

**IESO Response to:
NERC Request of July 27, 2006 for Comments on FERC's ERO Certification Order**

The following are the comments of the Ontario Independent Electricity System Operator.

Governance

- 1. Should NERC move to a single representation model for ERO membership and voting on standards? What should that membership model be? Should NERC take the approach of justifying the two separate representation models? What would the justification for two separate models be? (See ¶ 63 in FERC order.)*

The IESO favours the approach of justifying the two separate representation models. The justification is as follows:

- The Registered Ballot Body (RBB) and the Members Representative Committee (MRC) serve different purposes. For the RBB and its focus on voting on standards in a manner that balances functional interests, as prescribed by ANSI, a structure based on function alone is appropriate. For the MRC the focus is on representation of all views in a governance role, and the additional inclusion of regional and national segments is appropriate.
- The NERC stakeholder communities and Board overwhelmingly supported the two separate models in NERC's ERO application, signifying the broad acceptability of the two models to the very communities whose interests must be balanced and whose diversity of views must be represented in governance. Surely this acceptability is the acid test.
- Were the RBB composition to be used for the MRC, provision for Canadian representation based on NEL would have to be retrofit, given that such provision must be in place for a major NERC committee.
- While the separate representation models were found to be acceptable, it is acknowledged that these models are not the only ones or necessarily the best ones that could achieve the objectives of balance and representation. However, re-opening the composition of these two models to a full examination of alternatives would be divisive and consume considerable industry attention and effort at a critical time when the industry needs to pull together and be concerned with more substantive issues and ones yielding far greater payoffs.

The Ballot Body should be modified only to accommodate the specific structural changes recommended by FERC, namely to create a separate sector for ISOs/RTOs and to include Regional Entities with Regional Reliability Organizations in a single Regions sector.

The MRC should retain the structure proposed by NERC in its application, with the modification that in the Regions segment each Region would have one member, representing both the Regional Entity and the Regional Reliability Organization. The Regions segment would have a total three votes, as recommended by FERC, however, we

believe each Region's vote should be in proportion to its share of total Net Energy for Load (NEL), rather than one vote per Interconnection. NEL is the basis for determining a Region's share of NERC's costs, and implicitly its benefits, and therefore a sound basis for its voice in the governance matters addressed by the MRC.

- 2. *Should the representation model limit regional reliability organization representation to one member per interconnection? Should regional entities and regional reliability organizations share the same representation or be represented separately? (See ¶ 75 in FERC order.)***

In our view it is essential to have the views of all Regions represented in the MRC. Given the diversity of issues and characteristics within the Eastern Interconnection, it is not realistic to expect one Region to adequately represent the views of the others.

We can accept FERC's concern with undue voting power if each Region were to have one vote; we believe the compromise of membership for all Regions, together with proportional voting power as described above, is a responsive and viable solution.

While Regional Entities (REs) and Regional Reliability Organizations (RROs) have differentiated roles, there will be no shortage of Regional staff and industry personnel involved in and knowledgeable of both organizations, and hence able to competently represent the interests of both.

- 3. *If NERC separates the ISOs/RTOs into a separate segment for voting on standards, should that segment be subject to the segment weight discounting rule (each entity gets 10 percent of a segment vote)? Should the same rule apply for regional entities and/or regional reliability organizations? (See ¶ 90 in FERC order.)***

NERC has just approved segment weight discounting for the current segment structure. Changing the structure to accommodate separate ISO/RTO and regions segments should lead to re-examination of discounting, given FERC's direction and given further that the ballot body's approval of discounting did not anticipate the creation of these segments, and in particular their unique situation in which neither would be capable of avoiding discounting, even with registration of all potential members in the segments and 100% voting participation.

There would be counter-productive consequences were discounting to apply - if ISOs/RTOs or Regions were to merge in the interest of improving economy or effectiveness, they would be penalized by receiving reduced voting power on standards.

We suggest that discounting is inappropriate for these segments. In the event this view is rejected we suggest the alternative of a discounting scheme based on the fraction of total segment membership participating in a vote (for example, the ISO/RTO segment would have no discount if 8 of 8 members voted and 25% discount if only 6 of 8 voted).

Standards Development

4. *How should NERC define the phrase “adequate level of reliability”? What methods should NERC propose to assure its proposed reliability standards provide an adequate level of reliability? Are commenters concerned that the supermajority provisions in NERC’s standards process will adversely affect reliability? If so, what alternative procedures would the commenter propose to use? (See ¶ 240 in FERC order.)*

The IESO does not believe it is productive to seek a precise technical definition of adequate level of reliability. We would stop at the conceptual level and simply state that the level that is adequate is the level of reliability that users are willing to accept and pay for.

It would be useful to focus any discussion on the adequacy of a standard on the associated level of risk of failing to meet two principles: (1) ensuring the interconnected system can withstand recognized contingencies without cascade tripping/system collapsing, and (2) that there should not be any expectation of uncontrolled load loss following recognized contingencies.

Moreover, there should be a rebuttable presumption that a consensual decision by stakeholders to approve a standard under a balanced voting protocol, where the standard is subsequently approved by the NERC Board of Trustees following a process that provides for consideration of minority positions that would include a claimed inadequate level of reliability, will result in an adequate level of reliability as so defined. There are additional safeguards to back up such a rebuttable presumption - a Region may introduce a regional difference or a regional standard, where the basic standard is judged to provide too low (or too high) a level of reliability. There will also be an opportunity for parties to argue before FERC that a standard will lead to an inadequate level of reliability in FERC's process to review the standard (but under rebuttable presumption the onus would be on the parties).

We believe that having a super-majority requirement is appropriate because it ensures there is a consensus on the need and appropriateness of the standard. This is a fundamental feature of the ANSI process. It should be noted that the super-majority provision is not necessarily biased in the direction of producing weak standards - the provision also enhances the voice of a minority of voters who oppose the standard on grounds that it is too weak; that is, it is easier to defeat a proposed weak standard under a super-majority requirement than it would be if the standard had to achieve only a simple majority of votes.

5. *What alternatives would be appropriate if the existing standards development procedure is not sufficient for the “timely development of a reliability standard or modification of a reliability standard at the direction of the Commission”? Are there any concerns with urgent action standards remaining in effect indefinitely without expiring automatically? In instances in which the urgent action process may be insufficient to set a standard to address a rare but imminent threat to national security, what actions should NERC consider to ensure reliability? (See ¶¶ 252 and 253 in FERC order.)*

Regarding direction by FERC for the timely development of a standard at the direction of the Commission, we can suggest application of the urgent action process, modified to enhance timeliness. Ultimately, however, the standards development process cannot guarantee the approval of a standard. Absent acceptance by the ballot body, there will be no standard. This is the model anticipated by the U.S. legislation and must be accepted as a fundamental feature of the standards framework.

We note further that the development of a standard may involve considerable complexity and an associated requirement for extensive discussion and reflection. It is important that the job be done right and not be rushed.

The IESO has supported and continues to support the position that an urgent action standard should not expire automatically. The standards approval process by its nature cannot guarantee approval of a replacement standard. The risk of having no standard in place is not acceptable.

We believe it would be prudent to establish an "emergency standards action process" to address the possibility, however remote, of a threat to national security, where a reliability standards action would be required to address such a threat on an emergency basis. We would extend the application of such a process to an imminent and real threat to BES reliability. Such a situation would be more extreme than that contemplated for urgent action standards. We use the term “standards action” because the response might be the temporary or permanent suspension of a standard as well as the establishment of a new or modified standard. Defining such a process is not feasible in the time available for NERC to make its filing. We suggest that the filing simply acknowledge the willingness of working with the Commission to establish such a process and provide an overview of possible features, such as the following:

- NERC would develop and receive approval of the criteria that would trigger the process. There are examples of emergency action criteria that might be considered, for example those contained in Ontario legislation.
- A NERC standing committee would be required to consider a request from any party to undertake an emergency standards action.
- Within a defined period, such as 24 hours, the committee would be required to rule on the need for such a standards action, and upon determining such need, develop

and submit the standards action to the NERC Board of Trustees. The Board would be required to conduct a vote to approve such a standards action within a defined period, such as an additional 24 hours.

- The standards action would come into effect at the earliest opportunity, such as midnight on the day of approval. If FERC and Canadian authorities do not have emergency authority to make such a standards action mandatory and enforceable, such authority should be sought.
- Upon approval by the NERC Board the standards action would be forwarded to FERC and Canadian regulators, who would previously established a coordination process
- FERC in particular would convene a review process on an urgent basis (such as 24 hours) under which the Commission would approve the standards action, or order it repealed, either through its own determination or upon appeal by another party.

Confidential Information

6. *Besides Critical Infrastructure Protection Information, what other specific categories of information used in compliance monitoring and enforcement and other ERO activities should be subject to confidentiality provisions? What is the justification for each category? (See ¶¶ 399, 400, and 659 in FERC order.)*

To the categories of proprietary, commercially valuable or commercially sensitive we suggest the addition of: material whose disclosure is not in the national interest (of either the U.S. or Canada), and the names of alleged but not proven violators of standards whose reputation could be damaged by disclosure.

Penalties

7. *How should entity size and/or ability to pay be considered in the determination of a financial penalty for violation of a standard? Should this consideration be separate from the violation risk factor? (See ¶ 443 in FERC order.)*

Penalty levels could be established as a cost per end user, where the penalty can be deemed to pass to end users, or as a percentage of the sanctioned entity's annual revenue.

Penalty size should also consider potential reliability impact that can result from non-compliance.