

FERC Technical Workshop – July 6, 2006: Notes for Kim Warren, Ontario IESO

INTRODUCTION

I'd like to begin by commending the Commission and its staff for the quality of the review of the NERC's standards, for proceeding with this technical conference and also your intention to move forward under the NOPR process. These efforts provide an opportunity for broad and inclusive input from the industry which is greatly appreciated.

My comments are made from the following perspectives:

- My province, Ontario, shares a geographic border with 6 U.S. states and is interconnected with 3 of them; it is also interconnected with 2 Canadian provinces
- My organization, the Ontario Independent Electricity System Operator (IESO) is 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;
- The IESO is also a member and active participant in the affairs of the Canadian Electricity Association ("CEA"), the organization representing the wholesale electricity industry in Canada; and a member of the ISO/RTO Council ("IRC"). The IESO has also had extensive discussions on the subject of the ERO with members of the Federal Provincial Territorial ADM Electricity Group ("FPT Group")
- At the personal level I have spent almost my entire career in system control centres and making reliability standards, and interconnected systems generally, work in real time.

For now I will confine my comments to international aspects of the ERO, answering the Commission's final two questions:

"What coordination is necessary with other state, federal, and/or international regulators to ensure a good transition to mandatory reliability standards?", and

"What process should the United States, Canada, and Mexico follow for review and approval of Reliability Standards to meet possible time constraints?"

I will of course draw on positions advocated by the IESO in this proceeding but I will also reflect in the responses made by the CEA, the IRC, and NERC. There is widespread agreement among these parties and others on how the Commission should now proceed.

There is universal agreement on the importance of having a single set of reliability standards common to both countries. Coordination among the regulators will be essential to achieving this commonality, and that the Bilateral Principles provide a good framework for defining this coordination.

FERC and the Canadian regulators could potentially recognize NERC as ERO in the immediate future. This would in turn set the stage for regulators to rule on the 102

reliability standards submitted by NERC 3 months ago. Rulings by regulators, in turn, create the need for coordination mechanisms between regulators prior to their issuing rules. The need to define coordination mechanisms is therefore upon us today. The time has come to take all of this good conceptual work done to date to its logical and urgently needed conclusion by defining the specifics of the coordination necessary among regulators.

Another area of widespread agreement concerns remand, namely that the issuing of a remand by any regulator for some of the 102 standards would be of concern in provinces where the standards are currently mandatory and enforceable: one regulator would be rejecting a standard other regulators have accepted. This is a prime example of where inter-jurisdictional coordination mechanisms should be applied.

Moreover, there is recognition that the substantial use of remand in the present proceeding would set a bad precedent, given that remand is widely seen as a mechanism to be used rarely and as a last resort. At the November 18, 2005 FERC technical conference I expressed this concern as follows:

"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."

For this reason the IESO and others have recommended the Commission simply decline to approve a standard judged unacceptable, rather than issuing a formal remand. As stated in the responses of the IESO and IRC, the end result should be the same if the Commission were to proceed in this less formal manner.

Various respondents have expressed the view that the current standards must at a minimum retain their current voluntary status in the U.S. until such time as they become mandatory and enforceable, i.e., until they become approved by the Commission as part of the present proceeding, or as approved subsequently following revision by NERC. Standards in Canada would likewise retain their present applicability, which is mandatory and enforceable in several provinces.

In the recommendations that follow I have captured some of these themes, including the timelines given by NERC in its ERO application for coordination among regulators. The intent is to provide the Commission and Canadian regulators with some specific features to be recognized in the coordination mechanism.

A. Regulators Should Develop International Coordination Approval/Remand Mechanisms Now

It is important that FERC and Canadian regulators develop a specific coordination mechanism consistent with the Bilateral Principles. Ideally, this should be completed

prior to the date of recognition by FERC and Canadian regulators of NERC as the ERO; in any event, this must be completed prior to FERC or any Canadian regulator making any decision other than approval respecting the applicability of the NERC standards.

NERC in its ERO application recommended features of such a mechanism, including the development of memoranda of understanding among FERC and provincial regulators respecting the features of coordination. These should be taken as a starting point.

B. Guidelines for Commission Treatment of the existing NERC Standards

Before I focus on the existing NERC standards and their potential treatment by the regulators, I will discuss our interpretation of applicability going forward.

Current standards should remain applicable (in the U.S. and Canada) until such time as they are changed by NERC (revised, withdrawn) and subsequently approved FERC and Canadian regulators. As these standards were developed outside of the future ERO process, an existing NERC standard that the Commission declines to approve would remain applicable on a voluntary basis in the United States. I believe this makes sense from an overall reliability perspective, from a multi-jurisdictional perspective (by keeping a uniform set of standards in place) and from the perspective of U.S. federal legislation respecting the Commission's authority.

We note that approval or conditional approval by FERC would change the enforceability of the standard in the U.S., but not the content. That is, the standard is applicable on a voluntary basis today, and it would continue to be applicable following approval, but on a mandatory and enforceable basis.

Now I'd like to speak to the possible options regulators have with respect to the present day NERC standards.

- 1. FERC should approve a standard judged acceptable in its present form, that is, having an appropriate content (enhances reliability and is "just, reasonable, not unduly discriminatory or preferential, and in the public interest") and meets Order 672 criteria for enforceability in the U.S.***

This approval should be no sooner than 60 days following the recognition of the ERO by the Commission, allowing time for coordination with any Canadian regulator that may be contemplating a remand of the standard.

The standard would become both mandatory and enforceable in the U.S. The standard would retain its current applicability in Canadian provinces – enforceable in Alberta, Ontario and New Brunswick, while not enforceable in other provinces until such time as the appropriate enforcement mechanisms are adopted.

2. ***FERC should conditionally approve a standard judged acceptable on a conditional basis, that is, having relatively minor deficiencies regarding its content and/or its enforceability. Depending on its particular characteristics, the standard would at a minimum become mandatory (in the U.S.), and at a maximum, both mandatory and enforceable.***

The Commission should notify Canadian regulators of its intention to issue conditional approval and allow 60 days for coordination with Canadian regulators, prior to issuing the conditional approval. A Canadian regulator contemplating conditional approval would likewise notify FERC.

Coordination is needed here because conditional approval will involve FERC (or a Canadian regulator) sending NERC a request to initiate a standards action. Such coordination would be directed at avoiding the confusion that would be created by having two regulators sending separate and conflicting requests to NERC, or simply from NERC being asked to change a standard that other regulators find acceptable.

3. ***FERC should decline to approve an existing NERC standard judged not acceptable in its present form, that is, having deficiencies regarding its content and/or its enforceability that preclude making the standard mandatory and/or enforceable.***

This action would have substantially the same effect as a remand, but would avoid creating the precedent of a formal remand. We see the remand options as acceptable last resort tool for regulators only once the regulators have established a suitable coordination mechanism.

Presently, if FERC declines to approve one of the existing NERC standards, the standard would remain in effect in the U.S. on a voluntary basis (as noted under B) until such time as the standard is revised by NERC, resubmitted to the Commission and approved by the Commission.

Today and looking to the future, FERC should notify Canadian regulators of its intention to remand a standard, or in this instance decline to approve a standard, with reasons, and allow 60 days for coordination with Canadian regulators, prior to issuing the order.

C. Lessons Learned from Ontario's Compliance and Enforcement Experience

I'd now like to share some observations from Ontario's four years of experience with mandatory and enforceable reliability standards. As you know the IESO, on behalf of Ontario, is accountable for all compliance within the province with NERC standards. Under the authority of the Ontario market rules which include both market and reliability based requirements, the compliance arm of the IESO monitors and enforces compliance with NERC and NPCC standards on all entities.

First, enforcement involves a significant amount of work, for example to establish that all parties understand their responsibilities and generally to establish an effective working relationship. This is true despite the fact that in Ontario it is clear who is responsible for what because of the comprehensive nature of our market rules. Elsewhere, where the

extent of the applicability is not yet firmly established, and where there will be many new players, you can expect a considerable effort will be required during the transition period to fully establish the compliance mechanisms.

Secondly, investigating potential reliability violations also requires a considerable amount of work. There are always circumstances surrounding an alleged violation, and these must be established if justice is to be done. We have investigated a number of alleged reliability violations over the past four years, however we have seen only two confirmed violations. There have been many more market based investigations and breaches during this timeframe.

Thirdly, parties are highly motivated to avoid violations and to contest them once there is an alleged violation. We conclude that maintaining corporate reputation is a major motivator. We have the ability to levy financial penalties, including very substantial ones for significant violations, but the imposition of penalties has not played a major role. Our ultimate objective is to achieve compliance with industry standards rather than a focus on penalties themselves.

Finally, I'd like to comment on the under-recognized role of education. Education is the essential element for moving a developed standard forward into practical real time application. It should be appreciated that maintaining reliability requires far more effort than being able to recite a manual of specific procedures. I see the lack of practical education to be a critical unfulfilled need, and one that NERC, the regions and the industry must address in parallel with efforts to develop the standards themselves.

Thank you