

COMMENTS FROM THE CANADIAN ELECTRICITY ASSOCIATION REGARDING FERC'S ORDER CERTIFYING NERC AS THE ERO

The Canadian Electricity Association ("CEA") appreciates this opportunity to provide the North American Electric Reliability Council ("NERC") with comments regarding issues identified in the Federal Energy Regulatory Commission's ("FERC") order certifying NERC as the ERO. While NERC has requested that parties provide expedited comments only with regard to governance issues by August 11th, this submission contains all of CEA's comments with respect to the FERC order.

Governance

In the order certifying NERC as the ERO, FERC concluded that NERC's proposal to have differences in stakeholder composition within the two voting bodies is without adequate justification. FERC directed NERC to explain in its compliance filing why it is necessary or appropriate to have different voting bodies.

CEA supports the retention of the distinction between stakeholder composition of the two separate voting bodies, based on the difference in function of the two bodies.

In previous comments, CEA had recommended to NERC that all relevant committees have adequate Canadian representation, and NERC agreed to this recommendation. To the extent NERC moves to a single representation model, NERC should ensure that effective Canadian representation is retained as an element of the revised model.

Remand

FERC has identified the following shortcomings in NERC's remand procedures that need to be addressed in a compliance filing:

1. NERC needs to set a specific deadline for action by the standards development committees and registered ballot body in response to a Commission order that mandates action on a remand by a date certain.
2. NERC needs to adopt a process that provides for adopting an interim Reliability Standard on an expedited basis that is later subject to adoption on a permanent basis without any possibility that the interim standard expires in the interim.
3. NERC needs to develop a process where the urgent action process may not be sufficiently expedited.

FERC recognized the need for coordination among the relevant governments, given the potential for conflicting Reliability Standards across the border. While NERC had suggested in its ERO application the establishment of a memorandum of understanding among the relevant governmental authorities, FERC determined that NERC, as an international organization subject to

multiple jurisdictions, should be responsible for specifying the steps to coordinate the standards approval and remand processes.

CEA is concerned that placing limits on NERC's development of standards or its processes for addressing remand could impede NERC's ability to receive effective input from and coordinate with Canadian governmental authorities, and could limit effective coordination among the relevant governmental authorities. In the past, CEA has recommended the development of coordination mechanisms among the relevant jurisdictions, in accordance with the Bilateral Principles, to allow for the effective development and approval of reliability standards in those jurisdictions and to ensure that jurisdictional sovereignty is respected by those same governmental authorities.

In its Application for Certification, NERC had recommended that the relevant governments enter into a memorandum of understanding that defines the cooperative approaches to be taken with respect to remand. CEA supports the establishment of coordination mechanisms for the relevant governmental authorities for the development and approval of Reliability Standards. Such coordination mechanisms could, for example, include processes for expedited consideration of a standard and for the resolution of issues relating to the remand of a standard. Importantly, such coordination mechanisms will help to ensure that jurisdictional sovereignty is respected and that unilateral actions by a governmental authority are not taken that would have cross-border implications.

Compliance Audits.

In order to ensure consistency throughout the audit process, the Commission directed NERC to conduct all audits in accordance with generally accepted government auditing standards as set forth in the *Government Auditing Standards*. CEA believes that the reliance on a U.S. government publication to establish a process that will be used in both the U.S. and Canada is inappropriate. While NERC may rely on the *Government Auditing Standards* to establish the audit process for U.S. entities, the auditing process for Canadian entities must be based on standards appropriate to Canadian jurisdictions.

Ambiguity in Language

Responding to concerns with the phrase "otherwise accepted as mandatory within a particular region," FERC found that, while the language is intended to accommodate the authority of certain Canadian governmental authorities, it creates ambiguity since only standards approved by FERC are enforceable in the United States. NERC was directed to either delete the phrase or to revise the language to eliminate the ambiguity.

This language was not intended to relate to authorities within the U.S., but is clearly important to protect Canadian interests. To address the identified ambiguity, CEA recommends the following change to the phrase to make clear that the language relates only to Canadian authorities: "otherwise accepted *in Canada* as mandatory within a particular region".