

## **COMMENTS OF CONSTELLATION ENERGY ON PROPOSED CHANGES TO NERC RULES OF PROCEDURE AND ASSOCIATED APPENDICES**

Constellation Energy Group, Inc. (“CEG”), Baltimore Gas & Electric Company (“BGE”), Constellation Energy Commodities Group, Inc. (“CCG”), Constellation Energy Control and Dispatch, LLC (“CCD”), Constellation NewEnergy, Inc., (“CNE”) and Constellation Power Source Generation, Inc. (“CPSG”) and its affiliates (collectively, “Constellation”) and Constellation Energy Nuclear Group, LLC,<sup>1</sup> (“CENG”) provide the following comments on the Proposed Changes to the NERC Rules of Procedure (“RoP”) and associated Appendices posted for industry input by the North American Electric Reliability Corporation (“NERC”) on November 7 and November 22, 2011.

Constellation/CENG joins in support of the comments filed by the Edison Electric Institute (“EEI”), Electric Power Suppliers Association (“EPSA”), American Public Power Association (“APPA”) and National Rural Electric Cooperative Association (“NRECA”), collectively, the “Associations”, on this matter. Constellation/CENG agrees with the issues raised and the recommendations proposed by the Associations and, by reference, incorporates their entire comments herein. Constellation/CENG particularly shares the Associations’ concerns regarding the following:

- Appendix 4C, Section 3.1.4.2: Further revision to this section is needed to resolve the conflict created between the Compliance Monitoring and Enforcement Program (“CMEP”) and the Reliability Standard data retention period language. The last line of Section 3.1.4.2 should be stricken to read:

*The Registered Entity will be expected to demonstrate compliance for the entire period described above. If a Reliability Standard specifies a document retention period that does not cover the entire period described above, the Registered Entity will not be found in noncompliance solely on the basis of the lack of specific*

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<sup>1</sup> On November 6, 2009, EDF, Inc. (“EDF”) and Constellation Energy Group, Inc. completed a transaction pursuant to which EDF acquired a 49.99 percent ownership interest in CENG. CENG was previously a wholly owned subsidiary of Constellation Energy Group, Inc.

*information that has not been retained based on the retention period specified in the Reliability Standard. However, in such cases, the Compliance Enforcement Authority will require the Registered Entity to demonstrate compliance through other means.*

- Section 800 and Appendix 8: These sections should be withdrawn and further vetted as part of package of documents associated with the NERC Events Analysis program. Currently, three documents are in development that relate to the NERC Events Analysis program – the Events Analysis Process document, Reliability Standard EOP-004-2 and Section 800 and Appendix 8 of NERC’s Rules of Procedure. Despite the obvious relation, at no point has NERC presented the three components together to allow stakeholders to understand how these three efforts will work together in practice. Nor have stakeholders been given the opportunity to review these documents in conjunction with each other and provide constructive input towards the creation of a quality, manageable Events Analysis program that is efficient and that delivers useful, reliability-based lessons learned in a timely manner.

Moreover, none of these efforts should be finalized independently. Given how closely related these documents are in terms of subject, substance and reference, it is problematic to approve one without approving the others. For example, the proposed event analysis revisions to the Rules of Procedure substantively refer to and depend on the Events Analysis Process document, which is not yet final. As noted at the recent December 2011 Operating Committee meeting, modifications to the Event Analysis Process document are needed to address critical issues, such as:

- Clarifying the process for managing, maintaining and revising the document;
- Vetting the recently added provisions within the latest version of the Event Analysis Process, including the implications of Regional Entity reviews/confirmations of an entity-lead analysis;
- Resolving the conflict between compliance and reliability endeavors within the process; and
- Replacing the redundant event definitions with clear references to the fully vetted event definition language that will exist within Reliability Standard EOP-004-2, which is also not final and continuing to progress through the standard development process.

These event analysis efforts need to be presented concurrently, whereby NERC and its stakeholders can work together towards creating a cohesive and comprehensive event analysis program.

- The addition of Appendix 4C, Section 5.11: Proposed section 5.11 should be removed from the Rules of Procedure revisions, and a separate process should be established to discuss the need for such a provision and the best approach to addressing that need. As it currently stands, proposed section 5.11 raises significant issues around accountability for ISO/RTO reliability violations and penalty cost allocation, which can only be resolved through industry and ISO/RTO input. The concerns underpinning the development of this new section may have merit; however, the proposed language is extensive and in need of constructive industry discussion to ensure all interests are adequately considered when developing a mechanism to address these concerns. For one, cost allocation is typically handled through the ISO/RTO tariff. If the allocation of penalties for reliability standard violations are going to be addressed in the NERC Rules of Procedure, additional thought and discussion needs to occur around how this impacts the cost allocation mechanisms within the ISO/RTO tariff and whether such costs can or should be passed on to its members.

Moreover, if an ISO/RTO is permitted to implicate other entities in a violation proceeding before a Compliance Enforcement Authority, appropriate procedures need to be established to ensure adequate due process is afforded to such entities. As proposed, section 5.11 raises significant questions that cannot be adequately addressed via this comment process, and thus we request that industry be given the opportunity to relay their concerns through a transparent and open Section 5.11 development process.

In the alternative, if NERC retains the addition of section 5.11, the language should be simplified and focused to only address how entities may intervene in an enforcement action against an ISO/RTO.

In addition to the specific issues raised by the Associations, Constellation/CENG is also concerned about the manner in which revisions to the Rules of Procedure are being managed. The Rules of Procedure are fundamental to the structure, operations and obligations under the NERC regime. Revisions to the Rules warrant a thorough and transparent process: one that makes clear the reason for a revision, gathers stakeholder input, and respectfully responds to issues raised in comments. For these reasons, NERC should seriously consider increasing the transparency of the revision process and more readily demonstrating that stakeholder input is credibly taken into consideration in its Rules of Procedure development/revision process.

To reiterate, Constellation/CENG agrees with the issues and recommendations raised within the Associations' comments. As these comments represent the views of a significant portion of industry entities, NERC should weigh trade association comments accordingly when considering the issues and recommendations presented.

Thank you for your consideration of the above comments. Please contact me with any questions regarding Constellation/CENG's comments.

Respectfully submitted,



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