

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability Council)
and North American Reliability Corporation) Docket No. RR06-1-000

MOTION FOR LEAVE AND REPLY OF NATIONAL RURAL ELECTRIC COOPERATIVE
ASSOCIATION, AMERICAN PUBLIC POWER ASSOCIATION, AND THE ELECTRICITY
CONSUMERS RESOURCE COUNCIL TO NERC'S REPLY COMMENTS

The National Rural Electric Cooperative Association (“NRECA”), the American Public Power Association (“APPA”), and the Electricity Consumers Resource Council (“ELCON”) (jointly, “Joint Filers”) submit these joint reply comments in response to the reply comments filed by the North American Electric Reliability Council and the North American Electric Reliability Corporation (individually and jointly, “NERC”) in the above-captioned proceeding on June 13, 2006. To the extent necessary, Joint Filers request leave and submit that there is good cause for accepting this reply, in light of the need for a full and complete record for considering NERC’s application for certification as the Electric Reliability Organization (“ERO”) pursuant to § 215 of the Federal Power Act (“FPA”), as amended by the Energy Policy Act of 2005.

Joint Filers will confine their comments to Appendix B of NERC’s filing, the “Statement of Compliance Registry Criteria.” In general, Joint Filers believe that Appendix B is a positive step in terms of applying criteria and establishing required granularity to the NERC Compliance Registry proposal. NERC frames the root issue quite well at page 2 of Appendix B:

As the ERO, NERC intends to comprehensively and thoroughly protect the reliability of the grid. To support this NERC will include in its compliance registry each entity that it concludes is needed to accomplish this goal. However, the potential costs and effort of ensuring that every organization potentially within the scope of “owner, operator, and user of the bulk power system” becomes registered while ignoring their impact upon reliability, might be disproportionate

to the improvement in reliability that would reasonably be anticipated from doing so.

The Joint Filers support NERC's basic approach of ensuring that entities with a "material impact" on the reliability of the bulk-power system are included in the compliance registry, while also adopting workable criteria that balance compliance burdens and enforcement costs incurred from more inclusive registry criteria. Workable criteria advance the public interest by ensuring that NERC and the Regional Entities pursue an effective and efficient compliance program that focuses on those entities that pose a material risk to reliability. At the same time, Joint Filers have concerns about the criteria, or at least how they should be properly understood, and about the procedures followed at NERC and at the Commission regarding Appendix B.

In terms of the substance, NERC's Appendix B serves to identify initial criteria for determining candidates that may have a "material impact" on the reliability of the bulk-power system, which is ultimately the key factor to be considered if an entity should be subject to the Reliability Standards and included in the Compliance Registry. So understood, Appendix B is a step in the right direction.

Nonetheless, Joint Filers have a number of concerns regarding the specific criteria. In particular, the 25 MW peak load threshold for the Load-serving Entity and Distribution Provider functions does not necessarily establish that such an entity automatically has a material impact on the reliability of the bulk-power system: while such an entity may obviously experience problems on its own local distribution system if it does not, for example, shed load in response to under-frequency or under-voltage conditions, there is no reason to think, on the basis of peak load alone, that those problems will cascade beyond its own system and thus become the

appropriate focus of the Reliability Standards and the ERO. Nonetheless, 25 MW appears to represent a reasonable starting point in terms of determining when an entity's activities are reasonably likely to have a material impact on the reliability of the bulk-power system and taking into account the costs of a compliance registry that is overly inclusive.

Joint Filers are concerned, however, that Appendix B's current proposal in Note 1 at page 4 to require registration of entities that fall below the threshold simply if the RE "believes and can *reasonably demonstrate*" (original emphasis) a material impact on the reliability of the bulk-power system presents too nebulous and subjective a standard. Instead, the RE should be required to demonstrate that an entity that falls below the threshold is likely to have a material impact on reliability of the bulk-power system. Similarly, an entity above the threshold that seeks to be excluded from the registry should be required to demonstrate that its operations are unlikely to have a material impact on the reliability of the bulk-power system.

Joint Filers strongly support the "roll-up" alternative stated in Note 3 on page 4 of Appendix B by which Distribution Providers and Load-serving Entities may be exempted from registration if another entity is registered instead and accepts the reliability responsibility through agreement or other mechanisms. This approach has the potential to yield substantial "economies of scale" in terms of achieving reliability in a cost-effective manner, and Note 3 should be extended to encompass the Generator Owner/Operator (where it is already identified) and Transmission Owner functions as well. Since the potential exemption is addressed in a general note, the exclusions noted as bullet items under the Distribution Provider and Generator Owner/Operator functions should be deleted as being redundant.

The proposed treatment of the Transmission Owner function on page 4 of Appendix B is problematic in two respects. First, the first bullet appears to potentially require an entity with sub-100kV facilities to be included in the compliance registry if the RE so determines. Similarly, the second bullet provides for inclusion of a facility that falls below the 100 kV threshold if the facility “is included on a critical facilities list that is defined by the [RE].” In both instances, there should be specific, substantiated criteria for adopting a lower threshold or developing a critical facilities list, and these matters should be subject to notice and comments to verify that entities falling below the threshold do indeed have a material impact on the reliability of the bulk-power system.

Joint Filers are particularly concerned about the notion in Note 4 on pages 4-5 of Appendix B that individual entities that do not have a material impact on reliability may still be subject to registration and compliance because they are part of a class “that in the aggregate *could* have such an impact” (emphasis added). This concept is rife with potential for abuse. It has the potential to swallow the other criteria as well as override Congress’s specification in FPA § 215(a)(1) that the bulk-power system “does not include facilities used in the local distribution of electric energy.” Accordingly, the RE, NERC, and ultimately the Commission should face an especially heavy burden in terms of making an actual demonstration that a class of entities, the members of which individually have no material impact on reliability, nonetheless has a material impact in the aggregate such that its members should be included in the compliance registry.

Joint Filers are also concerned that NERC did not follow its regular notice and comment procedures in developing Appendix B and that the Commission then did not notice NERC’s filing for comment. Compliance with NERC’s internal procedures is an important matter,

especially in light of FPA § 215(c)(2)(D) (the ERO is to “provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties”). Joint Filers infer that NERC perceived some need to expedite the preparation of Appendix B, but the understandable desire to accommodate the Commission’s schedule should not cause NERC or the Commission to depart from their procedures.

Subject to the above reservations and understandings, Joint Filers generally support the Statement of Compliance Registry Criteria included in NERC’s reply comments.

Respectfully submitted,

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Dated: July 3, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document by email and/or first class mail upon each party identified in the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 3rd day of July, 2006.

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