

**UNITED STATES OF AMERICA  
BEFORE THE  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

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**Transfer of Certain Nebraska Entities from )  
Midwest Reliability Organization to )  
Southwest Power Pool Regional Entity )**

**COMMENTS OF THE NEBRASKA PUBLIC POWER DISTRICT  
IN RESPONSE TO COMMENTS FILED BY  
THE MIDWEST RELIABILITY ORGANIZATION**

The Nebraska Public Power District (“NPPD”), in accordance with the open comment period set by the North American Electric Reliability Corporation (“NERC”), responds to the opposition filed by the Midwest Reliability Organization (“MRO”) to NPPD’s request to transfer from the MRO to the Southwest Power Pool, Inc. Regional Entity (“SPP RE”). The MRO’s opposition filed as the MRO’s August 16, 2010 Report (“MRO Report”) asserts that the transfer cannot be factually supported and granting it would create a poor precedent. MRO Report, Cover Letter at 1. These assertions rest largely, however, on the MRO’s views on the supposed deleterious effects of the transfer on the MRO’s financial condition and the efficacy of Coordination Guidelines between the MRO and the SPP RE (*id.* Exhibit A) in resolving coordination issues. Even assuming both concerns were valid, they involve, at best, transitional issues that should not govern NERC’s response to the transfer request.

NPPD submits that the governing principle for deciding this matter should be the statutory criterion under FPA Section 215 of improving the efficiency and effectiveness of the bulk power system (“BPS”). In this regard, while the MRO downplays the importance of NPPD’s voluntary decision to join the SPP RTO, *see* MRO Report Cover Letter at 3 (referring to “NPPD’s choice to join SPP without any ‘guarantee’ of a change in Compliance Enforcement

Authority”), the relationship between the geographic boundaries of the RTO and the Regional Entity is very relevant to the issue of whether approval of NPPD’s transfer to the SPP RE would improve the efficiency and effectiveness of the bulk power system.<sup>1</sup> The MRO seems to have lost sight of the fact that FERC has encouraged the participation of all utilities in RTOs in order to promote a more reliable and efficient nationwide bulk power transmission grid. NPPD responded and became one of a few exempt public utilities to join an RTO. To now punish NPPD, as suggested by the MRO, for moving forward without any guarantee of a corresponding transfer to the SPP RE, would discourage RTO membership. If NPPD had known that the MRO would take its current position, NPPD would have conditioned its application to join the SPP RTO upon approval of a corresponding request to transfer to the SPP RE. In any event, NPPD’s decision to join the SPP RTO should not, as MRO suggests, be relegated to little weight here, but should be evaluated as an important consideration in determining whether to approve the transfer.

The Commission has recognized “the potential benefits of having the same boundaries for an RTO/ISO and a Regional Entity.”<sup>2</sup> As explained by the SPP RE,<sup>3</sup> the obvious benefits of the instant transfer requests are both qualitative and quantitative. NPPD’s membership in the SPP RTO provides for SPP to act as NPPD’s Reliability Coordinator, which includes real time interaction, monitoring and training. Approval of the requested transfer will enable NPPD to

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<sup>1</sup> NPPD recognizes that it does not have a unilateral right to a transfer. To that end, NPPD has followed all the required steps for seeking and obtaining approval of the transfer from NERC. NPPD followed the MRO’s contractual termination procedure and has sought through the SPP RE a revision to the current delegation agreements to effectuate the transfer. During this period, NPPD has followed the directives from both the SPP RTO and the MRO regarding planning and operation for reliability purposes. These actions hardly show that NPPD is acting on the basis that it has a unilateral right to a transfer, but, rather, that NPPD has satisfied all requirements for justifying approval of the transfer by NERC.

<sup>2</sup> *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, 2006-2007 FERC Stats. & Regs. Preambles ¶ 31,204 at P 671 (2006).

<sup>3</sup> SPP RE Report dated August 16, 2010 at page 2.

concentrate all of its efforts in one reliability area rather than splitting its resources between the SPP RTO activities and the MRO RE activities. The SPP also serves as NPPD's Planning Authority. Approving NPPD's transfer to the SPP RE will result in a more efficient process for planning construction of new facilities, including facilities needed to maintain and improve reliability.

The MRO claims that the relationship between the geographical boundaries of Reliability Coordinators and Planning Authorities should be addressed on a global basis between REs and NERC, "not one petition at a time." MRO Report, Cover Letter at 1. Clearly, NERC does not agree, as evidenced by its proposed Rule 1208, which envisions transfers by registered entities on an ad hoc basis. As the proposed rule suggests, individual transfer requests are appropriate where, as here, significant changed circumstances warrant reconsideration of the existing configuration to determine whether a change would improve BPS efficiency and reliability. NPPD's joining the SPP RTO is such a significant changed circumstance because the SPP RTO coordinates planning and operation of NPPD's transmission facilities for reliability and other purposes. Aligning those functions with the requirements of the SPP RE Reliability Coordinator promotes more effective use of the RTO's BPS.

Related to this point is the MRO's claim that NPPD's concerns about duplicative data submittal, inconsistent reporting, and inconsistent regional procedures "are addressed and resolved by the agreed-upon Coordination Guidelines." MRO Report Cover Letter at 2, referring to MRO Report, Exhibit A. The need for such Guidelines underscores, however, the fact that such duplication and inconsistencies exist under the current configuration. They also demonstrate that NPPD must, for all practical purposes, follow two sets of rules. For example, in the Guidelines under "Model Building," NPPD's system is to be included in the SPP RTO

model, but subject to the MRO's overview and coordination as to timing and use in the MRO's models. Exhibit A at 8. While the ostensible result of the coordination may be that the NPPD has to submit data only one time, realistically this guideline requires NPPD and the SPP RTO to factor the MRO's considerations into the analysis. At best, such guidelines might serve a useful purpose during a transition period, but they are not, as the MRO suggests, a permanent solution to duplication and inconsistency.

The MRO opposition is driven largely by the MRO's own self-interest, which is disguised in several forms. *See* MRO Report, Cover Letter at 3 (“What may be efficient for one Registered Entity would drive up the cost for other Registered Entities”); at 5 (“the change would be detrimental and disruptive to the remaining Registered Entities in MRO by increasing their costs and administrative burdens”). In an attempt to prove that the MRO Registered Entities share the MRO's point of view, its President recently circulated a letter to the MRO Registered Entities drawing their attention to the Comment Period to respond to the Nebraska Entities' request to transfer from MRO to SPP RE and to highlight his view that “[i]f the request is granted, Registered Entities with load in MRO will see increased costs in 2011 and beyond and an unfortunate precedent will be set by NERC on this matter for the future.”<sup>4</sup>

MRO's comments raise several points that need to be emphasized.<sup>5</sup> First, the implication that NPPD is requesting the transfer merely to save money has no support. As the MRO's Exhibit B shows, NPPD's cost will increase after it joins the SPP RE compared to the costs of remaining with the MRO. Second, the MRO has been aware of NPPD's transfer request since 2008, but has yet to take any steps to mitigate its current costs to a level that would reflect reduced variable expenses assuming the transfer is approved. *See* MRO Report, Cover Letter at

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<sup>4</sup> See Exhibit A attached hereto.

<sup>5</sup> As a threshold matter, NPPD notes its concern as to whether it is appropriate for the President of MRO to use his stature to influence the views of entities subject to his enforcement authority.

4 (indicating proposed increased cost reallocation “would be carried forward into future budget years”). Third, the approval of the Nebraska entities’ transfer will result in a 10% decrease in costs assigned to each SPP RE Registered Entity. SPP RE Report at 3. This reduction will serve to equalize, rather than disrupt or skew, the relationship between the cost of belonging to the MRO and the SPP RE.

The MRO states that the facilities of NPPD (and the other Nebraska entities) “are entirely within the MRO geography” (Cover Letter at 2) and that if the request is granted “the remaining footprint for the MRO in Nebraska would become checkered, resulting in extra administrative reporting costs for those remaining in Nebraska and the MRO.” *Id.* at 4. The first statement merely reflects the obvious, *viz.*, NPPD and the other Nebraska entities are now served by the MRO. But the question presented is whether that configuration continues to make sense now that NPPD is part of the SPP RTO, and thus transmission planning and operation in Nebraska is done by the SPP RTO. As FERC has recognized, there are strong reasons to align RE boundaries with RTO boundaries without consideration of state boundaries. Also NPPD and the other Nebraska entities serve approximately 90% of all customers in Nebraska (SPP RE Report at 1-2). Consequently, a shift to the SPP RE would cover compliance in the vast majority of the State.<sup>6</sup>

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<sup>6</sup> Exhibit C to MRO's Response is a letter from Lincoln Electric System indicating its preference for remaining in MRO because, *inter alia*, "It is simply better for the reliability organization to be totally separated from and independent of the RTO." NPPD notes that FERC has addressed Lincoln concerns by requiring the selection and composition of the SPP RE Trustees to be independent of the SPP RTO. *North America Reliability Council*, 119 FERC ¶ 61,060 at P 398 (2007). Moreover, the SPP Bylaws governing conflicts of interest provide that RE Trustees shall not be an officer or employee of any member of SPP and shall have no direct financial interest in any member of SPP. *See* Section 9.7.2.2 of SPP Bylaws. By contrast, MRO's Board is comprised of 18 members, including representatives of the Lincoln Electric System and 13 owners or operators of the bulk power transmission system within the MRO footprint. NPPD would prefer to be under a governance structure like that of the SPP RE, particularly where non-public information concerning MRO audits and investigations is shared with the MRO Board of Directors.

The MRO's final argument against a transfer is the suggestion that allowing a transfer here could lead to a situation where it would be "difficult to determine whether past enforcement action or the perception of the enforcement capabilities and philosophy" of one RE is "a motive for the requested change." MRO Report, Cover Letter at 4. There is no basis for intimating that NPPD is requesting a transfer due to concerns about the MRO's enforcement actions or that approving the transfer would be an invitation for others registered entities to transfer due to compliance issues. NPPD assumes that all Regional Entities rigorously enforce Reliability Standards. NPPD has no expectation that the SPP RE's approach towards enforcement will be less rigorous than that of the MRO. As the MRO's Exhibit F indicates, it had one compliance matter with NPPD that was resolved by a settlement approved by FERC. *North American Electric Reliability Corp.*, 130 FERC ¶ 61,154 (2010). NPPD's motive in this transfer has not been to escape from the MRO's enforcement capabilities, but to improve the efficiency and effectiveness of its bulk power system by aligning the planning and operation by the SPP RTO with the compliance authority of the SPP RE. NERC could identify this latter point as the reason for approving the transfer, and reiterate that it will not permit transfers designed to evade enforcement capabilities of a particular RE.

Respectfully Submitted,

/s/ Harold L. Hadland

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**EXHIBIT A**

**From:** Jessica R. Mitchell [mailto:JR.Mitchell@MidwestReliability.org]  
**Sent:** Monday, September 13, 2010 3:55 PM  
**To:** Jessica R. Mitchell  
**Subject:** Notice: NERC Comment Period Opens for Reports Evaluating Requests to Transfer Compliance Registration of Several Entities from MRO and SPP RE

*The following correspondence is sent on behalf of Dan Skaar, President of Midwest Reliability Organization.*

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Dear Registered Entities, Members, and Load Serving Entities of MRO,

I wanted to call your attention to the Comment Period that has been established by NERC to respond to the request by four Nebraska Entities (Nebraska Public Power District, Omaha Public Power District, City of Hastings and the City of Grand Island) to change their Compliance Enforcement Authority from Midwest Reliability Organization (MRO) to Southwest Power Pool RE (SPP RE). For details relating to this proposed transfer, please see the link below to NERC's website.

The Board has been involved in this matter and supports MRO to oppose the transfer for policy and cost reasons. If the request is granted, Registered Entities with load in MRO will see increased costs in 2011 and beyond and an unfortunate precedent will be set by NERC on this matter for the future. MRO's response, including the reasons MRO opposes the transfer, as well as SPP RE's response, is posted on NERC's website at:  
[http://www.nerc.com/files/CommentPeriod Request to Transfer Compliance Registration on 20100831.pdf](http://www.nerc.com/files/CommentPeriod%20Request%20to%20Transfer%20Compliance%20Registration%20on%2020100831.pdf). Western Area Power Administration and Lincoln Electric System also oppose the transfer. Their comments are included in the MRO response as Exhibits C and D.

The Comment Period ends Tuesday September 21, 2010. Requirements for filing comments are included in the notice posted by NERC noted above.

Very truly yours,

Daniel P. Skaar