



FERC Technical Conference
Priorities for Addressing Risks to the Reliability of the Bulk-Power System
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Opening Comments of
Dr. John A. Anderson
President & CEO
Electricity Consumers Resource Council
Washington DC

I am John Anderson, President and CEO of the Electricity Consumers Resource Council (ELCON). ELCON is the national association of large industrial users of electricity. ELCON appreciates the invitation to appear before the Commission to share our views on priorities for addressing risks to the reliability of the bulk-power system.

At the outset, I point out that ELCON member companies approach bulk electricity reliability from at least three different positions: (1) end users, (2) on-site or behind-the-meter generators, and (3) demand responders. I emphasize that a reliable supply of electricity is essential to large industrial electricity consumers. For these reasons, ELCON was active in drafting and supporting the reliability language that eventually became Section 215 of the Federal Power Act. ELCON staff and members serve on many NERC committees of the North American Electric Reliability Corporation (NERC) and devote a lot of time and resources on NERC activities. Our participation at NERC dates back to 1997 and has continued unabated with FERC's designation of the organization as the Electric Reliability Organization (ERO).

ELCON has been, and continues to be, a strong advocate for the creation and operation of an ERO that is fair, balanced, open and inclusive – as required by the legislation. We also believe that a stakeholder-driven ERO has the greatest potential to develop processes and procedures to assure adequate reliability of the grid while being

sensitive to the trade-offs between increased reliability and consumer costs. We believe strongly that NERC and its stakeholders are making very significant progress developing procedures and standards to assure the reliability of the interconnected electric system. However, we also recognize that more can, and should, be done.

In my remarks I identify three on-going efforts at NERC to prioritize reliability risks and therefore streamline the regulatory burden imposed by FPA section 215. The first two are stakeholder-driven initiatives on a project prioritization tool and risk-based reliability compliance. The third initiative is the efforts of NERC's CEO Gerry Cauley to define the organization's high-priority issues. ELCON strongly supports all of these efforts. But in an example of "one step forward, two steps back," I also identify a recent proposal by NERC staff to needlessly burden end-use customers with compliance requirements that undermine the spirit of these positive initiatives.

ELCON believes that NERC's accomplishments to a large extent have been commendable. NERC developed and in 2007 FERC approved 83 mandatory and enforceable reliability standards. NERC has proceeded rapidly to develop compliance and enforcement procedures to assure the implementation of these reliability standards. It is my understanding that the number of Notices of Penalty (NOP) that NERC has filed at FERC increased from 40 in 2008 to 78 in 2009 to 177 in 2010 clearly indicating an aggressive implementation process. A positive sign is the compliance violation trend seems to be on a downward slide with 100 violations received in December 2010 compared to 148 violations received in November 2010. But of perhaps more importance, there have been no major BES outages since 2003.

However, all is not well in the reliability space. That brings me to respond to the first question asked of this panel.

Question #1: What are the most significant risks to the reliability of the Bulk-Power System? Do the current Reliability Standards effectively address these risks? If not, what processes should be used by industry, the North American Electric Reliability Corp. (NERC) and the Commission to address these risks?

It is not clear what “are the most significant risks to the reliability of the Bulk-Power System.” Various actions by FERC and NERC make us question whether the overarching goal is maintaining reliability or being obsessed with compliance for its own sake. Often it seems that FERC is so overly concerned about another blackout that it is insensitive to the ultimate compliance burden and its cost, and whether compliance with each and every requirement in the standards really improves reliability. As an example, it appears that FERC has assigned some projects to NERC with specific deadlines that have very low reliability impacts.¹ In such cases, NERC is required to spend resources in ways that may not increase reliability. However, I am pleased to note that FERC recently has demonstrated a willingness to be more responsive to stakeholder needs.²

To make matters worse, NERC as an organization, increasingly seems willing to trade a fair, balanced, open and inclusive approach for strict adherence to FERC rules and other mandates.

Let me try to explain. Many ELCON members appropriately are subject to at least some of NERC’s standards. However, I also emphasize that these companies have every economic incentive to implement cost-effective reliability operations and procedures in a manner that will minimize reliability problems as a stable and reliability supply of electricity is critical for them to manufacture their goods and services. Yet, these companies inform me that they are overwhelmed with demands for documentation and other requirements simply to show full compliance with each and

¹ In its March 18, 2010 Order on TPL Table 1 footnote b regarding the planned or controlled interruption of electric supply where a single contingency occurs on a transmission system gave NERC until June 30, 2010 to file a revised footnote that applies to four separate standards. NERC requested more time and FERC did extend the due date, but it still caused NERC to rearrange its workload. NERC was scrambling to meet the deadline when FERC issued an Order on June 11, 2011 granting an extension of time to file the revised footnote - to March 31, 2011. Additionally, NERC is required to develop a requirement for FAC-008 to address a directive that industry believes is not necessary for reliability. FERC advised NERC that it will have 90 days to produce this revised standard from the date they issued a Final Order on NERC’s Dec 23, 2010 compliance filing (the filing to change the ROP). This represents a requirement where the reliability benefit is very hard to see - where NERC is attempting to identify a theoretical limit of the most limiting element in a facility that is no longer limiting.

² As a specific example, FERC recently asked NERC to provide information on how long it would take to deliver a Frequency Response standard.

every requirement in the applicable NERC standards. Often they find that they are assessed rather substantial penalties for “documentation only” violations when the work was actually being performed but perhaps not spelled out clearly enough for a specific NERC auditor in the entity’s procedures documents.³

Obviously, serious violations should come with appropriate penalties. However, all too often it seems that “document only” violations are treated equal to high-risk impact findings. I hope that both FERC and NERC understand and recognize this problem.

On a positive note, the NERC Standards Committee has recognized that all standards are not created equal and has initiated a process to develop a prioritization process. The project prioritization tool assigns a base weight to each project based on that project’s potential impact on reliability, and then adds more weight to those projects that have other factors that may warrant giving that project a higher priority. The tool provides (hopefully) a systematic method of assigning priorities to each standards project, by scoring each project across ten ranking criteria. One factor adds up to 100 points for projects that are subject to a time-constrained Commission directive. Speaking frankly, the tool highlights the fact that completing some time-constrained FERC directives may not provide the same positive impact on reliability as some other pending NERC standards projects. This tool has been posted for industry comments, on both the proposed criteria and the specific scores assigned to each standards project. This tool is a significant step in the right direction in NERC’s efforts to decide which projects are most important to reliability – and to focus NERC and industry time and resources on those projects first, even if it means deferring work on other lower priority projects.

NERC also has proposed and is working hard to implement a risk-based approach to reliability standards, compliance and enforcement. The intent is to both (1)

³ For example, PRC-005 addresses the maintenance and testing of the Protection System. However, the registered entity’s procedure documents may not have specified certain components of the Protection System as the auditors believe necessary.

reduce the number of requirements by eliminating requirements that are primarily administrative and do not contribute directly to reliability as well as (2) reduce or eliminate the lower level facilitating requirements that are already measured through other performance-based requirements.

Additionally, the NERC Planning Committee has recently issued a draft “Risk-Based Reliability Compliance White Paper” for discussion. The paper sets forth 18 specific recommendations to NERC and Regional Entities on how to incorporate a risk-based approach. The fundamental purpose of this risk-based reliability paper is to allow registered entities to focus more on reliability and less on administrative aspects of compliance since most violations have little or no impact on the BES. The process recognizes that the degree of monitoring and enforcement should be commensurate to the degree of impact the standard and violation has on the BES.

And finally, on January 7, NERC’s President issued his Top Priority Issues for Bulk Power System Reliability. The goal of this set of high priority issues is to develop a list to focus work in the one to three year horizon on those technical areas most likely to have a positive impact on bulk power system reliability. This appears to be another positive step for the ERO, together with the Standards Committee’s Project Prioritization Tool and the Planning Committee’s proposal on Risk-Based Reliability Compliance. In my judgment, these activities at least begin a process for NERC and FERC to respond to President Obama’s Executive Order 13563 (“Improving Regulation and Regulatory Review”).

ELCON supports these efforts and urges the Commission to also do so. However, we emphasize that any approach that does not result in a reduction of requirements or that results in all requirements being ranked as high risk will not change the status quo. We must not allow the “perfect to be the enemy of the good.”

While these positive steps are commendable, there are also important concerns. This brings me to the second question asked of this panel.

Question #2: What are the most critical reliability issues and/or standards development initiatives that need to be addressed in 2011? What are the biggest challenges to addressing these issues and/or completing these initiatives in an effective and timely manner? What next steps are appropriate to timely and effectively address the priorities discussed?

A critical reliability issue emerged with FERC's issuance of a Notice of Proposed Rulemaking (NOPR) on March 18, 2010 requiring NERC to revise its definition of the term "bulk electric system" (BES). The stated reason was to eliminate the regional discretion in the current definition that allowed one region (NPCC) to exempt from registration certain "users, owners and operators" of the BES not exempted in other regions. In fact, FERC stated that it did not believe that the proposal would have any immediate impact on entities in any Regional Entity other than NPCC. I believe that the NOPR opened up a can of worms and may have introduced more problems than the NOPR intend to solve.

The NOPR is confusing in several ways. For example, it abandoned the existing 100 kV **general** threshold and adopted an arbitrary **bright-line** threshold for inclusion of transmission elements and facilities subject to compliance. Further, the NOPR was unclear on the status of radial lines. In our view, the proposed changes in the NOPR would require significant increases in the number of registered entities without demonstrated increases to reliability. Instead of streamlining or clarifying regulation, it may unnecessarily expand the burden and cost of compliance without any tangible benefits.

FERC issued its Final Rule on November 18, 2010 adopting many of the NOPR's proposed provisions. FERC gave NERC one year to develop a new standard defining the BES. FERC did state that (1) the new definition of the BES is not intended to significantly increase the scope of the present definition as it applies to generation, transmission and interconnection facilities, (2) FERC does not seek to modify the definition of radial transmission facilities, and (3) NERC should use its Standards Development Process to develop the new definition of BES.

The process to comply with the Final Rule began when a group of Regional Entities drafted a Standards Authorization Request (SAR). NERC asked for informal comments on a preliminary draft BES definition and a “Concept Document,” also prepared by representatives of Regional Entities. Subsequently, NERC staff submitted comments calling for:

- Elimination of the categorical exemption to behind-the-meter generation if the net capacity provided to the BES does not exceed the criteria for BES generation (> 20 MVA for an individual generating unit and > 75 MVA for a generating plant/facility)
- Defining BES generation to include any demand response relied on to provide Contingency Reserves to its BA
- New, more restrictive criteria for granting exemptions of radial transmission facilities from the BES

At least from our view, the NERC staff comments would (1) significantly increase the number of Registered Entities without any assurance that there would be an increase in reliability, (2) change the burden of proof from the Regional Entities and NERC to the Registered Entities, and (3) suggest that end-use customers are responsible to assure BES reliability rather than recognize that the BES and the utility owners and operators of BES Elements and Facilities exist to serve end-use customers. More important, there is, at least in my mind, a bizarre contradiction underlying NERC staff’s comments. In the spirit of let no good deed go unpunished, NERC staff is defining resources that are good for reliability as unwarranted risks to reliability that need to be controlled by heavy-handed regulation.

One result of NERC staff’s proposals would be to make customers less willing to voluntarily help maintain reliability in times of emergencies if it means becoming subject to burdensome NERC regulations. ***It will chill industrial participation in demand response.*** It will also discourage customer ownership of generation and interconnection assets, which may lead to further concentration of such assets in the

industry and a commensurate increase in market power. None of these outcomes is good for reliability.

When efforts to maintain BES reliability are perceived to be dependent on the actions of end-use customers, it is clear that such efforts intend to target the “electric system,” and not the “bulk electric system.”

Certainly, these staff comments do not represent balanced, open and inclusive views. They make us wonder: Is the BES in existence to serve customers or do the BES and reliability standards exist for their own sake? In other words, who serves whom?

I certainly recognize that the staff comments will be considered by the Standards Drafting Team just like any other comments. However, both the process used in their development as well as their content give me concern.

Question #3: How do NERC and reliability standards development teams incorporate new priorities and/or Commission directives regarding reliability standards into their work plans?

NERC stakeholders are very sensitive to both new priorities and Commission directives. The NERC Standards Committee continually strives to balance stakeholder needs with new priorities and Commission directives. An example is the trade-off between increased reliability and consumer costs – an issue that cannot be emphasized enough.

We must recognize that we never will have – nor should we try to have – 100% reliability. The costs would be too great. And at the outset I recognize, and understand, that those folks who will be the first to be called before Congressional committees to face the “gavel” naturally will be more willing to require costs that they do not have to pay in exchange for procedures that they believe will lead to greater reliability. However, ELCON members who operate in very competitive world-wide markets, simply cannot pay unlimited amounts for activities that provide questionable reliability benefits – at best.

That is why we so strongly supported the stakeholder-driven standards development process contained in § 215. This process allows stakeholders throughout North America to express their preferences and their willingness to pay for increased “9’s.”

Question #4: How do NERC’s non-standards processes such as the Industry Alerts, Recommendations, Event Analysis, Essential Actions, Lessons Learned and Compliance Application Notices interact with the reliability standards? To what extent do these processes aid in identifying important reliability matters that are not addressed under the existing Reliability Standards?

Industry Alerts, Recommendations, Event Analyses, Essential Actions, Lessons Learned and Compliance Application Notices are all tremendous tools intended to assist registered entities in their efforts to comply with Reliability Standards. They are examples of how NERC as an organization and the registered entities are trying to work together to assure a reliable BES. However, too much of a good thing may not actually be that good.

As an example, in a two-month period in 2010, stakeholders were issued four separate and substantial NERC Alerts.⁴ This placed a very hard reporting condition on registered entities with numerous facilities. While the alerts deal with important subject matter, the timing and use of the Alert System needs to be carefully reviewed with compliance clearly in mind. Information overload may be counter productive.

Conclusion

ELCON strongly supports efforts to assure an adequate level of reliability at reasonable costs. To accomplish this objective, ELCON recommends that the focus of both FERC and NERC be on reliability risk rather than on compliance risk. A practical

⁴ Specifically, four NERC alerts were issued in September/October 2010 time frame. Some of these require numerous hours of resources and dollars to complete including: (1) AURORA Mitigation - Protection and Control Engineering Practices and Electronic and Physical Security Mitigation Measures, (2) Consideration of Actual Field Conditions in Determination of Facility Ratings, (3) Exploit Active for - Malware Targeting SCADA Systems (Update 3), and (4) Recommendation to Industry Generator Governor Information and Settings

distinction should be made between violations and deficiencies. I believe that the old “80 / 20” rule applies in this case. I urge both FERC and NERC to focus on the 20% of the problems that have the greatest impact on reliability.

Efforts to expand the reach of reliability standards and compliance requirements behind-the meter is at odds with the stated objective of this conference: That is to identify priorities for addressing risks to the reliability of the bulk-power system.

While NERC’s stakeholder driven processes seem to be attempting to meet the challenge, NERC staff seems to see a need to sweep into the Compliance Registry any and all entities that might have some remote impact on reliability—and not just those that would have a “material” impact on reliability worthy of newspaper headlines.

In closing, I urge FERC to:

- (1) Require that NERC move expeditiously to adopt and use a project prioritization tool and develop and implement a risk-based approach to standards and compliance, and
- (2) Understand that over-reaching will bring unintended consequences. Customers may, in critical times, find that the costs of compliance exceed the benefits that they receive. To that extent, they may have to decide to restrict their generation and/or demand response to the detriment of the BES. That is not a good outcome for anyone.

Thank you for the opportunity to appear before you today. I look forward to your questions.