



Sector 8 Policy Input to the NERC BOT and MRC

Dated April 29, 2014

Item 1: Reliability Standard Audit Worksheet (RSAW) Review and Revision Process

The Large Consumer segment appreciates the opportunity to provide feedback on the RSAW review and revision process proposed by the ERO Enterprise. We are encouraged that NERC and the Regional Entities understand the vital connection between the entities that develop the guidelines and those that are subject to them. Too many times, material modifications to guidelines are implemented without sufficient transparency – and the consequences are only determined when costly penalties are absorbed by less-observant registered entities who find to their surprise that their procedures or documentation are no longer sufficient.

We do understand and appreciate the need for Compliance Enforcement Authorities (CEAs) to rapidly incorporate essential findings from audits, spot checks, and BES events analysis into the RSAWs. In addition, we can all agree that it can be difficult to discern the degree of impact from a material modification – some will reflect universal industry practices, while others may unexpectedly disallow comparable alternatives. As such, the Large Consumer segment fully agrees with the initial steps that the ERO Enterprise has proposed.

However additional steps should be mandatory when feedback from an industry stakeholder established that the modification is inconsistent with the scope or intent of the Standard. Evidence of such inconsistency should be more than mere opinion but may include the Standard Development Team's (SDT) responses to industry commentary, the NERC submission to FERC prior to approval, or FERC's order approving the Standard. When such evidence is presented, the ERO Enterprise must be compelled to address it in written format. It can solicit input from the SOTC or even the Standards Committee and the original SDT Chair. In the event that the industry stakeholder's position is rejected, the ERO Enterprise must issue a written response so that, if appropriate, its decision can be appealed.

We believe that this type of process will separate issues of serious consideration from those which are not. Most RSAW modifications still will pass through the process in short order, but the tougher ones deserve added attention – and some may even require a Standard's modification. If an emergency update is needed due to a never-before-experienced situation, there are other enforceable vehicles that NERC can use in the interim.

Item 2: Risk-Based Registration Assessment

Question 1. The whitepaper sets out several objectives for this initiative. Do you agree with these objectives and are there any other considerations you would suggest?

Ans: The Large Consumer Segment strongly supports the Risk-Based Registration (RBR) initiative provided that it pursues the following objectives as stated in the Executive Summary:

“(i) clearly defined terms, criteria and procedures that are risk-based and ensure reliability of the BES, (ii) refined thresholds, where warranted, based on sound technical analysis and support, and (iii) reduced Reliability Standard applicability, where warranted, based on sound technical analysis and support.”

We agree that accomplishing these objectives would result in a vastly improved basis for registering entities.

However, a literal reading of the detailed text of the whitepaper indicates that the primary objective, at least for GO/GOP and TO/TOP, may not be aimed at the Registry, nor is it to promote de-registration, but rather appears only to be reducing the compliance scope for small GO/GOP and TO/TOP:

“The intent of establishing a small GO/GOP threshold is not to remove any BES generator owners and operators from the registry. Rather, all BES generator owners and operators that meet the BES Definition, as well as the Registry Criteria capacity thresholds (individual units >20 MVA, plant >75 MVA), would remain registered and subject to compliance with applicable GO/GOP standards. For entities that do not exceed the small GO/GOP threshold set in the RBR process, they would be subject only to a defined subset of GO/GOP requirements (discussed below), which is to be determined after further analysis.” (Appendix A)

We seek clarification on the important point that the RBR initiative should focus on reducing unnecessary registrations as a threshold matter, as well as on reducing the compliance scope for entities that are registered but should not be subject to the full GO/GOP or TO/TOP requirements. The Large Consumer segment trade group, ELCON, has repeatedly expressed its concern that the revised BES definition will greatly expand the number of candidates for registration – especially involving load-only manufacturing facilities – because of the blunt-force nature of the definition’s bright-line thresholds. While these thresholds may be reasonable and effective for identifying BES Elements on utility systems, they are not suitable for identifying BES Elements inside manufacturing facilities except in the instance of large, utility-scale behind-the-meter generation that are already registered. Imposing certain standards requirements on manufacturing facilities – all of which are retail loads – is tantamount to taking control of and interfering with the industrial production process. This violates the basic premise of the electric power industry that the plenary responsibility of the industry is to reliably serve its retail customers at just and reasonable rates.

To date, no load-only manufacturing facility that we are aware of has been required to register in the NERC Compliance Registry. Yet it is common knowledge that a large number of such facilities have interconnection or other internal facilities that will disqualify them from the E1 Radial and E3 Local Network exclusions and therefore they will become candidates for registration. It is not clear what their registration status will be under the existing *Statement of Compliance Registry Criteria*. It is therefore imperative that registration criteria be devised that prevents wholesale registration of these manufacturing entities. ELCON has proposed one such approach to the RBRAG and it is on pages A-15 and A-16 of the whitepaper.

Also, the Board should be aware that most behind-the-meter generators offer sales to the BES on a discretionary basis. However, most of the behind-the-meter generators that are currently registered are large and utility scale with a business model that combines energy/steam self-supply with merchant sales. These units are routinely engaged in power sales and actively seek such commercial opportunities, in addition to responding to requests by the TOP/BA/RC for reliability purposes. Many of the machines that generally provide discretionary sales may choose to carefully limit such sales to the BES so as to avoid exceeding the applicable thresholds that would trigger registration. In effect, they may deliberately limit energy and capacity sales to the grid because the cost of compliance with the Reliability Standards would exceed the value of incremental power sales. Many regions in the US are experiencing or anticipating problems with resource adequacy because of the penetration of variable energy resources and/or the retirement of coal-fired or nuclear power plants. It would be a wise application of the RBR to allow behind-the-meter generators to exceed the thresholds if such sales are deemed to be free of any negative impacts to reliability. For example, if a TOP or BA openly solicits

capacity from such entities, the fulfillment of such requests should not be used to trigger registration. In many instances, allowing the thresholds to be exceeded by these resources is the lower risk option. ELCON has proposed on page A-20 and A-21 of the whitepaper a set of criteria that would allow greater discretionary sales when such sales have either no reliability impact or otherwise make a net positive contribution to reliability as directed by the BA, TOP or RC.

The Large Consumer Segment supports the two stated goals of RBR on page 3 of the whitepaper, specifically to:

- (1) Develop and deploy a sustainable Registration program design that incorporates evaluation of the reliability risks and benefits provided by an entity to ensure reliability, and where appropriate, define classes of Registered Entities for application of a properly scoped set of Reliability Standard requirements.
- (2) Create an implementation plan that supports a 2016 or sooner launch, along with business practices and IT requirements, with the possibility of early adoption options that can address undue industry burden, while also preserving reliability.

We also support:

- (1) The objective to develop a consistent approach, for use by all Regional Entities, to determine an entity's material impact on BPS reliability;
- (2) A consistent approach to assessing materiality;
- (3) NERC oversight and guidance on regional registration practices;
- (4) Allowing for one-time attestations that a requirement is inapplicable;
- (5) The application of a centralized review process;
- (6) The development of a common registration form for entity risk assessment; and
- (7) The elimination of the functional registration categories identified in the whitepaper (PSEs and IAs).

We agree that several options should be pursued for implementing RBR as discussed on pages 8 and 9. These are:

- (1) A CMEP approach in which it is *prima facie* established that certain requirements do not apply to a Registered Entity. The Regional Entities enforcement policies and the Reliability Assurance Initiative (RAI) must play a key role in advancing the RBR Initiative. The RAI has recently been remarkably successful in reducing audit scope while maintaining or improving reliability focus on important requirements.
- (2) A materiality approach in which existing thresholds may be revised as appropriate to account for lower or no risk situations with the outcome that the Registered Entity may be a candidate for deregistration, or the BES classified candidate for registration is not subject to registration. For example, ELCON has proposed to allow net sales to the BES by behind-the-meter generators to exceed the 75-MVA threshold in limited, reliability enhancing situations that would not entail registration of the entity (see page A-20 of the whitepaper). Similarly, we have proposed a series of risk-based criteria that would exempt load-only manufacturing facilities from registration even if the entity owns or operates an electrical configuration that does not qualify for the E1 Radial and E3 Local Network BES exclusions (see pages A-15 to A-16).

- (3) Revising Reliability Standards such that subsets of requirements are applied to subcategories of functional entities. Long-term, the Standards Development Process should be where the emphasis should be.

Finally, we support the formation of SME task forces to develop risk criteria and Reliability Standard applicability classes. Regarding the latter, we remind the Board that the GOTO effort took a long time to reach fruition and that any attempt to deploy this model again should be conditioned on a more expeditious timeline for completion.

Question 2. Is the use of multiple thresholds, as discussed in the whitepaper, a prudent approach to determining whether an entity should be registered and do you believe this may cause any unintended consequences?

Ans: The Large Consumer Segment supports the use of multiple or revised thresholds as a very practical approach to account for the level of risk. At its most fundamental level, the thresholds would map the disparity between entities that are public utilities and entities that are not public utilities. Within the class of public utilities, the thresholds should also be established on the basis of entity size. We acknowledge that this may entail the need for a case-by-case process modeled after the BES exception process.

We remind the BOT that the use of multiple thresholds has already been demonstrated within specific Standards applicability, and were deemed a prudent and fair way of limiting Standard Requirements to entities that actually affect the reliability issues being addressed by a given Standard. Examples of such Standards are FAC-003, MOD-26, -27, and CIP V4.

Question 3. Are there other considerations not identified in the whitepaper that you believe need to be factored into this initiative?

Ans: Although not specifically a registry issue, the compliance burden of the small entities could be further reduced by having different audit schedules (as part of the RAI).

In addition, as discussed above, the cost of complying with Reliability Standards for some behind-the-meter generators might cause those generators to withhold energy and capacity from the energy and ancillary services markets in order to stay below the “net capacity” thresholds in the existing *Statement of Compliance Registry Criteria*. In regions of the country that face resource adequacy challenges, the risk of registration may itself become an added reliability risk. This issue might be easily resolved under any rational risk-based assessment of the entity (ignoring the implications on resource adequacy). However, RBR also might be a useful tool for identifying and mitigating situations where the compliance cost burden may potentially degrade reliability and this should be an important criterion for not registering the entity. For example, there have been repeated efforts to functionalize demand response and subject this resource to the requirements of certain Reliability Standards. It is well known that large manufacturers are frequent suppliers of demand response. We would anticipate that the availability of this resource would be sharply curtailed if the provider were at risk of NERC registration.

Item 3. Potential Alternative Funding Mechanism to Support Expanded Cyber Security Information Sharing and Capabilities.

The Electricity Sector Information Sharing and Analysis Center (ES-ISAC) was established in 1998 when DOE requested that NERC serve as the ISAC for the electricity sub-sector. The purpose of the ES-ISAC is the rapid and secure sharing of information with the electric industry and applicable governmental entities regarding real and potential cyber-related threats to the electricity sector. NERC has funded the

ES-ISAC but that will end after the 2014 Fiscal Year because ES-ISAC is not a statutory requirement under Section 215 of the Federal Power Act. NERC has proposed an alternative funding scheme that would rely on voluntary contributions.

ELCON supports the proposal that ES-ISAC be funded on a voluntary, opt-in basis from the utility sector. In general, direct financing by the industry is preferable to governmental allocations through FERC. It allows for shared decision making on expenses – and the voluntary nature of the contributions would force NERC to continually demonstrate the value of the program. However, under a voluntary scheme there will be a strong incentive for free riders. Therefore, there may need to be some tangible benefit provided to contributors that non-contributors do not get. But this should be balanced with the need for inclusiveness and the avoidance of a governing structure dominated by a subsector of the utility industry.

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