

days out of time. Hence EPSA urges the Commission approve the NERC Petition while directing the Electric Reliability Organization (ERO) to amend the NERC ROP using the JTA proposed changes.

I. MOTION TO SUBMIT COMMENTS OUT OF TIME

EPSA requests that the Commission accept these out-of-time comments on the NERC TFE Petition and JTA comments on the NERC proposal. EPSA reviewed the JTA comments upon their filing with the Commission. We had already submitted a timely document-less intervention. Now that EPSA members have had the opportunity to review the JTA comments there is widespread member support for the comments. As the trade association for competitive suppliers, EPSA alone can adequately represent the interests of its members and, therefore, requests that the Commission accept these out-of-time comments. EPSA accepts the record in this proceeding and by allowing it to actively participate would be in the public interest. There will be no disruption of the proceeding resulting from permitting EPSA's intervention at this time. Nor will there be any prejudice to or additional burdens upon existing parties to this newly established docket.

II. COMMENTS

EPSA supports NERC's Petition that responds to the Commission's directive to establish a process for submission and approval for TFEs. Therefore EPSA urges the Commission to find that the proposed amendments are just and reasonable and in the public interest. However, in EPSA's view, the Commission

should also heed the clarifying changes requested by the JTAs so that any unintended consequences can be avoided through the implementation of Order No. 706.³ A well-documented and consistent TFE process for registered entities is necessary to ensure the protection and reliable operation of the nation's Bulk Power System (BPS).

EPSA supports NERC's TFE proposal while also recognizing that the JTA proposals will improve the TFE process by increasing efficiencies while eliminating unnecessary burdens for registered entities. Therefore, EPSA strongly supports the JTA's three suggested FERC directives for the ERO. First, the Commission should direct the ERO to establish an annual reporting requirement in lieu of duplicative and burdensome quarterly reports. Second, alternative measures and compensating methods for requirements newly deemed ineligible for TFE applicability should not be subject to a higher level of compliance than approved TFEs. Finally, the ERO should ensure there is a similar opportunity for remediation in the event that the alternative measures or compensating methods are determined by NERC or a Regional Entity (RE) to be inadequate.

Competitive suppliers concur with the JTA assertion that quarterly TFE reporting is overly burdensome and that annual reporting is sufficient. Importantly, ERO and RE resources would be unnecessarily diverted from more important tasks while not achieving commensurate reliability benefits from the resources used. Consistent with this focus on streamlining administrative

³ See Mandatory Reliability Standards for Critical Infrastructure Protection, Order No. 706, 122 FERC 61,040 at PP 178 and 222 ("Order No. 706"), order denying rehearing and granting clarification, 123 FERC 61,174 (2008).

procedures, EPSA agrees with the JTAs that annual reporting requirements are sufficiently responsive to the Commission's requirement to provide a regular review of TFEs.

The Critical Infrastructure Protection Standards are part of an iterative standards improvement process that can sometimes lead to the implementation of more costly and complex measures for needed mitigation. Due to the necessary evolving nature of these standards, it is important not to inadvertently penalize responsible entities that are striving to sufficiently meet the standards. In that context, EPSA supports the JTA's request that any process for evaluating alternative measures or compensating measures should not create compliance obligations that exceed those mandated for TFEs, so that complying entities may, in good faith, implement alternative or compensating measures modeled on the TFE approach as a way to demonstrate compliance.

It is important that the evolution of the mandatory reliability regime, mitigation methods and compliance be well understood so that there is a solid foundation of clear rules. Consequently, complying entities should receive adequate notice and the opportunity to meet changing standard measures prior to being subject to a notice of penalty. Therefore, EPSA supports the JTAs alternative approach that, during an audit or spot-check in which a RE reviews measures implemented by a responsible entity and determines that those measures are inadequate, the RE needs to provide specific guidance on what the complying entity should do to implement alternative measures that would be considered adequate. Additionally, the responsible entity must be given a

reasonable period of time to achieve compliance and ensure that, when entities institute alternative mitigation, they will know they will not trigger unnecessary sanctions. Thus the JTA proposed approach provides a way for the RE and the responsible entity to resolve the issue in a timely manner and ensure reliability without the issuances of hasty notice of penalties.

III. CONCLUSION

Wherefore, EPSA respectfully request that the Commission approve the NERC petition for TFE submission and processing, along with the proposed changes put forth by the JTAs.

Respectfully submitted,



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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., November 23, 2009.

A handwritten signature in black ink, appearing to read "N. Bagot", written in a cursive style.

Nancy Bagot, V.P. of Reg. Affairs