

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Notice of Proposed Rulemaking
Mandatory Reliability Standards for the
Bulk Power System

Docket No. RM06-16-000

**FURTHER COMMENTS OF TRANSMISSION
ACCESS POLICY STUDY GROUP IN SUPPORT OF
SUPPLEMENTAL FILING OF NORTH AMERICAN
ELECTRIC RELIABILITY CORPORATION**

On February 6, 2007, the North American Electric Reliability Corporation (“NERC”) filed supplemental information in the form of revised compliance registry criteria (“Revised Criteria”). The Transmission Access Policy Study Group (“TAPS”), which previously commented¹ on the October 20, 2006 notice of proposed rulemaking, 117 F.E.R.C. ¶ 61,084 (“NOPR”), submits these further comments to strongly support NERC’s revised compliance registry criteria.

TAPS NOPR Comments (at 7-15) urged the Commission to accept NERC’s June 13, 2006 compliance registry criteria, as proposed in NERC’s June 13, 2006 Reply Comments in Docket No. RR06-1-000, as reasonable general thresholds that limit the applicability of reliability standards to entities that have a material impact on bulk system reliability. TAPS has worked with NERC on its February 6, 2007 Revised Criteria, and strongly supports reliance on them as an improved mechanism to restrict the scope of compliance obligations by small entities, as well as the auditing and enforcement obligations of NERC and its Regional Entities, in a manner that makes sense and is

¹ See January 3, 2007 Comments of the Transmission Access Policy Study Group (“TAPS NOPR Comments”).

consistent with the intended scope of the NERC reliability standards being considered for approval in this rulemaking proceeding.

NERC's revised compliance registry criteria will enhance reliability and make enforcement more efficient and effective by concentrating on entities that have a material impact on bulk system reliability. As was the case with regard to the June 13 registry criteria, the Revised Criteria do not provide a "blanket waiver." *See* TAPS NOPR Comments at 13-14, addressing NOPR at P 51. Rather, they expressly enable NERC and its Regional Entities ("REs") to include entities that fall below the general thresholds where they find that those entities have a material impact on the bulk power system. *See, e.g.,* Revised Criteria Sections III.c.4 and III.d.2, and Note 1.

Indeed, the Revised Criteria expressly obligate NERC and its REs to register entities that have a material impact on bulk system reliability. The criteria also provide a process for adding entities initially missed and for bringing newly-registered entities into compliance with standards through remedial action directives or mitigation plans where necessary. *See* Revised Criteria Summary, Section V, and Note 1. At the same time, the Revised Criteria will help to ensure due process by providing notice that registered entities are subject to compliance obligations and preventing imposition of sanctions or penalties against entities not included in the compliance registry. NERC's Revised Criteria also respect the statutory scheme and protect the integrity of the NERC standards development process by retaining the Bulk Electric System definition, which was the basis on which the standards currently before FERC were approved by stakeholders. *See* TAPS NOPR Comments at 5-6, 21-23.

Finally, the Revised Criteria Section IV's provision for Joint Registry Organizations ("JROs") represents a major improvement over the prior criteria by providing for necessary refinements in the assignment of compliance responsibility. Under Section IV, compliance responsibility may now be divided between a JRO and its members, in contrast to the previous "all or nothing" rule about which TAPS had expressed concerns. *See* TAPS NOPR Comments at 15-16. This important change affords the flexibility needed to accommodate the fact that the division of operational and/or contractual responsibilities between a JRO and its members may not mirror NERC's division of activities among functional categories or among reliability standards. This flexibility is particularly crucial to accommodate the range of structures of municipal joint action agencies (*e.g.*, some are project-based and others are "all requirements"), as well as contractual and state law limitations on the assignment of responsibility and authority as between the JAA and its members.

The potential for administrative confusion is eliminated by Section IV's requirement that joint registrants submit a written list that clearly delineates the assignment of compliance responsibility as between the JRO and its members where they share compliance responsibility for standards applicable to certain functions. *See* Revised Criteria Section IV(c). At the same time, the revised compliance registry criteria ensure that nothing falls through the cracks in cases of "joint registration" by holding the JRO responsible where the assignment of responsibility is not clear, and leaving it to the JRO and its members to address the ultimate assignment of any sanction or penalty in such a case. *Id.* By enabling compliance responsibility to be defined and divided in a manner that matches the complexity of real-world relationships, the revised registry

criteria will facilitate streamlining compliance responsibility where contractually permitted, thus easing the burden on NERC and its regional entities, as well as on smaller entities, and promoting reliability.

CONCLUSION

For the foregoing reasons, TAPS respectfully urges the Commission to accept and approve NERC's revisions to its compliance registry criteria as a reasonable basis for registering, and thereby defining, those responsible for compliance with approved reliability standards.

Respectfully submitted,

/s/ Rebecca J. Baldwin

Robert C. McDiarmid
Cynthia S. Bogorad
Rebecca J. Baldwin

Attorneys for
Transmission Access Policy Study
Group

Law Offices of:
SPIEGEL & MCDIARMID
1333 New Hampshire Avenue, NW
Washington, DC 20036
(202) 879-4000

February 13, 2007