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April 17, 2007

VIA ELECTRONIC FILING

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: *Applicability of Federal Power Act Section 215 to Qualifying Small Power
Production and Cogeneration Facilities, Docket No. RM07-11-000*

Dear Ms. Bose:

The North American Electric Reliability Corporation (“NERC”) hereby submits to the Commission the attached Comments on the Notice of Proposed Rulemaking issued in Docket RM07-11-000 on March 16, 2007 and published in the *Federal Register* on March 27, 2007.

Please contact the undersigned if you have any questions concerning this filing.

Respectfully submitted,

/s/ Owen E. MacBride
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Debra Ann Palmer

*Attorneys for
North American Electric Reliability
Corporation*

Attachment

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

**APPLICABILITY OF FEDERAL)
POWER ACT SECTION 215 TO)
QUALIFYING SMALL POWER)
PRODUCTION AND)
COGENERATION FACILITIES)**

Docket No. RM07-11-000

**COMMENTS OF
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
ON PROPOSED RULE**

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April 17, 2007

I. INTRODUCTION

The North American Electric Reliability Corporation¹ (“NERC”) is providing comments in response to the notice of proposed rulemaking the Commission issued in this docket on March 16, 2007.² The Commission is proposing to amend its regulations governing qualifying small power production and cogeneration facilities (“QFs”)³ to specify that the exemption from the requirements of the Federal Power Act (“FPA”) provided by 18 C.F.R. §292.601 does not apply to Section 215 of the FPA.⁴ The result of the proposed amendment to §292.601 would be that a QF would be subject to the requirements of ERO reliability standards that are approved by the Commission, to the extent the QF falls within the category of owners, operators and users of the bulk-power system to which the requirements of a standard apply. In the NOPR, the Commission states that from a reliability perspective, there does not appear to be a meaningful distinction between QF and non-QF generators that would warrant exemption of QFs from mandatory reliability standards.⁵ The Commission also states that the benefit of removing the exemption will be increased reliability of the North American bulk-power system.⁶

¹ The Commission certified NERC as the electric reliability organization (“ERO”) authorized by Section 215 of the Federal Power Act (“FPA”) in its order issued July 20, 2006 in Docket No. RR06-1-000. 116 FERC ¶ 61,062 (July 20, 2006) (the “ERO Certification Order”).

² *Applicability of Federal Power Act Section 215 to Qualifying Small Power Production and Cogeneration Facilities*, Docket No. RM07-11-000, 118 FERC ¶ 61,220 (2007) (the “QF NOPR”). The Commission’s notice was published in the *Federal Register* on March 27, 2007.

³ 18 C.F.R. Part 292.

⁴ 16 U.S.C. § 824o.

⁵ QF NOPR at PP 1 and 5.

⁶ *Id.*

NERC agrees with the Commission's assessment, and makes two points in these comments:

- (1) The Commission's proposed removal of Section 215 from the exemption for QFs from requirements of the FPA is appropriate both from a statutory perspective and in terms of the impact on reliability of the bulk power system.
- (2) With the exemption removed, in determining whether QFs are subject to mandatory reliability standards, NERC will treat QFs as it does all other owners, operators and users of the bulk power system, *i.e.*, the decision as to whether to place an entity on the NERC compliance registry will be based on the specific circumstances of each entity.

II. NOTICES AND COMMUNICATIONS

Notices and communications with respect to these comments may be addressed to the following:

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*Persons to be included on the Commission's service list are indicated with an asterisk.

III. DISCUSSION

- 1. The Commission's proposed removal of Section 215 from the exemption for QFs from requirements of the FPA is appropriate both from a statutory perspective and in terms of the impact on reliability of the bulk-power system.**

Removing Section 215 from the exemption for QFs from the requirements of the FPA – thereby making QFs subject to ERO reliability standards -- is consistent with the language and

intent of Section 215. When Congress adopted Section 215, it used broad language to ensure that all those who could adversely affect the reliability of the bulk power system would be subject to mandatory reliability standards. Specifically, Section 215(b)(1) states that “The Commission shall have jurisdiction, within the United States, over . . . all users, owners and operators of the bulk-power system (including the entities described in section 201(f)), for purposes of approving reliability standards established under this section and enforcing compliance with this section.” Additionally, Section 215(b)(2) states that “All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.” Thus, Congress used words of inclusion and breadth, and gave no indication it intended to exempt any entity that could affect the reliability of the bulk power system from the reach of mandatory reliability standards.⁷ It is inconceivable that Congress, in the process of establishing the broad jurisdictional reach of Section 215, would *sub silencio* also intend that QFs could be exempted from the requirements of Section 215.

The Commission is correct that from a reliability perspective, there are no meaningful differences between QFs and non-QF generators that would justify a blanket exemption for QFs from Section 215 and the obligation to comply with mandatory reliability standards otherwise applicable to generators. All generators, no matter their size or ownership, provide real and reactive power and therefore affect the power flows and voltage levels within the

⁷Indeed, Congress included within the scope of “users, owners and operators of the bulk-power system” the entities described in Section 201(f) of the FPA, which include the United States, a state or any political subdivision of a state, an electric cooperative that receives financing under the Rural Electrification Act of 1936 or that sells less than 4,000,000 megawatt-hours of electricity a year, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty. 16 U.S.C. §824(f). Thus, Congress included within the entities subject to mandatory reliability standards under Section 215 broad classes of entities that are normally excluded from the Commission’s jurisdiction under Part 2 of the FPA.

Interconnection. In addition, because all generators are sources, they must have protection systems that are integrated and coordinated with the surrounding power system and therefore will impact protection system reliability. Generators also contribute to the balance between resources and demand, which, in turn, affects Interconnection frequency, inadvertent interchange, and time error.

QF status is a statutorily-created status that was grounded in a policy objective to provide economic incentives for the development of certain types of generating facilities. However, that policy objective should not be extended to allowing QFs not to comply with bulk-power system reliability standards that apply to other generators that are identical to the QFs in all respects relevant to the reliability of the bulk-power system.

- 2. With the exemption removed, in determining whether QFs are subject to mandatory reliability standards, NERC will treat QFs as it does all other owners, operators and users of the bulk power system, *i.e.*, the decision as to whether to place an entity on the NERC compliance registry will be based on the circumstances of each entity.**

NERC is completing its first iteration of the compliance registry that NERC and the regional entities will use to identify the entities that will be held accountable for compliance with mandatory reliability standards. NERC expects to post the compliance registry on its Web site, and send notices to those on the registry, this month.

The Commission has approved NERC's use of the compliance registry for these purposes.⁸ NERC developed criteria for the regional entities to use in determining which entities to include on the compliance registry, and has filed those criteria with the Commission.⁹ The

⁸ Order No. 693, Mandatory Reliability Standards for the Bulk Power System, 118 FERC ¶ 61,218 (issued Mar. 16, 2007), at PP 75, 92 and 97; see also ERO Certification Order at P 689.

⁹ Request of the North American Electric Reliability Corporation to File Supplemental Information, Docket RM06-16, filed February 6, 2007 (submitting Revision 3 to the NERC Statement of Compliance Registry Criteria).

Commission has approved the use of those criteria by NERC and the regional entities in developing the compliance registry.¹⁰

The proposed revision to §292.601 will not result in all QFs becoming subject to reliability standards. As the Commission notes in the QF NOPR, under the compliance registry criteria, the threshold for applicability of reliability standards to generating units is a gross nameplate rating of 20 MVA for an individual generating unit (corresponding to 20 MW at unity power factor) or 75 MVA in aggregate for a generating plant; reliability standards are also applicable to any generator, regardless of size, that is a blackstart unit material to and designated as part of a transmission operator's restoration plan, or that is material to the reliability of the bulk-power system.¹¹ In the QF NOPR, the Commission reports data from the Energy Information Administration showing that less than 25% of all QFs would meet the generally applicable threshold of 20 MVA.¹²

In determining what entities should be included on the compliance registry, NERC and the regional entities will apply those criteria to QFs, on a facility-by-facility basis, in the same manner that the criteria are applied to all other entities. That means QFs will be included on the compliance registry – and therefore subject to mandatory reliability standards – only if, and only to the extent, they meet the criteria. Further, as the Commission noted in both Order No. 693 and the QF NOPR, a QF will have the opportunity to challenge its placement on the compliance registry, in the same manner as other entities.¹³

¹⁰ Order No. 693 at PP 93-95.

¹¹ QF NOPR at P 6.

¹² *Id.*

¹³ Order No. 693 at P 101; QF NOPR at P 6.

IV. CONCLUSION

For the reasons stated in these comments, NERC supports the Commission's proposed revisions to §292.601(c) of its regulations to remove Section 215 from the blanket exemption for QFs from the requirements of the Federal Power Act.

Respectfully submitted,

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