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**Summary of Proceedings:
Bilateral ERO Oversight Group Workshop
On an ERO That Can Work As an Effective
International Organization**

**December 8, 2004
Toronto, Ontario
Canada**



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Background

There is currently reliability legislation before the U.S. Congress that proposes to establish a mandatory Electric Reliability Organization (ERO) whose function would be to maintain electricity reliability in North America. The intention of the ERO is that it would work on an international basis, in both the U.S. and Canada to develop, monitor and enforce electric reliability standards. To the extent practical, it will be beneficial for the affected parties in Canada and the U.S. to come to a common understanding on certain basic questions concerning the ERO before the U.S. Congress enacts reliability legislation. Once the legislation is enacted, the U.S. Federal Energy Regulatory Commission (FERC) will be on a tight schedule to issue a final rule (pertaining to operations of the ERO within the U.S.) within 180 days.

The Bilateral ERO Oversight Group¹ is currently addressing key issues for the transition from the current North American Electric Reliability Council (NERC) to an ERO. The group hosted a workshop on December 8, 2004, the purpose of which was to explore the robustness of options for the ERO with a focus on international issues. The event brought stakeholder views together and gathered feedback relating to issues around the development and implementation of the ERO.

List of Abbreviations

| | |
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| ANSI | American National Standards Institute |
| CEM | Council of Energy Ministers |
| CSA | Canadian Standards Association |
| ERO | Electric Reliability Organization |
| FERC | Federal Energy Regulatory Commission |
| FPT | Federal-Provincial-Territorial Assistant Deputy Minister Electricity Working Group |
| GRI | Gas Research Institute |
| IRC | ISO/RTO Council |
| ISO | Independent System Operator |
| NEB | National Energy Board |
| NERC | North American Electric Reliability Council |
| NEL | Net Energy for Load |
| NPCC | NorthEast Power Coordinating Council |
| RRC | Regional Reliability Council |
| RRO | Regional Reliability Organization |
| RTO | Regional Transmission Organization |
| SAC | Standards Authorization Committee |
| WECC | Western Electricity Coordinating Council |

¹ This group includes representatives of the following organizations: the Federal-Provincial-Territorial Assistant Deputy Minister Electricity Working Group, the U.S. Department of Energy and the U.S. Federal Regulatory Commission.

Introductory Remarks

Dr. Nawal Kamel

Special Advisor to the Deputy Minister, Natural Resources Canada

Dr. Kamel welcomed participants to the workshop and stated the objective of the workshop discussions: What would the future ERO look like, how would it interact with industry, governments and regions? The Canada U.S. Power System Outage Task Force on the 2003 outage addressed some questions about the ERO; however, the discussion must take place in more detail to assist in establishment of an ERO that can work on an international basis.

The Federal-Provincial-Territorial Assistant Deputy Minister Electricity Working Group (FPT) has made a commitment to Canada's Council of Energy Ministers (CEM) to have a presentation on the ERO by fall 2005.

Mr. David Meyer

Senior Advisor, Electric Transmission and Distribution, U.S. Department of Energy

Mr. Meyer welcomed workshop participants and emphasized that the workshop should be an active discussion rather than simply presentations on various options on aspects of the ERO. The intent of the workshop is not to reach clear cut decisions or commitments, but instead, seek reasoned opinions on key questions with the potential of emerging consensus.

The ERO in Context

David Cook

Vice President and General Counsel, North American Electric Reliability Council

After legislation is passed and before the FERC rule is issued, the characteristics of the ERO will be discussed and spelled out. This workshop is an important contribution to that discussion.

The ERO model has two key strengths: 1) it is a partnership between government and industry (government oversight and industry technical expertise) and 2) recognizes the international nature of the grid

In the pending reliability legislation:

- The ERO is an independent, self-regulatory organization
- The ERO is subject to FERC oversight in the U.S.
- Compliance and enforcement would be delegated to regional authorities
- Government oversight provides a measure of protection under U.S. anti-trust laws
- Standards are mandatory and enforceable and would apply to all owners, operators and users of the bulk power system

- FERC will certify one entity as the ERO
- ERO standards must provide for adequate bulk system reliability and ERO rules must ensure fair and open procedures. Standards will take effect in the U.S. after they are filed and approved by FERC. FERC can remand but not revise standards. Regional variations will be allowed and there will be a rebuttable presumption in favour of interconnection wide standards.

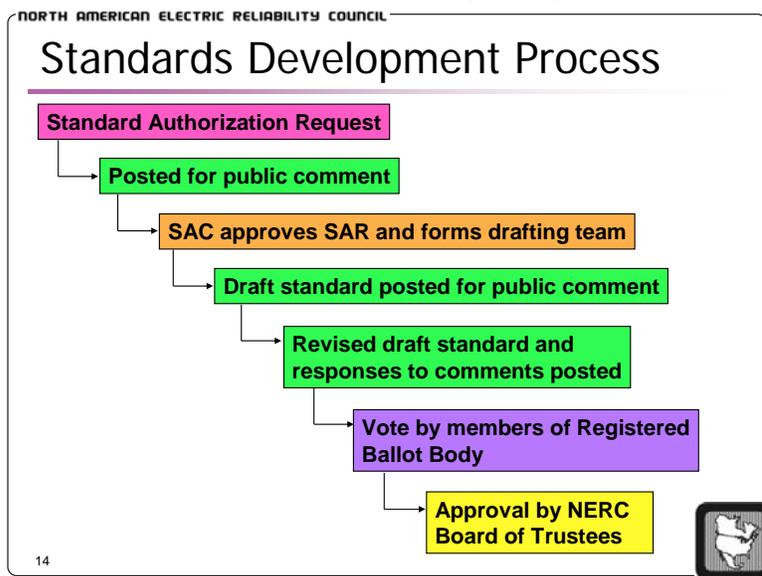
Overview of NERC

NERC will seek certification as the ERO. NERC has always had strong Canadian participation. FERC will provide government oversight of the ERO in the U.S. but the discussion needs to be held in Canada to clarify the role of the provinces and the NEB in ERO oversight.

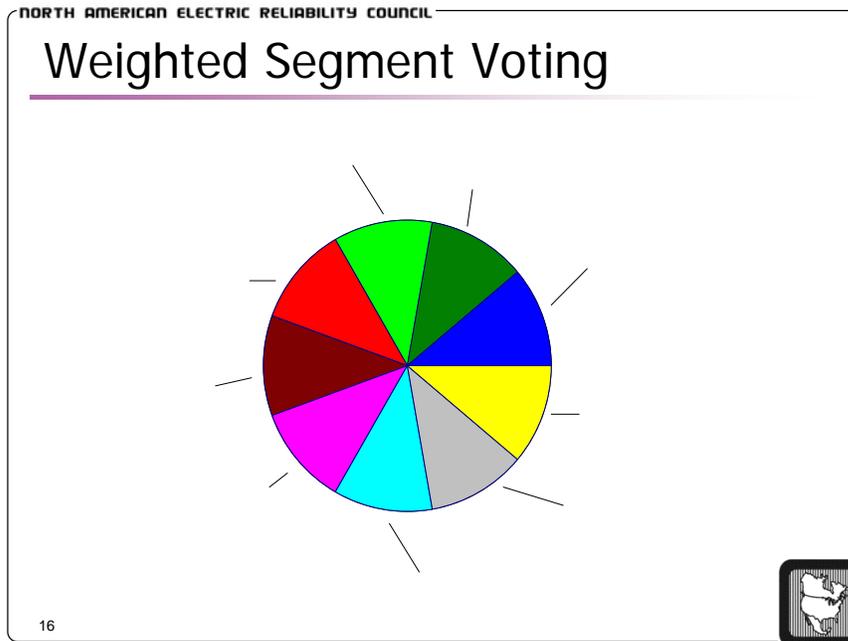
The NERC standards development process is now accredited by the American National Standards Institute (ANSI). NERC has been restructured over the last several years to coincide with the expected characteristics of pending ERO legislation. NERC has already implemented the following requirements of the pending legislation: Independent board of directors, fair stakeholder selection of directors, and balanced decision making in committees. A major outstanding issue is whether membership will be voluntary or mandatory.

The current NERC committee structure will not be that different under the ERO though the Standards Authorization Committee (SAC) is one committee with a noticeable lack of Canadian representation. The NERC board has recognized that the absence of designated Canadian representation on the SAC is an issue and efforts are underway to address this without unduly unbalancing the voting model.

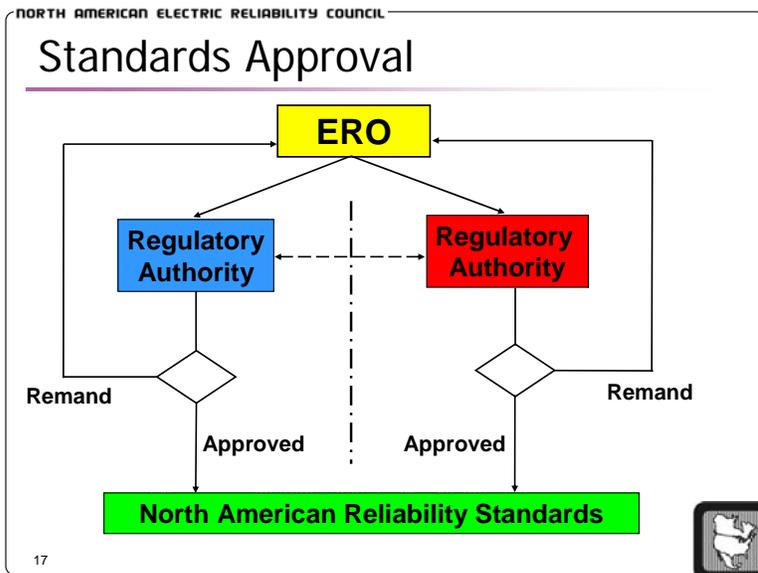
The current NERC Standards Development process is outlined by the following diagram:



The voting model being used for the NERC Version 0 standards currently being drafted is the following:



NERC's view of the model for approval of ERO reliability standards:



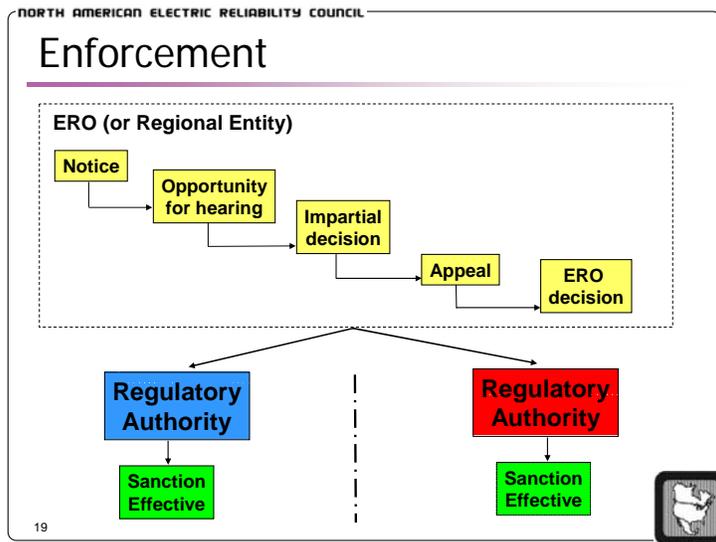
Enforcement

The ERO must be able to enforce standards, its rules must provide due process and it must have the ability to assess financial penalties and sanctions. On these three issues respectively, NERC and the regions have developed a Compliance Enforcement Program, rules of procedure are being developed and there are stipulated simulated penalties.

Transmission
Dependent
Utilities

39 (0)

NERC's view of the model for approval of enforcement actions:



Funding

The ERO must equitably allocate reasonable charges among end users. Its funding mechanism and budgets must be filed with FERC and other regulators and the likely basis will be Net Energy for Load (NEL). NERC currently allocates its funding among regions on a NEL basis. Canada's share of NEL in 2003 was 12.4 %.

Presentation of Provincial Models

Ontario:

Paul Murphy

Chief Operating Officer, Independent Electricity Market Operator

Mr. Murphy provided a summary of the reliability framework in Ontario:

- Provincial statutes grant authority over reliability, standards and their enforcement
- NERC/NPCC standards fully adopted in Ontario through the IMO market rules
- Ontario market participants obligated to comply with market rules
- IMO establishes, monitors and enforces mandatory reliability standards
- Market rule breaches enforced by letter and monetary sanctions
- The Ontario Energy Board licenses market participants with conditions, reviews market rule amendments and hears appeals
- NPCC reliability standards enforcement through its membership agreement
- IMO, as Ontario's Control Area Operator and Reliability Co-ordinator, is a signatory to the NPCC Regional membership agreement
- Active participation in reliability standards development by market participants and the IMO to ensure Ontario's concerns/issues are considered

While Ontario's market rules require compliance with NERC and NPCC standards, they also contain many more detailed equipment and performance requirements related to reliability. Ontario's reliability framework has been tested in major ways since the opening of the market in 2002 and has weathered these tests effectively. Since 2002, the IMO has investigated more than 100 potential violations of reliability-related market rules in Ontario resulting in 25 financial sanctions. None of these sanctions were for NERC standards and only one was for an NPCC standard.

Under Bill 100, the reliability framework and authorities will remain in place and the IMO will change its name to the Independent Electricity System Operator (IESO).

Alberta:

Kellan Fluckiger

Executive Director, Alberta Department of Energy

The reliability framework for Alberta is as follows:

- Western interconnect operates on the basis of a contractual agreement
- 85-90% of the Western load has voluntarily entered into contractual agreements that make compliance with WECC mandatory through the RMS agreement (Reliability Management System). Alberta and British Columbia are signatories of RMS
- RMS has been developed over time with a phase-in process – at first 5 operating standards came into effect and there are now about 20 standards in total
- As of 2003, the Power Pool of Alberta and the Independent System Operator combined into the Alberta Electric System Operator (AESO) that operates a spot market. The AESO is responsible for compliance and has agreed to monetary sanctions.
- The Alberta Department of Energy considers the following four entities to be responsible for electricity legislation and oversee reliability in the province: the AESO, the Alberta Energy and Utilities Board (EUB), the market surveillance administrator and the Balancing Pool, a financial entity charged with managing financial accounts arising from the transition to a competitive generation market
- Alberta is participating fully in discussions on the ERO and is in favour of a model like WECC so that extensive adjudication is not required and bilateral disagreements and provincial discussions can be avoided

Regulatory and Legislative Context for Electricity in Canada

David Burpee

Senior Advisor, Electricity Restructuring, Natural Resources Canada

In Canada, provinces exercise primary authority for the reliability framework and the role of the National Energy Board is limited to exports and international power lines (although this may extend to specific inter provincial power lines if the federal Cabinet issues orders to this effect). Hitherto, electricity restructuring in Canada has been primarily at the initiative of provincial governments. The management of mandatory

reliability standards will be of concern to provincial and territorial authorities as well as the federal government.

Panel 1: ERO Governance: Representation and Structure

Facilitator:

Owen Saunders

Executive Director, Canadian Institute for Resources Law, University of Calgary

Mr. Saunders provided brief introductory remarks stating that the ERO is not an intergovernmental organization established by a treaty, but rather a partnership between government and the private sector. The discussion of this panel will be restricted to representation and structure. He then invited the panelists to make their presentations.

David Cook

Vice President and General Counsel, North American Electric Reliability Council

Mr. Cook offered a few specific points for consideration:

- NERC believes the current requirements for a Canadian presence on the Board and most of its committees should be carried forward into the ERO
- Canadian NEL is 1/8 so Canadian representation being 1/8 of ERO representation on committees could be a consideration
- NERC is not in favour of setting up special voting rules for issues of transnational significance, because the integrated grid requires a common set of rules and it would also be difficult to reach a consensus on which issues are of transnational significance

David Meyer

Senior Advisor, Electric Transmission and Distribution, U.S. Department of Energy

Mr. Meyer stated that the views he expressed were in his personal capacity and not as a representative of the U.S. DOE. The following points were made:

- NERC to date has been a technical organization, not an intergovernmental organization. This has been part of its success, however, the transition to an ERO will involve significant changes
- While it is reasonable to set principles regarding national representation, any changes in representation that would be country specific should be approached with great care
- Organizations that wish to participate actively in ERO affairs should become members at some nominal fee. Membership should not be mandatory, but non-members would be subject to ERO standards. This would reduce the ERO's income but money raised from fees will not be a significant part of ERO budget

Lisa Jackson

Acting Director, Renewable and Electricity Energy Division, Electricity Resources Branch, Energy Policy Sector

Governance of the ERO is an important issue for the Federal-Provincial-Territorial (FPT) Group. The FPT group hoped that it would be possible to arrive at some guiding principles concerning representation in, and the structure of, the ERO. In turn, the FPT group would take those principles to the federal and provincial energy ministers for their consideration. The usual criterion for representation in an international organization is equality, but different considerations may apply to an industry-based organization.

FPT group has been discussing a number of principles with regard to the structure of the ERO. These principles include:

- There is need for objective criteria for representation on the Board of Trustees and other key decision-making committees
- One criterion may be that Canadian representation should be no less than NEL
- No less than 2 representatives from Canada on the Standards Authorization Committee
- Board of Trustees – designated representatives from Canada who have a knowledge of provincial electricity markets and have an understanding of issues related to electricity reliability in the different provincial jurisdictions
- The ERO should have an appropriate voting structure
- The FPT position on membership is under discussion
- Canadians should have effective roles in the RROs
- The ERO should be the forum for dispute resolution whenever possible, but since there will be more than one regulator involved, a mechanism external to the ERO is needed. Government to government agreements need to be discussed but not in this forum. Integrity of trade agreements need to be respected.
- It may be desirable to have a mechanism that could monitor how the ERO is evolving over time. This could ensure that it is functioning effectively and that the governance rules and bylaws continue to be in the interests of all parties, including the federal and provincial governments in the case of Canada.

Amir Shalaby

Manager, Regulatory Affairs, Independent Electricity Market Operator

Mr. Shalaby spoke in his capacity as the Chair of the Canadian Electricity Association's Policy and Regulatory Developments Task Group. He presented the following positions of the Canadian Electricity Association on representation and governance:

- ERO governance cannot be discussed in a vacuum as it is dependent on the role and scope of the Regional Reliability Organizations (RROs)
- Issues hardly ever divide on the basis of national interests, but rather on industry segment interests. The current balloting procedure provides for balancing of segment interests.
- The value of separate Canadian representation is to better assure the acceptance and enforcement of standards by relevant Canadian regulatory authorities

- 2 of 9 Board members should be *from* Canada, not just *having knowledge of* Canada as currently stipulated in the NERC procedures
- CEA realizes its obligation to fill those designated seats and realizes it could be a challenge
- Membership in the ERO is an important issue to come to a view on, but there are many other issues to sort out first before membership discussions can be meaningful
- Canadian industry is monitoring the effectiveness of the ANSI certified balloting process. There are alternatives if the current process bogs down, or produces weak standards.

Edward Comer

Vice President and General Counsel, Edison Electric Institute

Mr. Comer presented the following points representing EEI's views on the ERO:

- EEI supports the characteristics of the ERO contained in the proposed legislation and will honour those principles. It is very important to American CEOs that the ERO be a self-regulating industry-based standards organization. The self-regulation approach is modeled on the approach used for the New York Stock Exchange and similar organizations which are technically subject to Securities and Exchange Commission oversight. This approach assures that the people who understand the system are responsible for reliability.
- Stakeholder representation is important. The process must be open, transparent and independent. Many believe administration will be simpler if all users of the system are required to be members and that requiring each member to pay some nominal amount will give them a stake in assuring efficient administration of the ERO.
- People who work in the NERC/ERO process have to have fundamental understanding of how the system works – technical knowledge is extremely important, as well as active stakeholder and regulatory participation throughout the process
- EEI supports the provision to allow states to impose more stringent standards if they desire
- Funding must be fair and efficient. Regional councils are efficient collectors of dues but do NOT have to be ERO members to do this.
- NEL is a reasonable basis for funding

Q & A/Discussion

Representation

Participants discussed the extent to which NEL might be the basis for representation to other committees and what the process for deciding Canadian representation would be. Mr. Shalaby stated that extending the requirement to other committees at 12.4% of Canadian representation would be reasonable. CEA currently identifies and supplies candidates for NERC Canadian seats and the NERC Board Nominations Committee polls the entire stakeholder body for suitable candidates. Ms. Jackson stated that the role of industry in filling positions is encouraged and that should be reflected in the design of the ERO.

Voting procedures

Mr. Comer stated that EEI would be troubled by any small veto type authority, especially with regards to standard setting. This would set a bad precedent for the ERO as a consensus based standards organization. If there are issues of transnational concern, they should be brought up early in the process and addressed by people with technical expertise.

Mr. Shalaby commented that there is a built-in veto for each provincial regulator for the adoption and enforcement of standards, but concerns should be expressed early in the process of standard setting so as to minimize the incidence of the remand being used.

Audience Comments

A WECC representative commented that WECC is one of ten regional councils but also one of three interconnections – Eastern, Western, and Texas. WECC supports deference to standards, procedures, policies, programs that have been established on an interconnection basis. To the extent that committees would make decisions infringing on this deference would be a problem, and voting on the basis of NEL would not necessarily address this. Mr. Comer said that the legislation contemplated deference to interconnection decisions and that primary decisions would be made by regions, not the ERO.

In a discussion dealing with regional differences, the consensus was that appropriate representation at certain designated levels is the first step to dealing with such differences. A representative of ELCON expressed concern that if Canadian representation is based on NEL, should NEL be the basis for representation for all RROs? Mr. Cook defended a special provision for international representation in the ERO because that is the basis for other governments to accept the international role of the ERO; that need is not applicable to the same extent within the U.S. Ms. Jackson reiterated that designated Canadian representation will serve to minimize the occurrence of the remand function being exercised.

Panel 2: Funding of the ERO

Facilitator:

Rich Scheer, *Vice-President, Energetics, Incorporated*

Mr. Scheer introduced himself and invited the panelists to provide their remarks.

David Cook

Senior Vice President, North American Electric Reliability Council

The NERC annual budget is approximately \$ U.S. 15 million which works out to 3 cents per year for each end-use customer. If the control area was directed to administer funding to all its end-use customers, each customer would only pay once and none would pay double. Many regions already include NEL as at least part of their costs. The ERO should submit its annual funding requirement to the regulator.

John Anderson

Executive Director, Electricity Consumers Resource Council²

Mr. Anderson noted that he was the only consumer representative present at the workshop. He stated that the current NERC funding mechanism is inefficient in that funds pass through several layers of entities making the mechanism unfair and discriminatory. ELCON believes that changing the funding mechanism should be a priority for FERC in the U.S. even prior to the passage of legislation. Mr. Anderson then outlined ELCON's funding proposal before the passage of legislation:

- NERC prepares its budget with oversight and administration by a standing committee of the NERC Board of Trustees and with Stakeholder Committee input
- Regional organizations (RRCs and IRCs) prepare budgets to recover the costs of implementing functions delegated by NERC for regional implementation. The regional organizations submit these budgets to NERC for payment. It is essential to combine the NERC and the regional organizations' budgets to avoid duplication and assure a "top down" chain of authority.
- NERC submits the total budget to FERC, including both the NERC and the regional costs of delegated functions for public comment and approval
- FERC amends each OATT to include the FERC-approved NERC surcharge (including the designated regional costs) and assessment obligations
- Transmission Providers who administer FERC's Pro Forma Open-Access Tariff (OATT) become Collection Agents for the purpose of assessments of the NERC Surcharge
- Collection Agents that are ISOs or RTOs assess the NERC Surcharge to each load-serving entity served by the ISO or RTO within the footprint of the ISO or RTO
- Collection Agents that are not ISOs or RTOs assess the NERC Surcharge to their end-use native load, plus that Collection Agent's firm requirements wholesale sales to public utilities/load-serving entities that are not Collection Agents. Inclusion of both the native load and the firm wholesale sales are critical to assure an equitable allocation of costs to all end-use customers.
- Guidelines must be established both to assure inclusion and avoid double counting associated with cross-boundary sales for resale
- Similar regulatory mechanisms must be developed for all Canadian entities.

Roberta Brown

Vice-President, Transmission, Pepco/Connectiv

Ms. Brown's comments assumed the passage of U.S. legislation and discussed three things on which there is substantial consensus.

² The full text of Mr. Anderson's statement on December 8, 2004 can be accessed at www.elcon.org

- 1) Method: NEL should be used
- 2) Oversight: FERC and the Canadian provincial authorities will be tasked with oversight and it does not have to be identical
- 3) Collection Agent: This is the most complicated item to discuss. It can be top down or bottom up. The latter is preferred instead of approving the budget in advance and then allocating it to regions. The bottom up approach will allow the regions to budget what is necessary to keep the system operating safely and then revisit what else should be done and the funds required to do it. RROs provide different services in different areas so there should be some justified regional variation. There are also opportunities for contractual methods of funding, absent legislation.

Yves Dallaire

Chargé – Développement des affaires, HydroQuebec, TransEnergie

Mr. Dallaire spoke in his capacity as a CEA representative and made the following points:

- CEA supports NEL being used as it is simple and appropriate but some adjustments could be explored in the future ERO, especially if there is an increase in the NERC/ERO budget. Funding mechanisms should be reviewed once other issues have been resolved in order to reach a more equitable allocation in relation with significant factors. In the meantime, a NERC task force is going to evaluate potential adjustments such as to charge back to the audited entities NERC expenses associated with the readiness audits.
- The collection agent should be control areas: Load serving entities, transmission service providers, RROs
- In Canada, the collection mechanism should be at the discretion of Canadian provincial authorities
- It is critical that RRO governance allows for an effective voice in the development and approval of the ERO budgets

Q & A/Discussion:

Mr. Cook commented on ELCON's funding proposal stating that the assumption should be that legislation passes rather than advocating changes prior to legislation. He stated that ELCON's funding proposal is far too complicated and reminded participants that FERC does not have jurisdiction over 25% of transmission in U.S. The reliability of the bulk electricity system is a public good for which every end-use customer should pay something, rather than a membership fee proposal which is quite divisive and can exclude some people from participation.

Mr. Anderson responded that NERC has been waiting for legislation to pass for eight years and it is no longer feasible to work on the assumption of legislation passing in the near future. ELCON believes that the collection of funds should be as close to the customer as possible and is absolutely opposed to a membership fee.

Ms. Brown stated that when working out a new mechanism, it is difficult for it to be fair, simple and precise. If funding and budgets can only be two of these things, they should be fair and simple. Even if the ERO budget increases ten fold, the proportion of customer payment will still be very small. The allocation should be at the RRO level as a separate NERC charge for each customer cannot be determined.

Mr. Konow of the CEA stated that the ERO is a technical organization and technical expertise should be the criteria of people's involvement. The reality of any bi-national organization is that there is a regulatory backstop in each jurisdiction. A minimum number of Canadians is non-negotiable to ensure appropriate Canadian representation.

Mr. Scheer provided a summary of the consensus points of the panelists:

- The amount of money being discussed is not substantial
- Whatever the collection method, it should be stable
- There needs to be some kind of dispute resolution process to keep funding stable
- Membership fees are exclusionary and prohibit participation of smaller entities
- Collection needs to be as close to the customer as possible and most (but not all) panelists believe that NEL is the best way to allocate reliability costs. However, others believe that costs should be based on MW peaks. Some commented that the grid can be unreliable at any time, not just on peak. There was no consensus regarding membership fees.
- The FERC method of setting the Gas Research Institute's (GRI) surcharge was put forth as an example
- A next step for discussion could be an analysis of the peak MW allocation method and how it compares with NEL

Other comments included:

- Concern that FERC or any of the provinces could hold ultimate veto over the budget
- The challenge of assessing funding on the basis of MW peaks rather than energy (MWh)
- Membership should be open to all stakeholders, and everyone has input into the budget process, however, regulators have the obligation to express their views early in the process
- Should be some way of making sure there is Canadian representation from generators and a balance between independent transmission providers and bulk transmission providers
- All stakeholders' should be voting on Canadian nominations, not just Canadian stakeholders

Panel 3: How the ERO Relates to Governments in Canada and the U.S.; Standards Development, Approval, Enforcement and Penalties

Facilitator:

Jan Carr

Vice-Chair, Ontario Energy Board

Mr. Carr provided introductory remarks. The regulator is a contact point between the electricity supply industry and the general legal infrastructure. This, in turn, has a formal relationship with legislation and the government. The regulator is therefore in effect the front-line element in the link between government and the ERO.

Technically speaking, a regulator is an adjudicative tribunal; a judge and jury making decisions in the public interest based on evidence heard. The individuals who actually do the adjudication are appointed by the legislature and exercise their judgement on an individual basis. In this regard, they have individual responsibilities with regard to the public interest which is distinct from the “joint” responsibility of employees of other entities.

The general approach to the role of government can be considered in two contexts:

- 1) The regulator is involved in the standards process in order to prevent later surprises
- 2) There is some kind of forum for dialogue among regulators to prevent unnecessary differences between jurisdictions

The challenge on the rulemaking side is that involvement of regulators must be such as to not compromise their ability to impartially adjudicate on matters related to the rules. This challenge is not peculiar to the area of electricity reliability. The OEB is now more active in developing policies and procedures rather than being a purely reactive tribunal. In this regard, the OEB has a role that is similar to the role of FERC in U.S. While this migration away from a pure focus on tribunal activities is a general trend among energy industry regulators, the status is not common across the country.

David Cook

Vice President and General Counsel, North American Electric Reliability Council

- A mechanism comparable to the FERC/ERO understanding needs to be developed between the ERO and Canadian jurisdictions
- The standards process must be designed so regulators can input into the process early but have the right of remand. This would give the proper incentive to the ERO and stakeholders to make sure that issues are addressed as early as possible
- It would be considered a failure if at the end of the standards setting process, a regulator had such a major objection that it would remand a standard

- The location in which a violation takes place is not a major issue as the ERO would work with the relevant jurisdictions. This may be an area where governments on both sides should ensure that a consistent approach is being taken.

Michael Bardee

Associate General Counsel for Markets, Tariffs and Rates, FERC

Mr. Bardee spoke in his personal capacity and not on behalf of FERC. He emphasized the need for consistency and specificity in the standards setting process, less so with regards to enforcements and penalties. The U.S. legislation does not provide any detail on procedures for developing consistency in standards but this ideally would be addressed by intergovernmental agreement.

Participants may want regulators to be involved early in the standards setting process, however, in FERC's experience, a more hands off approach may be advisable as regulators will be hesitant to have a role in the development of standards in an industry led process. Regulators have the possibility of remanding a standard and do not see it as a daunting option. Mr. Bardee agreed with Mr. Cook's comments on the ERO working with the relevant jurisdiction in which a violation occurs.

Kellan Fluckiger

Executive Director, Alberta Department of Energy

The standard setting process will be difficult and needs to be a selective and iterative exercise. Setting out enforcement mechanisms in an international agreement will also be very difficult. Regulators have regulatory backstop in each province and are not going to give it up. To avoid lengthy regulatory processes with respect to enforcement, it will be important to invite regulators to participate in a process which involves their public interest authority. Standards must clearly lay out the violations and the details of penalties.

Jennifer Moroz

Barrister & Solicitor, Manitoba Hydro Law Department

Ms. Moroz presented the views of the Canadian Electricity Association.

The way that the ERO relates to governments is shaped by two things:

- 1) Various pieces of reliability legislation in force across North America
- 2) An international agreement or Memorandum of Understanding (MOU)

CEA believes that international agreements between appropriate authorities should define governance, procedures for standards development and approval, certification and enforcement of standards. Absent such an agreement, NERC will need to determine how it will handle regulatory approval being received in some jurisdictions and not others.

Standards development should be industry led and governments should not be involved. Unless an international agreement addresses some form of unified regulatory action, the ERO will need a mechanism that considers various regulatory processes in order to avoid standards coming into effect in different jurisdictions at different times. Dialogue among regulators is problematic before they have made a decision on whether they would approve a standard and needs to be addressed in any international agreement.

The ERO should have primary authority for monitoring and enforcing compliance with reliability standards. Governments and their agents should only act as appellate bodies once NERC's dispute resolution is exhausted. The ERO has no authority to determine regulatory sanctions. Ms. Moroz agreed with Mr. Fluckiger that standards should be clear and unambiguous in order for the ERO to be able to determine whether or not a breach of a standard has occurred.

Cindy Bogorad

Partner, Spiegel & McDiarmid

The key to a standards development process that enables the ERO to function effectively and efficiently *internationally* is ensuring an effective and efficient standards development process at the ERO. In standards development, there needs to be a very robust process in Canada and the U.S. which includes reasonable notice, opportunities for comment, due process, openness and balance of interest. The Board needs authority to ensure that the standards that emerge from that process are timely and adequate to protect the reliability of the grid. FERC's role in the standards development process should be limited to observer status, with the opportunity for informal advice as permitted by FERC regulations. On the enforcement side, Ms. Bogorad agreed with fellow panelists that the key to consistent enforcement is clarity in the standards themselves rather than the penalties being a discretionary process.

Q & A/Discussion

Facilitator Jan Carr summarizes some points of the discussion:

- It is important that requirements are clear and penalties for non-compliance are up front
- Inconsistency in enforcement is of less concern than inconsistency in standards
- It is easier for regulators to determine whether, how and to what extent they should be involved in rulemaking rather than be part of an enforcement proceeding that originates with the ERO
- To the degree that the ERO process is inclusive and transparent in terms of having a full range of stakeholders, that will satisfy the regulator's view that public interest has been satisfied
- Regional councils have enforcement mechanisms on a contractual basis that already work
- International agreements do have dispute resolution mechanisms so it is not something of primary importance upon which to focus

A discussion took place about violations. If the ERO determines a breach of a standard, to whom does the accused entity appeal? If it is not directly to the ERO, it could result in a floodgate of appeals to regulators. Mr. Cook stated that an impartial tribunal should hear an appeal before it goes to the regulator.

An extensive discussion followed on models of regulatory involvement in sanctions and appeals. A WECC representative stated that the WECC RMS now covers 92% of the load in the Western interconnection. WECC has been issuing sanctions for non-compliance since 1999 and its area covers FERC jurisdictional and non-jurisdictional entities. In 5 years, the number of infractions has decreased and there have been 6 appeals. The appeals review committee has sustained the majority of the sanctions. The enforcement process can be delegated to a regional entity, particularly one that covers an entire interconnection.

Mr. Charles Durkin of NPCC provided an overview of the NPCC model. The five control areas that make up NPCC are subject to standards that are mandatory and enforceable on members.

Mr. John McCarthy of the NEB stated that the establishment of standards that are national in scope and applied by provincial jurisdictions happens all the time and does not see this as an issue of concern.

Panel 4: Role of Regional Entities in the ERO

Facilitator:

Rich Scheer

Energetics, Inc., Vice-President

Charles Durkin

Chairman, Northeast Power Coordinating Council

Mr. Durkin offered the following positions regarding RRCs:

As I start let me say that these are my thoughts and in the interest of time I will focus my comments starting with U.S. legislation.

This legislation is quite complex, with opportunity for conflict and adversarial contention. It defines or confirms three authorities, but does not delve into detail on the relationship between them.

These authorities are the ERO, which has already received considerable discussion today, an interconnection authority and the savings section confirms the right of a state to take action to ensure the safety, adequacy, and reliability of electric service within a state, as long as such action is not inconsistent with any ERO reliability standard.

This provision provides a balance between Federal, State and local reliability authorities and can enhance mandatory compliance.

Currently, the states and provinces provide the regulatory support for the regional councils. And the councils provide a means for the states and provinces to fulfill their obligation to provide for electric reliability for their constituents. The legislation does not require regional reliability councils to become regional entities. The decision on whether or not to become a regional entity will rest upon the details of the legislation implementation plans.

A plan that recognizes the councils as equal peers in the reliability structure, provides a strong role for the regions (which was emphasized by several Panel 1 participants), and supports their functions will have the greatest likelihood of success. The regional councils in addition to other services have four primary functions:

- Regionally-specific reliability criteria
- Coordination of Planning and Operations
- Assessment of Reliability
- Compliance Monitoring & Enforcement

When taken together, these functions provide a comprehensive base for regional reliability and build upon the ERO standards. Enforcement of the ERO bulk power system standards should be done primarily by the regional councils with verification and validation by the ERO. The ERO should provide oversight and perform the actions necessary for due diligence to make sure the bulk power system is planned and operated in compliance with ERO standards. The NERC readiness reviews are an excellent example of verification and validation.

This structure builds upon the present structure, incorporates the Federal and State authorities embodied in the legislation, provides for Canadian participation at both the Provincial and Federal level and balances continental and regional electric reliability. When properly combined with the interconnection authority, which is not a focus of this session, it has the potential to minimize adversarial contention.

- Membership should be open and inclusive of owners, operators and regulators
- Governance should be fair and balanced without any segment dominating and with effective Canadian and Mexican participation
- All entities should be required to comply and the violations should be disclosed
- There can be regionally specific reliability criteria
- Going forward, RRCs need to develop transition plans to meet the principles of the legislation, assess future functions and evaluate alternative reliability management boundaries

Steven Naumann

Vice President, Wholesale Market Development, Exelon

Mr. Naumann stated his preference for a totally independent RRO board which is not supported by industry. The authority of regions should be minimized and the compliance

function should be delegated down to RRCs. There is no need for independent regional governance as everything should flow down from the ERO. Not having independent governance avoids the debate over what the role of FERC and provincial governments is.

Mike Penstone

Manager, Industry Practices & Policy, HydroOne Networks

The proposed legislation identifies three distinct activities that are necessary for effective reliability standards: standards development, compliance monitoring, and enforcement. Allocating these responsibilities amongst the ERO, RRO and regulators, respectively, would align the ERO with other standard-setting organizations such as ANSI and CSA.

The proposed legislation offers the RRO an opportunity:

- a) To develop proposals related to regional specific standards not addressed by original ERO standards
- b) To support and assist regulators in assessing and reporting on inter-regional reliability risks where coordinated action is required to address those risks
- c) To provide an independent, consistent assessment of whether entities are compliant with reliability standards. It is essential that such compliance monitoring be consistent across North America to achieve stable levels of reliability. Thus, we expect the ERO would also establish standards, related to compliance, which would apply to the RROs.

The panel facilitator offered the following summary points:

- A discussion needs to take place on how the existing RRCs would transition to RROs
- The functions of RROs need to be identical across regions
- The legislation specifies some functions of regional entities regarding enforcement and compliance monitoring but, beyond that, there is not a clear picture on what other functions the ERO would find logical and helpful to delegate
- A discussion also needs to take place on the relationship of RROs to the ERO – whether RROs are “branch extensions” of the ERO or completely independent entities.

Workshop Wrap Up and Synthesis of Issues

The panel facilitators and workshop participants had a brief discussion at the end of the workshop and made the following points regarding next steps in the ERO discussion:

- The magnitude of establishing the ERO was emphasized as no comparable standards body in other industries currently exists
- A draft MOU between NERC and Canadian jurisdictions is something that could be explored as a next step in the absence of legislation
- The next steps can proceed on two parallel paths. One is for governments and regulators to address the issues, while the second is for industry to address them and make proposals to governments and regulators for further discussion
- A further workshop involving government officials and industry representatives would be very useful
- An important step in the ERO discussion is a discussion amongst Canadian regulators
- ERO certification was suggested as a specific topic for another workshop
- These discussions and outcomes need to be recorded so that we have a base to work from and not need to revisit the same issues
- A framework (straw person) should be developed to facilitate discussions in future workshops

Mr. Fluckiger informed participants that the FPT group and the Council of Energy Ministers are committed to working on specific mechanisms for solving the issues discussed above by the fall of 2005.

Mr. Doug MacCallum, on behalf of the Bilateral ERO Oversight Group, thanked panelists and participants for their time. The conference proceedings will be made available to participants at a later date and the deliberations of the FPT on this issue will continue in the New Year. The workshop was adjourned at 4 P.M.