Good afternoon.

Below are the comments from NPCC representing 18 registered entities.

Contributors

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<tr>
<th>Contributor</th>
<th>Organization</th>
<th>Region</th>
<th>Segment</th>
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<tbody>
<tr>
<td>Alan Adamson</td>
<td>New York State Reliability Council, LLC</td>
<td>NPCC</td>
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<tr>
<td>Gregory Campoli</td>
<td>New York Independent System Operator</td>
<td>NPCC</td>
<td>2</td>
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<tr>
<td>Sylvain Clermont</td>
<td>Hydro-Quebec TransEnergie</td>
<td>NPCC</td>
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<tr>
<td>Gerry Dunbar</td>
<td>Northeast Power Coordinating Council</td>
<td>NPCC</td>
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<tr>
<td>Brian Evans-Mongeon</td>
<td>Utility Services</td>
<td>NPCC</td>
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<tr>
<td>Mike Garton</td>
<td>Dominion Resources Services, Inc.</td>
<td>NPCC</td>
<td>5</td>
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<tr>
<td>Kathleen Goodman</td>
<td>ISO - New England</td>
<td>NPCC</td>
<td>2</td>
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<tr>
<td>Chantel Haswell</td>
<td>FPL Group, Inc.</td>
<td>NPCC</td>
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<tr>
<td>David Kiguel</td>
<td>Hydro One Networks Inc.</td>
<td>NPCC</td>
<td>1</td>
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<tr>
<td>Michael R. Lombardi</td>
<td>Northeast Utilities</td>
<td>NPCC</td>
<td>1</td>
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<tr>
<td>Randy MacDonald</td>
<td>New Brunswick Power Transmission</td>
<td>NPCC</td>
<td>9</td>
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<tr>
<td>Bruce Mettruck</td>
<td>New York Power Authority</td>
<td>NPCC</td>
<td>6</td>
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<tr>
<td>Lee Pedowicz</td>
<td>Northeast Power Coordinating Council</td>
<td>NPCC</td>
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<tr>
<td>Robert Pellegrini</td>
<td>The United Illuminating Company</td>
<td>NPCC</td>
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<td>Si Truc Phan</td>
<td>Hydro-Quebec TransEnergie</td>
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<tr>
<td>David Ramkalawan</td>
<td>Ontario Power Generation, Inc.</td>
<td>NPCC</td>
<td>5</td>
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<tr>
<td>Saurabh Saksena</td>
<td>National Grid</td>
<td>NPCC</td>
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<tr>
<td>Michael Schiavone</td>
<td>National Grid</td>
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<td>Wayne Sipperly</td>
<td>New York Power Authority</td>
<td>NPCC</td>
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<td>Donald Weaver</td>
<td>New Brunswick System Operator</td>
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<tr>
<td>Ben Wu</td>
<td>Orange and Rockland Utilities</td>
<td>NPCC</td>
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<tr>
<td>Guy Zito</td>
<td>Northeast Power Coordinating Council</td>
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Introduction
NPCC members submit the following comments in response to the North American Reliability Corporation’s (“NERC”) August 15, 2011 request regarding the Compliance Application Notice Process Version 4.

Summary of Comments
NPCC members support NERC’s proposed modifications to the CAN Process that ensure the process will be implemented consistent with the limited intent and scope of that Process to:

1. Respect the FERC recognition that Industry-driven Reliability Standards Development Process “are sufficiently clear as to be enforceable and do not create due process concerns.”
2. Recognize that the CANS Process is not meant to address “gaps and ambiguities” in the approved standards, and that CANS shall not introduce any new standard, requirement or measure not explicitly mandated by a given standard
   a. CANS must not be used to implement rights and obligations, policies, best practices or NERC’s subjective belief of what is required by a standard where any of the foregoing exceed the scope of the standards;
   b. CANS must not be used to close perceived “gaps” in standards;
   c. CANS: 1) are limited to establishing “consistency in the application of compliance criteria across all CEAs...” 2) are limited to identifying non-exclusive instructions for determining “safe-harbor” evidence that is acceptable to demonstrate compliance (i.e. not defining the one and only measurement, just instructions for identifying evidence that if met will demonstrate compliance)
   d. CANs are temporary CMEP administration aides to facilitate consistent CMEP results that will expire if and when the underlying issue is addressed by an interpretation and/or standard revision becomes effective.
3. CANS are a NERC staff initiative and not part of the Standards Development Process and therefore not enforceable.

General Discussion
The ERO has begun to use statements from Order 693 as rationale for exercising its authority within different programs. Order 693 stated that the approved standards were sufficient to ensure reliability, but also recognized that clarity issues may arise. The Order directed the use of the ERO’s approved Reliability Standard Development Process to resolve those issues. It did not establish or direct NERC to establish a CAN Process to provide clarity.

During the CANS Webinar, staff stated that the CAN process is the only tool they have to effect changes. That is not true and is not consistent with Order 693. To
the extent NERC continues to use the CAN process, it must be used for the limited purposes it was intended to address. The current revisions to the Process appear to realign the process with its limited purpose and that the CAN process is not a tool for standard clarification. To the extent the revised process is administered consistent with these principles, NPCC members believe it represents an improvement over the current operation of the program.

NPCC members support the concept to implement the CANS program as defined by the Compliance Application Notice (Can) Process manual and, by implication, to return the NERC Interpretation Process to its role of providing business practice justification for ambiguous terms, processes or procedures, as contained in the approved Standards Requirements.

NPCC members agree that the CANS Process is a NERC staff process. As such, CANs cannot and must not change, modify or interpret a FERC and Canadian Regulator approved standard, requirement or measure. The CANs are designed to resolve conflicts by and among Compliance Enforcement personnel on what is acceptable non-exclusive evidence for compliance; a CAN should not limit/restrict the scope of acceptable evidence. If a standard intends to specifically limit how an entity must comply with its obligations, those specifics must be developed in the Standards Development Process.

NPCC members note that the applicability of the CAN process is correctly limited to NERC and the regions, and, as such, provides instructions for auditors’ to follow. It is not designed to mandate any particular obligations with respect to industry behaviour. Based on industry requests in the CAN process, it appears that certain entities wish to use the CAN process to mitigate their compliance risk by telling them exactly what they need to do under the standard to comply. As discussed above, that is not the purpose of the CAN process, nor does NERC have the authority to implement the process in that manner. Applying the CAN Process consistent with its original design and intent will enable entities to conduct themselves in a manner that results in the “safe-harbor” evidence reflected in a CAN, which facilitates their ability to comply with the standards in a manner that reduces risk. NERC must administer the CAN Process consistent with its limited purposes. Any attempt to do otherwise would be beyond the scope of NERC’s authority as the ERO. Additionally, because CANs are not part of the standards and cannot be the sole means of assessing compliance, enforcement actions cannot be based on alleged violations of a CAN.

Other comments related specifically to the document:
1. The Scope (page 5) of the document states that a CAN is based on four principles. Item “b” should be reworded to:
   b. A CAN cannot expand a standard and/or interpretation.

Add Item “e”:
   e. A CAN cannot add a new definition or modify or interpret an existing definition.

2. Item “a” in the Scope reads:
   a. A CAN provides instructions to CEAs regarding the boundaries within which to assess compliance with effective standards and requirements
      i. A registered entity may demonstrate that it has an equally efficient and effective alternative to maintain compliance from a reliability objective
The introductory paragraph under Scope states that “there are multiple ways for a registered entity to meet the requirements of a standard, a range of acceptable compliance actions.”

The use of the term “boundaries” is open-ended. How is it determined that the way an entity meets a requirement falls within the boundaries? And, doesn’t it open the door for prolonged discussion and appeal?

In the CAN Process section (page 6), Section A. Issue Identification, Item 1, what defines a large corporation, and why must it have “entities in multiple Regional Entities”? Also, the sentence immediately following Item 4 reads: “CAN issues may relate to specific standards and requirements…” Why may? On p. 3 the Introduction states “Compliance Application Notices (CANs) were created by NERC…in regard to compliance monitoring with NERC Reliability Standards” which clearly states the relationship between CANs and Standards. What else might a CAN relate to? The paragraph in Section B (top of page 7) beginning with “After the CAN issues are reviewed and it has been determined…” refers to priority being determined based on its impact to reliability, etc. The final sentence reads: “CANs are developed in the order that will help the most registered entities at the moment.” One CAN may have a very significant reliability impact on a minimum number of entities, and another CAN with not so significant reliability impact on a much greater number of entities, but it still helps them. Which CAN has the priority?

In the Regional Entity Comment Period section, the three to five days specified is too short. Suggest lengthening it to ten business days.

In the Industry Comment Period section (page 8), in the last sentence why does not “Industry” include individual stakeholders?

In the Final Review and Posting section (page 8), what happens if FERC and/or the Canadian Regulators voice an objection or concern to the CAN after their review?

In the Webinars and Training section (page 8), what happens if questions are raised during a Webinar that indicate the need for a revision to the CAN? In Section H. Expiration or Removal of CANs it states that “…a CAN may be revoked or revised if additional information is brought forward…” What is the revision process?

In the Expiration or Removal of CANs section on page 8, recommend adding:

“A CAN may be retired if replaced by a subsequent, more up-to-date CAN. CANs may also be withdrawn or retired when the issue initiating the CAN is no longer valid or relevant, e.g., when the underlying reliability standard is consolidated into others.”

Under the Benefits of CANs, Section A. Provide Formal Feedback to Standards, is the CAN submitted to the Standards Development (Drafting?) Teams? Or just a statement of the issues? Is it done after the CAN is drafted, or after it is finalized? Doesn’t this influence the way a Standard is written?

Under the CAN Issues and Concerns, Item 1a. on page 10, “reasonable time” must be defined.
In the Summary on page 10, “guidance” should be replaced by “instruction”.

For all occurrences throughout the document replace BPS with BES, BES being the NERC defined term.

**CAN-0016 CIP-001 R1 Sabotage Reporting Procedure**

The CAN process is intended to provide guidance to industry and CEA staff with respect to acceptable evidence to demonstrate compliance. It is not designed to interpret the substantive scope of a standard and/or requirement. Accordingly, a CAN should not, and indeed cannot, expand the substantive scope of a standard/requirement, either directly (e.g. via the explicit inclusion of an obligation that doesn’t exist in a requirement) or indirectly (e.g. by mandating the provision of compliance evidence that forces registered entities to engage in activities / establish processes that are not otherwise required under a standard/requirement). Substantive changes must occur pursuant to the FERC approved Standards revision process. This is explicitly recognized in each CAN, which state: *This document is designed to convey compliance guidance from NERC’s various activities. It is not intended to establish new requirements under NERC’s Reliability Standards or to modify the requirements in any existing NERC Reliability Standards. Compliance will continue to be determined based on language in the NERC Reliability Standards as they may be amended from time to time.*

The plain language of CIP-001 R1 is clear. It states:

**R1.** Each Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator, and Load Serving Entity shall have procedures for the recognition of and for making their operating personnel aware of sabotage events on its facilities and multi-site sabotage affecting larger portions of the Interconnection.

All that is required for compliance is the existence of sabotage procedures that provide for the recognition and communication of sabotage events. The requirement does not prescribe the substance of those procedures, nor does it impose performance obligations relative to the procedures. The substantive details of the procedures are determined by the registered entities.

The scope of CIP-001 R1 is supported by the applicable compliance measure, which states:

**M1.** Each Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator, and Load Serving Entity shall have and provide upon request a procedure (either electronic or hard copy) as defined in Requirement 1

Consistent with the scope of R1, all that is required by M1 to demonstrate compliance is to have procedures and provide them upon request. There are no specific plan details that must be included to demonstrate compliance, nor does the measure require any sort of
performance evidence. This is understandable in that neither NERC, FERC nor the Industry have yet established a continent-wide approach with respect to: (a) how to define “sabotage”, or (b) what measures relating to “performance” are appropriately standardized.

In addition to going beyond the scope of the requirements/measurements, CAN-0016 also suffers from the same shortcomings of its prior version. Although not explicit, as in the first version of CAN-0016, this version still implies that it applies to non-BPS facilities. The CAN states that the emphasis is to enable registered entity personnel to recognize sabotage that “may impact the reliability of the BPS”. This raises the same jurisdictional concern at issue in the prior version.

NERC’s jurisdiction is circumscribed by Section 215 of the FPA, which limits reliability oversight to the BPS. Accordingly, the scope of all NERC standards, including CIP-001, is limited to BPS facilities. Sabotage events that “may impact” the BPS could be interpreted by CEA staff to include non-BPS facilities if such personnel believe that an event on a non-BPS facility could somehow impact a BPS facility. The CAN should be revised to clearly state that procedures required by CIP-001 are only relevant to BPS facilities.

The revised CAN-0016 therefore impermissibly: 1) exceeds the scope of the requirement and measures; 2) exceeds NERC’s jurisdictional authority, by adding additional requirements to an existing FERC-approved Standard and indicates that the CEAs should audit against the CAN; and 3) establishes the CAN as the exclusive means of demonstrating compliance.

Lee Pedowicz
Manager, Reliability Standards
NPCC
212-840-1070 xt7061