

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability  
Corporation

Docket No. RR06-1-005

**CONDITIONAL PROTEST OF THE  
TRANSMISSION ACCESS POLICY STUDY GROUP  
AND REQUEST THAT ACCEPTANCE OF NERC'S  
COMPLIANCE FILING BE CONDITIONED ON  
ACCEPTANCE OF AGREED-UPON ADDITIONAL  
LANGUAGE**

Pursuant to Rules 211 and 212 of the Commission's Rules of Practice and Procedure and the Commission's January 16, 2007 Combined Notice of Filings, the Transmission Access Policy Study Group ("TAPS")<sup>1</sup> conditionally protests the January 12, 2007 Compliance Filing of the North American Electric Reliability Corporation in Response to October 30, 2006 Order. Although NERC's January 12 Compliance Filing's proposed modifications to Section 1302 of its Rules of Procedure ("ROP") do not fully comply with the Commission's October 30 Order, 117 F.E.R.C. ¶ 61,126, PP 86-87 (2006), this protest is conditional because TAPS can support NERC's proposed modifications to ROP § 1302 *if* they are augmented by the additional language proposed herein and agreed to by NERC.

Specifically, TAPS has worked closely with NERC to develop language to address the concerns that gave rise to TAPS' earlier protests and NERC's compliance obligation. The additional language, in combination with the language NERC proposed, achieves the balanced-decisionmaking objectives of the October 30 Order and FPA

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<sup>1</sup> TAPS was granted intervention in the underlying proceeding in the July 20, 2006 *Order Certifying North American Electric Reliability Organization and Ordering Compliance Filing*, 116 F.E.R.C. ¶ 61,062, Appendix A (2006) ("Certification Order").

Section 215 in a pragmatic manner that ensures NERC's ability to get its important mission accomplished, while providing for accountability, transparency, and the ability to address balance-related issues as they arise. TAPS is authorized to state that NERC agrees with and supports the additional underlined language set forth below, and asks that acceptance of NERC's January 12 Compliance Filing be conditioned on acceptance of the additional agreed-upon language.

With the agreed-upon (underlined) addition, revised ROP § 1302 would read, in full:

Each committee shall have a defined membership composition that is explained in its charter. Committee membership may be unique to each committee, and shall provide for balanced decision-making by providing for representatives from each sector or, where sector representation will not bring together the necessary diversity of opinions, technical knowledge and experience in a particular subject area, by bringing together a wide diversity of opinions from industry experts with outstanding technical knowledge and experience in a particular subject area. Committee membership shall also provide the opportunity for an equitable number of members from the United States and Canada, based approximately on proportionate net energy for load. All committees and other subgroups (except for those organized on other than a sector basis because sector representation will not bring together the necessary diversity of opinions, technical knowledge and expertise in a particular subject area) must ensure that no two stakeholder sectors are able to control the vote on any matter, and no single sector is able to defeat a matter. With regard to committees and subgroups pertaining to development of, interpretation of, or compliance with standards, NERC shall provide a reasonable opportunity for membership from sectors desiring to participate. Committees and subgroups organized on other than a sector basis shall be reported to the NERC board and the Member Representatives Committee, along with the reasons for constituting the committee or subgroup in the manner chosen. In such cases and subject to reasonable restrictions necessary to accomplish the mission of such committee or

subgroup, NERC shall provide a reasonable opportunity for additional participation, as members or official observers, for sectors not represented on the committee or subgroup.

**I. CONDITIONAL PROTEST AND REQUEST THAT NERC'S COMPLIANCE FILING BE CONDITIONED ON ACCEPTANCE OF ADDITIONAL AGREED-UPON LANGUAGE**

In PP 86-87 of the October 30 Order, quoted on page 2 of NERC's Compliance Filing, the Commission agreed that TAPS' proposed modifications to the first and last sentences of ROP § 1302 (quoted in PP 84-85 of the Order) "more clearly reflects the Commission's directives" in its earlier orders, and directed NERC to make the modifications. NERC's Compliance Filing adopted TAPS' modifications to the first sentence of ROP 1302 (quoted in P 84). However, NERC did not adopt the language proposed by TAPS for the last sentence in ROP § 1302 (quoted in P 85)<sup>2</sup> and instead proposed modifications that created an exception from Order 672's directive that "no two stakeholder sectors are able to control the vote on any matter, and no single sector is able to defeat a matter."<sup>3</sup>

Committees that are established on a sector basis All committees and other subgroups (except for those organized on other than a sector basis because sector representation will not bring together the necessary diversity of opinions, technical knowledge and expertise in a particular subject area) must ensure that no two stakeholder sectors are able to control the vote on any matter, and no single sector is able to defeat a matter.

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<sup>2</sup> TAPS proposed: "All committees and other sub-ordinate organizational structures that are established on a sector basis must ensure that no two stakeholder sectors are able to control the vote on any matter, and no single sector is able to defeat a matter."

<sup>3</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, P 153 (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.

NERC Compliance Filing at 3 and Attachment 2.<sup>4</sup> NERC explained that “[i]t is not always feasible to organize technical committees and subgroups on a sector basis” and provided several examples where sector voting could “render [committee or subcommittees] ineffective.” *Id.* Among other things, it noted the need for Reliability Standards Drafting Teams with “the necessary technical expertise and work process skills to develop standards.” *Id.* at 5.

TAPS recognized that NERC’s Compliance Filing failed to adopt TAPS’ language and was particularly concerned about NERC’s reference to Reliability Standards Drafting Teams as an expertise-justified departure from sector voting. At the same time, TAPS recognized the need for NERC committees and subgroups to be effective, so that NERC can achieve its important reliability mission.

TAPS therefore worked with NERC to develop a practical approach that would meet NERC’s needs to create efficient and effective committees and subgroups, while providing transparency and accountability for departures from sector voting, the ability to address balance issues if they arise, and enhanced opportunities for broader participation and openness. TAPS requests that acceptance of NERC’s Compliance Filing be conditioned on adding the resulting additional language, to which NERC has agreed, to the end of ROP § 1302, as amended by NERC’s Compliance Filing:

With regard to committees and subgroups pertaining to development of, interpretation of, or compliance with standards, NERC shall provide a reasonable opportunity for membership from sectors desiring to participate. Committees and subgroups organized on other than a sector basis shall be reported to the NERC board and the Member Representatives Committee, along with the reasons for constituting the committee or subgroup in the manner chosen. In such cases and subject to reasonable restrictions

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<sup>4</sup> Order 672 at P 153.

necessary to accomplish the mission of such committee or subgroup, NERC shall provide a reasonable opportunity for additional participation, as members or official observers, for sectors not represented on the committee or subgroup.

With the proposed additional language, NERC's Compliance Filing would achieve the objectives of the October 30 Order, the underlying Certification Order, and Order 672.

Specifically, the first sentence of the additional language ("With regard to committees and subgroups pertaining to development of, interpretation of, or compliance with standards, NERC shall provide a reasonable opportunity for membership from sectors desiring to participate.") is designed to maximize opportunities for sector-based decisionmaking on committees and subgroups dealing with the all-crucial issues pertaining to the developing, interpreting, and complying with standards, while enabling NERC to get its job done in a timely manner. Especially given the expansive view of applicability of standards proposed by the Reliability NOPR,<sup>5</sup> it is essential that reasonable opportunities be provided for participation of affected sectors in standards-related committees and subgroups. For example, small utilities have expertise critical to assessing the extent to which a standard should apply to small utilities and how such standard should be drafted. This first additional sentence provides for reasonable opportunities for sectors desiring to participate to do so.

The second additional sentence ("Committees and subgroups organized on other than a sector basis shall be reported to the NERC board and the Member Representatives Committee, along with the reasons for constituting the committee or subgroup in the

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<sup>5</sup> See, e.g., *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 49-52, 60-69 (to be codified at 18 C.F.R. pt. 40), *comment period extended*, 71 Fed. Reg. 70,695 (proposed Dec. 6, 2006).

manner chosen.”) provides a reporting requirement that assures accountability and transparency for departures from sector-based committees and subgroups, and a mechanism to address concerns if issues arise. This sentence is consistent with the Certification Order’s expectation that board involvement in structuring committees would ensure balance. Certification Order at P 104. Consistent with Order 672, this sentence also ensures that departures from the “no two sectors/no one sector” requirements are limited to where “the ERO adequately explains why it cannot apply these principles.” Order 672 at P 153. It facilitates prompt resolution of balance-related issues by providing the Members Representatives Committee an opportunity to voice concerns if there are questions as to whether sector representation will not bring together the necessary diversity of opinions, technical knowledge and expertise in a particular subject area, and/or whether a proposed committee or subgroup will do so.

The third additional sentence (“In such cases and subject to reasonable restrictions necessary to accomplish the mission of such committee or subgroup, NERC shall provide a reasonable opportunity for additional participation, as members or official observers, for sectors not represented on the committee or subgroup.”) affords NERC the flexibility to populate non-sector-based committees and subgroups in a manner that facilitates achievement of their missions, while affording opportunities for participation of other sectors consistent with achieving those objectives. Particularly given the Commission’s concern for prompt NERC actions in response to Commission directives,<sup>6</sup> this sentence provides needed flexibility to NERC, while providing opportunities for participation that are reasonable given the objectives of such committees and subgroups (that have been

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<sup>6</sup> *North American Electric Reliability Corp.*, 118 F.E.R.C. ¶ 61,030, PP 19-20, 26 (2007).

reported to the board and Member Representatives Committee, pursuant to the second sentence).

Thus, if supplemented by the three agreed-to additional sentences, NERC's proposed modifications to ROP § 1302 would meet the October 30 Order's objectives of providing for balanced decision-making, while enabling NERC to get its important job done.

### CONCLUSION

TAPS therefore urges the Commission to condition acceptance of NERC's Compliance Filing on the inclusion in ROP § 1302 of the three additional sentences agreed to by NERC and quoted above.

Respectfully submitted,

*/s/ Cynthia S. Bogorad*

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February 2, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have on this 2<sup>nd</sup> day of February, 2007, caused the foregoing document to be sent by first-class or 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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