

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

Revisions to Regulations on Electric Reliability Organization Performance Assessments)))))	Docket No. RM21-12-000
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**Comments submitted to FERC on March 1, 2021
by the Foundation for Resilient Societies**

The Foundation for Resilient Societies (“Resilient Societies”) supports amendment of the regulations of the Federal Energy Regulatory Commission (“FERC” or “the Commission”) to require the Electric Reliability Organization (ERO) to submit assessments of its performance every three years instead of the current practice of every five years. We also support a requirement for the Electric Reliability Organization to include in its performance assessment a detailed discussion of any areas of the ERO’s responsibilities and activities, or a Regional Entity’s delegated functions, beyond those required by the Commission’s regulations. Lastly, we support a formal method for the ERO and Regional Entities to receive and respond to recommendations by the users, owners, and operators of the Bulk-Power System, and other interested parties for improvement of the Electric Reliability Organization’s operations, activities, oversight, and procedures. Because of the rapid changes in the Bulk Power System (BPS) caused by a shift to less carbon-intensive resources, and because of the increasing importance of system reliability and system resilience, these changes will help in preserving the role of the ERO as a self-regulatory body and will also better serve the public interest.

OUR PERSPECTIVE ON NERC

Resilient Societies and its staff have been observers and active participants at the current ERO, the North American Electric Reliability Corporation (NERC), since 2011. We have participated in standard-setting and/or rulemaking for NERC standards “TPL-007-1— Transmission System Planned Performance during Geomagnetic Disturbance,” “CIP-014-1 — Physical Security,” and “CIP-008-6 — Cyber Security — Incident Reporting and Response Planning.” We have been members of the Geomagnetic Disturbance Task Force, the Electromagnetic Pulses Task Force, and the Electric-Gas Working Group. We have attended meetings of the NERC Board of Trustees, the Members Representatives Committee (MRC), and the Reliability Issues Steering Committee (RISC). Twice we have attended NERC’s annual grid security conference, GridSecCon, and also attended its annual Reliability Leadership Summits.

Through these activities we have developed understanding of the roles and performance of NERC staff. We have found the NERC staff to be welcoming of public participation, diligent in their efforts, and genuinely committed to reliability of the Bulk Power System (BPS).

NERC serves an important role for electric reliability within the United States and Canada—and increasingly, within Mexico as well. In our view, a governmental organization could not effectively or efficiently replace the activities and responsibilities of a well-managed ERO. Because there is the possibility that the Commission could decertify NERC and replace it with another standard-setting body, NERC executives should – with appropriate oversight by the Commission – have strong incentives to maintain a high level of performance.

While NERC retains paid staff to manage committees, working groups, and standard drafting teams, it largely relies on volunteer experts from industry to do the bulk of its work. It is unlikely that a government regulator could obtain such a high level of commitment from industry volunteers. Oftentimes industry volunteers have experience and expertise that would be difficult or impossible to find among academics, consultants, non-governmental organizations (NGO), and members of the general public.

Over its time as designated ERO, NERC has increasingly engaged in activities that are not related to standard-setting or auditing of compliance with standards. These activities include sponsoring of conferences and meetings such as GridSecCon, tabletop exercises such as GridEx, and standing committees with principal purpose of exchanging information. NERC regularly establishes working groups that produce “reliability guidelines” instead of mandatory reliability standards. NERC has expanded the use of programs that excuse non-compliance with standards such as “Find, Fix, Track and Report” and “Compliance Exception.” The NERC Electric Information Sharing and Analysis Center (E-ISAC) allows information sharing among NERC members and with governments, but this information is not directly used for standard-setting. These NERC activities, while often valuable, are an inadequate substitute for the system of mandatory standards and penalties as envisioned and enacted by Congress in the Energy Policy Act of 2005.

NERC’s standard-drafting teams can be dominated by industry representatives. The presence of NERC staff and non-industry representatives on standard-drafting teams would provide balance. The proposed NOPR would better enable FERC to assess the composition of

standard-drafting teams and determine how this composition affects the performance of NERC as an accredited standard-setting body.

NERC's governance structure is a system of weighted voting which elects the Member's Representative Committee (MRC). The weighting of votes is designed so that industry interests predominate; consumer interests are minimized. The MRC in turn elects the Board of Trustees. The Board often has members that have spent most of their careers in the utility industry. In a technical sense, the NERC system of governance is "independent" of the customers, owners, and operators of the "bulk power system" as mandated by Section 215(c) of the Federal Power Act, and by FERC Order No. 672, which established criteria for selection of an Electric Reliability Organization.¹ However, with the far-reaching powers of the Members Representative Committee, and the industry dominance of the Board of Trustees, and the weighted voting system strengthening the influence of the electric utility industry, the independence of NERC from the industry it regulates is significantly eroded.

Because of NERC's expanding activities, industry-dominated standard drafting teams, and industry-biased governance structure, it is essential the Commission have processes to exercise firm and frequent oversight.

ASSESSMENTS OF NERC PERFORMANCE EVERY THREE YEARS

The tenure of FERC Commissioners is almost always shorter than the statutory limit of five years and often closer to three years or less. A three-year assessment cycle would give Commissioners the opportunity to observe NERC performance and adjust FERC policies accordingly – especially the decision for recertification.

¹ See FERC Order No. 672. Issued February 3, 2006 in Docket RM05-30-000, Para. 146.

More frequent Commission assessments of NERC performance would better serve the public interest in other ways. The United States and Canada are on rapid timeframes for decarbonization of their electricity sectors; a three-year cycle of assessment would be more consistent with the “net-zero” timeframes proposed by policymakers.

Increasingly, the public is subjected to electric grid outages and load shedding. The August 2020 events in CAISO and the February 2021 event in Texas are examples of severe reliability and resilience deficiencies for the BPS. When four years have passed since these outages and NERC is up for its next recertification, it will be difficult for the new FERC Commissioners to relate the recent outages to NERC performance as ERO.

ERO ACTIVITIES BEYOND THOSE REQUIRED BY COMMISSION REGULATIONS

Because NERC has increasingly engaged in activities that go beyond commission regulations, it is important that there be a discussion in its performance assessment of the necessity and effectiveness of such activities. This is especially true for activities that represent a large part of the NERC budget (such as the E-ISAC) or that serve as a substitute for mandatory standard-setting and enforcement (such as the development of reliability guidelines).

FORMAL METHOD FOR THE ERO TO RECEIVE AND RESPOND TO RECOMMENDATIONS

In our experience NERC management is sensitive to recommendations from FERC, legislators, and the public. However, its industry-dominated governance structure blocks action. For example, NERC in conjunction with the U.S. Department of Energy authored the 2009 report “High-Impact, Low-Frequency Event Risk to the North American Bulk Power System.” This report was critical in establishment of the GMD Task Force and setting of standards for GMD protection. Unfortunately, an industry-dominated standard drafting team set the limits

for GMD hazards so low that electric utilities can entirely avoid installing hardware-based GMD protection.

Concerns expressed by FERC and others resulted in the 2017 Special Reliability Assessment, “Potential Bulk Power System Impacts Due to Severe Disruptions on the Natural Gas System” and the current Electric-Gas Working Group. The recent outage in Texas for one-quarter of ERCOT customers amply demonstrated the need for electric-gas reliability standards but no standard-setting project has been established by NERC.

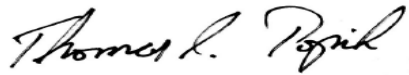
As an extreme example, the RISC voted to terminate the NERC project for a physical security standard only three weeks after the April 2013 Metcalf substation attack. It was only after the involvement of the U.S. Congress that FERC issued an order for a physical security standard.

Because of NERC’s inadequate record in responding to recommendations, FERC should require a method that documents recommendations to NERC and any actions taken in response.

CONCLUSION

NERC as designated ERO increasingly serves an important role as the self-regulatory body for electric reliability. Rapid decarbonization initiatives and demonstrated threats to system reliability will stretch NERC’s capabilities. People and organizations tend to respond better to a feedback process that is timely and well-organized. The three steps outlined in the FERC NOPR should improve the efficiency and effectiveness of the NERC performance assessment process.

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