

February 14, 2012

Via E-Mail

Mr. Steven T. Naumann
Vice President, Wholesale Market Development
Federal Regulatory Affairs & Public Policy
Exelon Corporation
Chase Tower-50th Floor
10 S. Dearborn Street
Chicago, IL 60603

Re: Exelon Level 1 Appeal of FAC-003x in Project 2010-07

Dear Steve,

In my role as Director of Standards you informed me, on January 13, 2012, of the possibility of filing an appeal. On January 20, 2012 you filed, on the behalf of Exelon Corporation, a Level 1 Appeal of the processing of FAC-003 in Project 2010-07 under the NERC standards development process and the Rules of Procedure Section 300. In its appeal Exelon is contending that there was an improperly implemented, substantive change to the standard (R4.3.1) regarding "line of site" between the last successive and recirculation ballot.

Level 1 Appeals are managed within the current NERC Standard Processes Manual (SPM) dated September 3, 2010 as follows:

- Any entity that has directly and materially affected interests and that has been or will be adversely affected by any procedural action or inaction related to the development, approval, revision, reaffirmation, or withdrawal of a reliability standard, definition, variance, associated implementation plan, or interpretation shall have the right to appeal. This appeals process applies only to the NERC reliability standards processes as defined in this manual, not to the technical content of the standards action.

The burden of proof to show adverse effect shall be on the appellant. Appeals shall be made within 30 days of the date of the action purported to cause the adverse effect, except appeals for inaction, which may be made at any time.

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The final decisions of any appeal shall be documented in writing and made public.

The appeals process provides two levels, with the goal of expeditiously resolving the issue to the satisfaction of the participants.

- **Level 1 Appeal**
Level 1 is the required first step in the appeals process. The appellant shall submit (to the Director of Standards) a complaint in writing that describes the procedural action or inaction associated with the standards process. The appellant shall describe in the complaint the actual or potential adverse impact to the appellant. Assisted by staff and industry resources as needed, the Director of Standards shall prepare a written response addressed to the appellant as soon as practical but not more than 45 days after receipt of the complaint. If the appellant accepts the response as a satisfactory resolution of the issue, both the complaint and response shall be made a part of the public record associated with the standard.

The FAC-003-x standard had been scheduled for Board of Trustees approval at its February 9, 2012 meeting, however, in order to permit the Level 1 Appeal process to properly run, it has been withdrawn.

Information Requests

In response to the Level 1 Appeal, three information requests, each containing two questions, were issued on January 25, 2012. One was issued to Exelon, one to NERC Standards Process Staff and one to the Project 2010-07 Standards Drafting Team (SDT) Chair. The information requests and the responses are appended to this letter which will be posted on the NERC website.

Findings

Timeliness of the Appeal:

The Standard Processes Manual calls for the filing of the appeal within 30 days of the date of the action purported to cause the direct material adverse impact. The standard with the “line of site change” was posted on December 14, 2011 and the ballot was finalized on December 23, 2011.

Within the project notice posted on December 14, 2011 it was clearly stated:

“In FAC-003-X and FAC-003-3, the SDT added a clarifying reference to line of sight in the GO exemption in section 4.3.1. of both versions; corrected a typo in 4.3.1.2 of FAC-003-3; and changed “RE” to “Regional Entity” in 4.3.1 of FAC-003-X.”

In its response to the first information request Exelon notes its position that the adverse impact did not occur until the ballot was concluded (unfavorably in Exelon's view). On this basis Exelon believes its January 13, 2012 preliminary notice of intent to file an appeal and the January 20, 2012 filing of the appeal was timely under the SPM. I will consider the filing of this Level 1 Appeal as having been made timely.

Adverse Impact:

Exelon notes in its response to Information Request 1 that it considers the direct material adverse impact to be that it would be now subject as a Generator Owner/Generator Operator (GO/GOP) to the proposed FAC-003-x standard given the line of sight clarification. It is a fair question as to whether having a standard become applicable to a given entity is truly an adverse impact? If that were the case, then every registered function would contend the same. I find that it is not an adverse impact for a subset of Exelon's nuclear facilities to become subject to the standard. Applicability by itself is not an adverse impact. The interests of reliability must be served and if the SDT determines that a given set of circumstances should result in a standard becoming applicable, then that is the technical design. On the basis of applicability the appeal fails. The SDT in this project was charged specifically with the task of determining which standards and requirements should be adjusted (and how they should be adjusted) for applicability to GOs/GOPs.

Procedural Action:

Exelon believes that it did not have ample time to respond to the proposed change. Exelon contends it was denied the ability to inform the industry. Exelon did provide some information of its efforts to inform the industry of its beliefs, although apparently it was unpersuasive, given the outcome of the ballot.

Material Change:

Based on the information request response from the SDT Chair, the SDT believes that the "line of sight" change it made was clarifying and not material. I agree with Exelon, however that the line of sight change also had the effect of changing the applicability of the standard based on its construct as Exelon contends. This is within the technical scope for the SDT under the process. On this basis, I find that Exelon has made its case that the SPM was not adhered to and that a change impacting applicability was made between the last successive and recirculation ballot.

Recommended Actions and Options

I refer the issue to the Standards Committee for handling. There are several options to consider:

1. Re-post the standard for a successive ballot and recirculation ballot. Essentially set the clock back and correctly replay the last steps of the process.
2. Ask the SDT to remove the clarification language from the final standard and go directly to recirculation ballot.
3. Ask the SDT to redesign the challenged portion of the proposed standard.

I recommend the Standards Committee pursue option 2.

Sincerely,



Herb Schrayshuen
Vice President, Standards and Training

cc: Mr. Gerry. Cauley, President and CEO, NERC
Mr. Ken Peterson, Chair, Board of Trustees Standards Oversight and Technology Committee
Mr. David Cook, General Counsel, NERC
Ms. Holly Hawkins, Associate General Counsel, NERC
Mr. Michael Moon, Director Compliance Operations, NERC
Ms. Laura Hussey, Manager Standards Process, NERC
Ms. Mallory Huggins, GO/TO Standards Drafting Team Advisor, NERC
Mr. Allen Mosher, Chair, Standards Committee
Mr. Louis Slade, Chair, GO/TO Standards Drafting Team

Attachments:

- 1) Appeal Letter dated January 20, 2012 from Exelon
- 2) Exelon Response to Data/Information Request
- 3) Information Request 1 to NERC Standards Process Staff (plus response)
- 4) Information Request 1 to GO/TO Drafting Team Chair (plus response)