

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Docket No. RM05-30-000

**Rules Concerning Certification of the Electric Reliability Organization; and Procedures for
the Establishment, Approval, and Enforcement of Electric Reliability Standards**

**COMMENTS OF
THE ONTARIO INDEPENDENT ELECTRICITY SYSTEM OPERATOR
ON NOTICE OF PROPOSED RULEMAKING**

The Ontario Independent Electricity System Operator (“IESO”) hereby submits comments in response to the Notice of Proposed Rulemaking (“NOPR”) issued in this proceeding on September 1, 2005. The IESO is a member of the ISO/RTO Council (“IRC”) and is a signatory to the submission filed by the IRC in respect of this proceeding. The IESO participated in and generally adopts the positions contained in submissions filed by the Canadian Electricity Association (CEA), the Northeast Power Coordinating Council (NPCC) and the North American Electric Reliability Council (NERC). The IESO's submission is intended to complement these other submissions, in particular providing an Ontario-specific perspective on certain aspects of the NOPR.

I. Description of the Ontario Independent Electricity System Operator

On January 1, 2005 the Ontario Independent Market Operator (IMO) was continued as the IESO and the IESO continues to exercise the operating authorities and responsibilities of the

IMO.¹ The IESO is the organization responsible for establishing and administering wholesale electricity markets and directing the operation and maintaining the reliability of the integrated power system within the Province of Ontario. The IESO is the NERC Reliability Coordinator and Control Area operator in Ontario, and is a member of NPCC. The IESO's responsibilities include a broad range of integrated operations, including planning, security assessment and scheduling, administration of the wholesale electricity market and ancillary services, and real time coordination of the power system. The IESO-controlled electric power grid is interconnected with grids in two Canadian provinces and three U.S. states.

The IESO is subject to regulation by the Ontario Energy Board (OEB), i.e., it is not subject to Commission jurisdiction. However, given the integrated nature of the power system across borders and the long-standing electricity trading relationship between Ontario and neighbouring U.S. States, the IESO has been and continues to be an active participant in Commission proceedings that may impact the IESO-controlled grid and IESO-administered markets.

II. General Comments

For many years the IESO has actively promoted the need for mandatory and enforceable reliability standards that would apply to all owners, users and operators of the North American interconnected bulk power system and the creation of an Electric Reliability Organization (ERO) through which such standards would be developed and enforced. The IESO

¹ The IMO was established by the Electricity Act, 1998 as a not-for-profit corporation without share capital with responsibility for developing and administering the wholesale electricity markets and directing the operation of the integrated power system.

commends the Commission for its promptness and thoroughness in responding to the passage of the Electricity Modernization Act of 2005, which authorizes the creation of the ERO.

The IESO's comments fall into several categories. The Ontario standards management framework is described and recommended for application in the U.S. (Section II). There are a number of comments on matters related to the bilateral principles, which the IESO endorses as effective for an ERO functioning on an international basis (Section III). There are additionally a number of matters where the Commission in its rulemaking needs to take into account impacts and jurisdictional considerations on authorities in Canada (Section IV). A number of comments address the appropriate division of roles between the ERO and the Regional Entities (also in Section IV). Finally, we identify the need for the Commission to ensure that all owners, users and operators of the bulk power system register with the ERO and local Regional Entity (Section V).

1. The IESO recommends the Commission consider the Ontario standards management framework for application in the U.S.

As a general matter, we note that in Ontario compliance with NERC and NPCC reliability standards has been mandatory for some time, backed by sanctions that include financial penalties.

The IESO is the sole party responsible to NERC/NPCC for compliance with their reliability standards; the IESO in turn enforces compliance with these standards by all Ontario market participants, and itself, under authority of the Ontario market rules.

This process has the benefits of administrative efficiency today for NERC, NPCC and entities in Ontario, and it is anticipated this process in essentially its present form will be

continued under the ERO and new Regional Entity. The efficiency derives from NERC/NPCC having to deal with only one party in Ontario, a party whose primary focus is reliability, on compliance enforcement matters.

The Ontario process is also effective regarding the IESO's enforcement of compliance by all parties within Ontario. First, compliance enforcement involves technical matters that only the system operator fully understands, with the result that IESO compliance staff, through their ongoing day-to-day contact with (IESO) system operators, can be much more effective in their compliance work than if they had to rely on data feeds and system logs from an arms-length system operator. Second, the IESO's compliance and market surveillance (market monitoring) support functions and are located in the same business unit, yielding synergies between compliance, with its narrow and extensive technical detail, and surveillance, with its focus on broad regulatory or public policy issues. Finally, the compliance unit, by virtue of being located within the system operator, can understand and reflect in decisions the complex interdependence of reliability practices and associated business practices.

The benefits of a close working relationship of compliance staff with system and market operators must of necessity be balanced with an appropriate degree of separation, especially given that the compliance unit also monitors the IESO itself for compliance. This separation ("ring fencing") is provided through a management agreement between the IESO's CEO and the head of the market assessment and compliance division, who has been delegated to act on behalf of the IESO in the enforcement of compliance with the market rules. This unit independently manages compliance investigations and decides whether a breach has been committed, and if so, decides on the appropriate sanction.

The market rules specify that the IESO's compliance unit may: (1) direct such things as may be necessary for the participant or the IESO to comply with the rules, and (2) direct the participant or IESO to cease the act constituting the breach. The types of sanctions that may be imposed are: (1) impose record keeping or reporting requirements on the participant or the IESO, (2) issue a non-compliance letter, (3) impose financial penalties according to a penalty framework prescribed in the rules, and (4) issue a disconnection order to a participant found to be in breach on a persistent basis.

Financial penalties can only be imposed if the market participant acted intentionally or the breach could have been avoided by the exercise of due diligence. Penalties are capped at \$10,000 per breach unless it relates to specified provisions where the rules require a formula-based penalty that can result in a considerably higher amount. The rules prescribe the factors to be assessed in determining the quantum of the penalty for the category of breaches that cannot exceed \$10,000. There are also special circumstances identified in the rules when this cap may be exceeded, one of which specially pertains to violations during a declared emergency or high risk state.

Financial penalties have been assessed in 109 cases, including 2 against the IESO (not for violations of reliability standards) from market opening in May 2002 to the end of 2004. The number of alleged violations was significantly higher - in most instances the IESO and market participants informally reached a mutually acceptable result without proceeding to a formal investigation by the compliance unit. Market participants may appeal any alleged violation or breach to the IESO's Dispute Resolution Panel, and subsequently to the Ontario Energy Board, for defined major sanctions. No such appeal has taken place to date.

The IESO's administration and enforcement of market participants' compliance with mandatory reliability standards are directed by the Electricity Act, 1998, Ontario Energy Board licences and the Ontario Market Rules. The Ontario compliance process has proven to be effective and efficient and we recommend that the Commission's rule be sufficiently flexible to allow for its adoption in other jurisdictions.² We note that in four ISOs/RTOs under the Commission's jurisdiction the compliance and market monitoring functions are housed internally.

III. Comments Relating to the Bilateral Principles

The IESO endorses the bilateral principles, having participated actively in the extensive development process that involved governments, regulators and industry participants, in both the U.S. and Canada. In our view, it is essential that the ERO function as an international organization - we believe the bilateral principles provide a framework for establishing and administering an effective international reliability organization.

The remainder of this submission consists of the IESO's responses to specific matters raised in the NOPR. In each case our comment is followed by the corresponding text in the NOPR, using the NOPR's paragraph reference.

² In 2002 NPCC's Compliance Monitoring and Assessment Subcommittee (CMAS) directed a compliance review of the Ontario Area. Ontario was found to be full 100% compliant with all compliance requirements. The report concluded: "The Ontario Area Compliance program is unique in that it is directly tied to the established market rules and licensing requirements. This structure makes compliance a binding obligation and facilitates in the administration and enforcement of compliance. CMAS encourages other Areas to consider such a compliance program model". Subsequently, in 2004, NERC released a report confirming that the IMO meets its responsibilities for the safe and reliable operation of Ontario's electricity system. The latter report is available at http://www.theimo.com/imoweb/pubs/ircp/NERC/NERC_IMO_Audit_Report-2004.pdf.

2. ***The IESO endorses the bilateral principles, which provide the basis for an effective international organization.***

Moreover, these principles have a high degree of credibility and acceptance because they were developed in a thorough and extensive process, involving not only governments, governmental agencies and regulators on both sides of the international border, but also industry participants and NERC.

(¶ 8) On August 9, 2005, the Federal-Provincial-Territorial (FPT) Working Group in Canada and DOE jointly submitted to the Commission “Principles for an Electric Reliability Organization that Can Function on an International Basis” (bilateral principles) based on these stakeholder dialogues. We invite comment on those principles.

3. ***Membership in the ERO or a Regional Entity should not be a condition for participation in the ERO’s or a Regional Entity’s standards development processes.***

The ANSI-approved standards development process currently used by NERC is open to all interested parties, thereby providing a high degree of openness and transparency that both improves the quality and acceptance of the standards.

(¶ 56) We note that the bilateral principles specify that membership in the ERO should not be a condition for participation in the ERO’s reliability development process. We seek comments on whether membership in the ERO or a Regional Entity should not be a condition for participation in the ERO’s or a Regional Entity’s standards development processes.

4. *Coordination among standards authorities is important in the event of a remand by one authority; however, this need for coordination applies equally to all authorities, and is therefore best addressed in an agreement among authorities, not in the Commission's ERO rule.*

A remand or other action determined by any individual standards authority would apply in that authority's jurisdiction only; as a result a remand by some but not all authorities means there would not be a common set of basic reliability standards for all jurisdictions, and a fundamental objective of the ERO would no longer be met.

Avoidance of a remand is therefore more important than responding to it; every effort should be made during the standards development process to anticipate problems and reduce the likelihood of a remand.

(¶ 57) The Commission notes that the bilateral principles include a provision that if a standard is remanded by a regulatory authority, the ERO should notify all relevant regulatory authorities and should work to ensure that all concerns of such regulatory authorities are addressed prior to resubmission of the standard to the Commission and authorities in Canada. (1) Should the proposed rule specify this process? (2) What are the implications of the remand by a Canadian authority of a Reliability Standard that has been approved by the Commission?

5. *The IESO supports the Canadian representation recommendations contained in the bilateral principles.*

We note that the ERO is likely to have a large number of committees, some of them dealing with narrow technical matters, and that for such committees it would be appropriate for the certification criteria respecting international participation to be in the nature of a guideline, not a firm requirement. We take the reference to "total load" to mean Net Energy for Load.

(¶ 57) Also, should the ERO certification criteria specify that the number of board members representing each participating country in the ERO, and the opportunities for each country to have an equitable number of members on all committees, must be in rough proportion to total load?

- 6. The IESO supports the proposed non-public procedures for enforcement matters and recommends they be extended beyond cyber security incidents. These procedures should also include physical security incidents as well as any grid contingency or emergency incidents that identify vulnerabilities associated with critical infrastructure assets.*

(¶ 63) The Commission seeks comment on this proposal [regarding non-public procedures for enforcement matters involving a cyber security incident] and, in addition, seeks comment on (1) whether the proposal provides sufficient due process and (2) the identification of other specific events that should be subject to non-public hearing procedures.

- 7. The IESO supports the provision in the bilateral principles for rigorous audits performed by properly trained auditors and having common audit standards.*

However, how the ERO will ensure effective audits is a matter for the prospective ERO to include in its application, and ultimately to demonstrate to the Commission after the fact. It is not appropriate for inclusion in the ERO rule.

(¶ 71) (8) The Commission notes that the bilateral principles include a provision calling for rigorous audits by the ERO and Regional Entities to ensure the capability to comply with and actual compliance with the Reliability Standards. The bilateral principles also provide for the ERO to take steps to ensure that auditors are properly trained and that the same audit standards apply to all audits conducted by the ERO and Regional Entities. Should the proposed rule specify these audits requirements as part of the ERO certification requirements and the Regional Entity certification and delegation requirements?

- 8. The IESO believes that it is possible and practical for an ISO or RTO to adequately separate its enforcement function from its operation of the bulk power system, and be capable of functioning effectively as a Regional Entity.***

As noted in our first comment, the IESO currently performs both functions with its enforcement unit insulated from the rest of the organization. Moreover, we noted further that ISOs/RTOs currently subject to the Commission's jurisdiction have compliance and market monitoring units included in, but ring-fenced from the remainder of, their respective organizations.

Specific mechanisms include: arrangements to ensure the confidentiality of the enforcement unit's work, including the protection of files, databases and applications and the establishment of segregated working space; direct reporting relationship to the

CEO; delegation of authority to conduct investigations and levy penalties to the business unit head; and clear direction from senior management to report possible breaches to the enforcement unit and cooperate with its investigation

(¶ 71) (9) The Commission notes that the bilateral principles provide that RTOs and ISOs should not become Regional Entities, and that the Regional Entities should be distinct from the operators of the system, such as RTOs and ISOs. Should the proposed rule mandate this? What are the enforcement implications of an RTO or ISO that is a Regional Entity? Are there ways for an RTO or ISO to adequately separate its enforcement function from its ownership, use or operation of the Bulk-Power System to fully ensure the independence of the enforcement unit? What process should such an enforcement unit follow to insulate itself from its RTO or ISO organization so that it may undertake any enforcement actions that become necessary against the RTO or ISO? How would this comport with the requirements of section 215 of the FPA?

9. ***The IESO supports the extension of the Canadian membership provision in the bilateral principles respecting the ERO Board to the board of a Cross-Border Regional Entity.***

However, we interpret that extension to be more stringent than given in the Commission's question. The reference in the bilateral principles continues: "However, where the number of Board members from that country [i.e. Canada in the present context] would be less than 25 percent of the Board, the number of Board

members allocated to that country should not be less than the percentage of its Net Energy for Load." Application of this principle would therefore lead to specifying a minimum number of Canadian board seats for Cross-Border Regional Entities that is "rounded up" from the proportion of Net Energy for Load.

(¶ 84) (8) Should the certification and delegation criteria for a Cross-Border Regional Entity specify that each country represented in the region should have the opportunity to have members from the country on the board of the Regional Entity in numbers that reflect the country's approximate percentage of net energy for load in that region, similar to that provided in the bilateral principles?

IV. Comments on Other Matters

10. Recertification of the ERO should be conducted on an as-needed basis, following evidence of ERO performance deficiency in ERO reports to the Commission. Such reports would also serve to inform the Commission regarding its authority under proposed rule at 38.6 (a) to decertify the ERO or a Regional Entity. We suggest that recertification not be contemplated as an ongoing, periodic process.

The IESO notes that recertification would be costly and disruptive to the ERO and the industry that supports it, and should be undertaken only when there is supporting evidence to justify such cost and disruption. We recommend that the Commission develop performance metrics and require the ERO to report its performance against these metrics.

(¶ 42) We seek comments on what would constitute a reasonable length of time for such periodic certification [of the ERO] to be effective. For example, is a five-

year certification period appropriate? How far in advance should an ERO be required to submit its application for recertification before its current certification period expires?

11. The Commission should not, in general, void a standard found to be deficient until such time as an appropriate standard can be put in place as a replacement. A standard found deficient will in general be preferable to having no standard.

More fundamentally, the voiding of a standard would represent a unilateral action by one standards authority, which of itself would diminish the commonality of the standards across all jurisdictions. It is more appropriate therefore to request the ERO to develop and propose a new or revised standard, following which each authority would have the usual approval/remand option. Voiding is therefore not a desirable action, and is not recommended for inclusion in the Commission's rule.

(¶ 54) The Commission seeks comment on whether the Commission has authority to void a previously accepted Reliability Standard. If the Commission has such authority, is it beneficial to have such a provision in the Commission's regulations?

12. The Commission should first establish that any proposed standard developed under the voting protocol proposed by the ERO has a high probability of meeting the just and reasonable test. Weight would then be given to assessments conducted by Commission staff on specific proposed standards. Subject to a favourable assessment, the Commission would then follow an expedited approval process that would determine if

the voting protocol and other aspects of the standards development process were followed. The Commission's rule should allow for, or at least not preclude, such an expedited process.

The standards development process within the ERO can only be effective if it has the commitment of industry participants, and this commitment depends on the belief that the standards will for all practical purposes be determined by the ERO's voting protocol. Any perception that the Commission's review provides for reopening all aspects of the proposed standard, in anything other than exceptional circumstances, would weaken commitment to the ERO's process and ultimately the quality of the standard itself.

(¶ 55) Section 215(d) of the FPA and proposed regulation section 38.4 provide that the Commission may approve a proposed Reliability Standard or modification to a proposed Reliability Standard if it determines that the standard is "just, reasonable, not unduly discriminatory or preferential, and in the public interest." The Commission seeks comment on how this standard should be applied in the context of reviewing proposed Reliability Standards.

- 13. There should be an appeal to either the Regional Entity (preferably) or the ERO, but not both. There should be allowance for subsequent appeal to the Commission, or the corresponding authorities in Canada in the case of a Canadian entity.*

Two levels of appeal are neither necessary nor appropriate.

We favour strong and credible Regional Entities respecting their delegated enforcement role, including appeal aspects. There will not be such credibility if the Regional Entity process is seen as merely a preliminary round.

The subsequent appeal to the Commission or an appropriate authority in or Canada is an essential aspect of the enforcement process. In particular it is essential to the ERO working on a bi-national basis.

Regarding the appeal process, we note that the ERO retains responsibility in law for enforcement, notwithstanding its delegation agreements with Regional Entities. However, this responsibility can be exercised through managing the delegation agreements; there is no need for the ERO to review and approve every enforcement action undertaken by a Regional Entity.

(¶ 71) (1) What is the appropriate appeals process, if any, of an ERO or Regional Entity decision to impose a penalty? Would it be appropriate for the ERO or a Regional Entity with delegated enforcement authority to adopt enforcement, penalty and appeals processes similar to the SRO processes discussed above? Should appeals within the ERO be allowed before appeal to the Commission; should appeal of a penalty imposed by a Regional Entity be taken through the Regional Entity itself, with further appeal to the Commission; or should the appeal be through the ERO in the first instance, then to the Commission?

14. The IESO supports the inclusion of a penalty range or guideline with a proposed standard. As noted previously, the IESO, in its compliance role, may: (1) impose

record keeping or reporting requirements on the participant or the IESO, (2) issue a non-compliance letter, (3) impose financial penalties according to a penalty framework prescribed in the rules, and (4) issue a disconnection order to a participant found to be in breach on a persistent basis.

(¶ 71) (2) Should the Commission approve a penalty range or guidelines before the ERO can levy any penalty or sanction for violations, and, if so, should the penalty range or guidelines for a violation be submitted for Commission approval at the same time that the corresponding Reliability Standard is submitted to the Commission for approval?

15. The IESO supports the use of a range of penalties where the specific penalty would reflect particular circumstances. Additional circumstances include the impact or potential impact of a violation, whether the non-compliant party acted intentionally or the breach could have been avoided by the exercise of due diligence, whether the violation is a repeat offence, and whether there are extenuating circumstances.

Specifically, the Ontario rules, chapter 3, s. 6.6.6, provide a range of penalties consisting of four levels. Levels L1-L3 consist of non-compliance letters and penalties of \$2000, \$3000 and \$4000 respectively; level L4 consists of penalties of \$1000 to \$10,000.

Penalties should not be differentiated by Region.

(¶ 71) (3) Should a single monetary penalty be prescribed for a violation of a particular standard or should a schedule of monetary penalties be prescribed from which to select at the time of an infraction depending upon relevant

circumstances such as the number of repeat offenses or length of time before adequate corrections are made to bring the violator into compliance?

16. We recommend Ontario practice respecting the disposition of monies collected as penalties. The IESO Board may direct monies collected from Ontario market participants as penalties to either special educational projects or to reducing the IESO administration charge. In either case it is the end user to whose benefit the monies are directed.

Monies collected from a Regional Entity should benefit only the end users in that region, i.e. those who in general can be considered to be most directly impacted by the violation in question.

(¶ 71) (7) Who should receive, and what should be done with monies collected as monetary penalties? Should the monetary penalties collected by the ERO or Regional Entity be used to defray the cost of its enforcement program, or allocated to some other use? Would allowing the ERO or Regional Entity to use penalty money to fund an enforcement program create an appearance of impropriety?

17. We recommend that the application of compliance orders and penalties based on a forecast of future actions or lack of action be considered only in exceptional circumstances. In normal circumstances compliance enforcement pertains to establishing after-the-fact violations of standards, which falls within the purview of the ERO, not the Commission.

(¶ 71) (10) Paragraph (e) of proposed section 38.5 states that the Commission may order compliance with a Reliability Standard and may impose a penalty if the Commission finds that the user, owner or operator of the Bulk-Power System has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a Reliability Standard. Should the Commission clarify in the rule that, in a situation where an entity is about to engage in an act that will constitute a violation of a Reliability Standard, Commission action will be in the form of a compliance order with the goal of preventing the violation from occurring; and further clarify that an entity that has engaged in an actual violation may be subject to both penalties and a compliance order? Are there situations that may warrant penalties where an entity is about to engage in activity that would violate a Reliability Standard but the activity was ultimately averted?

18. The IESO recommends that the identity of an entity alleged to have violated a reliability standard, or to be judged likely to violate a standard should be made public only after the finding of a breach. Ontario practice is for the IESO to publish the fact of the breach and note if the matter has gone to dispute or appeal.

(¶ 71) (11) Paragraph (g) of proposed section 38.5 requires that the ERO and all Regional Entities have in place procedures to notify the Commission of all violations and potential violations of Reliability Standards when the ERO or Regional Entity first notifies the user, owner or operator of the violation or potential violation. We seek comment on what confidentiality protections may be

needed, particularly with regard to potential violations. For example, the Commission currently maintains confidential protection of other types of enforcement-related investigations pursuant to section 1b or our regulations, 18 C.F.R. § 1b (2005). Are similar protections needed here?

19. We suggest an annual filing by the ERO and each Regional Entity on their respective performance, to the Commission and authorities in Canada. Such filings would include actual accomplishments relative to the annual workplans for audits and other compliance activities. These would be supplemented by independent audits of the ERO and Regional Entities.

(¶ 76) What mechanism of review and methods of oversight should be used to assure the Commission that the ERO or a Regional Entity is meeting its responsibilities for monitoring compliance with the Reliability Standards?

20. It is not appropriate for the Commission to directly levy penalties against the ERO or a Cross-Border Regional Entity. Such a levy would impact the Canadian end users who are the ultimate funders of these organizations, and therefore be an improper extension of the Commission's authority.

(¶ 77) With respect to any monetary penalties levied directly by the Commission against the ERO or a Regional Entity for violation of the FPA, should the ERO or a Regional Entity be able to recover such penalties through dues, fees, or other charges?

21. The IESO believes it would be inappropriate for the Commission to impose penalties on board members of the ERO and Regional Entities, given that these are not-for-profit organizations, whose independent directors by definition cannot act in their self-interest. With respect to stakeholder directors, the Commission, in reviewing an application from a Regional Entity proposing a hybrid board of directors, must satisfy itself that the proposed structure precludes undue influence of stakeholder directors in the board's decisions. Self-interest, a legitimate consideration for SRO boards in the security industry, should not be a consideration for the present case of ERO and Regional Entity boards.

Additionally, we suggest the Commission consider the applicability of penalties on Canadian members of such boards.

(¶ 78) Section 215(e)(5) of the FPA provides that, “[t]he Commission may take such action as is necessary or appropriate against the ERO or a Regional Entity to ensure compliance with a Reliability Standard or any Commission order affecting the ERO or Regional Entity.” Since the ERO and Regional Entity provisions of the Electricity Modernization Act of 2005 are modeled on the SRO provisions of the securities law, and under those provisions, the Securities and Exchange Commission can impose monetary and non-monetary penalties on SRO board members, should the Commission adopt the same approach with respect to the board members of the ERO and Regional Entities?

22. The IESO supports the position that standards proposed by a Regional Entity to the ERO become ERO standards upon approval.

For a standard to become mandatory and enforceable within the U.S. it must be proposed by the ERO. For this proposal to be meaningful and defensible the ERO must satisfy itself on the merits of the standard, which in practical terms means meeting the test for adoption as an ERO standard.

(¶ 80) A Regional Entity may also propose Reliability Standards to the ERO, that, if ultimately approved by the Commission, would become regional variances in a specific region. Any such regional variances would be ERO variances, not Regional Entity Reliability Standards, since it would be the ERO, not the Regional Entity, that submits the proposed Reliability Standard to the Commission for its review. The Commission anticipates that any such regional variances would supplement ERO Reliability Standards, not substitute for them. The Commission seeks comment on this interpretation.

- 23. The Commission should not prescribe Regional Entity size, scope or configuration. Rather, the Commission should consider these factors in its overall determination of whether a Regional Entity's application for certification would lead to "effective and efficient" enforcement of reliability standards. Additionally, we would expect the Regional Entity to be required to seek approval of the Commission, and any corresponding authorities in Canada as applicable, for proposed material changes in scope, size or configuration.***

Regarding the specific matter of Regional Entity boundaries, RTO and ISO boundaries should be allowed to change in response to normal commercial and

political developments without forcing associated boundary changes in affected Regional Entities.

(¶ 84) The Commission seeks comment on the following related issues: (1)

Should the Commission prescribe a size, scope, or configuration requirement for the Regional Entities? And, if so, what should it be?

24. The IESO's recommendations on the role of Regional Entities in relationship to the ERO are reflected in a number of its positions. In summary, we favour the ERO as the clear owner of all standards, including those originating in and proposed by a Regional Entity. We also favour strong and credible Regional Entities, responsible for their own budget development without ERO approval, and performing on their own all aspects of the enforcement processes, including the hearing of appeals.

(¶ 84) (2) What is the role of the Regional Entities in relationship to the ERO?

25. Regional Entities should not be given additional authority by the Commission, nor should they be precluded from pursuing, on their own initiative or upon agreement with the ERO, any activity that will enhance reliability within their respective regions.

Such activities include those performed today, such as coordination of planning and operations, and assessment of reliability.

(¶ 84) (3) Beyond enforcement and the proposal of Reliability Standards to the ERO, what, if any, additional authority should the Regional Entities be given?

26. Consistency in delegation agreements should be encouraged but not required. This could be achieved by the use of a common template that could be tailored to meet the individual needs and circumstances within each region. For example, there would of necessity need to be a variation to accommodate the current Ontario compliance framework.

(¶ 84) (4) Should the ERO be required to submit a standardized form of delegation agreement concurrently with the ERO application that would delineate a uniform relationship between the ERO and all Regional Entities or should delegation agreements be tailored to the individual needs and circumstances of each region and the ERO and submitted for approval as they are executed by the parties?

27. The ERO should focus on setting the objectives of what is desired, not the particulars of how Regional Entities are to meet those objectives. That is, there should be no requirement for uniformity.

Where there are effective processes in place today between NERC and Regional Reliability Councils, and where those processes would meet requirements in the event these organizations become the ERO and Regional Entities respectively, these processes should not be precluded from future application by an arbitrary requirement for uniformity.

Moreover, the new legislation, the Electricity Modernization Act of 2005, provides a sufficient specification of Regional Entity governance and funding.

(¶ 84) (5) To what extent should the ERO, when delegating responsibility to Regional Entities, require uniform processes in matters including, but not limited to, governance, collection of dues and fees, compliance monitoring, and enforcement action procedures?

28. *The ERO should not play a role in the approval or appeal of an enforcement action undertaken by a Regional Entity. To have the ERO review and approve such actions would be administratively inefficient, and would, more fundamentally, undermine the authority and effectiveness of the Regional Entity; that is, Regional Entity compliance would tend to be viewed as simply an opening round.*

(¶ 84) (6) What role, if any, should the ERO play in the approval or appeal of an enforcement action undertaken by a Regional Entity?

29. *The ERO should not approve Regional Entity budgets. Such budgets will be developed in the Regions, with input from stakeholders representative of the users who will ultimately fund the Regional Entities. Regional Entities will be accountable for the compliance authority delegated to them, and they must be able to determine the necessary resources, subject of course to regulatory approval. To do otherwise would raise the prospect of Regional Entities attributing failure to meet contractual agreements with the ERO to the ERO's failure to approve adequate funding, a circularity that is to be avoided.*

(¶ 84) (7) What, if any, responsibility or involvement should the ERO have with regard to the funding of the Regional Entities?

30. Given that the application is to the Commission, it is appropriate for the Commission to set the standard for the application. Similar considerations would apply to application by Regional Entities for recognition in Canadian provinces. We see no reason to differentiate the application standard according to whether or not the Regional Entity would be organized on an Interconnection-wide basis.

(¶ 84) (9) Should the Commission set the standard by which Regional Entity applications to the ERO will be reviewed or should the ERO be allowed to determine this standard? Given that section 215(e)(4) of the FPA requires that the ERO and the Commission shall rebuttably presume that a proposal for a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk-power reliability, should a higher standard apply to Regional Entities that are not organized on an Interconnection-wide basis? What should the higher standard specify? Should a Regional Entity not organized on an Interconnection-wide basis have the burden to demonstrate that it has appropriate regional scope and configuration to promote effective and efficient administration of Bulk-Power System reliability?

31. Similar to our position in respect to the NOPR at P 42 relating to recertification of the ERO, recertification of a Regional Entity should be conducted on an as-needed basis, following evidence of performance deficiency. Recertification should not be an ongoing, periodic process.

Again, unnecessary re-certification would mean unnecessary costs to be borne by end users, and unnecessary demands on the resources of industry participants. An independent audit conducted for the Commission on a periodic basis, perhaps every three years, might be an appropriate tool.

(¶ 84) (10) Paragraph (f) of section 38.7 requires a Regional Entity approved by the Commission to periodically submit to the Commission an application to be re-approved as a Regional Entity. We seek comments on what would constitute a reasonable length of time for such periodic re-approval to be effective. For example, is a five-year approval period appropriate? How far in advance should a Regional Entity be required to submit its application for re-approval before its current approval period expires? What role, if any, should the ERO have in the re-approval process? Would the ERO have to resubmit a delegation agreement?

32. The proposed funding requirements should be extended to the Regional Entities.

Regulatory authorities approving end user charges for the funding of ERO and Regional Entities should not be required to conduct two proceedings or address two different methodologies. Having common funding requirements will facilitate this objective.

(¶ 103) In addition to comments on the proposed ERO funding regulations, the Commission asks for comments on the following questions: (1) Should the proposed funding requirements be extended to the Regional Entities?

33. It is appropriate for the ERO and the Cross-Border Regional Entities to propose funding details in their applications for certification, subject to meeting the applicable bilateral principles, which would be confirmed in the Commission's rule. The bilateral principles are important and apply to a substantial portion of the North American interconnected bulk power system. The need to ensure funding is equitable is likewise important. Given this, inclusion in the Commission's rule is appropriate.

(¶ 103) (2) The Commission notes the bilateral principles include several funding principles: (a) a principle specifying that net energy for load should be the primary basis upon which the costs of the ERO are assigned and that costs for one region or entity should be directly assigned to that region or entity; (b) a principle specifying that funding mechanisms, budget direction and budget levels should reflect consultations with appropriate stakeholders and authorities in each country; and (c) a principle specifying that the appropriate authorities in each country should be responsible for approving and ensuring cost recovery by the ERO and Regional Entities within their respective jurisdictions in a timely manner. Should the proposed rule address these types of funding-related details or should the ERO and Cross-Border Regional Entities have the discretion to address these matters at a later time?

34. Separate proceedings, i.e. a two-step process, should be followed for the ERO application and the submission for approval of the current standards. The ERO application process should be viewed as the first priority for both the Commission and industry respondents, many of which will be extensively involved in the development of

the application and the associated proceeding. The choice of reviewing standards individually or as a package is clearly for the Commission to make, and need not be made until such time as the standards are submitted by the organization selected as the ERO.

(¶ 104) Submission of standards with the application, and Commission review of individual standards in multiple-standard submission.

V. Other Matters

35. The Commission should include in its rule a requirement that each owner, operator, and user of the bulk power system shall register with the electric reliability organization and the regional entity for each region within which it owns, operates, or uses bulk power system facilities, in such manner as prescribed in the rules of the electric reliability organization and each applicable regional entity.

Registration of all owners, operators and users is an essential link in the standards framework, and one that is not addressed in the NOPR. On the assumption that some or all of NERC's present standards will become ERO standards, registration will identify each such organization as being one or more of the NERC Functional Model Responsible Entities specified in the standards, thereby linking each organization to the standards with which it must comply. In addition, such registration, and the provision of supporting information, is an essential element in developing a regional reliability plan that will in particular ensure there are no gaps in responsibility in the region.

VI. Conclusion

The IESO appreciates the opportunity to offer comment in this proceeding.

Respectfully submitted,



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