



## **II. MOTION FOR LEAVE TO FILE ANSWER**

The Commission's rules permit the filing of answers to motions in which parties seek substantive relief. The Commission's rules do not permit the filing of answers to protests. *See* 18 C.F.R. §385.213(a)(2). However, the Commission has granted motions for leave to file such answers if they will clarify issues in dispute, ensure a complete and accurate record or otherwise provide information to assist the Commission in its decision-making process.<sup>2</sup> NERC's Answer will clarify certain concerns about the November 13 Filing that were raised in the December 4 Comments and provide information that will assist the Commission in its decision-making process. Therefore, NERC requests permission to submit this Answer.

## **III. ANSWER**

The sole change made by the November 13 Filing was to add the Commission-approved term and definition of an Interchange Authority to the NERC *Statement of Compliance Registry Criteria*.<sup>3</sup> The amendment is needed to enable NERC and the Regional Entities to ensure that all entities meeting the criteria of an Interchange

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<sup>2</sup>*San Diego Gas & Electric v. Sellers of Energy and Ancillary Services*, 108 FERC ¶ 61,219, at P14, n. 7 (2004) (answer was accepted as it “provided information that assisted [FERC in its] decision-making process”); *see also Michigan Electric Transmission Co.*, 106 FERC ¶ 61,064, at P 3 (2004) (the permitted answer “provides information that clarifies the issues”); *North American Electric Reliability Corporation, Order Certifying NERC as the Electric Reliability Organization and Ordering Compliance Filing*, 116 FERC ¶ 61,062, at P 24 (2006) (reply comments of NERC and others accepted “because they have provided information that assisted us in our decisionmaking process”); *North American Electric Reliability Corporation, Order Conditionally Accepting 2007 Business Plan and Budget of the North American Electric Reliability Corporation, Approving Assessments to Fund Budgets and Ordering Compliance Filings*, 117 FERC ¶ 61,091, at P 18 (2006) (same); *North American Electric Reliability Corporation*, 119 FERC ¶ 61,248 (2007) at P 6 (same).

<sup>3</sup> On March 16, 2007, in Order No. 693, the Commission approved the definition of the term Interchange Authority in the NERC Glossary of Terms used in the Reliability Standards. Order No. 693 at P 796 & n.279 and PP 801-802.

Authority are included in the NERC Compliance Registry and are subject to the Commission-approved mandatory and enforceable Reliability Standards applicable to such functional entities.<sup>4</sup>

In its comments, EPSA proposes revisions to NERC's Rules of Procedure which apply to the Compliance Registry. Specifically, EPSA objects to NERC's procedures that make entities responsible for compliance immediately upon registration and do not provide an opportunity for entities to take steps to become compliant or to pursue appeal options before they must comply with the applicable Reliability Standards.<sup>5</sup> EPSA requests a 90-day grace period and an opportunity to exhaust appellate rights prior to registration and compliance with applicable Reliability Standards.<sup>6</sup> EPSA's proposed changes to the Commission-approved Rules of Procedure extend beyond the limited amendment reflected in the instant filing and amount to a collateral attack on prior Commission orders. However, while NERC considers the present rules to properly balance due process with protecting reliability, NERC is always willing to consider alternative approaches. This proceeding, however, is not the appropriate forum.

With respect to EPSA's claim that a grace period should be provided, it is important to note that the Commission approved the term and definition of Interchange Authority, as well as the Reliability Standards applicable to Interchange Authorities, on March 16, 2007. Therefore, the industry has been on notice for the last nine months that NERC would register entities for this function. The Commission's regulations at 18

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<sup>4</sup> In Order No. 693, the Commission approved Reliability Standards that apply to an Interchange Authority (*see, e.g.*, INT-005-1, INT-007-1 and INT-008-1, at Order No. 693 PP 848, 869 and 872, respectively).

<sup>5</sup> EPSA at 1.

<sup>6</sup> *Id.* at 6.

C.F.R. 39.2(c)<sup>7</sup> and the NERC Rules of Procedure obligate entities to register for applicable functions. If an entity fails to register for an applicable function, the Regional Entities and NERC have authority to seek out and register entities for all applicable functions. Registration of entities for applicable functions is a dynamic and ongoing process.

Importantly, NERC believes that the status of a registrant and the relative newness of the registrant to the obligations required of owners, operators and users of the bulk power system is a factor to consider in any compliance or enforcement matter. However, that is something to be considered on the facts and circumstances of a particular case. If Company A, which has been operating generating plants in the Eastern Interconnection for 30 years, decides to build a generating plant in the Western Interconnection, that plant should meet the reliability standards from day 1, not 90 days later. On the other hand, if Company B is in a situation where a new decision of either NERC or the Commission regarding the appropriate criteria for registration provides a new understanding of the basis for registration, it would not be appropriate to expect immediate compliance on the same day that new understanding is communicated. Again, that is a matter that should be addressed in the context of a specific compliance or enforcement action, based on the particular facts and circumstances, not in the registration process. Apart from the imposition of penalties or sanctions, it might well be appropriate for Company B to be subject to a mitigation plan to bring itself into

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<sup>7</sup> 18 C.F.R. 39.2(c) states “Each user, owner and operator of the Bulk-Power System within the United States (other than Alaska and Hawaii) shall register with the Electric Reliability Organization and the Regional Entity for each region within which it uses, owns or operates Bulk-Power System facilities, in such manner as prescribed in the Rules of the Electric Reliability Organization and each applicable Regional Entity.”

compliance within a reasonable time period. Separately, as part of the standards development process, NERC includes an implementation plan with newly developed standards (such as was included with the Critical Infrastructure Protection standards currently pending before the Commission). Such an implementation plan is provided to the industry prior to the ballot of the standard for comment on the reasonableness of the implementation plan by the owners, operators, and users who may become subject to the standard.

Finally, the Midwest ISO asserts it is not concerned with the definition of the term Interchange Authority, which it recognizes was accepted by the Commission previously.<sup>8</sup> Rather, the Midwest ISO expresses concern with the broad brush application of that term to the NERC Compliance Registry Criteria with no opportunity for review of the effects such an application may have on entities involved in interchange schedules.<sup>9</sup> The Midwest ISO states that, if NERC determines that all Balancing Authorities will be considered Interchange Authorities, then the Midwest ISO requests the Commission to require that NERC allow for industry comment on this matter.<sup>10</sup> According to Midwest ISO, the Balancing Authorities perform very few of the requirements set forth, for example, in the INT or CIP reliability standards because those requirements are performed on their behalf by a combination of their scheduling agent and/or the tagging service vendors.<sup>11</sup> By applying the definition of Interchange Authority to Balancing Authorities, the Balancing Authorities in centrally dispatched markets would become responsible for requirements over which they have no control. Moreover, Midwest ISO

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<sup>8</sup> Midwest ISO Comments at 2.

<sup>9</sup> *Id.* at 2-3.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.* at 3-4.

states that Balancing Authorities may have no contractual rights to require such vendors to perform at a level that would be compliant with the requirements of the reliability standard.<sup>12</sup> Midwest ISO recommends that the NERC and the industry participants work together to separate the requirements performed by the sink Balancing Authority from those requirements performed by the tagging system and then register the tagging system vendors as Interchange Authorities instead of shifting the responsibility to Balancing Authorities at this stage in the process.<sup>13</sup>

As the Midwest ISO properly recognizes, the Commission has already approved the definition of the term Interchange Authority, as well as its application to Commission-approved Reliability Standards. This is the definition NERC is proposing to employ in the registration process. Therefore, the objections raised by Midwest ISO as to the application of that term essentially amount to a collateral attack on FERC prior orders.

The issue of whether certain entities may not perform all requirements under a given function has already been addressed in the Commission-approved NERC Rules of Procedure. Those Rules of Procedure provide a mechanism for a registered entity to enter into agreements with third parties or to submit joint registrations for given functions.<sup>14</sup> Thus, no further action by the Commission as to this issue in the instant proceeding is required.

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<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Id.* at 4.

<sup>14</sup> See NERC Rules of Procedure at Sections 501.1.2.7 and 507 available at [ftp://www.nerc.com/pub/sys/all\\_updl/rop/NERC\\_Rules\\_of\\_Procedure\\_Complete.pdf](ftp://www.nerc.com/pub/sys/all_updl/rop/NERC_Rules_of_Procedure_Complete.pdf).

## **V. CONCLUSION**

The North American Electric Reliability Corporation respectfully requests that the Commission approve its November 13 Filing.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 17th day of December, 2007.

*/s/ Rebecca J. Michael*

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