

**ADVICE OF THE
WESTERN INTERCONNECTION REGIONAL ADVISORY BODY TO THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
REGARDING ITS SELF ASSESSMENT FOR 2009**

The Western Interconnection Regional Advisory Body (WIRAB) submits advice to the North American Electric Reliability Corporation (NERC) regarding its request for comments on a three-year self assessment in 2009. NERC is required to submit to FERC an assessment of its performance three years after being certified as the Electric Reliability Organization (ERO). In preparing for the performance assessment filing, NERC is seeking input from users, owners, and operators of the bulk-power system and other interested parties.

WIRAB acknowledges that NERC has led the electric industry through a major transition to implement a complicated system of mandatory reliability standards. NERC has issued a 133-page self assessment that documents its responsibilities as the ERO by major activities, accomplishments and recommendations for improvement.

WIRAB submits advice that focuses on five areas that are high priority topics in the Western Interconnection: (1) institutional structure of the ERO and delegation to Regional Entities; (2) reliability standards development, (3) regional reliability standards; (4) compliance and enforcement; and (5) providing timely feedback and clarity to Registered Entities.

1. Institutional Structure of the Electric Reliability Organization and Delegation to Regional Entities

WIRAB supports the self-regulatory model embodied in Section 215 of the Federal Power Act and the current institutional structure of mandatory reliability standards with NERC as the ERO and delegated authority to the Western Electricity Coordinating Council (WECC) as the Regional Entity in the Western Interconnection.

For six years leading up to the enactment of the Energy Policy Act of 2005 (EPAct), Western Governors' supported federal reliability legislation subject to deference to interconnection-wide reliability standards in the West, delegation of enforcement of those standards to a regional entity, and authorization to governors to create regional reliability bodies. These parameters were integrated into the final legislation that has become Section 215 of the Federal Power Act (FPA) and remain relevant today.

We believe the current institutional structure provides a reasonable balance of multiple interests to ensure a *regulatory structure* with strong technical expertise and regulatory oversight, while also accounting for regional, interconnection-wide and international differences necessary to meet important technical and public interest requirements.

WIRAB itself is an institution authorized in EPAct¹ and initiated by a petition of Western Governors in April 2006. WIRAB has observed the start up process for NERC becoming the ERO, the formation of delegation agreements with Regional Entities, the adoption of new mandatory reliability standards, and the challenges of compliance and enforcement of those standards. EPAct provides that regional advisory bodies may provide advice to FERC, the ERO, and regional entities on matters of the reliability

¹ Federal Power Act, Section 215(j).

standards applicable to that region, fees imposed on the region, governance of regional entities in the region, and other responsibilities requested by FERC.

WIRAB supported the NERC-WECC delegation agreement that authorizes WECC as the Regional Entity responsible for the Western Interconnection.² Over the past three years, we have not always agreed with specific actions taken by FERC, NERC or WECC. However, we do believe the current institutional framework is appropriate and has worked well to meet the challenges of implementing mandatory reliability standards across North America and specifically in the Western Interconnection.

2. Reliability Standards Development

WIRAB supports the development of mandatory reliability standards as a tool to advance the goal of improving the reliability of the bulk power system. We disagreed with NERC and FERC, however, about the strategy, scope and timing of implementing new mandatory reliability standards. We have observed that fear of heavy monetary sanctions has caused many regulated entities to focus on limiting their potential liability rather than on doing what is most cost-effective to maintain reliability. This is seen in a significant reluctance to support new standards. It is also seen in the diversion of personnel who once volunteered significant time to the collegial process of system studies and sharing of information to a single-minded focus on compliance tasks designed simply to limit exposure to possible fines resulting from the existing standards. And while both NERC and FERC have emphasized the importance of vegetation management and relay testing to minimize the risks of failures that have brought about previous cascading outages, a large number of the requirements in the standards deal with

² WIRAB Advice, January 10, 2007.

mundane documentation processes. Because auditors can more easily identify failure to document activities than equipment that is likely to fail and cause the next major outage, a tremendous amount of time and energy is being spent now on understanding of and compliance with these detailed documentation requirements.

On April 4, 2006, NERC submitted to FERC 102 proposed reliability standards and requested unconditional approval of 77 standards and conditional approval of 25 “fill-in-the-blank” standards. On March 16, 2007, FERC issued Order 693 that approved 83 mandatory reliability standards and directed NERC to make significant improvements to 56 of the 83 approved reliability standards. FERC subsequently approved additional standards for critical infrastructure protection, facility operating limits and nuclear generators. FERC has approved a total of 95 continent-wide reliability standards.

WIRAB would have preferred that NERC and FERC had followed a different approach in establishing mandatory reliability standards as outlined in advice filings of July 25, 2006 and January 3, 2007.³ Our recommendations were influenced by the lessons learned in the Western Interconnection with WECC’s prior experience implementing regional standards known as the Reliability Management System (RMS). WIRAB advised FERC to implement reliability standards in a phased process with the highest priority standards adopted first and other less critical standards adopted later. We called for standards with adequate metrics and compliance information. We also recommended field testing of new standards prior to imposing monetary penalties in an effort to promote compliance in the face of foreseeable startup problems, ambiguities, and inconsistent enforcement among regional entities. We feared that the large number

³ WIRAB Advice, July 25, 2006; WIRAB Advice, January 3, 2007.

of new mandatory standards and over 1000 requirements could lead to a regulatory quagmire for FERC, NERC and the regional entities.⁴

We recognize that FERC has spoken on these issues and implemented a new system of mandatory reliability standards and directed NERC to make improvements on many approved reliability standards. We acknowledge and salute NERC's ability to launch a new regime of mandatory reliability standards in a relatively short time frame, in coordination with 8 Regional Entities, and responsive to the directives received from FERC.

WIRAB believes, however, that its prior concerns about the strategy, scope and timing of implementing reliability standards remain valid. We believe the fundamental problems have not disappeared, but have shifted from the arena of standards development to the arena of compliance and enforcement. We believe that NERC can begin to address this problem by modifying the enforcement process to reduce the large backlog of violations. As discussed below in section 4, we recommend adopting a traffic ticket mechanism to process low priority violations and the creation of a regulatory watch list of multiple and repeat violators.

Moreover, we are concerned that current trends in the standards development process could further exacerbate these problems. NERC currently has over 30 standards development projects underway. These projects will add to the large list of existing

⁴ WIRAB Advice, January 3, 2007, at 7. "Thus, we believe that the Commission invites inconsistent and ambiguous enforcement by Regional Entities without a trial period, adequate metrics and compliance information in Reliability Standards, and with the use of a complex penalty structure. We foresee that Regional Entities and the ERO may become burdened by a plethora of litigation over penalties imposed on entities during this transition period. We are concerned about a potential enforcement quagmire that diverts the attention and resources of WECC and NERC from the task of promoting compliance with the most important standards for maintaining the reliability of the Western Interconnection."

standards and requirements that will apply to regulated entities and require a system of regulatory enforcement.

We support those standards that contribute to greater reliability. However, we acknowledge there are transaction costs to an expanded number of reliability standards in the form of resources employed by registered entities to comply with standards and resources needed by Regional Entities and NERC to enforce these standards. In WIRAB's advice filing of July 25, 2006, we supported the principle that reliability standards should be justified on grounds of economic efficiency. We favor a mechanism or process to address the economics of reliability standards.⁵ We encourage NERC to develop the methodology and economic analysis to evaluate whether new reliability standards produce sufficient marginal benefits to reliability to justify the incremental administrative costs of new reliability standards.

3. Regional Reliability Standards

WIRAB has supported WECC's regional reliability standards for the Western Interconnection. We are concerned that NERC has disregarded statutory provisions that extend deference to WECC's proposed reliability standards and taken steps that have delayed and undermined the review of WECC regional reliability standards.

In 2006, WECC proposed using expedited procedures to develop eight high priority interim regional reliability standards (Tier 1 Standards) from its existing contractual Reliability Management System. On June 8, 2007, FERC issued an order

⁵ WIRAB Advice, July 25, 2006.

approving WECC's eight Tier 1 regional reliability standards.⁶ FERC identified various shortcomings in the proposed standards and directed modifications when WECC develops permanent, replacement standards.⁷ WECC developed permanent replacement standards and submitted those standards to NERC on June 10, 2008. In October 2008, the NERC Board approved six of the revised Tier 1 standards, appropriately overruling NERC staff recommendation to remand two of the Tier 1 standards. In February 2009, the NERC Board approved the seventh Tier 1 standard.

In February 2009, NERC filed with FERC four of the non-controversial WECC revised Tier 1 standards, eight months after WECC's submission to NERC and well past the deadline established by FERC. Still pending is NERC's filing of two other revised WECC Tier 1 standards. The final standard WECC revised Tier 1 standard is still under review at NERC. We believe that NERC's review of the revised Tier 1 standards does not adequately respect the certain provisions in Section 215 of the FPA designed to extend deference to a Regional Entity formed on an interconnection-wide basis.

Section 215(d)(3) of FPA states that:

The Electric Reliability Organization shall rebuttably presume that a proposal from a regional entity organized on an Interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.⁸

⁶ Order Approving Regional Reliability Standards for the Western Interconnection and Directing Modifications, 119 FERC ¶ 61,260 (June 8, 2007) Docket No. RR07-11-000. (WECC Approval Order)

⁷ *Id.* at 56, 72, 78, 89, 98, 110 and 123.

⁸ Section 215(d)(3) of the FPA.

The FPA extends additional statutory deference to regional entities organized on an interconnection-wide basis by requiring FERC to give due weight to the technical expertise of a Regional Entity organized on an Interconnection-wide basis.⁹

FERC set forth additional criteria for regional reliability standards in Order 672. A regional standard must either be (1) more stringent than a continent-wide reliability standard or (2) necessitated by a physical difference in the bulk power system.¹⁰

FERC also elaborated on the rebuttable presumption condition in developing rules for certifying the Electric Reliability Organization (ERO) in Order 672.

We clarify that the rebuttable presumption in section 39.5(b) refers to the burden of proof before the ERO. Any person objecting to the proposed Reliability Standard before the ERO would have the burden of demonstrating to the ERO that a Reliability Standard proposed by an Interconnection-wide Regional Entity does not satisfy the ERO criteria for approval and is therefore not entitled to any presumption. . . . If the ERO does not find that the presumption is adequately rebutted, it must accept the proposed Reliability Standard from a Regional Entity organized on an Interconnection-wide basis to be just, reasonable, not unduly discriminatory or preferential, and in the public interest and must submit such a proposed Reliability Standard to the Commission for approval.¹¹

WECC is a regional entity organized on an interconnection-wide basis, therefore use of rebuttable presumption applies to NERC review of the revised Tier 1 proposed regional reliability standards. In FERC's order approving the original Tier 1 standards, FERC stated that NERC must support any decision to rebut this presumption by providing a "robust discussion of its reasoning for finding that the rebuttal presumption

⁹ Section 215(d)(2) of the FPA

¹⁰ Order 672 at 292.

¹¹ Rules Concerning Certification of the Electric Reliability Organization; Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards, Order No. 672, FERC Stats. & Regs. ¶ 31,204 (2006) (Order 672) P 301.

has been overcome.”¹² WIRAB urges NERC to respect the letter and spirit of the FERC directive and statutorily mandated rebuttable presumption applied to WECC’s proposed regional reliability standards.

4. Compliance and Enforcement

One of the biggest challenges facing NERC and the Regional Entities is to process the large backlog of violations and mitigation plans in a timely, efficient, and fair manner. WIRAB believes this task will require NERC to be adaptive and pragmatic in developing solutions. The process must balance the need to operate with sufficient speed to reduce the backlog while maintaining expectations of due process for registered entities.

NERC’s own data illustrates the magnitude of the backlog in compliance and enforcement. As of December 31, 2008, NERC identified 1,812 violations at different stages of the enforcement process across the eight Regional Entities. A majority of these violations are in the early stages of processing. There are 843 violations in State 1 described as assessment and validation, and 389 violations in State 2 covering confirmed violations. Settlement negotiations account for another 236 violations. State 3 has 239 violations that are pending regulatory filing. There are only 104 violations that have reached State 4 which covers violations completed and closed. NERC data from earlier periods does show some progress moving the number of violations from the lower states to higher states.

WIRAB notes that WECC has the largest share of violations among all the NERC regions (1145 of 1812, or 63%). WIRAB observes that most of the violations from

¹² WECC Approval Order, at P 38.

WECC are still in the early stages of the process in State 1 (629 of NERC's 843) and State 2 (316 of NERC's 389). In the latter stages, WECC violations account for less than half of the total NERC violations in settlement negotiations (94 of NERC's 236) and State 3 (106 of NERC's 239). No violations from WECC that have reached completion stage in State 4 (0 of NERC's 104). The data shows that the bulge of violations from WECC is in the early stages of working through the NERC enforcement process. It will be very important for the enforcement staff in WECC and NERC to expeditiously handle and process this large number of violations.

WECC is making progress reducing the backlog and reaching settlements. As of December 31, 2008, WECC issued notice of alleged violations (NOAV) for 566 violations to 81 Registered Entities. Of the 81 Registered Entities, 11 have requested settlement, and 8 of those 11 have settled in principle. These numbers will change over time. WECC is currently in discussions with NERC on the form of the notice of confirmed violations. WECC has a queue of 98 notices of confirmed violations. Under the current review process, the large workload represented in the WECC backlog will soon be transferred to NERC.

WIRAB encourages NERC to adopt procedures to facilitate the expeditious processing of a large number of violations with low risk. Certainly not all violations pose the same threat to reliability. The enforcement process has already been designed to handle the high priority violations. NERC could help reduce the existing backlog by streamlining the process for low priority violations. NERC should set up speeding ticket type procedures that are designed to process lower priority violations quickly in a traffic court manner that encourages quick resolution with relatively low penalties to the

registered entity. Traffic court still provides the opportunity for a defendant to plead his or her case to a court and receive appropriate due process protection.

NERC should also consider implementing a “watch list” for Registered Entities with recurrent compliance problems. The watch list would serve to focus enforcement efforts to problem areas and alert all parties to entities that need to improve their compliance effort.

5. Providing Timely Feedback and Clarity to Registered Entities

Achieving compliance with 95 standards with more than 1,000 requirements is a daunting challenge for Registered Entities. This challenge is made more difficult by the lack of timely feedback on what constitutes compliance. While communication between Registered Entities in various regional and NERC forums may provide some of the needed feedback on what constitutes compliance, NERC and Regional Entities need to establish public mechanisms to provide feedback to Registered Entities and the public on what constitutes compliance with standards and requirements.

NERC and Regional Entities have been hamstrung in their ability to provide feedback to Registered Entities because of the confidentiality requirements for alleged violations and the extended time (20 months and counting) for alleged violations to work their way to FERC where they become public.

The problem with insufficient feedback on what constitutes compliance may be alleviated as the bulge of violations works its way through NERC to FERC when information becomes public. At a minimum, NERC should establish a continent-wide system to relate to Registered Entities and the public what constitutes compliance with

standards when that information is sent to FERC. If the lag time between discovery of an alleged violation and submission of the violation to FERC continues, NERC and Regional Entities need to be enabled to provide timely feedback on what constitutes compliance.

WIRAB recommends that NERC and the Regional Entities post on their web sites examples and guidance as to what compliance audits have found to be acceptable and unacceptable. We would anticipate that the auditors are gaining experience about common pitfalls, ambiguities, procedural lapses, or inadequate responses by registered entities. We suspect that this body of information would be useful and beneficial to Registered Entities. For example, the posting could be in the form of a user friendly “frequently asked questions” or “common mistakes” that would illustrate the lessons learned by the auditors that would assist registered entities from making the common and avoidable mistakes.

Additionally, the growing body of information on settlements could be useful information to guide registered entities about what constitutes acceptable and unacceptable forms of compliance. WIRAB suggests that Regional Entities post information about cases resolved through settlements before those cases are reviewed by NERC and FERC. Lessons from existing settlements could influence and encourage Registered Entities to take steps to avoid compliance mistakes. We are concerned that under the current system the lessons from settlements do not become available information to other registered entities in a timely manner. WIRAB believes that posting information about cases settled would improve the flow of information back to Registered Entities and encourage greater overall compliance.

Dated this 3rd day of March, 2009.

Respectfully submitted,

A handwritten signature in black ink that reads "John F. Savage". The signature is written in a cursive, flowing style with a large initial 'J'.

John Savage, Chairman
Western Interconnection Regional Advisory Body