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July 22, 2002

Mr. Gregory Eisenstark
Assistant General Solicitor
PSEG Services Corporation
Law Department
80 Park Plaza, T5G
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Dear Mr. Eisenstark:

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

Gregory Eisenstark
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June 24, 2002

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**Re: North American Electric Reliability Council
Application for ANSI Accreditation as a Standards Developer**

Dear Mr. Niebo:

Public Service Electric and Gas Company (“PSE&G”), PSEG Power LLC, and PSEG Energy Resources & Trade LLC (collectively the “PSEG Companies”), pursuant to the Notice of Application to the American National Standards Institute (“ANSI”) for Accreditation of the North American Electric Reliability Council (“NERC”) as a Developer of American National Standards under the Organization Method of developing standards published in the June 7, 2002 edition of the *ANSI Standards Action*, hereby submit their questions and comments on the NERC Application for Accreditation as a Standards Developer (“Application”). The PSEG Companies have been active on numerous NERC committees and issues since NERC’s inception, and because of the nature of the PSEG Companies’ business, will be materially and directed affected by any and all standards that may be developed by NERC. Moreover, for many years the PSEG Companies have urged NERC to correct deficiencies in its processes and to seek ANSI accreditation, based upon the PSEG Companies’ favorable experience with ANSI. However, the PSEG Companies’ review of the Application indicates that there are a number of issues in the Application and NERC standards development process that do not meet the necessary tests of due process, balance, fairness, etc., necessary to be an ANSI-accredited standards developer. Accordingly, pursuant to ANSI procedures, the PSEG Companies respectfully request that their concerns be adequately resolved prior to ANSI granting NERC’s Application.

The PSEG Companies’ specific questions and comments on the Application on a section-by-section basis are as follows:

Application Section III – Scope and Rationale

A. Scope (Application Page 1)

NERC states that the “purpose of a standard is to support the reliability of the North American bulk electric systems without causing *undue restrictions or adverse impacts* on the competitive electricity markets.” The nature and effects of “restrictions” and “adverse impacts” on the market can have profound consequences both to suppliers and customers. The Application does not define the meaning of “undue restrictions” and “adverse impacts” nor does it state by whom or by what means the “restrictions” and “adverse impacts” will be defined or determined. It appears that it is NERC’s intent to unilaterally pass judgment on “undue restrictions” and “adverse impacts.” This is unacceptable and NERC should amend the Application to further define and clarify these terms, including the means by which all interested stakeholders will be heard on these matters.

RESPONSE: The comments are correct in that the application itself does not define terms such as “undue restrictions” or “adverse impacts.” The Organization Standards Process Manual does, however, provide a clear and sufficient description of the nature and extent of the Organization Standards NERC will develop. For example, the Manual cites the Reliability Principles and Market Interface Principles as defining purpose, scope, and nature of the Organization Standards. These Principles, which are approved by the NERC independent Board of Trustees, appear in the appendix to the Manual. Also, the NERC process uses a unique Standards Authorization Request to determine, through industry consensus, the need and scope for an Organization Standard BEFORE a standard is drafted.

There are three safeguards against developing overly restrictive standards and/or standards that unduly have an adverse impact on electricity markets. First, the Standards Authorization Committee is balanced by having an equal number of representatives for each industry segment. Their first responsibility is to review each Standards Authorization Request, and ensure that the proposed standard would not have an undue adverse impact on industry markets. Second, the standards development process encourages all interested parties to provide written comments on all draft documents. These written comments are publicly posted for all industry participants to see. Any entity that feels as though a proposed standard would be overly restrictive or would have an adverse impact on competitive markets is responsible for bringing this forward in written comments. Every comment is addressed before any voting takes place. Third, a weighted-segment voting model is used to ensure that each industry segment has an equal vote in approving all new standards. Under this model, standards that don’t have widespread industry acceptance (i.e., those that are overly restrictive or those that would adversely impact markets) would not be approved.

Under “characteristics” (Application Page 2)

In the definition of “Material to Reliability,” the Application states that the measure of materiality is whether “the reliability of the bulk electric system could be compromised.” This definition is overbroad and could be construed to mean that a NERC standard that has the potential for a *de minimis* compromise of reliability is material. The PSEG Companies suggest that NERC amend the Application to insert the words “substantially and materially” before the word “compromised” in the definition.

RESPONSE: The term “Material to Reliability” is defined in the Organization Standards Process Manual (page 6). Further the word “material” is defined¹ as “of substantial import of much consequence important.” Adding the words “substantially and materially” before the word “compromised” in the application seems unnecessary in that the Manual itself adequately defines the term “Material to Reliability.”

¹ Random House Dictionary of the English Language.

Under “performance standards” (Application Page 2)

NERC should amend the Application to insert the words “substantially and materially” before the word “impacting” in the definition for the same reasons as set forth above.

RESPONSE: Same comment as above.

B. Rationale (Application Page 2)

The Application states “NERC is the sole organization established by the members of the electric industry for the development of the bulk interconnection of system electric reliability standards in North America.” This statement is misleading, because the Regional Reliability Councils (the industry entities that formed NERC), and industry-formed Independent System Operators (“ISO”) and Regional Transmission Organizations (“RTO”) also develop and implement reliability standards for their respective areas. RTOs were expressly directed and ordered by the Federal Energy Regulatory Commission (“FERC”) to, among other things, be responsible for maintaining short-term reliability of the bulk power system and ensure long-term reliability through coordinated planning.²

RESPONSE: The reference to FERC Order 2000 by the commenter is incorrect. The RTOs that the Commission intends Order 2000 to bring about will themselves be operators of the bulk power system, subject to the rules promulgated by NERC. The Commission fully intends that there be a separate standard-setting and enforcing organization. In response to comments urging that RTOs be authorized to set their own reliability standards, the Commission stated:

“We conclude the RTO must perform its [short-term reliability] functions consistent with established NERC (or its successor) reliability standards and notify the Commission immediately if implementation of these or any other externally established reliability standards will prevent it from meeting its obligation to provide reliable, non-discriminatory transmission service.” Order No. 2000, Docket No. RM99-2-000, Preamble at 323.

The Application defines in part the rationale for standards as “Necessary for developing viable, competitive markets.” Here, the Application correctly implies that reliability standards are intertwined with and directly impact the electricity markets. Reciprocally, business practice standards directly impact electric system reliability. However, in stating that NERC is the “sole organization” for developing electric reliability standards the Application ignores the fact that the ANSI-accredited North American Energy Standards Board (“NAESB,” formerly know as the Gas Industry Standards Board or “GISB”) has been selected by industry participants and approved by the FERC to develop business standards for the bulk electric systems and markets. The Application should be amended, at a minimum, to state that NERC’s role will be to develop core reliability policy, which together with FERC policy will form the basis for development of relevant industry standards by the Wholesale Electric Quadrant (“WEQ”) of NAESB.

² Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,092 (1999).

RESPONSE: FERC’s May 16, 2002 Order did not say that NERC would develop only “core reliability policy.” It did state, “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.”

This statement by FERC, along with the previous quote from FERC Order 2000, makes it clear that FERC views NERC as the organization responsible for setting reliability standards for the wholesale electric industry.

Further, NERC has developed a Letter of Intent to coordinate the development of reliability standards by NERC with business practice standards by NAESB once the 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.”

Section IV – Information Regarding Standards Activities

C. Requested Enclosures – Administrative Documentation

List of candidate American National Standards (clause 2.3) (Application Page 3)

In the first paragraph of this subsection, the Application states that “The result will be standards that are consistent measurable, enforceable, and guided by the reliability and market interface principles established by NERC.” The PSEG Companies are concerned that these principles themselves, fundamental to the future standards to be developed, have not been developed in an ANSI-accredited process. The NERC Organization Standards Process Manual (Application Attachment B at Page 5), states “The [NERC] Board of Trustees may modify these principles from time to time, as necessary, to adapt its vision for Organization [NERC] Standards.” Thus, only the independent NERC Board will have any authority to modify the all-important principles. Effectively, this leaves the interested stakeholders with no meaningful role or authority to amend the “Constitution-like” principles! The Application and supporting documents should be amended to state that, as a first order of business, the reliability principles must be revisited in the ANSI-accredited standards development process, and that the authority of the NERC Board to amend or modify the principles in any way will be eliminated.

RESPONSE: The NERC independent Board, as a matter of course, solicits input on all major policy matters, such as revisions to the Reliability Principles and Market Interface Principles. It does this through its three standing committees — Planning, Operating, and Market Interface — each of which comprise a broad and balanced representation of electricity market participants, as well as its Stakeholders Committee, which comprises executive, policy-level participants, again from a broad cross section of the electricity industry. Policy matters such as these Principles are posted for public comment before coming to the Board for action.

The transfer of the governance of NERC in 2001 from industry stakeholders to a fully independent Board was a major accomplishment. An independent Board with no market connections is essential for the credibility of reliability standards, oversight and enforcement. Stakeholder governance is cumbersome and often ineffective when hard decisions have to be made. Further, it is important that responsibility for the reliability of the integrated system be clearly defined. If there are major problems on the integrated system, it is highly unlikely that the public, Congress or Canadian governmental entities will hold a stakeholder sector voting process responsible, whether or not it is ANSI-accredited. They are going to look to the board of directors of the responsible organization, or to regulators. For this reason, the independent NERC Board must have the authority and obligation to exercise its own judgment in the final approval of the Reliability and Market Interface Principles on which Organization Standards are based.

Of substantial concern is the Application’s reference to “market interface principles.” NERC has many times publicly acknowledged that reliability and commercial standards are intertwined.³ NERC’s Board of Directors has also recently determined that NERC’s role should be limited to reliability, and will not include market or commercial aspects. Accordingly, it is inappropriate for the Application to reference “market interface principles established by NERC.” The Application should be restated to provide that NERC shall be guided by market interface principles established by the WEQ of NAESB and the FERC. NAESB’s WEQ would utilize its already ANSI-accredited process to develop the market interface principles and file the NAESB product with the FERC.

RESPONSE: The Market Interface Principles, as stated in the Organization Standards Process Manual, are intended to ensure that Organization Standards are written such that they achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets. As such, it is entirely appropriate for NERC to develop such Principles.

With respect to NAESB, it is important to recognize that there is no Wholesale Electric Quadrant as yet. Further, NAESB is not constituted to develop policy or principles, but rather to develop voluntary, industry-consensus business practice standards based on policies and principles established by others. In the case of the yet-to-be-formed Wholesale Electric Quadrant, it would likely be FERC that establishes the relevant policies and principles, not NAESB.

The scopes of committees, subcommittees or technical committees that have standards development or approval responsibilities (clause 2.3) (Application Page 4)

The lead paragraph states that “any person . . . shall be allowed to participate in the development and approval of a NERC Organizational Standard.” While nominally a correct statement, the PSEG Companies have a substantial concern with the availability of truly meaningful participation for all materially interested parties in certain aspects of the NERC process. Specifics on the concerns are set forth below.

³ For example, on Page 14 (Attachment A) of the subject Application NERC states “Recognizing that bulk electric system reliability and electricity markets are inseparable and mutually interdependent . . .”

NERC Board of Trustees (Application Page 4).

This subsection is problematic in at least two respects. First, it gives the NERC independent Board of Directors unfettered discretion to disapprove any standard, even if that standard was developed without any protest and was unanimously approved by the stakeholders in the ballot pool. This final step of review by the NERC Board is not necessary and is counter to the spirit if not the letter of the ANSI process. Once the ballot pool in an ANSI-approved process has voted upon and adopted a standard, that should be the final step (other than what may be provided in the ANSI-approved appeals process) at NERC for a standard to be considered final. To allow the Board of Directors to set-aside what the participants have developed and approved counters all for which ANSI stands -- a balanced, open and fair process resulting in a true consensus. The Application and supporting documents should be amended to remove the reference to NERC Board's approval of standards.

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.

Second, the last sentence of this subparagraph states, "Once the [NERC] Board adopts a NERC Organization Standard, compliance with the standard will be enforced with the effective date." For a considerable time NERC has been seeking authority on multiple fronts to enforce standards and now seems to have expanded its efforts by including this provision in its ANSI Application. Placing any reference to enforcement in the Application is both irrelevant and beyond the scope of the Application. The Application and supporting documents should be amended to remove all references to enforcement and the possibly mandatory nature of any standards, as these issues properly should be considered in another forum, not at ANSI.

RESPONSE: While including reference to NERC's Compliance Enforcement Program in the application is not required for accreditation of its voluntary, industry consensus standards development process, it is an integral part of NERC's mission and inclusion in the Manual and by reference in the application for ANSI accreditation should not detract or add to the case for accrediting the NERC standards development process.

Standards Authorization Committee (Application Page 4)

The Application fails to specify how, or by whom, each of the two members from each industry segment in this powerful committee will be selected. At a minimum, the Application must be amended to specify a fair and open means for the selection.

RESPONSE: NERC believes it to be sufficient in the context of the Organization Standards Process Manual to indicate that the Standards Authorization Committee will consist of two representatives of each of the Industry Segments in the Registered Ballot Body. NERC is in the process of approving registrations for the nine Industry Segments, and as soon as registrations reach a predetermined threshold, NERC will be requesting the registered entities in each Industry Segment to designate their representatives to the SAC. Each Industry Segment can establish its own “fair and open means” for the selection of their designated representatives.

The Application also fails to specify how the members of the team that drafts/ revises the Standards Authorization Requests (“SAR”) are selected. At a minimum, the Application should be amended to provide that any interested party may participate in the drafting of a SAR. A closed or limited group is unfair and unacceptable.

RESPONSE: It appears the commenter misunderstands the role of the SAR/Standard Drafting Teams. Both are small teams of technical experts who work with the Requestor (in the case of the SAR Drafting Team) and the industry commenters (in both cases) to develop drafts for posting and public comment. The teams will also assist in the conduct of industry workshops and standards forums to explain the draft SARs and standards and to solicit additional comments from all industry participants. The important thing here is that the SAR/Standard Drafting Teams serve as agents for the larger group of industry participants. Further, they work under the direct supervision of the SAC, which is made up of representatives of the Industry Segments. Finally, EVERYONE in the Registered Ballot Body has the opportunity to join a Standard Ballot Pool and vote on a proposed Organization Standard.

All interested parties are encouraged to submit written comments on all draft SARs and Standards and the drafting teams use these comments to shape the scope and technical details of the standard.

Standards Drafting Team (Application Page 5)

This subsection provides that details of a standard will be developed by a “Standards Drafting Team” (“SDT”) defined as “A small team of technical experts, approved by the Standards Authorization Committee.” The PSEG Companies view this provision as substantially and fundamentally unfair. It clearly lacks the attribute of openness central to the ANSI process, since the elite SDT GROUP would wield the all-important “power of the pen” in developing the language of a standard. While the PSEG Companies recognize that commenting on the draft language is open to all, they strongly believe that participation on the Standards Drafting Team should likewise be open to all. Limiting the size of the SDT because of a preconceived notion that a large group would be unmanageable assumes that the stakeholders would act contrary to their interests and impede development of the standards. Quite to the contrary, the stakeholders who volunteer their valuable time and efforts to drafting standards would cooperate so that the drafting effort is efficient in their own self-interest. Imposing a closed (rather than an open) drafting team process at this time is at best premature, and jeopardizes the credibility of the entire standards development process. The Application and supporting documents should be amended to provide that any stakeholder with a legitimate interest may fully participate on a standards drafting team.

RESPONSE: The size of the SAR/Standard Drafting Teams is kept relatively small for efficiency and effectiveness. However, the meetings of these groups are open to the public. Further, NERC utilizes a “self-nomination” process for gathering names of candidates to serve on SAR/Standard Drafting Teams, and assembles these teams based on technical, segment, and geographic balance. Finally, the segment-balanced SAC must approve the membership of the teams.

Industry Segments Expected to Ballot Standards (Page 6)

The application lists nine separate segments. However, Segments 3 “Load-serving Entities” and 4 “Transmission-dependent Utilities” are functional equivalents in that they perform a retail distribution function. Likewise, Segments 7 “Large Electricity End Users,” 8 “Small Electricity End Users,” and 9 “Federal, State, and Provincial Regulatory or other Governmental Entities” all essentially represent the interests of consumers of electricity. Accordingly, the interests represented by this nine-segment model are not balanced. The Application should be revised to combine segment 3 with 4 to form a distribution/load-serving segment, and to combine segments 7, 8 and 9 to form an end-user segment, resulting in a balanced five-segment, functionally-based model. RTOs and ISOs should determine into which segment they best fit. Each function would then have one-fifth of the voting power.

RESPONSE: The issue of the Industry Segments was fully vetted with the industry over the course of several months and several public postings and comment opportunities and approved by the NERC independent Board. The Board, in approving the nine segments, agreed to review at least at every Board meeting the Industry Segments and voting rules to assure the process is followed and working well. Having one party whose views were heard and rejected during this fair and open comment process seek to reopen the discussion of this Board decision in the context of NERC’s application is inappropriate.

D. Requested Enclosures – Coordination Efforts

*Efforts to explore using the expertise and processes of a currently accredited standards developer(s).
(Application Page 7)*

Incredibly, the Application simply states “No overlap found.” in response to this subsection. As stated earlier in these comments, NERC apparently chose to ignore the existence and expected role of the North American Energy Standards Board. NAESB is an ANSI-accredited standards developer and is nearing the end of the process to establish a Wholesale Electric Quadrant to develop standards for the same bulk electric system to which NERC standards are directed. Most industry stakeholders, including NERC itself, as well as the Federal Energy Regulatory Commission, have on numerous occasions publicly acknowledged the intertwined nature of reliability and commercial impacts of standards in a bulk power environment – reliability aspects of a standard usually have substantial commercial implications and commercial aspects of a standards usually have substantial reliability implications. Senior NERC Staff has attended most if not all meetings related to the formation of the NAESB Wholesale Electric Quadrant. The exact division of responsibility of standards development activity for the wholesale electric industry between NERC and NAESB is not yet fully settled. However, there is substantial consensus among the industry stakeholders that if NERC is to have a role in developing reliability-related standards, the overlap with commercial aspects dictates that there be an efficient coordination with NAESB.⁴ NERC’s omission of NAESB is inconsistent with the language on Page 14 (Attachment A) of the Application stating that reliability and markets are inseparable. Also, the NERC Organization Standards Process Manual (Application Attachment B at page 4) states that the NERC standards “must at the same time accommodate competitive electricity markets.” Similarly, on page 5 the same document states that “. . . bulk electric system reliability and electricity markets are inseparable and mutually independent. . .” On Page 27 of Attachment B, the table contains references “Market Interface Principles.” On Page 29 of Attachment B, the table contains references “market for generation products.” Likewise, on Page 30 of Attachment B, the table contains references to Market Interface Principles.

⁴ In a recent order the FERC (the agency with jurisdiction over wholesale electricity) stated that it is satisfied with NAESB as a commercial standards developer, but wanted stakeholders to provide additional information as to how its interface with any reliability organizations might be coordinated. *Electricity Market Design and Structure*, “Order on a Standards Development Organization for the Wholesale Electric Industry,” 99 FERC ¶ 61,171 (May 16, 2002).

RESPONSE: See earlier comments on how NERC and NAESB intend to coordinate and cooperate their respective standards development activities once the Wholesale Electric Quadrant of NAESB is formed. As of the date of this response, that has not happened. NERC understands that the industry group working to form the Wholesale Electric Quadrant has developed a proposal that many in the industry support and that will be submitted to NAESB in the near future.

In the second subsection on Page 7 of the Application, NERC expressly states, without mentioning NAESB by name, that “NERC is committed to coordinate the development of its reliability standards with the related wholesale business practice standards that will be developed by that organization.” This is a further indication of the substantial overlap that would exist between NERC and NAESB. Many stakeholders have suggested that NERC should develop core reliability policy and NAESB should develop industry standards based on that policy and commercial needs. Accordingly, the Application must be amended to fully explain the overlap between NERC and NAESB and the specific ways in which the overlap with this existing ANSI-accredited standards developer will be addressed.

RESPONSE: As stated in response to an earlier comment, NERC intends to enter into a memorandum of understanding with NAESB, once the Wholesale Electric Quadrant of NAESB is formed, that will describe how NERC and NAESB will work together to assure the coordinated development of business practice standards and electronic communications protocols by NAESB and of reliability standards by NERC in a manner that is both efficient and beneficial to the industry and the marketplace as a whole.

In further support of the position in NERC’s application that there will be no overlap between the NERC and NAESB standards development activities is a letter from the Chairman of FERC to the Chairman of NERC, immediately prior to NERC’s Board of Trustees meeting. In part that letter states:

“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 crucial. I urge you to work with NAESB expeditiously to establish the procedures for ensuring coordination after the NAESB Wholesale Electric Quadrant is formed. I hope to have such coordination in place well before the end of the year to support our efforts to establish a standard market design.”

At NERC’s June 14, 2002 Board of Trustees meeting, the NERC Board approved a Letter of Intent regarding coordination between NERC and NAESB and authorized its Chairman to negotiate the final details. At NAESB’s June 28 Board meeting, the NAESB Board gave similar authorization to its Chairman. Both NERC and NAESB expect to come to agreement promptly on a Letter of Intent, which will form the basis for a more detailed memorandum of understanding once the Wholesale Electric Quadrant of NAESB has been formed.

In summary, NERC stands by its statement that no overlap will exist between the reliability standards developed by NERC and the wholesale electric business practice standards and communications protocols intended to be developed by the NAESB Wholesale Electric Quadrant, once that quadrant is formed.

In the third subsection dealing with organizations developing standards that may reference, et al, NERC's standards, on page 7 of the Application NERC mentions the Regional Reliability Councils. However, Regional Transmission Organizations, which have been and are in the process of forming pursuant to FERC's orders, are charged with implementing markets and maintaining reliability for the bulk wholesale power industry within their regions as well as coordinating with adjoining RTOs. To accomplish these legally mandated tasks, the RTOs also have been and will continue to develop standards for their own areas that impact reliability and commercial. The RTOs' activities clearly will reference NERC's standards (they already do), use NERC standards as inputs, have some standards that are similar to NERC's and are certainly related to NERC's area of interest. The Application is deficient in that it fails to include RTOs. Such an omission, given FERC's aggressive efforts to implement them nationwide, must be addressed in sufficient detail in an amended Application.

RESPONSE: While this same question was addressed earlier in the response, it bears repeating here in its entirety.

The Commission fully intends that there be a separate standard-setting and enforcing organization for reliability. In response to comments urging that RTOs be authorized to set their own reliability standards, the Commission stated:

"We conclude the RTO must perform its [short-term reliability] functions consistent with established NERC (or its successor) reliability standards and notify the Commission immediately if implementation of these or any other externally established reliability standards will prevent it from meeting its obligation to provide reliable, non-discriminatory transmission service." Docket No. RM99-2-000, Preamble at 323.

NERC Organization Standards Process Manual (Application Attachment B) Dated May 16, 2002

Much of this document must be amended to reflect the comments set forth above and the specifics below:

References to NERC or its Board developing Market Principles should be removed, because such activity is inconsistent with the NERC Board's directive that NERC is to be a reliability-only organization. (See first two subsections on Page 6 of Application Attachment B for examples of references that should be removed; also Page 7 first table "Purpose" element.)

RESPONSE: NERC believes it is totally appropriate for it to develop Market Interface Principles as the purpose for doing so as stated on page 5 of NERC's Organization Standards Process Manual is to ensure that reliability standards developed by NERC achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets. Further, NERC's open and inclusive process is designed to solicit feedback early on in its development process to assure strong industry support for the nature and scope of a proposed standard BEFORE the actual standard is drafted. (The Standard Authorization Request (SAR), a unique feature of the NERC process, is noted earlier in this response.)

In Application Attachment B, Page 7, second table "Compliance Administration Elements" are irrelevant to standards development, ANSI, and the Application, and should be removed for purposes of the Application. Such NERC activities do not belong in an ANSI application forum.

RESPONSE: NERC is not seeking ANSI accreditation of its compliance activities. However, since NERC, unlike some other standards developers, also performs a monitoring and enforcement function, it plans to develop the related Compliance Administration Elements along with each actual standard to ensure that the final standard is measurable and enforceable. However, NERC believes that its Organization Standards Development Process Manual properly includes mention of Compliance Administration Elements. In that manner, all industry participants will know and be able to comment on the compliance elements of a standard as it is being developed, and the best time to work out any changes that may be needed.

In Application Attachment B, Page 9, the descriptive language of the Standards Authorization Committee and the Standards Process Manager must be expanded to clearly indicate by what means memberships on the committee and the role of standards process management meet all openness, fairness, due process, etc., principles of ANSI. How are these individuals selected? Does NERC Staff have any influence over selection?

RESPONSE: The members of the Standards Authorization Committee do not vote on approval of standards in the NERC process. All voting is done by an “open” ballot body of individuals that join one of nine Industry Segments. As stated in the Organization Standards Process Manual, the SAC manages the standards development process. Each segment designates their two representatives to the SAC. NERC staff has no influence over how each segment arrives at their designated representatives to the SAC.

While each Industry Segment is permitted to use its own procedures for election of its SAC members, the procedures used must be fair and open. NERC will provide a default procedure that Industry Segments may use to elect their SAC members. If an Industry Segment elects to use its own procedures to elect its SAC representatives, a written copy of the procedures must be provided to NERC so that NERC has documentation that the procedures used for electing SAC representatives are fair and open.

In Application Attachment B, Page 10, will NERC staff assist the SAR Drafting Team upon request? What influence will the NERC Staff have, and if Staff has influence or authority over any matters, how is that reconciled with the ANSI principles?

RESPONSE: NERC staff provides administrative support for the standards development process. A NERC staff member will serve as the ‘secretary’ of each of the SAR and Standard Drafting Teams. The role of the secretary is to provide administrative support to the team — by taking meeting minutes, distributing copies of relevant documents, setting up meeting room arrangements, etc. Individual SAR or Standard Drafting Teams may call on technical assistance from NERC staff at the discretion of these Teams. The main thing to remember about the NERC standards development process is that EVERYONE that has an interest in a standard has an opportunity to vote on approval of that standard by registering in the Registered Ballot Body and joining a Standard Ballot Pool.

With respect to the term “Requester” on Page 10, who determines if the request is complete? What influence will the NERC Staff have, and if Staff has influence or authority over any matters how is that reconciled with the ANSI principles?

RESPONSE: The Standards Process Manager reviews each new SAR to verify that it is complete. This review consists of ensuring that all required data has been provided. Again, NERC staff serves in an administrative and technical support role. The SAC manages the standards development process.

In addition, the appeals process described in the Standards Process Manual provides a vehicle for any entity that has been adversely impacted by any action or inaction, to bring this action or inaction to a high level of visibility as well as a fair resolution.

On Page 10, SAR Drafting Team, it is stated that this group will be a “small team of technical experts assigned to a SAR” and the Standards Drafting Team, “small team of technical experts, approved by the Standards Authorization Committee.” Since these very important committees are limited in membership and wield the all-important ‘power of the pen,’ how does this reconcile with the ANSI principle of open participation by all interested parties? All drafting groups in the NERC process should be open to all interested stakeholders. It is fundamentally unfair to limit participation on drafting teams to small, closed groups. The volunteers who will be willing to expend the time and resources drafting the materials will be dedicated individuals who in their enlightened self-interest will want to ensure that the drafting is done fairly, efficiently and expeditiously. These groups being open to all avoids the appearance of impropriety that closed membership represents. Attachment B should be amended to open membership on the SAR Drafting Teams and the Standards Drafting Teams to all stakeholders with a legitimate interest in the outcome of the standard. The same comments apply to the description of these teams appearing on Pages 13 and 14 of Attachment B.

RESPONSE: Open participation in the process is assured by providing the opportunity for anyone to initiate a request for a standard, anyone to comment on a Standard Authorization Request or draft Standard, and for any member of the Registered Ballot Body to join a Standard Ballot Pool and vote on a Standard. Also, the process provides for “self nominations” to join SAR and Standard Drafting Teams with the SAC deciding on the final makeup of these Teams in order to achieve the right balance of interests and technical talent. The NERC process draws heavily on the process used by the Institute of Electrical and Electronics Engineers (IEEE), which also relies on small teams for drafting proposed standards and an open voting process. The SAC, which manages the standards process and which is representative of all nine Industry Segments, is free to add as many people to the SAR and Standard Drafting Teams as they find necessary and appropriate.

All SAR and Standard Drafting Team meetings are open to all who pre-register. Meeting notices, agendas, minutes and working documents are publicly posted. More importantly, the SAR and Standards Drafting Teams work as ‘agents’ for the rest of the industry. The drafting teams use the comments submitted by industry participants to determine the scope and details of each SAR and associated standard.

The concerns identified immediately above, if not rectified, are in conflict with the definition of “Openness” that appears on Page 11 of Attachment B – “Participation is open to all persons who are directly and materially affected by North American bulk electric system reliability.”

RESPONSE: NERC disagrees with the commentor’s interpretation and assessment. As stated above, openness is afforded by virtue of providing the opportunity for anyone to initiate a request for a standard, anyone to comment on a Standard Authorization Request or draft Standard, for any member of the Registered Ballot Body to join a Standard Ballot Pool and vote on a Standard and by providing for “self nominations” to join SAR and Standard Drafting Teams. All SAR and Standard Drafting Team meetings are open to all who pre-register. Meeting notices, agendas, minutes and working documents are publicly posted.

As discussed in the foregoing comments on the Application itself, the step listed on Page 12 of Attachment B – “Adoption by the Board of Trustees” should be eliminated. A final successful vote by the members of the ballot pool should be dispositive of approval. The NERC Board should have no authority to reject a duly developed and approved standard.

RESPONSE: The role of the NERC Board of Trustees as stated in the Organization Standards Process Manual page 9 is to “consider for adoption” as Organization Standards the standards that have been approved by the Standard Ballot Pool. The purpose of this step is to make a given standard, once “adopted” by the NERC Board, mandatory and enforceable under NERC Bylaws. If the Board chooses not to “adopt” a standard, it does not alter the fact that the standard had been “approved” by the Standard Ballot Body. It just means that NERC has not made that standard mandatory and enforceable.

On Page 14 of Attachment B, the reference to coordinating standards drafting with the NERC Compliance Program should be deleted. In keeping with ANSI principles, the NERC Compliance Program should not be granted status above that of other interested stakeholders. The Compliance Program staff should be welcomed to participate in the same manner as any other stakeholder. This provision should be amended to eliminate reference to the Coordination Program.

RESPONSE: The NERC Compliance Program is not granted status above that of other interested stakeholders. As indicated above, the reason for developing the Compliance Enforcement Elements of a standard with the standard itself is to assure that the final standard, once approved by the Standard Ballot Body, can be implemented, monitored and enforced once it is adopted by the NERC Board of Trustees.

The PSEG Companies have similar concerns with respect to the NERC Compliance Program determining if field testing is needed, as provided in Step 7 set forth on Page 15 of Attachment B. The interested stakeholders, including the NERC Compliance program acting as a stakeholder, should make that determination. The provision should be amended accordingly.

RESPONSE: Field testing is also an integral part of developing a standard that can be properly implemented. ANSI sometimes refers to this step as “Trial Use Standard.” While the Compliance Program Director recommends how much field testing should be done, the SAC, a team of balanced industry stakeholders, makes the final decision on how much field testing will be done.

Step 10 set forth on Page 17 of Attachment B – Adoption of the Organization Standard by the Board, should be deleted for the reasons set forth earlier in these comments. The NERC Board should not have any authority to set aside a standard that has been developed and successfully voted upon in accordance with all ANSI process requirements.

RESPONSE: As noted above, Step 10 simply calls for the NERC Board to adopt a standard for inclusion in NERC’s Compliance Enforcement Program. This is no different than when other ANSI-accredited standards developers (e.g., NAESB) submit an approved standard to, say, the Federal Energy Regulatory Commission, which has the option to include such standard in the tariffs and procedures of jurisdictional entities. NERC, in adopting a reliability standard developed through an ANSI-accredited process, is simply making that standard mandatory and enforceable in the same way that FERC would make a business practice standard, duly approved by NAESB, mandatory and enforceable.

Step 11 set forth on Page 17 of Attachment B – Implementation of Organization Standard is not relevant to the Application under consideration by ANSI. It refers to what may or may not happen after a standard is adopted, including compliance and enforcement, which is beyond the scope of ANSI and belongs in another forum. This step should be deleted from Attachment B for purposes of the Application.

RESPONSE: NERC agrees that some steps described in the Organization Standards Process Manual are not necessary for judging ANSI accreditation of the NERC standards development process. The Organization Standards Process Manual describes an integrated process that embodies but is not limited to the process for developing and approving a standard. While it would be possible to amend the Manual and NERC's ANSI application to strip out all steps that go beyond the pure standards development process, this seems like an unnecessary step. NERC believes that ANSI's Executive Committee can properly evaluate the standards development portion of the integrated process described in the integrated Manual.

On Page 20 of Attachment B, Interpretation of Standards, the team to address the interpretation of a standard should be open to all legitimately interested stakeholders, not simply chosen by the Standards Process Manager. To ensure openness, due process and fairness, this provision should be amended accordingly.

RESPONSE: The process for developing and approving an "interpretation" of a standard is an expedited process to provide a requestor with a prompt clarification or interpretation to an existing standard. Since the Standards Process Manager administers and facilitates all aspects of the standards development process, he or she is in the best position to assemble an appropriate team to provide a timely response to a request for clarification or interpretation. The Standards Process Manager will also be in the best position to judge whether the request for interpretation warrants a formal request to develop a new or revised standard (by submitting a SAR) or can be handled, at least on a temporary basis, as an interpretation. In any event, the process states that an interpretation stands only until the standard is revised through the normal process. Finally, all requests for interpretations will be publicly noticed.

Where practical, the SPM will re-assemble the Standards Drafting Team that developed the associated standard. Each of these teams will have been formed through a self-nomination process that is open to all interested parties. The activities of the SPM are subject to the review of the SAC.

Pages 21 and 22 of Attachment B contain language related to standards submitted by various classes of NERC regional reliability organizations. It is fundamentally unfair to make distinctions between types of regions and these provisions provide a potential means for NERC member regions to circumvent the NERC ANSI process. These sections should be deleted in their entirety and any standards affecting one or more regions differently than North America as a whole should be processed through the regular NERC standards development process for which accreditation is sought in the Application. There should be no special provisions for any NERC member region without regard to its geographic or electrical configuration. Any exceptions or special provisions to general standards should be accomplished during the regular process under which the standard is developed.

RESPONSE: The commentor refers to the distinction between regional standards that are intended to apply on an Interconnection-wide basis vs. those that would apply to only part of an Interconnection. (There are three Interconnections in North America — Eastern, Western, and ERCOT.) The reason for this distinction is that each electrical Interconnection operates as a single, synchronous machine. Actions in any part of an Interconnection cause electrical effects in all other parts of that Interconnection. As a result, it is critical for reliability standards to be common throughout a given Interconnection. This section of the Manual provides for a Region or group of Regions to propose more detailed or different standards that they wish to have approved as Organization Standards. Other than the burden of proof being different for standards proposed to apply on an Interconnection-wide basis vs.

those proposed to apply on less than an Interconnection-wide basis, the NERC process would operate the same way.

By way of an example, suppose one Region in the Eastern Interconnection desired to have approved as an Organization Standard a standard that allowed generation-load imbalances to persist for, say, 20 minutes, instead of a NERC standard of 10 minutes. Allowing such a difference would place a reliability burden (system frequency depression plus unscheduled transmission line flows) on all other NERC Regions in the Eastern Interconnection.

On Page 23 of Attachment B, Level 2 –Appeal, the reference to the NERC Board of Trustees should be deleted as it refers to the provision that would allow the Board to reject a standard, which is inappropriate for the reasons discussed previously in these comments.

RESPONSE: The provision cited by the commentor does not give the NERC Board the authority to reject a standard. In the section of the Manual cited by the commentor, the role of the NERC Board is to assemble a panel to hear appeals on either substantive or procedural issues or to hear a procedural complaint itself. This is to assure that the independent Board, which is responsible for seeing that the standards process is fair, open, balanced and inclusive, has an opportunity to resolve any procedural complaint with the process.

On Page 25 of Attachment B, it is provided that adopted Organization Standards would be filed with regulatory agencies at the discretion of the NERC Board. The NERC Board should not have any discretion as to whether or not a standard should be filed with regulators. Doing so has the Board in effect create two classes of standards, not necessarily as contemplated by those stakeholders who participated in the development process. To satisfy ANSI's openness requirement, this provision should be amended to simply provide that all approved standards will be filed with the applicable regulatory agencies.

RESPONSE: The purpose of filing reliability standards with applicable regulatory agencies is to notify those agencies that NERC has adopted a standard for mandatory compliance. Under the terms of the proposed electricity legislation, NERC would have authority to enforce compliance up to and including the imposition of penalties and sanctions. Absent legislation, NERC would still notify appropriate regulatory agencies of all standards adopted by the NERC Board as those standards would still be mandatory according to NERC's Bylaws on all Regional Councils and their members. A standard approved through the NERC standards development process but not adopted by the NERC Board (which would be a highly unusual case) could still be filed with any regulatory agencies. In the case of FERC, which has no clear-cut jurisdiction over reliability, such a filing would be moot.

On Page 31 of Attachment B, the table calls for explanation of "Regional Differences" so they can be taken into account during the standard drafting process. The 'Regions' in question are the NERC member regions. The table is silent as to disclosure of differences that may be necessary in one or more FERC-approved RTOs. Such RTOs are not coincident with NERC regions, and yet may have legitimate differing needs. The table should be revised to expressly recognize the potential needs of RTOs.

RESPONSE: With the rapid pace of change in RTO memberships, some of which have not yet been approved by FERC, there are some proposed RTO memberships that span multiple Regional Councils. Regional Council boundaries will be realigned, as necessary, so as to fully incorporate individual RTOs within their boundaries.

On Pages 34 and 35 of Attachment B, the description of segments should be revised to a five-segment functional balanced model as described earlier in these comments. To achieve a true balance of interest based upon functions in the electric power industry, Segments 3 and 4 (both of which represent a distribution – retail load serving function) should be combined and Segments 7, 8 and 9 (which represent electric consumer interest function) should be combined. The RTOs and ISOs should self-determine in which segment they best fit. That way each of the five fundamental industry functions gets an equal vote.

RESPONSE: The commentor again brings up an issue that goes beyond the scope of NERC's request for accreditation of its standards development process. As noted earlier, the issue of segments was fully vetted prior to the NERC Board's final decision in February 2002. Further, the Board stated, in approving the nine segments that are in effect today, that it would review at least at every Board meeting the Industry Segments and voting rules to assure the process is followed and working well.

Conclusion

For all the foregoing reasons, the PSEG Companies, while pleased with and supporting the decision by NERC to seek ANSI accreditation as a standards developer, have significant reservations as to whether NERC's processes satisfy ANSI's requirements, based on NERC's statements in its Application and in its standards development process attached to the Application. Accordingly, the PSEG Companies respectfully request that ANSI withhold approval of NERC's Application until all issues and comments raised herein are satisfactorily answered and resolved by NERC. The PSEG Companies request that NERC and ANSI add it to any correspondence list relevant to the disposition of the Application.

RESPONSE: NERC believes that it has adequately clarified and explained its process in its response to commentor's issues and concerns and that its application for accreditation should be granted by ANSI.

Thank you for the opportunity to comment on the NERC application.

Very truly yours,

Gregory Eisenstark
Assistant General Solicitor
On Behalf of the PSEG Companies