

## **Attachment to 6 December 2012 National Energy Board Letter**

On 23 February 2011, the National Energy Board (NEB or Board) issued draft provisions for an order containing mandatory reliability standards for comment. On 29 November 2012, the Board issued General Order MO-036-2012 and Amending Orders for several permits (referenced in this document as “the Order”) for mandatory reliability standards for certain International Power Lines (IPLs) under the Board’s jurisdiction.

Substantive comments received as a result of the Board’s communication, between the period of 23 February 2011 – 23 May 2011, and later, are summarized below, along with Board remarks.

### **Potential duplication with provincial regulatory frameworks**

Commenters indicated that regulatory frameworks are in place in most of the provinces. Therefore, mandatory reliability standards required by the Board would duplicate provincial requirements for mandatory reliability standards. Industry representatives also expressed concern about the potential duplication and cost of compliance and enforcement activities.

### **NEB Remarks:**

Through the certificates and permits issued by the NEB for International Power Lines (IPLs) under the *National Energy Board Act* (the Act), the NEB has regulatory oversight for IPLs. A regulatory gap for reliability standards exists with respect to NEB-regulated IPLs. The Order is issued to address this regulatory gap.

The NEB’s intent is for the requirements of the Order to align with provincial regulatory frameworks as they relate to reliability standards. To this end, the reliability standards requirements in the Order are defined broadly so that they may include regional variations and can be harmonized with provincial regulatory frameworks as they relate to reliability standards.

### **Applicability of standards**

Commenters indicated that the draft order that was issued for comment listed categories of standards that include North American Electric Reliability Corporation (NERC) standards. However, not all of these standards may be applicable to all IPLs.

### **NEB Remarks:**

The Order contains a set of 12 categories of generic reliability standards which correspond to the categories of reliability standards developed by NERC. The Board recognizes that not all standards are applicable to all IPLs. It is the responsibility of the IPL owner to evaluate system conditions and identify the standards that are applicable to each IPL. Sections 6 and 7 of the Order require the IPL owner to indicate the names and any reference numbers of the reliability standards that are applicable to the IPL. These sections also provide further detail as to the information required to be submitted to the Board.

### **Accountability for reliability standards**

In some provinces, accountability for implementing reliability standards is shared between the IPL owner and a system operator. Thus, the IPL owner is responsible for some aspects of reliability standards, while the system operator is responsible for others. Industry representatives commented that IPL owners in this situation cannot be held accountable for the reliability standards for which the system operator is responsible through provincial legislation.

#### **NEB Remarks:**

The Board acknowledges that in some provinces, the IPL owner and provincial system operator split accountability in implementing reliability standards. To address this issue, section 4 of the Order provides that the Board may exempt the IPL owner from compliance with a reliability standard or any other obligation under the Order for which they are not responsible.

### **Compliance documents**

The draft order that was issued for comment contained a provision for a compliance plan to be submitted to the Board, for approval. IPL owners indicated that they are required to develop Compliance Monitoring and Enforcement Programs (CMEP) in most provinces. The contents of the CMEP may vary from province to province and CMEPs are generally approved by provincial authorities. IPL owners were concerned about a scenario where the NEB requires changes to a CMEP that was already approved by a province. In these cases, compliance with the NEB's direction could put the IPL owner in non-compliance with the provincial regulatory authority.

#### **NEB Remarks:**

The Board has removed the requirement of submission and Board approval of a compliance plan. Instead, the Order now includes:

1. a provision requiring the IPL owner to provide any compliance document, or any portion of a compliance document, to the Board upon request (section 9); and
2. a provision requiring the IPL owner to report non-compliances on reliability matters to the Board (section 10).

### **Confidentiality**

Industry representatives were concerned about the confidentiality of infrastructure and sensitive information about power lines that might be contained in non-compliance reports submitted to the Board. IPL owners requested that the Board maintain confidentiality of the reports submitted to the Board pursuant to section 16.1 of the Act.

#### **NEB Remarks:**

Section 10 of the Order requires IPL owners to report any non-compliance to the Board. This provision also indicates that in lieu of preparing a formal report specifically for the Board, the IPL owner may provide a copy of the report sent to a provincial authority or standards development authority.

Current Board process, outlined in Section 1.5 of the Board's Filing Manual, indicates that section 16.1 of the Act is used by the Board only in respect of (a) any regulatory proceeding, that is, applications filed under the Act or any other public hearing process under the Act; (b) matters related to condition compliance where the condition is a "for approval" condition of the Board; and (c) any other matter where there is significant third party interest. Filings of non-compliance reports are unlikely to fit into one of these categories.

Filings which are unrelated to regulatory proceedings, matters relating to condition compliance where the condition is a "for approval" condition of the Board, or any other matter where there is a significant third party interest, may be designated in accordance with the *Security Organization and Administration Standard*. As the Board uses this standard to protect sensitive information under its control, if a filing was designated under this standard, the Board would not make the filing public on its electronic repository.

The Board notes that all records under the control of the Board, including those filed pursuant to section 16.1 or those designated in accordance with the *Security Organization and Administration Standard*, are subject to requests made pursuant to the *Access to Information Act*.

In addition, if there are confidentiality concerns about submitting to the Board a copy of a non-compliance report prepared for another jurisdiction, IPL owners may submit to the Board a separate non-compliance report which complies with the requirements of section 10 of the Order.

### **Clarity of terms and provisions**

#### **Reliability standards**

Comments regarding the draft order noted that further clarity was required in respect of:

- whether IPL owners are required to submit to the Board information regarding the reliability standards being followed; and
- a provision in the draft order regarding a description of how reliability standards other than those addressed in the order would be accommodated.

#### **NEB Remarks:**

The Order clarifies that the IPL owner is to submit to the Board a record of the reliability standards being followed (section 6 of the Order). As well, the Order requires the IPL owner to submit an annual report to the Board with a description of any reliability standard adopted, approved, established or developed after the issuance of this Order, with which the IPL owner is complying with (section 7 of the Order).

#### **Compatibility provision:**

Comments regarding the draft order that was issued for comment noted that further clarity was required in respect of a provision regarding the manner in which a power line is to be compatible with the rest of the power system to which it is connected.

**NEB Remarks:**

Section 3 of the Order clarifies the manner in which a power line is to be operated, monitored and maintained. To meet the outcome of reliable and secure IPLs, it is expected that an IPL working with power lines upstream and downstream of the IPL will use methodologies for calculation of power system parameters similar to those used elsewhere in the network so that there are no adverse reliability effects on the IPL.