

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

Mandatory Reliability Standards for the Bulk-Power System)	Docket No. RM06-16-000
)	
Facilities Design, Connections and Maintenance Reliability Standards)	Docket No. RM07-3-000
)	
)	

**COMMENTS OF THE
NEW YORK STATE RELIABILITY COUNCIL LLC**

Pursuant to the Federal Energy Regulatory Commission's ("Commission" or "FERC") November 27, 2006 "Notice Granting in Part Motions for Extension of Time to File Comments and Notice Announcing Rulemaking Proceeding" ("Notice Extending Comment Date") in the above-captioned proceeding and Rules 211, 212 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. §§ 385.211, 385.212 and 385.214), the New York State Reliability Council LLC ("NYSRC") hereby submits these comments.

I. BACKGROUND

On October 20, 2006, the Commission issued a Notice of Proposed Rulemaking on Mandatory Reliability Standards for the Bulk-Power System.¹ In the NOPR, the Commission, among other things, proposed to approve 83 of 107 proposed Reliability Standards, including six of the eight regional differences and a Glossary of Terms Used in Reliability Standards. On November 15, 2006, the North American Electric Reliability Council, on behalf of its affiliate,

¹ *Mandatory Reliability Standards for the Bulk-Power System*, Notice of Proposed Rulemaking, IV FERC Stats. & Regs. ¶ 32,608 (2006) ("NOPR").

the North American Electric Reliability Corporation ("NERC Corporation," and collectively, "NERC"), filed 20 revised proposed Reliability Standards and three new proposed Reliability Standards for Commission approval. On November 27, 2006, the Commission established January 3, 2007 as the due date for submitting comments on the NOPR as well as the 20 revised proposed Reliability Standards as part of the NOPR proceeding.

The NYSRC

The NYSRC was approved by the Commission in 1999 as part of the comprehensive restructuring of the competitive wholesale electricity market in New York State.² Under the restructuring, the New York Power Pool ("NYPP") was replaced by the New York Independent System Operator, Inc. ("NYISO") as the entity with the primary responsibility for the reliable operation of the State's bulk power system. The NYISO also assumed responsibility for administration of the newly established competitive wholesale electricity markets.

The NYSRC was established to promote and preserve the reliability of the New York State power system by developing, maintaining, and, from time to time, updating the reliability rules ("Reliability Rules") that govern the NYISO's operation of the State's bulk power system. The NYSRC develops Reliability Rules in accordance with standards, criteria and regulations of NERC, the Northeast Power Coordinating Council ("NPCC"), the Commission, the New York Public Service Commission ("PSC") and the Nuclear Regulatory Commission.³ Under the recently enacted legislation, the NYSRC's Reliability Rules would conform to Electric Reliability Organization ("ERO") Reliability Standards approved by the Commission, as

² *Cent. Hudson Gas & Elec. Corp.*, 83 FERC ¶ 61,352 (1998), *order on reh'g*, 87 FERC ¶ 61,135 (1999).

³ Agreement Between The New York System Operator And The New York State Reliability Council, section 4.1, available at www.nyiso.com/public/documents/regulatory/agreements.jsp ("NYISO/NYSRC Agreement").

required by the NYISO/NYSRC Agreement, and may be more specific or more stringent when necessary to meet the requirements of the State's bulk power system. The Commission-approved NYISO/NYSRC Agreement provides that the NYISO and all entities engaged in the transactions on the New York State power system must comply with the Reliability Rules adopted by the NYSRC.⁴ The PSC has adopted the NYSRC Reliability Rules in their entirety as state regulations.

While the NYSRC Reliability Rules must be consistent with NERC and NPCC reliability standards (and with ERO Reliability Standards when approved by the Commission), they may be more specific or more stringent to meet the special requirements of the State's bulk power system. These special requirements include the specific electric system characteristics and demographics of New York State, the complexities related to the maintenance of reliable transmission in New York State given the configuration of the State's bulk power system, and the potential consequences that can result from power interruptions in New York City and Long Island.

⁴ *Id.* §§ 2.1, 3.1.

II. COMMENTS

Bulk-Power System v. Bulk Electric System

The NYSRC strongly supports the Commission's proposal to accept the definition of bulk electric system set forth in the Glossary of Terms Used in Reliability Standards for the initial approval of the proposed Reliability Standards. NOPR at P 68.

The NYSRC supports the application of ERO Reliability Standards to all bulk power system facilities that impact the reliability of the bulk power system. The NYSRC uses a functional reliability impact approach for defining the facilities that are subject to NYSRC Reliability Rules. In accordance with this approach, the NYISO has developed a list of bulk-power system facilities to which NPCC and NYSRC reliability standards apply. The NYSRC approach, which is consistent with the approach used by the NPCC, is set forth in Section 5 of the Introduction to the NYSRC Reliability Rules Manual:⁵

5. Maintaining the Reliability of the NYS Bulk Power System

The Reliability Rules in this document focus on that portion of the *NYS Power System* which constitutes the *NYS Bulk Power System*. Maintaining the reliability of the *NYS Bulk Power System* provides protection for the entire *NYCA* system from widespread and cascading outages. Therefore, the *reliability* of the *NYS Power System* is dependent on maintaining *NYS Bulk Power System reliability* through the Reliability Rules.

NPCC defines the bulk power system as "the interconnected electrical systems within northeastern North America comprising *generation* and transmission facilities on which *faults* or *disturbances* can have a *significant adverse impact* outside of the local area". The *NYS Bulk Power System* is "the portion of the

⁵ NYSRC Reliability Rules For Planning And Operating the New York State Power System, Version 17 (Aug. 11, 2006), at 7-8, available at <http://www.nysrc.org/pdf/NYSRCReliabilityRulesComplianceMonitoring/RRManuaRev2Ver17.pdf> ("NYSRC Reliability Rules Manual").

bulk power system within the *NYCA*, generally comprising generating units 300 MW and larger, and generally comprising transmission facilities 230 kV and above. However, smaller generating units and lower voltage transmission facilities on which *faults* and *disturbances* can have a *significant adverse impact* outside of the local area are also part of the *NYS Bulk Power System*". The application of the *NYS Bulk Power System* definition in the *NYCA* is consistent with similar NPCC and NERC bulk power system definitions. The *NYISO* shall develop, maintain, and keep current a list of *NYS Bulk Power System* facilities in its annual *NYISO "Load and Capacity Data Report"*.

Id. (italics in original).

The term "significant adverse impact" used to determine the applicability of NYSRC

Reliability Rules is defined in the NYSRC Reliability Rules Manual glossary as follows:

Significant Adverse Impact - With due regard for the maximum operating capability of the affected systems, on[e] or more of the following conditions arising from faults or disturbances, shall be deemed as having significant adverse impact.

- a. system instability;
- b. unacceptable system dynamic response or equipment tripping;
- c. voltage levels in violation of applicable emergency limits;
- d. loading on transmission facilities in violation of applicable emergency limits;
- e. unacceptable loss of load.

Id. at 88-89.

The NYSRC functional reliability impact approach provides protection from widespread and cascading outages. This approach is consistent with the statutory definition of "reliable operation" set forth in Section 215(a)(4) of the Federal Power Act ("FPA"):⁶

The term "reliable operation" means operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled

⁶ Energy Policy Act of 2005, Pub. L. No 109-58, Title XII, Subtitle A, 119 Stat. 594, 941 (2005), to be codified at 16 U.S.C. § 824o(a)(4).

separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements.

The NYSRC strongly recommends that the application of ERO standards be determined by a functional reliability impact approach. Under the current NERC definition of bulk electric system, NPCC has used a functional reliability impact approach to determine the bulk-power system facilities to which NERC standards should apply. The functional reliability impact approach identifies those facilities that materially impact the reliable operation of the bulk power system, while recognizing that some facilities have little impact of bulk power system reliability. It is important that reliability compliance and enforcement efforts and resources be directed at facilities that have a meaningful impact on bulk-power system reliability.

The Commission noted concerns expressed in the Staff Preliminary Assessment⁷ with the possible creation of reliability gaps and inconsistent application of ERO standards under NERC's bulk electric system definition. NOPR at P 64. Those concerns, however, should be addressed by the ERO through its Reliability Standards development process. An abrupt change from the current method for determining the applicability of Bulk-Power System standards, without careful consideration, would create confusion and uncertainty with respect to the application of the ERO Reliability Standards and would undermine the effective implementation of mandatory reliability standards for the summer of 2007.

Within the ERO Reliability Standards development process, the NYSRC will support the continued use of a functional reliability impact approach to determine the application of ERO Reliability Standards, as the most effective way to ensure the reliability of the Bulk-Power

⁷ *FERC Staff Preliminary Assessment of the North American Electric Reliability Council's Proposed Mandatory Reliability Standards*, Docket No. RM06-16-000 (May 11, 2006) ("Staff Preliminary Assessment").

System. The NYSRC also will support the continued involvement of Regional Entities ("REs") in determining the appropriate application of the Reliability Standards to Bulk-Power System facilities because of their special knowledge and expertise regarding the Bulk-Power Systems within their regions.

Approval of Reliability Standards with Direction for Modification Pursuant to Section 215(d)(5)

The NYSRC supports the Commission's proposal to approve as mandatory and enforceable a proposed Reliability Standard that requires improvements, and to direct the ERO to submit a modification to address specific issues or concerns identified by the Commission pursuant to Section 215(d)(5) of the FPA. NOPR at PP 79, 80.

The NYSRC requests, however, that the Commission clarify that such modifications are to be developed by the ERO through its Reliability Standards development process. The responsibility for the development to Reliability Standards and modifications to Reliability Standards is assigned to the ERO under Section 215(d)(1) of the FPA.⁸ The Commission's regulations contain the following direction of the ERO with respect to the filing of each Reliability Standard or modification to a Reliability Standard:

The filing shall include a concise statement of the basis and purpose of the proposed Reliability Standard, either a summary of the Reliability Standard development proceedings conducted by the Electric Reliability Organization or a summary of the Reliability Standard development proceedings conducted by a Regional Entity together with a summary of the Reliability Standard review proceedings of the Electric Reliability Organization, and a demonstration that the proposed Reliability

⁸ 16 U.S.C. § 824o(d)(1).

Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.⁹

It is important that the modifications directed by the Commission be developed under the ERO's Reliability Standards development process, as required by the Commission's regulations, to ensure that the views and expertise of interested stakeholders are considered.

Trial Period for Enforcement of Mandatory Standards

In paragraphs 90 to 93 of the NOPR, the Commission discusses NERC's proposed six month "notice period" during which the ERO would determine financial penalties and provide notice of the penalties to violating entities, but would not collect any penalties. The Commission expressed its concern that a trial period may interfere with mandatory and enforceable Reliability Standards being in effect by next summer.

The Commission proposed to eliminate a formal trial period, noting that entities that have complied with NERC's standards on a voluntary basis should be familiar with the proposed mandatory Reliability Standards, what is required for compliance, and that an extensive trial period is unnecessary for such entities. With respect to entities that have not historically participated in the voluntary system and may not be familiar with the proposed Reliability Standards and what is required for compliance, the Commission proposes that the ERO and REs use their enforcement discretion in imposing penalties on such entities for the first six months that the Reliability Standards are in effect.

The NYSRC suggests that the exercise of discretion by the ERO and REs with respect to the imposition of penalties during the first six months should not be limited to entities that did not participate in the voluntary NERC reliability standards process. Even those entities that are

⁹ 18 C.F.R. § 39.5(a).

familiar with the NERC standards are not familiar with the newly developed ERO enforcement procedures. During the first six months, the newly established ERO enforcement procedures should be field tested to identify and correct any flaws, and to allow affected parties to become familiar with the ERO's compliance requirements.

In addition, there are a number of Reliability Standards that are proposed to be made mandatory and enforceable despite significant issues identified by the Commission which will be addressed through subsequent modifications. These issues include ambiguous and unclear requirements and missing measurements and compliance elements. The need for modifications in many of the approved Reliability Standards also provides a sufficient basis for the ERO and REs to exercise their enforcement discretion during the first six months.

It also should be noted that under FPA § 215(e)(3), the Commission, on its own motion or upon complaint, may order compliance with a Reliability Standard and may impose a penalty against a user, owner or operator of the Bulk-Power System.¹⁰ All of the reasons that justify the exercise of enforcement discretion by the ERO and REs in the first six months after the Reliability Standards become effective, also justify the similar exercise of enforcement discretion by the Commission. The NYSRC recommends, therefore, that the Commission indicate that in exercising its enforcement discretion during the first six months after the Reliability Standards take effect, it will take into consideration the lack of familiarity with the newly established ERO enforcement procedures and the weaknesses that exist in the initial Reliability Standards, including ambiguous and unclear requirements and missing measurements and compliance elements.

¹⁰ 16 U.S.C. § 824o(e)(3).

Technical Adequacy - Lowest Common Denominator Approach

In paragraph 113 of the NOPR, the Commission notes that in the Staff Preliminary Assessment staff warned that a "lowest common denominator" approach is unacceptable if it is insufficient to ensure system reliability. The Commission states that it is cautious about drawing any general conclusions about technical adequacy and that it considers this a matter that can only be addressed on a standard-by-standard basis.

In its comments on the Staff Preliminary Assessment, the NYSRC informed the Commission that it shares staff's concerns regarding the use of a "lowest common denominator" approach in the development of ERO standards.¹¹ The NYSRC continues to have these concerns. In commenting on pending ERO standards that the NYSRC believes could weaken existing standards, the NERC drafting team has responded that a region is free to develop more stringent standards. However, the ability of an RE to propose more stringent standards to meet the reliability needs of that region does not justify the weakening of national ERO standards by use of a "lowest common denominator" approach in order to achieve greater support for a proposed standard. The 2003 blackout demonstrated that lower reliability standards or non-compliance in one region can adversely affect the reliability in other regions, even if those regions have more stringent standards and comply with those more stringent standards.

The NYSRC agrees with the Commission that this concern can be addressed only on a standard-by-standard basis. The NYSRC recommends, however, that the Commission reaffirm that it and its staff will carefully review subsequent proposed ERO standards to ensure that the

¹¹ Comments of the New York State Reliability Council, Docket No. RM06-16-000 (June 26, 2006), at 6-7 ("NYSRC Comments on Staff Preliminary Assessment").

standards are technically adequate and do not weaken the current level of reliability as a result of a "lowest common denominator" approach.

Treatment of Revised Proposed Reliability Standards

On November 15, 2006, NERC filed 20 revised proposed Reliability Standards and three new proposed Reliability Standards for Commission approval and requested that the 20 revised standards be included as part of the NOPR. On November 27, 2006 the Commission issued a notice stating that it will address the 20 Reliability Standards as part of this proceeding.

The 20 revised standards have purportedly addressed missing measures and compliance elements that were identified in the Staff Preliminary Assessment. However, in its rush to submit the revised standards to the Commission, NERC submitted these standards to the ballot body as a group, rather than individually. The group treatment of the revised standards prevented stakeholders from providing the careful attention that each revised standard deserves. Because we were forced to vote on the revised standards as a group, the NYSRC voted against approval of these standards.

Furthermore, the NYSRC is concerned that for certain standards in this group the requirements are not properly written so as to develop a meaningful compliance metric form. Unfortunately, the drafting team did not have the latitude to enhance or modify the requirements in any way. We believe that, as a result, requirements for a number of these standards are flawed. Accordingly, certain standards should be fully re-drafted and the individual requirements of each reviewed and revised as necessary to ensure that adequate compliance elements and measures are developed for each standard.

While the prompt approval of the revised standards may be justified in order to have them in place for the upcoming summer, there is not a sufficient basis for the Commission to

conclude that the weaknesses identified in these standards have been adequately addressed. The NYSRC respectfully recommends that the Commission approve the 20 revised standards and direct the ERO to more carefully address the weaknesses identified in those standards and to submit each revised standard to a ballot body for separate consideration.

III. CONCLUSION

For the reasons stated above, the NYSRC urges the Commission to take action consistent with the comments provided herein.

Respectfully submitted,

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