



Reliability:

FERC's Certification of the Electric Reliability Organization and the Western Interconnection Regional Advisory Body

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Overview

The order certifying the North American Electric Reliability Council (NERC) as the nation's Electric Reliability Organization (ERO) was issued on July 20, 2006.

- The ERO will propose and enforce mandatory Reliability Standards for the Bulk-Power System in the United States, subject to FERC's review and oversight.
- The ERO will delegate enforcement functions to Regional Entities.

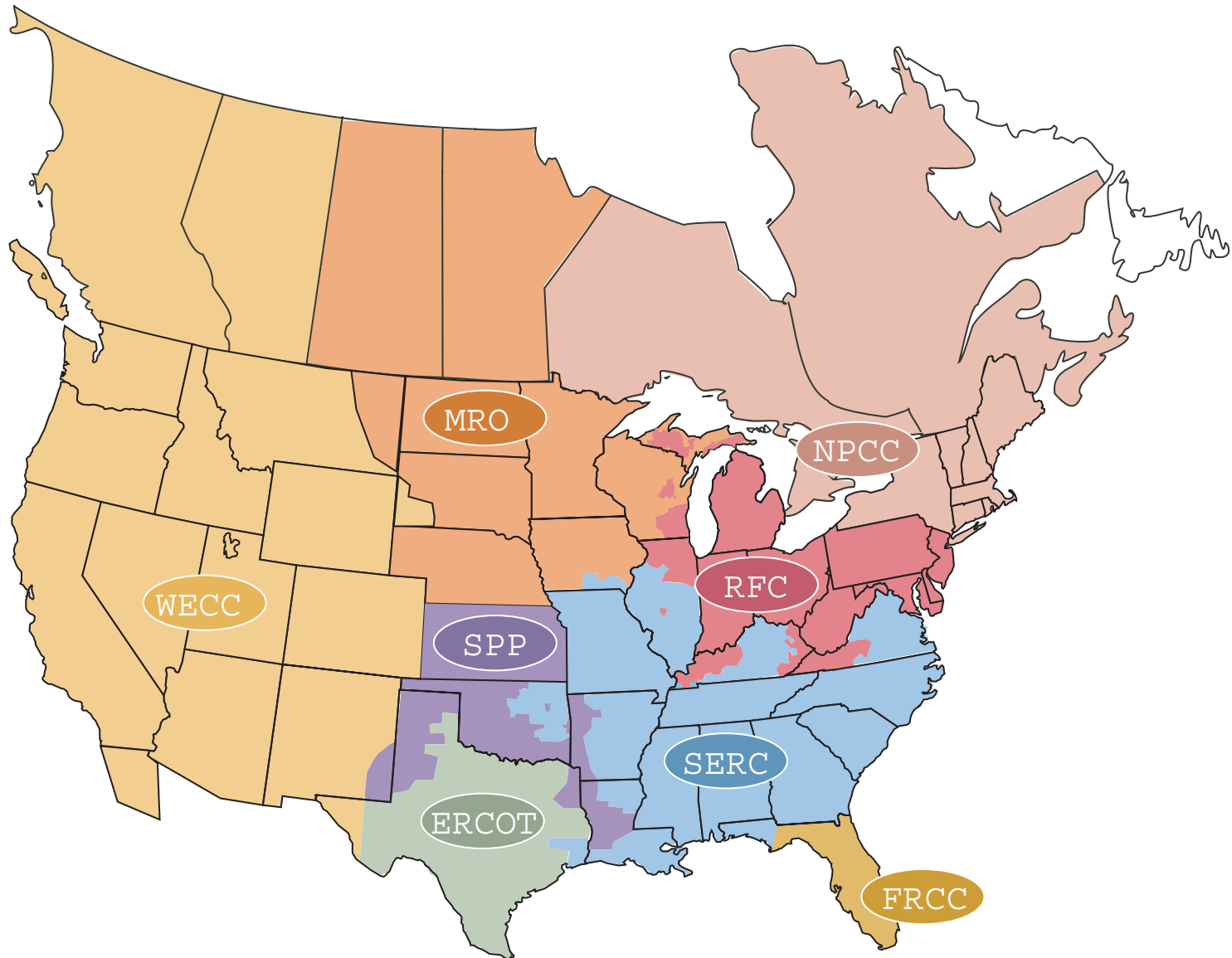
NERC's most important upcoming tasks are:

- To enter into delegation agreements with Regional Entities and submit the agreements to the FERC for consideration
- To submit a compliance filing with FERC by October 18, 2006, that includes information and revisions directed by FERC in the July 20, 2006 order

The major topics of the ERO order are:

- ERO Governance
- ERO Funding
- Reliability Standards Development
- Enforcement
- Regional Entity Delegation Agreements

NERC Regions



ERO Governance

- Any person or entity with an interest in reliable Bulk-Power System operation may become an ERO member, without paying a membership fee, and select one of 12 membership sectors.
- ERO rules must assure its independence of Bulk-Power System users, owners and operators. The ERO will be governed by a Board of Trustees, consisting of ten independent members and one management member, the NERC president.
- Independent trustees, elected by the membership representatives committee, cannot have any relationship that would interfere with the exercise of independent judgment.
- As the ERO, NERC will continue to rely on industry volunteers to provide technical expertise needed in ERO decision-making.

Funding

Billing and Collection

- The ERO will allocate all costs for statutory activities based upon a load serving entity's net energy for load.
- The ERO is funded by the ratepayers.
- Regional Entities perform billing and collection from the load serving entities within their geographic boundaries.

Funding of Activities

- The ERO must submit to the Commission a proposed budget that lists all statutory activities the ERO will undertake and identify the costs to support such activities.
- The ERO and Regional Entities may bill for non-statutory activities, however funds for statutory activities may not be commingled with funds for non-statutory activities.
- A statutory activity is anything required of the ERO and Regional Entity by statute, Order 672 pursuant to the statute, or any subsequent FERC order pursuant to section 215 of the FPA.

Reliability Standard Development

- The goal is to develop uniform Reliability Standards. Regional differences may still exist but should be the exception to the rule.
- The standard for approval is whether the Reliability Standard is just, reasonable, not unduly discriminatory or preferential and in the public interest.
- A registered ballot body votes on Reliability Standards before consideration by the ERO's board. A Reliability Standard is not mandatory and enforceable until approved by FERC.

Enforcement: Overview

- Under the authority of FPA section 215, FERC expects the ERO and Regional Entities to have an enforcement process, including:
 - a **compliance program** that includes proactive compliance audits to determine if users, owners and operators of the Bulk-Power System are complying with Reliability Standards;
 - an **investigation program** for alleged violations of Reliability Standards wherein the ERO informs FERC promptly of these incidents and their dispositions; and
 - a **penalty program** wherein a penalty may be assessed (non-monetary or monetary) subject to FERC's review.

FPA section 215 also provides for enforcement initiated by FERC on its own motion.

Enforcement: Compliance Program

- A **compliance audit** determines whether a user, owner or operator of the Bulk-Power System is in compliance with all applicable Reliability Standards through an independent audit that may result in the assessment of a penalty for a violation of a Reliability Standard.
- The ERO and each Regional Entity have the authority to take **remedial actions** to bring entities into compliance and ensure prospective compliance with Reliability Standards.
 - Where the Bulk-Power System could be imminently jeopardized by an entity's noncompliance with a remedial action, the ERO or a Regional Entity may seek immediate, injunctive relief in a court of competent jurisdiction pursuant to section 314 of the FPA. In those situations, FERC would coordinate with the ERO and applicable Regional Entity.
- A **reliability readiness review** uses peer review and mutual assistance in order to assess the readiness of a user, owner or operator of the Bulk-Power System, such as a balancing authority, transmission operator or other entity, by providing guidance to help both the audited entity and other entities to improve.

No constraint may be placed on FERC staff's participation in the audit process.

Enforcement: Investigation Program

- The ERO and the appropriate Regional Entity will conduct investigations of alleged violations of Reliability Standards, and shall report promptly to FERC any self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard and its eventual disposition.
 - To ensure consistency across regions, each Regional Entity is required to file a periodic report with the ERO on its enforcement investigations.
- The ERO, Regional Entities and FERC will treat reliability violations and alleged violations as nonpublic until the matter is filed with FERC as a notice of penalty, the matter is otherwise resolved, or FERC determines that the ERO or Regional Entity should conduct a public investigation.
 - Subject to exception (e.g., Cybersecurity Incident), any settlement of a potential violation to which a Regional Entity or the ERO is a party must be made public, whether or not a violation has been alleged or a finding of violation has occurred.

Enforcement: Penalty Program

- FPA section 215 specifies that any penalty imposed by the ERO “shall bear a reasonable relation to the seriousness of the violation and shall take into consideration the efforts of such user, owner, or operator to remedy the violation in a timely manner.”
- NERC’s proposed Sanction Guidelines and penalty matrix set out factors to be considered when the ERO or a Regional Entity determines the appropriate penalty or remedial action for a violation of a FERC-approved Reliability Standard.
 - FERC directed NERC to revise its proposed Sanction Guidelines and penalty matrix to ensure compliance with the requirements of section 215 of the FPA and section 39.7 of FERC’s regulations. FERC also directed NERC to include in its penalty matrix the \$1 million per violation, per day maximum penalty allowed by law.
- The ERO will follow a single appeal process at the ERO level of a Regional Entity’s final determination as to a violation and any remedial action or penalty that may apply.
 - The ERO has *de novo* review authority on appeal in matters where consistency across regions is desirable; however, FERC expects the ERO to provide appropriate deference to the Regional Entity’s determinations of fact in specific cases.

Delegation Agreements

- NERC filed a *pro forma* delegation agreement containing standard language that will be included in each individual delegation agreement negotiated between the ERO and a Regional Entity.
- The delegation agreements will include exhibits that may be customized to address such matters as Regional Entity Reliability Standard development procedures and regional enforcement program requirements.
- Amendments to the delegation agreements must be reviewed by the ERO and approved by FERC.
- Regional Entities may sub-contract, but may not sub-delegate ERO-delegated duties to other entities.

Western Interconnection Regional Advisory Body (WIRAB)

- On July 20, 2006, FERC issued an order accepting the petition of the Governors of Arizona, California, Colorado, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming to establish a Western Interconnection Regional Advisory Body (WIRAB).
- WIRAB provides advice to the ERO, a Regional Entity and FERC.
- Regional advisory bodies are composed of one member from each participating State in the region, appointed by the governor of each state. In addition, regional advisory bodies may include representatives of agencies, states and provinces outside the United States.
- Regional advisory bodies' costs for activities listed in section 215(j) of the FPA may be funded by fees collected from the ERO overall budget. Other costs will be recovered from end users within the same region.

Timetable

- **October 18, 2006:** NERC compliance filing
- **November 3, 2006:** Anticipated date of delegation agreements filing.
- **November 8, 2006:** NERC is expected to file with FERC a report and work plan providing a detailed schedule for addressing all of the regional “fill-in-the blank” standards for approval.
- **January 1, 2007:** ERO to commence operations.