

State of California

Public Utilities Commission
San Francisco

MEMORANDUM

Date : June 9, 2006

**To : The Commission
(Meeting of June 15, 2006)**

**From : Laurence G. Chaset, Legal Division
Keith White, Energy Division
Mark Ziering, CPSD**

**Subject : FERC Docket No. RM06-16-000 -- Mandatory Reliability Standards
for the Bulk-Power System: Staff Seeks Authority to File Comments in
Response to FERC Staff's Preliminary Assessment of NERC's
Proposed Mandatory Standards**

INTRODUCTION

On April 4, 2006, the North American Electric Reliability Council ("NERC") filed with the Federal Energy Regulatory Commission ("FERC") 102 proposed Reliability Standards for FERC approval, subject to its application for certification as the Electric Reliability Organization pursuant to section 215 of the Federal Power Act ("FPA"). On May 11, 2006, FERC released a staff preliminary assessment of the proposed Reliability Standards. FERC will issue a Notice of Proposed Rulemaking ("NOPR") with its proposals on each Reliability Standard after receiving comments on the FERC Staff Preliminary Assessment. NERC and other interested persons may file comments on the FERC Staff Preliminary Assessment by June 26, 2006.

Staff seeks the Commission's authorization to file comments in response to this FERC Staff Preliminary Assessment. These comments must be submitted by June 26, 2006. However, because of the time constraints under which we are operating, staff will need further time to fully develop its comments. We are accordingly seeking the

Commission's approval to submit comments that are consistent with the various policy points set forth below.

BACKGROUND

With the passage of the Energy Policy Act of 2005 ("EPAct"), the United States Congress entrusted FERC with the authority to approve and enforce rules to assure the reliability of the nation's bulk-power system. FPA Section 215 (enacted as Section 1211 of the EPAct) requires FERC to issue rules for the certification of an Electric Reliability Organization ("ERO"). The ERO will be responsible for developing and enforcing mandatory Reliability Standards, subject to FERC approval, that provide for an adequate level of reliability of the bulk-power system. The law mandates all users, owners, and operators of the bulk-power system in the United States will be subject to the FERC-approved Reliability Standards, in contrast to the current system of voluntary compliance with industry-developed reliability standards managed by NERC.

In discharging its responsibility to review, approve and enforce mandatory Reliability Standards, FERC is authorized to approve only those proposed standards that meet the criteria detailed by Congress:

The Commission may approve, by rule or order, a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.¹

In considering whether a Reliability Standard meets the statutory criteria, FERC must give "due weight" to "technical expertise" of the ERO or any Regional Entity ("RE") organized on an interconnection-wide basis. The only RE organized on an interconnection-wide basis that is subject to FPA Section 215 is the Western Electricity Coordinating Council ("WECC"), which oversees grid reliability in the Western Interconnection, including California.

On April 4, NERC filed 102 reliability standards with FERC requesting that these standards be approved and subsequently made mandatory. FERC Staff's May 11 Preliminary Assessment, which reviews these standards filed by NERC, is the first step in an open and inclusive process that will allow interested persons to submit comments on whether NERC's proposed mandatory Reliability Standards meet the statutory criteria and will allow FERC to develop an adequate record on which to make the required statutory findings.

¹ FPA Section 215(d)(2).

DISCUSSION

Based on its review to date of FERC Staff's Preliminary Assessment, staff recommends that the Commission should file comments covering the following points:

Mandatory Standards Must Be Enforceable. Like FERC, the CPUC supports the goal of sound and enforceable reliability standards consistent with the statutory requirements of Section 215 of the FPA. However, reliability standards do need to be enforceable if they are going to be mandatory. As FERC staff recognizes, not all of the NERC proposed standards have sufficiently precise or measurable performance criteria as to be enforceable. Accordingly, FERC should not approve any of the currently unenforceable standards proposed by NERC. Moreover, in its review of these proposed standards, FERC should recognize that in some instances, overall system reliability may be preserved or even enhanced when the enforcement of reliability standards is predicated on reasonable regional variation in the details of the standards to be enforced, and on the delegation of the means of enforcement of such standards to REs.

Not All of the Proposed Standards Should Be Mandatory. As it continues its evaluation of NERC's proposed mandatory reliability standards, FERC should recognize that such standards can actually be categorized into three different "buckets": (1) standards that will be mandatory on a national level, with specific enforcement criteria specified at a national level (*e.g.*, the time control standard would mandate that deviations from 60 cycles per second must be corrected over a specified averaging time imposed on a national basis); (2) standards that will be mandatory, in general, on a national level, but for which specific enforcement criteria can be specified at a regional level (*e.g.*, a national mandatory standard could mandate that all transmission overloads must be brought back to normal within 10 minutes, but could specify that the maximum load levels for individual transmission lines would be set by the REs; or, a NERC standard could mandate that all REs will develop methods for clearing congestion on transmission lines, including specification of the general criteria that such congestion clearing methodology would achieve, but the standard could appropriately leave the details of implementation of these criteria to the REs); and (3) standards that would be advisory on a national basis, (*i.e.*, that would be national guidelines) but that could be implemented either on an RE or on a system operator (RTO/ISO or individual utility) basis, but that would not be enforceable by sanctions that would be appealable either to NERC or FERC. An example of such a guideline would be a requirement for planning reserve margins. Clearly, it makes sense to plan for more capacity than is strictly needed to meet operating reserve margins, because some planned-for capacity may never be built. For this reason, the CPUC has adopted a 15% planning reserve margin as a guideline. However, in practice, such guidelines are not enforceable, because the determination of a guideline requires the use of many assumptions about future conditions (*e.g.*, demand

forecasts are heavily dependent on economic conditions, which are in turn subject to considerable uncertainty).

Deference to Existing WECC Standards. WECC already has a set of measurable standards where straightforward and objective measures of performance and compliance metrics exist and where associated penalties can be imposed. In considering any proposed mandatory standard, NERC should consider retention of corresponding WECC standards, under the deference standards promulgated in the EPACT. These standards are already in place; absent a clear showing that the standards are inadequate, NERC should adopt them without change. However, if FERC decides to consider alternative standards applicable within the WECC region, FERC should carefully examine the technical difference between WECC and other regions. In this regard, FERC will need to explicitly distinguish between those reliability standards that must necessarily be uniform throughout the country and those for which regional variation is a reasonable and appropriate strategy for assuring the reliability of the grid, in recognition of the fact that the electric systems in different parts of the country do vary. Also, as these distinctions are being made, FERC and NERC should not lose sight of the provision of Section 215(d)(3) of the FPA, which states, in effect, that the NERC and FERC shall rebuttably presume the reasonableness of a reliability standard or modification to reliability standard proposed by an RRO organized on an Interconnection-wide basis (*i.e.*, WECC) to be reasonable.

In Certain Cases, States Must Not be Preempted from Imposing Stricter Requirements. Some of the modifications to the NERC filing proposed by FERC Staff, *e.g.*, those dealing with minimum vegetation clearance requirements for overhead transmission lines, are acceptable as far as they go. However, with regard to this particular standard on minimum vegetation clearance requirements, as well as several others, FERC-approved mandatory standards must not preempt the ability of the states to adopt or impose even more stringent requirements, such as those contained in CPUC General Order 95.

Relationship of Mandatory Reliability Standards to the Commission's Generator Operation and Maintenance Standards. In its General Order 167, the CPUC has adopted a set of generator operation and maintenance standards enforceable against the operators of large independent and IOU-owned power plants. Although it does not specifically address this subject, NERC's ERO application does appear to respect the line between federal and state jurisdiction over power plant operations, maintenance and reliability. Similarly, as it evaluates, and ultimately approves NERC-proposed mandatory reliability standards, FERC should respect this line and should not to take any action that would either blur this line or in any way impinge upon state authority to enforce the kind of rules set forth in CPUC General Order 167.

ACTION REQUESTED:

Legal Division, Energy Division and CPSD request authorization to submit comments on FERC Staff's Preliminary Assessment of NERC's Proposed Mandatory Standards that are consistent with the foregoing discussion. Since comments will not be due for several weeks, staff is still developing its proposed comments. When finalized, staff's comments will elaborate upon the points discussed above in more detail. However, because staff has not completed its review of the FERC Staff's Preliminary Assessment, staff also seeks authorization to comment on additional, related points raised by that document in a manner that is consistent with the policy views articulated above.

Assigned Staff: **Laurence Chaset (LAU, 5-5595); Keith White (KWH, 5-5473); Mark Ziering (MAZ, 3-2233).**