

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

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| North American Reliability Corporation |) | Docket No. RR09-7-000 |
| Three-year Electric Reliability Organization |) | |
| Performance Assessment Report |) | |

**MOTION FOR LEAVE TO INTERVENE AND COMMENTS OF THE
ELECTRIC POWER SUPPLY ASSOCIATION**

Pursuant to the Commission’s July 23, 2009 Notice of Filing and Rules 211 and 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.211 and § 385.214, the Electric Power Supply Association (EPSA) moves to intervene in the above-captioned proceeding and express its general support for the performance of the North American Electric Reliability Corporation (NERC) as the Electric Reliability Organization (ERO), while providing comments on the Three Year Performance Assessment submitted in accordance with 18 C.F.R. § 39.3(c). Competitive suppliers actively support NERC’s work as the ERO and have participated in the relevant dockets and initiatives of both FERC and NERC to facilitate the successful evolution of the Electric Reliability Organization contemplated by Congress when it enacted the Energy Policy Act of 2005.¹ Throughout, competitive power suppliers have joined other industry stakeholders in recognizing the importance of maintaining the reliability of the bulk power system (BPS) and have contributed to standards that uphold system

¹ Energy Policy Act of 2005, Pub. L. No. 109-58, Title XII, Subtitle A, 119 Stat. 594, 941 (2005) (codified at 16 U.S.C. § 824o (2006)).

reliability and assist in preserving the positive link between reliability and markets. Therefore, EPSA strongly supports the Commission's efforts in concert with NERC and industry to approve clear standards that ensure electric reliability while improving competitive markets.

In its initial three years the ERO has come a long way, and EPSA supports the continued evolution of the ERO as evidenced by the proposed future actions presented in the Three Year Performance Assessment. EPSA provides comments herein on several of these future initiatives.

I. MOTION TO INTERVENE AND COMMUNICATIONS

EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities serving power markets. EPSA seeks to bring the benefits of competition to all power customers.²

EPSA members are and will continue to be active stakeholders in NERC and work with the NERC Regional Entities (REs) in order to foster the ERO's success. EPSA's members are continually looking for new opportunities to provide reliable power to electric customers. Confidence that NERC's performance assessment and resultant actions are deployed in the most efficient and timely manner is important to competitive suppliers. Therefore, EPSA members are directly affected by the instant filing. Accordingly, EPSA has a direct and substantial interest in the outcome of this

² The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

proceeding, which cannot be adequately represented by any other party, and allowing EPSA to actively participate in this proceeding would be in the public interest. EPSA should, therefore, be granted intervention to enable it to participate as a full party in this proceeding, with all rights accompanying party status.

Communications in connection with this filing should be addressed to:

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II. INTRODUCTION AND OVERVIEW

On July 20, 2006, the Commission issued its order certifying NERC as the ERO pursuant to §215(c) of the Federal Power Act (FPA),³ as added by Title XII of the Energy Policy Act of 2005 (EPAAct).⁴ The Commission's regulations at 18 C.F.R. §39⁵ require the ERO to submit an assessment of its performance three years from the date of certification by the Commission and every five years thereafter.

The Commission required that the ERO's assessment of its performance include:

- An explanation of how the Electric Reliability Organization satisfies the requirements of §39.3(b);
- Recommendations by users, owners and operators of the Bulk-Power System (BPS), Regional Entities, and other interested parties for improvement of the ERO's operations, activities, oversight and procedures, and the ERO's response to such recommendations; and

³ 16 U.S.C. § 824o(c).

⁴ Order Certifying the North American Electric Reliability Corporation as the Electric Reliability Organization and Ordering Compliance Filing, 116 FERC 61,062 (2006) (ERO Certification Order).

⁵ Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards, Order No. 672, FERC Stats. & Regs. ¶31,204 (2006) (ERO regulations).

- The ERO's evaluation of the effectiveness of each Regional Entity, recommendations by the ERO, users, owners, and operators of the BPS, and other interested parties for improvement of the Regional Entity's performance of delegated functions, and the Regional Entity's response to such evaluations and recommendations.⁶

On July 20, 2009, NERC as the ERO filed with the Commission its Three Year Electric Reliability Organization Performance Assessment Report addressing each of the Commission's requirements. EPSA believes the Report shows that NERC is meeting the requirements of section 39.3 (b) and carrying out its statutory and regulatory responsibilities as the ERO, which is to develop and enforce mandatory reliability standards that promote and maintain reliable operation of the North American BPS. NERC's initial three years as the ERO has engaged the Organization, the Regional Entities, the Commission and industry stakeholders in a rigorous process that has produced a functional ERO that is meeting the needs of the public and private interests for which it was established, although improvements should be addressed as discussed below.

The Three Year Performance Assessment provides analysis of the ERO's performance thus far, but also lays out lessons learned and specifies the actions the organization plans on taking to continue meeting its goals and maintain a high degree of reliability for North America. EPSA provides comments on specific issue areas the ERO has assessed and offers its support and suggestions regarding how the ERO can best execute many of the actions discussed in the Three Year Performance Assessment.

⁶ 18 C.F.R. § 39.3(c).

III. COMMENTS

The NERC process is a collaborative one that depends on the cooperation and help of all concerned, including government, industry, customers and NERC staff. EPSA has been pleased to be part of NERC's evolutionary journey during its first years as the ERO and looks forward to contributing to the next steps and future NERC actions. EPSA supports the Performance Assessment findings on Reliability Standard development and the three key areas that need to be addressed for further improvement:

(A) focus the development of new reliability standards on those that will lead to the greatest improvement in reliability;

(B) stress and thus reduce the existing reliability standards to only those that have a critical impact on reliability of the bulk power system and convert the remaining reliability standards to guidelines; and,

(C) develop a systematic process for prioritizing new reliability standards development projects based on risks to the bulk power system.

A. Focusing the Standards Development Process

EPSA supports focusing reliability standard development on new standards and asserts that NERC's three-year Reliability Standards Development Plan is the best starting point from which to build that focus. Plan objectives that EPSA most supports are the elimination of duplicative requirements and the establishment of a sound communication feedback loop.

Standard requirements with a material, demonstrable impact on the BPS deserve the focused attention of NERC and industry. Currently, the plethora of requirements contained in the existing standards are increasingly found to contain redundancies. These redundant requirements erode valuable industry and ERO resources that can be

better deployed with improved focus. Typically, the redundant items already are addressed with higher level requirements in the compliance process. Therefore, eliminating duplicative requirements by either retiring or converting them into guidelines with lower level requirements is a change supported by competitive suppliers.

A clear communication channel is fundamental to the success of the ERO, and thus, EPSC is pleased that NERC plans on enhancing its communication not only with industry but among the different NERC program areas. Connecting the feedback from different program areas, such as compliance monitoring and enforcement, reliability assessments and event analysis will prove valuable. Compliance, assessments and events findings need to be shared with industry as part of the learning process to ensure reliability and identify best practices. While EPSC appreciates the confidentiality concerns embedded in these processes, if the processes remain siloed, then lessons will not be learned in an efficient and effective way.

NERC asserts in the performance assessment that changing the way documentation-related requirements are now handled can be improved. Moreover, the ERO has identified actions that can be taken to address this issue.⁷ Competitive suppliers strongly support these actions and encourage NERC to consider this initiative a priority. Documentation requirements are taking valuable time away from industry and NERC staff that could be better spent on more material and direct reliability issues. NERC's recognition of this factor in the Assessment is an important step toward establishing a systematic way of laying out standards and their requirements and eliminating documentation requirements that currently burden resources without producing material improvement to reliability.

⁷ Assessment Attachment 2, Page 21.

B. Accelerating Standards

EPSA recognizes the importance of producing strong standards in a timely manner, but speed and quality can at times be at odds with one another. In the Three Year Performance Assessment, NERC outlines specific actions that balance these two aspects in a manner that competitive suppliers can support. The proposed actions should allow for sufficient industry review to ensure the strength and quality of standards, while keeping the process moving. Therefore, EPSA strongly supports NERC's suggested reforms to streamline the standards development process:

- For narrowly focused Standards Authorization Requests, post them with no comment period or a short, 15-day period.
- Permit multiple initial ballots without the need for multiple 30-day pre-ballot review periods, which allows for the continuous improvement to the standard without lowering the measure needed to support reliability.
- Permit informal comment periods for feedback on concepts or information used to develop a draft standard.

While EPSA supports tackling the above reforms first, several other suggested actions in the three year assessment provide additional measures that can make the process more efficient as well.

C. EPSA and Promotion of Smaller Entity Participation

EPSA appreciates NERC's comments to encourage participation by trade groups to establish better outreach to smaller entities that potentially play a part in North American reliability. EPSA, as the national trade association for competitive suppliers, represents 19 member companies, most of which are Fortune 500 companies or are affiliated with a Fortune 500 company. This may seem like a small number of companies, but each EPSA member typically operates in four or more NERC regions, and members represent over 600 registered entities in the NERC registry. Therefore,

EPSA members are typically widely disbursed across North America and are a significant part of the BPS. In that context, EPSA members have extensive and varied registrations and are very familiar with national issues associated with the compliance registry, regional entity consistency, and compliance with and enforcement of standards. EPSA, therefore, coordinates and represents its members on national NERC issues before the Commission. In that role, EPSA is happy to communicate NERC issues to its state and regional partners but would also suggest that the NERC REs could consider outreach efforts to state and regional independent power organizations that have better familiarity with competitive suppliers in that region. NERC and the REs may find this an effective way in which to communicate with entities that they currently feel they are not reaching.

D. Provision of Clear and Consistent Compliance Registration

A key focus for NERC and the Compliance, Monitoring and Enforcement Program (CMEP) is that consistency must be achieved among NERC and the REs. Given EPSA members' broad registration across the country, consistency in both registration and compliance is critical for EPSA members. Competitive suppliers broadly support the RE delegation model but urge NERC and the regions to expand their efforts to find solutions that support the RE delegation model while ensuring registration and compliance audit consistency. Therefore, NERC and the REs should engage in a collaborative effort to ensure coordination and consistent RE registration decisions. EPSA encourages NERC and the regions to explore pro forma delegation agreements that could enhance consistency while allowing for regional variation where needed. Because the delegation agreements will face renewal in May 2010, now is the

time to establish principles that both NERC and the REs can agree on to serve as a platform for consistency. EPSA encourages NERC along with the regions to set forth a plan under which industry can participate in the effort and help develop delegation agreements that can increase NERC's efficiency.

EPSA strongly endorses NERC's planned action to implement the recommendations from the Ad-hoc Group for Generator Requirements at the Transmission Interface. Since certain equipment owned and operated by generators may be defined as part of the Bulk Electric System, the so called "GOTO Team" explored how best to determine which owner and operating requirements are needed for reliability purposes for these facilities. The draft report released in August presents several recommendations that have the support of competitive suppliers. For example, EPSA strongly supports the Group's recommendation that, "NERC and the Regional Entities should refrain from further registering Generator Owners and Generator Operators as Transmission Owners and Transmission Operators generically by virtue of their Generator Interconnection Facilities."

Competitive suppliers are generators and marketers and do not consider themselves as transmission entities. However, some members, primarily in the West, own certain interconnection facilities that some REs have opted to define as transmission facilities. Such a declaration has caused some generators to be considered for registration as transmission owners or operators. While generators are willing to comply with the small subset of transmission-related requirements that are germane to their facilities, they do not believe it is appropriate to register them as transmission owners (TO) or transmission operators (TOP) with resulting responsibility

for all TO/TOP requirements. EPSA applauded the NERC Board's approval of the GOTO Team, which has worked to better define potential transmission-related requirements that could apply to a generator. Competitive suppliers, therefore, urge the Commission to also support NERC's Performance Assessment action to implement the GOTO Team recommendations, outlined in the "generator requirements at the transmission interface" part of the report.

E. Clear Compliance Communications with Registered Entities

The Commission and its goal to ensure reliability are best served when the compliance process has rules that facilitate communication between Compliance and Enforcement Staff and the registered entities. Consequently, EPSA recommends that the Commission support NERC's plan of action to establish an additional guidance process, consistent with the concept of a No-Action Letter program utilized at FERC. This would allow a registered entity to describe a set of hypothetical facts and/or a proposed action for complying with a standard that would be reviewed by NERC Staff with non-binding guidance provided. EPSA fully supports the development of such a process, and while it recognizes NERC's concern over resources, competitive suppliers contend that such a process would in fact reduce resources currently being expended due to inefficient communications. Often registered entities have not been able to engage in constructive communications that would better enable them to understand standards' requirements (which in some cases are being documented for the first time). Without a designated communication process, the most efficient and effective compliance process is not in place between compliance staff and registered entities.

Currently, each company and region struggles with this problem on an inefficient, case-by-case basis. Hence, the process NERC is recommending will increase efficiency and use less resources.

F. Simplified Compliance and Settlement Approaches

EPSA applauds NERC efforts thus far to develop and implement a simplified approach for settlements and compliance. The assessment notes that of the “violations of reliability standards identified to date, nearly 3 of every 4 are self-reported and nearly 50 percent of all violations are documentation related.” Consequently, these types of violations dominate the backlog of violations and will do so in the future even if the present backlog is substantially decreased. The “short-form” or pro-forma settlement option put in place earlier this year was a step in the right direction but is proving not to be used as widely as some might have anticipated for violation of documentation requirements or other administrative requirements. NERC explains that the pro-forma settlement has not been effective and, therefore, movement is needed to streamline administrative violations that are getting in the way of mitigating more important reliability violations. The key factor noted in the Assessment is that NERC hopes to revise the RE delegation agreements this year to accommodate other simplified approaches.

EPSA hopes that the contemplated delegation agreement revisions will streamline the process associated with administrative documentation related violations. Reliance on the short-form settlement process in place today appears to be ineffective in resolving the documentation violation backlog currently burdening NERC and

stakeholders. Consequently, competitive suppliers urge NERC to seek new ways to expand this approach and eliminate the unnecessary burden that documentation and administrative violations currently represent. Moreover, we urge the Commission to support an approach that seeks to minimize the administrative burden associated with documentation errors and focuses on more material aspects of mandatory reliability enforcement.

V. CONCLUSION

EPSA respectfully requests that the Commission accept that the ERO has met the Commission's requirements and that NERC and the Commission consider the comments EPSA has provided regarding future actions planned by NERC.

Respectfully submitted,



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Dated: September 3, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., September 3, 2009.

A handwritten signature in cursive script that reads "Nancy Bagot".

Nancy Bagot, VP of Reg. Policy