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- superior educational programming,
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June 7-8, 2016

Washington, DC



ENERGY
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EBA Energizer Legal Advice in the NERC Age: 2006-2016

April 22, 2016





NERC's History: Action and Reaction

- **1965** Northeast blackout
- **1968** National Electric Reliability Council established
- **1977** Northeast blackout
- **1977** Legislation allows federal government to propose voluntary standards
- **1996** Two major blackouts strike the Western Interconnection
- **1997** DOE panel recommends mandatory reliability standards
- **1999** WSCC (WECC's predecessor) implements Reliability Management System



NERC History

- **2002** NERC operating and planning standards become mandatory in Ontario, Canada
- **2002** NERC forms Critical Infrastructure Advisory Committee
- **2003** Urgent Action Cyber Security Standard 1200 issued
- **2003 August 14 Northeast blackout**
- **2005** U.S. Energy Policy Act of 2005
- **2006** Order 672; Federal Energy Regulatory Commission (FERC) certifies NERC as Electric Reliability Organization (ERO)



NERC History

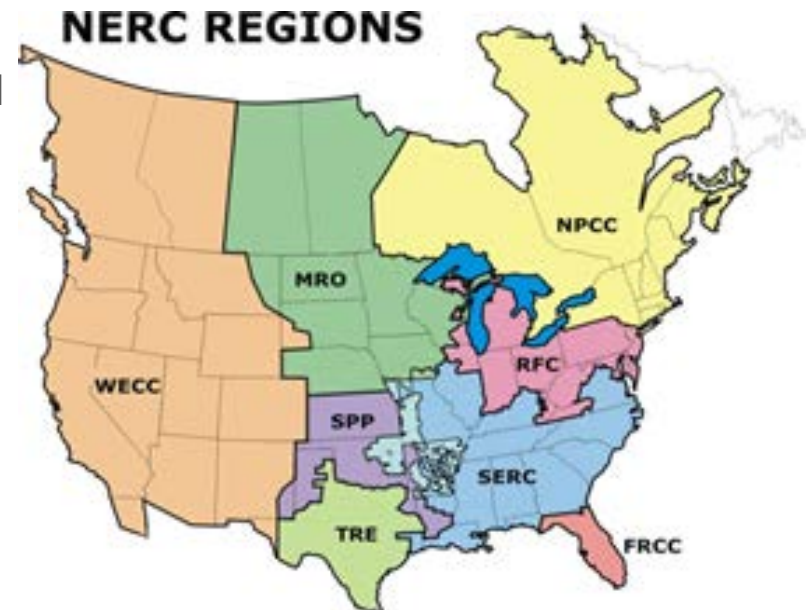
- **2006 NERC Memorandum of Understanding (MOUs) with some Canadian Provinces**
- **2007 NERC becomes North American Electric Reliability Corporation**
- **2007 FERC issues Order No. 693 approving 83 of 107 proposed reliability standards**
- **2007 June 18, O&P standards enforceable**
- **2008 Order 706; July 1 CIP standards enforceable**



ERO Overview

- NERC is the ERO for North America, subject to oversight by the Federal Energy Regulatory Commission and governmental authorities in Canada.
- The ERO Enterprise is a collaborative, international network comprised of NERC and the eight delegated Regional Entities:

FRCC	Florida Reliability Coordinating Council
MRO	Midwest Reliability Organization
NPCC	Northeast Power Coordinating Council
RF	Reliability <i>First</i>
SERC	SERC Reliability Corporation
SPP	Southwest Power Pool Regional Entity
TRE	Texas Reliability Entity
WECC	Western Electric Coordinating Council





NERC Overview

- Reliability Standards
- Education, Training, and Operator Certification
- Reliability Assessment and System Analysis
- Compliance Assurance and Enforcement
- Registration
- Reliability Risk Management
- Situation Awareness
- Events Analysis
- Performance Analysis
- Regional Entity Coordination
- Policy and External Affairs
- Legal and Regulatory
- Electricity Information Sharing and Analysis Center (E-ISAC)

Past to Present: Standards Development and Registration



Standard Development

Past: Focused on making changes to meet the large number of FERC directed changes to the standards issued in FERC Order No. 693 and subsequent orders.

Present: Address the most important unmitigated risks, including applicable high-impact, low-frequency risks.

Registration

Past: All bulk power system owners, operators, and users are required to register with NERC.

Present: Ensure that the right entities are subject to the right set of applicable Reliability Standards, using a consistent approach to risk assessment and registration.



Past to Present: Compliance and Enforcement

Past

- “Zero tolerance” approach
- Significant monetary penalties for noncompliance
- Compliance risk and administrative processes vs. reliability risk

Present

- Holds industry accountable for violations commensurate with risk and potential harm to the BES
- Develop compliance oversight plans developed for registered entities address the relevant risk
- Focus compliance monitoring on the most significant risks to the BES
- Transform the Reliability Assurance Initiative (RAI) from concept to implementation
- Continue to develop and implement discretion-based enforcement strategies



Panelists

- **Paul Ackerman** *Assistant General Counsel - NERC Compliance, Exelon*
- **Sonia Mendonca** *Vice President of Enforcement and Deputy General Counsel, NERC*
- **Holly Hawkins** *Associate General Counsel, NERC*
- **Daniel Skees** *Associate Counsel for Morgan, Lewis & Bockius LLP*



Moderators

- **Andrew Dressel** *Director of Regulatory Compliance, Grid Subject Matter Experts LLC (GridSME)*
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EBA Energizer: Legal Advice in the NERC Age: 2006-2016

Paul Ackerman
Assistant General Counsel, Exelon

April 22, 2016



Disclaimer

The views expressed in this presentation are those of the presenter and do not necessarily reflect the views of Exelon or any of its affiliate companies.

Discussion Topics

- 1. Key Challenges to Providing Legal Support to NERC Compliance Programs**
- 2. Important Attributes of Effective NERC Legal Support**
 - Driving Key Elements of an Effective NERC Compliance Program
 - Directing Internal NERC Investigations, Data Request Responses, Etc.
 - Fostering Productive Relationships with Regional Entities and NERC
 - Supporting Audits
 - Regulatory Support: Interpretations and Standards Development
- 3. NERC-Related Crossover Legal Support**

Key Challenges to Providing Effective Legal Support to NERC Compliance Programs

- **Voluminous, Highly Technical, and Changing Standard Requirements & Distinct Rules of Procedure**
 - Need a base level of knowledge and engagement/effective outside counsel support
- **Varying Internal NERC Compliance Program Structures**
 - Centralized program within a business unit with legal support
 - Centralized program within legal
 - Programs housed within business units with central oversight group and legal support
- **Involves Low Probability But High Significance Events**
 - Can pose a challenge to maintaining engagement
 - From a legal perspective, you need to prepare your company to effectively handle the worst case event
- **Challenging Balance Between Over and Under Engagement**

Important Attributes of Effective NERC Legal Support

- **Driving Key Elements of an Effective Compliance Program**
 - Establishing and maintaining senior management engagement
 - Clear roles and responsibilities down to the standard & requirement level
 - Transparent and robust corrective action program
 - Strong culture of compliance
 - Effective internal controls to detect and prevent issues
 - Clear demonstration in practices of focus on reliability and security (*i.e.*, above and beyond requirements)
- ***How can a lawyer foster these elements?***
 - *Be a consistent and supporting presence to the NERC compliance program.*
 - *Help develop and improve permanent internal mechanisms that promote effective programs (i.e., company charters, procedures, service level agreements)*
 - *Provide strong oversight of NERC investigations and corrective actions, e.g.:*
 - *Demand issues be identified, raised, self reported (if appropriate), and that root causes be effectively identified and mitigated*
 - *Promote dovetailing of NERC mitigation with established corrective action programs*
 - *Force development of internal controls and extent of condition reviews as part of mitigation*
 - *Encourage “above and beyond” practices*

Important Attributes of Effective NERC Legal Support

- **Directing Internal NERC Investigations, Data Request Responses, Etc.**
 - Develop effective processes to (1) maintain the attorney-client relationship in the midst of a reliability compliance issue; (2) ensure correct and complete documentation facts, (3) ensure timely and accurate legal advice, and (4) drive towards a positive resolution of issues with regulators.
 - Need a deliberate and efficient process to:
 - Initiate/lead investigation of instances of potential non-compliance, responses to request for information/data requests, etc.
 - Develop and enforce practices that protect Attorney-Client Privilege and Attorney Work Product
 - Initiate legal record holds for enforcement matters
 - Legal research and advise on self report determination
 - Review key document submittals self reports, mitigation plans, evidence packages, RFI responses
 - Brief and advise management on compliance and related liability issues
 - Negotiate and help resolve of issues with regulators

Important Attributes of Effective NERC Legal Support

- **Fostering Productive Relationships with Regional Entities and NERC**
 - Don't wait for a compliance issue
 - Establish defined lines of communications (Business Unit Compliance Leads, Legal)
- **Supporting External Audits of Business Units**
 - External: FERC, NERC, Regions, PJM
 - Review of audit support documentation
 - Help support pre-audit compliance review
 - Witness preparation (akin to deposition prep)
 - On-call support during audit/RFI responses
- **Facilitating Interpretations and Standards Development**
 - Consider developing an interpretations process for high risk standards (CIP, PRC, FAC etc.)
 - Support to company participation in the Standards Development Process

NERC-Related Crossover Legal Support

- **Transactional**
 - Support drafting Power Purchase Agreements, Lead Market Participant Agreements, Balancing Authority Services Agreements, etc.
 - Supply and services agreement when vendor is performing or key to NERC compliance functions
- **Risk**
 - Insurance/Self Insurance Issues
 - SAFTEY Act
- **Supply**
 - Driving changes to IT/OT procurement process to address cyber and physical security, data privacy, and NERC CIP compliance at the front end.
 - Updating contract terms, conditions and requirements to better address security, privacy, and compliance risks/liability.
- **Labor and Employment**
 - Personnel Risk Assessments
 - Overseas contracting
 - Onboarding/Offboarding NERC personnel
 - Insider Threat