

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

Reliability Technical Conference)	Docket No. AD12-1-000
North American Electric Reliability Corporation)	
)	Docket No. RC11-6-000
)	
Public Service Commission of South Carolina and the South Carolina Office of Regulatory Staff)	Docket No. EL11-62-000

**PRELIMINARY COMMENTS OF SCOTT HELYER ON BEHALF OF
THE ELECTRIC POWER SUPPLY ASSOCIATION**

The Electric Power Supply Association¹ (“EPSA”) submits these detailed comments in response to the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) November 9, 2011 Reliability Technical Conference Agenda, and a preliminary request from FERC staff to respond to certain questions in advance of the conference to inform the discussion among panelists. On Panel II, “Incorporating Lessons Learned into a More Reliable Grid,” Scott Helyer, Vice President of Transmission for Tenaska Inc. speaking on behalf of EPSA, will address the issues outlined in the Commission’s agenda. Herein, EPSA

¹ EPSA is the national trade association representing competitive power suppliers, including generators and marketers. Competitive suppliers, which, collectively, account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities serving power markets. Each EPSA member typically operates in four or more NERC Regions, and members represent over 700 registered entities in the NERC Registry. EPSA seeks to bring the benefits of competition to all power customers. The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

provides more detail on those questions to facilitate a robust discussion of the issues for Panel II on November 29, 2011.

I. COMMENTS IN PREPARATION FOR TECHNICAL CONFERENCE

EPSA and its competitive power supplier members are committed to building and maintaining a reliable electric system. Supporting this commitment is the fact that our business depends upon supplying reliable power. The contributions that market mechanisms make to system reliability, and the need to preserve the positive link between reliability and markets, is a significant dimension in the new reliability regime created by Federal Power Act (“FPA”) Section 215. Accordingly, EPSA welcomes the role that NERC and the Commission have assumed within the new reliability management model and welcomes the opportunity to comment on industry’s role in that regime in order to ensure reliability.

Under the Electric Reliability Organization (“ERO”) regulatory structure implemented in 2007 with the approval of the original 86 Reliability Standards, all stakeholders – industry, NERC and the Commission – assumed new responsibilities that require balancing traditional roles with new compliance obligations; all continue to be challenged with utilizing their resources in a manner most effective for maintaining reliability. While reliability sounds like a simple and straightforward concept, operation of a reliable grid is extremely complex. By mobilizing the engagement of industry’s technical expertise in the development of standards, Congress recognized the importance of the technical aspects underpinning the Reliability Standards that were to become mandatory

and enforceable. Industry embraces this regulatory structure that utilizes active, in-the-field, industry experts to develop standards that function within operational reality. EPSA members fulfill this technical role by participating on standard drafting teams and in the NERC Committee structure. Industry takes seriously its role in standard development. NERC then oversees compliance and enforcement of those Reliability Standards. As this process matures, industry and NERC are working to establish a fair, efficient and credible regulatory program that supports a reliable electric grid.

As stated above, industry's business success depends on reliable electricity delivery; therefore, industry shares NERC's reliability goals. The comments provided below are offered for consideration as all parties endeavor to improve the ERO. It is important that industry views not be diminished based on a perception that industry is attempting to avoid compliance or dictate the parameters of compliance. In the current reliability regime, industry seeks to point out areas for improvement to create a credible, transparent and effective ERO without unintended negative consequences for electricity providers or consumers.

Answers to the Agenda's panel questions are organized into three areas to illustrate how industry understands its role in the new reliability regime: Events Analysis/Lessons Learned, NERC Alerts and Guidance.

A. Events Analysis

Industry operational personnel have long shared best practices and lessons learned. NERC's Lessons Learned communications contains a list of

shared documents which industry views as a useful resource that does not create an associated compliance obligation or compliance risk. The quality and complexity of NERC Lessons Learned continue to evolve and improve as a reliability resource. Therefore, the Lessons Learned program is viewed as a valuable ERO tool for industry to use.

The Event Analysis process has potential to produce quality insight from real time events that industry supports; however, EPSA recognizes that the process is still under development and in need of further refinements. Regarding these refinements industry has concerns in three areas – coordination of inquiries, treatment of confidential information, and the role of compliance assessments within an event analysis.

When an inquiry commences, company respondents must instantly balance reporting to interested parties and addressing the critical event at hand. Receiving multiple inquiries from multiple sources is an inefficient and distracting obligation, particularly when entities are in the process of addressing an event.

The data required for NERC, Regional Entities, or federal and state regulators should not be significantly different. EPSA encourages NERC and FERC to establish a single, uniform data and information request template to be used for events inquiries. Additionally, cross-agency arrangements should be made to distribute information requests in an efficient manner. Developing such a template will allow those that are requesting data related to an event to rely on an existing form rather than developing a new data request for each new event. Complying companies as well as NERC, the regions, FERC, and governing

bodies would have a more consistent way of approaching events if a standardized data form, and post-event reporting timelines were set.

The event inquiries must not distract an entity from addressing the event at hand. Sufficient time should be allotted for entities to respond to the event, and gather relevant assessment data, recognizing the operational needs in play. Following a period for event response, then a period of examination should be set for identifying the lessons learned and sharing that information.

Once an investigation into an event is initiated, confidentiality concerns arise which can inhibit the events analysis process. The compliance-related confidentiality and CEII issues may be best overcome with a uniform, fully vetted and clearly understood process. Such a process will lead to faster release of findings and promote discussion that fosters learning for other entities.

An effective event analysis requires full knowledge of the context of the inquiry for the various authorities and companies involved. For instance, an analysis based on an engineering inquiry is different from a legal or compliance inquiry. Yet, the current NERC Events Analysis Process melds the two. Industry finds that the introduction of a legal assessment into an engineering analysis changes the tone and quality of the analysis. These analyses need to be kept separate so that their context can be correctly understood in the final event findings.

Industry understands that during an Event Analysis the inquiry can often touch on circumstances that may relate to compliance with a Reliability Standard. However, Event Analysis should not inadvertently function as spot check audits

as this potentially impedes beneficial informational flows. Industry is apprehensive that if compliance obligations are reviewed as part of an event analysis, the information most useful to the reliability effort will be limited due to compliance concerns.

In EPSA's view, a successful Events Analysis program will need to first develop a clear process that allows for timely reporting and disclosure of important findings to users, owners and operators. To keep the analysis focused on reliability concerns, EPSA requests that the compliance and enforcement component of the Event Analysis be removed, thereby avoiding potential delays associated with time-consuming inquiries based more on uncovering violations by a broad array of market participants rather than finding the causes for the reliability event. By establishing the specific reasons for an event in a timely manner, more expedient reliability solutions should result.

The Events Analysis Work Group already exists and is working on the concepts mentioned above, among others. In addition, a standard drafting team is progressing on revisions to the EOP-004 Standard that will relate to the Events Analysis Process. NERC can play a valuable role in coordinating these linked efforts along with the development of any revisions to the Rules of Procedure ("ROP") deemed necessary for the revised program.

There is a natural tension for a single agency serving as both a compliance enforcer and an advocate for learning, yet industry continues to work with NERC to find an effective program that meets these dual needs. EPSA believes that NERC should also continue to consider other reliability forums as

alternatives that could ease the tension created by compliance and confidentiality concerns. The North American Transmission Forum (“NATF”) continues to expand its scope of activities and plans a significant expansion in the next three years. Similarly, the North American Generator Forum (“NAGF”) has begun to develop its structure and processes. Information sharing, learning from system events, discussing new technologies and system configurations and their potential reliability impacts, and developing best practices, can and should be considered within the purview of NAGF, NATF, and other similar organizations that either exist, or will exist in the future. Allowing organizations such as NAGF and NATF to cover these issues could help NERC to sharpen its focus on its core program requirements, managing the development of mandatory standards, compliance and enforcement.

B. NERC Alerts

NERC Alerts serve a crucial communication function for the ERO, the regions, industry and regulators. Registered entities depend on Alerts to inform them in a timely manner on important reliability issues. Since April 30, 2010, NERC issued 21 NERC Alerts to industry. NERC shares valuable information based on a three-level system. The levels are based on the importance of the information being imparted, the urgency associated with that information and whether an industry response is necessitated.

Industry’s greatest concern with the Alert process is that it not expand and inadvertently encroach on functions that are better addressed through other existing mechanisms. Alerts are viewed as fulfilling a narrow, specific role to

inform and advise on urgent reliability concerns and will be most effective if the process is well understood and well defined. As an example, EPSA believes Alerts should not be used as data requests or impose new requirements on registered entities. ROP Section 1600 is still the appropriate place for data requests, and the Standards development process for designing reliability requirements.

EPSA is encouraged by NERC staff's receptiveness to industry comments on the Alerts. Registered entities have been rightly concerned that Alerts are not the appropriate vehicle for weighing reliability improvements and their associated costs. The Standards process has been recognized as the best place to weigh such concerns and should so remain.

The NERC Alert program is a valuable tool and will remain as such through consistent use that respects the program parameters. Using the NERC Alert program for alternative means will increase the number of Alerts which will serve to decrease the urgency of future Alerts. Consequently, if the Alerts process is overused, the risk that an important future Alert does not receive sufficient attention increases.

C. Guidance

It should be emphasized that industry welcomes guidance and values transparency, particularly in the compliance context. However, confusion currently exists around both the form and the content of recent guidance, giving rise to two concerns. First, there are many types of guidance - Bulletins, Compliance Application Notices (CANs), Directives, Case Notes, Compliance

Analysis Reports and Dismissal Analyses - and the varied purposes of such documents are unclear. Second, there are multiple instances where guidance goes beyond the actual language of the FERC-approved standards or interferes with the interpretation process.

In order to return to a constructive guidance program, NERC's Compliance and Enforcement division should revise the guidance program to streamline and simplify the guidance tools and to improve clarity and credibility of NERC guidance on Reliability Standards. This process should include an analysis to determine any overlap among current forms of guidance, as well as whether any guidance competes with another NERC process. Such an analysis should lead to consolidation of current guidance and efficiency improvements. Efficiency improvements can extend beyond Compliance program guidance by providing clarity and additional perspectives to the Standards development process.

The revised program must address a two-pronged challenge - clarifying Standards that have been in place since 2007 and providing guidance for newly released Standard language. The revision process should utilize constructive input from stakeholders, as regulated entities can offer useful insight in designing a cohesive, credible guidance program. Therefore, a revised guidance program should be rolled out to stakeholders transparently, perhaps establishing a pilot project to refine both guidance tools and guidance development process.

D. Interaction with the Reliability Standards

The Standards development process is the ERO's democratic process to debate and develop regulatory requirements for reliability. It is this process and the resulting FERC-approved Reliability Standards that FPA Section 215 made mandatory and enforceable. Reliability issues and the means to address concerns are vetted by industry sector technical experts in order to create Reliability Standards that recognize and serve operational realities. Further, the process enables input from all stakeholders – industry, NERC staff, FERC staff, etc. – allowing all to have a voice in the stakeholder-led standards development process. Like any process, some are critical of or impatient with the Standards development process, but this does not justify interference with or encroachment on the process, as has been experienced at times. Importantly, while information gathered from Events Analysis, NERC Alerts and guidance development is valuable in informing the Standards development process, these tools should not become an alternative to or replacement for the Standards development process.

Efforts are underway within the Standards Committee to consider improvements to the Standards development process and whether new approaches can capture the information provided through other channels. As mentioned above, the Compliance Enforcement Program can assist this effort by collaborating with the Standards Committee to ensure the flow of beneficial information for both areas while maintaining the appropriate separations.

While the goal of reliability is paramount in the Standards development process, one growing challenge within that effort is the tension between reliability

and compliance. As entities gain experience with audits and spot checks, greater awareness of the compliance burden has grown. Frustration mounts when extensive and exhaustive effort, time, cost and risk are expended on compliance with little improvement to reliability. The recently submitted NERC Find, Fix, Track and Report proposal holds promise to shift the focus from minor compliance to areas that are more critical to maintaining reliability. This is an important step. The next step needs to be a look at compliance costs and resource burdens. Without rationalizing the compliance burden, we run the risk of overwhelming Reliability Standards with compliance requirements rather than ensuring operational reliability gains.

The revision of the Compliance Guidance program can help by clarifying the understanding of and obligations around Reliability Standards. It would also be helpful for NERC to roll out development of a standard audit program to establish a process to develop audit protocols that balances a credible stakeholder review process with enforcement autonomy for NERC. The process would encourage efficient development of an understandable, functional audit tool/protocol and to vet potential issues within a protocol (legal, jurisdictional, etc.) before deployment. The program could be a collaboration between NERC and the Regional Entities and be designed as a phased-in approach to populate the audit tool with standard specifics at a reasonable pace.

On behalf of EPSA, the comments herein have been provided to facilitate robust discussion at the November 29, 2011 reliability technical conference.