

**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>                                |  |
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| (Complete this page for comments from one organization or individual.) |  |
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| NERC Region  |  |
| <input type="checkbox"/> ERCOT   |  |
| <input type="checkbox"/> FRCC  |  |
| <input checked="" type="checkbox"/> MRO                                |  |
| <input checked="" type="checkbox"/> NPCC                               |  |
| <input checked="" type="checkbox"/> ReliabilityFirst                   |  |
| <input checked="" type="checkbox"/> SERC                               |  |
| <input checked="" type="checkbox"/> SPP                                |  |
| <input checked="" 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 nine functioning Independent System Operators and Regional Transmission Organizations (ISOs and RTOs respectively) in North America formed the IRC in April, 2003. The IRC is comprised of the Alberta Electric System Operator (AESO), California Independent System Operator (CAISO), Electric Reliability Council of Texas (ERCOT), the Independent Electricity System Operator of Ontario (IESO), ISO New England (ISO-NE), New York Independent System Operator (NYISO), PJM Interconnection, L.L.C. (PJM) and the 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.

The IRC recognizes that certain changes have been made by NERC from its initial application in response to the comments it received. The IRC also is aware that NERC has specifically requested that commenters not simply repeat those comments on the initial application concerning portions that NERC has chosen not to modify in its second draft. Based on that understanding, the IRC provides these comments as a supplement to its prior comments on the first draft NERC application to cover those items which were not specifically modified by NERC. The IRC's not repeating its prior concerns is in keeping with NERC's request, and should not be construed as a waiver of its request that those concerns be addressed by NERC or ultimately by FERC.

Individual RTOs and ISOs may be supplementing these comments with their own individual comments.

ERCOT is both the ISO for an intrastate interconnection not subject to FERC jurisdiction and a NERC Regional Reliability Council. Given its unique posture, ERCOT generally supports the spirit and intent of the positions outlined in this document and in the IRC's prior submittal, but declines to participate in the IRC's comments.

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

Comments: In its Comments on the FERC NOPR in this matter, the IRC painstakingly laid out a working model clarifying roles and responsibilities. That model set forth the importance of functionally separating the setting of reliability standards from the implementation of those standards, and importantly, the need to separate both of those activities from enforcement. The IRC comments set forth criteria for the establishment of standards and proposed a separation between the "what" vs. the "how" of reliability standard setting. The draft application does not even consider this working model. Rather, the application blurs the line between standard setting, implementation and enforcement by involving NERC in many activities and functions far beyond the strictures of section 215 of the Act. For example, some of NERC's proposed activities could be seen as engaging in

tasks and reviews best left to system operators. These include activities such as "monitoring present conditions on the bulk power system and coordinating emergency response" (Section VIII Situation Awareness and Infrastructure Security Rules), providing tools and support services for reliability coordinators (Id.) and identifying best practices (Section IX, Performance Analysis Rules). The ERO must avoid mission creep by adding tasks (and staff) far beyond what was expressly provided by Congress. While the ERO taking on such tasks would be questionable from the perspective of cost efficiency, what is much more troubling to the ISOs/RTOs is the potential for real time operational confusion among industry participants if it is unclear whether they must follow the operational directives of the ISOs/RTOs or a standard that is more akin to an operational directive of the ERO. Importantly, and at a minimum, NERC must recognize that the ERO would neither have the institutional knowledge, resources, nor technical expertise to carry out such activities, and that ERO's taking on such responsibilities, already covered by the ISOs/RTOs, may not be cost justified.

Further, it does not seem consistent or prudent for the ERO to develop industry tools and then develop Reliability Standards which mandate the use of those same tools. The ERO should develop standards that mandate what needs to be done and leave it to the industry entities to determine how they will meet the Standards.

In short, the ERO's proposal to move beyond its role as a standard setting body and enforcer of reliability standards is ill-advised as NERC is not well-suited for the task, nor the most cost effective entity to perform these tasks. Congress clearly established distinct tasks for the ERO in the areas of standard setting and enforcement. See e.g. Section 215(d) and (e), Energy Policy Act of 2005. Congress also expressly indicated that implementation of those standards by ISOs and RTOs was to remain their task, pursuant to Commission approved tariffs. Congress even provided that ISO/RTO tariffs and practices implementing those tariffs remain in effect, even in the face of a conflict with ERO action, until the conflict were resolved by the Commission. See Section 215(d)(6). NERC should revise its application to eliminate those functions not expressly contemplated by the legislation and not otherwise being performed today by balancing authorities, regional entities, or state, federal and provincial regulators.

#### Who Should Perform the Industry Support Role?

The application indicates that NERC will provide various industry support functions, from providing software to publicizing best practices for implementing standards. These functions are clearly important ones and were appropriate functions for NERC to take on when it was an industry-organized voluntary organization. However, NERC and the stakeholders should consider the question whether there should be a separation between the ERO standard setting and enforcement process on one hand, and the development and provision of tools for compliance with those standards. In the nuclear industry, the NRC, like the ERO, is the entity that establishes standards and enforces them. The nuclear industry, on its own, has formulated INPO as an arm of the industry to develop the tools and information exchange vehicles to aid in meeting those NRC standards. These are two entirely separate organizations. In the nuclear industry there is a clear separation of the standard setting and enforcement function from the task of assisting the industry in meeting standards through new products and support services. The IRC does not take a position as to whether this

identical model should be applied to NERC, but believes that with the transformation of NERC as a result of its potentially becoming the ERO, the time is ripe for consideration and industry dialogue on this important issue. We stand ready to assist in this discussion before industry models and related institutions become fully developed.

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

Comments:

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

Comments: See prior IRC comments on Draft 1.

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

General Comments:

Comments on Section 300 — Reliability Standards Development (**Exhibit C — Section 300**): The ISOs/RTOs should not be combined with the regional councils through the balloting body. To do so will blur the lines between system operators and those regional entities charged with overseeing the RTOs/ISOs and enforcing regional and ERO standards. Given the vastly different functions these two entities perform and the Commission's own announced heavy burden for those RTOs or ISOs that wish to serve as Regional Reliability Entities, it is both ironic and inappropriate for NERC and stakeholders to join these two entities for purposes of balloting. The IRC urges a separation of the ISOs/RTOs from the Regional Entities for purposes of voting in the balloting body.

Comments on Section 400 — Compliance Enforcement (**Exhibit C — Section 400**): The IRC notes that a number of NERC penalties associated with Version 0 standards are not proportional to the severity of the violation. Standards appear to be heavily weighted toward the higher, level 4 category, even though the infraction relates to a violation with little impact on the bulk power system, such as lack of complete documentation. For example, of the 858 requirements in Version 0 Reliability Standards (remembering that many of these are administrative in nature), 539 of them are categorized as "high risk" and only 215 are "lower risk".

Further, a number of penalties are tied to the size of the entity (for instance, peak load) for infractions for which size has little or no bearing on the impact of the violation to the bulk

power system. For example, there are 100 measures in the NERC Cyber Security Standards now out for ballot for which penalties apply. This standard is primarily measuring the administration of a cyber security program. The annual exposure to a large RTO which failed to meet these requirements would be in the neighborhood of \$80-90 million. Such an event is not expected, but it demonstrates that the penalties are not aligned with the impact of non-compliance.

NERC needs to reconsider its proposed penalties associated with its Version 0 standards to recognize both the severity and the distribution of low-to-high levels of non-compliance as well as to give consideration as to whether the violation would have had a widespread negative impact on the bulk power grid. One possible solution would be to remove all administrative requirements from the existing penalty matrix and devise an alternative means that drives compliance and assesses administrative sanctions outside the existing monetary penalty structure. In essence, administrative violations would not be treated as they are presently given that, although important, these violations have no direct impact on reliability.

Comments on Section 500 — Organization Registration and Certification (**Exhibit C — Section 500**): See prior IRC comments on Draft 1 - Exhibit C - Section III.

Comments on Section 600 — Personnel Certification (**Exhibit C — Section 600**): See prior IRC comments on Draft 1 - Exhibit C - Section IV.

Comments on Section 700 — Reliability Readiness Audit and Improvement (**Exhibit C — Section 700**): See prior IRC comments on Draft 1 - Exhibit C - Section V.

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

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

Comments on Section 1000 — Situation Awareness and Infrastructure Security (**Exhibit C — Section 1000**): As noted in the overall comments detailed above, the provisions contained in this section which address situational awareness have the potential to involve NERC in operational functions that are beyond the scope of what the legislation intended and could not be supported from a cost-efficiency perspective. Although NERC needs to remain apprised of implementation challenges associated with its standards, care must be taken not to blur the lines between standard setting and enforcement on one hand, and implementation of standards and operation of the bulk power system on the other. The situation awareness provisions and NERC's broad role outlined in this section potentially crosses that line and needs to be pared back to solely focus on the ERO's statutory role to set standards and enforce same.

In addition, the role of NERC in detailing best practices, in providing software, and in otherwise providing tools for compliance with its own standards should be examined. The standard setting body should be especially vigilant not to be promulgating what constitutes best practice implementation of a particular standard. To do so will effectively drive the industry to view those best practices as minimum practices which will ensure that an entity does not violate the standard. Although information sharing is appropriate, the standard setting body should not step into the role of promoting particular practices. Rather the entity that sets standards should clearly separate itself from promoting particular operational practices associated with meeting those standards and, at most, providing examples of excellence. The industry should come together on whether it wishes NERC or another entity or entities (similar to INPO in the nuclear industry) to be providing the tools that aid in compliance with ERO standads.

Comments on Section 1100 — Annual NERC Business Plans and Budgets(**Exhibit C — Section 1100**): See prior IRC comments on Draft 1 - Exhibit C - Section X.

Comments on Section 1200 — Regional Delegation Agreements (**Exhibit C — Section 1200**): The IRC reserves the right to comment upon individual regional supplements to the pro forma Regional Delegation Agreement.

Comments on Section 1300 — Committees (**Exhibit C — Section 1300**): See comments on Section 300 above.

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

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

Comments: The IRC reserves the right to comment upon individual regional supplements to the pro forma Regional Delegation Agreement.

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

Comments: