

Comments of the American Public Power Association on the NERC Draft Three-Year ERO Performance Assessment Dated April 27, 2009

The American Public Power Association (APPA) submits the following comments in response to the NERC Draft *Three-Year ERO Performance Assessment* as posted on April 27, 2009 and supplemented on May 15, 2009.¹ These comments build upon APPA's February 25 comments and respond to NERC's summary of stakeholder and regional entity comments and recommendations and to NERC's proposed specific actions identified in Attachment 2 to the April 27 Draft Assessment.²

Overview and Policy Considerations:

APPA commends NERC and its Regional Entities for the progress they have made over the last three years to stand up the new independent, self-regulatory Electric Reliability Organization, to rewrite and submit to the Federal Energy Regulatory Commission a new body of clear and enforceable electric reliability standards for the bulk power system, and to create nearly from scratch an effective compliance monitoring and enforcement program. NERC has also developed a new cyber-security program that promises to serve the industry well in the coming years and is undertaking important initiatives to improve upon existing programs in reliability assessment, event analysis, situational awareness and operator training.

Despite these achievements, APPA and its members are not satisfied with NERC's and the regions' performance to date, but we are fully committed to working with NERC and its Regional Entities to make each of NERC's programs more effective, efficient and timely in accomplishment of our shared objective: reliable and secure operation of the bulk power system. We share NERC's commitment not just to compliance with reliability standards, but to operational excellence. Effective, efficient and timely achievement of these objectives will require that NERC target resources within each NERC program area toward improvements that will have the most material impact on reliable operation of the bulk-power system.

In APPA's view, most of NERC's programs, particularly compliance and standards, are currently too resource and procedurally intensive to be sustained by NERC, the regions and the registered entities that are subject to mandatory reliability standards. This burden is particularly severe for medium-sized and small utilities that are on the NERC compliance registry. APPA and many of its members are deeply concerned that current practices have begun to degrade reliability by diverting resources from actually performing reliable operations, planning and

¹ Go to <http://www.nerc.com/page.php?cid=118303> APPA previously submitted written comments on and responded to the On-Line Survey form associated with the January 27 Preliminary NERC Assessment.

² *Attachment 2 to Three-Year ERO Performance Assessment, Stakeholder and Regional Entity Comments and Recommendations, and NERC's Discussion of the Comments and Recommendations and Specific Actions*, April 27, 2009. Go to [Three Year Performance Assessment - Attachment 2 http://www.nerc.com/files/ATTACHMENT-2_\(Comments-Responses-Actions\)_for_4-27-09_posting.pdf](http://www.nerc.com/files/ATTACHMENT-2_(Comments-Responses-Actions)_for_4-27-09_posting.pdf)

coordination into the paperwork required to document that registered entities are operating, planning and coordinating the bulk power system as required by NERC's reliability standards.

APPA and its members fully recognized that the start-up process that followed the transition from a voluntary to a mandatory standards regime would require a surge in resource commitments by both NERC and industry participants, to convert the pre-existing NERC and regional reliability council operating policies and planning standards into high quality mandatory standards, and then to stand up the rigorous NERC, RE and utility compliance programs required to monitor and ensure compliance over time, including programs within each utility to identify, self-report and mitigate performance failures. However, this surge in resource commitments to BPS reliability has seemingly become a permanent operational state for many APPA members and for other registered entities, diverting scarce senior engineers and operators from actual planning and operations, into the documentation of their planning and operating practices.

Meanwhile, the industry now faces new public policy challenges and public expectations that may dwarf the resource requirements and urgency of BPS reliability – in particular, cap and trade climate change legislation, federal and state renewable energy standards, an unprecedented expansion of North America's EHV transmission system, potentially vast changes in system load levels and characteristics driven by distributed resources and plug-in electric vehicles, coupled with various "smart grid" technologies that may substantially increase grid operational flexibility and complexity, while creating potential new cyber-security vulnerabilities.

In summary, it is essential for NERC to do more than turn the corner on the backlog of pending reliability standards projects and compliance violations. In particular, the compliance violation backlog must somehow be eliminated *this year*, even if it takes a level of triage that would not be deemed acceptable in more normal times, in order to free up industry resources for other public policy initiatives, in addition to ensuring reliable BPS operations.

In support of this performance goal, APPA recommends that NERC take the following steps, in consultation with industry, Regional Entities and applicable regulatory authorities, on the NERC reliability standards, organization registration and compliance monitoring and enforcement programs:

A. Reliability Standards

The core problem the NERC standards program creates for NERC and the industry is requirement overload. The NERC and regional standards programs frequently overload the ability of the industry to process, understand and comment on its work products. This is particularly true for medium-sized and smaller entities, since the employees capable of fully understanding and commenting on NERC standards will inevitably have jobs other than monitoring and ensuring NERC compliance. Further, the total number of NERC requirements exceeds the level that most engineers and operators can recall, even with continuing education. For these reasons, APPA recommends that NERC:

1. Direct the Standards Committee and NERC standards staff to reprioritize projects in the standards development plan pipeline to focus on completing current projects that address the most severe risks of wide-area cascading outages, including areas identified in the

2. NERC needs to complete the rewrite of Versions 0 standards into Version 1, to eliminate as many ambiguities in the existing standards as quickly as possible. Again, standards that address the potential for wide-area outages should be given priority.
3. Registered entities should be encouraged to request interpretations of NERC standards. The Standards Committee should reject requests for interpretation that duplicate previous requests. While interpretation requests could become voluminous, interpretations are a necessary safety valve to address ambiguities in the existing standards, particularly until Version 0 changes are completed and approved by FERC and other regulatory authorities.
4. As part of preparations for the 2010-2011 Standards Development Plan, NERC should initiate a project to examine existing reliability standards to ensure that each standard and each requirement is essential for reliable operation and planning of the BPS, as required under FPA Section 215. APPA and a number of its members are convinced that there are reliability standards that should be reclassified as “good utility practices,” NAESB business practices, or operating guides. Other standards impose requirements for generators and loads to submit data to other entities for planning studies or even to perform or participate in studies which they have no capability to complete. In the latter case, while entities may have an obligation to submit timely and accurate data, failure to do so should trigger a fine, not a compliance violation investigation.

APPA responds below to NERC’s summary of industry stakeholder comments and recommended “Specific NERC Actions” on Reliability Standards Development:

1. ***Focus existing reliability standards and reliability standards development on areas that will lead to the greatest improvement in bulk power system reliability.***

Specific NERC Actions

- a. Continue to utilize the Reliability Standards Development Plan to guide standards development activities.
- b. Continue the outreach efforts to obtain feedback from industry stakeholders as well as from the NERC program areas, including Compliance Monitoring and Enforcement, Assessments and Event Analysis, for use as input into the 2010-2012 version of the Reliability Standards Development Plan.
- c. Complete the Standards Committee activity by June 30, 2009 to identify administrative requirements in current set of standards and provide these as input (as candidates to be removed from the standards) to the 2010-2012 version of the Reliability Standards Development Plan.

- d. Develop and begin implementing a plan that includes engagement of the regulatory authorities to convert the existing set of reliability standards and requirements to a smaller set of critical performance-based reliability standards. [Ongoing]
- e. Develop a prioritization process by December 31, 2009 for standards development that strikes a balance between regulatory directives, industry input, and feedback on reliability performance from the Events Analysis and Compliance programs.
- f. Use more broad-based initiative approaches, like the System Protection Initiative, to identify and address requirements for improving bulk power system reliability. [Ongoing]
- g. Continue with NERC's aggressive efforts to address the issues identified by the Commission in Order No. 706 to protect the critical electric infrastructure from malicious cyber attack. [Ongoing]
- h. Conduct a technical conference with invited subject matter experts to assess conformance of existing reliability standards to the stated reliability principles and to the definition of adequate level of reliability by June 30, 2010.
- i. Continue to collect feedback from the NERC program areas, including, Compliance Monitoring and Enforcement and Event Analysis, as inputs to standards development activities.

APPA supports in principle each of these initiatives – they build upon NERC's existing processes for standards development, draw upon the expertise and concerns of the industry, reflect a commitment to engage regulators in these Specific Actions and reflect a commitment to reliability standards that focus on performance improvement and measurement in areas that have the greatest material impact on bulk power system reliability.

The heretofore missing elements within these initiatives concern the missing feedback loops between the NERC (and regional entity) Compliance Monitoring and Enforcement Programs (CMEP) and the Events Analysis Programs back to standards development. NERC and Regional Entity managements and the NERC Board of Trustees should place a high priority upon establishing an effective "lessons learned" feedback loop between the CMEP and Events Analysis and future standards development. These lessons can be small (e.g., registered entities are frequently misreading a specific requirement to exclude certain covered equipment) or large (zone 3 relays).

2. Accelerate the Standards Development Process.

Under this heading, NERC identifies a variety of Specific Actions that may be taken to expedite the standards development and approval process. APPA supports consideration of each of these initiatives *provided* these initiatives do not have the effect of compromising fundamental tenets of the existing NERC ANSI-approved Reliability Standards Development Procedure. While resource intensive, APPA and most but not all of its members are confident that the RSDP can and will produce industry consensus and high quality, technically excellent reliability standards. APPA and its members also support continued adherence to ANSI principles. Alternative processes may in fact jeopardize reliability, by permitting approval of standards that depart from NERC and ANSI principles. Nonetheless, there are real limits to the "through-put" that can be pushed

through the NERC standards development pipeline. These limits need to be respected, requiring choices among various standards projects and program initiatives.

Thus, for example, many standards projects could be expedited slightly if the SAR Drafting Team membership automatically became the Standard Drafting Team once the SAR has been approved. However, this procedural change if not properly implemented could lead to SDTs that have a full team of members, but turn out to lack either specific technical skill sets or industry segment and regional balance.

Similarly, in some projects the NERC staff coordinator could be authorized by the SDT Chair to draft and provide a straw man draft standard in advance of the first drafting team meeting, potentially shaving weeks off of standard development. NERC staff coordinators are likely to be much more familiar with the format and required content of reliability standards and are well-versed in the substantive issues raised by proposed standards. However, in controversial projects, this approach could create the perception that the NERC staff coordinator has his or her own agenda or is advancing the agenda of NERC or regulatory agencies.

3. Promote, encourage, and facilitate participation by smaller entities.

APPA appreciates NERC focus on this issue. The following three additional measures are likely to be beneficial in this area:

First, efforts that increase the efficiency of standards development and focus reliability standards on core reliability requirements will allow small entities to read and review proposed standards once or twice over a confined period, submit one set of focused comments and then look to ensure these comments were taken into account in the development of the final draft standard. Prolonged standards development processes extending over several years require a level of sustained attention that is just not feasible for most small entities.

Second, NERC should avoid standards proposals that extend the applicability of particular standards to numerous additional small entities where there has been no showing of material impact on BPS reliability. Certain industry participants continue to propose extending the applicability of proposed standards to, for example, all generators regardless of size or to load-serving entities that are not directly connected to the BPS. These proposals have the direct effect of refocusing small entity attention from the general merits of the standard to the potential impact on their compliance registration.

Third, regional standards development projects that duplicate NERC projects should be discouraged. While APPA members are generally very supportive of compliance enforcement at the regional level, standards development should take place at NERC, unless the standard is intended to address region-specific issues.

4. Role of FERC staff comments during standard development.

APPA supports each of these proposed Specific NERC Actions and is prepared to assist NERC in their full and timely implementation:

- a. Implement the *Roles and Responsibilities* document approved by the Standards Committee in March, 2009 that identifies drafting team response to regulatory authority involvement in standard development activities. [Immediately]
- b. Reinforce to standard drafting teams that they can develop an equal and effective alternative to regulatory authority directives, but must thoroughly document their technical rationale for doing so. [Immediately]
- c. Conduct discussions with FERC staff upon issuance of a Notice of Proposed Rulemaking concerning adoption of a proposed standard or group of standards to ensure an understanding of the Commission's intent before issuance of a final order.
- d. Develop a focused process to obtain feedback from the industry stakeholders regarding newly issued orders and rulings to determine if filing a request for rehearing or clarification is appropriate within the 30-day window.

5. *Better align functional categories with current industry/market structure.*

In the discussion of comments, NERC states:

The registration criteria do not drive the standards. The converse is true. If, in the determination of the standard drafting team and as approved through the industry ballot process, a particular activity requires the extension of standards applicability beyond the criteria established in the *NERC Statement of Compliance Registry Criteria*, the drafting team has the latitude to do so but must provide the technical justification for why the extension is warranted. If the resulting new or revised standard identifies a new category of functional entity, that new functional entity and its characteristics will be added to the *Statement of Compliance Registry Criteria* and entities meeting the criteria will be registered for the new function.

APPA believes this description is *technically* correct, but as a practical matter does not accurately characterize either the public policy or reliability issues that have been raised in some recent drafting team discussions, which tend to focus on broadening the registration criteria for existing functional entities, rather than carefully defining new functional entity classifications.

Changes to the Compliance Registry Criteria may have the effect of sweeping large numbers of entities into mandatory compliance – and not just for a single proposed standard, but rather for hundreds of Requirements. These regulatory costs to particular entities may far outweigh the putative reliability benefit associated with extending the applicability under a specific reliability standard. Further, actions with such broad reaching effects on the industry are likely to go far beyond the scope of the authority and the expertise of any single Standard Drafting Team.

NERC needs to spell out the criteria that SDTs may use to demonstrate the technical necessity to revise the Compliance Registry Criteria in terms of material impact on the bulk power system. NERC should also explore and develop alternative approaches such as entity registration by groups of requirements. Alternatively, standards could be developed to adopt new functional entity definitions, such as has been contemplated for the generation owners/operators of transmission-voltage interconnection facilities that do not in fact perform transmission functions other than the delivery of generation output to the bulk transmission system.

6. *Provide clear measures for each standard requirement.*

7. *Enhance Stakeholder Communications.*

8. *Expedite completion of “fill-in-the-blank” standards.*

APPA has no comments on the discussion of these areas.

B. Organization Registration and Certification

1. *Raise threshold criteria for requiring entities to be registered.*

In its discussion of stakeholder comments, NERC states in part:

Stakeholder comments suggest that the registration criteria have very low thresholds that capture small to medium-sized entities that have no impact on BPS reliability. Comments recommend that registration criteria be modified to more appropriately determine responsibility to register based on material impact to the reliability of the bulk power system.

One Regional Entity also commented that there have been numerous questions surrounding the inclusion of generators in the NERC Compliance Registry, and believes improvement in reliability could be made as well as the elimination of confusion and inconsistency in registration criteria if NERC would consider requiring all generators with nameplate ratings greater than 20 MVA, regardless of connection voltages to be included in the NERC Compliance Registry.

NERC responds with the following proposed NERC activities:

Specific NERC Actions

- a. Review existing registration criteria with NERC technical staff for possible changes.
- b. Request comments from stakeholders on the existing criteria through the Organization Registration and Certification Subcommittee (ORCS) of the Compliance and Certification Committee (CCC).
- c. Request comments on the existing criteria from the Regional Entities through the RWG.
- d. Review data from registered entities surveys currently being administered by the RWG with NERC oversight for criteria application issues.
- e. Continue the process of responding to specific issues related to registration criteria on a case by case basis.

The core issue raised by industry stakeholder commenters that recommend higher thresholds be incorporated into the Compliance Registry Criteria, as well as the comments of the Regional Entity that would in effect eliminate interconnection voltage as a relevant criterion for generator registration, is whether an entity or group of entities have a material impact on the reliable operation of the bulk power system. NERC and industry stakeholders need to develop workable procedures and engineering criteria for the study and evaluation of material impact, and develop

workable guidance on how to make the trade-offs against the regulatory burdens on small entities. Such study methodologies and criteria are important for both standards development and decisions concerning the registration or de-registration of particular entities.

2. Allow registration by requirement.

According to NERC:

Stakeholder comments recommend that registration requirements should be modified to allow entities to register for packages of Requirements that correspond to their activities, rather than be responsible for all Requirements applicable to a functional category to which they are assigned that does not correspond to their activities.

Discussion of Comments

In general, NERC does not support this approach. . . .

APPA is frankly mystified by NERC's response to stakeholder comments. "Registration by requirement" is no more than a short hand for an approach developed by public power and other utilities in the WECC region to provide greater regulatory certainty to Load Serving Entities and Distribution Providers and to the enforcement staff in the WECC region on the particular Requirements for which the entity is responsible and must demonstrate compliance. Reliability Standards applicable to LSEs and DPs tend to fall into some fairly straightforward buckets related to data submittals (to support studies by various BPS operators and BPS planners) and specific protection facilities (e.g., installation and maintenance of under-frequency load shedding relays). Contractual agreements laying out the expectations of the regional entity enforcement staff and the registered entity do not constitute a waiver of enforcement; rather, these agreements are intended to support efficient program administration for both entities. The registered entity in question remains on the NERC compliance registry and presumably is responsible for compliance with any new Reliability Standards that may be approved.

5. Improve joint registration procedures.

The NERC Summary of Comments and Discussion of Joint Registration Organizations states in part:

Stakeholders offered a number of comments and criticisms regarding the joint registration procedures, which included:

- NERC and the Regional Entities have not provided adequate guidance or information on the availability of or criteria for joint registration.
- The existing Functional Model makes it difficult to bifurcate responsibilities for purposes of joint registration.
- The Joint Registration procedures in Rules of Procedure Section 500 need more development with respect to establishing which entity has what responsibilities in a Joint Registration situation.
- The Joint Registration process should be modified since currently it can be used only where the entities have all registered for the same function.

- The NERC Rules of Procedure should provide an alternative registration process for those situations where compliance responsibilities are shared among entities by agreement and formation of a Joint Registration Organization is not required.
- The Joint Registration procedures should be modified to allow parties to develop a matrix assigning responsibilities, rather than the very formal process required by the NERC Rules of Procedure Section 507.

Discussion of Comments

The NERC JRO process is not designed for implementation using the Functional Model. The purpose of the Functional Model is to provide a guide for the development of standards. The functional entities identified in the standards are the entities required to be registered for those reliability functions. The JRO applicable functions are identified in the NERC Statement of Compliance Registry Criteria. The JRO process is for sharing reliability standard requirement responsibilities for one function between two or more Registered Entities. It is, by design, a formal process to ensure distinct identification of the responsibilities for compliance with standards requirements agreed to by each member of the applicable JRO. The process for JRO registration gives the entities included in each agreement some flexibility in the format of the agreement and associated data as long as the formal requirements of section 507 of the NERC Rules of Procedure (ROP) are addressed. Some consistency in the agreements is required due the ROP requirement for NERC to post all JRO information for each JRO agreement. Significant inconsistencies in the posted agreements could lead to confusion in interpretation of the posted data.

However, on an ongoing basis, in conjunction with the Regional Entities, NERC continues to evaluate the JRO procedures for possible clarifications and improvements in light of experience in their application.

APPA respectfully responds that NERC appears to be missing the underlying point. The JRO procedures that were first added to the initial NERC Compliance Registry Criteria – at APPA’s behest – and later made a part of the NERC Rules of Procedure, were intended as an initial starting point and framework for discussions between NERC and the industry on how NERC compliance responsibilities could be realigned across organizational lines to correspond to how registered entities actually choose to perform various reliability functions in the normal course of business, through the creation of various types of utility organizations such as joint action agencies, G&T cooperatives, RTOs, ISOs, independent power producers, and transcos. It is well recognized that there are significant differences in the operations and business models of various RTOs. APPA will attest that municipal joint action agencies are different from each other in crucial respects, in terms of the utility businesses and the reliability functions that they are capable of performing.

It was not unreasonable for NERC to in effect establish high hurdles for the establishment of JROs during the first two or three years of its operation as the ERO. Over the next two or three years, NERC should encourage the development of contractual and regulatory arrangements to reallocate or share compliance responsibilities.

C. Compliance Monitoring and Enforcement

APPA has significant concerns about the compliance violation backlog within the NERC/RE compliance monitoring and enforcement program. This backlog is having a severe, perverse impact on utility organizational performance, diverting management and line staff focus from current and future operational performance to a backward looking preoccupation with the inadequacy of compliance documentation developed in 2007 and 2008 for standards that were neither crisp nor clear in the first place. Prosecution of many of these violations appears to entail a commitment of entity and regulatory resources that are completely disproportionate to the potential reliability benefit that full compliance would provide to the entity or to its interconnected neighbors. Further, the backlog has stymied the development of a “lessons learned” feedback loop that the industry was counting on to improve compliance and to guide development of “Version 1” standards. Elimination of the backlog is essential to improve industry compliance and operational performance.

In its February 25 comments, APPA recommended that NERC pursue the following strategy:

1. Perform a triage process on all pending document-related violations of reliability standards as quickly as possible. NERC compliance statistics indicate that such violations may constitute 43% of the current backlog, or approximately 735 violations as of December 31, 2008. Violations that have not completed due process within the region or for which a settlement in principle has not been initialed by the Compliance Enforcement Authority should be directed to a short-form settlement process, in which the violation, the proposed penalty and the required mitigation plan would be accepted by NERC and submitted to FERC (or other applicable regulatory authority) as an uncontested settlement that sets no precedent as to the disposition by NERC or FERC of future violations of reliability standards. Explain to FERC that this initiative is intended as a temporary measure to address the current compliance violation backlog. The objective here is to focus NERC and industry resources on investigating and mitigating violations that are most likely to have a material impact on BPS reliability or to result in important “lessons learned” for other industry participants..
2. Conduct a triage process similar to (1) on all of the remaining pending violations with low Violation Risk Factors. Consider expanding the triage process to encompass violations of requirements with medium VRFs and lower Violation Severity Levels by smaller entities on the compliance registry (e.g., a peak load of less than 100 MW), except where such entities are registered as Transmission Operators or Balancing Authorities or may otherwise have an identified material impact on a System Operating Limit or Interconnection Reliability Operating Limit.
3. Redeploy NERC and RE compliance program resources freed up by (1) and (2) to focus on entities that have committed the remaining non-document violations with medium to high Violation Risk Factors, particularly for (a) standards for which

4. Redeploy NERC and RE staff resources to assist regions with the most severe compliance violation backlogs, to assist in completing tasks (1), (2) and (3) in 2009.
5. Direct all Regional Entities to post “lessons learned” as they are identified through the compliance monitoring and enforcement process, even where the proposed violation has not been confirmed. If necessary, consider seeking release or waiver of confidentiality requirements to ensure prompt posting of such lessons learned or post preliminary lessons learned on a non-public site. (Under the current approach, BPS users, owners and operators are less well informed about the facts behind trends in violations and the specific measures entities can take to improve performance than are NERC, REs and FERC. If the actual goal is performance (rather than just compliance and enforcement) this pattern must be eliminated.
6. Reduce the RE time lag in processing mitigation plans associated with self-reported violations. Particularly within WECC, APPA members report that mitigation plans remain pending and unprocessed with regional compliance staff for months after they are submitted, denying these registered entities the feedback they need to receive before mitigation plans are integrated into the utility’s internal operating procedures.

APPA reiterates its support for these six recommendations.

APPA is not recommending significant changes to the NERC Compliance Monitoring and Enforcement Program at this time. Rather, our recommendations entail a reorientation of resources, to address the current backlog. Once the backlog is reduced, NERC and the industry can undertake a more measured evaluation of potential areas for improvement of the NERC and Regional Entity CMEPs.

APPA also does not support a further centralization of the compliance enforcement activities at NERC rather than in the regions. As detailed in the Regional Entities comments on their own CMEP achievements, NERC’s Regional Entities are doing an increasingly effective job in outreach to and education of registered entities. NERC should, however, undertake its responsibility to ensure that each of the Regional Entities enforce reliability standards on a consistent basis.

Discussion of NERC Recommendations:

1. ***Put more emphasis on training, education, and assistance regarding what it takes to comply with, and to demonstrate compliance with, reliability standards.***

Specific NERC Actions

- a. Consider development of a process by which registered entities can submit hypothetical or proposed means of complying and demonstrating compliance with particular standards for review and guidance by NERC and the Regional Entities.
- b. Evaluate and implement ways to make registered entities more aware of means currently available to registered entities to obtain guidance on how to comply with standards and how to demonstrate compliance.
- c. Increase the offerings of programs and information by the NERC Training and Education program focused on appropriate means of complying with and demonstrating compliance with particular standards.

APPA supports NERC's proposed actions, particularly the adoption of the No Action Letter approach outlined in stakeholder comments and the development of lessons learned and various guidance documents now being developed by Regional Entities.

2. Eliminate the backlog of audit reports and compliance violations so more precedents are available to industry.

In response to industry comments, NERC proposes the following Specific Actions:

Specific NERC Actions

- a. Increased NERC and Regional Entity staffing and other resources are being dedicated to the Compliance programs, including to processing notices of alleged violation, settlements and mitigation plans.
- b. Continue development of a common, centralized platform for collection and maintenance of compliance information by NERC and the Regional Entities.
- c. Modify compliance program process steps to provide for earlier and more frequent NERC involvement in the processing of notices of alleged violation, settlements and mitigation plans by Regional Entities.
- d. Continue offering the pro forma, short-form settlement agreement that can be tendered to registered entities and used to expeditiously resolve and close alleged violations involving missing documentation and other administrative, low risk violations.
- e. Continue to study NERC and Regional Entity compliance processes to identify and implement ways to streamline and shorten those processes.
- f. Amend the delegation agreements and ERO Rules of Procedure as necessary to implement or accommodate the proposed actions.

APPA reiterates its support for a triage process to address the current compliance backlog, particularly for pending self-reports of violations by entities within WECC. Regions such as SERC now appear to have minimal backlogs, allowing SERC to process newly identified self-reports and violations identified through compliance audits on a timely basis. With new resources, staff training, compliance software improvements and process improvements, APPA is optimistic that other regions can be equally effective in their implementation of the CMEPs, which will in turn allow NERC to complete the submission of pending Notices of Confirmed Violations and Mitigation Plans to FERC.

3. Process minor violations and those of an administrative nature more rapidly.

In its discussion, NERC states:

Stakeholders commented that NERC needs to ensure that violations of a minor or “administrative” nature are processed more rapidly, and suggested a simple, abbreviated, streamlined process for (i) resolution of self-reported or self-certified non compliances and (ii) processing minor violations (e.g. of documentation or administrative requirements) that have little or no immediate reliability impact (low risk – low severity violations), i.e. a “warning ticket” approach. Stakeholders referenced the NRC’s “non cited violations” approach as a possible solution.

Discussion of Comments

NERC has developed a short-form pro forma settlement agreement for lower risk violations and those that are administrative in nature. To date NERC has not received any submissions using this new template.

NERC has considered a “warning ticket” approach, similar to the NRC’s non cited violations, for first time or minor violations, but for the reasons discussed elsewhere in this report, has not utilized the approach at this time.

Specific NERC Actions

- a. Continue to offer the short-form pro forma settlement approach for minor violations and those of an administrative nature.
- b. Continue to review the appropriate role for a “warning ticket” process.

APPA strongly encourages NERC to reconsider the short-form pro forma settlement approach it has adopted to make it more broadly applicable and to develop both “warning ticket” (no fine/implied probation) and “traffic ticket” (standard fine/probation) approaches to compliance violations associated with self-reports, compliance audits and other enforcement mechanisms that identify violations with low to medium violation risk factors and violation severity levels. NERC should be looking for reasons to say “yes” to these approaches rather than to further limit their applicability and use.

11. Basis for penalty determinations needs to be more transparent.

NERC summarized the principal stakeholder comments on penalties as follows:

Stakeholders commented that NERC should make its penalty calculator public so registered entities can understand how penalties are determined and the consequences of various actions/inactions. Stakeholders also indicated that the ranges of penalties indicated by the *Sanction Guidelines* coupled with the number of mitigating and aggravating factors are too broad to be meaningful, and that the guidance in the *Sanction Guidelines* is too general to be helpful. Further, stakeholders commented that without the

penalty calculator made public, registered entities cannot be sure the *Sanction Guidelines* are being followed and that the lack of transparency and clarity in penalty calculations makes it appear that penalties are subjective.

APPA encourages NERC to make the penalty calculator public and to revisit the NERC penalty matrix. However, the most important step NERC can take is to eliminate the current compliance violation backlog, so that the industry can evaluate and respond to actual penalties and mitigation plans for confirmed violations, rather than to speculate on potential penalties. In conjunction with the per day per violation approach to penalties adopted by FERC, the potential exposure of registered entities to financial penalties can quickly amount to many millions of dollars.

Conclusion

APPA is under no illusions that achievement of these recommendations will be easy or that they can be adopted without significant modifications to current procedures. A number of these recommendations are in partial conflict with recent FERC guidance orders on the processing of compliance violations and notices of penalty. Some could result in delay in the achievement of some FERC directives concerning reliability standards, in order to ensure that other directives are timely achieved. Nonetheless, APPA is convinced that such steps are necessary to accomplish the reliability objectives that are shared by NERC, FERC and the industry.

Finally, APPA reiterates the following point from its February 25 Comments: a number of recent discussions have centered on whether NERC will be “industry-centric” or “FERC-centric.” NERC board members and staff have stated that NERC “can’t serve two masters.” In APPA’s view, that is *exactly* what NERC must do as the independent ERO, by reestablishing a shared vision and a shared commitment to a set of core reliability objectives among industry stakeholders, NERC, its regions and regulators, and then crafting a realistic, achievable strategy to accomplish these objectives.

Questions concerning these comments may be addressed to:

Allen Mosher
Senior Director of Policy Analysis and Reliability
American Public Power Association
1875 Connecticut Ave. NW Twelfth Floor
Washington, DC 20009-5715
(202) 467-2944 voice
(202) 467-2992 fax
(301) 767-6652 cell
amosher@appanet.org