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Draft Five-Year ERO Performance Assessment Report – Comments of the Canadian Electricity Association

The Canadian Electricity Association (“CEA”) appreciates this opportunity to provide comments on the Draft Five-Year ERO Performance Assessment Report (“Draft Five-Year Assessment”).

CEA views the Draft Five-Year Assessment as generally being a fair and measured evaluation of NERC’s performance in fulfilling its responsibilities as the Electric Reliability Organization (“ERO”). It is clear from the description of activities and accomplishments that NERC has made significant progress in helping to improve bulk power system (“BPS”) reliability in the years following its previous self-assessment in 2009 (“2009 Assessment”).

CEA wishes to focus these comments on two specific topics – one which is addressed in the Draft Five-Year Assessment (NERC’s efforts to seek recognition in Canada) and one which is not addressed (the growth of NERC’s overall budget since the 2009 Assessment).

1. CEA requests that NERC further engage Canadian entities on preparing and verifying information in Attachment 1 regarding NERC’s efforts to seek recognition in Canada.

Attachment 1 to the Draft Five-Year Assessment discusses how NERC meets the ERO certification criteria set forth in the applicable regulations of the U.S. Federal Energy Regulatory Commission (“FERC”). Among the criteria covered is the establishment of “rules that provide appropriate steps to gain recognition in Canada and Mexico.” CEA acknowledges and appreciates that NERC has devoted considerable space to this criterion in Attachment 1, and believes this approach is befitting an organization with an international mandate and mission.

It appears that much of the relevant content for this section in Attachment 1 mirrors background material prepared for the May 9, 2013 meetings of the NERC Board of Trustees.¹ This material consisted of a summary of the various regimes in place across Canadian jurisdictions governing adoption, monitoring and enforcement of reliability standards.

As NERC is aware, prior and subsequent to the May 2013 meetings, various Canadian entities have been working on a similar set of materials. At present, this effort is being led by the Monitoring and Enforcement Sub-Group (“MESG”) of the Federal-Provincial-Territorial

¹ See: <http://www.nerc.com/gov/bot/Agenda%20highlights%20and%20Mintues%202013/BOT0513acomplete.pdf>.

Electricity Working Group (“FPT Group”). The MESH has signalled an intent to complete its final product – with opportunity for appropriate input from CEA members – in time for the FPT Group’s next scheduled forum with its counterparts at FERC in May 2014.

In view of this planned timing, CEA requests that NERC align the discussion in Attachment 1 of recognition in Canada with the material set to be yielded through the MESH’s work. Such an approach will ensure unity of effort and accuracy of information. With NERC set to file its finalized Five-Year Assessment with FERC on or before July 21, 2014, CEA believes that there is ample time to allow for such consultation and coordination in advance of submittal.

Coordination with Canadian Entities

CEA appreciates the inclusion in the Draft Five-Year Assessment of NERC’s commitment to sustained participation in the regular Trilateral Group meetings of applicable North American governmental authorities and to ongoing coordination with Canadian entities.²

2. CEA believes that the Five-Year Assessment ought to reference NERC’s current budget level, growth in NERC’s budget since the 2009 Assessment, enduring stakeholder concerns regarding this growth, and NERC’s efforts to address these concerns.

CEA observes that the Draft Five-Year Assessment includes numerous references to specific details and aspects of NERC’s annual budget. For example, it notes that integration of the top priority reliability risks with the budget will be a cornerstone of NERC’s annual planning process going forward³ and that NERC has implemented criteria to determine whether an activity is eligible for normal statutory funding.⁴ Attachment 1 also explains such matters as how NERC has established rules to equitably allocate costs among end-users.⁵

Current Budget & Growth in Budget Levels

In CEA’s view, it seems curious that the Draft Five-Year Assessment omits any reference to NERC’s current budget level and the growth in NERC’s overall budget since the 2009 Assessment. While the Draft Five-Year Assessment acknowledges increases in specific program areas such as standards development and compliance and enforcement, the draft neither acknowledges nor provides a more global explanation for the expansion of NERC’s overall budget from approximately US\$34.5 million in 2009 to US\$55.6 million in 2014.

An essential component of evaluating an organization’s performance is consideration of the budgetary backdrop under which this performance has been executed. One would assume that, given the significant escalation of costs at NERC, the Draft Five-Year Assessment would at least recognize that improvements in NERC’s performance have not been free, but rather have

² Draft Five-Year Assessment, p. 81.

³ *Ibid*, p. 16.

⁴ *Ibid*, p. 79.

⁵ Attachment 1 to Draft Five-Year Assessment, p. 26.

incurred substantial additional expense. Ideally, the document would clearly demonstrate the cost-effectiveness of growth in NERC's overall budget and headcount, and would explain how NERC applies its resources in a cost-effective manner in service of BPS reliability.

Stakeholder Concerns & NERC's Efforts to Address Them

This omission in the Draft Five-Year Assessment is likewise peculiar in light of the strenuous concerns stakeholders have expressed over the last few budget cycles regarding significant year-over-year increases in NERC's budget.

In fact, such concerns were already surfacing at the time of the 2009 Assessment. To its credit, the 2009 Assessment directly acknowledged these concerns, noting that stakeholders were requesting more information regarding the cost and headcount increases at NERC, and were calling for greater consideration of stakeholder recommendations in the NERC budget process.⁶

These concerns have not abated. Rather, they have magnified over the last five years as NERC's budget has continued to expand. This is further reflected in the responses to the October 2013 survey soliciting stakeholder input on NERC and Regional Entity performance, which are consolidated in Attachment 4 to the Draft Five-Year Assessment. The average scores awarded to NERC for granting stakeholders reasonable opportunity to provide input during the annual budget process and for providing sufficient information in support of proposed budgets were quite low.⁷ However, the Draft Five-Year Assessment is silent on the concerns expressed by stakeholders in this regard. (Indeed, apart from the presentation of numerical ratings from stakeholders' responses to the October 2013 survey, it is not clear to CEA where the Draft Five-Year Assessment actually acknowledges and addresses in a meaningful way the incongruence between stakeholders' perceptions of NERC's performance and NERC's own evaluation).

In forums such as the Member Representatives Committee and during past budget cycles, NERC has previously sought to assure stakeholders that budget growth will level off, now that NERC has reached a point of maturity and stability as an organization. Based on this and the above discussion, CEA believes that more detail around – or at a minimum, a basic acknowledgment of – growth in NERC's budget, stakeholders' enduring concerns and NERC's plans to control costs going forward is appropriate and necessary in the Five-Year Assessment.

Assessments for Canadian Entities

In addition to the above, CEA notes the following language in Attachment 1 to the Draft Five-Year Assessment, located in the section describing how NERC has established rules to equitably allocate costs among end-users:

⁶ See: http://www.nerc.com/FilingsOrders/us/NERC%20Filings%20to%20FERC%20DL/NERC_3-year_Assessment_report_COMPLETE_FINAL7-20-09.pdf, pp. 72-73.

⁷ Attachment 4 to Draft Five-Year Assessment, p. 9.

- “In Business Plan and Budget filings with the Commission, actual assessments for Canadian and Mexican entities vary after taking into account policies regarding the allocation of certain compliance and enforcement costs.”⁸

CEA applauds NERC for these and other ongoing efforts to address concerns raised by CEA members in the period leading up to the 2009 Assessment regarding the allocation of costs associated with FERC-specific directives and requirements to Canadian entities.

Conclusion

CEA thanks NERC for considering these comments. We look forward to further discussion of the Draft Five-Year Assessment in conjunction with the May 2014 meetings of the NERC Board and to further engagement with NERC on the above requests.

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⁸ Attachment 1 to Draft Five-Year Assessment, p. 26.