



*ELCON's<sup>1</sup> Initial Thoughts at the  
Federal Energy Regulatory Commission's December 1, 2003 Conference on the  
Certification of an Electric Reliability Organization and the  
Establishment, Approval, and Enforcement of Electric Reliability Standards  
FERC Docket No. RM04-2-000*

**RE: The Establishment of an Electric Reliability Organization (ERO):**

- 1. End-use customers ultimately pay all the costs to operate the North American Electric Reliability Organization (NERC), all the costs of maintaining reliability, and all the costs of blackouts.**
- 2. The problems associated with NERC's lack of enforcement authority have been before federal and state officials for a long time. But nothing has been resolved because of turf fights and efforts to protect market power.**
- 3. The Interim report of the U.S. – Canada Power System Outage Task Force Report, at least to ELCON, clearly demonstrates that reliability must be managed on a regional basis. Electron flows do not respect either electric utility service territories or state boundaries. However, for a variety of reasons – many clearly political – such regional organizations have not been created in many parts of the country. Customers are now asking: How many more \$6 billion blackouts do customers have to face before action is finally taken? We are thus very pleased to hear Chairman Wood's opening remarks that FERC will become very creative in interpreting the Federal Power Act to allow FERC to exert authority over reliability.**
- 4. We thus urge FERC and the Department of Energy to work cooperatively to forcefully and convincingly use existing authorities to reduce the probability for additional blackouts by creating Reliability Transmission Organizations (RTOs). Waiting for legislation is simply unacceptable. Specifically, we recommend three general actions:**
  - a. First, FERC should utilize all existing authorities to mandate the creation of RTOs – Reliability Transmission Organization including:**
    - (1) Use its FPA § 202(a) authority to divide the country into regional districts for voluntary interconnection and coordination of facilities for the purpose of assuring an abundant supply of electric energy throughout the United States and to encourage interconnection and coordination. The regional**

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<sup>1</sup> ELCON, founded in 1976, is an association of large industrial consumers of electricity. Our members have facilities in most of the fifty states and in many foreign countries. These companies come from virtually every manufacturing industry. Our member companies consume nearly six percent of all the electricity used in the United States. These companies require an adequate and reliable supply of electricity at competitive prices.

districts should reflect actual power flows – not simply the political wishes of the states or market power aspirations of utilities. Many existing Regional Reliability Councils do not meet these criteria.

- (2) Use its FPA §205 and 206 authorities to encourage voluntary participation in RTOs by all jurisdictional entities by disallowing market-based rates to any entity that does not voluntarily join a FERC-approved RTO under the finding that market power is not mitigated if the entity is not in an RTO and reliability cannot be assured.
- (3) Urge, if not require, NERC to file all of its reliability standards with FERC for approval by noting that an existing track record of filing proposed standards with FERC will be taken into consideration once Federal legislation is actually enacted and FERC is considering applications to be the ERO.
- (4) Require RTOs to implement the reliability standards once they are approved by the Commission.
- (5) Where RTOs are not created, order the implementation of reliability standards by the Authorities that perform Order No. 2000 "Short-term Reliability (Characteristic 4)" as specified in the NERC Reliability Functional Model (v.2), e.g., Reliability Authority, Interchange Authority, Balancing Authority and Transmission Service Provider. Entities that are obligated to comply with the reliability standards include: Market Operators or Resource Dispatchers, Transmission Operators and Owners, Generator Operators and Owners, Load-Serving Entities, Purchasing-Selling Entities and Distribution Providers.

Obviously, RTOs should NOT create their own reliability standards. They should implement uniform, North American standards established by a fair, inclusive, non-discriminatory standards-setting organization that is ANSI certified.

- b.** *Second, the Commission should work closely with the Department of Energy to either complete or re-issue the DOE's November 20, 2000 Notice of Inquiry. **These are not new issues.*** In fact, three years ago, DOE stated in an NOI that "Because the 106<sup>th</sup> Congress is likely to adjourn without enacting legislation to improve the reliability of the electric grid, DOE is considering using its authority under section 403 of the DOE Organization Act to initiate an electric reliability rulemaking at the Federal Energy Regulatory Commission (FERC)." We now are in the middle of the 108<sup>th</sup> Congress – and have moved no further forward.
  - (1) That NOI asked a series of questions regarding: adequacy of voluntary compliance, legal authorities, and possible actions that can be taken without federal legislation.
  - (2) Comments were filed by various parties, but apparently no final actions were taken.
  - (3) At a minimum, those comments should be carefully reviewed and either a new NOI issued or the original NOI finalized.
- c.** *Third, the Department of Energy should use its Public Utility Regulatory Policies Act §209(c) authorities to recommend industry standards for reliability to the electric industry, including standards with respect to equipment, operating procedures, and training of personnel. The recommended industry standards*

could be based on the NERC standards that have been filed with and approved by FERC.

**5. Finally, FERC should develop language for a proposed rule to establish an ERO once federal legislation is enacted. The language should incorporate the principles included in the attached ELCON document. FERC should be very clear regarding its specifications for the ERO, any Regional Entities and any Regional Advisory Bodies that eventually will be established.**



*ELCON's Thoughts on the on the Establishment of both an  
Electric Reliability Organization and  
Regional Advisory Bodies  
December 1, 2003*

**RE: The Establishment of an Electric Reliability Organization (ERO):**

1. **Goal:** ELCON advocates large, seamless markets that operate under reliability and commercial standards that do not favor one market participant over another. In this regard, we strongly support the creation of large Regional Transmission Organizations that meet the criteria of FERC's Order 2000. The implementation of reliability standards should be by FERC-approved Regional Entities that are exclusively RTOs. Otherwise, the implementation of reliability standards should be by the Authorities that perform Order No. 2000 "Short-term Reliability (Characteristic 4)" as specified in the NERC Reliability Functional Model (v.2), e.g., Reliability Authority, Interchange Authority, Balancing Authority and Transmission Service Provider. Entities that are obligated to comply with the reliability standards include: Market Operators or Resource Dispatchers, Transmission Operators and Owners, Generator Operators and Owners, Load-Serving Entities, Purchasing-Selling Entities and Distribution Providers.
2. **Basic Organizational Concept:** ELCON advocates a strong, top-down Electric Reliability Organization (ERO). ELCON is very concerned about the creation of seams especially within the Eastern interconnection. A strong, top-down ERO could/should assist in the mitigation of seams. Many seams can be mitigated by the consolidation of uneconomic "control areas." However, control area consolidation must meet a cost-benefit test.
3. **Relationship between Reliability and Commercial Standards:** ELCON believes that reliability and commercial issues are generally inseparable. However, we recognize that the ERO will establish reliability standards and the North American Energy Standards Board (NAESB) will establish commercial standards. Thus, the creation of the ERO must simultaneously create both a process and a mechanism that will assure that the duplication and overlap between the efforts of the ERO and NAESB are minimized.
4. **Essential Principles to be Incorporated into the ERO:** ELCON strongly recommends that the following principles be included in the creation of the ERO:
  - a. *Independence:* The Board of Directors of the ERO as well as any Regional Entity should be completely independent of any fiduciary interests of the energy industry and its suppliers. ELCON recognizes that

- the proposed legislation allows for either an independent or a “balanced stakeholder” board. ELCON strongly urges the Commission to create very high standards for the term “balanced” if either the ERO or any Regional Entity proposes a stakeholder board. In the evaluation of “balanced,” FERC should keep clearly in mind that end-use customers, ultimately, pay all of the costs of both the ERO and any Regional Entity and thus should have a disproportional share of any governance system.
- b. *Authority:* The ERO should have strong “top-down” authorities. Electricity does not respect state or regional boundaries. Reliability standards should be established in an organization that includes all of the interconnected grid of North America. Regional Entities that are RTOs should implement the standards that are established by the ERO. Within multi-control area RTOs, *ALL* control areas must be under the operational control of ERO employees.
  - c. *Open Governance:* The ERO and any Regional Entity should be open and inclusive. All parties with an interest in the electric industry should be welcome to participate. A party need not be a public utility or “user” of the bulk power grid to qualify. The ERO and any Regional Entity should provide for a fair and impartial representation in all activities and in the implementation of all new and modified standards. In this regard, representation in all committees, subcommittees, etc. should be by sectors that represent all stakeholders. Any entity with an interest in the electric industry should be able to request either a new or a modification to an existing standard.
  - d. *Dominance:* No two sectors should be able to control and no single sector should be able to veto any action of the ERO or any Regional Entity.
  - e. *Due Process:* The ERO and any Regional Entity should provide a due process procedure that assures that all comments received on a proposed new or modified standard are either satisfied to the satisfaction of the commentor or are carried forward with an explanation of all actions taken to satisfy the commentor. Thus, the process to establish standards within the ERO and any Regional Entity should be certified by a nationally recognized, private, non-profit organization that administers and coordinates the U.S. voluntary standardization and conformity assessment system (i.e., ANSI).
  - f. *Approval Process:* All standards established or modified by the ERO should be filed with the Commission for approval. They should not go into effect before receiving FERC approval.
  - g. *Regional Differences:* There should be no regional differences in ERO standards within each of the three electrical interconnections. However, within an interconnection, standards affecting sub-regions could be established that are more stringent than the standards established by the ERO if they are demonstrated to be necessary and in the public interest.
  - h. *Regional Entities:* The proposed legislation (§(e)(4)) requires that the ERO determine that any delegation to a Regional Entity be accompanied by a finding that the delegation agreement promote “effective and efficient administration of bulk-power system reliability.” Since electrons do not respect state or regional boundaries, any Regional Entity should have a footprint that coincides with a FERC-approved RTO. Further, the same

section of the proposed legislation limits the scope of any Regional Entity to “proposing reliability standards to the ERO and enforcing reliability standards under paragraph (1).” FERC should enforce this provision stringently.

- i. *Funding*: To the greatest extent practicable, all end-use customers should directly pay the FERC-approved costs of the ERO and any regional entities for all U.S. activities. The ERO and any regional entities should have a funding mechanism that is just and reasonable; not unduly preferential; and in the public interest. No additional charges or fees should be required from participants.

5. **After the enactment of Federal legislation and receiving FERC approval**, but not before, the ERO should be granted:
  - a. Enforcement authority,
  - b. Limited anti-trust immunity, and
  - c. The ability to assess required fees.

**RE: The Establishment of Regional Advisory Bodies:**

The proposed legislation requires the Commission to establish, upon appropriate petition, Regional Advisory Bodies (RABs). Industrial electricity consumers are very concerned that the establishment of such bodies could create yet another very time-consuming and costly forum in which they must participate – but not receive any real benefits. Thus, we strongly urge the Commission to require:

1. **RAB Footprint**: The footprints of any RAB should coincide precisely with the footprint of one or more RTOs that they are to address. No two RABs should cover the same geographical area.
2. **Delegation of Jurisdiction**: A state that voluntarily agrees to participate in an RAB must voluntarily agree to waive its jurisdiction over any issue covered by the RAB for the decisions of the RAB to have any standing with the Commission. Any decision of the RAB shall go directly to the ERO and shall not be subject to any formal review by an individual state.