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CONTACTS ♦

Roy Thilly, Chairman

Wisconsin Public Power Inc.
1425 Corporate Center Drive
Sun Prairie, WI 53590
608.834.4500
Fax 608.837.0274
rthilly@wppisys.org

Robert McDiarmid

Cindy Bogorad

Spiegel & McDiarmid
1333 New Hampshire Avenue,
NW
Washington, DC 20036
202.879.4000
Fax 202.393.2866
robert.mcdiarmid@spiegelmcd.com
cynthia.bogorad@spiegelmcd.com

Deborah Sliz

Morgan Meguire LLC
1225 I Street, NW
Suite 1150
Washington, DC 20005
202.661.6192
Fax 202.661.6182
dsliz@morganmeguire.com

Robert Talley

Talley & Associates
2121 K Street, NW
Suite 650
Washington, DC 20037
202.296.4114
Fax 202.296.2409
Tmq1@erols.com

William J. Gallagher

Special Projects Chief
Vermont Public Power Supply
Authority
802.244.7678
Fax 8802.244.6889
wgallagher@vppsa.com

August 8, 2008

Mr. Rick Sergel, President
North American Electric Reliability Corporation
116-390 Village Boulevard
Princeton, NJ 08540-5721

Re: TAPS Comments Concerning Proposed Changes to NERC Rules of Procedure
Section 500 and Appendix 5

Dear Mr. Sergel,

TAPS appreciates the opportunity to comment on NERC’s proposal to revise
its Rules of Procedure.

TAPS is concerned that the proposed changes in the Rules of Procedures
(Section 501.1.3) and Appendix 5 (Section V.2.a) suggest a Regional Entity may have
its own Registry Criteria different from the NERC’s FERC-approved Statement of
Compliance Registry Criteria. Because they would undermine the consistency and
uniformity central to NERC’s mission and are fundamentally inconsistent with
FERC’s orders approving the Registry Criteria, these changes should not be adopted
by NERC.

Specifically, the proposal would make the following underlined modifications:

- Section 501.1.3 would be modified to state that the Compliance Registry is “based on the registration criteria as identified by NERC and/or the regional entity.”
- Appendix 5, Section V.2.a would be modified to state that a challenge to registration “must state why the entity believes it should not be [registered] based on the applicable Regional Entity’s and NERC’s criteria.”

NERC’s Statement of Compliance Registry Criteria is applicable throughout
NERC’s footprint and relied on as such by participants in the bulk electric system. In
Order 693, FERC approved NERC’s Statement of Compliance Registry Criteria, as

♦ An association of transmission-dependent utilities and other supporters of equal, non-discriminatory transmission access and vigorously competitive wholesale electric markets. TAPS members are located in more than 35 states, including: Alabama . Arizona . California . Colorado . Connecticut . Delaware . Florida . Illinois . Indiana . Iowa . Kansas . Kentucky . Louisiana . Maine . Massachusetts . Michigan . Minnesota . Mississippi . Missouri . Nebraska . New Hampshire . New Mexico . North Carolina . North Dakota . Ohio . Oklahoma . Pennsylvania . Rhode Island . South Carolina . South Dakota . Utah . Vermont . Virginia . West Virginia . Wisconsin . Wyoming

the description of how NERC and its regional entities will identify entities for registration.¹ As reiterated in FERC's order approving the addition of interchange authorities to the Registry Criteria (footnotes and citations omitted):²

In the Certification Order, the Commission found NERC's compliance registry process to be a reasonable means to ensure that the proper entities are registered and that each knows which Commission-approved Reliability Standard(s) are applicable to it. The Commission also approved NERC's Rules of Procedure, including section 500 (Organization Registration and Certification), subject to certain revisions. Section 501.3.4 of NERC's Rules of Procedure provides that an entity may "appeal" a NERC registration determination to the "applicable governmental authority."

The Registry Criteria themselves make clear that they are *NERC* Criteria, with Regional Entity applications appealable to *NERC*. See, e.g., the second paragraph of the Registry Criteria³ ("This document describes how NERC will identify organizations that may be candidates for registration and assign them to the compliance registry."). While Regional Entities have a role in making the initial identification and required demonstrations, the Registry Criteria provide that application of the NERC Registry Criteria is ultimately a NERC determination, subject to FERC or Canadian review. See, e.g., Registry Criteria, at 8 n.5.

NERC's role in developing and enforcing uniform Registry Criteria is also highlighted in the FERC orders reviewing registration decisions. "The Commission believes that the registration process should provide consistency across the regions, unless a persuasive reason is articulated for such differences."⁴ Where the Commission has identified an issue triggering the need for modification of the Registry Criteria, the remand is to NERC, not the regional entity.⁵

Thus, the proposed changes to ROP Section 501.1.3 and Appendix 5, Section V.2.a are fundamentally at odds with FERC's orders approving and applying the Registry Criteria, as well as the terms of the Registry Criteria. By suggesting that a Regional Entity can have its own Registry Criteria, different and distinct from those set forth in the NERC Statement of Compliance Registry Criteria, the proposed language would represent an inappropriate and unwarranted departure from the consistency that NERC has repeatedly stated as its objective and

¹ Mandatory Reliability Standards for the Bulk-Power System, Order No. 693, 72 Fed. Reg. 16,416, 16,427 PP 92-95 (Apr. 4, 2007), [2006-2007 Regs. Preambles] F.E.R.C. Stat. & Regs. ¶ 31,242, PP 92-95 (codified at 18 C.F.R. pt. 40), *effective date stayed*, 72 Fed. Reg. 31,452 (June 7, 2007), *aff'd*, Order No. 693-A, 72 Fed. Reg. 40,717 (July 25, 2007), 120 F.E.R.C. ¶ 61,053 (2007).

² *N. Am. Elec. Reliability Corp.*, 122 F.E.R.C. ¶ 61,101, P 2 (2008).

³ NERC, Statement of Compliance Registry Criteria (Revision 4.0) at 1 (Sept. 25, 2007) ("Registry Criteria"), available at www.nerc.com/files/Statement_of_Compliance_Registry_Criteria_V4-0.pdf.

⁴ *Direct Energy Servs., LLC.*, 121 F.E.R.C. ¶ 61,274, P 43 (2007).

⁵ See, e.g., *Direct Energy Services, LLC*, 121 F.E.R.C. ¶ 61,274, P 1, Ordering Paragraph D (2007), *rehearing-pending*, 123 F.E.R.C. ¶ 61,016 (2008) (accepting procedural aspects of NERC's compliance filing).

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the uniformity that FERC rightly expects from NERC in terms of enforcement of reliability standards.⁶ As NERC's CEO has recently assured TAPS (by letter of July 8):

The Criteria represent a general policy position, supported by NERC and the Federal Energy Regulatory Commission (FERC), that new NERC or Regional standards should not result in a significant expansion of the Registry without a clear demonstration that the standards are needed to protect against a material adverse impact to the reliability of the bulk power system. ... The board, in determining whether to approve a Regional standard as a mandatory, enforceable NERC standard, will also be guided by the overall principles of uniformity and consistency.

The proposed changes would also undermine the certainty that was the basis for FERC approval of NERC's Registry Criteria.

For there to be nine sets of Registry Criteria would turn upside down the principles of uniformity and consistency, as well as reversing the basic concept of mandatory NERC standards, enforced by regional entities through delegated authority. There must be a final authority on registration for legally enforceable standards; that final authority must be NERC, given its need to approve any enforceable regional (as well as grid-wide) standard. The alternative would allow a Regional Entity operating under delegated authority to trump the delegation.

To avoid any confusion on this important issue, TAPS requests that the emphasized language above be removed from NERC's proposed changes, and that Section 501.1.3 of the ROP and Appendix 5 (Section V.2.a) be left as they are.

Again, TAPS appreciates the opportunity to comment.



William J. Gallagher
Special Projects Chief
Vermont Public Power Supply Authority Post
Office Box 298
Waterbury Center, VT 05677-0298

⁶ *E.g.*, *N. Am. Elec. Reliability Corp.*, 116 F.E.R.C. ¶ 61,062, PP 339, 350 (2006) ("Certification Order"), *order on reh'g & compl.*, 117 F.E.R.C. ¶ 61,126 (2007), *appeal pending sub nom., Alcoa Inc. v. FERC*, No. 06-1426 (D.C. Cir. filed Dec. 29, 2006).