UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Mandatory Reliability Standards for the Bulk-Power System	**Docket No. RM06-16-000**

COMMENTS OF THE ONTARIO INDEPENDENT ELECTRICITY SYSTEM OPERATOR

Pursuant to the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or the "Commission"), 18 C.F.R. Part 385 (2002), and the Commission's Notice in Docket No. RM06-16-000, the Ontario Independent Electricity System Operator ("IESO") respectfully submits these comments regarding the Federal Energy Regulatory Commission Staff Preliminary Assessment of the North American Electric Reliability Council's Proposed Mandatory Reliability Standards ("Preliminary Assessment").[1]

The IESO is a member of the ISO/RTO Council ("IRC") and is a signatory to the submission filed by the IRC in respect of this proceeding. The IESO participated in and generally adopts the positions contained in submissions filed by the Canadian Electricity Association ("CEA"), the Northeast Power Coordinating Council ("NPCC") and the North American Electric Reliability Council ("NERC").

[1] The IESO was established on April 1, 1999 as the Independent Electricity Market Operator ("IMO") under the *Electricity Act, 1998* (Ontario) and was continued under its current name on January 1, 2005. The IESO's responsibilities include a broad range of integrated operations, including planning, security assessment and scheduling, administration of the wholesale electricity market and ancillary services, and real-time coordination of the integrated power system within the Province of Ontario. The IESO is, *inter alia*, the NERC Reliability Coordinator and Control Area operator in Ontario, and is a member of NPCC. The IESO-controlled electric power grid is interconnected with grids in two Canadian provinces and three U.S. states.

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For many years the IESO has actively promoted the need for mandatory and enforceable reliability standards that would apply to all owners, users and operators of the North American interconnected bulk power system and the creation of an Electric Reliability Organization ("ERO") through which such standards would be developed and enforced.

In this submission, the IESO limits comment to multi-jurisdictional implications of the proceeding.

The Commission is requested to affirm that it will seek to coordinate with authorities in Canada prior to any exercise of conditional approval, remand or rejection of a standard in the present proceeding; and that each existing NERC standard will retain its present applicability (in the U.S.) until such time as the Commission approves it as a mandatory and enforceable ERO reliability standard. The IESO also recommends the Commission forego the use of remand in the present proceeding and simply decline to approve proposed standards judged deficient, and request NERC to address the deficiencies. This approach would achieve the same result as a remand, but would also recognize that remand is intended to be used sparingly, in order to better ensure there will be common standards on both sides of the international border and to avoid excessive amounts of time to achieve this commonality. Extensive use of remand in this proceeding would, in our opinion, create a negative precedent.

I. Achieving Uniform Standards in a Multiple-Jurisdiction Environment

The IESO notes that the NERC standards are currently mandatory and enforceable in Ontario as well as in certain other provinces. Moreover, NERC submitted its reliability standards for approval to regulatory authorities in Canada simultaneous with its submission to the Commission. As a result, actions taken by the Commission respecting these reliability standards have the potential to be incompatible with the objective of having a uniform set of standards applicable throughout North America, given that standards are subject to separate regulatory oversight by authorities in their respective jurisdictions.

The objective and the need for coordination to achieve it were recognized in the Bilateral Principles:[2]

"The ERO should consult with the appropriate authorities in each country with regard to reliability standards under development, to minimize the likelihood of a remand being exercised. If a standard is remanded by a regulatory authority, the ERO should notify all relevant regulatory authorities, and should work to ensure that all concerns of such regulatory authorities are addressed prior to the resubmission of the standard to FERC and authorities in Canada."

The Commission in Order 672, at P 126 and 127, stated:

"We agree that for the ERO to be effective in maintaining Bulk Power System reliability across national borders it must be able to operate in an international arena...To this end the Commission has worked with our partners in Canada to develop the Terms of Reference for the Bilateral Group ... Pursuant to the Terms of Reference, the Bilateral Group is intended to have an ongoing role in identifying issues related to international aspects of the reliability framework and identifying options for resolution of those issues. The Bilateral Group intends to consult on international aspects of reliability policies and reliability regulatory issues."

NERC, in its April 4, 2006 ERO application stated, at page 55:

"The issues surrounding remand of a reliability standard will require that governmental authorities on both sides of the border engage in consultation and collaboration, both with NERC and with each other. To the maximum extent possible, the

[2] "Principles for an Electric Reliability Organization that Can Function on an International Basis", submitted to the Commission on August 9, 2005 by the Federal-Provincial-Territorial Electricity Working Group (FPT Group) in Canada and the U.S. DOE.

prospect of a reliability standard being approved in one jurisdiction and yet rejected and remanded in another, or having inconsistent reliability standards in force in different jurisdictions, must be avoided. At a minimum, such a situation could foster confusion. It may also result in unfairness. And for those reliability standards where the physics of the integrated grid dictate an absolute need for uniformity, nothing short of uniformity will work."

NERC referenced its role and that of its standards development process in achieving this objective, and then offered specific suggestions for regulatory authorities:

"Fourth, governmental authorities must communicate with each other promptly, so that all will learn if any governmental authority has an issue with a particular reliability standard; ideally, this should occur before any governmental authority has acted. To facilitate such communications, governmental authorities could establish procedures under which they will agree not take any action (other than seeking public comment) for a certain period (perhaps 60 days). Such procedures could provide that if any governmental authority raises an issue within the 60-day period, none of the governmental authorities will take action for another 60 days. This would allow time for the ERO and the relevant governmental authorities to work out a possible solution that would result in uniformity. In addition, because the U.S. legislation permits the Commission to approve reliability standards by rule (FPA, § 215(d)(2)), the Commission can obtain the views of a broad range of industry participants, including other governmental regulatory authorities, prior to approving proposed reliability standards. By using informal notice and comment rulemaking procedures, the Commission should be free to engage in any necessary coordination with its Canadian counterparts. Finally, in the event a governmental authority remands a proposed reliability standard, Section 309.2 of NERC's ROP [Rules

of Procedure] (included in Exhibit C) commits NERC to promptly notify all governmental authorities of the remand.

NERC recommends that all relevant governmental authorities enter into a memorandum of understanding that embodies this cooperative approach. Such a memorandum of understanding would let NERC and all interested persons know what to expect regarding remands, and would provide a principled way for the multiple jurisdictions to address the very real need for the coordinated development and adoption of reliability standards."

Accordingly, the IESO recommends:

A The Commission is requested to affirm that it will seek to coordinate with authorities in Canada prior to any exercise of conditional approval, remand or rejection of a standard in the present proceeding.

The above specific recommendations from NERC are commended to the Commission for its consideration. We note that these recommendations apply to regulatory authorities in Canada as well as to the Commission. It is the IESO's hope and expectation that the Canadian authorities will also respond positively to the recommendations.

In an attempt to facilitate coordination among authorities the IESO requests the following clarifications on the applicability of the reliability standards before the Commission.

B The Commission is requested to affirm that each existing NERC standard will retain its present applicability (in the U.S.) until such time as the Commission approves it as a mandatory and enforceable ERO reliability standard.

This would maintain the status quo respecting applicability in the U.S. and Canada until such time as NERC is certified as the ERO, and subsequently until such time as authorities in both countries approve the standard.

Apart from international considerations, this approach is consistent with the presumption that having in place a present NERC standard, even one with possible deficiencies, will be preferable

to not having the standard in place at all. The IESO holds that this presumption should govern in the absence of a specific determination to the contrary.

Further, there are many service agreements between entities in the electricity industry in both countries that reference compliance with NERC standards. It would be inappropriate to change the applicability of a standard without first giving consideration to the impact on these agreements and the associated underlying reliability objectives.

The term "present applicability" used above reflects our uncertainty as to the nature of that applicability. In one view, the current NERC standards are voluntary in the U.S., in another view, compliance is mandatory but without financial sanctions for non-compliance, and a third view is that the standards reflect "good utility practice" and therefore fall within the Commission's sanctioning authority. The comments made by the IESO are intended to apply whichever interpretation of applicability applies. However, there is seen to be merit in having the Commission clarify its interpretation.

C The Commission is requested further to clarify that a standard remanded for further consideration by NERC will retain its current applicability in the U.S.

This situation is seen as a special case of "A" above. That is, until such time as the remanded standard is revised and resubmitted to the Commission by NERC, and subsequently approved, the applicability of the present standard would be retained.

As a general matter, the IESO supports the provision for remand in the present multiple jurisdiction environment to address proposed standards judged unacceptable. However, the IESO recommends the Commission forego the use of remand in the present proceeding and simply decline to approve such standards and request NERC to address the deficiencies. This approach recognizes that remand is intended to be used sparingly, and ideally never, in order to better ensure there will be common standards on both sides of the international border and to avoid

excessive amounts of time to achieve this commonality. Extensive use of remand in this proceeding would, in our opinion create a negative precedent; moreover, there would be no difference in outcome if approval is simply declined rather than being formally remanded - in both cases there will not be an enforceable standard in place until any deficiencies are corrected to the satisfaction of the Commission. Secondly, the standards currently before the Commission are unique in the sense that they already are mandatory and enforceable in a number of Canadian jurisdictions -- this will not be the case for future new standards which NERC as ERO will propose for adoption by all of the regulators.

D The Commission is requested further to clarify that a standard that is rejected will retain its current applicability in the U.S., pending its being withdrawn by NERC.

Again, this is seen as a special case of "A" above. That is, until such time as the rejected standard is withdrawn by NERC, the present applicability of the standard would be retained.

Respectfully submitted,

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