

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**North American Electric
Reliability Corporation**

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)

Docket No. RR06-1-001

**ANSWER OF THE ISO/RTO COUNCIL TO REQUEST FOR REHEARING OF
THE ELECTRICITY CONSUMERS RESOURCE COUNCIL (“ELCON”)**

Pursuant to Rule 213 of the Federal Energy Regulatory Commission's (the “Commission’s”) Rules of Practice and Procedure, 18 C.F.R. § 385.213, the ISO/RTO Council (“IRC”)¹ respectfully submits information in response to the Request for Rehearing of the Electricity Consumers Resource Council (“ELCON Rehearing”).

The IRC recognizes that, in general, the Commission’s Rules of Practice and Procedure do not permit answers to rehearing requests.² If, however, the Commission

¹ The IRC was formed by the nine functioning Independent System Operators (“ISOs”) and Regional Transmission Organizations (“RTOs”) in North America in April 2003. It is comprised of the Independent System Operator operating as the Alberta Electric System Operator (“AESO”), California Independent System Operator, Inc. (“CAISO”); Electric Reliability Council of Texas (“ERCOT”); the Independent Electricity System Operator of Ontario (“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”); and Southwest Power Pool (“SPP”). The IRC’s mission is to work collaboratively to develop effective processes, tools and standard methods for improving 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.

The AESO and IESO are not subject to this Commission’s jurisdiction. While the AESO and IESO concur with this Motion for Clarification, this concurrence should not be construed as agreement or acknowledgement that their organizations are subject to this Commission’s jurisdiction. ERCOT has elected not to be a signatory to this filing.

² Although an answer is not normally permitted to a request for rehearing, the Commission will allow answers where, as here, an answer provides further explanation or otherwise helps to ensure the existence of a full and complete record and Commission understanding of that record. *See, e.g., Pacific Gas & Electric Co.*, 93 FERC ¶ 61,322 (2000); *American Transmission Company LLC*, 93 FERC 61,267 (2000); *Delmarva Power & Light Co.*, 93 FERC ¶ 61,098 (2000); *Commonwealth Edison Co.*, 93 FERC ¶ 61,040 at 61,085 (2000); *Sierra Pacific Power Co. & Nevada Power Co.*, 93 FERC ¶ 61,107 (2000); *California Power Exchange Corp.*, 92 FERC

deems the issue raised by ELCON with regard to the role of ISOs and RTOs in the ERO's governance structure to merit rehearing, the IRC respectfully requests this opportunity to respond in order to clarify the record and give the Commission a more complete understanding of the issue presented. The ISO therefore moves, pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.212, for leave to file this answer.

I. BACKGROUND

A. In the ERO Order, the Commission Directed NERC to Establish a Separate Segment for ISOs and RTOs in the Registered Ballot Body and Standards Committee.

On July 20, 2006, the Commission certified the North American Electric Reliability Corporation ("NERC") as the Electric Reliability Organization and ordered NERC to make a further compliance filing.³ In paragraph 90 of the ERO Order, the Commission ordered NERC, on compliance, to create a separate segment in its Registered Ballot Body ("RBB") and Standards Committee for ISOs and RTOs and to address the IRC's request for a waiver from the NERC Rules of Procedure that would discount the votes of RBB and Standards Committee segments with less than ten (10) members voting. The IRC has provided the Commission background on this matter in its August 21, 2006, Motion for Clarification⁴ that it filed in light of *interim* actions taken by NERC in response to that compliance directive.

¶ 61,093 (2000); *Tennessee Gas Pipeline Co.*, 55 FERC ¶ 61,437 at 62,306 n. 7 (1991). In addition, the Commission has, in the past, accepted answers where they assist the Commission's understanding of the issues presented. *See, e.g., New England Power Pool*, 88 FERC ¶ 61,147 (1999); *AES Redondo Beach, L.L.C.*, 87 FERC ¶ 61,208 (1999).

³ *North American Electric Reliability Corporation*, 116 FERC ¶ 61,062 (2006) (*hereinafter* referred to as the "ERO Order").

⁴ *See* Motion for Clarification of the ISO/RTO Council, Docket No. RR06-1 (filed on Aug. 21, 2006) (*hereinafter* referred to as "IRC Motion for Clarification").

B. ELCON Files Rehearing Request of the ERO Order Establishing a Separate Segment for ISOs and RTOs on the RBB and Standards Committee.

On August 18, 2006, ELCON filed a Request for Rehearing of the Commission's ERO Order. Among other issues, ELCON requested rehearing of the part of the ERO Order in which the Commission: "require[d] NERC to create a separate segment for ISOs and RTOs."⁵ ELCON claims that because the ISO/RTO Council is a member of the Joint Interface Committee ("JIC") – a Committee that was established pursuant to a Memorandum of Understanding between North American Energy Standards Board ("NAESB") and NERC, dated November 30, 2002 and filed in Docket No. RM01-12 on December 16, 2002, and later modified on May 15, 2003 to include the IRC and filed in the Order No. 672 Docket⁶ – the ISOs and RTOs would have "excessive voting rights" with regard to the development of Reliability Standards. Moreover, ELCON claims that the Commission failed to consider the existence of the JIC in directing NERC to establish a separate segment for ISOs and RTOs.

ELCON does not seek any specific outcome from the Commission. ELCON asks generally for the Commission to reconsider its decision. As discussed in Section II below, the basis for rehearing provided by ELCON both misconstrues the role of the JIC, and is otherwise factually inaccurate.

⁵ See ELCON Rehearing at pp. 10-11. ELCON erroneously cites the pertinent part of the ERO Order as paragraph 89; the pertinent directive from the Commission is in paragraph 90.

⁶ See Comments of the North American Energy Standards Board on the Second Technical Conference for Docket No. RM05-30-000 (filed Dec. 22, 2005). Specifically, NERC attached to that filing the Amended and Restated Memorandum of Understanding for the North American Energy Standards Board, North American Electric Reliability Council and the ISO/RTO Council ("JIC Memorandum of Understanding").

II. ANSWER OF THE IRC

A. Providing ISOs and RTOs with Their Own Segment In the RBB and Standards Committee Does Not Provide ISOs and RTOs with “Excessive Voting Rights.”

First, as the IRC briefed fully in its initial comments on the NERC’s ERO Application⁷ and in its recently filed Motion for Clarification⁸, the Commission was correct to establish a separate segment for ISOs and RTOs on the RBB and Standards Committee. The IRC directs the Commission to its previously filed comments and Motion for a full discussion of the rationale.

Second, and with specific regard to the ELCON request, ELCON has misconstrued the role of ISOs and RTOs in participating on the JIC. By way of background, the JIC was developed by NERC, NAESB and the IRC to ensure that the process for development of wholesale electric business practices and reliability standards is harmonized and that every effort is made to minimize duplication of effort between NERC and NAESB. It should be emphasized, however, that the JIC serves to coordinate work among these three entities; it neither provides the IRC with any vote on the content of any particular Reliability Standard nor provides the IRC with any decisional role with regard to whether any particular Reliability Standard goes forward. Moreover, the JIC works to coordinate the annual plans of each entity and to determine the appropriate body to consider a request for a standard or business practice (including whether a particular request is more in the nature of a reliability standard or a commercial business practice). Thus, the JIC becomes involved at the *front end* of the process, identifying the appropriate body to deal with the subject being addressed by the proposed standard or

⁷ See Comments of the ISO/RTO Council, Docket No. RR06-1 at pp 3-4 & 10-14 (filed on May 4, 2006) (hereinafter referred to as “Comments of IRC”).

business practice rather than the contents of the standard or business practice itself, which has not even been developed. As such, in participating in the JIC, the IRC cannot influence the content or outcome of any proposed Reliability Standard any more than can NERC or NAESB representatives participating in the JIC process. The IRC's participation on the JIC simply helps ensure that issues underlying the development of Reliability Standards – issues that may have wholesale market implications (which ISOs and RTOs are uniquely qualified to address) and business practice implications – are efficiently considered by both NERC and NAESB. In short, the JIC provides for efficient “process management” of proposed Reliability Standards.

ELCON is simply wrong to suggest that the IRC's role in helping NERC and NAESB manage the consideration of issues associated with the development of new Reliability Standards gives the ISOs and RTOs any additional voting power, authority or influence when such Reliability Standards are considered in the RBB and Standards Committee. The only place in which the ISOs and RTOs may register their views on the content of Reliability Standards is by voting at the RBB and Standards Committee.⁹

B. ELCON is Wrong to Suggest the Commission Failed to Consider the JIC in Promulgating its ERO Order.

ELCON is wrong to suggest that the role of the JIC was not taken into account in promulgating the ERO Order. First, as ELCON itself notes, NERC made clear the role of

⁸ See IRC Motion for Clarification at pp. 9-10.

⁹ See also, e.g., JIC Memorandum of Understanding at Section 2.6 (“Once the JIC has assigned or referred the standards proposal for further development, the members and constituents of the other organizations are strongly encouraged to actively engage in the development process by participating in subcommittee, task force and working group deliberations as well as offering comments and recommendations on any and all aspects of the proposed standard or policy.”) (emphasis added).

the JIC in filing its Application.¹⁰ Second, in its original comments on the NERC Application, the IRC itself highlighted the role of the JIC in commenting that the ISOs and RTOs should have their own segment on the RBB and Standards Committee. In the Section of its Comments, subtitled: “The Proposed Balloting Body Segments Must Be Modified to Create a Separate Segment for ISOs/RTOs In Order to Meet the Statute’s Requirements”, the IRC commented that:

[t]he Application appropriately proposes to create a truly separate ISO/RTO industry segment on the ERO’s Member Representatives Committee. Moreover, the Application appropriately proposes to continue to rely on the Joint Interface Committee (consisting of NERC, NAESB and IRC representatives) for coordinating work on Reliability Standards and wholesale electric business practices. The proposal for the Registered Ballot Body and Standards Committee, however, arbitrarily and capriciously dilutes the ISO/RTO vote on proposed Reliability Standards by grouping ISOs/RTOs with “Regional Entities” and “Regional Reliability Organizations” for purposes of voting. There is no basis for treating ISOs/RTOs differently in these two voting bodies.¹¹

In ordering NERC to establish a separate segment for ISOs and RTOs, the Commission explicitly cited the IRC’s comments in expressing the preference that the makeup of the RBB and Standards Committee should be the same as the Member Representative Committee (in which the ISOs and RTOs have their own sector).¹² ELCON’s claim that the Commission “apparently did not consider that the ISO/RTO Council already has one-third of the votes in the Joint Interface Committee (“JIC”)” is simply unsupported by the record of this proceeding and the Commission’s own decision.

¹⁰ See ELCON Rehearing at 10-11; *see also* NERC Application at Exhibit C, Appendix 1 (“Reliability Standards Development Procedure”), p. 9.

¹¹ Comments of IRC at 10 (footnotes omitted).

¹² See ERO Order at PP 62-63.

The record on which the Commission based its decision fully explained and discussed the role of the JIC. ELCON does not, of course, claim that the Commission's Order for NERC to establish a separate ISO/RTO segment on the RBB and Standards Committee was "arbitrary and capricious." As such, while ELCON would no doubt like a different result, ELCON cites no ground that warrants Commission reconsideration.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the IRC respectfully requests that the Commission accept this Answer and deny ELCON's rehearing request as relates to the Commission ordering NERC to establish a separate sector for ISOs and RTOs on the RBB and Standards Committee.

Respectfully submitted,

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Dated: September 5, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 5th day of September, 2006.

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