

**Excerpts from Board of Trustees Meeting Minutes Relative to Proposed
Modifications to the Reliability Standards Development Procedure**

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February 12, 2008 BOT Meeting Minutes Relative to Dissolving the Joint Interface Committee

Termination of Joint Interface Committee

David Cook requested the board to approve termination of the amended and restated memorandum of understanding among NERC, NAESB, and the ISO/RTO Council and termination of the Joint Interface Committee. NERC understands both NAESB and the ISO/RTO Council have voted to withdraw from the MOU in accordance with Section 7.1 of the MOU.

On motion of Sharon Nelson, the board approved the following resolution:

WHEREAS, on November 27, 2002, the North American Electric Reliability Council (NERC's predecessor) and the North American Energy Standards Board executed a memorandum of understanding and established a Joint Interface Committee to coordinate standards development activities; and

WHEREAS, on May 15, 2003, the ISO/RTO Council became a signatory to the memorandum of understanding ("Amended and Restated Memorandum of Understanding for the North American Energy Standards Board, the North American Electric Reliability Council, and the ISO/RTO Council, dated May 15, 2003") and ISO/RTO Council representatives were added to the Joint Interface Committee; and

WHEREAS the parties to the memorandum of understanding no longer desire to coordinate standards development activities through the Joint Interface Committee and instead have developed other mechanisms for such coordination;

RESOLVED, the Parties support the dissolution of the Joint Interface Committee through the withdrawal of the Parties from the Amended and Restated Memorandum of Understanding for the North American Energy Standards Board, the North American Electric Reliability Council, and the ISO/RTO Council, dated May 15, 2003, with the following conditions:

- (1) that the Joint Development Process continues to be supported by both NERC and NAESB; and
- (2) that the coordination of the annual plans continues to be addressed through the leadership of the Parties.

**October 29, 2008 BOT Meeting Minutes Relative to Standards Addressing
National Security Emergency Situations**

**Recommendations from Corporate Governance and Human Resources
Committee on Standards Process**

John Q. Anderson, Corporate Governance and Human Resources Committee Chairman, began the discussion of certain issues relating to the standards process that had been referred to the committee for consideration. Janice Case presented the issue dealing with NERC's process for developing standards in national security emergency situations, especially for cyber security. After discussion among the trustees, on motion of Ms. Case the board adopted the following resolution:

WHEREAS, it may be necessary in certain national security emergency situations for NERC to develop Essential Action Alerts and Reliability Standards on an expedited and confidential basis using a process that varies somewhat from the NERC *Reliability Standards Development Procedure*; and

WHEREAS, the Corporate Governance and Human Resources Committee of the NERC Board of Trustees, after due consideration of several options and input from the stakeholder community, has recommended that NERC issue Essential Actions (Alerts) to address national security issues of immediate concern in advance of the development of standards; and that NERC develop cyber or physical security standards, as needed, on an expedited and confidential basis, as described in the attached "*Proposed Process for Developing Essential Action Alerts and Reliability Standards to Address National Security Emergency Situations*," (**Exhibit F**);

RESOLVED, that the NERC Board of Trustees endorses the recommendations of the Corporate Governance and Human Resources Committee and directs NERC management to take the steps necessary to implement the committee's recommendations, including appropriate modification of the NERC Rules of Procedure, Reliability Standards Development Procedure, or any other NERC documents.

Proposed Process for Developing Essential Action Alerts and Reliability Standards to Address National Security Emergency Situations

It may be necessary in certain national security emergency situations for the ERO to develop Essential Action Alerts and Reliability Standards on an expedited and confidential basis using a process that varies somewhat from the NERC *Reliability Standards Development Procedure*. In general, the threshold for invoking such a special process will be:

The President of the U.S. or Prime Minister of Canada or a national security agency or national intelligence agency of either or both governments issues to the ERO a written directive or determination that an imminent national security threat to the reliability of the bulk power system exists.

Essential Action Alerts

Upon receiving such directive or determination, the NERC board¹ will direct the immediate development and issuance of an Essential Action Alert to those registered entities that are the subject of the Alert, with a response required by a given date.²

NERC will establish and draw on a standing body of experts to assist in the development of such Alerts, which experts will all have pre-confirmed security credentials on file with NERC that are appropriate to the task at hand.³

Reliability Standards

The board may also direct the immediate development of a new or revised reliability standard to address the national security emergency situation using one of two processes.

If circumstances allow, NERC will use one of the provisions of its open and transparent *Reliability Standards Development Procedure* – Normal Action, Urgent Action, or Emergency Action.

If the nature of the threat or vulnerability that necessitated the national security directive demands confidentiality, NERC will utilize the following process to develop a reliability standard:

1. Assemble a special drafting team from an established pool of subject matter experts who all have pre-confirmed security credentials appropriate to the task at hand and presigned confidentiality agreements on file with NERC.

¹ NERC will evaluate the need for security clearances for NERC board members to engage in this process and make appropriate revisions to its Rules of Procedure to govern the process the NERC board will use in making determinations to issue Essential Action Alerts in cases of national security emergencies.

² Depending on the nature or subject matter of the Essential Action Alert, NERC may restrict its distribution to individuals within registered entity organizations who possess certain security credentials appropriate to the situation.

³ It is anticipated that the individuals that comprise the standing body or pool of subject matter experts that NERC could call on to assist in the development of Essential Action Alerts or Security Standards would enter into “nuclear safeguards-like” information protection agreements and potentially government supported background checks.

2. The team will draft the reliability standard to address the national security emergency based on the threat information (rationale and justification) provided by government agencies, their own knowledge and expertise, and input from other government sources; e.g., national laboratories.
3. The team will discuss the draft standard, as it is being developed, with officials from the appropriate governmental agencies in the U.S. and Canada, under strict security and confidentiality rules.
4. The team will distribute the draft standard for comment, under strict confidentiality rules (NDA or nuclear safeguards like), only to those entities that will be expected to comply and who have identified individuals from their organizations that adhere to the confidentiality requirements. These individuals will not be required to have security clearances to review and comment on the proposed standard, but must have signed confidentiality agreements with NERC.⁴
5. Following any adjustments to the draft standard based on comments received in Steps 3 and 4, the team will request approval by ballot of a normal standard ballot pool formed for this purpose. Only the proposed standard will be posted for ballot, as the information supporting the need for the standard will need to remain confidential.
6. Upon receiving the required 2/3 weighted-segment vote approving the standard, and the subsequent recirculation ballot, the team will present the proposed standard to the NERC board for approval in a special closed session, either in person or by conference call. (The closed session will allow the team to present not only the standard, but also the confidential information supporting its need.)
7. Following approval by the board, the standard will be filed with the FERC and with the appropriate governmental authorities in Canada for immediate action and implementation.
8. Following governmental approvals, the standard will be noticed to those registered entities for which compliance is required and posted on the NERC website.
9. Compliance monitoring and enforcement will be undertaken based on the effective date of the standard. Special procedures may be used in monitoring and enforcing compliance to ensure that no information is made public that could increase the vulnerability of the threat for which the standard was developed.

⁴ In this phase of the process, only the proposed standard will be distributed to those entities expected to comply, not the rationale and justification for the standard. Only the special drafting team members, who have the appropriate security credentials, will have access to this rationale and justification.

February 10, 2009 BOT Meeting Minutes Relative to Developing and Approving VRFs and VSLs

Recommendations from Corporate Governance and Human Resources Committee on Standards Process

On motion of Sharon Nelson, the board adopted the following resolution:

WHEREAS, the Corporate Governance and Human Resources Committee of the NERC Board of Trustees was directed by the board to review and recommend how NERC should develop and approve Violation Risk Factors (VRFs) and Violation Severity Levels (VSLs) associated with NERC Reliability Standards;

WHEREAS, the Federal Energy Regulatory Commission has ruled that VRFs and VSLs are not part of Reliability Standards, and that ruling has not been challenged on appeal;

WHEREAS, the NERC board has an independent requirement and authority to make final decisions on VRF and VSL assignments;

WHEREAS, the use of VRFs and VSLs in Canada will vary from jurisdiction to jurisdiction and will not be automatically applied in any jurisdiction;

WHEREAS, the committee, in formulating its recommendation, posted and actively sought stakeholder input on several options for addressing this policy issue; and

WHEREAS, the committee believes that it is necessary and appropriate to amend the NERC Rules of Procedure to specify the overall policy context in which VRFs and VSLs will be developed and approved, as well as direct the Standards Committee, with the assistance of NERC staff, to develop the necessary procedural changes required in the *Reliability Standards Development Procedure* to implement the intent of this policy framework, while ensuring that these changes present no new gaps, conflicts, or inconsistencies.

RESOLVED, that the Board of Trustees concludes that the amended NERC Rules of Procedure should be based on the following basic tenets: (1) stakeholders and NERC staff will be provided ample opportunity to provide input on VRFs and VSLs as they are developed concurrently and in parallel with the associated Reliability Standards; (2) Reliability Standards will be balloted independent of the VRFs and VSLs; (3) a separate, non-binding poll of industry stakeholders will be conducted to gather input on proposed VRFs and VSLs; and (4) the process for finalizing VRFs and VSLs to be presented to the board for approval should not present the board with a “governance” dilemma; i.e., the process should not request a formal ballot or vote of the stakeholders and the board may accept, reject, or modify the VRF and VSL assignments recommended by NERC staff; and

FURTHER RESOLVED, that the NERC Board of Trustees: (1) directs management to take all steps necessary to propose and approve amendments to Sections 320 and 1403 of the NERC Rules of Procedure as set forth in **Attachment A**, as recommended by the Corporate Governance and Human Resources Committee, following the procedure described in Sections

1401 and 1402; (2) directs management to file the approved revised Sections 320 and 1403 with applicable governmental authorities in the United States and Canada; and (3) directs the Standards Committee, with the assistance of NERC staff, to develop all necessary conforming procedural changes to the *Reliability Standards Development Procedure* to implement these changes.

Replace Section 320 in its entirety with the following:

320. Developing and Approving Violation Risk Factors and Violation Severity Levels

1. **Drafting VRFs and VSLs** — The standard drafting team working with NERC staff, will draft VRFs and VSLs associated with Reliability Standards, taking into account the NERC and appropriate governmental agency development guidelines for assigning VRFs and VSLs.
2. **Soliciting Public Comments on Draft VRFs and VSLs** — Draft VRFs and VSLs will be posted for public comment concurrent with the draft Reliability Standard, as appropriate⁵, with comments requested in a separate portion of the comment form than that used for comments on the other elements of the draft Reliability Standard.
3. **Comments by Compliance Program** — The Standards Interface Subcommittee of the NERC Compliance and Certification Committee will provide comments on the draft VRFs and VSLs as part of the public comment process.
4. **Analysis and Response to Written Public Comments** — The standard drafting team and NERC staff, working together, will analyze and respond to written public comments on the draft VRFs and VSLs using the process defined in the *Reliability Standards Development Procedure*.
5. **Non-Binding Poll on VRFs and VSLs** — A non-binding poll of the ballot body will be conducted at the same time the draft Reliability Standard is balloted to help gauge industry support for the proposed VRFs and VSLs associated with each Reliability Standard. When the poll is conducted, it will be made clear that the NERC board has an independent requirement to make decisions on VRF and VSL assignments, and that the results of the non-binding poll do not in any way constitute a formal industry ballot, but merely an expression by the industry of the degree of support for the proposed VRFs and VSLs.
6. **Finalizing VRFs and VSLs for Board Approval** — NERC staff will develop for board approval recommended assignments of VRFs and VSLs associated with Reliability Standards being presented for adoption by the board. In developing the recommended assignments, NERC staff will take into consideration the views of the standard drafting team, stakeholder comments received on the draft VRFs and VSLs during the posting for comment process, the non-binding poll results, appropriate governmental agency

⁵ The posting of draft VRFs and VSLs for stakeholder comment can be deferred until a second or later posting of the draft standard as determined by the standard drafting team; however, it is recommended that the VRFs and VSLs be posted for comment with the entire draft Reliability Standard as early in the standard development process as possible.

rules and directives, and VRF and VSL assignments for other Reliability Standards to ensure consistency and relevance across the entire spectrum of Reliability Standards. NERC staff will provide explanation and justification for its recommendations in the agenda background material provided to the board.

7. **Approval of VRFs and VSLs by the Board** — The chair or vice chair of the Standards Committee, or their designee, will present the results of the non-binding poll conducted and a summary of industry comments received on the final posting of the proposed VRFs and VSLs. The NERC Director of Standards, or his designee, will present for board approval the NERC staff recommendations on VRF and VSL assignments.
8. **Filing Approved VRFs and VSLs** — Once the board has adopted a Reliability Standard and approved the associated VRF and VSL assignments, the board will direct the combined package to be filed with applicable governmental authorities in the United States, Canada, and Mexico for approval.
9. **Remands or Directed Revisions of VRFs and VSLs by Governmental Authorities** — If a governmental authority remands or directs a revision to a board-approved VRF or VSL assignment, the NERC Director of Standards, after consulting with the standard drafting team, Standards Committee, and NERC Director of Compliance, will recommend to the board one of the following actions: (1) filing for clarification; (2) filing for regulatory review or rehearing; or (3) adoption of the directed revisions to the VRF or VSL.

Revise Section 1403 as follows:

1403. Alternative Procedure for Violation Risk Factors and Violation Severity Levels

In the event the standards development process fails to produce violation risk factors or violation severity levels for a particular standard in a timely manner, the Board of Trustees may adopt violation risk factors or violation severity levels for that standard after notice and opportunity for comment. In adopting violation risk factors and violation severity levels, the board shall consider the inputs of the Member Representatives Committee and affected stakeholders.