



MRO BOARD OF DIRECTORS
POLICY INPUT TO NERC BOARD OF TRUSTEES

May 7, 2010

Pursuant to the NERC Board of Trustee's request for policy input from the NERC Member Representative Committee for the upcoming May 11, 2010 meeting, the MRO Board of Directors respectfully submits the following comments.

1. FERC March 18 Orders, NOPRs and Policy Statements

It is MRO's position that the March 18th FERC Orders signaled to the industry that the Commission in the United States has concerns about the rigor of the international self regulatory implementation as contemplated by Congress and the Bilateral Principles. MRO strongly supports the international self regulatory model for the following reasons:

- a. The model balances the interests of industry with arms-length oversight; and,
- b. The model recognizes the interdependencies of the North American bulk electric system where "one size does not fit all" as there are many technical situations and players and we must be respectful of international borders (U.S., Canadian, and Provincial jurisdictions).

MRO suggests that NERC (both Management and Trustees) engage the Commission to better identify, understand and then address concerns through informal and formal means. NERC should encourage the Commission to continue their ongoing dialogue with Canadian regulators to ensure understanding of concerns and potential solutions which are common to maintain the reliability and security of the North American bulk electric system.

2. Discussion of NERC Priorities, Goals and Objectives

MRO is very supportive of the three year common business planning and assumptions guide that was developed for the 2011 (and beyond) budgeting process. NERC and Regional staff should be congratulated for a job well done and treat this document as a "living plan" to be reviewed annually into its three year window. MRO offers the following comments on NERC's priorities for the future:

Standards

MRO believes that clear, unambiguous standards are the ultimate solution to both improving reliability and providing more clarity to the industry in meeting compliance requirements. However, this is a long term effort which will require training for NERC staff and industry members who participate in the standard development processes.





Because resolution to standard setting will take a number of years, MRO has two recommendations:

First, MRO strongly supports application guides as a means to reinforce the existing and future standards. While the purpose of reliability standards is to improve reliability, MRO is concerned with the continued focus on individual words of standards, rather than the greater context of their essential purpose, to improve reliability. Further, if improvement of system reliability is completely dependent on the existing standards processes, without regard to greater context of our essential purpose (*to improve reliability*); our implementation of self regulation is missing the mark and should be corrected. An application guide would provide Registered Entities guidance in how the standard and requirements apply to their functions (along the lines of the functional model) and could be revised as needed to provide more details on compliance expectations. Application guides cannot obviate NERC and the Regions from their responsibility to call “balls and strikes” and exercise judgment, but, they should provide the industry with a desired “strike zone” and set clear compliance expectations. Therefore, MRO supports more funding for merging the current RSAWs into more usable application guides through stakeholder engagement and as a general practice into the future.

Second, it appears that NERC intends to discontinue the current Interpretation process in order to focus on completing Commission Order 693 required changes. MRO is concerned about interrupting the interpretation process as this will leave interpretation to the compliance and enforcement stage, creating much more uncertainty with Registered Entities on how to comply with perceived ambiguities in the current Reliability Standards. MRO supports immediate improvements to the current NERC interpretation process to improve speed without sacrificing industry engagement, an important aspect of self regulation. MRO understands that the new Compliance Application Notices are helpful to the industry to better understand specific issues in a particular standard. While we applaud all efforts to provide more transparency, this effort is not a replacement for a streamlined, interpretation process consistent with our self regulatory construct which depends on meaningful engagement with the industry. Moreover, MRO believes that if we develop application guides to the standards, interpretations should be more of an exception.

Compliance

Much of the consistency issues raised by the industry over the last three years may be related to inadequate training and credentialing of NERC and Regional staffs. MRO strongly supports the U.S. Government Accountability Office (GAO) “yellow book” (2007 version) which includes many applicable performance standards for which NERC and Regions can benchmark performance and are quite consistent with international concepts and practices. These practices are consistent with a risk based approach, the performance of our Compliance Monitoring and Enforcement Program (CMEP) activities, and past Commission orders. Without a “play book” or clear benchmark, NERC and Regional staff will continue to conduct compliance activities in an ad hoc fashion, resulting in wide inconsistencies -- a common source of





frustration by the industry. While ultimate determinations are adjudicated through the due process of the CMEP, a more systematic and complete approach, such as the applicable standards in the “yellow book”, would go a long way to improve consistency. MRO does not expect all the GAO standards are applicable to the conduct of our work, but many are related and NERC and Regions should be held accountable to them. MRO appreciates that NERC mentions the “yellow book” in audit training, but training towards this benchmark requires a much more comprehensive approach, including the identification of the applicable standards in the conduct of our work and measuring performance in the field to these benchmarks. If NERC and Regional staffs are held accountable to these benchmarks, the suggestion at the February MRC meeting of a “police review board” on the conduct of NERC and Regional staff will be unnecessary. Therefore, MRO supports additional funding for training to a performance “benchmark” and credentialing of NERC and Regional staff, including CIP audit staff who perform compliance functions under the CMEP.

Enforcement

With more standards, increasing demands, and no leveling off of alleged violations in the “pipeline”, we need better tools in our toolkit. Greater discretion in enforcement matters is urgently needed so that Regions can better focus on serious risks to reliability, such as significant alleged violations and the mitigation plans to quickly address such risks. The Commission provided NERC an opportunity, in its October 26, 2009 order, to propose a different approach to enforcement in the United States. The Commission outlined in the order the concept of scalable records. NERC, to its credit, established an abbreviated record as a way to take advantage of the Commission order and enable more efficiency in processing enforcement actions.

While the abbreviated record is a step in the right direction, MRO is concerned with the costs to prosecute all violations through a “Notice of Penalty (NOP)” docket with the Commission in the U.S., and seeks a periodic, public reporting mechanism for minor violations which have been mitigated (i.e. “quarterly deficiency logs”) to allocate resources more effectively. MRO expects that increased resources will be necessary in the future, but also considers that additional tools in the “toolkit” will permit better allocation of existing resources to focus on more serious matters. Therefore, MRO supports funding to initiate a filing with the regulators to adopt the aforementioned process in 2010, to be effective as soon as possible. MRO believes that without better tools, we will be unable to manage costs and workload in an efficient, effective manner in the future. In summary, NERC and the Regions should be provided more discretion to handle minor and administrative violations without the burdens of the formal docketing process and NERC should seek an appropriate mechanism.

Event Analyses and Lessons Learned

MRO strongly supports the transformation of the NERC-enterprise (NERC and the Regions) into learning organizations that work with industry to improve reliability through fast, transparent dissemination of relevant information about events, disturbances, compliance, and





enforcement findings, as Mr. Cauley has discussed. This is entirely consistent with the self regulation model; however, the NERC-enterprise needs to find a way to allow learnings to be timely disseminated without the “chill” of potential enforcement which can prevent prompt “lessons learned” from being communicated. MRO supports NERC’s continued efforts to improve and clarify event analyses and investigations. While both are necessary, the NERC-enterprise should not permit investigations, which can be time consuming, prevent the broader goal of being a learning organization and a true resource for the industry to improve their performance. MRO has re-aligned itself and added additional resources to focus on improving the transference of timely information and encourages NERC-enterprise to do so as well.

Thank you for the opportunity to comment.

