

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

The North American Electric Reliability  
Council  
The North American Electric Reliability  
Corporation

Docket No. RR06-1-004

**COMMENTS OF THE TRANSMISSION ACCESS  
POLICY STUDY GROUP**

Pursuant to the Commission's December 4, 2006 Notice of Filings, the Transmission Access Policy Study Group ("TAPS") comments on the November 29, 2006 filing by the North American Electric Reliability Council and the North American Electric Reliability Corporation (collectively "NERC") of a Compliance Monitoring and Enforcement Program ("CMEP").<sup>1</sup> TAPS, an informal association of transmission dependent utilities in more than thirty states,<sup>2</sup> generally supports the comments submitted today by the American Public Power Association, which identify several fundamental gaps in the CMEP. We submit these comments to highlight limited additional concerns.

**COMMENTS**

**I. REGISTRATION PROCEDURES SHOULD PROVIDE  
ADEQUATE TIME TO OBJECT AND NOTICE OF SUCH  
OPPORTUNITY**

TAPS supports CMEP Section 2.0, which provides that the Compliance Enforcement Authority, when it registers organizations responsible for complying with NERC standards (in accordance with Section 500 of NERC's Rules of Procedure

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<sup>1</sup> TAPS is not filing comments on the various delegation agreements.

<sup>2</sup> TAPS has previously intervened in the underlying proceeding. See TAPS May 4, 2006 Motion to Intervene and Limited Protest; see also *North American Elec. Reliability Corp.*, 116 F.E.R.C. ¶ 61,062 (2006), Appendix A ("ERO Certification Order), *on reh'g*, 117 F.E.R.C. ¶ 61,126 (2006).

(“ROP”)), to “inform each Registered Entity at the time of registration of the Reliability Standards that are applicable to the Registered Entity.” However, TAPS is concerned that given the very short time frame provided in Section 500.1.3.2 of NERC’s ROP, more must be done to make sure that Registered Entities know when and how to challenge registration for compliance responsibility for particular standards.

Specifically, Section 500.1.3.2 of NERC’s Rules of Procedure allows only 21 days to object to registration. Particularly given the Mandatory Reliability Standards NOPR’s proposal to extend applicability of standards to potentially several thousand small systems (by rejecting NERC’s June 13, 2006 compliance registry criteria in favor of a standard-by-standard approach, and by “interpreting” NERC’s bulk electric system definition inconsistently with its terms),<sup>3</sup> this interval is too short. The entities most likely to be aggrieved by erroneous registration—very small entities that have no material impact on reliability and which have not previously been involved in the development of or compliance with NERC reliability standards—are also most likely to be unaware that NERC’s Rules of Procedure call for such a swift challenge. Such prompt action may be particularly difficult for small municipal systems, whose governing bodies may not even meet more than once per month.

Ideally, ROP § 500.1.3.2 would be modified to provide a more reasonable period to challenge registrations. Although TAPS did not protest this provision at the time it was initially proposed by NERC, the full extent of the Mandatory Reliability Standards NOPR’s proposed reach was not yet known. Given the close relationship of ROP

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<sup>3</sup> See TAPS January 3, 2007 Comments in Docket No. RM06-16-000 at 7-15, 18-25, addressing Mandatory Reliability Standards for the Bulk-Power System, 71 Fed. Reg. 64,770 (proposed Nov. 3, 2006), IV F.E.R.C. Stat. & Regs. ¶ 32,608, PP 51, 68-70 (to be codified at 18 C.F.R. pt. 40), *comment period extended*, 71 Fed. Reg. 70,695 (proposed Dec. 6, 2006) (“Mandatory Reliability Standards NOPR”).

§ 500.1.3.2 to CMEP Section 2.0 (which is under review at this time), and the expanded reach of the standards as proposed in the Mandatory Reliability Standards NOPR, it would be appropriate to modify the challenge period to 30 or 45 days. Otherwise, given the heavy consequences of registration, the rule would not meet FPA Section 215(f)'s (16 U.S.C. § 824o(f)) requirement that rules be just, reasonable, not unduly discriminatory and in the public interest.

Particularly if the Commission determines that ROP § 500.1.3.2 is no longer subject to modification at this time, it is essential that the Commission modify CMEP Section 2.0 to minimize the potential that small entities may lose their rights to challenge registration for compliance with a specific standard. Section 2.0 should be modified to require that at the time of registration, in addition to informing the Registered Entity of each standard that is to apply to them, the Compliance Enforcement Authority must (1) inform such entity that it has 21 days to challenge the registration, and (2) explain with specificity how such challenge may be lodged (*i.e.*, the name and address of the person to whom the challenge should be submitted). In addition, Section 2.0 should make clear that the Compliance Enforcement Authority should repeat this notice and explanation process whenever the registry is modified to add to the particular standards with which an entity is responsible for complying. Expanding CMEP's registration requirements to provide more explicit and effective notice is essential to ensure that the small entities most likely to be incorrectly registered have a viable means to contest such registration.

**II. CMEP PROVISIONS SHOULD CONSISTENTLY PERMIT REGISTERED ENTITIES TO SUBMIT A MITIGATION PLAN WHILE CONTESTING THE FINDING OF VIOLATION AND/OR PENALTY**

The public interest is advanced by prompt mitigation of alleged violations to reliability standards. Early submission and acceptance of a mitigation plan would also benefit the Registered Entity by limiting its exposure to findings of further violations and penalties while the accepted mitigation plan is being implemented. *See* CMEP Section 6.3. For that reason, TAPS supports CMEP Section 6.4, which makes explicit that a Registered Entity can submit a mitigation plan, even though it is contesting the finding of a violation and/or the penalty, without such submission being treated as an admission. Section 6.2 also appears to accommodate early submission of a mitigation plan.

Unfortunately, CMEP Section 5.1, which details the components of the Notice of Alleged Violation, fails to identify this course as a possible option available to the Registered Entity. Instead, the identified options suggest that prompt submission of a mitigation plan is only an option if the Registered Entity agrees to the Alleged Violation. *See* CMEP Section 5.1(v)(3).

The Commission should require NERC to revise Section 5.1(v) to expressly include, as an option available to a Registered Entity, submission of a mitigation plan while contesting the violation (and/or penalty). Such modification would eliminate internal inconsistency and confusion, as well as promote prompt submission, acceptance, and implementation of mitigation plans.

### III. CMEP PROVISIONS SHOULD REQUIRE REPORTING AND PUBLIC POSTING OF ALL SETTLEMENTS

The first paragraph of CMEP Section 5.4 provides that settlements may occur at any time after the notice of an Alleged Violation. However, the final paragraph, which deals with public posting of settlements and reporting them to this Commission, confusingly refers only to a settlement of a Violation. In accordance with the directive in Order 672<sup>4</sup> (at P 598) requiring that *all* settlements be reported and made public, NERC should be required to revise the final paragraph of CMEP 5.4 to refer to settlements of a Violation or Alleged Violation.

Respectfully submitted,

/s/ Cynthia S. Bogorad

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<sup>4</sup> Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards, Order No. 672, 71 Fed. Reg. 8,662 (Feb. 17, 2006), III F.E.R.C. Stat. & Regs. ¶ 31,204 (to be codified at 18 C.F.R. pt. 39), *corrected*, 71 Fed. Reg. 11,505 (Mar. 8, 2006), *on reh'g*, Order No. 672-A, 71 Fed. Reg. 19,814 (Apr. 18, 2006), III F.E.R.C. Stat. & Regs. ¶ 31,212.

CERTIFICATE OF SERVICE

I hereby certify that I have on this 10th day of January, 2007, caused the foregoing document to be sent by first-class mail or sent by electronic mail to all parties on the list compiled by the Secretary of the Commission in this proceeding.

*/s/ Cynthia S. Bogorad*

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