

ISO/RTO Council¹ Responses to NERC Request for Comments on ERO Order
August 11, 2006

Governance (comments due Aug 11)

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 ISO/RTO Council (IRC) believes there is no need to combine the membership and voting representation since the functions of the two are very different. Membership in the ERO should impose a higher expectation of participation and involvement. The Members Representative Committee (MRC) will have responsibilities related to the governance of the ERO including recommendations on compliance and standards processes, selection of independent directors and other guidance to the ERO staff. The voting membership ensures that all interested parties have a fair and representative voice in the development and approval of standards. The ballot body is fluid since a party may not be interested in every proposed standard. The MRC also will ensure that the Canadian representation is equal to its Net Energy for Load of North America; the ballot body does not assure that.

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.)

The Regional Entity, if it performs only those functions provided for in EPCA 2005, should not be represented on the MRC.

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

¹ The IRC was formed by the nine functioning Independent System Operators (“ISOs”) and Regional Transmission Organizations (“RTOs”) in North America in April 2003. It is comprised of the Independent System Operator operating as the Alberta Electric System Operator (“AESO”), California Independent System Operator, Inc. (“CAISO”), Electric Reliability Council of Texas (“ERCOT”), the Independent Electricity System Operator of Ontario (“IESO”), ISO New England, Inc. (“ISO-NE”), Midwest Independent Transmission System Operator, Inc. (“MISO”), New York Independent System Operator, Inc. (“NYISO”), PJM Interconnection, L.L.C. (“PJM”), and Southwest Power Pool (“SPP”). The IRC’s mission is to work collaboratively to develop effective processes, tools and standard methods for improving competitive electricity markets across North America. In fulfilling this mission, it is the IRC’s goal to provide a perspective that balances reliability standards with market practices so that each complements the other, thereby resulting in efficient, robust markets that provide competitive and reliable service to customers.

10 percent of a segment vote)? Should the same rule apply for regional entities and/or regional reliability organizations? (See ¶ 90 in FERC order.)

The ISO/RTO Council believes that NERC must: (a) establish a separate segment for ISOs/RTOs to vote on standards, and (b) not apply the voting weight reduction rule to the new ISO/RTO segment as the rule would run contrary to the requirements of the Energy Policy Act of 2005 and would be counterproductive if applied to the new ISO RTO segment. Based on a 2004 assessment, two-thirds of Americans live in regions served by Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs). In 2004 ISO/RTOs delivered 2.19 million gigawatt hours (GWh) of electricity – 62 percent of the electricity consumed in the U.S. – and 58 percent of the peak load. They oversee more than 272,000 miles of high-voltage transmission lines and coordinate power production from 585,000 megawatts (MW) of generation (67 percent of the U.S. total).

By way of background, the Commission’s July 20, 2006 Order (“ERO Order”) made clear that as part of NERC’s compliance filing, NERC must create a separate segment in its registered ballot body for ISOs and RTOs and must address the IRC’s request for a waiver from the provision weighting the votes of registered ballot body segments with fewer than ten members.² The Commission not only specifically directed NERC to establish a separate segment for ISOs and RTOs in the Registered Ballot Body (“RBB”) and Standards Committee, but also after acknowledging ISOs and RTOs had their own sector on the MRC, the Commission expressed its preference that the MRC, RBB and Standards Committee have a consistent structure.

The IRC is concerned that the question posed by NERC could be read to imply that the ERO is reading the Commission’s order as providing it with discretion as to whether or not to create a separate RTO/ISO segment on the balloting body. For NERC to take any action other than establishing a separate segment for ISOs and RTOs in the RBB and Standards Committee, NERC would first have to ignore the plain language of the ERO Order. Paragraph 90 “requires NERC to create a segment for ISOs and RTOs.” While the Commission made reference to NERC considering “alternative approaches”, this reference only applies to how NERC might remedy its discriminatory RBB segment vote weighting rule. In addition, NERC would also have to interpret the ERO Order in such a manner that it would be internally inconsistent or result in a revised ERO Application, not responsive to the Commission’s guidance on how to comply with its concerns. Neither approach is an appropriate response in a compliance filing. In short, NERC should proceed to establish a separate ISO/RTO voting segment irrespective of how the overall structure of the MRC, RBB and Standards Committee is resolved. The two issues are distinctly severable and it would be inappropriate for NERC to tie the prompt resolution of creating a separate ISO/RTO segment from the larger issues associated with the governance structure of all three voting bodies.

Finally, as the IRC explained its comments to FERC, a vote discounting rule that relies on the number of entities is inappropriate to apply to an RTO/ISO segment. The IRC understands that the rule may be designed to avoid disproportionate voting power by

² ERO Order at P 90 (emphasis added).

very small entities or to discount the votes of entities from those segments which nominally have a large number of members but for which only a few members actually appear to vote.

Such a rule does not serve its intended effect when applied to the RTO /ISO sector. By contrast, it leads to a permanent dilution of the RTO/ISO vote in contravention of the requirements of balanced decision-making and openness mandated by the Energy Policy Act of 1992. Unlike other segments, the RTO/ISO segment would be limited to nine members as there are no discernible prospects, in the near term, for additional RTOs and ISOs to be formed. Thus, the rule would work to *permanently* reduce the vote of this segment as opposed to incenting others to join as would be the case when the rule is applied to other segments. Moreover, as noted above, although the number of RTOs and ISOs are small (only nine in the US and Canada), their size and role in maintaining reliability is extremely large and significant. As a result, application of a numbers-based rule to the ISO/RTO segment would represent a permanent dilution of their vote in contravention of the FERC's ruling that such entities should be fully represented as independent entities and EPACT's requirements of balanced decision-making. Because of the anomalies of applying the rule to this new segment and the fact that its application would not advance its intended purpose, NERC should, in its compliance filing, find the rule inapplicable to the newly created RTO/ISO segment.

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.)

(from 240.) Therefore, we direct NERC to consider and propose methods for ensuring that Reliability Standards provide for an adequate level of reliability and defining "an adequate level of reliability." For example, NERC should address the possibility that the super-majority voting requirement could, in some cases, allow a small portion of the industry to veto a standard that is designed to improve reliability or otherwise remedy flaws in an existing standard. Although we believe that a super-majority requirement is generally consistent with the nature of the ERO as a self-regulatory organization, we are concerned that, in certain instances, it could pose an obstacle to strengthening the reliability of the grid as envisioned by Congress in enacting section 215.

The IRC does not believe it is productive to seek a precise technical definition of adequate level of reliability. Nonetheless, two basic principles should be considered measures for an "adequate level of reliability": (1) ensuring the interconnected system is planned and operated to withstand recognized contingencies without cascade tripping/system collapsing, and (2) that there should not be any expectation of uncontrolled load loss following recognized contingencies. The NERC standards process should ensure that standards not only meet this level of reliability but also establish requirements that define more specific levels of performance pertaining to a particular standard.

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.)

The Urgent Action process already exists as an alternative. Hasty deployment of standards, particularly where there has not been an identified urgent need, causes missteps and misallocates resources that could be used to add real value to reliability. The urgent action process should be used where there is a demonstrated need, but this mechanism should be rarely used. The sunset provisions of Urgent Actions standards are a safeguard that ensures reevaluation of a standard’s need and effectiveness in cases where it was implemented without full due process. FERC likely has the authority to ask for continued reporting of performance to a lapsed standard while it is being refined.

NERC should inform FERC that there are trade-offs between time needed to develop standards and the quality of the standard. This is the concern FERC raises in the ERO Order as identified under question no. 4. One cannot expect to revise a large number of standards that are not diminished in quality by super-majority voting and written with enough detail to meet the statutory requirements of measurability and enforceability, all in a short time frame. If industry exponentially increased the number of man-hours currently dedicated to standards development, it could not meet all these parameters. The balance between time and quality of standards is what drove the IRC to its recommendations in the response to the FERC Staff assessment of reliability standards. FERC should accept those standards that already meet the statutory requirements, which we believe many in the NERC Compliance Program do, and require industry to continue compliance with the remaining NERC standards, without monetary sanctions, until each one has been put through the standards process.

There are some minor changes NERC can make to expedite the standards process. NERC should review its experience with the existing process and identify areas where there are time impediments that have added little or no value to the final standard. For example, the second registration requirement to join a ballot body and the 75% quorum requirement has led to unnecessary delays and confusion. The existing Standards process also does not accommodate making corrections to flawed areas of a proposed standard once the scope of work has been fixed by the Standards Authorization Request (SAR). This could cause unnecessary delays as the process now requires a change in the SAR be approved before the drafting team can proceed. The drafting team should have latitude to make changes to a standard if necessary. Better standards will result at the end of the process.

While it is important that standards be developed in a timely manner, it is also important that there is coordination across jurisdictions. This will reduce the likelihood of a remand of a NERC approved standard once it reaches governmental authorities.

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.)

Generator siting information, generator outage schedules, and facility status are commercially sensitive and must also be held as confidential. Any real time or near real time status information such as SCADA data must be treated as confidential. Facilities used for system restoration should also be considered confidential if not already included in the critical infrastructure list of facilities. Lastly, data from E-tags for transactions and interchange schedules that are in progress or yet to be implemented must also be treated as confidential.

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.)

The primary consideration for a penalty assessment must be the severity or level of threat to the reliability of the interconnected grid. The size of the entity has no bearing on impact on reliability for most standards and requirements. Penalties are not the goal; rather compliance with the standards is the goal. The size of the entity should not be a determinant in the amount of a penalty. Some penalties may need to be significant in order to incent an entity to achieve compliance. Because the probability of experiencing a violation for many standards increases with size (more wire, more likely that one will reach an Security Operating Limit (SOL) or have a relay problem), levies naturally increase geometrically. An analogy is a speeding ticket, which is not based on the size of the car or your ability to pay the fine, but on the seriousness or danger of the violation to others.

There are other avenues to consider an entities size and/or ability to pay. The Compliance Program provides for a settlements process, which includes negotiations of penalty amounts. There is also an appeals process available if an entity does not believe it is being fairly treated. NERC's oversight of the Regional Entity's assessment of penalties ensure that the sanctions correlate to the severity of the violation and are reasonable but significant enough incentives for entities to take corrective actions.

It is also important that the high penalties are placed on true threats to the system, not on violations of requirements such as reporting procedures for after-the-fact occurrences, guidelines, or lack of documentation. The IRC believes that some of the current NERC

standards are not actually reliability standards, but rather legacy requirements from past NERC policies and guides. It is important to recognize this distinction when assessing penalties.

Lastly, compliance penalties should not be set at levels such that entities make economic choices to comply or violate the requirement.