

Canadian Electricity  
**Association**

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**CEA Positions Regarding the Establishment ●  
of an Effective International Electric  
Reliability Organization**

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Canadian Electricity Association

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Canadian Electricity Association  
Association canadienne de l'électricité

● **CEA Positions  
Regarding the  
Establishment  
of an Effective  
International ERO**

The Canadian Electricity Association (CEA) is an active participant in the deliberations on electric reliability presently under way in Canada and the United States. It is CEA's view that mandatory uniform North American reliability standards that allow for regional differences are essential to assure long term reliability.

This document is intended as CEA's latest contribution to ongoing discussions in the United States and Canada regarding the establishment of an electric reliability organization. CEA is the national forum and voice of the evolving electricity business in Canada through its core membership that accounts for 95% of Canada's installed generating capacity and nearly all of its transmission capacity.

The establishment of an effective international electric reliability organization (ERO) should allow for the development and enforcement of such standards. The effectiveness of the international ERO is dependent upon a complex and inter-related reliability management framework that involves:

- International Agreements
  - Governance
  - Regulatory Oversight
- Scope and Nature of Reliability Standards
- Funding
- Canadian Representation in the ERO and Regional Reliability Organizations
- Compliance Monitoring
- Enforcement
- Violations Disclosure
- The Role of Regional Reliability Organizations
- Participation in Regional Reliability Organizations
- Improvements/Alternatives to ANSI

Although legislation has yet to pass at this point in the United States, CEA is of the opinion that the discussion around the design and operations of the ERO to ensure its effectiveness needs to proceed. It offers the following recommendations to officials in government in Canada and the United States as they continue their ongoing deliberations.

For the purposes of this paper, except where the specific context suggests NERC or the ERO, the term ERO refers to both NERC as it evolves, and the electric reliability organization that could be established pursuant to legislation if and when it passes. Similar considerations apply to today's regional reliability councils and future regional reliability organizations.



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### **International Agreements**

To achieve the objectives of mandatory uniform North American standards and respect for national sovereignty, CEA believes that international agreements between appropriate authorities will be necessary to create the framework for an international ERO. These agreements must ensure that a single regulatory agency or group of agencies from one country should not take unilateral action, where such action would have cross-border implications.

The content of international agreements should address:

- (1) the governance of NERC/ERO and the regional reliability organizations, and
- (2) the principles for regulatory oversight.

#### **(i) Governance**

With respect to governance, CEA recommends a structure that provides for the following:

- ensuring the independence of the ERO from entities which regulate electric utilities, own or operate assets comprising the North American Interconnections, or schedule transactions on North American Interconnections.
- effective participation by Canadian authorities in the development of governance bylaws for the ERO and regional reliability organizations;
- designated representation for each country on all NERC/ERO/regional reliability organization development committees, decision-making bodies and voting protocols, based on Net Energy for Load (as currently defined by NERC)<sup>1</sup>

- ensure that the delegation of ERO authority to a regional entity does not disrupt cross-border trade
- a funding mechanism and budget direction for NERC and regional reliability organizations as currently constituted that reflect Canadian input and concerns. (This would include provisions for any future changes to such mechanisms).
- primary appeals process (appeals would be conducted first within NERC and/or the regional reliability organizations, with provision for subsequent appeal to the appropriate authority)

#### **(ii) Regulatory Oversight**

With respect to regulatory oversight, the CEA recommends that any agreement provide for the following:

- identification of the authorities that will act as legal backstop for matters related to electric reliability;
- approval/remand of proposed ERO/regional reliability organization governance rules (bylaws) by appropriate authorities in both countries to make sure principles of the agreement are upheld;
- approval/remand of proposed standards by appropriate authorities;
- chartering and certification of the ERO;
- enforcement of standards;
- secondary appeals process (appeals would be conducted first within NERC and the regional reliability organizations, with provision for subsequent appeal to the appropriate authority).

In this paper, CEA further examines a number of the issues identified above.

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<sup>1</sup> Defined by NERC as system net generation, plus energy received from others, less energy delivered to others through interchange. It includes system losses but excludes energy required for storage at energy storage facilities. (NERC Glossary of Terms, 1996)



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### **Scope and Nature of Reliability Standards**

Reliability standards should be mandatory and uniform across North America and allow for regional variances, consistent with the recommendations contained in the discussion later in this paper on the role of regional reliability organizations.

The ERO should focus on standards for operating the interconnected grid. In particular, the ERO should avoid developing standards that would affect equipment performance, unless such equipment would impact reliability and such impact cannot be adequately mitigated by an operating or planning standard.

The level of detail in ERO standards should be commensurate with their reliability impacts. That is, factors that have a direct and critical impact on interconnected reliability (e.g. operator qualifications) should have prescriptive requirements.

### **Funding**

In the final report of the U.S.-Canada Power System Outage Task Force, the Task Force recommended the implementation of a new funding mechanism for NERC and the regional councils based on a surcharge in transmission rates. Such a mechanism would involve recovery of ERO/NERC/regional council costs from customers through transmission tariffs. End users would therefore be the ultimate funders of NERC, and potentially the regional reliability organizations.

"Net Energy for Load"<sup>2</sup> should be used as the basis upon which funding is assigned. However, to the extent that the NERC budget increases in the future, and before the ERO is established, the funding mechanism should be reviewed and consideration could be given to the following additional factors: (1) the relative

loading of transmission facilities; (2) the type and capacity of interconnections (3) assignment of the costs of programs and tools only to the beneficiaries; and (4) demonstrated reliability performance or impact. Within each country, the subsequent allocation to individual entities will be determined by the appropriate authorities.

Each country's allocated charges should be collected either directly or indirectly from end-use customers, with the collection mechanism being left to the discretion of the appropriate authorities. Consistency is desirable, but not essential, and these collection mechanisms may include, but are not limited to, non-bypassable transmission tariffs and uplift charges.

With respect to funding for regional reliability councils, CEA believes it is desirable, but not essential, to have the same collection mechanism as that used to fund NERC. It is more important that any changes to funding for regional reliability councils be devised in a manner that does not involve any significant cost-shifting among regions.

The current NERC budget is about \$13 million U.S. The budgets of the three regional reliability organizations (i.e. regional councils) having Canadian members have budgets totalling about \$26 million U.S. (net of fees paid to NERC). Given the expected enhanced responsibilities of NERC (and ultimately the ERO) and the regional reliability organizations, the budgets of these entities are expected to grow significantly.

As FERC and the Canadian provincial authorities exercise greater authority over NERC and the regional reliability organizations, these authorities will be reviewing the portions of the budgets of these entities that will be the basis for the respective funding requests. This is particularly the case once the mechanisms for funding the

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<sup>2</sup> See definition as per footnote 1.



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different entities are established. Given that Canadian entities will be paying their fair share of the costs of these reliability organizations, CEA believes it is critical that governance and bylaws of the ERO and regional reliability organizations allow for an effective Canadian voice in the development and approval of these budgets.

Any positions respecting funding should be revisited once the other issues are resolved, with the intention of developing an integrated view that incorporates all aspects of the ERO.

### **Canadian Representation in the ERO and Regional Reliability Organizations**

Adequate Canadian representation in ERO and the regional reliability organizations is necessary in order for these entities to be truly international organizations. Currently, NERC has specified Canadian representation on a number of its committees. For example, 4 of 35 voting members of each of the standing committees (Operating Committee, Planning Committee and Market Committee) have designated Canadian representation. However, recent changes to the NERC standards development process have diluted the influence of such representation because the standing committees are no longer approval authorities for standards and policies. In addition, there is no designated Canadian representation on the Standards Authorization Committee (SAC) that now oversees the development of standards.

Within the ERO and the relevant regional reliability organizations, CEA is concerned about ensuring an effective voice and approval in the standard setting process, and therefore recommends the following specifics as to standard-setting within the ERO:

1. The jurisdictional authority to adopt or remand at the level of the individual province affords a "backstop" measure to protect Canadian interests, and this backstop needs to be explicit.

2. The seeking of an appropriate proportion of designated Canadian representatives should apply to both NERC and the regional reliability organizations. Canadian representation on formal standing committees and the relevant boards of reliability organizations should follow, in principle, a ratio comparable to the Net Energy for Load ratio between the two countries, and within regions as appropriate.
3. Section 2d of the NERC Bylaws recognizes knowledge and experience in Canada that should be retained. However, it is recommended this section be amended by the bracketed insertions as follows: "The Board must at all times include at least one Independent Trustee [from the U.S.] with appropriate knowledge and experience of the industry, regulatory, and legal systems in the U.S. and at least one Independent Trustee [from Canada] with similar knowledge and experience in Canada." This amendment would make explicit the residency of these two trustees.
4. These principles suggest the NERC Standards Authorization Committee (SAC) should have two designated Canadian representatives over and above the current membership of 18 representatives from the 9 sectors.
5. A "national approval requirement" should be added to the current approval process. Any proposed standard would require 66.7% approval, on a weighted segment basis, from both the U.S. and Canadian participants in the ballot pool. This would in effect split a current single global requirement into separate requirements for U.S. and Canadian participants.

### **Compliance Monitoring**

Reliability audits are an essential element of the standards compliance process. In



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order to ensure consistency in the auditing process, CEA believes it is necessary for NERC/ERO and the regional reliability organizations to be staffed appropriately to conduct the audits.

Effective reliability audits require independence on the part of the auditing team. Accordingly, reliability audits should be undertaken by technical experts independent of the audited entity.

This independence must be extended to the relevant regulators or equivalent authorities. U.S. and Canadian provincial regulators currently may participate in NERC's readiness audits. Given that the audit team would be reaching conclusions and making recommendations, the regulators' position on the audit team may compromise their ability to review any proposed sanctions resulting from the audit team's determinations. Accordingly, in order to preserve the independence of authorities, regulatory staff should not participate in these audits.

### **Enforcement**

At present, NERC's ability to enforce standards is unclear. Nevertheless, both Canadian and U.S. government officials are working to establish a process that will enable NERC and ultimately the ERO to enforce mandatory reliability standards. CEA supports the ERO having the authority and ability to enforce reliability standards.

Once ERO authority to enforce standards is established and because both ERO and the U.S./Canadian authorities will have enforcement authority, it will be important to establish a process for the exercise of their respective authorities. Determining the timing for regulators' involvement in the enforcement process is important in assuring that the ERO is effective in its enforcement role. CEA recommends the ERO take the lead in ensuring that reliability standards are effectively monitored and consistently enforced. This will allow the ERO to utilize its various

approaches to enforcing standards (including imposition of operating restrictions and issuance of letters of reprimand), as well as its expertise. Moreover, this will enable the respective regulators to serve as appellate bodies, stepping in only if ERO is unable to exercise its enforcement authority or if an entity is appealing a NERC determination.

Along with NERC's enforcement of standards, the regional reliability organizations should exercise appropriate enforcement authority, as delegated to them from an ERO. CEA supports the regional reliability organizations exercise of such delegated authority. However, with the evolution of NERC also comes an evolution of existing regional reliability organizations, i.e. regional councils. Consistent with efforts to establish a top-down organization, CEA recommends that NERC should be notified of any enforcement actions taken by a regional council. However, this notice should be limited, serving mainly as a step in the appeal of such a decision to the relevant authority

### **Violations Disclosure**

NERC has approved interim disclosure guidelines that provide for public disclosure of violations of NERC standards. CEA approves of efforts by NERC to disclose confirmed violations to ensure greater transparency. Public disclosure of violations should occur only after all rights of appeal have been exhausted.

### **The Role of Regional Reliability Organizations**

The ERO will be responsible for setting reliability standards. Nevertheless, the different regions of the North American grid have unique characteristics and unique needs that will necessitate flexibility in the implementation of such standards. Accordingly, regional reliability organizations are necessary to respond to the reliability needs of each region – and develop



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reliability standards that reflect regional circumstances.

The nature of the future relationship of such entities with ERO needs to be addressed. As a minimum, the roles, practices and structures of regional reliability organizations must be consistent and compatible to avoid seams issues.

NERC's review of a regional difference should be limited to ensuring that it is compatible with NERC standards, and is compatible with neighbouring interconnected regions' standards and will not compromise the reliability of interconnected neighbouring regions. NERC must have an expedited process for the review of regional differences.

#### **Participation in Regional Reliability Organizations**

As a general matter, CEA believes that all operating and planning entities participating in electricity transmission and generation must comply with reliability standards developed by the ERO. Moreover, CEA believes that all operating and planning entities must comply with any reliability requirements established by the regional reliability organization in the region in which that entity is located.

CEA believes that all participating entities should be encouraged to be members of regional reliability organizations. Membership affords such entities the ability to participate

in actions taken by the regional reliability organizations. However, CEA does not believe that an entity should be directed to become members. Assuming such an entity is required to comply with reliability standards (and the funding of regional reliability organizations is not based on membership), failure to become a member of such an organization only limits that entity's ability to influence outcomes of the organization's decision-making processes.

#### **Improvements/Alternatives to ANSI**

CEA members remain concerned regarding the effectiveness and efficiency of NERC's ANSI-approved standards development process. Accordingly, on-going consideration should be given to assessing the effectiveness and efficiency of the ANSI process for the development of standards. Specifically, existing processes required by the Standards Council of Canada and other Canadian standards development organizations should be examined to identify improvements to the ANSI requirements. In addition, CEA recommends the exploration of an alternative standard-setting process to be used in the event that the ANSI framework ultimately proves unworkable.

CEA is prepared to participate in any review efforts to enhance the ANSI standard-setting process, or in discussions of alternative processes.

