



**POLICY INPUT FROM THE BOARD OF DIRECTORS OF
MIDWEST RELIABILITY ORGANIZATION (“MRO”) TO
NERC MEMBERS REPRESENTATIVE COMMITTEE (“MRC”)
NERC BOARD OF TRUSTEES (“BOT”)
OCTOBER 30, 2009**

The Midwest Reliability Organization Board of Directors (“MRO BOD”) respectfully submits the following comments for the North American Electric Reliability Corporation (“NERC”) MRC and NERC BOT to consider at their November 4 and 5, 2009 meeting in Atlanta, GA.

Three Year Performance Assessment

MRO BOD supports the efforts to use the *Three Year Assessment* as a key input to improve the implementation of NERC and the Regional Entities activities and ensure better coordination between NERC and the Regional Entities. MRO BOD recommends a priority on those matters which can provide the highest, fastest impact to improve reliability and increase efficiencies. For example, establishing feedback loops to provide timely insights into how Registered Entities can improve both compliance performance and system reliability. A systematic approach led by NERC, to “glean” lessons learned from the various outputs of compliance audits and Notices of Penalties (“NOP”), including settlements and sharing those insights with the industry would be a tremendous service to the stakeholders. As a self regulatory organization, NERC, through a centralized manner, may take initiatives to link compliance and enforcement outcomes with improving performance as an essential element to the self regulatory construct. MRO BOD completely supports the current direction by NERC on performance metrics and this can serve as the logical extension into a broader effort, moving from data/trend statistical analysis to qualitative insights into improving performance. MRO BOD considers this “low hanging fruit” and can be acted upon immediately with a realignment of existing resources.

After three years of experience, the Rules have worked as designed and NERC should be commended for the implementation thus far. MRO BOD recognizes that the Rules were constructed in very careful manner by many dedicated professionals. However, MRO BOD would appreciate a review of the Rules with an eye towards simplification as part of the *Three Year Assessment* project. For example, on October 26, 2009, the Commission provided an opportunity to consider scalable records for violations (e.g. minor violation, smaller record; more serious violation, bigger record) as a very pragmatic way to simplify activities in enforcement (*Further Guidance Order of Filing of Reliability Notices of Penalty issued October 26, 2009*). Perhaps NERC and the Regional Entities can use this as an opportunity to simplify other aspects of the Compliance Monitoring and Enforcement Program (“CMEP”) and to address





some of the concerns from stakeholders, such as re-visiting the possibility of a “non-cited violation”¹ (“warning ticket”) approach. Given the Commission order, this approach could be a suitable alternative to the abbreviated Notice of Penalty approach to handle administratively minor, low impact violations.

Project to Develop Results-Based Standards

MRO BOD strongly supports any efforts to improve the existing standards through prioritization, using risk-based methods, and further clarifications by removing ambiguity and unnecessary requirements to system reliability. Specifically, MRO BOD recommends that for existing standards, NERC, through the MRC, should adopt a one-time alternative procedure to expedite the process. The process should focus on removing those requirements in the existing standards which are unnecessary to maintain and improve reliability².

In the Commission Order 693 issued March 16, 2007, the Commission provided insights into the level of specificity required for enforceable standards³. MRO believes that removing unnecessary requirements from the existing Reliability Standards is a needed administrative procedure to improve the focus of standards, makes enforcement determinations more meaningful and does not conflict with the Commission’s Order.

Regional Delegation Agreements

MRO BOD supports strong stakeholder advice on how to improve the current delegation agreements. MRO BOD would appreciate considerations to clarify roles between NERC and the Regional Entities and provide specificity in the delegation agreements as to how NERC will

¹ In the context of Section 215 of the Federal Power Act in the United States, MRO would propose that such “non-cited violations” would require a submission by the Registered Entity that mitigation was completed within the agreed upon schedule; failure to do so would escalate to an enforcement action. Additionally, MRO would propose that non-cited violations would be part of the violation history of the Registered Entity (i.e. considered in future enforcement actions) and filed with Regulator as information.

² Technical references or application guides are helpful accompanying documents to Reliability Standards and should be considered as well. MRO frequently points to the *Protection System Maintenance-A Technical Reference* published by the NERC Planning Committee as an example of an important accompanying document to the meet compliance requirements.

³ Para. 275 of Commission Order 693. *The underlying assumption of many of the commenters seems to be that the Reliability Standards must spell out in minute detail all factual scenarios that might violate a Requirement and the precise consequences of that violation. But due process requirements do not go so far. Indeed, many government regulatory schemes provide far less specificity in terms of what is required or proscribed, and yet those regulations are routinely enforced.*¹²⁸ *Indeed, many tariffs on file with the Commission do not specify every compliance detail, but rather provide some level of discretion as necessary to carry out a particular act. This does not mean the tariffs are unenforceable; rather, it means that, if a dispute arises over compliance and there is a legitimate ambiguity regarding a particular fact or circumstance, that ambiguity can be taken into account in the exercise of the Commission’s enforcement discretion. Therefore, we find that the Reliability Standards must strike a balance between a level of specificity that places users, owners and operators on notice of what is required, and a level of generality that encompasses unanticipated but serious actions or omissions that could affect Bulk-Power System reliability. We are satisfied that the Requirements portions of each Reliability Standard that we approve in this Final Rule appropriately strike this balance.*¹²⁸ *Many sections of the FPA, including section 215, use such terms as just and reasonable or unduly discriminatory or preferential or even the public interest.*





achieve more consistency across the Regional Entities. First, MRO BOD supports an explicit definition of delegated authorities in the next agreements as a means to improve clarity of roles between NERC and the Regional Entities and better define “oversight” by NERC. For example, MRO BOD believes that there is a “presumption” that the Regional Entities decisions related to compliance and enforcement determinations are valid by virtue of meeting the governance requirements of Section 215 of the Federal Power Act (“FPA”) and following the Rules. Such an approach would provide the industry with a higher level of certainty that decisions made under delegated authorities by Regional Entities carry a presumption of validity. Second, NERC has stated and taken actions to improve consistency⁴; perhaps, NERC can include additional suggestions in the next version of the agreements to memorialize those actions which result in improved consistency in close collaboration with the Regional Entities.

In closing, the MRO BOD remains strongly supportive of the self regulatory model under Section 215 of the FPA and via other agreements with Canadian jurisdictions; and, is committed to taking the necessary steps to maintain and strengthen the relationships between NERC, Regional Entities, Regulators, and those in the industry.

⁴ Excerpt from *NERC Compliance Monitoring and Enforcement Program 2008 Annual Report* date August 2009 : *While the Regions developed a governance structure with several working groups to develop consensus on compliance implementation and policy issues, NERC will provide points of contact within NERC’s staff for each such working group.* MRO believes that only NERC, as the international Electric Reliability Organization (“ERO”), has the authority to assure consistency in implementation. Regional Entities cannot compel one another to be consistent; Regions can only voluntarily agree, although this has been successful, it provides no assurance to the industry that consistency in implementation will prevail across North America. Centralized policy, procedures, and systems are essential elements for successful and predictable decentralized implementation through the delegation agreements.

