

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

North American Electric Reliability Corporation) Docket No. RR06-1-007

**REQUEST OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
FOR CLARIFICATION, OR IN THE ALTERNATIVE, FOR REHEARING,
OF JUNE 7, 2007 ORDER ON COMPLIANCE FILING**

I. INTRODUCTION

Pursuant to Rule 713 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §385.713, the North American Electric Reliability Corporation (“NERC”) requests clarification of a single sentence in paragraph 64 of the Commission’s June 7, 2007, Order in this docket.¹ The June 7 Order approved, in part, and required further changes to proposed Electric Reliability Organization (“ERO”) Rules of Procedure that NERC filed with the Commission on March 19, 2007, in compliance with the Commission’s January 18, 2007, order.² The June 7 Order requires NERC to make a further compliance filing within 60 days (*i.e.*, by August 6, 2007). If the Commission disagrees with NERC’s requested clarification, then NERC, in the alternative, requests rehearing with respect to the issue raised by paragraph 64.

II. REQUEST FOR CLARIFICATION

NERC seeks clarification with respect to the following issue raised by paragraph 64 of the June 7 Order:

Issue: NERC seeks clarification that the Commission did not intend by its statement in the last sentence of paragraph 64 to prohibit NERC (i) from carrying

¹ *North American Electric Reliability Corporation, Order on Compliance Filing*, 119 FERC ¶61,248 (2007) (“June 7 Order”).

² *North American Electric Reliability Corporation, Order on Compliance Filing*, 118 FERC ¶61,030 (2007) (“January 18 Order”).

out its responsibilities as the Electricity Sector Information Sharing and Analysis Center (“ES-ISAC”) to inform electricity industry participants of corrective action they must take to avoid, reduce, or respond to a newly identified threat to the electricity infrastructure, or (ii) from carrying out its responsibilities as the ERO certified by the Commission under Section 215 of the Federal Power Act to inform users, owners, and operators of the bulk power system of corrective action they must take to avoid, reduce, or respond to a newly identified threat to the reliability of the bulk power system.³

This issue is created by the last sentence of paragraph 64 of the June 7 Order (underscoring in quotation added):

64. The Commission dismisses EEI’s request to require NERC to explain the difference between operations and equipment alerts and remedial action directives. The Commission did not require NERC to make any modifications to section 807.6 in the *January 2007 Compliance Order*. Therefore, this section is a settled matter and its acceptance should have been raised on rehearing, but was not. Further, the Commission believes that NERC should issue an operations and equipment alert requiring specific actions only under NERC’s remedial power.²¹

²¹ See Order No. 672 at P 476-77, see also Rules of Procedure, Appendix 4B, Sanctions Guidelines, section 6.

NERC’s Compliance and Enforcement Program (“CMEP”), Appendix 4C to the NERC Rules of Procedure, provides for the “Compliance Enforcement Authority” (NERC or, pursuant

³ NERC is an “information sharing and analysis organization” within the meaning of Section 212 of the Homeland Security Act, 6 U.S.C. §101 *et seq.* Homeland Security Presidential Directive 7, *Critical Infrastructure Identification, Protection, and Prioritization* (issued December 17, 2003), and the National Infrastructure Protection Plan provide the overarching framework for a structured partnership between government and the private sector for critical infrastructure and key resources. This sector partnership structure encourages formation of Sector Coordinating Councils (“SCCs”). SCCs foster and facilitate the coordination of sector-wide activities and initiatives designed to improve the security of the nation’s critical infrastructure. SCCs are self-organized, self-led, broadly representative of owners and operators (and their associations) within the sectors, and are focused on homeland security and critical infrastructure protection. It is the responsibility of each SCC to identify the sector’s boundaries, establish the criteria for membership, seek broad participation and representation of the diversity of the sector, and establish the governance, business case, and work processes of the sector’s SCC. NERC has formed the Electricity Sector Coordinating Council, in the form of the Executive Committee of the NERC Critical Infrastructure Protection Committee plus the NERC President, and NERC operates the Electricity Sector Information Sharing and Analysis Center as a part of the Department of Homeland Security’s Information Sharing and Analysis Program.

to delegated authority in an approved delegation agreement, a Regional Entity) to issue a Remedial Action Directive to a Registered Entity “when such action is immediately necessary to protect the reliability of the bulk power system from an imminent threat.” Issuance of a Remedial Action Directive must be based on a violation or possible violation of a Reliability Standard.⁴ Similarly, §6.1 of the NERC *Sanction Guidelines*, Appendix 4B to the NERC Rules of Procedure, states that “Remedial actions are directives that may be issued to a bulk power system owner, operator or user to resolve an alleged violation of a reliability standard by addressing conditions, practices, or any other relevant action or activity. A remedial action directive will be issued when NERC or the regional entity identifies an alleged violation of a reliability standard that must be corrected to promptly reduce the reliability threat that NERC or the regional entity has identified poses to the reliability of the bulk power system.”⁵

Thus, NERC’s authority to issue a Remedial Action Directive is limited. A Remedial Action Directive may be used to direct a cure to a violation or possible violation of a Reliability Standard by a particular entity, where the condition the Remedial Action Directive requires be cured poses an imminent threat to the reliability of the bulk power system.

⁴ See Appendix 4C to the NERC Rules of Procedure, §7.0; *Order Accepting ERO Compliance Filing, Accepting ERO/Regional Entity Delegation Agreements, and Accepting Regional Entity 2007 Business Plans*, 119 FERC ¶61,060 (issued April 19, 2007) (“April 19 Order”), P 93 (directing that §7.0 of the CMEP be modified to specify that the notice of a Remedial Action Directive must state the violations or possible violations of Reliability Standards on which the Remedial Action Directive is based). In the April 19 Order, the Commission approved the CMEP and the delegation agreements between NERC and the Regional Entities, subject to various modifications specified in that Order.

⁵ *Sanction Guidelines of the North American Electric Reliability Corporation*, §6.1. In the June 7 Order, the Commission approved the *Sanction Guidelines* as filed by NERC in its March 19, 2007 compliance filing to the January 18 Order.

However, the range of situations in which NERC's responsibilities may necessitate that it advise bulk power system owners, operators and users that a certain condition should be remedied, or a certain practice discontinued (or adopted), to maintain the reliability of the bulk power system, are considerably broader than those specifically involving correction of violation of a Reliability Standard. For example, as the ES-ISAC, NERC may learn of a cyber security vulnerability that the industry needs to promptly address. Or, during its reliability assessment and performance analysis activities or its disturbance and event analysis activities, NERC may learn of a defect in a particular piece of commonly-used equipment, or of a heretofore unrecognized flaw in how equipment is configured.⁶ None of these situations would necessarily involve a violation of a Reliability Standard, yet each could well involve a threat to the reliability of the bulk power system that could be alleviated with a prompt, clear direction to address the problem.

It is clearly in the public interest for NERC to issue alerts to the industry requiring specific corrective actions where NERC obtains information showing the need for such corrective actions, even where a violation of a Reliability Standard is not involved. Moreover, NERC is the entity best positioned to gather the information that may show a need for corrective actions by the industry, or segments of the industry, to avoid a threat to the reliability of the bulk power system. NERC is also the entity best positioned to disseminate the need for specific corrective actions to the industry. In fact, the Commission has concluded that "monitoring the

⁶ See Section 800 of the NERC Rules of Procedure and Appendix 8 thereto. In its October 23, 2006 Order conditionally approving NERC's proposed 2006 ERO budget, the Commission concluded that NERC's reliability assessment and performance analysis and situational awareness and infrastructure security programs were activities within the scope of the ERO's statutory responsibilities under §215 for which funding should be provided pursuant to the mechanisms authorized by §215. See *Order Conditionally Accepting the 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 (2006), at PP 20 and 28.

reliability of the Bulk-Power System” is one of the ERO’s statutory functions under §215 of the Federal Power Act.⁷

In developing its Rules of Procedure, NERC anticipated the need for, and provided procedures for, such notifications and directives. Specifically, in Section 807, “Analysis of Major Events”, subsection 807.6 provides for three levels of operations or equipment alerts:

NERC will screen and analyze the findings and recommendations from the analysis, and those with generic applicability will be disseminated to the industry in the form of operations or equipment alerts of three possible types:

- a. Advisory — these alerts are purely informational, intended to alert owners, operators, and users of the bulk power system to potential problems;
- b. Recommendation — these alerts are intended to recommend specific action be taken by owners, operators, and users of the bulk power system;
- c. Required Action — these alerts are intended to require specific action by owners, operators, and users of the bulk power system. Such alerts require NERC board approval before issuance.

In Section 808, “Analysis of Off-Normal Events and System Performance,” subsection 808.2 also provides for three levels of operation and equipment alerts:

NERC will screen and analyze events for significance, and information from those with generic applicability will be disseminated to the industry in the form of operations or equipment alerts of three possible types:

- a. Advisory — these alerts are purely informational, intended to alert owners, operators, and users of the bulk power system to potential problems;
- b. Recommendation — these alerts are intended to recommend specific action be taken by owners, operators, and users of the bulk power system;
- c. Required Action — these alerts are intended to require specific action by owners, operators, and users of the bulk power system. Such alerts require NERC board approval before issuance.⁸

⁷ *Rules Concerning Certification of the Electric Reliability Organization; Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶31,204 (2006), at P 202.

⁸ As provided in Sections 807.6 and 808.2, “Required Action” alerts – those intended to require specific action by owners, operators and users of the bulk power system – require, because of

None of the situations covered by Sections 807.6.c and 808.2.c necessarily involves a violation of a Reliability Standard. NERC intended these provisions to provide a mechanism to address areas of concern and the need for corrective action to be sent to the entire industry, or specific segments of it. The Commission approved these provisions in the January 18 Order and the June 7 Order and, save for the last sentence of paragraph 64 of the June 7 Order, has not placed an (apparent) limitation on their use.

NERC understands that communications to the industry on the need for specific corrective actions, as provided for in Sections 807.6 and 808.2 of the Rules of Procedure or in NERC's role as the ES-ISAC, are not Remedial Action Directives under the CMEP and the *Sanction Guidelines* and do not (necessarily) involve violations or possible violations of Reliability Standards. NERC understands, therefore, that it lacks authority to impose penalties or other sanctions if a Registered Entity fails to take the corrective action specified in one of these issuances. However, NERC anticipates that its positions as both the ERO and the ES-ISAC will convey a sense of authoritativeness that will be persuasive to entities in determining to comply with Required Action alerts. For example, in a Required Action alert, NERC may express its opinion that "good utility practice" requires bulk power system owners, operators and users to take the specified corrective action. In short, NERC fully anticipates that bulk power system owners, operators and users will take seriously Required Action alerts issued by NERC pursuant to Sections 807.6 and 808.2, or alerts issued in its role as the ES-ISAC.

Accordingly, NERC requests clarification from the Commission that the Commission did not intend, by the last sentence of paragraph 64 of the June 7 Order, to limit NERC's ability to

their importance, approval of the NERC Board of Trustees before they can be issued. "Required Action" alerts cannot be issued solely at the initiative of the NERC Staff without approval of the NERC Board.

issue Required Action alerts requiring specific actions by bulk power system owners, operators and users, as specified in Sections 807.6 and 808.2 of the NERC Rules of Procedure, or to limit NERC's ability to issue similar alerts requiring specific actions in its role as the ES-ISAC, only to situations involving a violation or possible violation of a Reliability Standard.

III. STATEMENT OF ISSUES/SPECIFICATION OF ERROR FOR ALTERNATIVE REQUEST FOR REHEARING

If the Commission disagrees with NERC's requested clarification of the last sentence of paragraph 64 of the June 7 Order, as discussed in §II above, then NERC, in the alternative, requests rehearing with respect to the last sentence of paragraph 64. Pursuant to 18 C.F.R. §395.713(c)(1) and (2), NERC seeks, in the alternative, rehearing on the following issue:

Issue: In the last sentence of paragraph 64 of the June 7 Order, the Commission has inappropriately and erroneously limited NERC to issuing operations and equipment alerts requiring specific actions by bulk power system owners, operators and users only when such specific actions are necessary to cure a violation or possible violation of a Reliability Standard that poses an imminent threat to the reliability of the bulk power system. It is bad public policy, and not an action supportive of promoting the reliability and security of the bulk power system, for the Commission to impose a limitation on NERC to issuing operations and equipment alerts requiring specific actions only to situations where the action is necessary to cure a violation or possible violation of a Reliability Standard by a particular entity. Such a limitation would eviscerate the reliability benefits of NERC's role and position in performing assessments of the reliability of the bulk power system and analyses of specific system disturbances and other events, evaluating the information gathered, and informing the industry as to specific corrective actions that may be necessary to avoid threats to the bulk power system – even where no violations of Reliability Standards are involved. Further, the last sentence of paragraph 64 creates a conflict with the provisions of Sections 807.6 and 808.2 of the NERC Rules of Procedure that the Commission has approved; and imposes an inappropriate limitation on NERC's role as the ES-ISAC as part of the Department of Homeland Security's Information Sharing and Analysis Program.

The Commission should grant rehearing and on rehearing should eliminate the last sentence of paragraph 64 of the June 7 Order, or modify that sentence in accordance with the arguments presented by NERC in this filing. In further support of its alternative request for rehearing, NERC respectfully refers the Commission to the discussion in §II of this filing.

IV. CONCLUSION

For the reasons set forth in this filing, NERC requests that the Commission issue an amendatory or supplemental order to the June 7 Order clarifying that the last sentence of paragraph 64 of the June 7 Order is not intended to limit NERC to issuing “Required Action” operations and equipment alerts requiring specific actions pursuant to Sections 807.6 or 808.2 of the NERC Rules of Procedure, or in NERC’s role as the ES-ISAC, to situations in which the specific action is required to cure a violation or possible violation of a Reliability Standard that poses an imminent threat to the reliability of the bulk power system. Alternatively, if the Commission does not agree with NERC’s requested clarification, then for the reasons set forth in this filing, the Commission should grant rehearing as to the last sentence of paragraph 64 and should delete that sentence or modify it in accordance with the arguments presented by NERC herein.

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 Chicago, Illinois this 9th day of July, 2007.

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