

State of California

Public Utilities Commission
San Francisco

MEMORANDUM

Date : December 8, 2006

**To : The Commission
(Meeting of December 14, 2006)**

**From : Laurence G. Chaset, Legal Division
Keith White, Energy Division
Mihai Cosman, 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's Proposed Approval of NERC's Proposed
Mandatory Standards**

**INTRODUCTIO
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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. NERC subsequently filed with FERC five additional proposed Reliability Standards. On October 20, 2006, FERC proposed a rulemaking to approve 83 of NERC's 107 proposed Reliability Standards. Staff seeks the Commission's authorization to file Comments in response to FERC's proposed approval of these 83 Reliability Standards.

These comments must be submitted by January 3, 2007. 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 EPCRA) 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. NERC subsequently filed five additional proposed standards for FERC approval. FERC Staff’s October 20 Notice of Proposed Rulemaking (“NOPR”) proposes to adopt 83 of the 107 standards proposed by NERC. In its October 20 NOPR, FERC states that although it believes that it is in the public interest to make these Reliability Standards mandatory and enforceable by June 2007, it also finds that much work remains to be done. FERC specifically states its belief that many of these Reliability Standards require significant improvement, and therefore proposes to require NERC to make significant improvements to many of the 83 Reliability Standards that are being proposed for approval as mandatory and enforceable. With respect to the remaining 24 Reliability Standards, FERC proposes that they remain pending until further information is provided.

DISCUSSION

Based on its review to date of FERC’s proposed action to adopt 83 of NERC’s proposed mandatory and enforceable Reliability Standards, staff recommends that the Commission should file comments covering the following points:

¹ Federal Power Act Section 215(d)(2).

- **FERC Appears to be Pushing for National Uniformity in Areas Where Such Uniformity is Unnecessary or Even Counter-productive.** For example, FERC proposes to adopt national definitions of alerts and emergencies. Such definitions should depend on the specific market systems and demand-side contracts in place in each locality. For another example, in California, the ISO declares a Stage II emergency when reserves drop below 5 percent. This allows the ISO to request load reductions from customers who have signed “interruptible” contracts with utilities. If NERC adopts a conflicting definition, it may require changes in existing contracts; it certainly will add to confusion as the new system is implemented, with no clear benefits. Similarly, we may wish to comment on the requirements, metrics, or other aspects of particular standards, especially when these seem impractical or counter-productive in California or the West.
- **FERC is Ignoring the Existing, Enforceable Reliability Standards in the Western Interconnection.** There are 15 existing, enforceable WECC standards that overlap the proposed mandatory Reliability Standards. Five of these WECC standards overlap the 24 fill-in-the-blank NERC-proposed standards that are not included among the 83 standards addressed in FERC’s NOPR. However, these five WECC standards should be adopted when FERC takes final action on the standards proposed for approval in the NOPR, since they are already in place in the West. Also, there are three additional WECC standards, which are already in place but do not have a corresponding NERC reliability standard. These additional three WECC standards should be approved by FERC to be applicable in the Western Interconnection. In the NOPR, FERC states that no standard will take effect until FERC approves it. However, there is no reason to suspend WECC standards already in effect, at least in the interim until FERC can review them. Along similar lines, additional fill-in-the-blank standards to be applicable in the Western Interconnection can and should take effect when approved by WECC, not by FERC. Parties objecting to such new, regional fill-in-the-blank standards will retain the right to appeal them to FERC.
- **The Roles of the Regional Organizations.** The proposed standards should not be directly enforceable on regional organizations, such as WECC. (That is, WECC should not have to pay fines to NERC.) Rather, FERC and NERC may direct those organizations to take certain actions. However, we should object to FERC’s proposal that the proposed Reliability Standards, in their current form, name NERC, not regional entities such as WECC, as the compliance monitor for all standards. This proposal appears to deny the regions any enforcement role.
- **Applicability of the Proposed Standards.** When approved, 83 of the 107 proposed standards will apply to “all entities.” However, it is overbroad to subject

all entities (including generators) to all standards. Rather, each standard should specify the entities to which it applies. On the other hand, some parties have advocated that a mandatory Reliability Standard should not apply to entities that have no material impact on the bulk-power system. In this regard, NERC itself states that applicability of the proposed standards to certain electric facilities (*e.g.*, facilities such as generators with a nameplate rating less than 20 MW, or transmission facilities energized below 200kV) may be limited. The scope of such ostensible objections to applicability of the standards needs to be carefully considered. FERC should accordingly make sure that each standard applies to all entities, or categories of entities, that it needs to apply to, but only to those entities, or categories of entities, that it needs to apply to.

- **Need for a Trial Period.** NERC suggested a six-month trial period during which the proposed Standards would not be formally enforced after they were approved. FERC proposes to eliminate a formal trial period on the grounds that entities that have complied with NERC's standards on a voluntary basis should be familiar with the proposed mandatory standards and what is required for compliance with them. However, this is a mistaken approach. Since the NERC standards have been in place on a voluntary basis, some entities have chosen to ignore them or do not even know what all the standards are. For example, in the West, there are numerous small entities that have limited impact, limited resources, and limited (or no) familiarity with many of these standards. In addition, some of these entities may not yet be registered with NERC. Thus, for some of the proposed standards, even a six-month test period may be inadequate. (This was one of the many reasons for the Western blackout in 1996. Standards were in place, but on a voluntary basis, such that certain small entities had no idea that these standards existed.) In response to this concern that a trial period is needed, FERC proposes that for those entities that are not already in voluntary compliance with existing standards, the NERC and the RROs can use their discretion in imposing penalties for the first six months. However, this discretionary authority is left wide open to interpretation. FERC should accordingly institute a formal trial period for all of NERC-proposed mandatory Reliability Standards after FERC approves them.
- **Need for WECC to Have More Discretion.** WECC, and the seven other Regional Reliability Organizations ("RROs") in the country, should have more discretionary power in connection with the implementation of mandatory Reliability Standards. For example, RROs should be able to act as the compliance monitors in their respective regions; the exercise of this important responsibility should not be restricted to NERC. This issue is likely to come up, as well, in connection with the Delegation Agreement between NERC and WECC that was filed at FERC on December 4, 2006.
- **Need for Modification of Certain of the Proposed Standards.** FERC has recognized that some of the proposed standards will be approved as mandatory

and enforceable even though they require modification. However, it is not fair to expect entities subject to these mandatory Reliability Standards to comply with them when they are not finalized, or need modification. Certainly, if any of the standards that FERC adopts still require modification, it does not make sense to enforce penalties for non-compliance with such standards until all necessary modifications to such standards have been made and approved by FERC.

- **FERC's Proposed Mandatory Standards Should Reflect the Concerns Raised by the CPUC in its Previous Comments.** Last June, the Commission approved the policy points to be addressed in CPUC comments in response to FERC staff's preliminary assessment of the proposed Reliability Standards. FERC's NOPR does not reflect the substance of certain of the comments that we filed. We should accordingly reassert the importance of those concerns we previously raised and request FERC to incorporate those concerns in any final action it takes on the 83 proposed mandatory Reliability Standards.

ACTION REQUESTED:

Legal Division, Energy Division and CPSD request authorization to submit comments on FERC's proposed adoption of 83 mandatory and enforceable Reliability 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); Mihai Cosman (MR2, 5-5504); Mark Ziering (MAZ, 3-2233).**