

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability Corporation	Docket Nos. RR06-1-017
Delegation Agreement Between the North American Electric Reliability Corporation and Texas Regional Entity, a division of ERCOT	RR07-1-004
Delegation Agreement Between the North American Electric Reliability Corporation and Midwest Reliability Organization	RR07-2-004
Delegation Agreement Between the North American Electric Reliability Corporation and Northeast Power Coordinating Council: Cross Border Regional Entity, Inc.	RR07-3-005
Delegation Agreement Between the North American Electric Reliability Corporation and ReliabilityFirst Corporation	RR07-4-004
Delegation Agreement Between the North American Electric Reliability Corporation and SERC Reliability Corporation	RR07-5-005
Delegation Agreement Between the North American Electric Reliability Corporation and Southwest Power Pool, Inc.	RR07-6-004
Delegation Agreement Between the North American Electric Reliability Corporation and Western Electricity Coordinating Council	RR07-7-004
Delegation Agreement Between the North American Docket Electric Reliability Corporation and Florida Reliability Coordinating Council.	RR07-8-005

**CONDITIONAL PROTEST OF THE
TRANSMISSION ACCESS POLICY STUDY GROUP**

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.211, and the Commission's July 23, 2008 Combined Notice of Filings #1, the Transmission Access Policy Study Group ("TAPS") conditionally protests the July 21, 2008 compliance filing ("July 21 Compliance Filing") of the North American Electric Reliability Corporation ("NERC"). Specifically, NERC has failed to include in Section 6.5 of its Compliance Monitoring and Enforcement Program ("CMEP") a sentence that, in response to TAPS, NERC had agreed, in filings submitted to the Commission, would be an appropriate addition, and which TAPS understands NERC still believes would be an appropriate addition. TAPS therefore asks that acceptance of NERC's compliance filing be conditioned on the addition of the previously agreed-upon language.

Specifically, in the November 30, 2007 Motion to Intervene and Comments of the Transmission Access Policy Study Group ("Comments") in this docket, TAPS stated that:

TAPS requests that NERC be required to add a sentence to Section 6.5 to clarify that where NERC rejects a mitigation plan previously accepted by a regional entity, the registered entity should *not* be subject to violations and penalties for the period during which the mitigation plan was under consideration by the regional entity and then by NERC. It would be unfair to penalize the registered entity, who in good faith committed to the mitigation plan required by its regional entity, for the regional entity's failure to accurately assess what NERC might demand as a mitigation plan. The situation addressed by the newly added language in Section 6.5 (where NERC rejects a regional entity-accepted mitigation plan) is different and distinct from the situation addressed in P 88 of the April 19 Order (where the registered entity's proposed mitigation plan is never accepted by the regional entity), with equities that warrant protection of the registered entity that adheres to the instruction of its regional entity. A registered entity should not be punished for the regional entity's error in judgment in accepting a mitigation plan that NERC later rejects.

Thus, Section 6.5 should be revised to expressly state that where a regional entity accepts a mitigation plan, the

registered entity will *not* be subject to violation or penalty for the period during which the mitigation plan was pending before the regional entity and NERC so long as the registered entity timely submits a mitigation plan complying with NERC's directives.

November 30, 2007 Comments at 6-7 (emphasis in original).

On December 14, 2007, NERC filed a Motion to Answer and Answer of the North American Electric Reliability Corporation to Comments on Compliance filing in Response to April 19, 2007 Order ("Answer") in which it agreed that TAPS' proposed addition to the language of CMEP Section 6.5 should be made:

NERC agrees that if the Regional Entity has accepted the Registered Entity's Mitigation Plan, but the Mitigation Plan is then rejected by NERC, the Registered Entity should not be subject to violations and penalties during the time the approved Mitigation Plan was under consideration by NERC and for a reasonable period after NERC's decision if the Registered Entity submits a revised Mitigation Plan complying with NERC's directives during that period. Accordingly, the following sentence should be inserted in the second paragraph of §6.5, following the existing third sentence:

The Registered Entity shall not be subject to findings of violations of Reliability Standards or to imposition of penalties or sanctions for such violations with respect to the period of time the Mitigation Plan was under consideration by NERC and for a reasonable period following NERC's disapproval of the Mitigation Plan, so long as the Registered Entity promptly submits a modified Mitigation Plan that addresses the concerns identified by NERC.

December 14, 2007 Answer at 17-18.

The March 21, 2008 Order on NERC's October 30, 2007 Compliance Filing specifically recited TAPS' comments regarding the need to supplement CMEP Section 6.5 to protect registered entities that in good faith relied upon the Regional Entity's

acceptance of a mitigation plan that was subsequently rejected by NERC, and expressly acknowledged NERC's agreement that this change should be made.¹ While the Order accepted NERC's proposed revisions to Section 6.5 "as amended in its answer," regarding several other aspects of Section 6.5, the Commission did not expressly address this non-controversial, agreed-upon addition.²

We understand that because the March 21, 2008 Order failed to expressly direct NERC to include this additional TAPS-requested sentence, NERC failed to include it in its July 21 Compliance Filing even though NERC had expressly agreed in its Answer to do so. TAPS understands that NERC continues to agree with and support the additional underlined language set forth above.

Consistent with NERC's commitment in its Answer, as recited by the Commission in its March 21, 2008 Order, TAPS therefore asks that acceptance of NERC's July 21 Compliance Filing be expressly conditioned on inclusion in the CMEP Section 6.5 of the additional agreed-upon language.

¹ *North American Elec. Reliability Council*, 122 F.E.R.C. ¶ 61,245, PP 66-67, *order on reh'g*, 123 F.E.R.C. 61,276 (2008).

² At P 70 of the March 21, 2008 Order, the Commission did address NERC's revisions to Section 6.5 to give NERC a time allowance for reviewing mitigation plans and required NERC to clarify the Rules of Procedure as they relate to review of mitigation plans by Regional Entities and then by NERC.

CONCLUSION

For the foregoing reasons, the Commission should explicitly condition acceptance of NERC's Compliance Filing on the inclusion in Section 6.5 of the Compliance Monitoring and Enforcement Program of the additional language agreed to by NERC and quoted above.

Respectfully submitted,

/s/ Cynthia S. Bogorad

Cynthia S. Bogorad
Rebecca J. Baldwin

Attorneys for
Transmission Access Policy Study
Group

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

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated on this 11th day of August, 2008.

/s/ Cynthia S. Bogorad

Cynthia S. Bogorad

Law Offices of:
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1333 New Hampshire Avenue, NW
Washington, DC 20036
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