

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

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| |) | Docket No. AD13-6-000 |
| Reliability Technical Conference |) | Docket No. RC11-6-004 |
| |) | Docket No. RR13-2-000 |

**WRITTEN COMMENTS OF JOHN ANDERSON, PRESIDENT AND CEO
ELECTRICITY CONSUMERS RESOURCE COUNCIL (ELCON)**

The Electricity Consumers Resource Council (ELCON) respectfully submits the following comments for the Reliability Technical Conference held by the Federal Energy Regulatory Commission (FERC) on July 9, 2013. The Technical Conference addresses policy issues related to the reliability of the Bulk-Electric System (BES). ELCON’s comments focus on the issues set forth for Panel III: NERC Standards Development Process and Priorities.

ELCON greatly appreciates the opportunity to participate in this Technical Conference and observes that ELCON is the only consumer (large or small) representative included in any of the four Panels.

ELCON is the national association representing large industrial consumers of electricity. ELCON member companies produce a wide range of products from virtually every segment of the manufacturing community. ELCON members operate hundreds of major facilities and are consumers of electricity in the footprints of all organized markets and other regions throughout the United States. In many cases, ELCON members generate electricity using combined heat and power (CHP) systems. Increasingly, ELCON members (and other industrial electricity consumers) own or operate facilities that are being defined as part of the BES and thus are directly impacted by NERC’s Reliability Standards.

I. COMMUNICATIONS

All correspondence concerning this proceeding should be directed to:

John Anderson, President and CEO
The Electricity Consumers Resource Council (ELCON)
1111 19th Street, NW, 7th Floor
Washington, D.C., 20036
(202) 682-1390
janderson@elcon.org

II. BACKGROUND

Industrial electricity consumers (as do other stakeholders) consider a reliable electric supply critical. Increasingly, industrial production processes are sensitive to even very minor reliability problems. However, these same industrial electricity consumers emphasize that reliability cannot come at any cost. Reliability is of great importance, but only as long as consumers are able to pay the costs. We cannot have, nor should we try to have, 100% reliability.

Section 215 was carefully crafted. The electric industry is North American in scope and must include the views of all North American stakeholders – not just those in the United States. No matter how good FERC staff, they can never have the expertise of the North American electric “industry”. For these (and other) reasons, FERC was not given the authority to draft reliability standards

FERC designated NERC as the ERO. NERC had a long history of crafting reliability measures, but in the past was not balanced, open and inclusive. FERC’s designation of NERC as the ERO gave NERC the authority to craft mandatory reliability standards with stiff penalties (subject to FERC approval) in the US. However, FERC required NERC to be balanced, open and inclusive. ELCON believes that NERC has met these expectations with its revised governance procedures

Overall, ELCON thinks that NERC’s Standards Process is quite good. It is certified by the American National Standards Institute (ANSI). The process now is very balanced, open and inclusive. Any entity can participate both in the crafting of the standards and in the approval process. However, by being so open and inclusive, the standards development process takes time.

III. COMMENTS

ELCON believes that the NERC process is working – although certainly not perfectly. But then no process can be perfect. As mentioned above, we cannot achieve, nor can we afford, 100% reliability.

NERC has implemented (or is in the process of implementing) many changes that have brought (or will bring) substantial and significant improvements including, but not limited to:

- Developing a Project Prioritization Tool – recognizing that not all Standards are equal
- Developing the Find, Fix, and Track (FFT) tool –with the goal to substantially reduce the time require to process FFTs
- Moving towards a Reliability Assurance Initiative (RAI) based on good internal controls – while recognizing that one size does not fit all
- Significantly improving the interpretations process – while making sure that the various types of interpretations do not actually change the Standard

- Moving towards a “risk-based” approach to reliability standards – and away from a “zero tolerance” approach – understanding that a culture of reliability will never be achieved as long as zero tolerance is in place
- Working to identify unnecessary Reliability Standards or Requirements through the “Paragraph 81” process
- Developing the Cost Effectiveness Analysis Process (CEAP) to introduce cost consideration to the standards development process which is now moving to the testing stage – but also recognizing that it is the cumulative impact of NERC Standards that has the real impact on Registered Entities
- Taking substantial actions to speed up the Standards Development Process – while maintaining vital stakeholder input.

It is important to recognize that there are basic, underlying tensions between FERC and NERC that will always exist. FERC is the regulator (at least in the US) – while NERC is a regulated entity. FERC Commissioners and staff naturally do not want outages “on their watch”. Such disturbances bring significant political and other backlashes. Thus, it is not surprising that FERC might err on the side of (1) requiring tighter and more stringent regulations, (2) issuing more and more specific Directives that, while not actually writing standards, impose requirements that may be in conflict with stakeholders’ views or be very expensive to implement – while not significantly improving bulk power system reliability, and (3) putting less emphasis on costs than those entities that actually bear the costs.

Consumers do not want outages, but understandably also do not want to pay more than necessary for an adequate level of reliability – whatever that means. They are reluctant to accept changes to NERC’s processes and procedures that cut short the input of those stakeholders that are (or potentially could be) impacted by the standards or that are not cost-effective. On the other hand, streamlining a process that was difficult to participate in from a time and volume aspect may help improve standards if done in way that preserves and incorporates the input of all the effected stakeholders.

Many stakeholders feel that moving too far or too fast may result in either not getting it “right” or stimulating opposition – or both. The recent experience relating to the implementation of the definition of the Bulk Electric System is an example.

Increasingly, the owners and operators of industrial facilities are becoming Registered Entities, and thus subject to applicable NERC’s Standards. Industrials have every economic incentive to perform the requirements that minimize reliability problems as they need a reliable supply of electricity to manufacture their goods and services. However, industrials often report that they are overwhelmed with mounds of demands for documentation and other requirements to show full compliance with NERC standards. This seems out of proportion to the risk at hand.

The costs of NERC compliance is growing. Just as a couple of examples:

- One ELCON company estimates that it costs over \$250k to deal with NERC compliance requirements for a single registered facility.

- Another ELCON company had to hire lawyers and consultants at considerable costs just to try to explain why its industrial facility does not have a material impact on the BES.
- Yet another ELCON company is trying to “sell” (actually give away) certain facilities to avoid registration – but to no avail.

Industrials are often torn between taking actions that may either improve reliability or minimize possible penalties. Thus a “culture of reliability” may be in conflict with a “culture of compliance”. Given such a choice, the culture of compliance is the logical and rational choice for many industrial Registered Entities – and perhaps many others also.

Often, NERC is caught between FERC Directives and stakeholder concerns. This is a natural tension between a regulated entity and a regulator. FERC Directives and mandates appear to be driving NERC staff to have to make a choice between a slower, but stakeholder-inclusive, process and a staff-driven process that limits stakeholder input to achieve more timely results. If forced to make a quick decision, it might be strict adherence to FERC Directives.

IV. CONCLUSIONS AND RECOMMENDATIONS

First: Both FERC and NERC should listen more carefully to stakeholders.

Stakeholders are the entities actually “in the trenches.” They are the ones that face the day-to-day crises. They are the ones that know what the electric system can tolerate and what it can’t. They are the ones that bear the real burdens of outages. And they are the ones that actually pay the costs.

Second: Both FERC and NERC should better understand the costs of actions – and of inactions.

There is an understandable link between high compliance costs and stakeholder reactions. In this regard, I commend NERC for the development of the Cost Effectiveness Analysis Process (CEAP). This process at least is trying to identify in the early stages of standards development the costs of compliance. And identify whether there are alternative methods to the way the standard approaches the reliability need.

But both FERC and NERC must also recognize that the real industrial cost concern is not the compliance cost of a single standard. Rather it is the cumulative cost of complying with the entire suite of standards that is applicable to a Registered Entity. Obviously, the cumulative cost for large consumers includes the indirect costs of other Registered Entities that pass along their compliance costs to their ratepayers. These are the costs that are growing substantially and that are causing real concerns.

Total cost of compliance isn’t discussed much or very well known. The ERO has been functioning for almost 7 years but it has not yet offered metrics related to total system cost for NERC compliance or produced a cost / benefit argument showing its actions have led to improved reliability. The cost of ‘top

down' driven compliance liability needs to be appreciated as much or more than the cost of individual standards.

I emphasize – the calculation of the cumulative costs does not have to be precise. But I hope more precise than Judge Posner noted (in another context) in the 7th Circuit Decision regarding the calculation of benefits: “We do not suggest that the Commission has to calculate benefits to the last penny, or for that matter to the last million or ten million or perhaps hundred million dollars”.¹ Without a good understanding of the cumulative costs, the tensions will continue without resolve.

Third: NERC and FERC should focus on the reliability risk associated with individual facilities

NERC recognizes that the zero tolerance approach to standards encourages a culture of compliance rather than a culture of reliability. It is encouraging to see that NERC is trying to move toward risk-based standards. Differentiating between facilities that actually have a material impact on the BES rather than simply applying standards to certain facilities would be a very positive step in the right direction. The burden of proof for such differentiation should be on the Regional Entities and NERC. Facility owners should not be guilty until they have proved themselves innocent.

Moving from zero tolerance to risk-based standards is a very good, and necessary, change – but it will be very difficult to actually implement without strong support from FERC. I strongly urge FERC to explicitly embrace a reliability-driven approach to both standards development as well as compliance and enforcement. The costs of not doing so are great.

Fourth: Both NERC and FERC should recognize that a standard is not always the right response to a reliability challenge

The Southwest blackout event is a clear example of such an event. I strongly suggest that FERC keep an open mind to this suggestion. A FERC Directive that requires the development of a standard may be less than totally effective. A FERC Directive that asks for input from the industry regarding the best way to address reliability challenges may be much more effective and efficient than simply mandating the development of a standard.

Thank you for the opportunity to offer comments on this important matter.

¹ ***Illinois Commerce Commission, et. al. v. Federal Energy Regulatory Commission, et. al.*** Order in 2009 (at page 11)