UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability Corporation) Docket No. RR09-7-000

MOTION OF THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION REQUESTING ISSUANCE OF PRELIMINARY ASSESSMENT IN RESPONSE TO THREE-YEAR ELECTRIC RELIABILITY ORGANIZATION PERFORMANCE ASSESSMENT REPORT

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May 13, 2010

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I. INTRODUCTION

On July 20, 2009, the North American Electric Reliability Corporation ("NERC") submitted its *Three-Year Electric Reliability Organization Performance Assessment Report* ("ERO Performance Report") in accordance with the Federal Energy Regulatory Commission's ("Commission" or "FERC") regulations. *See* 18 C.F.R. §39.3(c).

Pursuant to Rule 212 of the FERC Rules of Practice and Procedure, 18 C.F.R. § 385.212, NERC hereby requests that the Commission have its staff issue a preliminary assessment of the electric reliability organization ("ERO") Performance Report for comment. Given that the ERO Performance Report was filed nearly a year ago, NERC expects that Commission action on the ERO Performance Report may occur soon. The issuance of a preliminary assessment will provide the opportunity for interested parties to weigh in on the preliminary conclusions and recommendations. It may avoid the prospect of protracted rehearing proceedings and possible litigation over issues that might better be resolved with an opportunity for evaluation and discussion prior to final decisions being made. Importantly, it will afford all interested persons, including ERO governmental authorities, state regulators, interested federal agencies, the

industry, customers and other stakeholders, an opportunity to provide valuable input that will aid the Commission in developing a complete record, prior to issuing a determination on the performance of the ERO in meeting its obligations under Section 215 of the Federal Power Act ("FPA").

II. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to:

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*Persons to be included on the Commission's service list are indicated with an asterisk. NERC requests waiver of the Commission's rules and regulations to permit the inclusion of more than two people on the service list.

III. BACKGROUND AND MOTION

NERC was formed to serve as the ERO authorized by Section 215 of the FPA. NERC was certified as the ERO by the Commission's Order issued July 20, 2006, pursuant to Section 215(c) of the FPA.[1] As noted above, the Commission's regulations, at 18 C.F.R. Part 39, require the ERO to submit an assessment of its performance three years from the date of certification.[2]

[1] *North American Electric Reliability Corporation*, "Order Certifying North American Electric Reliability Corporation as the Electric Reliability Organization and Ordering Compliance Filing," 116 FERC ¶ 61,062 (2006) (ERO Certification Order).

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

On July 20, 2009, NERC submitted its ERO Performance Report in accordance with Section 39.3(c) of the Commission's ERO regulations. Section 39.3(c) also provides that the Commission will establish a proceeding to allow public comment:

> After receipt of the assessment, the Commission will establish a proceeding with opportunity for public comment in which it will review the performance of the Electric Reliability Organization.
>
> (1) The Electric Reliability Organization's assessment of its performance shall include:
>
> > (i) An explanation of how the Electric Reliability Organization satisfies the requirements of §39.3(b);
> >
> > (ii) Recommendations by Regional Entities, users, owners, and operators of the Bulk-Power System, and other interested parties for improvement of the Electric Reliability Organization's operations, activities, oversight and procedures, and the Electric Reliability Organization's response to such recommendations; and
> >
> > (iii) The Electric Reliability Organization's evaluation of the effectiveness of each Regional Entity, recommendations by the Electric Reliability Organization, users, owners, and operators of the Bulk-Power System, and other interested parties for improvement of the Regional Entity's performance of delegated functions, and the Regional Entity's response to such evaluations and recommendations.[3]

NERC recognizes that the Commission has already received public comment on the ERO Performance Report. However, NERC has not received any feedback on the report from the Commission or its staff. By this motion, NERC requests that the Commission have its staff issue a preliminary assessment of the ERO Performance Report, and that it solicit comments from interested persons prior to taking final action in response to the ERO Performance Report. NERC and all stakeholders would benefit from an open dialogue with the Commission about the status of implementation of Section 215 and how the Commission expects that to evolve. This

[3] *See* 18 C.F.R. §39.3(c).

docket provides an appropriate vehicle for a general examination of the relationship between NERC and the Commission going forward. By allowing public comment on the preliminary assessment prior to final action, the parties can gain a common understanding of the issues or at least understand the differences related thereto. It will ensure that the Commission has a fully informed and developed record upon which to make a final decision. This also may obviate protracted rehearing proceedings and possible litigation.

NERC's motion is consistent with Commission precedent. On May 11, 2006, the Commission issued a Staff Preliminary Assessment of the NERC Reliability Standards. In the Staff Preliminary Assessment, the Commission noted:

> This preliminary staff assessment is the first step in an open and inclusive process that will allow interested persons to submit comments on whether the proposed mandatory Reliability Standards found in NERC's petition meet the statutory criteria and will allow the Commission to develop an adequate record on which to make the required statutory findings.[4]

Approximately 50 entities filed comments in response to the Staff Preliminary Assessment.[5]

The Commission's review of the NERC Reliability Standards is analogous to its review of the ERO Performance Report. Thus, it is important that the industry and affected stakeholders have an opportunity to review a preliminary assessment prior to the Commission taking final action on the ERO Performance Report.

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[4] *Federal Energy Regulatory Commission Staff Preliminary Assessment of the North American Electric Reliability Council's Proposed Mandatory Reliability Standards*, Docket No. RM06-16-000, at pp. 1-2 (2006) ("Staff Preliminary Assessment").

[5] *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 FR 16,416 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242 at P 16 (2007).

IV. CONCLUSION

Accordingly, NERC respectfully requests that the Commission have its staff issue a preliminary assessment on the ERO Performance Report, in accordance with Section 215 of the FPA and Commission precedent and provide opportunity for public comment on the preliminary assessment.

Respectfully submitted,

/s/ Rebecca J. Michael

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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 13th day of May, 2010.

/s/ Rebecca J. Michael
Rebecca J. Michael

Attorney for North American Electric Reliability Corporation