

***Comments of the
Electricity Consumers Resource Council (ELCON)
On the
NERC's Wholesale Electric Standards Model (WESM)
February 13, 2002***

The Electricity Consumers Resource Council (ELCON) offers the following comments on the North American Electric Reliability Council's Wholesale Electric Standards Model (NERC's WESM).

In general, ELCON supports the WESM proposal. Specifically, we recommend that the NERC Board, at its February 20, 2002, meeting approve the proposal – but with the following modifications:

- ❑ Remove the word “reliability” from the name of the organization. As long as the word reliability is in the name, there will be at least a perception that commercial issues are “second class citizens” to reliability.
- ❑ Explicitly commit to “occupying” the Wholesale Electric Quadrant (WEQ) of the North American Electric Standards Board (NAESB). This will require NERC to work with NAESB to achieve the necessary by-law and other changes required to have NERC occupy the WEQ.
- ❑ Explicitly agree to review the voting process as well as segment composition and population at each future Board meeting.
- ❑ Explicitly state that all standards resulting from the process will be filed with the Federal Energy Regulatory Commission (FERC) [at least in the U.S.]. No standard should be enforceable prior to FERC approval.
- ❑ Commit to have a funding mechanism in place by the end of 2002 that will allow participation by all end-use customers without requiring prohibitive membership fees. FERC should assure that the costs of the standard-setting organization are just and reasonable.
- ❑ Explicitly agree to immediately file with the American National Standards Institute (ANSI) for accreditation of the standards-setting process and, further, commit to making any changes to the WESM proposal necessary to achieve such accreditation.
- ❑ Finally, but of most importance, assure that end-use customers have at least 33 1/3% of the total vote in the governance process. This point is explained in more detail in the General Comments and Specific Comments sections (on pages 4 & 5 below).

These ELCON comments are organized as follows: First, we provide some background information to put the comments into perspective. Second, we offer general or overarching attributes that we believe must be included in any standard-setting organization. Third, we offer specific comments on various aspects of the proposal. Finally, we provide answers to the specific questions posed by Board Chairman Richard Drouin in his February 6, 2002, letter to the Stakeholders Committee.

Background:

The NERC and the Gas Industry Standards Board (GISB) each have proposed new or modified standard setting organizations and procedures. These ELCON comments focus on the WESM proposal, but mention the NAESB proposal where necessary.

NERC has proposed the Wholesale Electric Standards Model (WESM) to be used in the proposed North American Electric Reliability Organization (NAERO). WESM/NAERO would have an independent Board and have a technical staff (as NERC has today) to draft standards. NAERO would address both reliability and commercial standards, but limit its scope to wholesale transactions only.

NERC has been operating for more than 30 years. It has assured the reliability and integrity of the electric grid – but has come under tremendous criticism from the marketplace for appearing to ignore many of the commercial impacts of reliability standards. The NERC Board recently agreed to expand the scope of the organization into both commercial and reliability standards (NERC’s version of a “one-stop-shop” organization). They have proposed the Wholesale Electric Standards Model (WESM) that includes a standards setting process that is quite fair, open, balanced, and inclusive. NERC says that it will seek ANSI certification in the near term.

The latest version of NERC’s WESM model is intended to both respond to comments received during its public posting period and allow the model to operate within the NAESB wholesale electric quadrant (WEQ). The NERC Board will consider approval of the modified WESM proposal at its February 20, 2002, meeting.

The Gas Industry Standards Board (GISB) was formed roughly 6 years ago to develop standards for the wholesale gas industry. They are primarily a volunteer consensus organization – with a staff of only 3. GISB has developed over 500 gas standards – all of which have been approved by FERC. The GISB standards approval process was given ANSI accreditation last year. Many GISB participants speak highly of the GISB process, although many other participants state that participation is very time consuming. This is very troublesome for resource constrained market participants.

The Coalition for Uniform Business Regulations (CUBR) [which later became the group advocating Uniform Business Practices (UBP)] was a group of marketers that found business practices being established with substantial differences between the states. CUBR went to GISB over two years ago to see if GISB would take on the job of standardizing such retail practices. After much debate and consideration, GISB agreed in December 2001 to change its name to the North American Energy Standards Board (NAESB). NAESB proposes four “quadrants” (wholesale and retail, electric and gas), thus expanding from the single wholesale gas scope of today. NAESB would have an elected “sector” Board and rely on “volunteers” for the drafting. NAESB would address both retail and wholesale issues (in the wholesale and retail quadrants respectively), but

be limited to commercial issues (at least at this time). Organization of the new quadrants is now underway. The old GISB will occupy the WGQ.

General Comments:

ELCON believes that there are several attributes of any standard setting organization that are absolutely essential. These include:

1. **A single organization must address both reliability and commercial, as well as retail and wholesale issues.** ELCON believes that it is impossible to separate these issues. Attempts to address them in separate organizations will necessarily result in continual bickering and arguments over jurisdiction, inter-relationships, priorities, etc. The organization should establish uniform standards for North America. Regional Transmission Organizations (RTOs) should ***implement*** these uniform standards – not establish their own regional standards.¹ A single standard-setting organization addressing both reliability and commercial as well as retail and wholesale issues is an overarching requirement for any standard setting organization and essential for ELCON support.
2. **The process used to set any standard must be ANSI certified.** The process used by any standard setting organization must be fair, open, balanced and inclusive. The American National Standards Institute (ANSI) will not certify any process unless it truly meets these criteria. ANSI certification of the process is essential for ELCON support.²
3. **ELCON believes that a technical standards-drafting staff is essential.** An all-volunteer processes requires tremendous contributions of time from the members. Industrial users and other consumers cannot devote enough staff time to adequately participate in an all “volunteer” process.³ A technical standards-drafting staff, operating under very clearly specified guidelines, can greatly enhance the abilities of resource-constrained parties to participate.

¹ ELCON reserves comment on the potential for a “patchwork” problem that could evolve during the period where RTOs may not have been formed or approved and Regional Reliability Councils (RRCs) still exist. Such a situation is not a problem as long as no standard is enforceable prior to FERC approval. However, such a situation could be a significant problem if some regions attempt to enforce some standards while other regions decide they will not even attempt to enforce the standards.

² ELCON recognizes that ANSI certification may be a very lengthy process. ELCON thus recognizes that actual certification of an organization may not be realized until some time in the future. However, ELCON cannot support a proposed organization that does not commit to seek immediate certification of the process and take all necessary steps to actually receive such certification..

³ It is very important to recognize that “volunteers” actually are “biased participants.” Individuals are paid to participate in the standard-setting organization. In nearly every case, they are expected to advocate policies and positions that benefit their employer. An all “volunteer” organization thus hears more from those market participants that have greater resources than from those that are resource constrained.

4. **The staff of the organization should report to an independent Board.**
ELCON does not believe that sector or segment Boards deal well with policy or other difficult issues or interpretations. The problems of the California ISO Segment Board highlight these concerns. While we do not expect the Board of any standard setting organization to set policy, we do believe that there will be many instances where interpretations of policy must be made – interpretations regarding the reliability vs. commercial impacts are clear examples. The staff should not be subjected to split Boards any more than absolutely necessary. Thus, we believe the standard setting organization should have an independent Board.
5. **NERC must remove the word “reliability” from the name of the organization.** As long as the word reliability is in the name, there will be at least a perception that commercial issues are “second class citizens” to reliability.
6. **Finally, end-use customers pay all of the bills. Thus, they should have a very significant proportion of the vote in any governance process.**
ELCON’s membership met during the week of February 5, 2002, to discuss, among other issues, the various proposals to establish a standard setting organization. The members expressed significant frustration over the experiences with other organizations – especially existing Independent System Operators (ISOs) – regarding the lack of sensitivity of the needs of end-use customers. They pointed out that having only 20% (or even 25%) of the vote in an ISO was insufficient. They are not ready, at this point in time, to seriously propose that end-use customers have all of the vote – even though they pay all of the costs. However, they believe strongly that end-use customers should have significantly more than 25% of the vote. At a minimum, ELCON believes that end-use customers should have at least one third of the total vote at this point in time. Thus, ELCON recommends a three-segment composition of: (1) producers, (2) transporters, and (3) end-use customers.⁴

Specific Comments:

ELCON finds many attributes of the WESM proposal attractive, but not completely satisfactory at this time. Specific comments on the proposals are set forth below:

- **Governance – Organization:** An overriding consideration for ELCON is that there be one – and only one – organization setting standards for the electric industry. This organization should address both commercial and reliability, as well as retail and wholesale, issues. Thus, the NERC Board should commit to

⁴ We believe that a more appropriate segment model would be (1) end-use customers and (2) everyone else – each segment with 50% of the vote. However, ELCON recognizes that this might be too radical a change for this moment. Thus, we now recommend the three segment model above.

occupy the WEQ of NAESB and work with NAESB to be sure that this actually happens.

- **Governance – Voting Methodology for Standards Adoption:** ELCON believes that ANSI accreditation of the process is critical. It is our understanding that NERC recognizes this need and says that they will take steps to receive such accreditation. The voting methodology thus must be acceptable to ANSI. WESM proposes a “Weighted Sector” process that seems acceptable to ELCON at this point in time. However, NERC must be ready and willing to modify the standards approval process, if necessary, to achieve ANSI accreditation and monitor the voting process to determine possible future problems and take appropriate remedial actions where necessary. NERC has said that it will review the results of the voting process at least at every Board meeting. Such monitoring is essential for ELCON’s support. Thus, the Board should explicitly agree to review the voting process and segment composition and population at each future Board meeting.
- **Governance – Role of the NERC Board:** ELCON believes there must be only one organization setting standards. Thus, WESM must “occupy” the WEQ of NAESB. In this role, the NERC Board should assure both the existence of and compliance with a truly fair, open, balanced and inclusive process. However, the NERC Board should *not approve* any standards as this would jeopardize ANSI certification. To occupy the WEQ, the NERC Board must “fit into” the NAESB Board process and structure. NERC proposes to do just that – fit into the WEQ. However, NERC has listed several changes that have to be made to the NAESB By-Laws and process to allow this to happen. NAESB has not stated that it is willing to make such changes. Such changes must be made by NAESB in a timely manner.
- **Governance – Segments:** As mentioned above, end-use consumers ultimately pay all of the costs. The members of the other Segments pass (in by far the most cases) the costs on to end users. End-use consumers do not have resources to participate in a manner equal to other market participants. ELCON strongly believes that end-use consumers should not pay a second (or third) time to participate in the process. Thus, ELCON proposes that Members in the end-use consumer Segment should not have to make any payments to be Members. If, in spite of this recommendation, end-use consumers are charged fees to be members, the End User Segment should have a significant proportion of the total vote.⁵ NAESB says that the segments will be decided by the WEQ once it is organized. WESM proposes 9 segments – with two of the segments dedicated to end-users. While ELCON conditionally agreed to the WESM segments as a starting point for discussion, our members are increasingly concerned that these segments do not give end-use customers enough influence. The end-use customer representation must be increased to at least 33 1/3% in the WESM proposal.⁶ Thus, ELCON

⁵ As mentioned above, ELCON believes that end-use consumers should have 100% of the vote since they pay all of the costs. However, ELCON is willing to compromise on this issue at least in the transition recognizing that this is a significant deviation from existing proposals.

⁶ This comment applies to the NAESB process as well.

recommends a three-segment composition of: producers, transporters, and end-use customers.

- **Governance – Multi-Segment Representation:** ELCON believes as a matter of principle that all entities should be required to designate a single segment within which they participate. However, reality may require allowing multi-segment participation. This raises many problems. Such problems are not potential, but real. There must be a policing mechanism incorporated with any multi-segment participation process to assure that entities do not game the system and stack segments to their advantage. Both NAESB and NERC have proposed policing mechanisms. The issue must be carefully and continually monitored to prevent the gaming. Thus, the Board should explicitly agree to review the voting process and segment composition and population at each future Board meeting.
- **Relationship Between Business Practices and Reliability – Convergence:** ELCON strongly believes that commercial issues cannot be separated from reliability issues – and that wholesale issues cannot be separated from retail issues. Therefore, there must be convergence into one organization for any proposal. The WESM model achieves such convergence by proposing to occupy the WEQ of NAESB. Further, ELCON believes that there should be parity between business practice and reliability issues. This means that reliability must *not* be able to “trump” commercial issues – nor *vice versa*. The same must apply to wholesale and retail issues.
- **Relationship Between Business Practices and Reliability – Compliance and Enforcement:** Compliance authority should come with FERC approval – at least within the U.S. Attempts to enforce standards that are not FERC approved (in the U.S.) are inappropriate. Thus, NERC must explicitly state that all standards developed through the WESM process will be filed with FERC (in the U.S.).
- **Relationship Between Business Practices and Reliability – Regional Variances:** ELCON believes that regional differences in standards often exist because there are regions – not because there are real differences. The best way to deal with real differences between regions, where demonstrated, is to have all standards developed within one organization and utilizing one process. If everyone around the single table agrees there need be varying standards, then the single process should so approve different standards. Otherwise, there should be a single, consistent set of standards throughout the entire North America. The WESM proposal provides an acceptable method to deal with regional variations.
- **Relationship with Other Entities – Relationship with FERC/Canada:** ELCON believes that FERC (in the U.S.) must approve all standards. Therefore, it would be a conflict of interest for FERC or FERC staff to take an active part in the standards-setting process. NERC does not propose having FERC vote in the process.
- **Relationship with Other Entities – Role of State Commissions:** ELCON believes that state Commissions may have to approve some of the standards. Thus, it could be a conflict of interest for state Commissions to actually vote in the process. However, ELCON recognizes that some state Commissions believe strongly that they should have the opportunity to vote in the standard-setting process. Thus, ELCON accepts the WESM proposal to allow state commissions

to vote if they so choose. ELCON strongly urges a careful monitoring of the results of such commission voting over time. Further, ELCON again emphasizes that allowing state commissions to vote must not diminish the influence of end-use customers.

- **Relationship with Other Entities – Relationship with RTOs:** ELCON believes that standards should be established in a fair, open, balanced and inclusive standard-setting organization, approved by the appropriate regulatory authority, and then *implemented* by RTOs. RTOs should not set their own standards. Any regional variances should be established within the standard-setting organization following the established, single approval process. The WESM proposal provides an acceptable method to deal with regional variations.
- **Standards Development Process – Coordination of Standards Development Between Quadrants:** ELCON strongly believes that commercial issues cannot be separated from reliability issues – and that wholesale issues cannot be separated from retail issues. Therefore, there must be very strong coordination between the quadrants. The best way to accomplish this coordination is to have only one standard-setting organization. ELCON is adamantly opposed to two separate organizations. The WESM model achieves this objective by proposing to occupy the WEQ of the NAESB. ELCON cannot support the WESM proposal if it does not occupy the WEQ of the NAESB.
- **Standards Development Process – Treatment of Existing NERC Standards:** Existing NERC standards that have been approved by NERC *and* the FERC (if there were any) obviously should remain in effect. Standards that have been approved by NERC but not approved by FERC more than likely will retain the same status they have today. There is no realistic alternative. However, all standards must be subjected to the organization’s approval process in a timely manner.
- **Standards Development Process – Staff Support in Standards Development process:** Technical drafting/staff support is very important to resource constrained organizations. These staff should be required to follow clearly stated objectives and guidelines that have been approved by the segments. The management of the staff should be by an independent Board.
- **Standards Development Process – ANSI Approval:** ANSI approval of the process is absolutely essential. No provision should be approved or accepted that precludes ANSI approval. The NERC Board should agree at its February 20, 2002 meeting to immediately file with ANSI for accreditation of the standards-setting process and, further, commit to making any changes to the WESM proposal necessary to achieve such accreditation.
- **Funding:** ELCON is opposed to a “pay to vote” process. Further, ELCON believes that attempts to fund a technical staff and an independent Board with “dues” payments from members are unworkable. The “dues” would be prohibitively high to raise enough money to pay the staff and an independent Board. A funding mechanism must be established that fairly places the costs of the standard-setting organization on all end-users. The NERC Board must commit at its February 20, 2002 meeting to have a funding mechanism in place by

the end of 2002 that will allow participation by all end-use customers without requiring prohibitive membership fees.

Response to the Questions Set Forth by Richard Drouin in his February 6, 2002 letter to the Stakeholders Committee:

Board Chairman Richard Drouin sent a letter to the Stakeholders Committee dated February 6, 2002 asking specific questions. ELCON's responses to those questions are contained below:

- Q1. Should NERC continue to be responsible for establishing and enforcing policies and standards that govern the reliability of the North American grid?
- A. NERC – without the word “reliability” in its name – should be responsible for establishing a fair, open, balanced and inclusive process in which both reliability and commercial standards are established. The enforcement of these standards should occur only after FERC approval (in the U.S.).
- Q2. Should all wholesale electric standards (reliability and business practice standards) be developed by a single standards development organization?
- A. Yes. A single organization is absolutely essential for ELCON's support.
- Q2a. If not, how should business practice standards developed by another organization be coordinated with reliability standards developed by NERC? How should conflicts be resolved?
- A. It is impossible to separate reliability from commercial standards. Thus, they both must be established in a single organization. Attempts to separate them and develop them in different organizations will only result in conflicts and arguments.
- Q2b. If yes, should NERC continue pursuit of a model to become “the one-stop shop” for developing both reliability and business practice standards?
- A. Yes, NERC should occupy the NAESB WEQ for both reliability and business standards development.
- Q3. Assuming yes to question 1.: How should voting for approval of standards be done within NERC? By assigned/elected delegates or by all interested parties through a weighted-segment voting process, such as the one described in the WESM proposal?

- A. A weighted segment voting process such as the one described in the WESM proposal appears to be acceptable. However, ANSI accreditation is absolutely essential. Thus, if the weighted voting process is found to be inconsistent with ANSI accreditation, the Board must be willing to make the necessary changes to achieve the accreditation.
- Q4. What should be the role of the NERC Board in the process of developing, adopting and implementing reliability standards? What should be the role of the NERC staff?
- A. The Board should have no role in *approving* the standards as such a role probably would preclude ANSI accreditation. The standards should be developed through a process that provides a fair, open, balanced and inclusive process. The Board should oversee that process to be sure that it is fair, open, balanced and inclusive.
- NERC professional staff with writing expertise should work with stakeholder experts in drafting proposed standards. The writing staff should follow very specifically prescribed criteria approved by the segments as they draft the standards. The SAR process appears to meet these goals.
- Q5. If either a weighted segment voting model or segment delegate voting model is used for the approval of standards, what should be the segments? How should approval of these segments be proposed, vetted and approved?
- A. A lot of time and effort went into the development of the nine segments contained in the WESM proposal. However, ELCON now believes strongly that end-use customers should have significantly more than 20% or 25% of the vote. At a minimum, ELCON believes that end-use customers should have at least one third of the total vote at this point in time. Thus, ELCON recommends a three-segment composition of: producers, transporters, and end-use customers. This point is explained more fully in the General Comments section above.
- Q6. How should a standards development process be funded — equal participant dues, tiered dues, organizational budget, tariff adder, other?
- A. The standards development process should be funded primarily by an allocation of budgeted cost to all end use load. A small segment of the budget may be collected through tiered dues, but the amount of dues should enable and encourage full participation by smaller entities, consumer advocates and other public interest groups. FERC should assure that the costs of the standard-setting organization are just and reasonable.