

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

**Rules Concerning Certification of the)
Electric Reliability Organization; and)
Procedures for the Establishment,)
Approval, and Enforcement of Electric)
Reliability Standards) Docket No. RM05-30-000**

**COMMENTS OF THE COMMITTEE ON REGIONAL ELECTRIC POWER
COOPERATION**

Pursuant to the Commission’s Notice of Proposed Rulemaking (“NOPR”) issued in the above-referenced docket September 1, 2005, the Committee on Regional Electric Power Cooperation (CREPC) respectfully files the following comments on proposed rules for certification of the Electric Reliability Organization (“ERO”) and the approval and enforcement of reliability standards.

I. INTRODUCTION

CREPC is a joint committee of the Western Interstate Energy Board and the Western Conference of Public Service Commissioners. It was formed in 1983. All regulatory, energy planning and siting agencies in the states and provinces in the Western Interconnection are eligible to participate in CREPC. Positions are taken by CREPC only if no state or province objects. The Western Interstate Energy Board is an organization of 12 Western states (AZ, CA, CO, ID, MT, NE, NV, NM, OR, UT, WA, WY) and three Western Canadian Provinces (AB, BC, SK). Its members are appointed by the Governor

or Premier. Its legal basis is an interstate compact approved by 12 states and Congress (PL 91-461). The Board serves as the technical energy arm of the Western Governors' Association. The Western Conference of Public Service Commissioners includes the PUCs from 11 states (AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, WY). The Western Conference is a non-profit corporation. State and provincial agencies participating in CREPC are also members of the Western Electricity Coordinating Council (WECC) and six CREPC members serve on the WECC Board of Directors as Class 5 and Class 4 members.

CREPC supported the position of the Western Governors' Association and WECC during the six years of Congressional deliberations that led to the enactment of Section 215 of the Federal Power Act. Three guiding principles can be discerned from the Congressional debate.¹

¹ For example, in the Senate floor debate (March 14, 2002) that resulted in the ultimate language found in Section 215, Senator Thomas, sponsor of the amendment adopted by the Senate, stated: "Another key problem with the Daschle bill [which provided unfettered authority to FERC to set reliability standards] is that it does not recognize regional differences in electrical systems due to the geography, the market design, the economics, and the operational factors. Many fear that FERC does not have the sensitivity to the regional differences that are so critically important, and I suppose you could say particularly in the West, in that the West has moved a little more quickly to this, but the rest of the country will be moving necessarily soon. Regional differences are best taken into account by those who are closest to the problem and those who understand what needs to be done, and that, unfortunately, is not FERC... There is no question but that we need a new system. The question is--we can do it in different ways--how will we do it? It [the Daschle bill] gives all the responsibility to FERC and sets the standards. We agree that we need protection. It is not whether we need it, but it is how we get it. I think the Daschle bill takes the wrong approach; hence our amendment. We know there are great differences in geography, market designs, and economics over the different parts of the country. So we want to have those people in those areas having input into how to resolve it in that particular area. FERC is not necessarily sensitive to those particular changes and differences that are there. So we believe very strongly we need to do that... The new reliability organization will have enforcement powers with real teeth to ensure reliability. The amendment provides mandatory reliability rules that will apply to all uses of the transmission grid. No loopholes, nobody is exempted. It is the kind of thing, certainly, that most of us believe is the direction we ought to take in government; that is, to empower local people who are experts in what they are doing. FERC has been working for a very long time. When we look at the California situation of last summer, we see that reliability was the issue that was least important. Reliability was there. So we ought to use that experience rather than trying to build a new bureaucracy in FERC which doesn't have the authority or the capability of doing these kinds of things."

1. A regional reliability organization that covers an entire interconnection should be delegated the authority to set and enforce reliability standards within that interconnection;
2. An ERO should defer to the decisions of an interconnection-wide regional reliability entity and FERC should give “due weight” to the technical expertise of an interconnection-wide regional reliability entity.
3. Reliability decisions are imbued with the public interest and elected officials from States (and Provinces) are best positioned to express the public interest for the region. That is why Congress enacted Section 215(j) that directs the Commission to approve a Regional Advisory Body established by Governors and authorizes such bodies to include Canadian Provinces. Congress also authorized the Commission to defer to the decisions of a Regional Advisory Body created on an interconnection-wide basis.

Congress and the Commission, in the preamble to its proposed rules to implement Section 215, recognize that the setting and enforcement of reliability standards is a major change from the FERC’s traditional role as an “economic regulator.” As such, the Commission needs to adopt a significantly different approach to exercising its responsibilities. CREPC believes that the Commission’s role in reliability, if it is to be effective, should be exercised in partnership with States and Provinces and that the Commission should defer to decisions made by regional entities organized on an interconnection-wide basis that have the support of the States and Provinces.

II. STATEMENT OF CONCERN

While CREPC and Western Governors have supported the enactment of section 215, as noted above, thus empowering FERC to perform an essential backstop regulatory role in approving and providing ultimate enforcement authority for mandatory reliability

standards in the United States, we have done so with the expectation that FERC will execute its new responsibilities with full recognition of the limitations Congress intended for this role. Unfortunately, statements made by FERC commissioners in recent weeks have suggested that FERC is gravitating toward the stronger role that was rejected in 2002 when the Daschle bill was replaced by the Thomas amendment. We have no objection to FERC providing a firm backstop to mandatory reliability standards. That has been expected. But we do object to suggestions that FERC expects the ERO to favor uniformity of approach and to give a hard look at standards proposals from the West that do not provide for reliability the same way reliability is addressed in the Eastern Interconnection. We believe that the ERO and WECC, as expert reliability organizations, will come to a reasonable agreement as to their respective roles if FERC does not give the ERO the signal that in order to be an effective ERO in FERC's eyes, the ERO must challenge standards proposed by WECC. We also believe that given the international nature of the problem of ensuring reliability, FERC could, ironically, defeat the goal of maintaining a reliable North American power system by asserting too strong a role for itself and the ERO. It is from this perspective that we make our recommendations in these comments. We want very much to be partners with FERC in successfully maintaining a reliable bulk power system, and we believe we have much to offer FERC in that partnership, but if it is to work, FERC must show that it respects its partners, including WECC and a Western Interconnection Regional Advisory Body, if one is formed.

Deference and Delegation

The Commission's rules should empower Regional Entities covering an entire interconnection to undertake standards development, standards enforcement and all other activities necessary to promote reliability in a consistent manner within the interconnection, including collecting data and conducting studies on issues such as studies of resource adequacy and transmission expansion.

We recommend that the Commission reorganize the proposed rules to clearly separate the authorities and responsibilities of regional reliability entities that cover an entire interconnection from regional reliability entities that cover only a portion of an interconnection. In reorganized rules, the Commission needs to clearly state that:

- Regional entities organized on an interconnection-wide basis shall submit proposed reliability standards and modifications simultaneously to FERC and the Electric Reliability Organization (ERO) and that the ERO must establish an expedited procedure to forward its recommendation on such standards to the Commission. If the ERO opposes a standard it must present clear and convincing evidence rebutting the statutory presumption that such interconnection-wide standards be adopted. The interconnection-wide regional entity shall be entitled to appeal to the Commission any negative finding by the ERO.
- Delegation agreements between the ERO and a regional reliability entity covering an entire interconnection must reflect the deference and delegation provisions in the statute. Thus such delegation agreements will necessarily differ from delegation agreements between the ERO and regional reliability entities that include only part of an interconnection. If there is a Regional Advisory Body in place when a delegation agreement is under review by the Commission, such delegation agreements should be reviewed by the relevant Regional Advisory Body prior to action by the Commission.
- Any appeals of enforcement actions by an interconnection-wide regional reliability entity should be made directly to FERC (or the appropriate regulatory authority in Canada and Mexico) and should not be filtered through the ERO.

Budgets

The proposed rules governing the funding of activities under Section 215 need to be amended in four areas to include the following:

1. Any regional reliability entity which spans an entire interconnection shall simultaneously file its proposed budget with the Commission, the North American electric reliability organization (ERO) and any applicable Regional Advisory Body.
2. The ERO shall simultaneously file its proposed budget with the Commission and Regional Advisory Bodies.
3. To enable Regional Advisory Bodies to fulfill their statutory obligation to evaluate “whether the fees proposed to be assessed within a region are just, reasonable, not unduly discriminatory or preferential, and in the public interest...” pursuant to Section 215(j) of the Federal Power Act, Section 28.13 of the proposed rules needs to be amended to require that the Commission shall not act on the proposed budget of the ERO and any Regional Entity until 30 days after it has been provided to Regional Advisory Bodies or until Regional Advisory Bodies offer their advice to the Commission, whichever is sooner.
4. In conformance with the statute, which provides for fees paid by end users to fund all activities under Section 215, the rules need to clearly state that costs of any Regional Advisory Bodies are covered by the fees authorized under Section 215(c)(2)(B) of the Federal Power Act.

Immediate Adoption of WECC Reliability Management Standards

Given the urgency of implementing mandatory reliability standards,² the Commission should amend its rules to provide that existing standards of a regional reliability organization that covers an entire interconnection may be filed with the Commission and approved as interim standards by the Commission immediately without having to endure the inevitable delays in the submission and approval of an application

² At the Commission’s September 16, 2005 meeting, Chairman Kelliher acknowledged the urgency to put in place enforceable standards sooner than would be possible if the Commission took a very strict reading of the language of Section 215.

by an ERO, the execution and approval of delegation agreements with Regional Entities, and the lengthy standards development process that the ERO and Regional Entities will be required to implement.

In the Western Interconnection, we have had in place a carefully crafted Reliability Management System (RMS) for more than five years. The standards that are part of the RMS have been expanded several times and each expansion has been approved by FERC. Indeed, these standards are part of some FERC-approved transmission tariffs. It would be inappropriate and contrary to the intent of Congress for the Commission to delay making such standards mandatory or subjecting them to a standards development process such as the one the North American Electric Reliability Council uses, which involves segmented voting by hundreds of entities, the majority of which do not even do business in the Western Interconnection. The West cannot afford delays inherent in the necessary but time-consuming “on-the-job training” that will occur at the ERO and the Commission to fully implement Section 215.

Regional Advisory Bodies

Congress and the Commission in its proposed rules recognize that promulgating and enforcing reliability rules is a substantial change from the Commission’s historical role as an “economic” regulator. Congress wisely provided that the major burden of that task resides with technically competent industry reliability organizations such as the Western Electricity Coordinating Council. We also observe that Congress explicitly denied the Commission the power to order the construction of new generation or transmission, essential elements for the development of a reliable electric power system. The power to order the construction of new generation or transmission rests with the States and local governments (and Provinces). Finally, Congress clearly recognized that maintaining system reliability requires an interconnection-wide effort that must include the participation of Canadian Provinces and Mexico. In short, FERC alone does not have sufficiently broad jurisdiction to ensure system reliability. The degree of integration

among Canadian and Mexican portions of the Western Interconnection with the U.S. portions necessitates that processes, such as WECC has in place, continue.

These legal and electrical realities require the Commission to work in partnership with States and Provinces in order to achieve the Congressional objective of reliable power grids. A “go-it-alone” approach by the Commission will create unproductive friction between itself and States and Provinces that will ultimately lead to a failure to achieve cost-effective, reliable transmission grids.

To create the partnerships necessary to achieve system reliability, Congress authorized Governors to create Regional Advisory Bodies to advise regional reliability entities, the ERO and the Commission. In Section 215(j), Congress delineated three topics a Regional Advisory Body is to consider:

- “(A) the governance of an existing or proposed regional entity within the same region;
- (B) whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest;
- (C) whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest”.

In recognition of the need for the Commission to work in concert with States (and Provinces), Congress added a fourth charge for Regional Advisory Bodies to consider advice on “(D) any other responsibilities requested by the Commission.”

Finally, Congress recognized that electrical impacts of reliability decisions do not extend beyond the boundaries of an interconnection and that the parties that receive the benefits and bear the costs of reliability decisions should have a major role in the setting and enforcement of reliability standard. Electrical systems do not respect national borders. There is no such thing as U.S. national electricity reliability. Rather, there are three interconnections, with minimal DC interties and distinct technical requirements,

two of which integrate portions of other countries. Thus Congress granted the Commission a unique authorization by providing that “(4) The Commission may give deference to the advice of a regional advisory body if that body is organized on an interconnection-wide basis.”

Section 215(j) is not an afterthought; it is the core of the partnership that Congress recognized must be created to ensure reliable power grids. To realize Congress’ objectives, the Commission should amend the proposed rules in three areas.

1. Correct the misinterpretation of statutory language governing the creation

of Regional Advisory Bodies. The proposed rules (Section 38.10(a)) provide that “The Commission shall consider a petition to establish a Regional Advisory Body that is submitted by at least two-thirds of the States within a region that have more than one-half of their electric load served within the region.”

(emphasis added) Section 215(j) of the Federal Power Act *requires* the Commission to establish a regional advisory body once it receives a petition.³

The Commission should amend its proposed rules to accurately reflect its mandatory obligation to establish Regional Advisory Bodies upon petition of the States.

2. Notices of violations – The rules should provide that all notices of violations of reliability standards should be conveyed to a Regional Advisory Body immediately.

3. Audits - The rules should provide that the Commission will invite the relevant Regional Advisory Body to participate in the periodic audits and reviews of the ERO and Regional Entities pursuant to proposed Section 38.6(b).

³ The Energy Policy Act of 2005 adds the following to Section 215 of the Federal Power Act: “(j) REGIONAL ADVISORY BODIES—The Commission shall establish a regional advisory body on the petition of at least two-thirds of the States within a regional that have more than one-half of their electric load served within the region.”

Finally, the Commission, through the reliability rules or other mechanisms, should explicitly state it will defer to advice given by a Regional Advisory Body that is organized on an interconnection-wide basis.

In summary, Western States and Provinces are committed to working with the Commission to ensure the development and enforcement of cost-effective interconnection-wide reliability standards. We believe that the proposed rules, with the recommendations enumerated above, will provide a sound foundation for ensuring reliable operation of the Western Interconnection