



October 17, 2011

PROPOSED AMENDMENTS TO NERC RULES OF PROCEDURE

COMMENTS OF THE CANADIAN ELECTRICITY ASSOCIATION

The Canadian Electricity Association (“CEA”) offers the following comments in response to NERC’s September 2, 2011 posting of proposed amendments to the Rules of Procedure (“ROP”). CEA appreciates the opportunity to provide input on this matter.

CEA supports this housekeeping effort by NERC to enhance consistency and clarity in the ROP. In step with this goal, CEA respectfully recommends three modifications to the package of edits. CEA believes that these modifications will assist in achieving greater consistency and clarity in the ROP, to the mutual benefit of NERC and entities which may be affected by these rules.

1. The definition of “Reliability Standard” in proposed Appendix 2 is U.S.-centric and cannot be applied to users, owners and operators in Canada. CEA strongly supports NERC retaining the existing definition of “Reliability Standard” in the ROP, with one modification.

Under the ROP listed in effect as of October 7, 2011, Section 200 contains the following definition of “Reliability Standard”¹:

“Reliability standard” means a requirement to provide for reliable operation of the bulk power system, including without limiting the foregoing, requirements for the operation of existing bulk power system facilities, including cyber security protection, and including the design of planned additions or modifications to such facilities to the extent necessary for reliable operation of the bulk power system, but the term does not include any requirement to enlarge bulk power system facilities or to construct new transmission capacity or generation capacity. A reliability standard shall not be effective in the United States until approved by the Federal Energy Regulatory Commission and shall not be effective in other jurisdictions until made or allowed to become effective by the applicable governmental authority. (Emphasis added).

However, proposed Appendix 2, *Definitions Used in the Rules of Procedure*, contains a separate definition of the term, lifted directly from Section 215 of the U.S. Federal Power Act:

“Reliability Standard” means a requirement approved by the Commission under Section 215 of the Federal Power Act, to provide for Reliable Operation of the Bulk Power System. The term includes requirements for the operation of existing Bulk Power System Facilities, including Cyber Security Protection, and including the design of planned additions or modifications to such Facilities to the extent necessary for Reliable Operation of the Bulk Power System, but the term does not include any requirement to enlarge such Facilities or to construct new transmission capacity or generation capacity.

CEA does not at all support using statutory language applicable in only one jurisdiction to define a term which is a fundamental component of the broader North American electric reliability regime and lexicon. Moreover, CEA cannot support a definition of “Reliability Standard” that is

¹ http://www.nerc.com/files/NERC_Rules_of_Procedure_EFFECTIVE_20111007.pdf

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contingent upon FERC approval, as such definition disregards and delegitimizes the processes in place in Canadian jurisdictions for the development, adoption and approval of standards.

As noted above, the existing definition of the term in the ROP correctly acknowledges that reliability standards shall not be effective in a jurisdiction until made or allowed to become effective by the Applicable Governmental Authority. CEA strongly calls upon NERC to retain this definition and include it in proposed Appendix 2.

In addition, in view of circumstances surrounding the adoption and approval of Rule 321 in the ROP, CEA believes that NERC should modify the existing definition of “Reliability Standard” to clarify that such standard has received the express approval of the NERC Board.

2. The use of the defined terms “Applicable Governmental Authority” and “ERO Governmental Authority” throughout the ROP is duplicative. CEA recommends consistent use of one term in the ROP and in proposed Appendix 2.

Proposed Appendix 2 defines each term thus:

“Applicable Governmental Authority” means the FERC within the United States and the appropriate governmental authority with subject matter jurisdiction over reliability within Canada and Mexico.

“ERO Governmental Authority” means a government agency that has subject matter jurisdiction over the reliability of the Bulk Power System within its jurisdictional territory. In the United States, the ERO Governmental Authority is the FERC. In Canada, the ERO Governmental Authority resides with applicable federal and provincial governments who may delegate duties and responsibilities to other entities. Use of the term is intended to be inclusive of all applicable authorities in the United States, Canada, and Mexico, and is not restricted to those listed here.

It is unclear how the scope of either defined term is materially different from the other. Each term covers all U.S., Canadian and Mexican governmental authorities with jurisdiction over reliability within their respective territory. Moreover, the interchangeable use of these terms throughout the ROP suggests that there are no firm criteria for determining when one term is better suited to providing greater clarity or specificity. (For example, the basis in Rule 402.5 for using “appropriate governmental authorities” in the first sentence and “applicable ERO Governmental Authority” in the final sentence is not immediately apparent).

CEA therefore believes that greater consistency can be achieved by simply employing one of these terms throughout the ROP.

CEA believes that the consistent use of “Applicable Governmental Authority” has the advantage of conforming to language used in existing reliability standards (e.g. CIP-002 through CIP-009), the existing definition of “Reliability Standard” under the ROP (see #1 above), and the NERC Bylaws. In addition, not all governmental authorities have expressly recognized NERC as the “ERO” in the legislative or regulatory frameworks governing reliability in their respective jurisdictions. Nevertheless, CEA acknowledges that “ERO Governmental Authority” is the term more commonly used throughout the ROP, and that its definition is sufficiently inclusive so as to encompass all Applicable Governmental Authorities in Canada.



Irrespective of which defined term NERC selects for consistent use, CEA urges NERC to retain the existing definition of “ERO Governmental Authority” for such term, as it is more fulsome.

3. The definitions of “Regional Reliability Standard” and “Variance” in proposed Appendix 2 require modification in order to clarify the enforcement authority (or lack thereof) of Regional Entities in Canadian jurisdictions.

The last sentences of the definitions of each term in proposed Appendix 2 read as follows, respectively:

Regional Reliability Standards, upon adoption by NERC and approval by the applicable ERO Governmental Authority(ies), shall be Reliability Standards and shall be enforced within the applicable Regional Entity or Regional Entities pursuant to delegated authorities.

A Variance is embodied within a Reliability Standard and as such, if adopted by NERC and approved by the ERO Governmental Authority, shall be enforced within the applicable Regional Entity or Regional Entities pursuant to delegated authority.

CEA believes minor modifications to these definitions are required in order to accurately convey the roles performed by Regional Entities under the reliability frameworks in place in Canadian jurisdictions. As part of their reliability model, certain jurisdictions have accepted NERC’s delegation of enforcement authority to the applicable Regional Entity. Meanwhile, in other jurisdictions, a Regional Entity’s authority is not delegated from NERC’s authority through formal delegation agreements. Rather, authority is granted directly to the Regional Entity through legislation or other legal instruments. In addition, certain jurisdictions have not granted any enforcement authority to the applicable Regional Entity.

Accordingly, CEA recommends the following modifications, shown in bold red text, to the above sentences:

*Regional Reliability Standards, upon adoption by NERC and approval by the applicable ERO Governmental Authority(ies), shall be Reliability Standards and shall be enforced within the applicable Regional Entity or Regional Entities pursuant to **enforcement procedures prescribed by the Applicable Governmental Authority.***

*A Variance is embodied within a Reliability Standard and as such, if adopted by NERC and approved by the ERO Governmental Authority, shall be enforced within the applicable Regional Entity or Regional Entities pursuant to **enforcement procedures prescribed by the Applicable Governmental Authority.***

