

**Notes: Kim Warren, Ontario IESO -
FERC Technical Conference on
Electric Reliability Organization Certification (Docket No. RM05-30-000)
November 18, 2005**

INTRODUCTION

The panel topics are taken as given in the conference agenda:

Panel I: Standard Setting: The Current NERC and Regional Council Roles and Future ERO and Regional Entity Roles – Views from NERC, Utilities, a Regional Council, and Canada

Representatives of NERC, utilities, a regional council, and Canada will provide their views on:

- *How you respond currently to NERC and Regional Council actions and how you plan to respond to the ERO's actions as it establishes, implements, and enforces reliability standards.*
- *The challenges you might face regarding any new process.*

My comments are made from the following perspectives:

- my organization, the Ontario Independent Electricity System Operator (IESO): the NERC Reliability Coordinator for Ontario, the enforcement authority respecting compliance with NERC and NPCC by all entities in Ontario, and an organization that has always been and continues to be heavily involved in all aspects of NERC and NPCC;
- a member and active participant in the affairs of the Canadian Electricity Association, the organization representing the wholesale electricity industry in Canada
- one who has spent almost all of his career in system control centres and making reliability standards, and interconnected systems generally, work in real time.

I will attempt to first answer the above questions and then make a few general observations.

RESPONSES TODAY TO NERC/NPCC ACTIONS TODAY AND TO THOSE OF THE ERO/REGIONAL ENTITY IN THE FUTURE

Today, the situation in Ontario is as follows:

- NERC/NPCC standards are automatically mandatory in Ontario, under legislative authority at the moment they are approved.
- The IESO alone is accountable to NERC/NPCC for compliance by all parties in Ontario - the IESO alone is sanctionable for any violation of a standard in Ontario, irrespective of who caused it.
- The IESO, in turn, administers NERC/NPCC standards against all Ontario entities, including itself, under authority of the province's Market Rules.
- The enforcement arm of the IESO is "ring-fenced" from the remainder of the IESO.
- The IESO also has authority to develop Ontario-specific standards (that necessarily cannot be less stringent than NERC/NPCC standards), and has done this, for example with respect to vegetation management.

The Ontario framework was described in considerable detail in the IESO's response to the ERO NOPR¹ and suggested as a model that is effective and may have applicability elsewhere.

In the future, under the ERO, and the Regional Entity (RE) that NPCC becomes or is replaced by, the IESO does not anticipate significant changes in this framework. The changes, if any, are likely to be of the nature of formalizing current arrangements to parallel some of the formalism surrounding the ERO and RE relationships with the Commission, including:

- recognition of the ERO as a standard setting organization for purposes of developing and enforcing standards that will be mandatory within Ontario
- a Memorandum of Understanding (MOU) between the Ontario regulator, the Ontario Energy Board (OEB) and the ERO and RE, specifying the relationship respecting matters such as the hearing of appeals by the OEB of sanctions levied by the ERO/RE against the IESO; funding of the ERO/RE; and standards approval and remand.

In effect, the IESO's primary objective in the transition to the ERO will be to preserve the effectiveness of current arrangements and processes. This is true generally in Canada, where, similar to the case in Ontario, NERC/Regional standards are generally mandatory and enforceable.

Regarding the question of challenges from changed processes, we do not anticipate changes within the province of Ontario. We do, however, see some potential for indirect impact from the Commission's new oversight authority. In particular we have some concern that an enforcement regime with provision for very substantial financial penalties could drive the industry to develop "lowest common denominator" standards, i.e. standards that would be directed to minimizing the prospect for being penalized rather than ensuring an adequate level of reliability. Excessive fear of penalties could also tend to slow down approval processes for new standards - again a very undesirable outcome. We are not saying there should not be financial penalties - rather we suggest that the Commission should consider "behavioural consequences" when addressing the question of appropriate penalties. We note that NPCC has maintained a very high degree of compliance with standards without having financial penalties.

Further in this regard we see the question of regional variations of ERO standards, or alternatively regional standards that are subsequently approved by the ERO, as being essential in avoiding the lowest common denominator problem. It will be a challenge to design processes that are effective in facilitating such variations.

ADDITIONAL COMMENTS FROM A CANADIAN PERSPECTIVE

Many of the following points relate to the Bilateral Principles, which have a high degree of acceptance within Canada, and which were referenced extensively in responses by Canadian entities to the Commission's ERO NOPR. The following section reiterates specific aspects of the ERO from a Canadian perspective.

¹ See <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=10836460>

The grid is international in scope

Actions that take place in the United States are felt in Canada, and vice versa. The 2003 outage is such an example. With that in mind we believe that reliability standards must be the same on both sides of the border.

The ERO must be international in nature.

The ERO will follow in the steps of NERC, which has been operating successfully on an international basis for more than 30 years.

Given that the grid is international, the ERO must be international.

To operate there must be in place a commitment among the respective regulatory and governmental authorities in the U.S. and Canada to establish a foundation that can function effectively on an international basis.

The governments must put in place coordination mechanisms to ensure an effective international ERO

FERC is in the process of establishing rules for the establishment and operation of the ERO. Such rules will necessarily determine the governance and operation of the ERO, and the relationship between the ERO and the regions. Since the ERO will also operate in Canada, such rules will necessarily have cross-border impact.

NERC is in the process of meeting with the various provincial authorities to determine the appropriate processes for ERO recognition and for the establishment and enforcement of mandatory reliability standards. While there will inevitably be differences between the process requirements in a Canadian province relative to the requirements given in FERC's ERO rules, it is essential that there be no incompatibility between the two jurisdictions.

Once the ERO is in place, actions taken by a particular governmental authority could impact entities within the jurisdiction of another governmental authority or could undermine the authority of another governmental authority.

Now is the time to establish coordination mechanisms in a number of areas.

Coordination is needed in a number of areas:

- on the governance structure of the ERO
- on the approval of the ERO and the timing on when the approval will take effect
- coordination on approval of mandatory standards and the timing on when such standards will go into effect
- coordination on delegations to regional entities

- coordination on whether a reliability standard should be remanded, and on follow-up actions in the event a remand is made

The question of remand is a further example of the need for cross-border coordination and how the coordination should occur. Remand is an essential feature of a bilateral relationship that respects sovereign authority of the regulators in the two countries. The drafters of the Electricity Modernization Act of 2005 wisely included the remand feature.

The challenge will be implementing the remand function in a manner that it never takes place, or if it does take place, that there is a consensus among regulators on the need for a remand.

We suggest that the exercise of a remand would represent a failure of process. Such a failure would most simply be a failure of the development process that created the standard proposed by the ERO, for example a standard that was judged ineffective in providing for an adequate level of reliability.

While regrettable, such a failure is not fatal if recognized by all regulators. In this event, the remand by all regulators would send a strong corrective signal to the standards developers to guide their redrafting efforts, i.e. tighten the standards. Achieving such unanimity is unlikely to occur by all regulators acting in isolation - realistically there must be coordination among regulators for them to reach a common position on a remand. We recognize this as a challenge for regulators: regulators in law are independent of each other and ultimately accountability to their respective governments, not to each other. Coordination among regulators must achieve a common voice while respecting this constraint.

We note that Canadian provinces collectively and individually are developing memoranda of understanding with NERC as the prospective ERO. Such MOUs will define each province's relationship with the ERO - an essential part of the provincial oversight frameworks in Canada. We suggest the need for a corresponding explicit definition of the relationship between and among regulators on the two sides of the international border, to deal with remand and other matters.