UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability Corporation	))	Docket No. RM06-16-003

MOTION TO INTERVENE OUT OF TIME AND ANSWER/COMMENTS OF THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION, THE AMERICAN PUBLIC POWER ASSOCIATION, AND THE TRANSMISSION ACCESS POLICY STUDY GROUP

Pursuant to Rules 213 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.213 and 385.214 (2006), the National Rural Electric Cooperative Association ("NRECA"), the American Public Power Association ("APPA"), and the Transmission Access Policy Study Group ("TAPS") (together, "Joint Movants") individually and jointly move to intervene out of time in the above-caption docket and to submit their answer/comments. Good cause exists for allowing Joint Movants to submit their motion to intervene and answer/comments out of time, as explained below.

I.

INTRODUCTION AND SUMMARY

Joint Movants move to intervene in this docket at this time and submit their answer/comments to respond to the Motion to Intervene and Comments of FirstEnergy Companies ("FirstEnergy") dated June 14, 2007. FirstEnergy's comments purport to address the compliance filing that the North American Electric Reliability Corporation ("NERC") submitted on March 15, 2007, in response to paragraph 107 of Order No. 693, *Mandatory Reliability Standards for the Bulk Power System,* 118 FERC ¶ 61,218 (2007).

NERC's compliance filing presented a rather routine implementation of P 107, which directed NERC, in its capacity as the Electric Reliability Organization ("ERO"), to

file procedures to authorize one entity, such as a generation and/or transmission cooperative, a joint-action agency, or similar organization, "to accept compliance responsibility" as a Joint Registration Organization ("JRO") on behalf of another entity. In P 107, the Commission noted that the ERO had described its approach in its earlier filing, found that the ERO's approach was reasonable, and directed the ERO to file its procedures to allow the JRO to accept responsibility for compliance. Because the compliance filing was so routine and utilized language that the Commission had already approved when it addressed NERC's "Statement of Compliance Registry Criteria (Revision 3)," Joint Movants saw no need to intervene or submit comments of their own.

FirstEnergy's filing seeks to take a very different approach. FirstEnergy does not address whether NERC has complied with P 107, but instead asks the Commission to "clarify" that the JRO (which FirstEnergy mistakenly refers to as the "JAA") can be assigned compliance responsibility only for "performance" but not for "legal accountability," which accountability must be retained by the original (unregistered) entity, and to direct the ERO to submit amendments consistent with the requested clarification. As such, FirstEnergy's request for clarification represents a belated, collateral, and impermissible attack on Order No. 693 itself, and should not be allowed for those reasons alone. Moreover, splitting "compliance responsibility" into "performance" and "legal accountability" is a poor approach that would undermine the JRO mechanism and reliability in general.

Joint Movants thus move to intervene out of time so that they can submit this answer and comments demonstrating the defects in FirstEnergy's filing.

II.

MOTION TO INTERVENE OUT OF TIME

NRECA is the not-for-profit national service organization representing 930 not-for-profit, member-owned rural electric cooperatives. Most of these cooperatives are distribution cooperatives that provide retail electric service to more than 40 million consumer-owners in 47 states. NRECA members also include 65 generation and transmission cooperatives that supply wholesale power to their distribution cooperative owner-members. Virtually all NRECA members, large and small, directly or indirectly depend on the nation's bulk-power transmission system to obtain wholesale power supplies to serve their own loads. NRECA has long participated actively in reliability-related industry activities on behalf of the nation's cooperatively owned electric utilities.

APPA is the national service organization representing the interests of more than 2,000 not-for-profit, publicly owned electric utilities throughout the United States. Public power systems own about eight percent of the nation's high-voltage transmission lines, although many of these lines are configured to deliver energy to their own load centers, and not to provide transmission service in interstate commerce. Virtually all APPA members, large and small, directly or indirectly depend on the nation's bulk-power transmission system to obtain wholesale power supplies to serve their own loads. APPA has long participated actively in reliability-related industry activities on behalf of the nation's publicly owned electric utilities.

TAPS is an informal association of transmission-dependent utilities in more than 30 states, promoting open and non-discriminatory transmission access.[1] As entities entirely or predominantly dependent on transmission facilities owned and controlled by others, TAPS members have long recognized the need for mandatory and enforceable reliability standards that ensure grid reliability. Because TAPS members include municipal joint action agencies, as well as individual systems, TAPS has been involved in the development of the JRO registration provisions. TAPS has long participated actively in reliability-related industry activities on behalf of its members.

Joint Movants have a vital interest in reliability generally and in the JRO procedures specifically. Joint Movants have numerous members that may potentially benefit from the JRO procedures. In Joint Movants' view, many of these entities have no material impact on the reliability of the bulk-power system and so should not be subject to the Reliability Standards in any event, but a substantial number of their members may or will still be found to be subject to the standards. For these smaller, primarily distribution entities, the JRO procedures are a sound and very much needed, even vital, mechanism to ensure accountability and compliance with the Reliability Standards in an effective and efficient manner. In contrast, ineffective and confusing JRO procedures, such as those suggested by FirstEnergy, will, for reasons explained *infra,* actually serve to undermine reliability by obscuring the lines of accountability and forcing the ERO and

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[1] TAPS is chaired by Roy Thilly, CEO of Wisconsin Public Power Inc. ("WPPI"). Current members of the TAPS Executive Committee include, in addition to WPPI, representatives of: American Municipal Power-Ohio; Blue Ridge Power Agency; Clarksdale, Mississippi; ElectriCities of North Carolina, Inc.; Florida Municipal Power Agency; Geneva, Illinois; Illinois Municipal Electric Agency; Indiana Municipal Power Agency; Madison Gas & Electric Co.; Missouri River Energy Services; Municipal Energy Agency of Nebraska; Northern California Power Agency; Oklahoma Municipal Power Authority; Southern Minnesota Municipal Power Agency; and Vermont Public Power Supply Authority.

the Regional Entities ("REs") potentially to deal with perhaps thousands of smaller entities, thereby diverting attention from matters and other entities that have a much more material impact on reliability. Additionally, sound JRO procedures, as proposed by NERC in its compliance filing and previously approved by the Commission in the NERC "Statement of Compliance Registry Criteria (Revision 3)," are a sound and effective means to meet the requirements imposed by the Regulatory Flexibility Act ("RFA").

Joint Movants submit that ample good cause exists under Rule 214(d) to allow their late intervention. Joint Movants are filing very shortly after the normal filing deadline, their comments are limited to responding to unanticipated (and, in their view, entirely impermissible and unwarranted) comments of a single party. The disruption to this proceeding will be minimal (indeed, acceptance of Joint Movants' arguments will avoid later disruption). Their interests as trade associations deeply involved in the development of the JRO provisions set out in Revision 3 to NERC's Compliance Registry Criteria are not adequately represented by other parties. Their out of time motion to intervene at this early juncture imposes no prejudice or additional burdens upon existing parties.

III.

COMMUNICATIONS

Joint Movants request that service in this proceeding be made upon, and communications directed to, each of the following:

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Leave is respectfully requested to allow the designation of an additional individual to receive communications.

IV.

ANSWER/COMMENTS

As the Commission knows, Joint Movants have been vitally concerned since the enactment of section 215 of the Federal Power Act that the Reliability Standards would impose unreasonable and undesirable burdens on a large number of small entities,

including members of Joint Movants, and that forcing the ERO and the Commission to monitor compliance by such entities, which typically have no material impact on the reliability of the bulk-power system, would detract from reliability generally and also raise severe problems of compliance with the requirements of the RFA. Joint Movants, together with NERC and others, have thus diligently pursued the JRO option as one of several means for achieving compliance with the reliability requirements of § 215 in an efficient and effective manner and in compliance with the RFA. The JRO option was laid out in Section IV of Revision 3 to the Statement of Compliance Registry Criteria that NERC filed with the Commission in Docket No. RM06-16-000 on February 6, 2007. Joint Movants each filed subsequent comments supporting Revision 3, including Section IV thereof. Joint Movants were satisfied with the treatment of this matter at P 107 of in Order No. 693 because it struck an appropriate balance under the circumstances and reflected the consensus that was previously attained among NRECA, APPA, TAPS, EEI, NERC, and the eight Regional Entities, essentially accepting the provisions of Section IV. Joint Movants were also satisfied that NERC's compliance filing in the instant docket complied with Order 693 and was consistent with Section IV of Revision 3 to the Statement of Compliance Registry Criteria.

FirstEnergy has presented a different view in its comments on the NERC compliance filing. While FirstEnergy is obviously entitled to represent its own interests and present its own views as it sees fit, in this case its comments are both inappropriate and fundamentally misguided. In particular, what FirstEnergy seeks is not to comment on whether NERC's filing complies with Order No. 693, but instead to "clarify," meaning to alter substantially, what the Commission previously considered and addressed in P 107

of Order No. 693. FirstEnergy's filing is thus a belated, collateral, and impermissible attack on Order No. 693 rather than an appropriate comment on NERC's compliance filing. Moreover, even if FirstEnergy's comments were otherwise permissible at this time, they still embody an unsound approach that would undermine the framework that NERC and the Commission have already adopted. FirstEnergy's approach must thus be rejected.

These matters are addressed further below.

A. FirstEnergy's Comments are a Belated, Collateral, and Impermissible Attack on Order No. 693

The instant docket involves a compliance filing. The relevant issue for such a filing is whether the filing entity has appropriately complied with the Commission's earlier order. Other matters, such as whether the earlier order was appropriate or should be clarified or reheard, are not properly considered in a compliance proceeding. *See, e.g., East Tennessee Natural Gas Company*, 108 FERC ¶ 61,135 (2004) at P 9 ("The only issue in a compliance filing proceeding is whether the company has complied with the directive of the Commission's prior order.").

FirstEnergy makes no pretense of confining its comments to compliance matters. To the contrary, at pages 2, 8, and 9, FirstEnergy explicitly asks the Commission to "clarify" that "legal accountability" for compliance with the Reliability Standards cannot be transferred and to direct the ERO to submit a filing "that implements this clarification."

The requested clarification finds no support in Order No. 693 itself. Paragraph 107 instead addressed "compliance responsibility" in its totality and added that "there should not be overlaps in responsibility nor should there be any gaps." Nothing in P 107

or NERC's earlier filing gives any hint or suggestion that "compliance responsibility" should be bifurcated into "performance" and "legal accountability," with the JRO permitted to assume only the former but not the latter. Indeed, if one entity were responsible for "performance" and another entity were responsible for "accountability," there could be precisely the sort of potential overlaps and gaps in the role of the two entities that the Commission was seeking to avoid, as explained *infra*.

For present purposes, however, it is sufficient to note that FirstEnergy's statements at pages 2, 8, and 9 that its comments seek a "clarification" means that its request is one that could be raised, if at all, only in response to Order No. 693 itself, not in response to a subsequent compliance filing. FirstEnergy's request was simply not a timely-filed request for rehearing and/or clarification.[2] It thus amounts instead to a belated or otherwise collateral, and in any event impermissible, attack on Order No. 693, which was issued on March 16, 2007.

FirstEnergy's position must thus be rejected for this reason alone.

B. Even if FirstEnergy's Criticisms Were Permissible, They are Still Unsound

Even assuming *arguendo* that FirstEnergy's criticisms could be permissibly presented and considered at this time, they are still unsound and should be rejected on the merits.

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[2] Indeed, what FirstEnergy seeks amounts to rehearing and not clarification. Paragraph 107, the NERC filing that it addresses, and NERC's prior iterations of its compliance registry criteria all addressed registration, and only entities that are registered are responsible for compliance and accountable for penalties. The underlying principle is that one entity may **register** for another, and the entity that registers is responsible for performance and accountable for nonperformance, in that it is the entity that is subject to penalties and other sanctions. The change that FirstEnergy seeks -- having the original entity remain legally accountable -- is a major deviation from what Order No. 693 approved and directed, and cannot fairly be characterized as a request for mere "clarification."

What FirstEnergy seeks is a situation where the JRO is responsible for the "performance" of the compliance, but the original entity (be it a user, operator, or owner of whatever size) remains responsible for "legal accountability." Such a bifurcated approach to responsibility has ample potential to undermine efficiency, create uncertainty, and increase costs.

FirstEnergy's basic notion is to split performance and accountability, with one entity (the JRO) being ostensibly responsible for performance, but the original entity continuing to bear responsibility for accountability, which presumably translates into penalties and other sanctions in the event of the JRO's non-performance. Under FirstEnergy's approach, the original entity would need to exercise constant oversight over the JRO, because it retains "legal accountability," even though the original and typically smaller entity is ill-equipped to do so, thus precluding compliance with the objectives of the RFA. Indeed, under FirstEnergy's approach, it might well be necessary for the original entity to register as well, even if the JRO and the entity for which it is assuming responsibilities would otherwise agree to have only the JRO register. Furthermore, the ERO and the RE would need to investigate the relationship and relative roles of the JRO and the original entity in order to determine relative culpability and what the appropriate penalty or other sanction should be.[3] Additionally, a non-monetary sanction directed to ensuring compliance would likely be directed to the JRO in any event, further obscuring whatever distinction FirstEnergy seeks to make. FirstEnergy's approach thus presents

[3] Under Section 507.1 of NERC's proposed Rules of Procedure, entitled "Provisions Relating to Joint Registrations and Joint Registration Organizations," the JRO accepts "all compliance responsibility," including reporting requirements, for all of the reliability standards for which the JRO has agreed to assume such responsibility. Hence, the ERO and the RE need not delve into these matters, but can look to the JRO entity.

precisely the sorts of overlaps and gaps that P 107 of Order No. 693 said were to be avoided.

In contrast, the approach taken by the Commission in Order No. 693 and by NERC in its compliance filing allows for agreements that concentrate performance and accountability in a single entity, with the result being that the entity faces direct responsibility for any shortcomings in its performance. This approach is logical and clear, places incentives and disincentives where they will do the most good, reflects the sound objectives of the "cheapest cost avoider" principle to achieving compliance, and can be administered simply and very feasibly. For example, where a JRO agrees with its affected members to take responsibility for compliance with specified reliability standards or requirements, the ERO and the RE would need to look only to the JRO and need not devote their resources to monitoring what could be many hundreds of smaller entities. Having the ERO and RE devote resources to these smaller entities would be disruptive to the smaller entities, most of which will have relatively minimal impact on bulk-power system reliability in the first place, and will also cause the ERO and RE to divert resources from other matters where reliability oversight is most needed. Moreover, having the ERO and the RE look only to the JRO will minimize the regulatory burden on the smaller entities, furthering compliance with the requirements of the RFA.

In short, NERC and the Commission have pursued a sound approach, whereas FirstEnergy's proposal would negate the benefits that NERC and the Commission have properly sought to achieve.

V.

CONCLUSION

WHEREFORE, Joint Movants request the Commission to: (1) grant their motion to intervene out-of-time in this proceeding, with all rights appurtenant to that status; and (2) reject FirstEnergy's requested "clarification" that the JRO should be allowed to accept responsibility only for performance of the Reliability Standards and not for accountability as being (a) a belated, collateral, and thus impermissible attack on Order No. 693, (b) unsound both conceptually and pragmatically, and (c) contrary to the requirements of the RFA.

Respectfully submitted,

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June 19, 2007

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010, I hereby certify that I have this day served the foregoing document by electronic means and upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 19th day of June, 2007.

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