

ELECTRICITY
CONSUMERS
RESOURCE
COUNCIL



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John A. Anderson

President & Chief Executive Officer

January 12, 2006

Mr. Rick Sergel
President and CEO
North American Electric Reliability Council
11—390 Village Boulevard
Princeton, New Jersey 08540-5731

Dear Rick,

As you know, industrial electricity users and ELCON have long supported the establishment of a statutorily sanctioned national electric reliability organization. We recognize the good work that NERC has done through the years and we share NERC's frustrations about its voluntary nature, its inability to enforce its standards, and its limitations in raising sufficient revenue.

That is why we view the process now underway as extremely important. That process involves, first, the selection of a national electric reliability organization (ERO), pursuant to the recently enacted Energy Policy Act, and, second, the development of the procedures by which the ERO will develop electricity reliability standards for the operation of our interstate electricity. NERC's proposed ERO Application is a key step in this process. Overall, we commend you and the NERC staff for your efforts and for, by far, most of the specifics in the Application.

This process will determine whether the new ERO – presumably NERC – will basically continue the structures and procedures utilized in the past or, instead, create new processes and a new structure that will make the ERO a truly great North American reliability organization. We believe that the structure that evolved through the years – with, in our view, far too much reliance on the regional reliability councils – has hindered the development of strong and consistent North American reliability standards. We urge you and NERC to look for a different approach – an approach focusing on creating a top-down organization that will develop and enforce strong and consistent North American reliability standards.

I do not believe it is an exaggeration to state that how the issue of grid reliability is decided in the near future will have a significant impact for years to come. The opportunity to create a single reliability organization designed to develop and implement reliability standards for the integrated in grid in North America will not come again.

ELCON's specific comments on NERC's proposed Application are attached and are consistent with the objectives outlined above. I hope that you carefully consider our views and those of other consumers as you finalize the Application and I look forward to participating in the new ERO.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Anderson", written in a cursive style.

COMMENT FORM FOR DRAFT ELECTRIC RELIABILITY ORGANIZATION APPLICATION FILING

Please use this form to submit comments on the NERC draft Electric Reliability Organization Application filing. All comments must be submitted by **January 13, 2006** by e-mailing this completed form to 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 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.

Individual Commenter Information	
(Complete this page for comments from one organization or individual.)	
Name:	John Anderson
Organization:	Electricity Consumers Resource Council (ELCON)
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NERC Region	
<input type="checkbox"/> ECAR	
<input type="checkbox"/> ERCOT	
<input type="checkbox"/> FRCC	
<input type="checkbox"/> MAAC	
<input type="checkbox"/> MAIN	
<input type="checkbox"/> MRO	
<input type="checkbox"/> NPCC	
<input type="checkbox"/> SERC	
<input type="checkbox"/> SPP	
<input type="checkbox"/> WECC	
<input checked="" type="checkbox"/> NA - Not Applicable	

Please enter all comments in simple text format.

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

Comments: PAGE 3: ELCON strongly supports the statements that NERC will be (or hopes to be) a strong and effective ERO, that reliability standards must be consistent across North America, that regional delegation agreements should clearly define the responsibilities of the ERO and regional entities with regard to delegated functions, and that the ERO and the delegated functions of the regional entities are funded based on NEL. PAGE 4: ELCON opposes the retention of the existing board election procedure. We are opposed to a self-perpetuating board. ELCON believes that as long as the Members Representatives Committee is democratically elected, appropriately structured, and consumers have their appropriate proportion of the vote, the Members Representatives Committee should control the election of the board. PAGE 8: ELCON agrees with the statement that "ERO standards shall be consistent across North America" and that "All reliability standards, including regional reliability standards and variances, shall become ERO standards and must be approved by the ERO." Further, ELCON agrees with the proposal that standards proposed by less than an interconnection-wide region shall become ERO standards if there is a justifiable difference and there are no adverse impacts to others in or out of the interconnection or to commerce. However, ELCON believes that such standards should be developed within the ERO using the complete ERO standard-setting process, not within the region or with an abbreviated ERO process. PAGE 9: ELCON agrees with the statement that: "The regions are an extension of the ERO with regard to compliance." In fact, we believe that the regions are an extension of the ERO regarding any delegated function. PAGE 12: ELCON agrees that: "The ERO shall review regional budgets for delegated functions early in the budget process, prior to approval by the regional board, and shall consult with the region regarding any areas of concern." However, ELCON is opposed to the proposal that "Once the regional budget is approved within the region, the ERO would accept the approved budget for inclusion with the ERO budget in filings with regulatory authorities." ELCON strongly recommends that the regional budgets should be vetted in an ERO process that includes approval by the Members Representatives Committee and the ERO Board before they are filed with regulatory authorities. Consumers should not be required to pay more than absolutely necessary for the level of reliability they desire.

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

Comments: No comments at this time

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

Comments: PAGE 3: ELCON agrees that: "Any person or entity registering to become a member of the registered ballot body of the Corporation shall automatically be registered as and become a member of the Corporation, unless such person or entity affirmatively elects not to become a member of the Corporation." However, this statement suggests that persons or entities can become "members" without registering for the ballot body. ELCON recommends that all members also should be members of the registered ballot body, and vice versa. In fact, the registered ballot body should also be the list of the "members." Maintaining two lists would be duplicative and raises questions about the rights of "members." PAGE 4: ELCON agrees that the Membership Segments should, at least initially, be the same as currently exist in the registered ballot body. PAGE 6: ELCON recommends that the ERO application defines what is meant by the term a "trustee from Canada..." ELCON agrees that the representation on the board (and on other committees) should reflect the NEL from the U. S. and from Canada. However, enforcement of this concept requires a definition of representatives of both the U.S. and Canada. PAGE 7: ELCON recommends that the filling of any vacancies on the Board should require approval of the Members Representatives Committee. One of the responsibilities of the Members Representatives Committee is to elect the members of the board. Thus, filling vacancies should require approval of the Members Representatives Committee. PAGE 8: ELCON recommends that as long as the Members Representatives Committee is democratically elected, appropriately structured, and consumers have their appropriate proportion of the vote, this committee should control the election of the board. Thus, ELCON disagrees with the statement that: "The board shall appoint, on an annual basis, a nominating committee..." Alternatively, the Members Representatives Committee should appoint the nominating committee. PAGES 13 and 15: As noted above, the application should include a definition of what is meant by "representatives from the U.S. and Canada." PAGE 17: ELCON agrees with the statement on Page 9 of the Application that "The regions are an extension of the ERO with regard to compliance." In fact, ELCON believes that the regions are an extension of the ERO regarding any delegated function. Thus, we do not believe that regional entities should be members of the ERO. However, if regional entities are allowed to be members, we agree with the statement on Page 17 of the By Laws that states that they would be included in Segment 2. PAGE 20: ELCON recommends that the amount of the annual retainer fee or other compensation to be paid to the independent trustees for their services to the ERO should be approved by the Members Representatives Committee.

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

General Comments:

Comments on Section I — Reliability Standards Development (**Exhibit C— Section I**): Section 1.4, PAGES 10 & 11: ELCON is pleased that the Rules recognize that there is a relationship between Reliability Standards and Competition. However, the Rules are far too general on how the ERO should deal with the competitive aspects of each Standard. ELCON recommends that the Rules be amended to include specific references to the Joint Interface Committee (JIC) and the Memorandum of Understanding (MOU) that has been drafted and agreed to by NERC, NAESB and the IRC. Additionally, the MOU should be filed with the appropriate regulatory agencies. Section 3.4.2, PAGE 13: As we have stated above, ELCON believes that the regional entities are extensions of the ERO. Thus, we do not believe that regional entities should participate in the development of and voting on standards that they will be required to enforce. Section 5.3, PAGE 15: As stated above, ELCON recommends that the Rules contain a definition of what is meant by "Canadian members." Sections 10, 11, 12, 13, and 14, Pages 19 - 25: ELCON recognizes that the legislation gives deference to regional entities that are organized on an Interconnection-wide basis. Thus, Standards or Variances that are proposed by a regional entity organized on an Interconnection-wide basis should move more quickly through the ERO's standard development process. However, the legislation gives no such deference to regional entities that are organized on less than an Interconnection-wide basis. Thus, ELCON strongly recommends that any Standards or Variances that come from regional entities organized on less than an Interconnection-wide basis should be developed by using the complete ERO process, not the abbreviated process proposed in the Application. ELCON also offers the following comments on the "Reliability Standards Development Procedure" -- Appendix 1 of the Rules of Procedure: "Principles", Page 5 refer to the Market Interface Principles. The section "Roles in the Reliability Standards Development Process" (Page 12) mentions that the JIC's Purpose is to ensure that the development of wholesale electric business practices and reliability standards is harmonized. Step 3 of the Reliability Standards Consensus Development Process (Page 16) specifies that prior to authorizing a standard for development, the Standards Committee will coordinate the proposed standard request with the JIC. ELCON recommends that the specific relationship between NERC and NAESB should be explicitly addressed. The recent disagreement between these organizations over TLR highlights this concern. The Rules should specifically address the MOU between NERC and NAESB and set forth a procedure to deal with disagreements. The Special Procedures section contains reference to Regional Differences (Page 26). This section specifically states that: "To the maximum extent feasible, regional differences should be addressed through the NERC standards process and incorporated into and approved as part of the NERC reliability standard." However, just a few paragraphs down from this statement, the procedures state: "Regions may develop, through their own processes, separate regional

standards that go beyond, add detail to, or implement NERC reliability standards, or that cover matters not addressed in NERC reliability standards." This is confusing. ELCON recommends that such regional actions should not be called "standards" but rather regional criteria or something like that. The term "standards" should refer only to the ERO's reliability standards.

Comments on Section II — Compliance Enforcement (**Exhibit C — Section II**): Overall, ELCON compliments NERC on the Compliance Enforcement Program proposal. ELCON advocates a strong, top-down ERO. A critical part of this structure is a Compliance Enforcement Program that is controlled by the ERO, not the regions. ELCON believes that a volunteer fire department might work, but a volunteer police department cannot be fair and nondiscriminatory. The draft NERC proposal calls for strong oversight of the regions with individuals that are independent. ELCON strongly supports this proposal. Regarding specific sections of the proposal: Section 2.3, Page 29: ELCON strongly supports the proposal that: "...the ERO shall maintain consistency among the regional compliance enforcement programs." Section 2.10, Page 30: ELCON supports the proposal that: "The ERO shall evaluate annually the goals, tools, and procedures of each regional compliance enforcement program ...". Section 2.11.1, Page 30: ELCON supports the requirement that: "The ERO shall maintain a detailed audit procedure containing the requirements, steps, and timelines to conduct an audit of each regional compliance enforcement program." Section 2.11.2, Page 31: ELCON strongly supports the provision that: "The ERO can perform an audit of any entity without regional participation to verify the findings of a previous regional compliance audit of that entity and to evaluate how well the regional compliance enforcement program is meeting its delegated authority and responsibilities." Section 3.2, Page 31: ELCON supports the reporting of "... ALL confirmed AND UNCONFIRMED violations ...". This requirement also is contained in Section 3.9.3, Page 32; and Sections 8 and 8.1, Page 37. Section 3.3, Page 31: ELCON also strongly supports the proposal that: "Each region's governance of its own compliance enforcement program shall exhibit independence and the compliance enforcement program shall be organized so that its compliance and enforcement activities will not be unduly influenced by the entities being monitored or other regional activities." Similar independence requirements are contained in Section 3.11, Page 33; Section 5, Page 36; and Section 6, Page 36. Section 3.5, Page 31: ELCON agrees that all approved ERO standards should be included in the program. Section 3.6, Page 31: ELCON agrees that: "Each region shall annually develop and submit to the ERO for approval a regional compliance enforcement implementation plan..." The ERO should not in any way be restricted in its evaluation and approval of the regional plans. Section 7, Page 36: ELCONn agrees that: "The ERO shall review penalties and sanctions levied by each region for violations of reliability standards for consistency with similar violations and fairness in application. ELCON recommends one

change to the wording in this section of the application (as well as throughout the entire document). We recommend that any standards that are approved by the ERO, whether ERO or regional in nature, be called "standards." No other requirement should be called a "standard." Any requirement of the regions that is not approved by the ERO should not be called a "standard." Rather, it would be a regional requirement, etc.

Comments on Section III — Organization Registration and Certification (**Exhibit C — Section III**): Section 1.3.3, PAGE 40: ELCON agrees with the statement that: "The ERO shall develop and maintain a plan to ensure the continuity of organization registration and certification within the geographic boundaries of a regional entity ..." However, ELCON strongly recommends that the plan include consistent criteria across the regions for this registration and certification. Section 2.2, Page 41: ELCON agrees with the thrust of Section 2.2 calling for "consistency." However, the language of Section 2.2 calls for "procedures and processes" -- both plural terms. ELCON recommends that the ERO develop a single procedure and process to be used by all regions in carrying out their organization registration and certification program. Section 3, Page 43: ELCON agrees that the ERO should be able to delegate the registration and certification activity to the regions through approved delegation agreements." However, such delegations should conform to a single procedure and process, not different procedures and processes for each region. Section 3.3.2, Page 44: The certification procedure should be consistent within each region.

Comments on Section IV — Personnel Certification (**Exhibit C — Section IV**): Section 1, Page 46: ELCON agrees with the statement that: "The ERO shall develop and maintain a personal certification program to evaluate individuals through a certification process ..." ELCON emphasizes that this support is based on the statement that there would be only one such personnel certification program applicable to all regions.

Comments on Section V — Readiness Audits (**Exhibit C — Section V**): Section 1, Page 50: ELCON agrees with the statement that: "The ERO shall develop and maintain a reliability readiness improvement and audit program ..." ELCON emphasizes that this support is based on the statement that there would be only one such reliability readiness improvement and audit program that applies to all regions.

Comments on Section VI — Reliability Assessment (**Exhibit C — Section VI**): Section VI calls for the development of training standards. ELCON recommends that the Application should clearly state that the ERO should prepare one set of training standards that apply to all regions.

Comments on Section VII — Training (**Exhibit C — Section VII**): No comments at this time

Comments on Section VIII — Situation Awareness and Infrastructure Security (**Exhibit C — Section VIII**): No comments at this time

Comments on Section IX — Events Analysis and Information Exchange (**Exhibit C — Section IX**): No comments at this time

Comments on Section X — Annual Business Plans and Budgets (**Exhibit C — Section X**): The Energy Policy Act of 2005 requires that the ERO has rules that: "allocate equitably reasonable dues, fees, and other charges among end users for all activities under this section;" [Section 215(c)(2)(B)] Section 2.3, Page 72 states that "Costs should be allocated so that all load ... bears an equitable share of such costs." ELCON recommends that this statement explicitly use the term "end users" rather than "load." Section 4.3, Page 73: ELCON agrees with the statement that: "The ERO shall review the regional budget submittals for adequacy, reasonableness, consistency, and transparency or process, with final approval of such regional budget submittals by the ERO board, prior to filing with the appropriate regulatory authorities." However, this is not nearly enough. The ERO should also subject the regional budgets to an ERO vetting process that includes approval by the Member Representatives Committee and the ERO Board to be sure that the content of each regional proposal is consistent between regions and necessary to provide the level of reliability desired by consumers. Section 6, Page 74: The ERO should be required to consult with the Member Stakeholders Committee before filing any special assessments.

Comments on Section XI — Regional Delegation Agreements (**Exhibit C — Section XI**): Section 1, Page 75: ELCON strongly agrees with the statement that the

ERO shall develop and maintain "a" (singular) pro forma regional entity delegation agreement, which shall serve as: "the basis for negotiation of consistent agreements across regions for the delegation of ERO functions." However, the actual delegation agreements also should be "consistent" across all regions.

Comments on Section XII — Committees (**Exhibit C — Section XII**): Section 2, Page 76: The Application states that each committee shall have "a defined membership composition ..." However, it does not call for consistency between committees. ELCON recommends that every effort should be made to have balanced committee structures that reflect the Segments in the Registered Ballot Body. There may be good reasons to have different compositions for certain committees. However, the ERO should clearly justify the reasons for having committees that are weighted with members from only selected Sectors.

Comments on Section XIII — Amendments to the Rules of Procedure (**Exhibit C — Section XIII**): No comments at this time

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

Comments: The transition plan generally seems acceptable. However, it does note that if the signing of the regional delegation agreements are delayed until late in 2006, there could be a ripple effect on the completion of the transition. This is yet one more reason why the delegation agreements should be identical for each region. Delays would be expected if different delegation agreements are negotiated for each region.

6. Please identify comments that you have on the draft submittal of Reliability Standards for approval.

Comments: No comments at this time

7. Please identify comments that you have on the standards roadmap (**Exhibit J**).

Comments: No comments at this time

