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October 7, 2005

VIA ELECTRONIC FILING

Honorable Magalie R. Salas, Secretary
Federal Energy Regulation Commission
888 First Street, N. E.
Room 1-A209
Washington, D.C. 20426

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

Dear Secretary Salas:

For filing, please find the Notice of Intervention and Comments of the New York State Public Service Commission in the above-entitled proceeding. Should you have any questions, please feel free to contact me at (518) 474-7663.

Very truly yours,

Sean Mullany
Assistant Counsel

Attachment

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

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

**NOTICE OF INTERVENTION AND COMMENTS
OF THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NEW YORK**

The New York State Public Services Commission (NYPSC) submits these comments pursuant to the Notice of Proposed Rulemaking (NOPR) published in the Federal Register on September 7, 2005. The NYPSC submits its Notice of Intervention in compliance with Rule 214 of the Federal Energy Regulatory Commission's (FERC or Commission) Rules of Practice and Procedure. Copies of all correspondences and pleadings should be addressed to:

Sean Mullany Assistant Counsel Public Service Commission of the State of New York Three Empire State Plaza Albany, NY 12223-1350 Sean_mullany@dps.state.ny.us	Howard Tarler, Chief Utility Electric Programs Public Service Commission of the State of New York Three Empire State Plaza Albany, NY 12223-1350 howard_tarler@dps.state.ny.us
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BACKGROUND AND SUMMARY

The NOPR seeks comments on FERC's proposed regulations to implement section 215 to the Federal Power Act (FPA), which was added by Subtitle A (Reliability Standards) of the Electricity Modernization Act of 2005.¹ FPA Section 215 empowers FERC to establish mandatory enforceable Reliability Standards, developed by a FERC-certified Electric Reliability Organization (ERO), to ensure adequate reliability of the Bulk-Power system. The Energy Policy Act of 2005 (2005 EPA) directs FERC to issue a final rule to implement Section 215 by no later than February 5, 2006. Under the NOPR, FERC proposes to add a new Part 38 to Chapter I of Title 18 of the Code of Federal Regulations, entitled *Rules Concerning Certification of the Electric Reliability Organization; and Procedures For the Establishment, Approval and Enforcement of Electric Reliability Standards*. The proposed regulations would establish:

(1) Criteria that an entity must satisfy in order to qualify to be the Electric Reliability Organization (ERO) that will propose and enforce Reliability Standards for the Bulk-Power System in the United States, subject to Commission approval;

(2) Procedures governing enforcement actions by the ERO and the Commission;

(3) Criteria under which the ERO may enter into an agreement to delegate authority to a Regional Entity for the purpose of proposing Reliability Standards to the ERO and enforcing Reliability Standards;

¹ Energy Policy Act of 2005, Title XII, Pub. L. No. 109-58, 119 Stat. 594 (2005).

(4) Procedures for the establishment of Regional Advisory Bodies that may provide advice to the Commission, the ERO or a Regional Entity on matters of governance, applicable Reliability Standards, the reasonableness of proposed fees within a region, and any other responsibilities requested by the Commission;

(5) Regulations governing the issuance of periodic reliability reports by the ERO that assess the reliability and adequacy of the Bulk-Power System in North America; and

(6) Regulations pertaining to the funding of the ERO.

NYPSC commends FERC for acting quickly to implement Section 215, and welcomes this opportunity to comment on the proposed regulations.

Since the establishment of the Northeast Power Coordinating Council (NPCC) in response to the blackout of November 9, 1965, New York has aggressively applied lessons learned from previous blackouts, and led efforts to develop and implement criteria for the proper design and reliable operation of interconnected electric power systems. New York has also strongly supported mandatory and enforceable national Reliability Standards and applauds FERC's efforts toward achieving this end.²

² The NOPR, and Section 38.12 of the proposed regulations address the issue of state actions which are "inconsistent" with a Reliability Standard. We note for the record, however, that the NOPR makes no mention of the fact that Section 215(i)(3) of the FPA contains an exception for reliability rules within New York State. More particularly, the relevant statutory language, in its entirety, provides as follows:

Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard, **except that** the State of New York may establish rules that result in greater reliability within that State, as long as such action does not result in lesser (continued)

In these comments, the NYPSC makes the following points:

1. National Reliability Standards should establish minimum requirements for reliability, and regional variances should be implemented where necessary.
2. FERC should remand, rather than void, previously-approved Reliability Standards.
3. Regional Entities should not be larger in scope than NERC's Regional Reliability Councils.
4. Regional Entities should play a primary role in developing regionally-specific Reliability Standards, subject to ERO approval, and compliance monitoring and enforcement.

DISCUSSION

POINT I

National Reliability Standards Should Establish Minimum Requirements for Reliability, And Regional Variances Should Be Implemented Where Necessary

The 2005 EPA directs that FERC's regulations authorize the ERO "to enter into an agreement to delegate authority to a Regional Entity for the purpose of proposing Reliability Standards to the ERO and enforcing Reliability Standards" under certain conditions.³ FERC requests comment on its view that Reliability Standards proposed by a Regional Entity to the ERO, if ultimately approved by FERC, would become regional variances which

reliability outside the State than that provided by the reliability standards.

Federal Power Act (FPA) (16 U.S.C. §§ 824 *et seq.*), § 215(i)(3) (emphasis added).

³ FPA, at § 215(e)(4).

would "supplement ERO Reliability Standards, not substitute for them."⁴ To the extent that FERC's "supplement, not substitute" interpretation is intended to ensure that regional variances do not undermine the reliability otherwise provided by nationally-applicable standards, we support FERC's view.

New York strongly supports mandatory enforceable national Reliability Standards which establish a minimum level of reliability for the entire Bulk-Power System. The blackout of August 14, 2003 dramatically proved that actions or inactions in one region will directly affect reliability, and citizenry, in other regions served by the same interconnection. That blackout, precipitated by events outside of New York,⁵ caused a cascading loss of electricity to approximately 80% of New York State's electric load.⁶

⁴ NOPR, at ¶80, 70 *Federal Register* 53117, 53125.

⁵ New York's investigation of the August 14, 2003, blackout found no evidence of violations of bulk-system Reliability Standards within New York. To the contrary, the available evidence showed that system dispatch and reserve requirements were will within established criteria just before that blackout commenced. *Initial Report by the New York State Department of Public Service on the August 14, 2003 Blackout*, at pp. 31-32 (February 2004). The August 14, 2003 blackout was precipitated, in large part, by violations of the North American Electric Reliability Council (NERC) Reliability Standards, in the Midwest. U.S.-Canada Power System Outage Task Force, *Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations*, pp. 17-22 (August 2004).

⁶ *Initial Report by the New York State Department of Public Service on the August 14, 2003 Blackout*, at pp. 1 & 5 (February 2004). That blackout affected 6.3 million customers in New York State, representing approximately 15.9 million of the State's 19.2 million residents, (continued)

At the same time, FERC should continue to recognize the importance of regional variances to ensure reliability.⁷ Variances may be warranted by a number of factors, including the characteristics of the facilities in question, and the magnitude and severity of potential adverse impacts due to a system failure.

Examples of physical characteristics of the system requiring regional variances include systems featuring long lines, as opposed to shorter lines; systems featuring single vs. double-circuit towers or having multiple towers in a single, relatively narrow right-of-way; the presence of direct current lines; variations in transformer design (e.g., three phase vs. three single windings in a single container); systems requiring power stabilizers on generation vs. those that do not; and systems employing various types of dynamic disturbance recorders, as opposed to those using a single type.

Regional variances may also be required because Reliability Standards must account for demographic factors, such as population density within a particular service area. High density service areas necessitate higher Reliability Standards because the potential impacts of a system failure are

including virtually all customers in New York City, Long Island, and surrounding areas. Only portions of upstate New York were spared.

⁷ "Reliability Standards should allow, where appropriate, flexibility to accommodate regional differences, including more stringent reliability requirements in some areas, but regional deviations should not be allowed to lead to lower reliability expectations or performance." U.S.-Canada Power System Outage Task Force, *Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations*, p. 142 (August 2004).

much greater. A rural area may be capable of withstanding a blackout without significant and immediate adverse impacts on public health and safety. A system failure in a densely-populated urban area such as New York City, on the other hand, will have immediate and significant economic impacts, and, potentially, catastrophic human consequences.

New York and the three southern New England states contain areas characterized by very high concentrations of load, closely spaced, and very short transmission distances from generation centers to load centers due to the geography of the region. Economic, social, and political considerations have also affected the siting of generating units, making the area very highly transmission-dependent. These factors, together with the extremely high reliability requirements of this very densely urbanized region, have driven the requirement to preserve the interconnection above all else. Avoiding cascading outages on the interconnection requires that the system remain stable following the most severe contingencies. That requirement directly influences the design of protection systems, because reliable fault clearing is essential to maintaining network stability. Because stability margins are a direct function of fault clearance times, NPCC requires that critical fault clearance times be met under all conditions, even if the protection systems themselves have experienced an internal outage or failure.⁸ In this system,

⁸ Unlike the power system, protection failures most often remain undetected until the protection system is called upon to operate, at which time it is too late. Therefore, complete protection redundancy is (continued)

power system stabilizers generally are less common because of the tight interconnections and reliable fault clearing within the times necessary to maintain stability, and load shedding is an absolute last resort when all else has failed.

At the opposite end of the spectrum is the far western WECC system. There, the load centers are hundreds of miles apart, and many of the principal generation resources are even farther. In such a far-flung and loosely coupled system, preserving the stability of the interconnection is almost an impossibility except at huge costs in terms of additional transmission facilities not otherwise required for carrying the load. Hence, the design philosophy and approach to system reliability is entirely different. Intentional separation of the interconnection with concomitant load shedding is a base part of the design in order to preserve as much generation as possible, permitting the system (and load) to be restored as rapidly as transmission and generating resources become available following a major contingency. In this system, power system stabilizers play a large role, mainly because of the relatively loose interconnections; load shedding is also an integral part of the system design.⁹ Consequently, the notion of "one-size-

needed to mitigate against hidden protection system failures, and backup systems that require longer operating times are inherently inapplicable, but may be provided for other operational purposes.

⁹ The remainder of the country is somewhat between these two extremes and is designed accordingly.

fits-all" should be rejected. Instead, FERC should require a floor that is necessary and capable of being met nationwide.

POINT II

FERC Should Remand, Rather Than Void, Previously-Approved Reliability Standards

FERC requests comment on whether it has authority to void a previously-accepted Reliability Standard, and if so, whether it would be beneficial to have such a provision in its regulations.¹⁰

Assuming FERC does have authority to void a previously-accepted Reliability Standard, which we do not take a position on at this time, doing so would be inadvisable, given the highly technical and interdependent nature of Reliability Standards. For example, proposed NERC standards FAC008-1, FAC009-1, FAC010-1, FAC011-1, FAC012-1, and FAC013-1, include requirements for a facility ratings methodology, establishing and communicating facilities ratings, establishing and communicating system operating limits, establishing a transfer capability methodology and establishing and communicating transfer capabilities. These standards are interdependent. Calculating transfer capabilities depends on established operating limits which, in turn, depends on facility ratings. Voiding any one of these standards could adversely affect system reliability on its own and could prevent the implementation of the others. Remanding a problem standard to the ERO to be re-drafted within a specified time-frame, while the

¹⁰ NOPR, at ¶54; 70 *Federal Register*, at 53122.

original standard stays in place, would assure continued reliability coverage of the bulk-power system.

POINT III

Regional Entities Should Not Be Larger In Scope Than NERC's Regional Reliability Councils

Section 215(e)(4) of the FPA requires FERC regulations to authorize the ERO to delegate authority to a Regional Entity for the purpose of proposing Reliability Standards to the ERO and enforcing Reliability Standards if, among other things, the delegation agreement "promotes effective and efficient administration of bulk-power system reliability."¹¹ FERC requests comment on whether it should prescribe the size, scope or configuration of Regional Entities.¹²

Compliance monitoring and enforcement must be carried out by organizations having the resources and expertise needed to perform such functions. Regional Entities should be sized so that they are capable of understanding, and being familiar with, the particular design and operating characteristics of the electric systems they oversee. The Northeast Power Coordinating Council (NPCC), for example, has a very thorough, aggressive and successful compliance monitoring and enforcement program in place.¹³

¹¹ FPA, §215(e)(4).

¹² NOPR, at ¶ 84(1).

¹³ No violations within the NPCC were identified in connection with the August 14, 2003 blackout. U.S.-Canada Power System Outage (continued)

Its success is due largely to the fact that the NPCC staff knows the unique design and operating characteristics of the facilities within that region.¹⁴

Geographically, the NPCC covers a very large area and the system it encompasses produces approximately 125,000 MW at peak load.

Functionally, however, its size is near optimal. It would be unwise to dilute the effectiveness of that region's compliance monitoring and enforcement programs by creating an even larger region.

POINT IV

Regional Entities Should Play a Primary Role In Developing Regionally-Specific Reliability Standards, Subject to ERO Approval, And Compliance Monitoring and Enforcement

FERC seeks comment on what standards, guidelines, measures, or criteria it should use to determine if a delegation agreement between the ERO and a Regional Entity will promote effective and efficient administration of bulk-power system reliability.¹⁵ FERC also asks for examples of how Regional Entities would effectively and efficiently administer the enforcement function.¹⁶

FERC's criteria for determining whether a delegation agreement between the ERO and a Regional Entity promotes effective and efficient

Task Force, *Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations*, (August 2004).

¹⁴ There is considerable diversity between the Canadian and U.S. systems within the NPCC.

¹⁵ NOPR, at ¶84(11).

¹⁶ *Id.*

administration of bulk-power system reliability should include the following:

- (1) whether such delegation will achieve efficiencies by effectively utilizing already-existing resources, both physical and institutional;
- (2) whether such delegation will achieve effective administration by employing local expertise in standards-development, compliance monitoring, and enforcement;
- (3) whether such delegation will promote, to the maximum extent practicable, national uniformity in administration of bulk-power system reliability, including compliance monitoring and enforcement of mandatory standards.

Regional Entities can provide expertise and resources to promote effective and efficient administration of bulk-power system reliability. A study of NERC's ten Regional Reliability Councils showed that they, among other functions, develop regionally-specific reliability criteria, and carry out compliance monitoring and enforcement of applicable Reliability Standards.¹⁷ Having Regional Entities continue to carry out these functions can promote effective and efficient administration of system reliability by taking advantage of already-existing resources and local expertise. For example, NERC's Regional Reliability Councils already possess the detailed knowledge and understanding of the systems they oversee which is so essential to

¹⁷ Regional Managers Committee, *Examination of the Future Role of the Regional Reliability Councils and Assessment of Eastern Interconnection Regional Reliability Council Boundaries*, pp. 4-5 (October 5, 2004). Although it pre-dated the enactment of the 2005 EPA, that report referenced, and was intended to be consistent with, then-pending federal legislation which contained language identical to the language of Section 215(e)(4) of the 2005 EPA. *Id.*, at pp. 1, 4, & Appendix B.

effective compliance monitoring and enforcement. Using these "in-place" resources will achieve efficiencies not otherwise available. This approach will also expedite development of regionally-specific variances where necessary. At the same time, independent oversight of these functions by the ERO can be used to ensure the nationally-coordinated approach required by the 2005 EPA.¹⁸ For these reasons, Regional Entities should play a primary role in developing regionally-specific Reliability Standards, coordinating system planning, design and operations at the regional level, assessing system reliability, and monitoring and enforcing compliance with applicable standards.¹⁹

CONCLUSION

As discussed above, national Reliability Standards should establish minimum requirements for reliability, and regional variances should be implemented where necessary. FERC should remand, rather than void, previously-approved Reliability Standards. Regional Entities should not be larger in scope than NERC's Regional Reliability Councils. Regional Entities should play a primary role in developing regionally-specific Reliability Standards subject to ERO approval, and compliance monitoring and enforcement.

¹⁸ See, *id.*, at pp. 8-9.

¹⁹ See, Regional Managers Committee, *Examination of the Future role of the Regional Reliability Councils and Assessment of Eastern Interconnection Regional Reliability Council Boundaries*, p. 4 (October 5, 2004).

Respectfully submitted,

Dawn Jablonski Ryman
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By Sean Mullany, Assistant Counsel
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Public Service
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(518) 474-7663

Dated: October 7, 2005
Albany, New York

CERTIFICATE OF SERVICE

I, **Sandra Bruce**, do hereby certify that I will serve on **October 7, 2005** the foregoing **Notice of Intervention and Comments** of the Public Service Commission of the State of New York upon each of the parties of record, indicated on the official service list compiled by the Secretary in this proceeding.

Date: **October 7, 2005**
Albany, New York

Sandra Bruce

Sworn to before me this
7th day of October, 2005

Notary Public