

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Technical Conference Relating to the Rules  
Concerning Certification of the Electric  
Reliability Organization; and Procedures for  
the Establishment, Approval, and  
Enforcement of Electric Reliability Standards

Docket No. RM05-30-000

**Supplemental Comments of the  
Electricity Consumers Resource Council (ELCON) Regarding the  
Federal Energy Regulatory Commission's  
Notice of Proposed Rulemaking on the Creation of a  
Electric Reliability Organization (ERO)  
December 20, 2005**

The Electricity Consumers Resource Council (ELCON) is the national association of large industrial electricity consumers. ELCON appreciates the opportunity to offer supplemental comments on the regulations to implement the requirements of Subtitle A of Title XII of the Energy Policy Act of 2005. Subtitle A of that Title added a new section 215 to the Federal Power Act that allows the Federal Energy Regulatory Commission (FERC) to approve an Electric Reliability Organization (ERO).

**Introduction**

Electric reliability is of paramount importance to large industrial electricity consumers. Increasingly, productive processes rely on sophisticated electronic controls and other equipment that are very sensitive to even relatively minor power surges or interruptions. Industrial users

bear the brunt of power outages. The blackout of August 2003 cost the national economy billions of dollars and significantly harmed many industrial companies.<sup>1</sup> For these reasons, ELCON member companies and staff have been active participants in nearly every aspect of the North American Electric Reliability Council (NERC) for many years.<sup>2</sup>

NERC was formed in 1968 following the Northeast blackout of 1965. NERC has developed voluntary reliability standards. The ERO will both allow the standards of the ERO to be mandatory and apply to all users of the bulk power system. ELCON believes that the FERC now faces a tremendous opportunity – to approve an ERO that will significantly improve the reliability of the nation’s electric grid at reasonable costs. ELCON believes that this opportunity will be lost if the ERO simply duplicates NERC’s governance and standards development process as they exist today. Change is required, and this is the time to make the necessary change.

### **Comments**

Congress has now given FERC the authority and responsibility to assure grid reliability.

**ELCON urges FERC to use this authority to require a strong, “top-down” ERO.**

In ELCON’s view, FERC should strive to create a truly world-class reliability organization. The existing fragmented lines of authority that exist between NERC, the regional councils, RTOs and transmission owners must be eliminated and clear lines of authority should

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<sup>1</sup> See The Economic Impacts of the August 2003 Blackout, Electricity Consumers Resource Council, February 9, 2004, available at: [www.elcon.org](http://www.elcon.org).

<sup>2</sup> ELCON staff or members have served on (to mention a few): Board of Trustees, Stakeholders Committee, Operating Committee, Executive Committee of the Operating Committee, Market Committee, Executive Committee of the Market Committee, Planning Committee, Standards Authorization Committee, Post Legislation Steering Committee, Future of NERC Committee, Members Task Group, Funding Task Group, and Delegation Task Group, as well as the Working Group that developed the legislative language that became Subtitle A of Title XII.

be developed. Any deference or delegation from the ERO to the regions must not be an excuse to preserve some market advantage, allow opportunistic behavior, perpetuate a balkanized grid or otherwise preserve the *status quo* except as allowed in Section 215 of the EPCA.

One of the most difficult decisions that the ERO and FERC will have to make is to specify the level of reliability that should be met. It is quite clear that the greater the level of reliability, the greater the costs. While reliability is very important to industrial electricity consumers, the costs must not be exorbitant. Yet, the degree of reliability must be high enough to meet the needs of consumers, those that are paying the bills. We believe that it is nearly impossible to quantify this decision, but end users know it when they see it. In our view, consumers must be given both the opportunity and the ability to decide when expenditures are too little (resulting in an inadequate grid) or too great (resulting in “gold-plating”). **Thus, end users must be in a position to at least veto proposals within the ERO that end users believe are either inadequate or too costly. This requires a change in NERC’s governance.**

A second difficult decision that the ERO and FERC will have to make relates to the level of deference that the ERO will give to the regions. The legislation includes Section 215(c)(4) which states that:

“The Commission shall issue regulations authorizing the ERO to enter into an agreement to delegate authority to a regional entity *for the purpose of proposing reliability standards to the ERO* and enforcing reliability standards under paragraph (1) if ...” (Emphasis added)

the ERO meets specified conditions. The legislation also contains a provision that requires the ERO to:

“...rebuttably presume that a proposal from a regional entity *organized on an Interconnection-wide basis* for a reliability standard or modification to

a reliability standard **to be applicable on an Interconnection-wide basis** is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.” [Section 215(d)(3), emphasis added]

FERC’s interpretation of these provisions will be critical to the success of the new ERO.

One interpretation could result in a strong ERO that will assure a consistent and reliable bulk power system for North America. Another interpretation could result in a very weak ERO and a continuation of the existing balkanized process for setting reliability standards.

ELCON is very concerned that the later outcome will be included in the application submitted for FERC approval. Specifically, the final draft of the “Delegation Agreement” as presented to NERC’s Post Legislation Steering Committee would:

- (1) Authorize any regional entity to develop any regional difference or standard it wants and submit it to the ERO. The ERO would only be allowed to approve the proposal and submit it to FERC for approval; disapprove the proposal; or remand the proposal with comments;<sup>3</sup>
- (2) Require the ERO to fund delegated activities of the regions, but require the ERO to presume that the regional budget is reasonable if it has been approved by the region’s governing body;<sup>4</sup> and
- (3) Require that all regional costs be collected from entities within the region.<sup>5</sup>

The latest draft of NERC’s “Standards Development Program” also proposes a standards development process that is problematic. Specifically, any regional entity could request the ERO to pre-approve the region’s standards development procedure. Once approved, the regional entity could propose a regional variance or standard to the ERO for approval. The ERO would simply

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<sup>3</sup> “Delegation Agreement Between Electric Reliability Organization and [Reliability Entity]” Final Draft as presented to NERC’s Post Legislation Steering Committee, November 30, 2005, page 6.

<sup>4</sup> Ibid., Page 10.

<sup>5</sup> Ibid.

post the proposal for comment, then move the proposal for “ERO approval” by the ERO Board, thus bypassing the most significant part of the ERO’s standards development process.

ELCON strongly supports a strong, top-down ERO. However, we are concerned that approval of the language in both the draft “Delegation Agreement” and the draft “Standards Development Program” could result in a very weak and ineffective ERO by attempting to preserve the existing “bottom-up” governance of NERC. No matter how well the ERO is structured, this language would, at best, allow the ERO to have very little say over the establishment of standards – even though these standards would then be made a part of the ERO’s standards and enforced through the authority granted by the Energy Policy Act of 2005.

We are concerned that giving any regional entity the authority to develop their own standards with little ERO oversight will result in standards with little consistency between regions – even if there are not substantial regional differences. These different standards will require significantly increased efforts by stakeholders who will have to both participate in many regional standards setting processes and operate under different procedures. In addition, the different standards will create seams which, once created, will be difficult to eliminate. Allowing any regional entity to establish their own standards will make it very difficult for the ERO – and FERC – to monitor not only the development of the regional standards, but also their enforcement. There simply will not be any process that will even attempt to strive for consistency between regions. Significant deference to the regions will not result in a strong, top-down ERO. In essence, it simply codifies today’s *status quo*.

In order to balance the two legislative mandates specified above, ELCON recommends that any region (or any other entity with an interest in the bulk power system) should be able to

propose reliability standards to the ERO. All proposed standards must be subject to the ERO's standards development process. However, the ERO's standards development process might allow a proposal from a regional entity *organized on an Interconnection-wide basis* to move more quickly through the ERO. Such proposals could be posted by the ERO for public comment, then move to the ERO Board for approval. Clearly, if the interconnection-wide regional entity truly addressed all stakeholder concerns in its development process, there will be few, if any, further comments in the ERO's posting of the proposed regional standard. The proposal will thus move very quickly through the ERO. We do note, however, that such a process places additional responsibilities on the ERO, and indirectly on FERC. Each will have to follow very carefully the entire process used by the regional entity to be able to have comfort that the process has actually been followed.

### **Recommendations**

ELCON previously filed comments in this docket.<sup>6</sup> ELCON both reaffirms and expands on these earlier Comments.

Additionally, ELCON urges FERC to carefully consider the following ten recommendations for inclusion in the final Rule. In addition, ELCON's responses to the questions posed by FERC for the first panel of the December 9, 2005 Technical Conference are included as an Appendix.

### **ELCON's Ten Recommendations**

- I. ELCON recommends that the ERO should be organized, at least initially, around NERC's existing (albeit relatively new) nine-Segment Ballot Pool**

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<sup>6</sup> See Electricity Consumers Resource Council comments in Docket No. RM05-30-000 dated October 7, 2005.

**structure.** The existing structure has been proven to work and work well, although the representation of end users, those that pay all of the bills, is inadequate. The segment recommendation from NERC's Members Task Group significantly dilutes the end users' vote and should not be accepted. Equal representation between producers and consumers in any weighted voting system is the best means for ensuring "fair stakeholder representation." Thus, over time, the end users' representation must be increased.<sup>7</sup>

- II. **Regional entities should be able to participate in all discussions of the ERO, but should have no vote on any issue that they will later enforce.** The regions will, to a large extent, be an administrative extension of the ERO. ELCON believes that, ideally, regions should be regional offices of the ERO. At a minimum, we assert that it would be a conflict of interest for regions to vote on standards and other issues that they will later enforce.
- III. **ELCON strongly recommends that no regional entity that operates the transmission system be delegated any enforcement authority by the ERO.** A very significant conflict of interest will occur if the ERO delegates enforcement authority to a region that also operates the transmission system.

If FERC allows the ERO to delegate enforcement authority to a region that also operates the transmission system, we respectfully request that FERC establish clear and impenetrable fire walls between the two conflicting operations and assure stringent enforcement of the rules and procedures establishing the fire walls.

- IV. **There should be no "members" and no membership fee should be charged.** Anyone with an interest in the bulk power system should be able to participate equally in the ERO's process. The establishment of a category of "members," by definition, means that all participants are not treated equally. A membership fee of nearly any amount becomes a barrier to participation to some. All participants should be required to register on a regular basis (perhaps annually) to indicate that they continue to be active and interested.
- V. **The existing Stakeholders Committee should be retained but made democratic.** Each of the nine Segments should directly elect their representatives to the Stakeholders Committee, just as it is done today with the Registered Ballot Body electing their representatives to the Standards Authorization Committee.
- VI. **As long as the Stakeholders Committee is democratically elected, appropriately structured, and consumers have their appropriate proportion of the vote, this**

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<sup>7</sup> ELCON stated in our October 9, 2005 Comments that the regions today control 37% of the total vote in NERC. They have been given this proportion of the vote, to a large extent, because they "pay" the bills of NERC. In the new ERO, end users, by law, will pay 100% of the costs of the ERO. Thus, ELCON believes strongly that end users should have at least 37% of the vote. In the spirit of compromise, ELCON reluctantly agrees to accept the existing nine-sector structure of NERC's Registered Ballot Body for the transition period. ELCON strongly opposes the addition of any additional segments which would dilute the end users' votes.

**Committee should (1) elect Board members, (2) approve changes to the By Laws, and (3) approve changes in governance.** These are, without a doubt, some of the most important functions of the organization. The Stakeholders Committee should not be given these functions if it is not democratically elected and appropriately structured..

- VII. **The Board of Trustees should be directly elected by the Stakeholders Committee.** The Stakeholders Committee (the specific name is not important) should appoint a Nominations Committee comprised of a cross-section of the Stakeholders Committee. The Stakeholders Committee should control the election process.
- VIII. **The ERO should have broad discretion over both the ERO’s budget and that portion of the regional entities’ budgets that relate to delegated functions.** Regions should submit their proposed budgets to the ERO. The ERO should carefully review each region’s budget before sending the combined budgets to FERC for approval. The ERO should not presume that the regional budget is reasonable simply because it has been approved by the region’s governing body. NERC’s December 7<sup>th</sup> presentation is unclear on this issue. The presentation suggests that the ERO may disapprove a region’s budget proposal. However, the presentation states clearly that the ERO does not have to “approve” any region’s budget. We respectfully request that FERC include in the final rule a provision that clearly requires ERO approval over any portion of the regional entities’ budgets that relate to delegated functions.
- IX. **As discussed earlier, all standards that are to be enforced through authorities given to the ERO through the EPAct should be developed in the ERO’s standards development process.** Regions (and others) should submit to the ERO proposals (e.g., Standards Authorization Requests – or SARs) for standards development. Such proposals may be for standards that will be effective in sub-regions, regions, interconnections or the continent. Clearly, the ERO should comply with the provision in the law that requires the rebuttable presumption for proposed Interconnection-wide standards. However, we believe strongly that all proposed standards, regional or otherwise, should still follow the standards development process of the ERO.

As discussed above, ELCON opposes significant provisions of the current NERC draft Delegation Agreement and draft Standards Development Program. The former would grant regional entities complete authority to develop regional variances and standards without real ERO oversight. The latter would allow Regions to have their standards development *PROCESS* pre-approved by the ERO, and then allow regional standards or variances to by pass the significant comment part of the ERO’s standard development process.

ELCON recommends that regions should be able to develop any regional standard they wish as long as it is (1) not less stringent and not inconsistent with any ERO

standard; (2) not enforced under ERO authorities and (3) not financed through ERO funds. The ERO, subject to FERC approval, should determine what is “not less stringent and not inconsistent.” ELCON does not believe that a process that requires the ERO Board to approve regional proposals from regions with pre-approved standards development processes as long as the region followed its process to be in compliance with the legal provisions of the new Section 215(c)(4). Proposing a standard to the ERO for development is quite different from moving a proposal through the ERO with only a process review.

**X. Delegation agreements should be standardized to the greatest extent possible.**

The standardization of reliability standards is of utmost importance. Large industrial electricity consumers have major manufacturing facilities in multiple regions of North America. We believe that other stakeholders (e.g., independent generators) are in similar situations. While we recognize that there might be some differences in the way different interconnections, regions, and sub-regions are planned and operated, we are wary that many claims for “regional differences” are really attempts to preserve the regions’ ability to act independently rather than reflect real differences.

Delegation agreements that differ significantly between regions will reduce the effectiveness of the ERO and create significant obstacles to users of the grid. The burden of proof should be on any region that requests a variance from an ERO standard to clearly demonstrate the need for the variance.

### **Summary**

ELCON again compliments FERC for its NOPR. Most of the provisions are right on target and can help produce a strong “top down” ERO that provides wide-reaching benefits. We again note that FERC faces a tremendous opportunity to establish an ERO that will truly benefit consumers. We request that you to carefully consider our recommendations as you finalize the rule.

Respectfully submitted,

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Dated: December 20, 2005

## APPENDIX

### ELCON's Responses to FERC's Questions Regarding the Establishment of Electric Reliability Standards

#### 1. What criteria should be used to determine reliability standards?

ELCON believes that the current NERC standards development process is appropriate for the development of electric reliability standards. This process is certified by the American National Standards Institute (ANSI). It is fair, open, transparent and inclusive. However, as described in the body of these Comments, ELCON believes that the balance should be changed to increase the representation of consumers.

#### 2. How should "best practices" be incorporated into developing reliability standards?

The two major reports following the August 14, 2003 blackout specifically recommended that "best practices" be developed. Specifically, NERC's "Actions to Prevent and Mitigate the Impacts of Future Cascading Blackouts," dated February 10, 2004, included the following recommendation:

"The Operating Committee shall within one year evaluate the real-time operating tools necessary for reliable operation and reliability coordination, including backup capabilities. The Operating Committee is directed to report both minimum acceptable capabilities for critical reliability functions **and a guide of best practices.**" [Recommendation 10, "Establish Guidelines for Real-Time Operating Tools, emphasis added.]

The U.S.-Canada Power Outage Task Force final report of April 5, 2004, included several references to best practices, including:

"**Develop and implement best practices** and policies for IT and security management drawing from existing NERC and government authorities' best practices." [Recommendation 32, "Implement NERC IT standards", emphasis added]

and

"To coincide with these initiatives, the electricity sector, in association with federal governments, should develop policies **and best practices** for effective risk management and risk mitigation." – Recommendation 36, "Initiate a U.S.-Canada risk management study." [ibid]

It now appears that NERC will not actually embrace the concept of "Best Practices", but rather will develop some "Operating Guidelines" or "Notable Practices."

NERC established the "Best Practices Task Force" (BPTF). ELCON served on the BPTF. The BPTF draft report acknowledges that the use of Best Practices would: (1) move the industry toward excellence; (2) avoid "reinventing the wheel"; (3) promote motivation and spark innovation; and (4) help secure regulatory allowances.<sup>8</sup> However, the BPTF also notes that there are "obstacles" to the use of Best Practices. Specifically, the draft report notes that the use of Best Practices might: (1) lead to an expectation that compliance could be expected; (2) cause difficulties in identification; and (3) lead to confusion regarding whether "examples of excellence" are Best Practices or not.<sup>9</sup> Thus, the draft report of the BPTF recommends: (1) rename the old Operating Committee "Operating Guides" as "Operating Guidelines"; (2) update the Operating Guidelines; (3) seek industry comments on these Guidelines; (4) publish the Guidelines in the NERC Operating Manual; (5) continue to revise the Operating Guidelines and develop new ones; and (6) encourage electric utilities to consider these Operating Guides and implement them where appropriate.

ELCON is very aware that "...some members are extremely uncomfortable using the term 'best practices' because it can be misunderstood as 'no other practices are equal or superior' and possibly misapplied."<sup>10</sup> The report concludes: "The task force also believes that developing the Operating Guidelines effectively meets the intent of the recommendations from NERC and the U.S.-Canada Power Outage Task Force final report on mitigating the causes of the August 14, 2003 blackout."<sup>11</sup> However, if, for any reason, it is later found that the development of the Operating Guidelines does not meet the intent of the recommendations, ELCON will continue to work with the Operating Committee to further develop the issue.

### **3. What process should the Commission use in evaluating reliability standards?**

The Commission should verify that ANSI-approved processes were followed and that all negative comments were adequately addressed. The Commission should very carefully analyze any negative comments that were not resolved to the satisfaction of the commentor. The Commission should remand to the ERO for resolution any standard where, in the Commission's judgment, negative comments are significant.

ELCON recommends that the Commission be particularly diligent in evaluating proposed standards that have been developed in regions and given only cursory oversight by the ERO.

### **4. What are the implications for the Electric Reliability Organization (ERO) if a reliability standard is remanded?**

The implications depend on the reason(s) for the remand. Clearly, the ERO should carefully and completely address each reason. The ERO should re-file a modified standard if the ERO can resolve the disputes. If not, the ERO should clearly document to the Commission the steps that were taken to attempt to resolve the dispute.

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<sup>8</sup> North American Electric Reliability Council, "Best Practices Task Force Report: Discussions, Conclusions, and Recommendations," approved by NERC's Operating Committee, December 8, 2005, page 7.

<sup>9</sup> Ibid., pages 7 & 8.

<sup>10</sup> Ibid., page 3.

<sup>11</sup> Ibid., page 14.

5. **What process should be used by the ERO for handling remanded reliability standards?**

The remanded standard should go through the regular ERO standards development process. In addition, a dispute resolution process should be implemented. The FERC Order on Remand should serve as the Standards Authorization Request (SAR).

6. **How are entities such as distribution providers, load serving entities, generation owners, generator operators, etc. covered by the reliability standards approved by the Commission?**

The EAct of 2005 clearly states that: “All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.” [Section 215(b)] It seems to ELCON that all of the entities listed in the Question #6 are covered by this provision.