UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards

COMMENTS OF THE NORTHEAST POWER COORDINATING COUNCIL

The Northeast Power Coordinating Council (“NPCC”) hereby submits these comments in response to the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Notice of Proposed Rulemaking on Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards issued on September 1, 2005 (“NOPR”).

I. INTRODUCTION

On August 8th the President signed a hallmark piece of legislation, the Electricity Modernization Act of 2005, which will for the first time make compliance with electric reliability standards mandatory and enforceable as a matter of United States law. NPCC worked with others in the industry towards passage of this legislation. Pursuant to the directives in the Act, the Commission instituted this rulemaking on September 1st to establish criteria governing the certification of an Electric Reliability Organization (“ERO”) and develop procedures for the establishment, approval and enforcement of electric reliability standards. This rulemaking also outlines the procedures under which the ERO may delegate authority to a Regional Entity (“RE”) to propose and enforce those reliability standards.

As a Regional Reliability Council (“RRC”) and the organization responsible for establishing regionally-specific reliability criteria for the northeastern United States and eastern Canada, NPCC has a direct interest in the matters addressed in this NOPR. NPCC’s comments specifically focus on international reliability assurance, the delegation of FERC enforcement authority agreements, the role REs will play in the enforcement of reliability standards, and the application of regionally-specific reliability criteria. NPCC’s Members may also provide additional comments on the remaining aspects of the NOPR, as appropriate.

II. COMMUNICATIONS

All communications, including any correspondence, pleadings, or other documents, related to this matter should be directed to the following individual:

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III. DESCRIPTION OF THE NORTHEAST POWER COORDINATING COUNCIL

NPCC is the RRC responsible for assuring the reliability of the bulk power system in the northeastern United States and eastern Canada. Reliability is assured through the establishment of regionally-specific reliability criteria, which implement and augment broad-based, industry-wide standards; through coordination of system design and operations; through assessment of adequacy and security; and, through monitoring and enforcement of compliance with such reliability criteria. NPCC, through its open, stakeholder process for development of regionally-specific criteria, facilitates, to the extent possible, attainment of fair, effective and efficient competitive electric markets.
NPCC is one of ten Regional Reliability Councils in North America that together comprise the North American Electric Reliability Council (“NERC”). NPCC's international membership is comprised of electric utilities, transmission owners, transmission providers, independent generators, power marketers, transmission customers, an Independent System Operator (“ISO”), a Regional Transmission Organization (“RTO”), an Independent Electricity System Operator (“IESO”), a statewide sub-regional reliability council, and State and Provincial regulatory authorities. Each member is a signatory to the Council's Membership Agreement, which defines the membership rights and obligations. The Membership Agreement obligates all signatory parties to compliance with NERC Reliability Standards and NPCC Reliability Criteria, creating a mandatory compliance environment for the northeastern United States and eastern Canada. A compliance program, with State and Provincial regulatory support, is in place to enforce compliance within both the U.S. and Canadian portions of NPCC.

The geographic area of NPCC totals approximately one million square miles and includes New York State, the six New England states, Ontario, Quebec and the Maritime Provinces. The total population served is approximately 56 million people. From an electric load perspective, 20% of the Eastern Interconnection load is served within NPCC. For Canadian electricity requirements, 70% of the country's load is located within the NPCC Region. This represents a current NPCC membership composition by load that is approximately 45% U.S. and 55% Canadian.

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3 A list of NPCC’s members can be found at http://www.npcc.org/members.htm.
NPCC is a voluntary, non-profit organization. Membership is available to all entities that participate in the interconnected electricity markets in northeastern North America. The NPCC Membership Agreement provides for open, inclusive membership and fair and non-discriminatory governance with NPCC’s activities directed by a balanced stakeholder Executive Committee. The NPCC Membership Agreement also allows for non-voting Public Interest membership to be extended to regulatory agencies with jurisdiction over users, owners and operators of the bulk power system within northeastern North America and organizations expressing interest in the reliability of electric service in northeastern North America.

IV. EXECUTIVE SUMMARY

As a Regional Reliability Council (“RRC”) and the organization responsible for establishing regionally-specific reliability criteria for the northeastern United States and eastern Canada, NPCC welcomes this opportunity to comment on the Commission’s NOPR. NPCC’s comments specifically focus on international reliability assurance, the delegation of FERC enforcement authority agreements, the role REs will play in the enforcement of reliability standards, and the application of regionally-specific reliability criteria.

(1) The International Nature of Reliability Interdependency in northeastern North America Should Be Recognized Through the Establishment of a Cross-Border Regional Entity.

NPCC strongly supports the Commission’s recognition of the need for a Cross-Border Regional Entity and the special role such entities will play in assuring reliability in an international, interconnected power system. Any structure adopted in the U.S. must necessarily account for the steps taken by the Canadian and Mexican Governments to assure reliability within their borders. As an international RRC, NPCC has worked closely with Canadian authorities and within the regulatory structures established by the Provinces. The provincial regulatory regimes have referenced the regionally-specific reliability criteria established by NPCC in their proceedings. Accordingly, the Commission should extend a level of deference to the establishment of Cross-Border Regional Entities
and presume that a proposal for delegation to a Cross-Border Regional Entity promotes effective and efficient administration of bulk power system reliability and should be adopted.

(2) A Balanced Federal Role in Assuring Reliability Should Be Established.

Congress recognized the necessity of an industry based ERO formed around Regional Entities with a continued recognition of the role of the States in assuring safety, adequacy and reliability. The Commission, too, has recognized in previous policy statements that regional criteria may be necessary and that the State and RRCs have legitimate interests in enhancing reliability beyond the level achieved by compliance with broader-based minimum standards. Any move to limit reliability assurance efforts solely to a set of uniform North American reliability standards or force a “one size fits all” approach ignores unique regional needs or concerns and will ultimately degrade reliability in the northeastern portion of the U.S. and Canada.

(3) A Delegation of Enforcement Authority Supplements the Current Roles and Responsibility of the Regional Reliability Councils.

RRCs and NERC are the appropriate vehicles to provide necessary reliability assurance functions and services into the future, including those specifically identified in statute. The necessary functions and member services currently provided by the RRCs with State and Provincial support include: development of regionally-specific reliability criteria; coordination of planning and operations; assessment of reliability; and, compliance monitoring & enforcement of regionally-specific criteria. It is essential for bulk power reliability that these activities continue to be performed on a coordinated basis by RRCs across North America.

NPCC has played a vital role for nearly forty years in assuring, with State and Provincial support, the reliability of the international, interconnected bulk power systems in its Region through the establishment of reliability criteria, coordination of system design and operation, and the assessment of compliance and enforcement of reliability criteria. It is essential that the Regional Reliability Councils, such as NPCC, continue to play this vital role in assuring electric reliability in the U.S. and Canada.

V. COMMENTS OF NPCC

The international bulk power electric systems within NPCC’s Region are tightly interconnected with each other and with the bulk power electric systems in neighboring
reliability regions. In such a highly interconnected system each participant relies on the
due diligence of its neighbors to adhere to continent-wide reliability standards and the
more detailed, in NPCC’s case more stringent, regionally-specific reliability criteria to
ensure that the interconnected system remains secure. A failure of any participant to
perform according to these long standing, well established standards and criteria can have
significant adverse impact and wide reaching effects on grid reliability that can lead to
interruptions and even the collapse of the interconnection.4

A. The International Nature of Reliability Interdependency Should be
Recognized Through the Establishment of a Cross-Border Regional
Entity.

Responding to the recommendations of stakeholders in the electric utility
industry, the Commission has included a special Regional Entity category; the Cross-
Border Regional Entity. NOPR at P8. The term “Cross-Border Regional Entity” is
defined as a Regional Entity for which the size and scope includes a portion of Canada or
Mexico. Id. at P27. NPCC strongly supports the Commission’s recognition of a Cross-
Border Regional Entity and the special role such entities will play in assuring reliability
in an international, interconnected power system.

Any framework for reliability assurance adopted in the U.S. must necessarily
account for the steps taken by the Canadian and Mexican Governments to assure
reliability within their borders. Importantly, the structure of the Canadian regulatory
regime differs significantly from the approach taken within the U.S. Unlike the U.S.,
where the Electricity Modernization Act has granted Federal regulatory oversight of
electric bulk power reliability to FERC, the Canadian regulatory structure is provincially

4 In fact, NPCC was formed to promote the reliability and efficiency of the interconnected power
systems within its geographic area after such an event, the 1965 Northeast Blackout. Moreover, during the
based.\textsuperscript{5} There is no single, Canada-wide authority for electric reliability. For example, the Ontario Energy Board (“OEB”) has regulatory oversight and enforcement authority in the Province of Ontario.\textsuperscript{6} The Régie de l’énergie (Québec Energy Board or “QEB”) has regulatory oversight and enforcement authority in the Province of Quebec.\textsuperscript{7}

Cross-border cooperation on reliability standards development, compliance and enforcement should be built on the foundation already established by international RRCs. International RRCs, such as NPCC, have worked closely with the Canadian authorities and within the regulatory structures established by the Provinces. Moreover, the provincial regulatory regimes have referenced the regionally-specific reliability criteria established by NPCC in their proceedings. The Commission also acknowledges that directing a Cross-Border Regional Entity to take appropriate steps to be recognized in Mexico or Canada would meet the principle and statutory requirement established by Congress that Regional Entities will take the needed steps to have standing in those nations. NOPR at P8.

Accordingly, FERC should extend a level of deference to Cross-Border Regional Entities. Namely, a rebuttable presumption that a proposal for delegation to a Cross-Border Regional Entity promotes effective and efficient administration of bulk power system reliability and should be adopted. In addition, the Commission’s final rule should allow for the necessary structural and procedural differences of Cross-Border Regional Entities needed to integrate Canadian Provincial Authorities that would not ordinarily

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\textsuperscript{5} In the area of electricity, the role of the National Energy Board in Canada (“NEB”) is generally limited to approving International Power Line Certificates and the export of power from Canada.


apply to a Regional Entity operating entirely within the U.S. NPCC believes that this flexibility can be accommodated yet still remain true to the basic principle of promoting consistency among the Regional Entity delegation agreements.

The Commission placed in the public record of this docket the principles proposed by the Bilateral Electric Reliability Oversight Group ("Bilateral Group")\(^8\) which are intended to guide the establishment of reliability entities that can function effectively in the U.S. and Canada. Specifically, with respect to the principles intended to apply to Cross-Border Regional Entities the Bilateral Group includes:

- When considering the delegation of authority to a proposed Regional Entity, the ERO, FERC and regulatory authorities in Canada should take into consideration whether the size or scope of the proposed Regional Entity would result in difficulty in conducting cross-border trade.
- A Regional Entity that has cross-border scope should ensure that each country represented in the region has the opportunity to have members from the country on the Board in numbers that reflect the country’s approximate percentage of its Net Energy for Load in that region.
- Where possible, the boundaries of Regional Entities should encompass [logical] boundaries of other transmission organizations, such as [Transmission Owners (TO), Transmission Operators (TOP),] Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs). *Id.* at 3.

NPCC supports these principles that were put forward by the Bilateral Group. However, with respect to the issue of cross-border penalties, NPCC believes that an approach in which similar penalties are imposed for similar consequences should be adopted rather than uniform cross-border penalties. In order to respect the individual jurisdictions of the Canadian Provinces, the determination of penalties applicable in Canada and the disposition of any monies collected as monetary penalties would continue to be determined by the individual Provinces.

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B. A Balanced Federal Role in Assuring Reliability Should be Established.

Subtitle A of the Electricity Modernization Act of 2005 strikes a balance between the role of the federal government and the States. In striking this balance, Congress recognized the necessity of an industry based ERO formed around Regional Entities with a continued recognition of the role of the States in assuring safety, adequacy and reliability. The statute expressly provides for a balanced relationship between these several authorities:

1. The statute recognizes that there will be a partnership between the federal government, ERO, Regional Entities and the States in the development of continent-wide reliability standards and regionally-specific reliability criteria. The Legislation directs the Commission to give deference to the ERO on the content of a proposed reliability standard. It is only with respect to a reliability standard’s effect on competition that FERC is granted plenary authority. FPA § 215(d)(2).

2. The statute provides for the ERO, or FERC directly, to delegate authority to a Regional Entity for the purpose of proposing reliability standards to the ERO and enforcing reliability standards. FPA § 215(e)(4).

3. The States continuing authority 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, is also recognized. FPA § 215(i)(3)

4. Finally, the separate authority of the ERO and Regional Entities is supported by the statement that neither are departments, agencies, or instrumentalities of the United States Government. Electricity Modernization Act of 2005 § 1211(b).

FERC has in the past recognized this necessary balance of responsibility for reliability and the vital role RRCs play in the development and enforcement of regionally-specific reliability criteria. In its policy statement issued on April 19, 2004,\textsuperscript{9} the Commission clearly established that the “NERC reliability standards should represent a floor for grid operator and bulk system participants’ reliability efforts, and not a ceiling.” \textit{Id.} at P17.

The Commission supports variations where the transmission provider or other relevant entity can demonstrate that regional reliability [criteria] . . . are necessary to account for physical differences in the bulk power system and are no less stringent than, and not inconsistent with, NERC’s reliability standards. [footnote omitted]10

Furthermore, the Commission in its September 22, 2004 Order Granting Request For Clarification, indicated that the basis for more stringent regional criteria, with due regard to risks and costs, extends beyond the recognition of mere physical characteristics of the bulk power system but also includes more stringent regional criteria based on socio–economic conditions, such as, financial centers, population and load density and high-rise buildings.11 Adherence to these regionally-specific standards, along with the NERC standards, is a part of Good Utility Practice.12 In setting this principle, the Commission acknowledged “that regional criteria may be necessary and that the State and regional entities have legitimate interests in enhancing reliability beyond the level achieved by compliance with NERC standards.” Policy Statement at P31. Further, FERC has acknowledged that “more stringent regional criteria that address unique regional needs or concerns make for a more robust overall bulk electric system and allow greater flexibility when extraordinary events occur.” Id. at P30. Nothing has changed since the issuance of this policy statement that would invalidate these observations.

NPCC urges that the Commission be consistent with the principles established by Congress in the statute and enunciated in the Commission’s own policy statement on reliability. Any move to limit reliability assurance efforts solely to a set of uniform North

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10 Policy Statement at P18.
American reliability standards or force a “one size fits all” approach ignores unique regional needs or concerns and will ultimately degrade reliability in the northeastern portion of the U.S. and eastern Canada.

C. The Delegation of Enforcement Authority Supplements the Current Roles and Responsibility of the Regional Reliability Councils.

Congress provided several guiding principles for the delegation of enforcement authority, among which is that delegation must promote effective and efficient administration of bulk power system reliability. FPA § 215(e)(4)(C). RRCs and NERC are the appropriate vehicles to provide necessary reliability assurance functions and services into the future, including those specifically identified in statute. In addition, RRCs, with the added delegation as Regional Entities, can also perform the vital task of coordinating and combining U.S. federal reliability legislative authority for mandatory enforcement of continent-wide reliability standards with existing State and Provincial regulatory-backed compliance for NERC reliability standards and regionally-specific criteria. In order to fully realize the benefits of ERO continent-wide reliability standards, the monitoring and enforcement of these standards should be consistently applied. The necessary functions and member services currently provided by the RRCs include:

- The development of regionally-specific reliability criteria;
- Coordination of planning and operations;
- Assessment of reliability; and,
- Compliance monitoring & enforcement of regionally-specific criteria with State and Provincial support.

It is essential for bulk power reliability that these activities continue to be performed on a coordinated basis by RRCs across North America.

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13 The NERC Members and Board of Trustees approved a report by the Regional Managers Committee, entitled “Examination of the Future Role of the Regional Reliability Councils and Assessment of Eastern Interconnection Regional Reliability Council Boundaries” dated October 5, 2004.
VI. NPCC’S RESPONSES TO THE COMMISSION’S SPECIFIC QUESTIONS

NPCC provides the following responses to the Commission’s specific questions presented in the NOPR.

1. A Regional Entity may also propose Reliability Standards to the ERO, that, if ultimately approved by the Commission, would become regional variances in a specific region. Any such regional variances would be ERO variances, not Regional Entity Reliability Standards, since it would be the ERO, not the Regional Entity, that submits the proposed Reliability Standard to the Commission for its review. The Commission anticipates that any such regional variances would supplement ERO Reliability Standards, not substitute for them. The Commission seeks comment on this interpretation. NOPR at P80.

The Commission should continue its recognition of the importance that regionally-specific criteria, developed by the RRCs based on existing State and Provincial regulatory support, play in assuring reliability of the international, interconnected bulk power system. NPCC’s more stringent, regionally-specific criteria, in many instances, address areas crucial to reliability not covered in the North American level ERO standards. For example, NPCC has criteria addressing resource adequacy requirements and more stringent bulk power system design and operation requirements such as testing for single line-to-ground stuck breaker faults and designing for double circuit tower contingencies, which look at the loss of several elements simultaneously, as normal criteria testing. These particular criteria specifically address the tightly interconnected nature of the NPCC region where failure of any participant to perform according to these criteria can have significant, wide reaching effects on grid reliability that can lead to interruptions and even the collapse of the interconnection. The positive reliability effects of these criteria have been woven into the design and operation of the international, interconnected bulk power system in the northeast over the last almost 40
years of NPCC’s existence and are critical facets of the reliability criteria in northeastern North America.\textsuperscript{14} Moreover, where NERC has developed a reliability standard, these standards are broadly defined leaving the details to be filled in by the individual regions.

It is clear from the Commission’s Policy Statement on Reliability that the ERO standards should represent a floor, not a ceiling for reliability criteria. Furthermore, the Commission has acknowledged that the basis for more stringent regional criteria extends beyond the recognition of mere physical characteristics of the bulk power system but also includes more stringent regional criteria based on socio–economic conditions, such as, financial centers, population and load density and high rise buildings. Adherence to these regionally-specific criteria, along with the NERC standards, is a part of Good Utility Practice. The Commission has also recognized that the State and RRCs have legitimate interests in enhancing reliability beyond the base level achieved by compliance with broader-based ERO standards. Further, the Commission acknowledges that more stringent regional criteria that address unique regional needs or concerns make for a more robust overall bulk electric system and allow greater flexibility when extraordinary events occur.

NPCC urges that the Commission be consistent with the principles established by Congress in the statute and enunciated in the Commission’s own policy statement on reliability. Any move to limit reliability assurance efforts solely to a set of uniform North American reliability standards or force a “one size fits all” approach ignores unique

\textsuperscript{14} NPCC had also developed specific procedures to address phenomena unique to its region not addressed in NERC Version 0 standards, e.g., Document C-15, Procedure for Solar Magnetic Disturbances Which Affect Electric Power Systems.
regional needs or concerns and will ultimately degrade reliability in the northeastern portion of the U.S. and eastern Canada.

2. The Commission seeks comment on the following related issues: (1) Should the Commission prescribe a size, scope, or configuration requirement for the Regional Entities? And, if so, what should it be? NOPR at P84(1).

The RRCs and NERC have already assessed what should constitute the proper size and scope of the Regional Entities and established the following objectives:

- RRC boundaries should not cut across any Control Area or Reliability Coordinator boundary.
- RRCs should encompass entire Control Areas and one or more Reliability Coordinators with logical electrical boundaries.
- Deference should be given to proposals from interconnection-wide entities.
- International RRCs must respect sovereignty.

In addition, the Bilateral Group proposed several principles intended to apply to Cross-Border Regional Entities, which include:

- Consideration of whether the size or scope of the proposed Regional Entity would result in difficulty in conducting cross-border trade.
- That each country represented in the region has the opportunity to have members from the country on the Board in numbers that reflect the country’s approximate percentage of its Net Energy for Load in that region.
- Where possible, the boundaries of Regional Entities should encompass the logical boundaries of other transmission organizations.

NPCC supports these principles which are intended to guide the establishment of Cross-Border Regional Entities that can function effectively in the U.S. and Canada.

3. What is the role of the Regional Entities in relationship to the ERO? NOPR at P84(2).

Congress has recognized the necessity of an industry based ERO formed around Regional Entities with a continued recognition of the role of the States in assuring safety, adequacy and reliability. RRCs and NERC are the appropriate vehicles to provide
necessary reliability assurance functions and services into the future, including those specifically identified in statute. In addition, RRCs, with the added delegation as Regional Entities, can also perform the vital task of coordinating and combining U.S. federal reliability legislative authority for mandatory enforcement of continent-wide reliability standards with existing State and Provincial regulatory-backed compliance for NERC reliability standards and regionally-specific criteria.

The necessary functions and member services currently provided by the RRCs include:

- The development of regionally-specific reliability criteria;
- Coordination of planning and operations;
- Assessment of reliability; and,
- Compliance monitoring & enforcement of regionally-specific criteria with State and Provincial support.

It is essential for bulk power reliability that these activities continue to be performed on a coordinated basis by RRCs across North America.

Regional Entities should work in concert with the ERO to establish a reliability standard development and enforcement framework that is consistent and not duplicative in function. Working in collaboration, the ERO and the Regional Entities should focus on improvements which could be made in the near term while not creating abrupt shifts in the reliability assurance functions. Furthermore, the roles and responsibilities of the REs, with recognition of the special nature of Cross-Border REs, must be clearly defined within the delegation agreements and consistently applied throughout the North American interconnections.

4. *Beyond enforcement and the proposal of Reliability Standards to the ERO, what, if any, additional authority should the Regional Entities be given?* NOPR at P84(3).
No additional FERC based grant of authority is needed or contemplated in the statute. Regional Councils with State and Provincial support can continue to perform their current functions in the areas of development of regionally-specific reliability criteria, coordination of planning and operations, assessment of reliability, and compliance monitoring and enforcement of those criteria. If Federal authority is required, the RE can propose a Regional Standard to the ERO for approval as a Regional Variance.

5. Should the ERO be required to submit a standardized form of delegation agreement concurrently with the ERO application that would delineate a uniform relationship between the ERO and all Regional Entities or should delegation agreements be tailored to the individual needs and circumstances of each region and the ERO and submitted for approval as they are executed by the parties? NOPR at P84(4).

Delegation agreements should be tailored around a common pro forma template to meet the individual needs and circumstances within each region, for instance in the case of a Cross-Border Regional Entity.

6. To what extent should the ERO, when delegating responsibility to Regional Entities, require uniform processes in matters including, but not limited to, governance, collection of dues and fees, compliance monitoring, and enforcement action procedures? NOPR at P84(5).

The ERO should avoid being unnecessarily prescriptive when delegating responsibility to Regional Entities. The ERO should focus on setting the objectives of what is desired, not the particulars of how Regional Entities are to meet those objectives. Many of the Regions presently have compliance measurement and enforcement processes in place, therefore, the ERO should permit some latitude in the development of a Regional Entity’s internal mechanisms to meet compliance monitoring and enforcement action objectives set by the ERO and the Commission.
The statute already establishes governance and funding guidelines for Regional Entities. The Regional Entity must be governed by an independent board or a balanced stakeholder board or a combination independent and balanced stakeholder board.\textsuperscript{15} Funding must “allocate equitably reasonable dues, fees, and other charges among end users . . . .”\textsuperscript{16} Once these standards are met, however, the Commission should leave those aspects of regional rules and procedures, which do not directly affect the enforcement of reliability standards, to the parties in each region. Moreover, Cross-Border Regional Entities [such as NPCC] would have extra-territorial members who must rely on various provincial legislation as well as different regulatory regimes for the enforcement of reliability standards. Overall flexibility and regional adaptability that does not adversely influence reliability should be accommodated.

In addition, the Commission’s final rule should allow for the necessary structural and procedural differences of Cross-Border Regional Entities needed to integrate Canadian Provincial Authorities that would not ordinarily apply to a Regional Entity operating entirely within the U.S. NPCC believes that this flexibility can be accommodated yet still remain true to the basic principle of promoting consistency among the Regional Entity delegation agreements.

However, with respect to the issue of cross-border penalties, NPCC believes that an approach in which similar penalties are imposed for similar consequences should be adopted rather than uniform cross-border penalties. In order to respect the individual jurisdictions of the Canadian Provinces, the determination of penalties applicable in

\textsuperscript{15} FPA 215(c)(4)(A).
\textsuperscript{16} FPA 215(c)(4)(B) referencing 215(c)(2)(B).
Canada and the disposition of any monies collected as monetary penalties would continue to be determined by the individual Provinces.

7. *What role, if any, should the ERO play in the approval or appeal of an enforcement action undertaken by a Regional Entity?* NOPR at P84(6).

NPCC believes that the ERO’s role in compliance is to serve as a backstop to Regional Entity appeals process regarding violations of ERO Standards.

8. *What, if any, responsibility or involvement should the ERO have with regard to the funding of the Regional Entities?* NOPR at P84(7).

Funding through the ERO should include the Regional Entity expenses associated only with delegated enforcement authority. ERO review of RE funding should be limited to those functions that are delegated to the RE under the delegation agreement.

9. *Should the certification and delegation criteria for a Cross-Border Regional Entity specify that each country represented in the region should have the opportunity to have members from the country on the board of the Regional Entity in numbers that reflect the country’s approximate percentage of net energy for load in that region, similar to that provided in the bilateral principles?* NOPR at P84(8).

The delegation agreement should not proscribe RE governance beyond the requirement that its governance fairly represent the composition of its region.

10. *Should the Commission set the standard by which Regional Entity applications to the ERO will be reviewed or should the ERO be allowed to determine this standard? Given that section 215(e)(4) of the FPA requires that the ERO and the Commission shall rebuttably presume that a proposal for a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk-power reliability, should a higher standard apply to Regional Entities that are not organized on an Interconnection-wide basis? What should the higher standard specify? Should a Regional Entity not organized on an Interconnection-wide basis have the burden to demonstrate that it has appropriate regional scope and configuration to promote effective and efficient administration of Bulk-Power System reliability?* NOPR at P84(9).

The ERO should have the authority to determine the standard to judge Regional Entity applications. Furthermore, it should be rebuttably presumed that a proposal for
delegation to a Cross-Border Regional Entity promotes effective and efficient administration of bulk power system reliability and should be approved.

11. Paragraph (f) of section 38.7 requires a Regional Entity approved by the Commission to periodically submit to the Commission an application to be re-approved as a Regional Entity. We seek comments on what would constitute a reasonable length of time for such periodic re-approval to be effective. For example, is a five-year approval period appropriate? How far in advance should a Regional Entity be required to submit its application for re-approval before its current approval period expires? What role, if any, should the ERO have in the re-approval process? Would the ERO have to resubmit a delegation agreement? NOPR at P84(10).

Once a Regional Entity is approved, re-approval should not be required. Broad authority is provided under the Electricity Modernization Act of 2005 for the Commission to address complaints that a Regional Entity is not meeting the delegation requirements. FPA § 215(e)(5). This authority includes the ability of the Commission to require correction of any deficiency and in extreme circumstances would permit decertification of a Regional Entity. However, de-certification is a drastic measure that should be considered only in the most egregious cases since such decertification could result in a temporary void in reliability enforcement. Therefore, a periodic assessment process with the opportunity to cure deficiencies is the most appropriate mechanism to ensure Regional Entities remain true to their obligations under the delegation agreements. A reasonable period for this assessment process could be every six years.

12. Section 215(e)(4) of the FPA and proposed regulation section 38.7(c)(3) require that the ERO, when filing a delegation agreement, include a statement demonstrating that the agreement promotes effective and efficient administration of Bulk-Power System reliability. What standards, guidelines, measures or criteria should the Commission apply in determining whether a delegation agreement promotes effective and efficient administration of Bulk-Power System reliability? If the primary function of a Regional Entity is enforcement of Reliability Standards, in what ways will Regional Entities bring effective and efficient administration in the enforcement function? NOPR at P84(11).
Any structure adopted in the U.S. must necessarily account for the steps taken by the Canadian and Mexican Governments to assure reliability within their borders. Cross-border cooperation on reliability standards development, compliance and enforcement should be built on the foundation already established by international RRCs. International RRCs, such as NPCC, have worked closely with the Canadian authorities and with the regulatory structures established by the Provinces. Moreover, the provincial regulatory regimes have referenced the regionally-specific reliability criteria established by NPCC in their proceedings. The Commission also acknowledges that directing a Cross-Border Regional Entity to take appropriate steps to be recognized in Mexico or Canada would meet the principle and statutory requirement established by Congress that Regional Entities will take the needed steps to have standing in those nations. Recognizing the special role a Cross-Border Regional Entity will play in assuring reliability in an international, interconnected power system it should be rebuttably presumed that a proposal for delegation to a Cross-Border Regional Entity promotes effective and efficient administration of bulk power system reliability and should be approved.

13. The Commission seeks examples of situations or areas of concern in which commenters believe that conflicts between reliability standards and Transmission Organization tariffs exist or may arise. NOPR at P91.

NPCC is unaware of any conflicts between its regionally-specific reliability criteria and the Transmission Tariffs of its members. In fact, NPCC’s U.S. member Open Access Transmission Tariffs (“OATT”) expressly reference adherence to NERC standards and NPCC reliability criteria.

14. In addition to comment on the proposed regulation discussed above, the Commission seeks comment on the scope of the term “region” as used in section
38.10. In particular, should the region represented by a Regional Advisory Body correspond to that of an existing or proposed Regional Entity? NOPR at P94.

Greater efficiency and cooperation with State and Provincial governments will be experienced if the footprint of the Regional Advisory Body coincides with that of the Regional Entity.

15. In addition to comments on the proposed ERO funding regulations, the Commission asks for comments on the following questions: (1) Should the proposed funding requirements be extended to the Regional Entities? NOPR at P103(1).

Regional Entity funding through the ERO and FERC legislative authority should address the budgetary requirements associated with activities included in the delegation agreements. The application of funding requirements should be limited to the extent a RE is performing its delegated authority.

16. The Commission notes the bilateral principles include several funding principles: (a) a principle specifying that net energy for load should be the primary basis upon which the costs of the ERO are assigned and that costs for one region or entity should be directly assigned to that region or entity; (b) a principle specifying that funding mechanisms, budget direction and budget levels should reflect consultations with appropriate stakeholders and authorities in each country; and (c) a principle specifying that the appropriate authorities in each country should be responsible for approving and ensuring cost recovery by the ERO and Regional Entities within their respective jurisdictions in a timely manner. Should the proposed rule address these types of funding-related details or should the ERO and Cross-Border Regional Entities have the discretion to address these matters at a later time? NOPR at P103(2).

The issue of Canadian funding of delegated authorities performed by Cross-Border Regional Entities should not be addressed in this NOPR. Moreover, while NPCC supports the basic principle of net energy for load funding, the development and use of specific ERO tools and programs designed for some entities either by necessity or as a convenience should be paid for by those entities.
VII. CONCLUSION

For the foregoing reasons, NPCC respectfully requests that the Commission consider adopting the recommendations proposed by NPCC in its final rule and provide for procedures that recognize and continue to promote the important and necessary role that the RRCs play in assuring reliability of the international bulk power system.

Respectfully submitted,

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