards is not "open" to all potential interested persons.
 - A. NERC's proposed Segment Qualification Guidelines contained in the Registered Ballot Body (Appendix B on pages 33 and 34 of Attachment B to the Application) specifically exclude certain parties from voting in any industry segment for approval of an Organization Standard. The applicable provision on page 34 states:

*"Vendors, consultants, prime contractors of generation or transmission facilities, academics, and others may participate actively as standards are developed, but **will not be permitted to be voting members of any segment.**"* (emphasis added)

This provision will presumably also exclude trade organizations and labor union representatives from being voting members of any segment.On May 16, 2002 the FERC issued its latest order (99FERC 61,171 (2002)) related to the organization to develop business practice standards communication protocols. The order under paragraph 3 on page 2 states:

*"The industry was then asked to develop a similar organization, **open to all industry members**, with a standards development process, including the drafting stage, that must be: open to all; ensure due process; include an appeal process; and ensure that standards are developed by the industry through a consensus process with a balance of interests."* (emphasis added)

Any ANSI accredited processes should have no stricter requirements for interested persons than recommended by the FERC on the make up of an organization to develop reliability standards. Specifically the process should be "open to all industry members" without limitations on a person's interest.

Suggested Revision

Revised Operating Procedures to delete the exclusionary provision from the Segment Qualifications and permit "all" interested parties to self-select the segment that they feel their interest is the most closely aligned.

RESPONSE: The commenter references FERC's May 16, 2002 Order and adds "Any ANSI accredited processes should have no stricter requirements for interested persons than recommended by the FERC on the make up of an organization to develop reliability standards."

First, we believe the commenter misread the FERC Order, which does not recommend requirements for the make up of an organization to develop **reliability standards**, but rather sets out FERC's requirements for an organization to develop **business practice standards and communications protocols**.

Second, NERC determined that for voting on approval of reliability standards it was appropriate to include only those with a direct and material interest in those standards; i.e., direct industry participants that would be accountable for complying with the standards (users and operators of the bulk electric system) and those that would be directly affected by the reliability of that system (customers).

Third, NERC did agree that vendors, consultants, prime contractors of generation or transmission facilities, and academics could participate in all meetings and submit comments on proposed standards, and believes this to be a meaningful and appropriate way for these entities to participate.

Also, while there is no Industry Segment specifically defined for vendors, consultants, and prime contractors of generation or transmission facilities, these types of entities may register to join the Ballot Body in the Small Customer Segment.

Finally, NERC's procedures do permit agents or trade associations to represent groups of large end-use customers.

NERC notes that the Wholesale Electric Quadrant of NAESB, whose potential participants just reached tentative agreement on quadrant membership guidelines, did not include a specific segment for vendors or consultants.

- B. NERC's proposed Operating Procedures contains several versions of the phrases "directly and materially affected", "directly and materially affected by the reliability of North American bulk electric systems", "directly and materially affected interests" or "directly and materially affected by and existing standard". These phrases limit the persons that may submit a SAR, appeal a decision related to a SAR or join an industry segment. If the process is to be open and inclusive, "all" interested persons should be permitted to participate in the Operating Procedures without limitation on the level of such participation.

Suggested Revision

Revised Operating Procedures to delete the above limiting phrases where ever found in the Application and process text.

RESPONSE: See response to comment 1.A.

2. **NERC's proposed Operating Procedures for approval of an Organization Standard is not "balanced" among industry segments.**

A. Ballot Body and Voting Pools (Step 9 of Organization Standards Consensus Development Process)

The Ballot Body and Voting Pools provide for voting by all "Registered Members of the Ballot Pool" using the NERC Weighted Segment Voting Model (Voting Calculation Examples at Appendix C on page 36 of Attachment B to the Application). The Weighted Segment Voting Model as proposed by ANSI will permit a "Tyranny of the Majority" to be exercised.

For example, given the Example 1 as set forth on page 36, if Segments 1-4 and 9 voted 100% in the affirmative, Segment 5 voted 100% in the negative and Segments 7 & 8 abstained or did not vote per the original Application Example 1, the percent ballots returned would remain the same at 96.6% and the Weighted Segment Vote would be 85.7%. The Organization Standards subject to the vote would pass even though Segment 5 (Generators) voted unanimous against the Organization Standards and two Segments did not vote at all.

Further, even if either one of the Segments 7 or 8 voted 100% against the Organization Standards the percent return ballots would be acceptable (>75%) and the Weighted Segment Vote would be 75%. Again, the Organization Standard subject to the vote would pass (>.667) even though 2 Segments vote unanimous against the Organization Standards.

The Weighted Segment Voting Model cannot be considered "balanced" if the votes of one or two segment can be negated by the votes of the other segments.

Suggested Revision

Revised the Weighted Segment Voting Model to provide for a minimum affirmative vote from each segment to approve an Organization Standard. It is suggest that the minimum should be 40% to be consistent with other similar voting procedures used by energy industry standards organizations.

RESPONSE: It appears the commenter has incorrectly evaluated the Weighted-Segment Voting Model, so before responding to the issue of whether a single segment should be able to block adoption of a standard, as the commenter seems to favor, we seek to correct some of the arithmetic in the commenter's modified example. The commenter states, "if Segments 1-4 and 9 voted 100% in the affirmative, Segment 5 voted 100% in the negative and Segments 7 & 8 abstained or did not vote, per Example 1 of NERC's Application, the percent ballots returned would remain the same at 96.6% and the Weighted Segment Vote would be 85.7%." Actually, in the commenter's first example, the weighted vote would calculate to 77.1%, not 85.7%. (Assume that Segment 6 votes 60% in favor and Segment 9 votes 80% in favor, as was the case in Example 1 in the Application. Commenter did not identify how these segments vote in his example.) In commenter's second example, with either Segment 7 or 8 voting unanimously against the standard, and all other segments voting the same as in his first example, the weighted vote would be 67.5%, not 75%.

As to the substance of the comment, it appears that the commenter sought to create examples, notwithstanding their arithmetic errors and very hypothetical nature, to support a case that NERC's Weighted-Segment Voting is flawed because it does not allow one segment, or even two segments, to block adoption of a standard.

NERC submits that a voting system for the development of mandatory, enforceable reliability standards cannot permit one segment to block adoption of a standard that is otherwise supported by a strong majority (67% weighted vote) of the industry. Unlike the voting on development of business practice standards, with which the commenter is most familiar because of his long-standing association with GISB (now NAESB), a process that would allow one segment to block any reliability standard that its members oppose would result in a set of weak, least-common denominator standards.

In the NERC Weighted-Segment Voting Model, all members of the Registered Ballot Body have the right to vote, and there are no segment minimums. As of July 22, NERC has over 260 entities registered overall, and over 50 in the Generator segment alone, with more registrations coming in every day.

The presumption that ALL entities in a given segment vote in the negative on a given standard is rather difficult to imagine, unless, of course, there is a conscious attempt by participants in that segment to block a standard that has already been through the NERC SAR process to determine its need, and several drafts and comment periods for industry comment on the draft standard. The "one segment can block" provision in the NAESB standards development process was one of the reasons NERC rejected the NAESB process as a possible candidate when it sought to revise its standards development process. Instead, NERC opted for the Weighted-Segment Voting Model that has been used successfully in PJM LLC (Pennsylvania-New Jersey-Maryland Limited Liability Corporation).

B. Standards Authorization Committee (SAC)

The Operating Procedures provide for two members from each industry segment to be members of the SAC. Two members from each industry segment are not sufficient to represent all the different geographic and entity interest from each industry segment. For example, for each industry segment there should be sufficient numbers to have representatives from each significant part of the North American bulk electric systems (East, West, ERCOT and perhaps Canada and Mexico). Likewise, for each industry segment there should be sufficient numbers to have a representative from each type of legal entity that could be expected to participate; independent, transmission affiliated, and public and non-profit. All interested parties in an industry segment should be represented since the SAC is the gatekeeper to the process to develop or change an Organization Standard.

Suggested Revision

Revised Operating Procedures to increase the SAC segment members from two to four or more.

RESPONSE: The commenter states, "Two members from each industry segment are not sufficient to represent all the different geographic and entity interest from each industry segment." In the NERC process, the SAC does not vote on approval of standards. As indicated on page 9 of the Organization Standards Process Manual, the SAC will manage the standards development process. It will be the members of the Registered Ballot Body and Standards Ballot Pools that actually vote on the standards that are developed in the process.

The commenter describes the role of the SAC as the "gatekeeper" to the process. That description is inaccurate and gives the wrong impression of the role of the SAC. The real drivers of the NERC process are all the industry participants that comment on SARs and draft standards. The SAC is there to see that the process is carried out fairly and effectively.

The SAC does have a great deal of authority, but the Standards Development Process includes checks and balances to ensure that the authority is used as intended. As an example — the SAC does have the authority to reject a proposed SAR, but only if that SAR does not meet published criteria. If the SAC rejects a SAR, the reasons for the rejection must be publicly posted. The requestor, as well as any other adversely affected party, may use the appeals process if he/she believes the rejection was unwarranted.

Having said this, the SAC, once it is formed, may determine that its representation needs to be expanded. If so, they could recommend such changes and these would be addressed through the revision process in the Organization Standards Process Manual.

3. **NERC's proposed Operating Procedures for approval of an Organization Standard does not follow "due process" principles.**

Standards Authorization Committee (SAC) review of a Standards Action Request (SAR) (Step 1 – Request to Develop a Standard or Revise and Existing Standard on page 12 of Attachment B to the Application) does not provide for a voting process on the acceptance or rejection of a SAR. A SAR could be rejected by the SAC without a requestor having the ability to know to what extent and which members of the SAC rejected the SAR.

Suggested Revision

Revised Operating Procedures for a formal public and recorded vote of the SAC on each SAR. The recorded vote could be either a simple majority vote (50% + 1) or a supermajority vote (>67%). It is further suggested that a supermajority vote of the SAC with a minimum of one vote from each industry segment be required for acceptance of a SAR. This level of voting will insure that a SAR will not be accepted unless it is found by all industry segments to be within the scope of the NERC's reliability and market interface principles.

RESPONSE: NERC's "interim" SAC has been operating under a draft rule that requires all actions be passed by a 2/3 majority of the voting members of the SAC. All voting records have been publicly posted as required by the Organization Standards Process Manual. A SAC Scope document that includes these rules is in the NERC approval process.

The commenter states, "A SAR could be rejected by the SAC without a requestor having the ability to know to what extent and which members of the SAC rejected the SAR." The NERC process explicitly provides that if the SAC rejects a SAR, that it will provide a written explanation for rejection to the Requestor. Further, if the SAC rejects a SAR, the Requestor has the opportunity to file an appeal. All of the relevant requests, rejections, appeals, etc. are publicly posted to assure transparency in the workings of the process.

4. **NERC's proposed Operating Procedures for "Interpretation" of Organization Standards is incomplete.**

Interpretations appear to have the same effectiveness as the original Organization Standard per "Interpretations of Standards" on page 20 of Attachment B to the Application. If so, then the interpretation should be subject to the same process as the original Organization Standard since it has the same impact on the industry. Specifically, interpretation should be subject to the complete Ballot processes as the original standard and adoption by the Board of Trustees.

Suggested Revision

Revised Operating Procedures under "Interpretations of Standards" to provide for appeal of an interpretation and formal adoption by the Board of Trustees.

RESPONSE: Interpretations (clarifications) of Organization Standards are, by their nature, intended to have a quick turnaround and to be temporary. Interpretations may provide more details about some aspect of a standard but may not expand the scope of the standard. Once approved, they remain in effect until the standard itself is modified to incorporate the clarification provided by the interpretation. Interpretations, while they do not go through the complete SAR and standards development and approval process, are voted on by a Standard Ballot Pool formed specifically for that purpose.

Adding Board adoption is not necessary, as the interpretation does not expand the scope of a standard, it merely provides clarification. Further, adding Board adoption would further elongate the time between a request for clarification and the time at which industry participants receive that clarification.

The Organization Standards Process Manual includes an appeals process that is inclusive enough for use in appealing interpretations. It states, "Persons who have directly and materially affected interests and who have been or will be adversely affected by any substantive or procedural action or inaction related to the development, approval, revision, reaffirmation, or withdrawal of an Organization Standard shall have the right to appeal." Since an interpretation becomes part of an Organization Standard it is already included in the existing appeals process.

5. **NERC's proposed Scope of Reliability Principles and Market Interface Principles for the Organization Standards is to "vague" and may overlap other efforts by standards organizations.**

The list of Reliability Principles and Market Interface Principles on Attachment A to the Application determine the scope of the efforts that will be subject of the NERC Organization Standards Process Manual. Such scope is too vague to accurately determine if a SAR is within scope or possibly within the scope of other related standards organizations, specifically the North American Energy Standards Board's proposed Wholesale Electric Quadrant's scope of commercial business practices and related communications protocols for the North American bulk electric systems. Due to the vagueness of the scope, NERC's statement of "No overlap found" in response to the inquiry "Efforts to explore using the expertise and processes of a currently accredited standards developer(s)" is probably inaccurate to some extent. Many wholesale electric industry participants feel that NAESB (an ANSI accredited standards developer) already has the expertise and processes to perform the functions as proposed by NERC in its application.

Suggested Revision

NERC and NAESB should formally document the understanding between NERC and NAESB on the scope of each organization's efforts in the development of standards. The document should clarify the scope of

each organization and any coordination efforts that shall be used to ensure no overlap of standard development efforts or final standards of each organization.

RESPONSE: NERC believes strongly that the reliability standards that it will develop will not overlap with standards developed by others, such as NAESB. Neither does it believe that the Reliability and Market Interface Principles that it has developed and which have been duly approved by its independent, non-stakeholder Board are “too vague to accurately determine if a SAR is within scope or possibly within the scope of other related standards organizations, specifically the North American Energy Standards Board’s proposed Wholesale Electric Quadrant’s scope of commercial business practices and related communications protocols for the North American bulk electric systems.

The NERC Board acted to adopt Reliability and Market Interface Principles that protect the public interest by assuring continued reliability of interconnected electricity grids as well as the integrity of competitive electricity markets. As evidence of the Board’s interest and concern with both reliability and markets, it passed a resolution in February 2002 that stated, in part:

WHEREAS, safeguarding the reliability and integrity of the integrated, international bulk power system is of paramount importance, and

WHEREAS, the NERC Board is committed to NERC developing reliability standards that enable and encourage market solutions to the maximum extent possible, and

WHEREAS, NERC has successfully exercised responsibility for reliability of the interconnected, international transmission grid for nearly 35 years, and

BE IT THEREFORE RESOLVED that NERC will, through a fair, open, balanced, and inclusive process, continue to set, monitor, and enforce compliance with standards for the reliable operation and planning of interconnected electric grids throughout North America, and

BE IT FURTHER RESOLVED that NERC will work with other electric industry organizations to create a workable process to coordinate NERC’s standards with the development of related standards.

The Board, at this same February 2002 meeting, adopted a statement that included:

The Board of Trustees recognizes that some in the industry have expressed reservations about NERC’s role based on the historical role of integrated utilities in NERC’s governance. However, times have changed. We believe it would be a step backwards for final decisions on reliability standards, including compliance and enforcement of these standards, to be made by any organization governed solely by those with economic interests in the outcome.

Acting in good faith, NERC developed a Letter of Intent to coordinate the development of reliability standards by NERC with business practice standards by NAESB once the NAESB Wholesale Electric Quadrant of NAESB is formed. From the introduction of that Letter of Intent:

“A need exists to develop standards to enhance energy markets throughout North America, while ensuring the continued reliability of interconnected international bulk electric systems. There are both business practice and reliability aspects to such standards, and each has implications for the other. The North American Energy Standards Board (“NAESB”) and the North American Electric Reliability Council (“NERC”) desire to work together to coordinate the development of business practice standards and electronic communication protocols by NAESB and the development of reliability standards by NERC. It is the intent of both organizations that

the business practice and reliability standards be harmonized, that all reasonable efforts be made to eliminate overlap and duplication of effort, and that each organization be able to move forward with its appropriate standards development activity while keeping the other fully informed as to its efforts.

"The electric industry is in the process of formulating the Wholesale Electric Quadrant of NAESB. This letter of intent is, therefore, preliminary in nature. It will be supplemented by a more extensive memorandum of understanding that describes the details of the coordination process after the Wholesale Electric Quadrant of NAESB comes into existence."

At its June 14, 2002 meeting, the NERC Board adopted this Letter of Intent and authorized the NERC Chairman to negotiate a final Letter of Intent with the Chairman of NAESB. The NAESB Board, at its June 28 meeting, similarly authorized its Chairman to work with NERC to finalize a Letter of Intent.

With respect to the appropriate role of NERC and scope of its reliability standards, FERC's May 16, 2002 Order stated:

*"We also consider coordination between business practice standards and reliability standards to be critical to the efficient operation of the market. We urge the industry to expeditiously establish the procedures for ensuring such coordination after the NAESB WEQ is formalized, and request NAESB and others to file an update on the progress on coordination **between it and NERC** [emphasis added], 90 days after the formation of the WEQ. Given the critical importance of such coordination, the Commission stands ready to establish its own process to ensure coordination if the industry cannot agree on an effective mechanism."*

FERC reiterated these views in a letter from FERC Chairman Pat Wood to NERC Chairman Richard Drouin just prior to the June 14 NERC Board meeting:

"I appreciate the significant efforts of the North American Electric Reliability Council (NERC) and its regional councils to restructure NERC and adapt its reliability standards to meet the needs of the competitive electric industry. At this week's NERC Board meeting, you are considering several critical initiatives to support industry restructuring."

"One such initiative is to develop an understanding between NERC and the North American Energy Standards Board for coordinating the development of wholesale business practice standards and reliability standards. Such coordination is critical. I urge you to work with NAESB expeditiously to establish the procedures for ensuring such coordination after the NAESB Wholesale Electric Quadrant is formed."

EnCana's comments purport to redefine the scope of NERC standards and EnCana's preference for NAESB to develop both reliability and business practice standards, which run counter to what FERC expects of NERC and other industry standards development organizations, including NAESB.

NERC has a recognized, long-standing role and responsibility for developing reliability standards, such role being supported by federal, state, and provincial governments, as well as a broad array of industry participants throughout North America. As such, EnCana's comments on the role of NERC and the scope of its reliability standards development activities are not relevant to the subject at hand and should be ignored by the Accreditation Committee of the ANSI BSR in considering the accreditation of NERC's process.

6. **NERC's proposed Operating Procedures for Adoption of the Organization Standard by the Board (Step 10 on page 17 of Attachment B to the Application) gives too much discretionary power to the Board of Trustees to not approve an Organization Standard.**

The Board should be given formal guidelines on which reasons are acceptable for the Board to base its disapproval of an Organization Standard.

Suggested Revision

Revised Operating Procedures to limit the reasons for the Board to disapprove an Organization Standard to the instances where the Organization Standards is inconsistent with the reliability principles and market interface principles set forth on Attachment A of the Application.

RESPONSE: Step 10 of the Organization Standards Process Manual does not call for the NERC Board to approve or disapprove a standard developed through the NERC process. It does call for NERC to adopt those standards that it chooses to include as mandatory and enforceable, according to the NERC Bylaws. As stated in Step 11, once an Organization Standard is adopted, all persons and organizations subject to the Bylaws of NERC are required to comply with the standard in accordance with those Bylaws and other applicable agreements. The "adopted" Organization Standard will then be monitored by the NERC Compliance Enforcement Program to oversee the implementation and assess the effectiveness of the Organization Standard.

Stated another way, NERC is both a developer and an enforcer of reliability standards. The part of its Organization Standards Development Process that NERC wishes to have accredited by ANSI is the development of the voluntary, industry-consensus standards. The role of the NERC Board is then to adopt those industry approved standards for inclusion in the NERC Compliance Enforcement Program, much the same way FERC might adopt a NAESB business practice standard for inclusion in tariffs.

Please do not hesitate to contact me if you have questions on these matters.

Sincerely,

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