



**Comments of John A. Anderson of the  
Electricity Consumers Resource Council (ELCON) at the  
Reliability Technical Conference on November 29, 2011 before the  
Federal Energy Regulatory Commission (FERC)  
November 29, 2011  
FERC Docket No. AD12-1-000**

I am John Anderson, President and CEO of the Electricity Consumers Resource Council (ELCON). ELCON is the national association of large industrial users of electricity from virtually every manufacturing sector. ELCON appreciates the invitation to appear before the Commission to share our views on reliability issues.

At the outset, I emphasize that a reliable electricity grid is essential to ELCON members. For that reason, ELCON was active in drafting the reliability language that eventually became part of the Energy Policy Act of 2005. And ELCON staff and members serve on many committees and devote a lot of time and effort in the North American Electric Reliability Corporation (NERC). We have been very active within NERC both before and after FERC named NERC as the Electric Reliability Organization (ERO).

ELCON has been, and continues to be, a strong advocate for the creation of an ERO that is fair, balanced, open and inclusive – as required by the legislation. We also believe that a stakeholder-driven ERO has the greatest potential to develop processes and procedures to assure adequate reliability of the grid while being sensitive to the trade-offs between increased reliability and consumer costs. We believe strongly that NERC and its stakeholders are making very significant steps developing procedures and standards to assure the reliability of the bulk electric system (BES). However, we also recognize that more can, and should, be done.

ELCON believes that NERC's accomplishments to a large extent have been commendable, especially given the tremendous work load that FERC has required of NERC. Specifically, since NERC became the ERO, the Commission has issued 44 Orders containing approximately 655 directives related to NERC Reliability Standards. The majority of the directives, 428, were issued in 2007. However, 227 additional directives have been issued since that year.

### **POSITIVE DEVELOPMENTS:**

Overall, ELCON believes that NERC's standards development process is quite good. NERC has maintained its ANSI approval for its standards development process, thus assuring industry input to all standards development. NERC's standards reflect a significant improvement from the voluntary guidelines and practices of the past. A large number of industry experts currently devote their expertise and time to the standards development process. However, subject matter experts from a wide range of stakeholder groups are severely resource constrained.

NERC has diligently addressed the numerous FERC directives. As mentioned above, FERC has issued approximately 655 directives since 2007. NERC has initiated and completed projects associated with 44% of them. NERC is continuing to make substantial progress in addressing the remaining directives focusing first on those that have the greatest impact on reliability.

While many FERC directives are clearly stated, some are difficult to assess. Therefore, NERC and FERC staffs initiated a coordinated effort in August 2010 to reach an agreed-upon "accounting" to identify and catalog the directives. As of July 2011, this coordination project is approximately 50% complete.

The NERC "enterprise" continues to make improvements in both process and output. NERC has stated that it is committed to become a "Learning Organization". It has begun to develop "lessons learned" on various issues. NERC conducts webinars and technical workshops on a broad range of issues. It is learning from Events Analyses.

And NERC is attempting to align Facilities Ratings more closely with actual field conditions

ELCON believes that NERC has made substantial and significant improvements to its Standards Development Process. Attachment I to this Statement lists some of these improvements. A few of these improvements include: developing and fine-tuning the Project Prioritization Tool, piloting a process to develop a standard in significantly less time, helping to bring CANs into scope so that they don't add requirements, development of Find, Fix, Track and Report ("FFTR") and adding more formality and transparency to the interpretations process.

The Standards Committee and NERC staff have jointly worked to develop a prioritization tool, soliciting feedback from the industry, and refining the tool based on that feedback. On February 17, 2011, NERC's Board of Trustees endorsed the Standards Project Prioritization Tool and on May 13, 2011, NERC submitted an informational filing to FERC containing the results of the prioritization effort.

The Project Prioritization Tool recognizes that all standards are not created equal. The Standards Committee has worked very hard to develop a tool to rank standards by their relative importance to reliability. The *Reliability Standard Development Procedures* that was in effect at the time NERC was designated as the ERO required the Standards Committee to initiate almost all projects as Standard Authorization Requests were received. This old procedure led to too many projects in development by mid-2010. A new *Standard Process Manual* was approved for use in September 2010 giving the Standards Committee the authority to determine when to initiate a new project.

The Project Prioritization Tool assigns a base weight to each project based on the project's impact to reliability, and then adds more weight to those projects that have other factors that may warrant giving that project a higher priority. The tool provides an objective method (hopefully) of assigning priorities to each standard project. The tool is intended to point out places where FERC may have issued time-constrained directives

without regard to the impact to reliability. This tool has been posted for industry comments and, in our opinion, appears to be a significant step in the right direction.

NERC also has proposed and is working hard to implement a risk-based approach to reliability standards, compliance and enforcement. The intent is to reduce both (1) the number of requirements by eliminating requirements that are primarily administrative and do not contribute directly to reliability as well as (2) reduce or eliminate the lower level facilitating requirements that are already measured through other performance-based requirements. ELCON supports these efforts.

Regarding compliance and enforcement, NERC has developed and filed with FERC the “Find, Fix, Track and Report” (FFTR) process.

The objective of the FFTR initiative is to streamline the processing of possible violations that pose lesser risks to the bulk power system. Registered entities are now overwhelmed by the demands of the compliance and enforcement “administrivia” associated with demonstrating compliance with many of the NERC standards.

The FFTR initiative represents a more flexible approach to enforcing compliance in a manner that truly fosters enhanced reliability rather than draining resources on minutia while providing for systematic NERC tracking of region- and industry-wide trends in possible violations/issues to ensure continued reliable operations and compliance with standards.

On October 21<sup>st</sup>, ELCON joined with a wide range of other trade associations in filing with FERC strong support for FFTR and encouraging FERC to approve the proposal “as a promising new approach.” ELCON supports the need for a six and twelve month report from NERC on the effectiveness of the FFTR process. The development of these reports should include stakeholder input and preferably be conducted through the standards development process

## **AREAS WHERE IMPORVEMENT IS STILL NEEDED:**

Despite all of the hard work by NERC, more needs to be done. Various actions make us question whether the concern is increasing reliability or simply complying with FERC directives and standards. Often it seems that FERC is so concerned about any breach in reliability that it is insensitive to how much compliance will cost and whether compliance with each and every standard results in a cost-justified improvement in reliability. And NERC, as an organization, increasingly seems willing to trade a balanced and inclusive approach for strict adherence to FERC directives and other mandates.

Many ELCON members are subject to at least some of NERC's standards. These companies have every economic incentive to perform the requirements that minimize problems as they are reliant on a reliable supply of electricity to be able to manufacture their goods and services. However, these companies often inform us that they are overwhelmed with mounds of demands for documentation and other requirements to show full compliance with NERC standards.

Obviously, serious violations should come with appropriate penalties. However, all too often it seems that relatively minor violations (e.g., "document only" type violations) are treated equal to high-risk impact findings and that there is over zealous enforcement. Such actions antagonize the industry and create a culture of mistrust.

Below I address six specific areas where improvement is necessary:

### **(1) Bulk Electric System (BES) Definition**

In Order Nos. 743 and 743-A, FERC ordered NERC to develop a new definition of the BES by January 2012. The BES Standards Drafting Team (SDT) developed some recommendations that appeared to some to be unacceptable to FERC. The contested recommendations involve technical justification for the threshold for BES generation.

The NERC Board basically required the BES SDT to divide the project into two phases with the contested provisions delayed to “Phase II”.

At issue in Phase II is the need for valid technical justification for some of the assumptions used by NERC and the REs to register entities in the past. Some of the assumptions have, to date, been wholly arbitrary. Now it seems that NERC (and perhaps FERC) wants technical justifications for changing existing provisions that were not technically justified themselves.

Choosing double negatives carefully, ELCON does not oppose the division of the process into Phases. However, ELCON strongly urges FERC and NERC to encourage the BES SDT to move expeditiously into Phase II upon the completion of Phase I. Cost effectiveness should be a consideration in the implementation of the exemption process

## **(2) Compliance Application Notices (CANs)**

ELCON was a strong supporter for the CANs concept. We think CANs could: (1) provide transparency to those entities subject to NERC standards on how an ERO auditor will apply compliance criteria to a standard and (2) establish consistency in the application of compliance criteria across regions.

A CAN is not supposed to be a reliability standard or an interpretation of a standard. Rather, a CAN should be a supporting document that explains or facilitates implementation of standards but does not itself contain mandatory requirements subject to compliance review. It should be recognized that the CAN process is a NERC-staff initiative and not part of the Standards Development Process and, therefore, is not enforceable. No CAN should impose data retention or measures that begin before the effective dates given in the FERC and Canadian authorities’ approvals

ELCON was encouraged by the announcement at the Board of Trustees (BOT) meeting in Vancouver that NERC would restate the guidelines for CANs and would review those CANs already in place. However, things have not gone as we expected – or perhaps hoped. A relatively small number of CANs, in our opinion, goes significantly beyond the bounds of the standard. ELCON is working with other stakeholders to seek

a higher level review of these selected CANs, however, we are concerned that the same NERC staff that drafted the CAN may be the staff that will conduct the review.

Comments filed from industry stakeholders should be addressed. As just one example, over 70 comments were received on CAN-0016 stating that the draft went beyond the scope of the standard, but the comments were ignored.

### **(3) Draft Directive Regarding Generator Transmission Leads**

The draft Directive is based on an alleged “reliability gap” that purportedly warrants action on an interim basis to register a broad range of Generator Owners (GOs) and Generator Operators (GOPs) as Transmission Owners (TOs) and/or Transmission Operators (TOPs) when a GO/GOP satisfies any of four specified “Bright Line” criteria. ELCON recognizes that the stated objective of the draft Directive is to reduce the exposure of GOs and GOPs to compliance with Reliability Standards intended for TOs and TOPs. However, as drafted, the Directive backtracks from that promise and will add significant regulatory burdens and thus costs to many GOs and GOPs.

There is no generic reliability gap demonstrated by the draft Directive. Any Regional Entity (RE) today can propose registering any entity that is material to the reliability of the BPS. Three recent FERC Orders have demonstrated the effectiveness of facility-specific procedures as well as the facility-specific circumstances that are needed to address any reliability issues posed by GOs.

The draft Directive would detract from other, more effective, NERC activities. The draft Directive ignores the work and conclusions of the Ad Hoc Group for Generator Requirements at the Transmission Interface (GO TO Team). That GOTO Team specifically concluded that generators should not be registered as a TO or TOP by virtue of owning or operating its Generator Interconnection Facility and a Generator Interconnection Facility is considered as though part of the generating facility specifically for purposes of applying Reliability standards to a GO or GOP.

We believe that the draft Directive is inconsistent with and may in fact violate the FERC procedures governing reliability standards and NERC’s delegated authority under the FPA. Under FERC regulations, NERC cannot unilaterally modify the registration

criteria for a function by directive. Only one of the four draft Applicability Criteria is based on whether the GO/GOP satisfies the criteria for a TO/TOP as set forth in the NERC Statement of Compliance Registry Criteria. Therefore, the draft Directive, in effect, would register GOs/GOPs as TOs/TOPs even though they do not satisfy the registration criteria of a TO/TOP. We believe that an RE can propose to register an entity not meeting the registration criteria **only** if the RE believes and can reasonably demonstrate that the organization is a bulk power system owner, or operates or uses bulk power system assets, and is material to the reliability of the BPS. As proposed, the draft Directive would use the draft Applicability Criteria as a bright-line test without regard to whether the facilities are used in the local distribution of electric energy, thus going beyond the authority of the FPA and previous court decisions

Finally, the draft Directive sets forth a process whereby each RE is directed to negotiate with GOs/GOPs on an individual basis to reach unique agreements about which Reliability Standards will be applicable to the RE. Such a process is opposite to one that would ensure consistency.

ELCON joined with a wide range of other trade associations in filing with NERC on November 18, 2011. This joint filing states that the draft Directive: (1) is not needed, (2) does not demonstrate a reliability gap, (3) is an unreasonable and potentially unlawful departure from the scope of NERC's current procedures and its delegated authority, and (4) should not be the creation of a mutually binding agreement between GO/GOP and Region/NERC that the GO/GOP will comply with stated standards.

#### **(4) Critical Infrastructure Protection (CIP) Standards**

CIP Version 3 standards are in effect and the implementation of those standards is well underway. Many entities are now fully responsible for compliance with these standards and have incurred significant costs for compliance (although others may still be in implementation).

Version 4 has been filed at FERC and FERC has issued a NOPR for comment. Version 4 changed the identification requirements for Critical Asset identification from the Risk-based Assessment Methodology of Version 3 to a newly established set of

“Bright Line” criteria in CIP-002-4. There may be significant differences between the Critical Assets (and thus the Critical Cyber Assets) between Versions 3 and 4. Entities must remain fully compliant with Version 3 until Version 4 is fully mandatory and enforceable.

Version 4 implementation will require a significantly greater number of operations control centers, transmission substations, and large baseload generation stations to be identified as Critical Assets covered. All generation blackstart facilities that are included in restoration plans used to re-start the bulk system following a large outage also will be covered. We believe that this represents a significant response to the criticisms that have been raised. But we emphasize that implementation of Version 4 will be neither a simple nor straightforward activity and will cause implementation challenges and costs.

And further, Version 5, which is enormous and complex, modifies the bright line criteria by adding different tiers of Critical Assets. Version 5 is scheduled to be filed at FERC in the third quarter of 2012. Thus, Version 5 may become mandatory before Version 4 is completely implemented. These conditions create significant implementation costs, timing concerns, and compliance complexities.

Two of the issues of most concern are confusion over what compliance criteria will be required between the various Versions and a lack of clarity for auditors knowing what version to audit. There must be an effort to quickly bring these standards to a final and stable state so industry can focus on developing and finalizing their compliance plans and programs related to the CIP standards.

ELCON joined with a wide range of other trade associations in a filing with FERC on November 21, 2011 calling for: (1) Commission approval of Version 4 with reasonable and cost effective approaches for protecting critical electricity infrastructure and cyber security, (2) approval of the effective date and implementation plan of Version 4, (3) support for FERC setting goals for NERC to submit modified CIP standards, (4) careful consideration by FERC of the consequences and value of developing criteria for identifying critical cyber assets in Version 4, and (5) avoidance by FERC in considering in this docket broad policy issues involving cyber security.

## **(5) Proposed changes to the NERC Rules of Procedure (ROP)**

Proposed changes to the ROP have been promulgated by NERC staff and described as minor in nature. However, one of the proposed changes involves a proposal to impose monetary penalties for failures to comply with the ROP.

Specifically, Rule 414, “Imposition of Fines for Failure to Provide Information Requested Pursuant to the Rules of Procedure”, proposes to establish fines unrelated to any standard enforcement. Numerous comments questioned the legality of such requirements. Section 215 of the FPA does not appear to give NERC the authority to assess fines for anything other than a standards violation. NERC should be required to demonstrate a currently unmet need for information that has a clear link to preserving or enhancing the integrity of the BES before implementing any ROP changes. At an absolute minimum, NERC should post for comment both proposed changes to any ROP along with a clear and specific rationale for the changes

## **(6) Cost of Compliance**

The costs associated with demonstrating compliance are continuing to increase at an accelerating rate. The entire process for how industry is required to document its compliance efforts must be re-examined to ensure that the focus is actually on operating a reliable BES and not regulation for regulation’s sake. NERC must be required to explore steps to reduce burdens on stakeholders while focusing on the issues that are most critical to BES reliability and FERC should ensure that it gets done in a cost-effective manner.

## **CONCLUSIONS**

NERC is working very hard to develop reliability standards that will assure a reliable supply of electricity, hopefully at reasonable costs. However, FERC has placed enormous burdens on NERC. The FERC directives and mandates appear to be driving NERC staff to have to make a choice between a slower, but stakeholder-inclusive process and a staff-driven process that ignores at least some stakeholders' input to achieve more timely results.

The implications of these factors appear to be causing both a compromise in the stakeholder-driven standards development process and the incurrence of substantial costs. Such concerns have brought a wide range of stakeholders together in a way not seen in several years. This observation is emphasized by joint filings at FERC and NERC by a wide range of trade associations on issues including: (1) the proposed FFTR process, (2) concern over the CANs process, (3) Opposition to the proposed generator transmission leads Directive, and (4) implementation of CIP Standards.

ELCON believes it is time to let NERC and the industry catch up by reducing the number of directives or mandates to the bare minimum for the near term.

## **Attachment I:**

### **A listing of some of the specific and substantial improvements NERC has made to its Standards Development Process:**

- Fine-tuning of the Project Prioritization Tool and refinements when developing updates to the Reliability Standard Development Plan 2012-2014
- Working more closely with the NERC Technical Committees in analyzing the need for revisions to ALR and in identifying and gaining commitment to support studies needed to support development of new/revised standards
- Adding more formality and transparency to the process of developing interpretations
- Forming a standards drafting team to address CIP Interpretations
- Highlighting the need to bring CANs into scope so they don't add requirements to standards
- Piloting a process to develop a standard in 12 months from SAR posting to ballot pool approval (Rapid Development)
- Piloting a process to make a minor revision to a standard as an alternative to developing an interpretation (Rapid Revision)
- Investigating additional methods of expediting standards development without losing ANSI accreditation
- Revising the SC Charter and Election Procedure to have chair/vice chair serve for the industry at large rather than for industry segments – should help align the SC leadership more closely with BOT and ERO Goals without leaving some industry segments under-represented (not yet implemented due to wait for FERC approvals)

- Updating the Roles and Responsibilities Document to ensure SDTs understand they must treat comments from NERC staff in the same manner as comments from other stakeholders
- Working on increasing outreach to stakeholders through co-sponsoring two workshops with compliance and a “state of standards” webinar
- Encouraging SDTs to hold webinars on proposed standards – and 14 have been held so far this year on standards under development – with more planned before the end of the year
- Developing key points briefing documents distributed to regions and key industry groups to address controversial stakeholder issues such as the “Rapid Development” project and the need to subdivide the BES Definition Project into multiple phases
- Meeting face-to-face with SDT leadership to identify opportunities for improvement
- Working with the standards staff to identify and test improvements to the standards web pages