

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Smart Grid Interoperability Standards)

Docket No. RM11-2-000

Initial Comments of the Michigan Public Service Commission

On January 31, 2011, the Federal Energy Regulatory Commission ("Commission") held a technical conference in the above captioned proceeding to obtain further information to aid the Commission's determination of whether there is "sufficient consensus" that certain smart grid interoperability standards are ready for Commission consideration in a rulemaking proceeding, as directed by section 1305(d) of the Energy Independence and Security Act of 2007 ("EISA"). Pursuant to the procedural schedule established therein, the Michigan Public Service Commission ("MPSC") provides these initial comments to the questions identified by the Commission in its February 16, 2011 order entitled Supplemental Notice Requesting Comments.

A. Questions Pertaining to FERC's Ability to Make Standards/Protocols Adopted Under Section 1305(d) Mandatory:

- 1. In your view, would making standards enforceable best serve the intent of Congress to facilitate development and use of interoperability standards? Please explain.*

At this time, the MPSC does not believe that making standards enforceable best serves the intent of Congress to facilitate development and use of interoperability standards because, as evidenced at the Technical Conference, smart grid technologies are still at an early stage of development and are continually evolving. Regulating standards at this time is further complicated by the fact that, as recognized by the Commission, its

authority under the Federal Power Act to regulate smart grid standards is limited.¹ Recognizing that a significant amount of smart grid technologies are utilized at the distribution level, the MPSC is concerned that efforts to establish federal smart grid standards could unintentionally impact state jurisdictional distribution activity. Rather than establishing specific standards now, the MPSC believes that time should be allotted for innovations and emerging technologies to mature. Such an approach would enable new technologies to be tested by the market, gain industry support and progress in a manner similar to other federal standards, whereby the technologies, upon receiving broader recognition and acceptance would be adopted and ultimately incorporated into the standards process.

The MPSC is concerned with the implications of constant modifications to existing legacy systems. The MPSC believes that not unlike the Internet in 1988, today's smart grid industry is changing so rapidly that before any of the enforcement standards currently being contemplated can be deployed, it is possible that they would be replaced by newer technologies. For this reason, the MPSC supports acting more slowly and deliberately in this area to enable adequate operational planning and to avoid unintended consequences of enforceable standards.

Notwithstanding these comments, to the extent that the Commission determines that certain critical standards in unique areas, such as cyber security, should be the subject of a rulemaking, the MPSC agrees that establishing such a narrow area of enforcement standards may be advisable. However, to the extent the Commission takes

¹ *Supplemental Notice Requesting Comments* (February 16, 2011) citing 16 U.S.C. §§ 791a – 824r (2006).

such action, the MPSC believes that it is important for FERC to identify the cost, reliability and operational aspects associated with the migration from legacy systems to the proposed new standards.

2. *How does the determination of sufficient consensus implicate the requirement to “institute a rulemaking proceeding to adopt” standards and protocols? Please explain.*

The MPSC recognizes that the existence of a “sufficient consensus” may be a necessary element in the standards development recommendation process. However, the MPSC does not believe that such consensus should be the exclusive factor in a determination of whether standards and protocols are even necessary.

While the National Institute of Standards and Technology ("NIST") closed-door process purportedly generates smart grid standards which utilities can use to determine the protocols applicable to their individual systems, as demonstrated at the Technical Conference, there was no evidence that this process incorporated any stakeholder input. To the contrary, despite the Smart Grid Interoperability Panel's ("SGIP") responsibility to support NIST in fulfilling its responsibilities under the 2007 Energy Independence and Security Act, the lack of transparency inherent in the NIST process provides no indication that any consensus position reflecting the views of the SGIP, the utility industry, or state regulators were even taken into consideration. The MPSC is concerned that absent a transparent process that affords utilities and state regulators a voice, a "sufficient consensus" cannot be represented.

Moreover, as key parties in the implementation of proposed standards pertaining to smart grid deployment at the retail level, utility and state regulator representation should be essential to obtaining any consensus of standards. Currently, state commissions (and perhaps utilities) do not have proper representation at either the SGIP level or the NIST level. The MPSC believes that a responsible standard development organization should subscribe to a defined, transparent and detailed reporting process for the determination of “sufficient consensus” before recommending a standard to the Commission. Such a process would provide an opportunity for the Commission to monitor and/or audit the procedures, protocols and documentation to assure “sufficient consensus.”

3. *What meaning should the Commission give to the phrase “as may be necessary to insure smart-grid functionality and interoperability in interstate transmission of electric power, and regional and wholesale electricity markets?” Should the Commission evaluate for adoption only those standards that are critical for applications and that may implicate the functionality and interoperability of interstate transmission or wholesale electricity markets?*

The MPSC believes that the statutory language “necessary to insure smart grid functionality and interoperability in interstate transmission of power and regional/wholesale electricity markets” compels the Commission to adopt relevant standard(s) to ensure functionality and interoperability of smart grid on the wholesale electric markets. That being said, the MPSC believes that it is imperative that the FERC's actions be mindful of the possible infringement into state jurisdictional issues and thereby act narrowly and/or employ a process to work in concert with the state regulators in this important area.

4. *How does the smart grid review process consider and evaluate “normative references” (i.e., standards embedded within candidate standard for adoption, needed in order to comply with the standard)?*

The MPSC is not taking a position on this issue at this time but reserves the right to file reply comments on this issue.

5. *How does the NIST process assure that a standard has undergone sufficient review of interoperability and cyber security and is ready for consideration by regulators?*

As explained in the response to A2 above, the MPSC is concerned that the lack of transparency in the NIST process does not adequately assure that a standard has undergone sufficient review. While the MPSC recognizes NIST's efforts to integrate industry input through its interaction with SGIP, the manner in which these five family of standards (as opposed to other standards) emerged and were presented to the FERC raises questions as to whether SGIP's concerns were properly factored into process. Absent such assurances, it is unclear whether the NIST process can create a standard that has sufficient consensus.

B. Questions pertaining to ways in which “sufficient consensus” may be defined and used by the Commission to fulfill the purposes of EISA with respect to the appropriate venue for determining and documenting consensus, whether individual attributes of standards require documentation of consensus, and the appropriate role of testing and certification:

1. *Should the Commission rely solely on the results of the NIST process, and not conduct independent analysis with respect to consensus? If the Commission were to define consensus in this manner, what changes, if any, would be required to the currently effective NIST process?*

The MPSC does not believe that the Commission should rely solely on the NIST process. Rather, in light of the lack of transparency and the resulting concerns discussed above, the MPSC believes the Commission should provide a forum in which an

additional technical review of standards can be undertaken as a check and balance. In addition, changes to the currently utilized NIST process should focus on the goal of providing transparency which can be accomplished by: 1) formalizing the procedures utilized by NIST in making recommendations; and 2) incorporating a more balanced set of voting membership inclusive of state regulators. Such changes could also be incorporated at the SGIP level to allow for greater participation from state regulatory agencies and utilities. These changes would provide a greater likelihood that standards ultimately recommended to the Commission reflect a broader audience and provides a “sufficient consensus.”

2. *Alternatively, should the Commission independently determine consensus? If so, how?*

The answer to this question depends on whether changes are made. The MPSC believes that the fatal flaw associated with the existing NIST process is the lack of transparency. If the NIST process does not lend itself to procedures (that the MPSC identified in its response to Question B1 above) that would allow for industry review and analysis of the proposed standards, then the MPSC believes the Commission should create another level of review. Specifically, the Commission should institute a Technical Conference that would afford interested parties the opportunity to weigh in on the proposed standards through initial and reply comments.

3. *What benefit does documentation of key attributes of a standard (cyber security, functionality, architectural relevance, interoperability, reliability, and implementation issues) bring? Is it necessary? Are there other attributes that should be included, or are any of the attributes noted here unnecessary?*

The MPSC is not taking a position on this issue at this time but reserves the right to file reply comments on this issue.

4. *Is it appropriate for reliability and implementation issues to be reviewed by a separate panel, as some panelists commented at the technical conference, composed of utility representatives and NERC?*

Yes, the MPSC believes that a panel of experts, equally weighted, comprised of state commissions, utility representatives, regional transmission operators, and NERC should be formed to provide an opportunity for a broader audience to review and comment on the anticipated outcomes of any standard that has received industry consensus. The MPSC believes that this panel could be integrated into the Technical Conference process that the MPSC requested in response to Question B2 above.

5. *How should testing and certification for cyber security requirements be incorporated into the adoption process?*

The MPSC is not taking a position on this issue at this time but reserves the right to file reply comments on this issue.

C. Questions pertaining to the five families of IEC standards:

1. *Whether there is a need for additional process concerning the five families of standards and if so, how, for example, the identified cyber security issues can be addressed given the NIST and FERC structures and the language of EISA.*

As explained in A2 and B1, at the Technical Conference the five families of standards were heavily criticized. Questions were raised asking how and why these five families of standards emerged in advance of others and comments highlighted that these standards have not been thoroughly vetted through an engaged stakeholder process. The MPSC does not believe any standards should be adopted until they have been through a rigorous process.

2. *Whether the criteria for the Commission's evaluation should differ for interoperability and functionality, and the extent to which cyber security is an element of each.*

The MPSC is not taking a position on this issue at this time but reserves the right to file reply comments on this issue.

3. *What are the key smart grid benefits that standards should enable? How can the Commission encourage the standards development process to incorporate the continual, but gradual, growth in functionality that is occurring in smart grid implementations and pilot programs?*

The MPSC is not taking a position on this issue at this time but reserves the right to file reply comments on this issue.

Respectfully Submitted

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COMMISSION**

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