

SHEEHEY FURLONG & BEHM
PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

R. JEFFREY BEHM
DEBRA L. BOUFFARD
IAN P. CARLETON
MICHAEL G. FURLONG
BENJAMIN MARKS
DIANE M. MCCARTHY
ERIC S. MILLER
GREGORY S. NAGURNEY
PETER H. ZAMORE

PAUL D. SHEEHEY (1919-2004)

GATEWAY SQUARE
30 MAIN STREET
POST OFFICE BOX 66
BURLINGTON, VERMONT
05402
TELEPHONE (802) 864-9891
FACSIMILE (802) 864-6815

VIA ELECTRONIC MAIL
December 22, 2006

Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Docket No. RM06-16-000
Mandatory Standards for the Bulk-Power System

Dear Secretary Salas:

Attached for filing on behalf of the Western Electricity Coordinating Council are Comments to the October 20, 2006 Notice of Proposed Rulemaking of the Federal Energy Regulatory Commission (the "Commission") and a Certificate of Service in the above-referenced docket. Copies of these documents are being served upon the entities identified on the Commission's service list pursuant to 18 C.F.R. § 385.2010.

If you have any questions, please feel free to call.

Very truly yours,

SHEEHEY FURLONG & BEHM P.C.

/s/ Peter H. Zamore

PHZ/hbc
Attachment
cc: Service List

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

**Mandatory Reliability Standards
for the Bulk Power System**

Docket No. RM06-16-000

**COMMENTS OF WESTERN ELECTRICITY COORDINATING COUNCIL
ON NOTICE OF PROPOSED RULEMAKING**

INTRODUCTION

On October 20, 2006 the Federal Energy Regulatory Commission (the “Commission”) issued a Notice of Proposed Rulemaking in Docket RM06-16-000 (the “NOPR”).¹ In the NOPR, the Commission proposed to approve 83 of 107 Reliability Standards submitted by the North American Electric Reliability Council (“NERC”), and to continue consideration of the remaining 24 Reliability Standards, pending receipt of further information.² The Commission requested comments on its proposed action by January 3, 2007.³

The Western Electricity Coordinating Council (“WECC”) respectfully submits these comments in accordance with the NOPR. WECC supports the Commission’s proposed actions, though we believe that it is very important that the Commission fully understand the challenge posed by the approval of so many standards in one package, particularly when the majority of those standards, by the Commission’s own recognition,

¹ *Mandatory Reliability Standards for the Bulk-Power System*, 117 FERC ¶ 61,084 (2006).

² The Commission directed NERC to file modifications to 61 of the 83 approved Reliability Standards. In response, NERC filed modifications to 20 proposed Reliability Standards on November 15, 2006 and proposed three new standards, as to which the Commission indicated it would open another rulemaking with a different comment cycle. The Commission also approved the proposed Glossary of Terms and six of the eight proposed Regional Differences. NOPR Appendix A.

³ *Notice Granting in Part Motions for Extensions of Time*, Docket No. RM06-16-000 (Nov. 27, 2006).

still need work to become fully acceptable. We also note that for several decades, the reliability of the North American power grid has been maintained not only through compliance with standards but also through the voluntary provision of expertise employed to find solutions to grid reliability problems. WECC believes that reliability in the future will continue to depend not only on the development and enforcement of clear and effective standards, but also on continued cooperation between those entities that will live by those standards and those entities responsible for ensuring compliance with the standards. To the extent that industry quickly becomes enmeshed in complex and contentious litigation over the fairness of fines, the Commission should recognize that the cooperative spirit that has existed in the past will likely be damaged, and the goal of maintaining reliability may be damaged as well. WECC has long supported the development of enforceable reliability standards for North America and, as the Commission is aware, for several years has had experience enforcing key reliability criteria under a Commission-approved Reliability Management System (“RMS”) Agreement. From this perspective we offer the following comments on the actions proposed in the NOPR.

First, WECC believes that Regional Entities should have flexibility for at least six months in imposing penalties for all Registered Entities, rather than only those entities newly-subject to reliability standards. Second, this flexibility should continue, as appropriate, for those Reliability Standards requiring modification, until the modifications are agreed upon and timely noticed for an effective date. It is also important that the Commission and NERC collaborate closely with the Canadian

Provinces and Mexico in their interpretation, approval and enforcement of reliability standards. Finally, WECC addresses a few miscellaneous issues in these comments.

COMMUNICATIONS

Communications concerning these comments should be addressed to:

Louise McCarren
Chief Executive Officer
Western Electricity Coordinating Council
University of Utah Research Park
615 Arapleen Drive, Suite 210
Salt Lake City, Utah 84108-1262
Telephone: (801) 582-0353
Facsimile: (801) 582-3918
Email: louise@wecc.biz

Peter H. Zamore, Esq.
SHEEHEY FURLONG & BEHM P.C.
30 Main Street, Sixth Floor
P.O. Box 66
Burlington, Vermont 05402
Telephone: (802) 864-9891
Facsimile: (802) 864-6815
Email: pzamore@sheeheyvt.com

WECC BACKGROUND AND INTEREST

WECC is the regional reliability council responsible within the NERC structure for coordinating and promoting electric system reliability in the Western Interconnection. WECC is concurrently seeking Commission approval of its Delegation Agreement with NERC, which would establish WECC as the Regional Entity responsible for enforcing the Reliability Standards within the Western Interconnection. WECC has extensive experience in overseeing contractually-binding reliability standards for the entire Western Interconnection through its RMS, and in coordinating reliability oversight with the Canadian provinces of Alberta and British Columbia, and the Comision Federal de Electricidad of Mexico.

WECC has an interest in assuring that the implementation and enforcement of the Reliability Standards takes place in a manner that promotes clear expectations for entities subject to the standards. It also has an interest in avoiding unnecessary litigation that

may arise from ambiguous or incomplete standards, and in assuring continuing reliability through emphasis on education and remediation first, rather than penalties.

COMMENTS

I. The Commission Should Approve the Proposed Reliability Standards

WECC supports the Commission's proposal to approve 83 of the Reliability Standards. With respect to the 61 standards requiring modification, WECC supports the Commission's decision to require NERC to develop the modifications, rather than modifying the Reliability Standards itself. WECC is now working and will continue to work with NERC and others to facilitate the necessary filings and to gain Commission approval on a timely basis. WECC also intends to work hard with our Registered Entities to achieve compliance with all of these standards as fast as that can be accomplished. To do that, we need the Commission's support in recognizing that in the early stages of implementation, penalties should be reserved for clear situations where Registered Entities are refusing to comply. As implementation continues and Registered Entities have the opportunity to receive training and facilitation of their compliance, penalties will be justified for negligent non-compliance, particularly where there are repeated infractions or where the implementation of mitigation plans is ineffective. But as noted above, WECC believes that enforcement of reliability standards will not, by itself, ensure reliability. Moreover, unreasonably harsh enforcement in the early stages of implementation may damage the reliability we have enjoyed in the past by diverting industry resources away from developing solutions so that they can be employed for the avoidance of fines and to support litigation.

II. The Regional Entities Require Discretion in Order to Implement the Reliability Standards in a Timely and Efficient Manner

In its June 26, 2006 comments on the Commission Staff preliminary assessment concerning the proposed Reliability Standards, WECC proposed that the Commission establish a 2-4 year phase-in of the standards, during which field testing would occur prior to imposition of penalties.⁴ In the NOPR, the Commission rejected a formal trial period, because it might interfere with implementation of the standards by the Summer 2007 peak season and because entities that have been subject to the voluntary NERC standards should already be familiar with proposed standards and compliance requirements. NOPR ¶ 92. The Commission, however, did propose that for the first six months the Reliability Standards are in effect, the Regional Entities have discretion in imposing penalties on entities “that have not historically participated in the voluntary system” of compliance with reliability standards. NOPR ¶ 93.

Although WECC continues to believe that a longer trial period is appropriate, it is not requesting that the Commission revisit its decision on this issue. WECC does request, however, that the Regional Entities have somewhat greater flexibility in monitoring and enforcing compliance during the initial period of implementation. As explained further below, there is a high potential for inconsistent enforcement during the initial period and WECC believes that many Registered Entities, including those who have historically participated in the voluntary NERC reliability standards system, may not be able to develop the systems and procedures to fully facilitate and document compliance until after the Reliability Standards become effective. For these reasons, the Regional Entities should have flexibility in imposing penalties with respect to all

⁴ NERC and a number of other entities also proposed trial periods ranging from six months to five years. NOPR ¶¶ 90-91.

Registered Entities, rather than merely those without experience with the existing standards. In addition, this discretion should continue beyond six months after the effective date, if necessary, for those Reliability Standards requiring modification, until such modifications have become effective.

There is a high potential for inconsistent enforcement because the Commission proposes that 61 standards become effective even though many compliance elements have not yet been approved or require further clarification. NOPR ¶¶ 1, 7, 79-81, Appendix A. Specifically, while the Commission has determined that these 61 standards have sufficiently clear requirements and compliance language, the Commission also found that compliance metrics or noncompliance levels are either ambiguous or missing. NOPR ¶ 112. Although NERC subsequently filed modifications to 20 of the 61 standards, the Commission has not yet acted on the proposed modifications and no modifications have been filed for the remaining standards. As a result, differing interpretations among Regional Entities and Registered Entities are likely. Further, the Commission did not explain in the NOPR how standards with ambiguous or missing measures or non-compliance levels could be enforced nor did it discuss this issue in rejecting the proposed trial period. For instance, Reliability Standard BAL-005 Requirement 2 requires that Balancing Authorities maintain sufficient Regulating Reserve, but there are no measures to guide enforcement of the requirement. It is unclear whether the 30-minute deadline in Requirement 2 of Reliability Standard EOP-001 requires implementation of the load reduction plan within 30 minutes or actual overload relief within 30 minutes. Reliability Standard PRC-001 Requirement 2.2 requires “corrective action as soon as possible” in the event that a protective relay or equipment

failure reduces system reliability, but provides no guidance on the length of time that is permitted for corrective action.

There is also considerable confusion and concern by many in the Western Interconnection regarding the applicability of the Reliability Standards. In some instances, the registration requirements and violation assessments remain unclear, and have not been thoroughly addressed at NERC. The functional registration requirements described in the Functional Model are also not clearly defined. For example, the applicability of the Transmission Owner or Transmission Planner functions depends on the interpretation of certain terms.⁵

These types of issues create uncertainties for Registered Entities within a particular Regional Entity and are highly likely to result in inconsistent or delayed enforcement across regions. Registered Entities will not have adequate knowledge concerning compliance requirements until the ambiguous Reliability Standard provisions have been clarified and missing provisions added. The uniform compliance process will help achieve consistent enforcement through review of penalties by NERC, but to the extent the regions reach differing interpretations of Reliability Standards, NERC will be required to either relax the level of consistency among regions or resolve inconsistencies through the NERC review process. Although the review process should provide an adequate approach to achieving uniformity once the enforcement system is mature, it is

⁵ NERC's definition of Transmission Line includes voltages between 69 kV to 765 kV, whereas its definition of Bulk Electric System includes voltages of 100 kW or higher and "generally" excludes radial facilities. WECC intends to work with NERC in addressing these types of issues.

an inefficient and time-consuming method of addressing ambiguities or missing terms in the Reliability Standards.⁶

Compliance may also be difficult during the initial period of enforcement because many Registered Entities will be subject to reliability enforcement for the first time. As the Commission noted, “there are entities that have not historically participated in the voluntary system (including some relatively small entities) that may not be familiar with the proposed mandatory Reliability Standards and what is required for compliance.”

NOPR ¶ 93. These include smaller Load-Serving Entities, Purchase-Selling Entities and some Generator Owners. Many of these entities are not members of WECC and have not had the exposure to WECC’s compliance program.⁷ These entities may not be able to develop the systems and procedures to facilitate compliance in an efficient manner until well after the Reliability Standards become effective.

Initial compliance may also be difficult because the compliance documentation requirements are new. For example, the two measures of Reliability Standard EOP-001, requiring that emergency plans and the two most recent annual self-assessments be available for review at any time, were not contained in NERC Operating Policy 6B, upon which the Reliability Standard is based. It will take time and effort for Registered

⁶ WECC’s (and NERC’s) Compliance Monitoring and Enforcement Program provide that, on appeal of a Regional Entity determination concerning compliance, penalties or mitigation plans, NERC may affirm or remand, but cannot itself revise the terms of the Regional Entity’s decision. WECC Compliance Monitoring and Enforcement Program, Sections 5.4-5.5, 6.5. In addition, although compliance enforcement by the Regional Entities or NERC under their respective Compliance Monitoring and Enforcement Programs is confidential until a final compliance determination, it is not clear that the same level of confidentiality could be accomplished as readily in Commission proceedings. 5 U.S.C. § 552(b); Commission Rule 903.

⁷ Many of these entities may, as a result of interconnection agreements with Transmission Service Providers or Balancing Authorities, be subject to reliability obligations but they typically have not been required to document compliance on a regular basis.

Entities to develop the required documentation.⁸ Until this occurs, the process of demonstrating compliance through scheduled audits, spot-checking and the other types of compliance monitoring procedures will be more time-consuming and uncertain.

For all these reasons, during the initial implementation period the Regional Entities should focus on education and facilitation of compliance, through resolving ambiguities, promoting consistent expectations and enforcement, and assisting Registered Entity compliance, rather than focusing on penalties. To be sure, the existence of the penalty option will be important to ensure that Registered Entities have the motivation to comply with standards,⁹ but even properly motivated parties may fail to comply if they misunderstand requirements and if the Regional Entities do not focus on education and facilitation of compliance. WECC strongly believes that the goal of avoiding future cascading outages will be greatly improved if Regional Entities are allowed to be flexible in their enforcement of standards for a reasonable period after they are approved, particularly when they still contain ambiguities or missing elements.

Consistent implementation will require timely modifications of the remaining standards and provision to the Commission of the information necessary to approve the unapproved standards. It will also require a high level of informal interaction and collaboration among the Regional Entities, in order to address ambiguities and inconsistent interpretations. Registered Entity compliance should be promoted by similar

⁸ In estimating that compliance would cost \$40 million annually on aggregate basis, NOPR ¶ 1161, FERC assumed that there would be no increased reporting burden or additional information requirements. NOPR ¶ 1157. WECC disagrees with this assumption because the standards impose new documentation requirements that will create additional costs.

⁹ WECC is fully prepared to impose penalties against Registered Entities who have had a sufficient opportunity to understand a standard and who appear to have made the intentional choice not to comply, but WECC believes that in the early stages of the implementation of Section 215, there will be few situations where a failure of compliance is clearly caused by lack of motivation. We also believe that in those early stages, greater compliance will be achieved by focusing resources on training and efforts to facilitate compliance than on litigation and imposition of penalties.

interaction and collaboration between the Regional and Registered Entities, so that entities that have not been directly subject to regional reliability standards can comply more efficiently and the required compliance documentation can be developed.

These necessary efforts during the initial implementation period depend on the ability of the Regional Entities to enforce compliance in a flexible manner. The more discretion the Regional Entities have in imposing penalties, the more they will be able to focus on improving the Registered Entities' understanding of the compliance requirements and promoting efficient enforcement. Flexible enforcement during an initial implementation period will also reduce the number and length of hearings because the parties will be able to establish consistent expectations through collaboration rather than litigation.¹⁰ For these reasons, the Regional Entities should have flexibility for a minimum of six months in imposing penalties on all Registered Entities, rather than merely those without experience with the existing standards. In addition, this discretion should continue beyond six months after the effective date, if necessary, for those Reliability Standards requiring modification, until the modifications have become effective.

WECC is not suggesting that reliability be compromised in any way. Instead, it respectfully submits that the above considerations will lead more quickly to consistent and comprehensive enforcement.

¹⁰ Litigation not only delays enforcement and strains the resources of Registered and Regional Entities alike, it also could result in the invalidation of an enforcement standard to the extent it were found to be inconsistent with Section 215. It might be claimed, for instance, that a Reliability Standard with missing or ambiguous terms is not consistent with the statutory definition of a Reliability Standard or with the requirements of fair and impartial procedures and due process in the exercise of the Regional Entities' responsibilities. 16 U.S. C. § 824o(a)(3), (c)(2).

III. It Is Important That the Commission Collaborate With Canadian and Mexican Authorities in the Approval, Interpretation and Enforcement of Reliability Standards

In the NOPR, the Commission recognized the importance of international coordination. It stated, however, that the necessary coordination currently occurs through the existing means for coordination and its requirement that NERC identify actual steps to coordinate standards approval and remand processes with international regulatory authorities. NOPR ¶¶ 94-95.

In addition to the Commission's Reliability Standards, Canadian and Mexican authorities will be approving and enforcing reliability standards within the Western Interconnection. Conflicts could arise if standards were approved in one jurisdiction but not another, or were interpreted differently. It is therefore extremely important that all three authorities enforce their respective standards within WECC's single synchronized system in a manner that avoids conflicting obligations. For this additional reason, WECC suggests that the Commission grant WECC substantial discretion to focus on education and facilitation of compliance with NERC standards as it also seeks to promote consistent enforcement on both sides of both borders.

IV. Other Issues

There are 28 Reliability Standards that apply to Regional Reliability Organizations ("RRO's"). NOPR ¶ 54. The Commission requested comment on whether there is any need to maintain an RRO role for statutory functions that is separate from Regional Entity role. NOPR ¶ 56. It further proposed to require modification to the Delegation Agreements to assure that Regional Entities assume RRO statutory functions. NOPR ¶ 57. Although WECC is addressing issues concerning the scope of statutory

functions in another proceeding,¹¹ it agrees with the Commission that there is no need for a separate RRO role with respect to statutory functions¹² and that the Regional Entity should be responsible for performing all statutory functions. WECC also supports the Commission's decision to require modification of the Delegation Agreements to accomplish this result. The Commission needs to recognize, however, that the requirements enforced against Regional Entities through the Delegation Agreement mechanism are Section 215 functions and should be funded under the mandatory Section 215 fee. *See* Request of the Western Electricity Coordinating Council, et al. for Rehearing (Nov. 24, 2006), *North American Electric Reliability Corp.*, Docket No. RR06-3-000.

In response to concerns by several entities that changes to the Functional Model should be developed in an open stakeholder process, the Commission indicated that it would require review of any future modifications that affect the applicability of Reliability Standards. NOPR ¶ 48. WECC respectfully submits that in addition to Commission review, any modifications to the Functional Model should be developed in an open stakeholder process. The Regional Entities are most familiar with the Registered Entities in their area, most familiar with the relationship between Registered Entity functions and the applicable Reliability Standards, and therefore most able to provide relevant information concerning the need for changes to the Functional Model.

The Commission also noted that the scope of the NERC definition of bulk power facilities is narrower than the scope of the statutory definition, that the statutory definition should be used in the long-run, but that continuation of NERC's definition for now would

¹¹ *North American Electric Reliability Council, et al.*, Docket No. RR06-3-000.

¹² WECC also believes, however, that there is a continuing RRO role with respect to certain non-statutory functions.

avoid unintended substantive changes to the standards. NOPR ¶¶ 60-70. It further stated that the necessary changes could be effected through the standards development process, as proposed by NERC. NOPR ¶¶ 65, 68. The Commission requested comment on whether Regional Entities should play a role in either defining facilities subject to a standard or determining case-by-case exceptions. NOPR ¶ 71. The Regional Entities should be involved in these processes because they are more familiar with interconnection operating constraints, interaction between subregions and the impact of specific facilities on the system.

CONCLUSION

WECC supports the Commission's proposed actions with respect to the Reliability Standards, but requests that the six-month discretionary enforcement period apply to all Registered Entities and that this discretion continue beyond six months after the effective date, as necessary, for those Reliability Standards requiring modification, until the modifications have become effective. WECC also urges the Commission to coordinate closely with Canada and Mexico in their interpretation, approval and enforcement of reliability standards.

Respectfully submitted this 22nd day of December, 2006.

WESTERN ELECTRICITY
COORDINATING COUNCIL

/s/ Peter H. Zamore
SHEEHEY FURLONG & BEHM P.C.
30 Main Street, P.O. Box 66
Burlington, Vermont 05402
Telephone: (802) 864-9891
Facsimile: (802) 864-6815
E-mail: pzamore@sheeheyvt.com

Counsel for Western Electricity
Coordinating Council

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with 18 C.F.R. § 385.2010.

Dated at Burlington, this 22nd day of December, 2006.

/s/ Peter H. Zamore
SHEEHEY FURLONG & BEHM P.C.
30 Main Street, P.O. Box 66
Burlington, Vermont 05402
Telephone: (802) 864-9891
Facsimile: (802) 864-6815
E-mail: pzamore@sheeheyvt.com