UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability Corporation)	**Docket Nos. RR08-4-000,-001, and**
)	**-002**

COMMENTS OF THE ISO/RTO COUNCIL

The ISO/RTO Council ("IRC")[1] respectfully submits these joint comments in response to

the North American Electric Reliability Corporation's ("NERC") December 19, 2008 filing to

comply with Paragraph 47 of the Federal Energy Regulatory Commission's ("Commission")

Order On Violation Severity Levels Proposed By The Electric Reliability Organization issued on

June 19, 2008 in the captioned proceeding.[2]

I.   INTRODUCTION

In the June 19 Order, the Commission, *inter alia,* addressed certain requirements in

Reliability Standards submitted by NERC in a March 3, 2008 compliance filing where

compliance is defined in terms of "pass" or "fail." These requirements are referred to as binary

requirements. In its March 3, 2008 compliance filing, NERC had assigned a single Violation

Severity Level ("VSL") to each requirement. Nevertheless, the VSLs were different for different

binary requirements. The Commission found that NERC failed to explain why there was not a

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[1]   The IRC is comprised of the Independent System Operators operating as the Alberta Electric System
Operator ("AESO"), the California Independent System Operator ("CAISO"), Electric Reliability Council of Texas
("ERCOT"), the Independent Electricity System Operator of Ontario, Inc., ("IESO"), ISO New England, Inc. ("ISO-
NE"), Midwest Independent Transmission System Operator, Inc., ("MISO"), New York Independent System
Operator, Inc. ("NYISO"), PJM Interconnection, L.L.C. ("PJM"), Southwest Power Pool, Inc. ("SPP"), and New
Brunswick System Operator ("NBSO"). The IESO, AESO and NBSO are not subject to the Commission's
jurisdiction and these comments do not constitute agreement or acknowledgement that either can be subject to the
Commission's jurisdiction. The IRC's mission is to work collaboratively to develop effective processes, tools and
standard methods for improving the competitive electricity markets across North America. In fulfilling this mission,
it is the IRC's goal to provide a perspective that balances reliability standards with market practices so that each
complements the other, thereby resulting in efficient, robust markets that provide competitive and reliable service to
customers.

[2]   *North American Electric Reliability Corporation,* 123 FERC ¶ 61,284 (2008) ("June 19 Order").

consistent designation of the VSLs for the binary requirements. Accordingly, the Commission

directed NERC to submit a compliance filing within six months that provides a justification for

the inconsistencies in the single VSL assigned to binary requirements.[3] Alternatively, FERC

stated that NERC could either (1) modify the single VSL by consistently applying the same

severity level or (2) modify the VSL assignment by changing from a binary approach to an

approach using gradation, in accordance with so-called Guideline 2.[4]

On December 19, 2008, NERC submitted its filing to comply with the June 19 Order. In its

compliance filing, NERC assigned a single VSL of "Severe" for every one of the 322 requirements it

identified as binary in its filing.

II.   COMMENTS

The IRC does not object to the concept enunciated by FERC in its June 19 Order and adopted by

NERC in its December 19 compliance filing that truly binary standards, *i.e.,* where compliance is

pass/fail, should have VSLs "that ensure uniformity and consistency in the determination of penalties."

However, the IRC does not agree that each and every one of the 322 requirements submitted by NERC

are in fact "true" binary requirements. Indeed, in the June 19 Order, the Commission itself indicated that

"it does not agree with all instances in which NERC designates a requirement as binary."[5] Where

standards are not truly binary, universal application of a Severe VSL is arbitrary and capricious because it

ignores the reality that such non-binary standards are susceptible to degrees of violation.

Given that the compliance filing does not adequately distinguish between truly binary

requirements and those that are not truly binary, the IRC requests that the Commission order that (1) all

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[3]   June 19 Order at P 47.

[4]   Guideline 2 provides that VSL assignments should ensure uniformity and consistency in the determination
of penalties

[5]   June 19 Order at P 26.

of the NERC-identified binary requirements first be reviewed and properly accepted, corrected or eliminated by the NERC and the industry before being assigned any VSL (in order to ensure that only truly binary requirements are subject to NERC's proposal), and (2) NERC-identified binary requirements that are sub-requirements to other requirements not be enforced through the imposition of penalties at this time. This is appropriate because many of the NERC-identified binary sub-requirements are not true independent requirements; rather, they are merely explanations of the actual core requirement or the conditions required to fully meet the core requirement.

Assigning a Violation Risk Factor ("VRF") to both the main requirement and each sub-requirement, which was done at the time the VRFs for all Version 0 and Version 1 standards were developed in 2007, has created some difficulties in developing the appropriate VSLs for failing to meet the reliability objective of a requirement. This issue arises because the objective can be completely reflected in the core requirement itself, and the sub-requirements merely inform the core requirement by way of explanation and add nothing in terms of complying with the objective of the requirement. In other words, these sub-requirements do not add any incremental substantive obligations beyond the core requirement. Under these circumstances, no matter what VSL is assigned to the sub-requirements, there is a possibility for the assessment of inconsistent, non-uniform or duplicative financial penalties for non-compliance with the core requirement and the associated sub-requirement(s). In many instances, these sub-requirements are merely explanations of, or conditions for, the core requirement; they are not separate stand-alone requirements that can be violated. Sub-requirements that are simply explanations of a core requirement cannot be violated in and of themselves, and as such, these types of sub-requirements should not have separate VRFs and VSLs assigned to them. In instances where a sub-requirement is simply an explanation of the core requirement, any penalty imposed for violation of a sub-requirement would necessarily be duplicative of the penalty imposed for violating the core requirement. Such a result would be arbitrary and capricious. Under these circumstances, the IRC does not agree that a VRF should be assigned to both the main and sub-requirements.

For example, assigning a "Severe" VSL to NERC's Disturbance Control Standard BAL-002,

identified in the compliance filing as a binary standard, could cause the assessment of inconsistent and

non-uniform penalties. . NERC recognizes the core requirement R4 (*i.e.,* meet DCS 100% of the time) as

having four VSLs. On the other hand, NERC identifies R4.1 -- the explanatory statement of how to

handle different initial conditions for DCS -- as a binary sub-requirement. This presents a clear

compliance conflict because non-compliance with DCS could ostensibly be penalized pursuant to R4

and R4.1. In addition, recognition of both requirements as separate independent requirements (*i.e.* each

being assigned a VRF) creates the paradox that a DCS violation for R4 (which has four VSLs) can result

in a different penalty than a violation of R4.1 (which has only one VSL). Thus, no matter what VSL is

assigned to R4.1, a different penalty could be assessed for violating R4.[6]

In the IRC's view, a viable way to remove this paradox is to revise the requirement such that

there is a clear, well-defined core requirement that contains all of the necessary conditions and

explanations. In other words, explanation sub-text under the core requirement would not be listed as a

separate sub-requirement that can be violated whereas, the conditions under the core requirement would

be listed as sub-requirements which will be evaluated to determine the extent to which the core

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[6]   Take for example a situation where a Balancing Authority experiences 10 Reportable Disturbances, and meets the Disturbance Recovery Criterion for nine of them. Under these circumstances, the Balancing Authority has violated R4 of BAL-002-0 and would be assessed a Moderate VSL for meeting the Disturbance Recovery Criterion only 90% of the time. R4.1 of BAL-002-0 is the Disturbance Recovery Criterion and has been assigned a single Violation Severity Level of Severe. For the one Reportable Disturbance where the Balancing Authority did not meet the Disturbance Recovery Criterion, the Balancing Authority would be in violation of BAL-002-0 R4.1 and would be assessed a penalty based on a Severe Violation Severity Level. Thus, not only will the Balancing Authority incur two penalties for the one non-compliance event, the two penalties will be inconsistent with each other due to the fact that the current non-binary requirement R4 allows for gradations of non-compliance, while the current binary standard R4.1 does not allow for gradations.

     As another example, the IRC notes that the Violation Severity Level of BAL-002 R4.1 conflicts with the Violation Severity Level of BAL-002-0 R3. Anytime the Disturbance Recovery Criterion is not met for a single Reportable Disturbance, BAL-002 R3 will also be violated. This can result in different VSLs for the same event. Using the same example, if the average percent recovery was 96%, the assessed Violation Severity Level associated with the violation of BAL-002-0 R3 would be Lower. Therefore, the same Reportable Disturbance could result in violations of three separate requirements that have different Violation Severity Levels. The IRC submits that this violates Guideline 2 established by the Commission.

requirement is violated. Requirements that are not really requirements, or which are really conditions for the core requirement, should not have separate VRFs and VSLs as such, theyshould not be subject to penalty. The IRC is not proposing herein specific changes to R4 or any of its sub-requirements in BAL-002-2. The IRC is merely arguing that those sub-requirements that are really explanations of the core requirement should be made sub-text of, or bullets to, the main requirement, and that sub-requirements that are the conditions for the core requirement be "rolled up" into the core requirement to enable a proper VSL to be determined for the main requirement. Adoption of this approach will eliminate the potential for inconsistent or duplicative penalties.

The aforementioned paradox exists for many other requirements that have a VRF (and hence a VSL) assigned both to the main requirement and its sub-requirements. Another example, but one which demonstrates the need for a "roll up", where a VRF (and a VSL) should be assigned only to the main requirement is Requirement R4 and its sub-requirements in IRO-014-1[7].

The IRC notes that many of the existing requirements have been categorized by NERC as "binary" simply because the conversion from the "voluntary" NERC Policy and Standard documents to the Version 0 Reliability Standards was hastened in order to enable prompt implementation and enforcement of mandatory Reliability Standards.[8] When the conversion was made, the VRF and VSL matrices were not even yet conceived as a compliance enforcement mechanism. The IRC does not believe

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[7]   In NERC's compliance filing, R4 in IRO-014-1 and its sub-requirements R4.1, R4.2 and R4.3 are each assigned a binary VSL of Severe. R4 should not be regarded as a binary requirement because the degree of violating R4 would depend on the failure to meet any of its sub-requirements R4.1 through R4.3. In the IRC's view, a single VRF should be assigned to R4, whose VSL is determined by the extent to which R4.1 to R4.3 is violated. Any of the R4.1 to R4.3 sub-requirements can remain as binary, but without a VRF assigned to them; their assessment would only "roll up" to the VSL for the core requirement – R4. A single penalty would be determined for R4 based on the VRF assigned to R4, and the assessed "rolled up" VSL.

[8]   Also, the mandated timeline for NERC to develop the VSLs in response to the June 19 Order was not sufficient to allow NERC and the industry to fully address through the Commission-approved Reliability Standards Development Procedure the problems resulting from the original ambiguity of the Version 0 standards or to develop an analytical approach to setting VSLs for the binary requirements.

that many of the Version 0 binary requirements that were developed during this truncated process can be measured effectively for purposes of determining compliance. As the Commission recognized in the June 19 Order, "as a general rule, gradated Violation Severity Levels, wherever possible, would be preferable to binary Violation Severity Levels since the application of any penalty for a violation could be more consistently and fairly applied commensurate with the degree of the violation."[9] Assigning a pass/fail designation to requirements for which compliance is a matter of degree is arbitrary and capricious.

III. REQUEST FOR COMMISISON ACTION

As a general proposition, the IRC believes that NERC should (1) improve Reliability Standards requirements by developing standards that (a) are clear, concise and incorporate explanations into sub-text, or bullets for the main requirement rather than creating separate sub-requirements that are really not requirements at all, and (b) "roll up" sub-requirements into the main requirement to enable compliance to be measured more effectively and in a manner consistent with the intent of the reliability objective, (2) revise the VRFs to more accurately reflect the reliability impact of various types of requirements, assigning VRFs to the main requirements only (and not to sub-requirements that are explanations of the main requirement), and (3) more rationally assign VSLs to those same main requirements.

With respect to NERC's December 19 compliance filing, the IRC requests that the Commission direct NERC to comprehensively review all of the 322 requirements specified by NERC as binary to determine whether or not such requirements are appropriately categorized as binary or whether they should be modified as non-binary requirements in order to facilitate appropriate and equitable compliance assessments. This approach would avoid arbitrary pass/fail determinations for standards where actions are taken to comply with the requirement, and those actions are capable of being assessed as a matter of degree. In furthering this goal, the IRC urges the Commission to direct NERC to work through approved

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[9] *Id.*

standards development processes to develop an appropriate long-term solution for these standards. NERC's proposal contained in its compliance filing should remain in place only until such long-term solutions are developed and approved. Until these respective binary requirements can receive a proper and full vetting to ensure that they are properly written (or re-written) and that appropriate VRFs and VSLs are assigned to them, NERC and the Commission should be circumspect in imposing significant penalties in connection with requirements that may not truly be binary, especially given that NERC has arbitrarily assigned a VSL of "Severe" to all such requirements.

IV. CONCLUSION

Wherefore, the IRC requests that the Commission direct NERC to undertake a comprehensive review of all binary requirements consistent with the discussion herein.

Respectfully submitted,

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Certificate of Service

I hereby certify that I have this day served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated this 21st day of January, 2009 at Folsom, California.

Anna Pascuzzo

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