

Mr. David Cook  
Vice President & General Counsel  
North American Electric Reliability Council  
116-390 Village Boulevard  
Princeton, NJ  
08540-5731

Subject: Second Draft ERO Application Comments

Dear David:

## **Introduction**

The Ontario Independent Electricity System Operator (“IESO”) appreciates the opportunity to provide additional comments on NERC’s second draft ERO application (“Draft”). 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 Draft. The IESO also participated in and supports the positions contained in the submission of the Canadian Electricity Association (“CEA”) and the Northeast Power Coordinating Council (“NPCC”). The IESO’s submission is intended to complement these submissions while focusing on Ontario-specific aspects.

## **General Comments**

The IESO supports NERC’s second draft application and the manner in which stakeholder input has been sought by NERC. Of particular note is NERC’s expanded responsibilities for the MRC, revised Membership Segment and the efforts to better recognizing the international aspect of the ERO.

The IESO’s comments do not address the specific concerns with the application’s ability to compliment the Ontario regulatory framework. To that end, the CEA’s comments address our need to amend the bylaws and rules of procedure to provide the flexibility such that the application may be adopted by Ontario’s regulatory authority, the Ontario Energy Board (“OEB”). The IESO expects the details of an agreement between the OEB, NERC and possibly NPCC to answer the specific concerns of our regulator.

The attached comment form will detail the IESO’s specific concerns with the Draft with the focus of submission summarized as follows:

### Separation of Activities:

The IESO supports the ERO’s definition of the ERO’s statutory requirements however we note that several of NERC’s proposed functions go beyond what is envisioned in the legislation. NERC makes reference in its application to the separation of non-statutory activities

and goes so far as to suggest the need for a separate funding mechanism for these activities. To that end, the IESO believes that the application should make reference to the separate functions of an RRO and Regional Entities that will perform non-statutory and statutory functions. Similarly, NERC should identify these non-statutory functions in its application and propose to adopt the existing RRO funding mechanism in-place today to enable these industry stakeholdered activities to continue. NERC should work to build on its facilitation skills with the RROs and industry participants to move forward and effectively stakeholder projects that enhance the reliability of the international bulk power system.

Rules of Procedure:

The IESO is unsure of the distinction between the Rules of Procedure and reliability standards. The Bylaws state that entities must comply with the Rules of Procedure however the IESO cannot determine NERC's authority to impose sanctions for non-compliance with these rules. Given the assumed prominence of the rules of procedure the IESO recommends amendment approval by the MRC and Board.

Readiness Audits:

Readiness audits can be a useful tool as a step in the certification process or as part of a sanction order to verify appropriate operating practices. As such, the IESO believes there should be explicit criteria developed to trigger such audits rather than a routine 3-year cycle. Lastly, a clear scope definition is required to avoid disputes between the audit team and the audited entity.

Respectfully Submitted,

/s/ Kim Warren

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**COMMENT FORM FOR DRAFT ELECTRIC RELIABILITY ORGANIZATION APPLICATION FILING**

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Please use this form to submit comments on the NERC draft Electric Reliability Organization Application filing. All comments must be submitted by **February 28, 2006** by e-mailing this completed form to [karen.spolar@nerc.net](mailto:karen.spolar@nerc.net) with the words "ERO Comments" in the subject line. If you have questions, please contact Karen Spolar at [karen.spolar@nerc.net](mailto:karen.spolar@nerc.net) or 609.452.8060.

- Do** enter text only, with no formatting or styles added.
- Do** use punctuation and capitalization as needed (except quotations).
- Do** use more than one form if responses do not fit in the spaces provided.
- Do** submit any formatted text or markups in a separate WORD file.

- Do not** insert tabs or paragraph returns in any data field.
- Do not** use numbering or bullets in any data field.
- Do not** use quotation marks in any data field.

<b>Individual Commenter Information</b>	
(Complete this page for comments from one organization or individual.)	
Name:	<b>Kim Warren</b>
Organization:	<b>Ontario Independent Electricity System Operator (IESO)</b>
Telephone:	<b>(416) 506-2821</b>
E-mail:	<b>kim.warren@ieso.ca</b>
NERC Region	
<input type="checkbox"/> ERCOT	
<input type="checkbox"/> FRCC	
<input type="checkbox"/> MRO	
<input checked="" type="checkbox"/> NPCC	
<input type="checkbox"/> ReliabilityFirst	
<input type="checkbox"/> SERC	
<input type="checkbox"/> SPP	
<input type="checkbox"/> WECC	
<input type="checkbox"/> NA – Not Applicable	

**Please enter all comments in simple text format.**

1. Please identify any comments that you have on the Response to Stakeholder Comments.

Comments:

The Ontario Independent Electricity System Operator ("IESO") supports the position taken by NERC on many of the stakeholder comments. Of note, we appreciate NERC retaining an independent Board, adopting the majority of the PLSC's Members Task Group recommendations on the Membership Segments, and expanding the role of the MRC.

Of particular interest was NERC's comment on the ERO application in Canada. The IESO recognizes the approach taken in second draft to better reflect the international nature of the ERO. Due to the expected retention of the Ontario regulatory framework, the IESO understands that a few components of the rules of procedure will not be applicable to Ontario. The IESO expects issues such as budget and standard approvals to be addressed through an agreement between our regulator, the Ontario Energy Board ("OEB"), and NERC. In addition, the OEB may seek a separate NPCC agreement or possibly join with NERC to define the Regional Entity's ("RE") role in Ontario. As such, our comments are not directed at subjects that will be addressed by an OEB agreement. However, the IESO notes its participation in the Canadian Electricity Association ("CEA") submission that provides amendments to the Bylaws and Rule of Procedure ensuring the needed flexibility for adoption by the applicable provincial authorities. The IESO will continue to work with Ontario provincial authorities in anticipation of an application for recognition in Ontario. We support NERC's simultaneous filing with FERC and the Ontario Ministry of Energy.

NERC has struck a reasonable balance with this draft with respect to its delegated functions with the region oversight by the ERO. The IESO recommends that NERC explicitly identify statutory and non-statutory functions in its application. NERC should acknowledge the appropriate separation between delegated activities to the REs and continued non-statutory involvement of the Regional Reliability Organizations ("RROs").

The IESO recognizes the expanded responsibilities of the MRC in providing its input to the Board on amendments to the Rules of Procedure. However, the IESO is advocating that an amendment to the Rules of Procedure should be approved by the MRC as well as the Board. Our position is based on the uncertain nature of enforcement and penalties associated with many of the actions noted in the Rules of Procedure. If held to the same stature as reliability standards, then appropriate industry input via a development process similar to reliability standards or our suggested approval format by an effective stakeholder committee such as the MRC should be sought by NERC.

Specific text revisions to achieve improvements in these areas are offered in the following sections.

2. Please identify comments that you have on the draft Electric Reliability Organization Application cover document.

Comments:

The IESO has no comment on the existing filing cover document however we note that critical material was not included in the application.

The Rules of Procedure and proposed reliability standards make reference to certain responsible entities that are defined in the Functional Model but do not explicitly reference the model itself. While the Glossary of Terms Used in Reliability Standards contain abbreviated definitions of these responsible entities and other reliability related terms, the application lacks the definitive source of such definitions. As such, NERC should references these source documents in their filing. Referencing these documents would also signal their importance to bulk power system users, owners and operators.

3. Please identify any comments that you have on the draft Certificate of Incorporation (**Exhibit A**).

Comments:

No comment.

4. Please identify any comments that you have on the draft Bylaws (**Exhibit B**).

Comments:

The change adopted in the Membership Segments is a positive one by NERC.

Under Article VIII, Section 2, NERC should consider balanced representation from industry segments when populating the RE/RRO members of the MRC if these positions are delegated to non-RE/RRO staff or officers.

In Article VIII, Section 4, we suggest that the following sentence should be deleted:

"Provided, that no more than one such additional Canadian voting representative shall be selected from a segment."

5. Please identify any comments that you have on the draft Rules of Procedures document (**Exhibit C**).

General Comments:

Based on the second paragraph of Section 100, the Rules of Procedure may become a quasi-standard as the Draft states that all applicable entities shall comply with the procedures contained in the document. There is no documentation to support penalties, sanctions, etc. for an entity that violates the Rules of Procedure. In addition, the only stakeholdering process for rule changes is the Board considering input provided from the MRC. NERC's proposed process seems inadequate when compared to the extensive standards development process for reliability standards. Please see our comments in Section 1400 for further details.

The IESO anticipates that the Ontario Ministry of Energy will recognize NERC, its standards, Bylaws and Rules of Procedure pending a suitable agreement between the OEB

and NERC (and possibly NPCC) outlining the general process between these organizations. The agreement is intended to contain the exceptions and alternate procedures to the generic Rules of Procedure to accommodate Ontario's framework.

**Comments on Section 300 — Reliability Standards Development (Exhibit C — Section 300):**

The registered balloting body (Section 305) was not modified unlike the MRC segments. ISO/RTOs remain in the same stakeholder segment as the RROs which is equivalent today's ballot body structure. While these entities continue to have different perspectives today, their differences will become even more evident with the future ERO structure. ISO/RTOs are involved in the "how to implement" process while the REs will focus more on compliance and enforcement. Accordingly, the IESO believes that REs and ISO/RTOs should have separate stakeholder segments.

**Comments on Section 400 — Compliance Enforcement (Exhibit C — Section 400):**

The IESO notes that FERC's Order 672 presents only one level of appeal prior to seeking a regulatory authority appeal. The IESO agrees that one level of appeal provides an appropriate balance on the entities rights and enforcement efficiency. With this in mind, the IESO recommends that the ERO retain a centralized appeal function accessible after completion of the RE compliance enforcement process.

The IESO notes that Section 403(18) lists the various reasons for a compliance investigation to be initiated. The IESO suggests that Item (7) be modified as follows:

"(7) Nuclear Regulatory Commission-defined incident occurring on the bulk power system applicable to US entities."

**Comments on Section 500 — Organization Registration and Certification (Exhibit C — Section 500):**

The term "decertification" referenced to RROs was removed from Section 401(4) but left in Section 501(3.2). Decertification was never a defined process by NERC for RROs so the IESO recommends this term be removed from Section 501(3.2). The IESO also notes that regulatory authorities and the ERO do not certify RROs.

**Comments on Section 600 — Personnel Certification (Exhibit C — Section 600):**

The governing body should clearly be identified as the PCGC as defined in the Bylaws. As such, Section 602(3) should be removed or replaced with a reference to the

**Bylaws. Comments on Section 700 — Reliability Readiness Audit and Improvement (Exhibit C — Section 700):**

The IESO supports Readiness Audits but believes the scope of the audit should be clearly defined and the audits are performed as part of a certification process or non-compliance order.

Defined Scope:

The IESO understands the purpose of a readiness audit is to review the ability of an entity to perform its functions. There is a separate process that will perform regular compliance audits to ensure adherence to reliability standards. To avoid potential overlap in the audits and disputes over audit recommendations, the scope of the readiness audits must be clearly defined. In addition, the auditors must have relevant experience otherwise there is a risk of misdirected recommendations or, more importantly, a key deficiency may be overlooked.

To that end, the IESO could not substantiate the statutory authority of the RE or ERO to apply financial penalties associated with non-compliance with a readiness audit recommendation.

Audit Requirements:

Rather than burden efficient and effective organizations with regular audits that are not focused on compliance, these audits should be used as a tool during the certification process for new entities or entities performing new functions. It is NERC's current practice to perform readiness audits on new entities and the IESO would support this continued practice. Furthermore, the poor behaviour of an entity could trigger re-examination of the entity's operations. Such an audit would be the result of a sanction order by the RE or ERO authority. We would support the development of specific criteria that would trigger such audits.

Disclosure:

The IESO also believes that audit team's report should not be publicly disclosed until the appeals process is complete. The disclosure of the audit results should mirror the procedure for public posting of sanctions that occurs only after due process has been completed. The audit teams report will only make recommendations on an entity's processes to perform its function.

Comments on Section 800 — Reliability Assessment and Performance Analysis (**Exhibit C — Section 800**):

NERC has defined an extensive process under this section for reliability assessment. NERC continues to purport the need for their teams of NERC staff to develop an independent conclusion of the status of adequacy in North America. We see no reason why the RRO's regional information reporting and study results would be inconsistent with the criteria NERC use today, or the requirements found in FERC's Order 672. To that end, the IESO recommends NERC limit its activities to coordinating these reports using existing RRO staff and processes.

Comments on Section 900 — Training and Education (**Exhibit C — Section 900**):

No comment.

Comments on Section 1000 — Situation Awareness and Infrastructure Security (**Exhibit C — Section 1000**):

The IESO sees little justification for NERC's situational awareness activities based on US EPAct requirements or industry needs. NERC's broadly proposed awareness function should be vetted through an industry stakeholder process to confirm any such endeavor meets the needs of the industry. However, the IESO is supportive of the other non-statutory functions including centralized reliability support services. Moreover, NERC should focus more attention on the reliability support services aspect of this section. NERC is in a unique position within the industry to assist in the development of projects to better improve the tools used by the bulk power system users, owners and most importantly the operators. These new tools would be developed using NERC's existing facilitation expertise, while leveraging RRO staff and industry based experts, in garnering industry support and funding to develop applicable and effective programs.

Comments on Section 1100 — Annual NERC Business Plans and Budgets (**Exhibit C — Section 1100**):

The IESO has identified several of NERC's proposed functions including; training, readiness audits, personnel certification, situational awareness, readiness audits, and organization certification that go beyond what is envisioned in the legislation.

The IESO believes that NERC should explicitly identify its non-statutory functions in its application. The application should describe an effective process to include industry consultation and involvement for non-statutory activities to meet the needs of the industry. NERC should capitalize on its facilitation expertise to move the industry forward in developing projects that enhance the reliability of the international bulk power system. Similarly, NERC should adopt the existing RRO funding mechanism in-place today to enable these industry stakeholdered activities to continue.

The IESO is supportive of the non-statutory activities coordinated or performed by NERC today. However, NERC should not include these functions the same grouping as statutory functions given the differing industry stakeholder involvement and regulatory oversight requirements. Along the same lines, the IESO believes that the application should make reference to the separate functions of an RRO and RE that will perform non-statutory and statutory functions respectively. The model is more explicitly explained in NPCC's submission on this draft.

We also understand that NERC may be the recipient of direction from FERC or the US DOE in the development of electricity based programs (i.e., the recent FERC/DOE Transmission Monitoring report to Congress). Where possible, the IESO suggest that NERC undertake to coordinate with Canadian entities by seeking Canadian participation

or funding of such projects if there is a perceived international benefit of improved reliability through NERC stakeholdering processes.

Comments on Section 1200 — Regional Delegation Agreements (**Exhibit C — Section 1200**):

No comment.

Comments on Section 1300 — Committees (**Exhibit C — Section 1300**):

No comment.

Comments on Section 1400 — Amendments to the Rules of Procedure (**Exhibit C — Section 1400**):

As discussed in our comments under "Response to Stakeholder comments", the IESO suggests NERC clarify the standing of the Rules of Procedure. If these rules have equality with mandatory enforceable standards that are subject to non-compliance penalties, NERC should adopt a more stakeholder involved amendment process. Short of placing the Rules of Procedure through a process similar to the standards development process, the IESO suggests that NERC implement a two-stage approval process involving first the MRC then the Board for amendments to the Rules of Procedure. This is especially important if NERC intends to move away from the balloting process used in the development of the Reliability Standards Development Procedure, or other stakeholdered procedure included as appendices in the Rule of Procedure.

6. Please identify any comments that you have on the draft Delegation Agreement (**Exhibit E**).

Comments:

No comment.

7. Please identify any comments that you have on the draft Electric Reliability Organization Transition Plan (**Exhibit H**).

Comments:

No comment.