

DECISION

NSUARB-NERC-R-10
2011 NSUARB 113

NOVA SCOTIA UTILITY AND REVIEW BOARD



IN THE MATTER OF THE PUBLIC UTILITIES ACT

- and -

IN THE MATTER OF AN APPLICATION by **NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION** for approval of its Reliability Standards, and an application by **NORTHEAST POWER COORDINATING COUNCIL, INC.** for approval of its Regional Reliability Criteria

BEFORE:

Peter W. Gurnham, Q.C., Chair
Kulvinder S. Dhillon, P.Eng., Member
Murray E. Doehler, CA, P.Eng., Member

PARTICIPANTS:

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
V. Davis Smith, Attorney

NORTHEAST POWER COORDINATING COUNCIL, INC.
Edward A. Schwerdt, President & CEO

NOVA SCOTIA POWER INC.
Nicole Godbout, LL.B.

QUETTA INC.
John Reynolds, P.Eng.

FINAL SUBMISSIONS: April 21, 2011

DECISION DATE: July 20, 2011

DECISION: Decision is summarized in paragraphs 36-39

I INTRODUCTION

[1] The North American Electric Reliability Corporation (“NERC”) is responsible for the development of reliability standards for the electricity grid in North America. The Northeast Power Coordinating Council, Inc. (“NPCC”) is the organization that enforces the standards with respect to Nova Scotia Power Inc. (“NSPI”). The intent of the development and enforcement of these standards is to minimize, if not eliminate, the chances of a widespread electrical blackout. Up until this Decision, NSPI was required to comply with the standards, but this was not mandated by the Nova Scotia Utility and Review Board (the “Board”).

[2] NPCC applied to the Board for approval of its Regional Reliability Criteria (“Criteria”). The application was dated June 29, 2010.

[3] NERC applied to the Board for approval of its Reliability Standards and associated Glossary of Terms (“Standards”) to be applicable to users, owners, and operators of the bulk power system within the Province of Nova Scotia. The application was dated June 30, 2010.

[4] In its application, NERC also requested Board approval of the associated Violation Risk Factors (“VRFs”) and the Violation Severity Levels (“VSLs”).

[5] The Board issued a Notice of Filings by advertisement in the Chronicle Herald newspaper on August 5, August 14 and August 19, 2010. The Board received only two Notices of Intervention, one from NSPI and the other from Quetta Inc.

[6] In a letter dated September 17, 2010, to NERC, NPCC and NSPI, the Board requested that NSPI propose a timeline for Board approval of the Standards and Criteria. In its letter of October 15, 2010, NSPI submitted the proposed timeline. The

timeline had been agreed to by NERC and NPCC, and the Board accepted the timeline for the proceeding, as follows:

NSPI Recommendation	December 16, 2010
IRs to NSPI, NERC and NPCC	January 20, 2011
Responses to IRs	February 10, 2011
Intervenor Evidence/Comment	March 3, 2011
IRs to Intervenor	March 17, 2011
Responses to IRs	April 7, 2011
Final Submissions by NSPI, NERC, NPCC	April 21, 2011
Reply	May 5, 2011
Anticipated UARB decision	by August 2011

[NSPI Letter to Board, October 15, 2010, p. 2]

[7] Board staff issued Information Requests (“IRs”) to NSPI, NERC and NPCC on January 20, 2011. IRs were issued by NSPI to NERC and NPCC on the same date. All IRs were responded to on February 10, 2011.

[8] Final submissions were filed by NSPI, NERC and NPCC on April 21, 2011. No reply submissions were filed.

[9] The Board did not deem it necessary to hold an oral hearing.

II BACKGROUND

[10] The Board exercises general supervision over NSPI pursuant to the *Public Utilities Act*, R.S.N.S. 1989, c. 380, as amended (the “Act”). Under the *Act*, NSPI is required to provide reasonably safe and adequate service and facilities.

[11] A Memorandum of Understanding (“MOU”) dated December 22, 2006, between the Board and NERC, outlined a process by which the Standards would be made mandatory and enforced.

[12] The MOU further recognizes that once the Board approves a Standard, compliance with the Standard will be mandatory in Nova Scotia.

[13] An MOU dated May 9, 2010, among NSPI, NPCC and NERC, defines the methodology to approve and implement the mandatory Standards and Criteria in Nova Scotia.

[14] The May 9, 2010 MOU states:

In accordance with NSPI's designation as a Registered Entity, NSPI agrees to comply with NERC Reliability Standards and NPCC Regional Reliability Criteria.

Upon approval by the NSUARB, the NERC Reliability Standards and NPCC Regional Reliability Criteria will become mandatory in Nova Scotia.

[Exhibit N-11, p. 2]

[15] Further, the May 9, 2010 MOU directs NSPI to provide the Board with a recommendation either to approve the Standards and Criteria, or pursue a different course of action.

[16] On December 17, 2010, NSPI filed its recommendations with the Board.

In the letter, NSPI stated:

The approval of the Reliability Standards and Regional Reliability Criteria will not change NSPI's operating practices as NSPI already manages to compliance on all appropriate standards and criteria....

[Exhibit N-13, p. 2]

[17] The above statement is supported in the same letter by a discussion of a compliance audit performed by NPCC on NSPI in 2010. Although the final audit report had not yet been published, preliminary findings were that NSPI was compliant with the applicable Standards, with one minor possible violation, which involved revoking access within seven days of one employee, who had passed away during the audit period.

[18] NSPI closed its December 17, 2010 letter with two recommendations:

1. The Board approve the NERC Reliability Standards and the NPCC Regional Reliability Criteria.
2. The Board not approve the VRFs and the VSLs.

[19] Upon reviewing the above noted submissions and documentation, in the Board's view there are four issues which must be decided:

- Approval of the Standards and Criteria
- The procedure by which amendments or additions to the Standards and Criteria will be approved
- Approval of VRFs and VSLs
- Compliance Monitoring and Enforcement

III ANALYSIS AND FINDINGS

1. Standards and Criteria

[20] In response to Board IR-2, NERC provided its report entitled "A Summary of Canadian Provincial Adoption of Reliability Standards Framework". A review of the report indicates widespread acceptance and adoption of the Standards in Canadian jurisdictions.

[21] In response to NSPI IR-1, NPCC stated:

The provinces of New Brunswick, Ontario, Quebec and Nova Scotia reside within the boundaries of NPCC. To date, NPCC has filed, and Ontario and New Brunswick have adopted, the Regional Reliability Criteria contained in the NPCC Directories. It should be noted, however, that the larger market participants, including Reliability Coordinators and Balancing Authorities, in the remaining provinces within NPCC are NPCC Full Members and, as such, have agreed to abide by the NPCC Bylaws and, through those bylaws, comply with the NPCC Regional Reliability Criteria.

[Exhibit N-18, p. 1]

[22] As noted above, NSPI stated that it already manages its operation to be in compliance with appropriate Standards and Criteria. NPCC's response to Board IR-2

included a copy of the 2010 NSPI compliance audit, which confirms that NSPI is in compliance.

[23] There were no objections to the Board approving the Criteria and Standards.

[24] The Board hereby approves the Criteria and Standards as submitted.

2. Amendments or Additions

[25] Regarding notification and approval of amendments and/or additions to the Standards and Criteria, the May 9, 2010 MOU suggests the following approach:

The signatories anticipate that there will be ongoing amendments and/or additions made to the NERC Reliability Standards and NPCC Regional Reliability Criteria by NERC and NPCC, respectively. These amendments and/or additions will require approval by the NSUARB before they will become mandatory in Nova Scotia.

The signatories will utilize a regular notification process that identifies to the NSUARB proposed amendments and/or additions to be made by NERC and NPCC to Reliability Standards and Regional Reliability Criteria, respectively.

NERC shall concurrently notify NSPI and the NSUARB of Reliability Standards adopted by NERC. NPCC shall concurrently notify the NSPI and the NSUARB of Regional Reliability Criteria adopted by NPCC.

Periodically, NERC and NPCC shall file all proposed amendments and/or additions to the Reliability Standards adopted by NERC and the Regional Reliability Criteria adopted by NPCC with the NSUARB for approval.

As is contemplated with the initial filing, NSPI will provide the NSUARB with a recommendation with respect to the Reliability Standards and NPCC Regional Reliability Criteria being proposed.

[Exhibit N-11, p. 3]

[26] In summary, it is expected that the Board would follow, essentially, the same process for approval of future amendments and new Standards and Criteria as was used in processing the filings, which are the subject of this Decision. The Board has no objection to proceeding in that manner.

[27] In its December 17, 2010 letter, NSPI also agreed with this approach, with one exception:

NSPI recommends that the UARB implement this process for approval of future NPCC Reliability Criteria and NERC Reliability Standards, as contemplated by the UARB and NERC in their MOU, with one suggested change. The process contemplated by NERC and the UARB requires NERC to file its proposed Reliability Standard with the UARB upon the NERC registered ballot body and NERC Board of Trustees having approved a reliability standard. In the United States, there is an additional step before a NERC Reliability Standard becomes effective. That is the requirement of FERC approval.

NSPI proposes that the UARB not take any action on approving, or remanding, a reliability standard until such time as it is determined that FERC has approved the standard. The United States Federal Energy Regulatory Commission (FERC) does not have jurisdiction in Nova Scotia and the UARB may determine it appropriate to remand a standard that the FERC has approved or approve a standard that the FERC has remanded. However, if the UARB approves a standard that the FERC has not yet approved, or a standard that the FERC ultimately remands, NSPI will face conflicting compliance requirements by virtue of the different requirements arising from the UARB having approved a standard that is not in place within the FERC's jurisdiction. There could also be a duplication of process whereby it might be necessary to re-consider the Nova Scotia approval after a remand by the FERC.

NSPI notes that while NERC did file the NERC Board of Trustees-approved but FERC approval-pending Standards with the UARB (Exhibit H), it has not sought UARB approval of those Standards as of yet. This approach is consistent with NSPI's recommendation for approval of standards on a go-forward basis.

NSPI suggests that on an application for approval of future standards, the UARB stay any process for approval of such new Reliability Standards until such time as the FERC has approved or remanded such standard in the United States, so that the UARB can be better informed about the effect on NSPI and its customers.

NSPI also suggests that the process for approval of new criteria or standards be an annual process which would avoid the potential for having numerous applications before the UARB in a given year. Reliability Standards or Criteria changes could be accumulated over a year and filed in a single efficient process annually.

[Exhibit N-13, pp. 3-4]

[28] In its response to Board IR-1, NERC recommended a quarterly review process:

With respect to the process by which the NSUARB evaluates the Reliability Standards, NERC recommends that the NSUARB initiate a quarterly standards review process following the provision of each Reliability Standards filing by NERC. While NERC understands the desire to coordinate the standards review process, an annual review process would prove inadequate as NERC requires a common set of Reliability Standards to enforce promptly. The regular and responsive review of Reliability

Standards provides for reasonable notice and opportunity for public comment, due process, openness, and balance of interests while preserving reliability and avoiding undue discrimination. Therefore, NERC does not concur with NSPI's recommendation that the process for approval of new criteria or standards occur on an annual basis.

[Exhibit N-15, p. 1]

[29] In its final submission, NSPI agreed that the quarterly review process was appropriate.

[30] The Board, in considering future amendments and new Standards and Criteria, will follow the same process as used for the filings which are the subject of this Decision on a quarterly basis. Such future applications will not be processed by the Board until the Federal Energy Regulatory Commission ("FERC") has approved or remanded the standards in the United States.

3. VRFs and VSLs

[31] In its application, NERC also requested Board approval of the VRFs and VSLs. In its December 17, 2010 letter to the Board, NSPI disagreed that Board approval of VRFs and VSLs was necessary:

NERC has also requested that the UARB approve Violation Risk Factors (VRFs) and Violations Security Levels (VSLs). It is not clear to NSPI what would be gained from UARB approval of VRFs and VSLs in Nova Scotia. NSPI understands that these documents intend to assess the impact to reliability of violating a specific request, and define the degree to which compliance with a requirement is not achieved, the purpose of which is to assist the UARB in understanding any recommendation which may be made by NERC or NPCC to the UARB during a potential enforcement proceeding in the event of a violation.

NSPI has no objection to NERC filing these types of documents with the UARB, nor to the UARB receiving these documents from NERC. Given that the UARB has the discretion to make its own findings with respect to assessments of impact of a violation or the degree to which compliance is or is not achieved, it does not appear, that a formal UARB approval of VRFs and VSLs is necessary. NSPI recommend that the UARB not approve the VRFs and VSLs.

[Exhibit N-13, p 8]

[32] NERC, in its final submission, argued that:

... VRFs and VSLs provide important signals as to the seriousness and severity of the violations of the standards. The determination of violations and any associated sanctions will be made by NSUARB following its appropriate processes.

[NERC Final Submission, p. 2]

[33] Upon reviewing the VRFs and VSLs filed by NERC, the Board recognizes that they provide guidance in the determination of potential consequences arising from non-compliance with the Standards and Criteria. The Board accepts the VRFs and VSLs as guidance in the event the Board is required to review matters of compliance in future; however, the Board agrees with NSPI that formal approval of the VRFs and VSLs is not required at this time.

4. Compliance Monitoring and Enforcement

[34] The May 9, 2010 MOU provides the following:

NSPI, as a Registered Entity, will be subject to NERC's Compliance Monitoring and Enforcement Program ("CMEP") as implemented by NPCC. NPCC in its determination of a NSPI violation may identify the specific NERC Reliability Standard violated as well as the associated violation risk factor and violation severity level of the non-compliance. As applicable, NPCC will review for acceptability from a reliability perspective any NSPI mitigation plans to bring NSPI into compliance and may propose a non-monetary penalty, to the Nova Scotia Utility and Review Board. NSPI can also make a submission to the Board on the situation.

The parties understand that the Board will receive this information for use in enforcement proceedings, which proceedings will be conducted under the Board's direction and control and the Board will determine whether any violation has occurred and, if so, what remedial measures or non-monetary penalties should be imposed.

[Exhibit N-11, p. 4]

[35] The Board understands that the intent is that the Board be ultimately responsible to ensure that NSPI is in compliance with the Standards and Criteria. However, the parties should understand that the Board's authority does not extend to

the imposition of penalties on NSPI. Should NPCC choose to bring a matter of non-compliance before the Board, the Board will make a determination at that time as to how it would proceed. If the Board decides that a review is warranted, and finds that non-compliance exists, the Board would issue direction to NSPI for its mitigation.

IV SUMMARY OF FINDINGS AND DIRECTIVES

[36] The Criteria filed by the NPCC are approved.

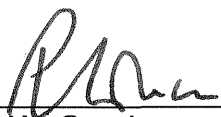
[37] The Standards and associated Glossary of Terms filed by NERC are approved.

[38] The Standards and the Criteria are mandatory and enforceable for users, owners and operators of the bulk power system in Nova Scotia.

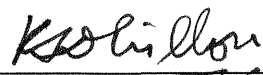
[39] The Board accepts the VRFs and VSLs for guidance only in the event the Board is required to review matters of compliance in future.

[40] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 20th day of July, 2011.



Peter W. Gurnham



Kulvinder S. Dhillon



Murray E. Doehler