

January 26, 2015

VIA ELECTRONIC FILING

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: North American Electric Reliability Corporation

Docket No. RR15-4-000

Motion to File Limited Answer of the North American Electric Reliability Corporation to Comments of the PSEG Companies and the Motion to Intervene and Protest of the Cogeneration Association of California and the Energy Producers and Users Coalition

Dear Secretary Bose:

The North American Electric Reliability Corporation (“NERC”) hereby submits a motion to file a limited answer to: (i) the Comments of the PSEG Companies; and (ii) the Motion to Intervene and Protest of the Cogeneration Association of California and the Energy Producers and Users Coalition (“QF Parties”), in Docket No. RR15-4-000.

NERC’s filing consists of: (i) this transmittal letter and (ii) NERC’s limited answer, which are being transmitted in a single PDF file.

Please contact the undersigned if you have any questions concerning this filing.

Respectfully submitted,

/s/ Nina H. Jenkins-Johnston

*Counsel for the North American Electric
Reliability Corporation*

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

NORTH AMERICAN ELECTRIC)
RELIABILITY CORPORATION) **Docket No. RR15-4-000**
)

**MOTION TO FILE LIMITED ANSWER OF
THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
TO THE COMMENTS OF THE PSEG COMPANIES AND THE MOTION TO
INTERVENE AND PROTEST OF THE COGENERATION ASSOCIATION OF
CALIFORNIA AND THE ENERGY PRODUCERS AND USERS COALITION**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213 (2014), the North American Electric Reliability Corporation ("NERC") moves for leave to file this answer and hereby submits an answer to two protests submitted in response to the NERC Petition.¹ The two protests were filed by: (1) the Comments of the PSEG Companies;² and (2) the Motion to Intervene and Protest of the Cogeneration Association of California and the Energy Producers and Users Coalition ("QF Parties"),³ in Docket No. RR15-4-000 on January 12, 2015.

¹ *North American Electric Reliability Corporation*, RR15-4-000, Petition of the North American Electric Reliability Corporation for Approval of Risk-Based Registration Initiative Rules of Procedure Revisions (December 11, 2014) ("NERC Petition").

² PSEG is presently engaged in, among other things, the transmission and distribution of electricity and the distribution of natural gas in New Jersey. PSEG owns transmission facilities in PJM Interconnection, L.L.C. ("PJM"). PSEG Power is a wholesale energy supply company that integrates its generation asset operations with its wholesale energy, fuel supply, energy trading and marketing, and risk management functions through three principal subsidiaries: (i) PSEG Nuclear LLC ("PSEG Nuclear"), which owns and operates nuclear generating stations; (ii) PSEG Fossil LLC ("PSEG Fossil"), which develops, owns, and operates domestic fossil-fuel fired and other non-nuclear generating stations; and (iii) PSEG ER&T, an indirect subsidiary of PSEG, sells power and energy and certain ancillary services at market-based rates. PSEG ER&T markets the capacity and production of PSEG Nuclear and PSEG Fossil's generating stations, manages the commodity price risks and market risks related to generation, and provides gas supply services. PSEG ER&T is engaged in extensive asset-based energy trading operations throughout the Northeast. *See* (doc-less) Motion to Intervene of the PSEG Companies ("PSEG Comments"), Docket No. RR15-4-000, at 1-2 (filed Jan. 8, 2015).

³ Cogeneration Association of California ("CAC") is an ad hoc association representing the power generation, power marketing and cogeneration operation interests of its members. Energy Producers and Users Coalition ("EPUC") is

I. BACKGROUND AND EXECUTIVE SUMMARY

On December 11, 2014, NERC filed for approval of amendments to the NERC Rules of Procedure, specifically Sections 302, 501 and Appendices 2, 5A and 5B, to implement the Risk-Based Registration Initiative. The proposed amendments reform the registration program to ensure that the right entities are subject to the right set of applicable Reliability Standards, using a consistent approach to risk assessment and registration. NERC's proposed amendments include: (1) modifications to the NERC Statement of Compliance Registry Criteria (Appendix 5B), including: (a) the removal of three functional registration categories (Purchasing-Selling Entities ("PSEs"), Interchange Authorities ("IAs"), and Load-Serving Entities ("LSEs")), (b) modifications to the threshold for registering entities as Distribution Providers, and (c) alignment of five functional registration categories to the definition of "Bulk Electric System" (Transmission Owners, Transmission Operators, Generator Owners, Generator Operators, and Distribution Providers); (2) the risk-based application of a sub-set of Reliability Standards for entities (including Underfrequency Load Shedding ("UFLS")-Only Distribution Providers); and (3) procedural improvements to the registration process.

The proposed amendments were developed with significant input from the Risk-Based Registration Advisory Group ("RBRAG") (comprised of NERC staff, the Regional Entities, FERC technical staff, and industry representatives from the United States and Canada) and from the RBRAG technical task force (comprised of subject matter experts from NERC, the Regional

an ad hoc association representing the large industrial and commercial consumer and cogeneration interests of its members: Aera Energy LLC, Chevron U.S.A. Inc., Phillips 66 Company, Shell Oil Products US, Tesoro Refining & Marketing Company LLC, THUMS Long Beach Company, and Occidental Elk Hills, Inc. They operate generators and networks of distribution elements within industrial facilities. *See* Motion to Intervene and Protest of Cogeneration Association of California & Energy Producers and Users Coalition ("QF Protest"), Docket No. RR15-4-000, at 1, n1 (filed Jan. 12, 2015).

Entities, and industry).⁴ NERC received additional input from industry survey responses, public comments during the meetings of the Board and its committees, as well as the Member Representatives Committee policy input comments. Finally, the proposed amendments reflect input from over fifty sets of comments on the design and implementation plan that were submitted in June 2014, as well as an additional forty sets of comments submitted in October 2014.

Eleven sets of interventions and/or comments were filed on January 12, 2015 in response to the NERC Petition. NERC's proposed amendments received significant support from U.S. and Canadian reliability stakeholders. Six sets of interventions supported some or all aspects of the NERC Petition. These interventions were filed by: (1) American Public Power Association ("APPA"),⁵ National Rural Electric Cooperative Association ("NRECA")⁶ and Transmission Access Policy Study Group ("TAPS");⁷ (2) Electricity Consumers Resource Council ("ELCON");⁸ (3) Electric Power Supply Association ("EPSA");⁹ (4) California Municipal

⁴ Both the RBRAG and the RBRAG technical task force were established by NERC to support this initiative.

⁵ APPA is the national service organization representing the interests of not-for-profit, publicly owned electric utilities throughout the United States. More than 2,000 public power systems provide over 15% of all kilowatt-hour sales to ultimate customers and serve over 47 million people, doing business in every state except Hawaii. Public power systems own approximately 10.3% of the total installed generating capacity in the United States. *See* Motion to Intervene and Comments of American Public Power Association *et al.*, ("Joint Commenters"), Docket No. RR15-14-000, at 1-2 (filed Jan. 12, 2015).

⁶ NRECA is the national service organization for more than 900 not-for-profit rural electric cooperatives and public power districts providing retail electric service to more than 42 million customers in 47 states. NRECA's members include consumer-owned local distribution systems and 65 generation and transmission cooperatives that supply wholesale power to their distribution cooperative owner-members. *Joint Commenters at 2* (filed Jan. 12, 2015).

⁷ TAPS is an association of transmission-dependent utilities ("TDUs") in more than 35 states, promoting open and non-discriminatory transmission access. As TDUs, TAPS members are users of the BPS, highly reliant on the reliability of facilities owned and operated by others for the transmission service required to meet TAPS members' loads. *Joint Commenters at 2*.

⁸ ELCON is the national association representing large industrial consumers of electricity. ELCON member companies produce a wide range of products from virtually every segment of the manufacturing community. ELCON members operate hundreds of major facilities and are consumers of electricity in the footprints of all organized markets and other regions throughout the United States. *See* Comments of Electricity Consumers Resource Council, Docket No. RR15-14-000, at 1 (filed Jan. 12, 2015).

⁹ EPSA is the national trade association representing leading competitive power suppliers, including generators and marketers, which collectively account for over 40 percent of the installed generating capacity in the United States. *See* Motion to Intervene and Comment of the Electric Power Supply Association, Docket No. RR15-4-000, at 1, n.1 (filed Jan. 12, 2015).

Utilities Association (“CMUA”);¹⁰ (5) Golden Spread Electric Cooperative, Inc.;¹¹ and (6) Canadian Electricity Association (“CEA”).¹² Despite their protests of the implementation of the proposed amendments and the application of the materiality test, the PSEG Companies¹³ and the QF Parties¹⁴ did express support for aspects of the RBR Initiative. Their protests focus on narrow concerns.

NERC addresses the narrow concerns of the two protests in these comments. While answers to comments are not prohibited by the Commission’s rules, answers to protests are generally prohibited.¹⁵ However, the Commission may waive that prohibition for good cause.¹⁶ The Commission has found good cause to permit answers where they are otherwise prohibited in various circumstances, including where a protestor has provided an inaccurate interpretation of the contents of a filing,¹⁷ and where the answer would assure a complete record in the

¹⁰ CMUA is a statewide organization of local public agencies in California that provide water, gas, and electricity service to California consumers. CMUA members provide electricity to approximately 25-30 percent of the population in California. *See* Motion to Intervene and Comments of California Municipal Utilities Association, Docket No. RR15-4-000, at 2 (filed Jan. 12, 2015).

¹¹ Golden Spread Electric Cooperative, Inc. is a non-profit electric generation and transmission cooperative organized under the Texas Electric Cooperative Corporation Act and provides electric service to about 223,000 retail electric meters serving consumers located in the Panhandle, South Plains, and Edward Plateau regions of Texas, an area covering 24 percent of the state, and in the Panhandle of Oklahoma and in portions of Kansas and Southeastern Colorado. *See* Motion to Intervene and Comments in Support of Golden Spread Electric Cooperative, Inc., Docket No. RR15-4-000 at 2 (filed Jan. 12, 2015).

¹² CEA members generate, transmit, distribute and market electrical energy to industrial, commercial and residential customers across Canada and into the United States. CEA members include Generator Owners and Operators, Transmission Owners and Operators, PSEs, Distribution Providers, LSEs and other entities that are subject to Reliability Standards developed by NERC. *See* Motion to Intervene and Comments of Canadian Electricity Association, Docket No. RR15-4-000 at 2 (filed Jan. 12, 2015).

¹³ *See* PSEG Comments at 2 and 12, respectively (“PSEG Companies support the goals of the RBR Initiative,” and “The PSEG Companies do not object to creating a limited set of Reliability Standards applicable to certain Distribution Providers.”).

¹⁴ QF Parties Protest at 3 (“The QF Parties generally support the application, particularly the proposals to allow identification of a sub-set of requirements for compliance, and to better define the criteria for assessing material impact.”).

¹⁵ *See* 18 C.F.R. § 385.213(a)(2) (2014).

¹⁶ *See* 18 C.F.R. § 385.213(a)(2) (2014).

¹⁷ *See, e.g.,* Alliance Cos., *et al.*, 91 FERC ¶ 61,152 at 61,577-78 (2000).

proceeding,¹⁸ lead to a better understanding of the issues in the proceeding,¹⁹ permit the issues to be narrowed or clarified,²⁰ aid in the disposition of the issues raised by the protests,²¹ or otherwise assist the Commission in its decision-making process.²²

For the reasons stated herein, NERC asserts that good cause exists to accept this answer. In this answer, NERC will help to clarify the very narrow issues raised by the PSEG Companies and the QF Parties, resulting in a complete and accurate record upon which the Commission may issue an order. NERC respectfully requests that the Commission act promptly to approve the NERC Petition, which will drive registration to a mature end-state.

II. ANSWER

A. It is Appropriate to Initiate the Proposed Changes through the Registration Process Rather than through the Reliability Standard Development Process.

The PSEG Companies raise the following two arguments in their protest: (1) in order to deactivate PSE, IA, and LSE functions, NERC must first remove those functions in all applicable Reliability Standards and in the NERC Glossary through the NERC Reliability Standard Development Process; and (2) NERC must align Functional Entity definitions (namely the “Generator Operator” and “Generator Owner” definitions) in the NERC Statement of Compliance Registry Criteria with the NERC Glossary. NERC disagrees with both assertions and addresses each in turn.

¹⁸ See, e.g., High Island Offshore System, L.L.C., 113 FERC ¶ 61,202 at P 8 (2005).

¹⁹ See, e.g., Mississippi River Transmission, LLC, 141 FERC ¶ 61,080 at P 4 (2012); N.Y. Indep. Sys. Operator, Inc., 91 FERC ¶ 61,218, at 61,797(2000) (allowing an answer deemed "useful in addressing the issues arising in these proceedings").

²⁰ See, e.g., TransColorado Gas Transmission Co., 111 FERC ¶ 61,208 at P 4 (2005); PJM Interconnection, LLC, 84 FERC ¶ 61,224, at 62,078 (1998); Cent. Hudson Gas & Elec. Corp., 88 FERC ¶ 61,138, at 61,381 (1999) (accepting otherwise prohibited pleadings because they helped to clarify complex issues).

²¹ See, e.g., Transcontinental Gas Pipe Line Co., LLC, 140 FERC ¶ 61,251 at n. 6 (2012).

²² See, e.g., Southern California Edison Co., 141 FERC ¶ 61,100 at P 6 (2012); ISO New England Inc. and New England Power Pool, 140 FERC ¶ 61,177 at P 6 (2012).

Only those entities that are registered for a given function and included in the NERC Compliance Registry are responsible for, and may be held accountable to, the requirements of a Reliability Standard.²³ Therefore, as a result of deactivation of the PSE, IA and LSE registration functions, any Reliability Standard that include those deleted functions as applicable entities will be moot as to those entities. Once the Commission approves the proposed deactivation of the PSE, IA and LSE registration functions, any needed changes to the NERC Glossary and corresponding Reliability Standards will be considered through the Reliability Standard Development Process. NERC further notes that there is no basis in Commission precedent for the PSEG Companies' argument that definitions in the NERC Glossary and the NERC Statement of Compliance Registry Criteria and Appendix 2 must be identical. In fact, the Commission has approved amendments to the Rules of Procedure with those sections retaining their respective terms. There is no need for the Commission to address or resolve this matter in the instant docket.²⁴

Finally, NERC's proposed changes to the definitions of "Generator Owner" and "Generator Operator" which include replacing the undefined term "generating units" with the term "Facilities," are appropriate. The term "Facilities" is defined in the NERC Glossary as a Bulk Electric System element, which ties in directly to the new BES definition. Use of the term

²³ Order No. 693, *Mandatory Reliability Standards for the Bulk-Power System*, 118 FERC ¶ 61,218 (2007) at PP 39, 75, 97 "[W]e approve NERC's current compliance registry to provide certainty and stability in identifying which entities must comply with particular Reliability Standards[;]...the Commission will rely on the NERC definition of bulk electric system and NERC's registration process to provide as much certainty as possible regarding the applicability to and the responsibility of specific entities to comply with the Reliability Standards in the start-up phase of a mandatory Reliability Standard regime. . . the Commission. . .will use the NERC compliance registry to determine those users, owners and operators of the Bulk-Power System that must comply with the Reliability Standards. Each individual Reliability Standard will then identify the set of users, owners and operators of the Bulk-Power System that must comply with that standard . . . the Commission will not assess penalties against an entity that has not previously been put on notice, through the registration process, that it must comply with particular Reliability Standards."

²⁴ See e.g., Project 2015-04 Alignment of NERC Glossary of Terms and Definitions Used in the Rules of Procedure (Appendix 2 of the Rules of Procedure).

“Facilities” has allowed NERC to eliminate the Part III threshold criteria and use the new Bulk Electric System core definition, inclusions and exclusions to identify Bulk Electric System generator assets. PSEG Companies’ objection should be rejected.

B. Proposed Amendments for UFLS-Only Distribution Provider Are Appropriate.

PSEG Companies raise the following two objections to the UFLS-Only Distribution Provider references and provisions: (1) they contend that all references to “UFLS-Only Distribution Providers” should be removed because this new term is not defined in the NERC Glossary;²⁵ and (2) they contend that the NERC Statement of Compliance Registry Criteria should not include a list of Reliability Standards applicable to UFLS-Only Distribution Providers.²⁶ Instead, they maintain that a more appropriate vehicle through which to address this issue is to require Distribution Providers registered solely because they own, control, or operate UFLS Protection System(s) needed to implement a required UFLS Program to apply to the panel to limit themselves to a sub-set of Reliability Standards.²⁷

As noted above, there is no requirement that terms used in the NERC Statement of Compliance Registry Criteria mirror those in the NERC Glossary. Any changes that need to be made to the NERC Glossary as a result of the Commission’s approval of the NERC Petition will go through the Reliability Standard Development Process. Entities that qualify as “UFLS-Only Distribution Providers” are a sub-category of a Distribution Provider. Until a Reliability Standard is submitted limiting its applicability to certain functional entities or characteristics, the Commission has long recognized the registration process is “the preferred method of determining

²⁵ PSEG Companies Comments at 11-13.

²⁶ PSEG Comments at 12.

²⁷ PSEG Comments at 13.

the applicability of Reliability Standards on an entity-by-entity basis.”²⁸

Going forward, NERC will continue to evaluate sub-set lists of Reliability Standards for appropriate entities as it has done for “UFLS-Only Distribution Providers.” However, NERC does not intend to retain all sub-set lists in the NERC Rules of Procedure (including the NERC Statement of Compliance Registry Criteria), rather they will be denoted in the NERC Compliance Registry as to applicable entities. While the NERC Statement of Compliance Registry Criteria include an initial list for UFLS-Only Distribution Providers,²⁹ any changes to that initial list will be reflected in the entity’s NERC Compliance Registry listing. This recognizes the ability for future applicable Reliability Standards to be addressed through the Reliability Standard Development Process. The PSEG Companies’ assertion that each and every Distribution Provider must first proceed through the NERC-led panel to be granted the already determined initial UFLS-Only Distribution Provider sub-set list introduces a significant unjustified administrative burden.³⁰

C. The Materiality Test is Comprised of Non-Exclusive Factors, and Factors Used Will be Identified in Publicly Posted Panel Decisions.

The PSEG Companies and the QF Parties raise various questions about the materiality test and its applicable factors, namely: (1) whether the materiality test applies to reactivation (Appendix 5A, Section III.C) of deactivated entities³¹ and (2) whether the materiality test, as proposed in the NERC Petition, is complete.³² These concerns are unwarranted, as discussed

²⁸ Order No. 693 at P 98 (emphasis added); *see also* Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure, Order No. 773 at P 52, 141 FERC ¶ 61,236 (2012), order on reh’g, Order No. 773-A, 143 FERC ¶ 61,053 (2013); Order Approving Revised Definition, 146 FERC ¶ 61,199 (2014); Order No. 773-A at P 52; Generator Requirements at the Transmission Interface, 144 FERC ¶ 61,221 (2013) (“Order No. 785”).

²⁹ *See* Appendix 5B at III(b).

³⁰ *See* Appendix 5A, III.A.13 for a description of the process required of an entity seeking UFLS-Only DP treatment.

³¹ PSEG Comments at 8.

³² PSEG Comments at 9-11; QF Protest at 3-4. Both the PSEG Companies and the QF Parties propose various changes to the materiality test elements.

herein.

Reactivation of any entity occurs when there is a change in circumstances or where there is a new risk to reliability identified after an entity has been deactivated. The language in Section III.C states that “Reactivation shall be governed by the procedures in the NERC [Rules of Procedure] Section 500 and Section III.A and, *as applicable, Section III.D of this Appendix 5A.*” (emphasis added). The reference to Section III.D is in fact a reference to the materiality test as being applicable to reactivation decisions as well.

The Risk-Based Registration Initiative contemplated that the materiality test would be comprised of non-exclusive factors whose application would vary depending on facts and circumstances of a given matter, taking into account risk-based considerations in reaching a decision. In all applications of the materiality test, the NERC-led review panel will issue a decision that will be made publicly available and will identify all factors that were applied and considered for that matter. The panel will analyze individual and aggregate issues as warranted by soliciting input from host or neighboring entities. Factors examined by the panel will be identified in the panel’s decisions which will be posted publicly on the NERC website, with confidential information redacted in accordance with Section 1500 of the NERC Rules of Procedure. Therefore, there is no need to mandate that the panel examine any particular factor at the outset.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, NERC respectfully requests that the Commission accept these comments and issue an order consistent with the comments herein.

Respectfully submitted,

/s/ Nina H. Jenkins-Johnston

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Dated: January 26, 2015

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 26th day of January, 2015.

/s/ Nina H. Jenkins-Johnston

*Counsel for the North American
Electric Reliability Corporation*