

**Comments of the Electric Power Supply Association On the “Memorandum  
of Understanding between North American Energy Standards Board and  
North American Electric Reliability Council”  
(Draft Work in Progress 10-31-02)**

The Electric Power Supply Association (EPSA) welcomes the opportunity to comment on the most recent draft Memorandum of Understanding (MOU) outlining certain procedures relating to the NERC-NAESB coordination process. EPSA joins FERC and other industry stakeholders in recognizing the potential impact that the coordination of reliability and business practice standards will have on the development and efficient operation of competitive markets. In the two orders expressing its expectations for a new “standards development organization for the wholesale electric industry”, the Commission viewed standards coordination as critical to its ongoing effort to standardize market design and establish regional transmission organizations.<sup>1</sup>

Given the importance and scope of this task, and the challenges associated with orchestrating real change to accommodate the evolving nature of energy standards fusing reliability and commercial issues, we appreciate the efforts of the representatives of both organizations. However, several provisions of the present draft raise serious concerns about the prospects for meaningful and effective coordination. As explained below, EPSA’s primary concerns relate to (1) the extent to which either organization can disregard JIC determinations and act unilaterally under section 2.8; (2) the need to clarify how tied JIC votes are resolved; (3) the use of the general categories within the Functional Model as coordination “Guidelines” in Appendix A; and (4) the failure to expressly provide for the economic impacts of all energy standards, whether reliability or business practice.

- (1) Section 2.8: For any coordination process to be fully responsive to the Commission’s orders, the process must include provisions for certainty and finality. The Commission’s May 16 order speaks in terms of a “formalized organizational structure”<sup>2</sup>, and “urge[s] the industry to expeditiously establish the procedures for **ensuring** such coordination.”<sup>3</sup> (emphasis added). Section 2.8 appears to contemplate that either organization can reject a JIC determination, for any reason or for no reason.

The JIC’s role, and the integrity and credibility of its decisions, are clearly central to the effectiveness and success of the coordination effort. It is difficult to imagine how section 2.8 ensures meaningful coordination when both parties have unfettered discretion to separately

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<sup>1</sup> Electricity Market Design and Structure (Docket No. RM01-12-000; December 19, 2001 and May 16, 2002).

<sup>2</sup> May 16 order at 9.

<sup>3</sup> Id at 10.

**November 4, 2002**

pursue their own organizational prerogatives. Given the universal recognition of the virtual inseparability of reliability and commercial concerns, accountability-- in accordance with mutually agreed upon terms, provisions and criteria—is a sine qua non for meaningful coordination. Creating ways for either organization to avoid coordination decisions, even when all procedures in the MOU are followed, is inconsistent with this goal. EPSA strongly urges the negotiating teams to explore alternative means of preserving whatever autonomy they believe is necessary without undermining the objectives to which the MOU is expressly committed.

- (2) Section 2.3: EPSA requests that the negotiating teams replace the provision in section 2.3 allowing “the Chairman of the Parties (or their Board level designee(s))” to resolve JIC tie votes with some other measure. Tie votes will typically reflect and result from a complex mix of technical issues relating to the nature and impact of a proposed standard. Moreover, resolving such disputes will best be done by an objective third party. Accordingly, EPSA recommends that the negotiating teams define a role for FERC staff to participate in this process. Alternatively, we suggest that the a member of the NERC Board and the WEQ Vice Chair replace the “Chairman of the Parties” serve as tie-breakers. The WEQ Vice Chair will be more familiar with the commercial implications of proposed standards, is elected by the balanced segments and represents the WEQ membership.
- (3) Appendix A: EPSA acknowledges that NERC’s Functional Model may provide a useful general framework for decisions relating to coordination. However, EPSA objects to the use of the various “authorities” and other components of the Model as silos into which proposed standards will be placed. The Model alone does not provide sufficient details or criteria upon which decisions differentiating between reliability and commercial issues can be based. Beyond that, standards relating to “reliability authority”, “balancing authority” and “interchange authority” have direct commercial implications.

Notwithstanding this, the second paragraph of Appendix A provides that standards proposals “applicable to those functions...normally would be assigned to NERC.” It is inappropriate to assign proposed standards to either NERC or NAESB based upon the general functional descriptions in the Model. To do so ignores the integrated, dual nature of all components in the Model. Ultimately, whatever guidelines, criteria or factors the JIC has available, they must balance the concern of being overly prescriptive with providing a sufficiently rational basis for a decision.

**November 4, 2002**

As presently drafted, Appendix A achieves the worst of both concerns: it provides general categories into which proposed standards must be placed if “applicable to those functions.” Rather than rely on a Model designed by NERC for other purposes, EPSA urges the negotiating team to develop more specific criteria to illuminate the nature and impact of proposed standards.

Regarding “factors” a-d in Appendix A, factor “b” should be rewritten to substitute “core reliability function” for reliable operation of the bulk power system”. The later phrase is far to general and would conceivably subsume virtually all proposed standards. Further, it is based on the dubious premise that “reliability” (however defined) and commercial can somehow be segregated into “relative portions”. That directive alone is unhelpful; rather, the JIC will need criteria establishing the basis for defining those “relative portions”. Finally, EPSA recommends that factor “d” on line 176 be deleted. It begs questions regarding what is “significant”, and ignores that both core reliability and business practice standards will have compliance implications and, beyond that, are typically fused together.

- (4) Whereas Clause on Economic Impacts: EPSA strongly believes that, regardless of which organization obtains drafting authority status, the economic and financial impacts of all standards must be accounted for. Accordingly, the coordinated standard setting process must include the concept of fair compensation for products and/or services rendered. EPSA supports the recommendation made by Alan Johnson of Mirant and Dave McMillan of Calpine that the MOU include the following Whereas clause:

“WHEREAS most standards have both business and reliability implications and range along a continuum from ‘predominantly reliability’ in nature to ‘predominantly business’ in nature, regardless of which organization ultimately drafts a standard, any standard dealing with reliability or business and communication practices, that provides for the mandatory provision of products, services, or the implementation of operational practice shall acknowledge and address fair compensation for such products, services and operational practices.”