

# STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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## PUBLIC SERVICE COMMISSION

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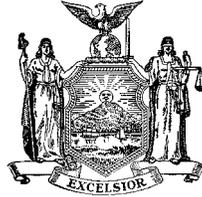
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*General Counsel*

JACLYN A. BRILLING

*Secretary*

May 4, 2006

Honorable Magalie R. Salas, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Room 1-A209  
Washington, D.C. 20426

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

Dear Secretary Salas:

For filing, please find the Notice of Intervention and Comments of the New York State Public Service Commission in the above-entitled proceeding. Should you have any questions, please feel free to contact me at (518) 473-8178.

Very truly yours,

David G. Drexler  
Assistant Counsel

Attachment

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

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

**NOTICE OF INTERVENTION AND COMMENTS  
OF THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NEW YORK**

**BACKGROUND**

On April 4, 2006, the North American Electric Reliability Council and its affiliate, North American Electric Reliability Corporation (jointly NERC) filed an application for certification as the Electric Reliability Organization (ERO) for the United States (Application). As the ERO, NERC would establish and enforce electric reliability standards for the bulk-power system, subject to review by the Federal Energy Regulatory Commission (FERC or Commission).<sup>1</sup>

**NOTICE OF INTERVENTION**

The New York State Public Service Commission (NYPSC) hereby submits its Notice of Intervention and comments pursuant to the

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<sup>1</sup> Electricity Modernization Act of 2005, §1211(a), codified at 16 USC §824.

Notice of Filing issued on April 7, 2006, and Rule 214 of the Commission's Rules of Practice and Procedure. Copies of all correspondence and pleadings should be addressed to:

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### SUMMARY

The NYSPSC generally supports the certification of NERC as the national ERO, given NERC's extensive experience developing and implementing bulk power system reliability standards in North America. However, we ask FERC to reject one aspect of NERC's proposal and clarify two other matters in the application prior to ERO certification. These matters touch upon the criteria for adoption of regional differences in reliability standards, the definition of the bulk electric system, and the ERO's authority for funding of delegated and non-delegated functions.

In sum, the Commission should reject NERC's proposal that additional criteria be demonstrated as a prerequisite for adoption of reliability standards applicable to part of an Interconnection. The Commission has indicated that regional differences in reliability standards are permissible, so long as

they are just, reasonable, not unduly discriminatory or preferential and in the public interest, and NERC should not be permitted to require proponents of such differences to make a showing that they meet NERC-imposed criteria. Rather than require proponents to demonstrate that NERC's additional criteria are met, these criteria should be used as a consideration by NERC and other market participants in determining whether a proposed regional difference meets FERC's criteria for adoption.

We also ask FERC to clarify that the bulk electric system will continue to be defined by reference to the Regional Reliability Organization's (RRO) designation. The RROs are most familiar with the design of local systems and are best equipped to determine what facilities perform bulk system functions. Including a reference to the RRO's definition would avoid overbroadly designating certain facilities as bulk-level.

Finally, we ask FERC to clarify that the ERO will only have authority over functions delegated to them by Congress under the Electricity Modernization Act of 2005. Providing the ERO with oversight of the RROs funding for non-delegated functions under the Electricity Modernization Act of 2005 would go beyond the legislated scope of the ERO, and could interfere with the independent operations of regional entities.

## DISCUSSION

### I. The Commission Should Not Allow NERC To Require Proponents Of Regional Standards To Comply With Newly-Created NERC Criteria

The Application distinguishes between two types of proposals for additional standards in different regions; those applicable on an Interconnection-wide basis, and those applicable to only a portion of an Interconnection.<sup>2</sup> Standards intended to apply to an entire Interconnection would be presumed to be valid unless they are rebutted, while standards intended to apply to a portion of the Interconnection would only be adopted if the proponent demonstrates compliance with various criteria. These criteria include: 1) that the standard was developed in a fair and open process that provides an opportunity for all interested parties to participate; 2) that the standard would not have an adverse impact on commerce that is not necessary for reliability; 3) the standard provides a level of bulk electric system reliability that is adequate to protect public health, safety, welfare, and national security and would not have a significant adverse impact on reliability;

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<sup>2</sup> An Interconnection is defined as "a geographic area in which the operation of Bulk-Power System components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain Reliable Operation of the facilities within their control." 18 C.F.R. §39.1.

and, 4) the standard is based on a justifiable difference between regions or sub-regions.

With this approach, NERC has gone beyond the Federal Power Act amendments and FERC's implementing Order.<sup>3</sup> As the Commission indicated, two categories of regional differences will generally be accepted, provided they are otherwise "just, reasonable, not unduly discriminatory or preferential and in the public interest, as required under the Federal Power Act."<sup>4</sup> The categories include: 1) a regional difference that is more stringent than the continent-wide reliability standard, including a regional difference that addresses matters that the continent-wide reliability standard does not; and 2) a regional reliability standard that is necessitated by a physical difference in the bulk power system.<sup>5</sup>

Instead, NERC proposes to only allow regional differences in a portion of an Interconnection if its proposed criteria are met. Requiring proponents of regional reliability standards to demonstrate consistency with NERC's new criteria as a

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<sup>3</sup> Electricity Modernization Act of 2005, §1211(d)(2); FERC Order 672, at ¶291. It also appears that NERC's proposed criteria regarding adverse impacts on commerce could inappropriately delve into the "effect of a standard on competition," which Congress exclusively reserved for the Commission to determine. Electricity Modernization Act of 2005, §1211(d)(2).

<sup>4</sup> Electricity Modernization Act of 2005, §1211(d)(2).

<sup>5</sup> FERC Order 672, at ¶291.

prerequisite for adoption would be inconsistent with the Federal Power Act amendments and FERC's implementing Order, by going beyond the criteria contained therein. Therefore, the Commission should reject the imposition of such additional mandatory criteria, and indicate that regional differences must be just, reasonable, not unduly discriminatory or preferential and in the public interest, as stated in FERC Order No. 672. Rather than require a proponent to demonstrate that additional criteria are met, NERC and market participants may use those additional criteria in considering whether a proposed regional difference meets the criteria already established by FERC for adoption.

## **II. The Commission Should Clarify That The RRO's Will Define The Bulk Electric System**

The Application indicates that NERC will define the bulk electric system as "the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher."<sup>6</sup> While NERC cites its glossary of terms as the basis for the definition in the Application, a key piece of that definition is missing, namely that the bulk system is defined by

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<sup>6</sup> Application at p. 61.

the Regional Reliability Organization (RRO).<sup>7</sup> Moreover, it is the RROs that have the most familiarity and experience with the design of local systems and are in the best position to determine what facilities perform bulk system functions. Therefore, it is essential that the RROs' designation be considered in defining the bulk power system to which the reliability standards would apply.<sup>8</sup> Otherwise, various facilities could be considered part of the bulk system by NERC, despite their proper designation and treatment as non-bulk facilities. For example, several 115 kV and 138 kV facilities in New York are considered non-bulk facilities by NERC and the Northeast Power Coordinating Council. NERC should be careful not to rearrange designations that are based upon the physical makeup of local systems.

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<sup>7</sup> NERC's Glossary of Terms defines the "Bulk Electric System" accordingly: "[a]s defined by the Regional Reliability Organization, the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load within one transmission source are generally not included in this definition."

<sup>8</sup> The Electricity Modernization Act of 2005, §1211(a), codified at 16 USC §824, limits the ERO's oversight to the bulk-power system.

### **III. The Commission Should Clarify That NERC's ERO Authority Extends Only To Its Delegated Functions**

The Application indicates that "[e]ach regional entity shall submit its annual budget for carrying out its delegated authority functions *as well as all other activities and funding to NERC.*"<sup>9</sup> By requiring regional entities to submit budget and funding information regarding non-delegated activities, the Application implies that NERC will exercise some level of oversight regarding these functions. Providing NERC with this oversight could inappropriately interfere with the independence of regional entities, and go beyond the scope of the ERO's delegated functions. Accordingly, the Commission should clarify that NERC's ERO authority will only extend to matters which have been delegated to them by Congress under the Electricity Modernization Act of 2005.

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<sup>9</sup> Application at p. 73 (emphasis added).

**CONCLUSION**

The Commission should include the modifications and clarifications discussed above as part of any authorization of NERC as the national ERO.

Respectfully submitted,

Dawn Jablonski Ryman  
General Counsel

By: David G. Drexler  
Assistant Counsel  
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of the State of New York  
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(518) 473-8178

Dated: May 4, 2006  
Albany, New York

CERTIFICATE OF SERVICE

I, Leann Ayer, do hereby certify that I will serve on May 4, 2006, the foregoing Notice of Intervention and Comments of the Public Service Commission of the State of New York upon each of the parties of record, indicated on the official service list compiled by the Secretary in this proceeding.

Date: May 4, 2006  
Albany, New York

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Leann Ayer