

On May 15, 2007, the North American Electric Reliability Corporation (“NERC”) submitted a compliance filing¹ in response to paragraph 107 of the Commission’s Order No. 693.² Specifically, NERC filed, as directed by the Commission, proposed revisions to Sections 501 and 507 of the NERC Rules of Procedure to incorporate procedures which permit (but do not require) an organization, such as a joint action agency, generation and transmission (“G&T”) cooperative or similar organization to accept compliance responsibility on behalf of its members. Subsequently, a total of four filings have been made commenting on the proposed changes to the Rules of Procedure.³ NERC hereby moves to submit this answer in order to respond to the discussion in these filings concerning a “clarification” to the rules changes proposed in the FirstEnergy Comments and further addressed in the NRECA-APPA-TAPS Comments and the FirstEnergy Answer.

I. MOTION FOR LEAVE TO FILE ANSWER

The Commission’s rules do not permit the filing of answers to protests. *See* 18 C.F.R. §385.213(a)(2) (2006). The Commission has, however, granted motions for leave to file such answers if they will clarify the issues in dispute, ensure a complete and accurate record or

¹ *Compliance Filing of the North American Electric Reliability Corporation in Response to Paragraph 107 of Order No. 693*, Docket No. RM06-16-003, May 15, 2007 (“NERC Compliance Filing”).

² *Mandatory Reliability Standards for the Bulk Power System*, Order No. 693, 118 FERC ¶61,218 (2007).

³ *Motion to Intervene and Comments of FirstEnergy Companies*, filed June 14, 2007 (“FirstEnergy Comments”); *Joint Comments of Georgia System Operations Corporation, Georgia Transmission Corporation and Oglethorpe Power Corporation in Support of Compliance Filing*, filed June 14, 2007; *Motion to Intervene Out of Time and Answer/Comments of the National Rural Electric Cooperative Association, The American Public Power Association, and the Transmission Access Policy Study Group*, filed June 19, 2007 (“NRECA-APPA-TAPS Comments”); and *Motion for Leave to Answer and Answer of FirstEnergy Companies*, filed June 26, 2007 (“FirstEnergy Answer”).

otherwise provide information that will assist the Commission in its decision-making process.⁴ NERC's answer will provide information to the Commission that will assist it in its decisionmaking process with respect to the proposed revisions to the Rules of Procedure submitted in the NERC Compliance Filing and the proposed "clarification" presented in the FirstEnergy Comments and discussed in the NRECA-APPA-TAPS Comments and the FirstEnergy Answer. The Commission should, therefore, permit NERC to submit this answer.

II. ANSWER

In paragraph 107 of Order No. 693, the Commission directed NERC as follows:

107. The Commission directs the ERO to file procedures which permit (but do not require) an organization, such as a joint action agency, G&T cooperative or similar organization to accept compliance responsibility on behalf of its members. The Commission believes that NERC's proposed procedures described above are reasonable, and directs the ERO to submit a filing within 60 days. [footnote omitted] In allowing a joint action agency, G&T cooperative or similar organization to accept compliance responsibility on behalf of its members, our intent is not to change existing contracts, agreements or other understandings as to who is responsible for a particular function under a Reliability Standard. Further, we clarify that there should not be overlaps in responsibility nor should there be any gaps.

"NERC's proposed procedures described above", which the Commission found were "reasonable", were summarized in paragraph 103 of Order No. 693 and were set forth in Version

⁴ See, e.g., *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"); *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, Order on Compliance Filing*, 119 FERC ¶61,248, at P 6 (2007) (same).

3 of the NERC *Statement of Compliance Registry Criteria* filed with the Commission on February 6, 2007 in this docket.⁵

To comply with the Commission's directive in paragraph 107, NERC simply removed the substantive provisions pertaining to joint registrations and Joint Registration Organizations ("JRO") – which the Commission had already concluded were "reasonable" – from the *Statement of Compliance Registry Criteria* and placed the provisions on this topic into Section 500 of the NERC Rules of Procedure. Specifically, Section 501.1.2.7 of the Rules of Procedure was revised, and a new Section 507 was added, to accomplish this. NERC submitted revised Section 501.1.2.7 and new Section 507 to the Commission in the NERC Compliance Filing.

In its Comments on the NERC Compliance Filing, FirstEnergy requests that the Commission:

(i) clarify that while users, owners and operators of the bulk-power system can transfer *performance* of compliance obligations under one or more of the mandatory reliability standards to a JAA [joint action agency], *legal accountability* for compliance (or failure to comply) cannot be transferred; (ii) accept [NERC's] proposed changes to its Rules of Procedure subject to this clarification; and (iii) direct [NERC] to submit amendments to its Rules of Procedure that implement this clarification within 30 days of the Commission's order in this docket.⁶

NERC submits that the Commission should not implement FirstEnergy's "clarification" in this proceeding, for two reasons. *First*, FirstEnergy's proposal goes beyond the scope of the matters the Commission should consider and act on in approving the NERC Compliance Filing. As indicated above, in Order No. 693, the Commission found the provisions in the *Statement of Compliance Registry Criteria* concerning joint registrations and JROs to be reasonable. All

⁵ *Request of the North American Electric Reliability Corporation to File Supplemental Information*, Docket RM06-16-000, filed February 6, 2007.

⁶ FirstEnergy Comments at 2, 8 and 9 (emphases in original).

NERC was directed to do by paragraph 107 was to incorporate these provisions into its Rules of Procedure, and that is all NERC has done in its Compliance Filing. FirstEnergy's request raises a new, substantive issue concerning the joint registration provisions. However, NERC did not intend to, and does not believe it did, make any substantive changes to the joint registration provisions in moving them from the *Statement of Compliance Registry* to Section 500 of the Rules of Procedure. Certainly, the idea that an entity (such as a joint action agency or a G&T cooperative) which registers to be responsible for a requirements of a reliability standard that would otherwise be the responsibility of one of its members (such as a municipal utility or a distribution cooperative) will be both *accountable* and *legally responsible* for performance of that requirement, and for any noncompliance, is not a new concept introduced in the NERC Compliance Filing or in proposed Sections 501.1.2.7 and 507 of the Rules of Procedure.

In short, the NERC Compliance Filing does exactly what the Commission directed in paragraph 107 of Order No. 693, no more and no less. Therefore, the Commission need not consider the "clarification" proposed in the FirstEnergy Comments nor the arguments in the NRECA-APPA-TAPS Comments.

Second, FirstEnergy's proposed split of *performance* and *legal accountability* for requirements of reliability standards is unworkable and would defeat the purpose of allowing joint registrations. Allowing an entity such as a joint action agency or a G&T cooperative "to accept compliance responsibility on behalf of its members", as the Commission directed in paragraph 107, makes sense because it enables a smaller entity, that may lack the resources or technical capability to adequately comply with and perform requirements of reliability standards, to transfer that responsibility to a larger organization with greater technical competence, depth and breadth. If the smaller entity were to remain "legally accountable" for compliance and

noncompliance, it would have no choice (as a responsible corporate or governmental entity) but to “stay involved” in the larger organization’s performance of the compliance functions. The smaller entity would not save resources. Further, FirstEnergy’s proposed approach would muddy, not clarify, the lines of compliance responsibility, and could be counterproductive and detrimental to reliability as two (or more) entities both strive to determine what actions need to be taken to maintain compliance with the reliability standard requirements in question.

NERC believes that under its procedures for joint registrations and JROs now embodied in proposed Sections 501.1.2.7 and 507 of the Rules of Procedure, it is clear that the joint action agency, G&T cooperative or similar organization assuming responsibility from its members or related entities (as defined in Section 501.1.2.7) for compliance with requirements of reliability standards will be both responsible and legally accountable for performance of the requirements and for any noncompliance. This structure appropriately places responsibility for performance of reliability requirements together with responsibility for the consequences of noncompliance.

The FirstEnergy Answer gives additional indications as to what FirstEnergy’s underlying concerns with the joint registration provisions may be. However, NERC submits that these potential concerns are all readily resolvable.

- FirstEnergy may be concerned that it will be forced to accept responsibility for compliance with requirements of reliability standards that would otherwise be the responsibility of smaller entities on its system. However, under proposed Sections 501.1.2.7 and 507, the role of a JRO is a voluntary one. The procedures “permit, but do not require” such registration. A JRO must either “accept” responsibility for a reliability function(s) in lieu of its members or related entities, or the JRO and its members or related entities must enter into a written agreement as to which of them

will be responsible for one or more reliability standards or requirements of reliability standards.⁷

- FirstEnergy may be willing to accept responsibility for performance of requirements of reliability standards on behalf of smaller entities on its system, but unwilling to accept legal accountability for performance (*i.e.*, to accept responsibility for penalties or sanctions for noncompliance). As shown above, however, such a split would be unworkable and not conducive to promoting the reliability of the bulk power system – the entity that is responsible for performance of a reliability standard requirement must also be accountable for the consequences of noncompliance.
- FirstEnergy may be concerned that if it accepts responsibility for performance of requirements of reliability standards on behalf of smaller entities on its system, and therefore also becomes accountable for noncompliance, it will not be able to get those smaller entities to take actions (or refrain from actions) FirstEnergy directs them to take for purposes of maintaining compliance (as the smaller entities will no longer face financial consequences for noncompliance, and thus may be indifferent to the JRO's directions). NERC submits that the answer to this concern lies in developing an appropriate written agreement among the JRO and its members or related entities as to the obligations of all parties. As noted above, under proposed Sections 501.1.2.7 and 507 of the NERC Rules of Procedure, a prospective JRO need not register as such unless it has entered into a satisfactory written agreement with its members or related entities setting forth the obligations of all parties.

⁷ See Sections 501.1.2.7, 507.1 and 507.2.

Finally, FirstEnergy argues that Section 215 of the Federal Power Act creates only a single class of entities (*all* users, owners or operators) for purposes of the ERO’s compliance program. NERC notes that at this juncture, neither the Commission nor NERC have defined the full scope of the “bulk power system,” under Section 215, but rather have determined to use the NERC registration criteria for the foreseeable future to identify, in an efficient manner, those entities that will be responsible for compliance with reliability standards during the initial period of ERO implementation.⁸ FirstEnergy’s proposed “clarification” and the concerns it expresses in its Comments and its Answer must be evaluated in that context.

Respectfully submitted,

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⁸ See Order No. 693 at PP 75 and 92-101.

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 Chicago, Illinois this 2d day of July, 2007.

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