

Subj: **Comments on Draft MOU**
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Rae/Michael:

The following comments are submitted by Barry Green on behalf of Ontario Power Generation.

* In Section 2.3, I think the use of the NERC & NAESB Chairs as arbitrators is inappropriate. I believe a process that would have more transparency would be to use FERC's Alternative Dispute Resolution procedures. I am aware also of an alternative proposed by Dave MacMillan of Calpine wherein the NERC and NAESB reps on the JIC, would jointly hold only 99% of the votes. The JIC would also have a FERC staffer as part of the committee who would normally not vote. Then, in the event of a tie, the FERC rep would cast the deciding vote. I believe this would also represent a workable solution. If these are deemed impractical and the use of the two Chairs is deemed necessary, then Section 2.3 should explicitly state that the decision of the Chairs should be provided with detailed reasons, in writing, to all NERC and NAESB members .

* Section 2.4 states that the JIC will review a proposed standard after the NERC SAC or the NAESB Triage committee has reviewed it. Although I can see the logic for that under certain circumstances, I would suggest that there be an option, perhaps at the discretion of the entity submitting the standard, for the JIC to review a proposed standard first to determine which organization will address it. This might save some time and effort.

* Section 2.8 of the draft MOU, although obviously incomplete, appears to contemplate the unilateral right of one party to reject the decision of the JIC. I believe this is inappropriate for two reasons:

* First I think that it is unnecessary. Both NERC and NAESB procedures need to insure that appropriate weight is given to both reliability and commercial aspects of each standard and the organization not developing the standard has adequate opportunity to input to it. Indeed the basis for the MOU rests upon such an assumption. Therefore, just because the JIC (with equal representation from NERC and NAESB) decides that a particular standard is more appropriately developed by NAESB does not mean that reliability will be compromised. Similarly if it is determined that a particular standard is more appropriately developed by NERC this does not mean that market considerations will be ignored. Both organizations have totally open, consensus-based processes for developing standards and to a large extent, it will be the same individuals and companies that will be involved in standards development regardless of whether the NERC or NAESB process is being used

* Secondly, if procedurally either party has a unilateral right to ignore the decisions of the JIC, of what value is the JIC and why should organizations voluntarily allocate resources to it.

* Appendix A as currently drafted does not provide appropriate guidelines for JIC coordination for the following reasons:

* The use of NERC's functional model to "normally" determine whether

the NERC or NAESB process is to apply is not appropriate in part, since NERC alone will make the determination which authority applies. Furthermore, the question of which of the NERC authorities has the responsibility for implementing a standard doesn't necessarily determine whether the standard is predominately commercial or reliability.

* Of the identified factors, a,b and c seem quite appropriate. However, factor d seems to be different. I do not believe that because a standard has a "significant reliability compliance element" it is necessarily a NERC standard, any more than a standard with a "significant commercial component" is necessarily a NAESB standard. To carry out its compliance mandate, NERC will need to have a process for developing a compliance program for the reliability aspects of all operational protocols regardless of whether they result from NERC standards, NAESB standards or FERC Orders.

* While I do not have a detailed alternative to propose for Coordination Guidelines, I might suggest that an approach could be based on an earlier stage of the NERC/NAESB deliberations where there was much discussion of "what's" vs. "how's". The thinking was that NERC would do the "what" and some other organization would do the "how". If we think of TLR as an example, which is within the mandate of the Reliability Authority (therefore a NERC standard by that criterion) there are huge commercial impacts. Perhaps the determination could be that the NERC reliability standard would address the criteria by which the system operator determines that congestion is present, that actions are required ands the timeframe within which such actions need to be carried out--the what. The NAESB standard could then address the options by which the congestion would be relieved--the how.

Thank you for the opportunity to comment on this draft MOU and to the parties that have worked so hard to bring the MOU this close to fruition.

Barry Green

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