

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability
Corporation

Docket No. RR15-4-000

**JOINT RESPONSE OF AMERICAN PUBLIC
POWER ASSOCIATION, NATIONAL RURAL
ELECTRIC COOPERATIVE ASSOCIATION, AND
TRANSMISSION ACCESS POLICY STUDY GROUP
TO CERTAIN COMMENTS**

On December 11, 2014, the North American Electric Reliability Corporation (“NERC”) filed its Petition for Approval of Risk-Based Registration Initiative Rules of Procedure Revisions (“Petition”).¹ On January 12, 2015, the American Public Power Association (“APPA”), National Rural Electric Cooperative Association (“NRECA”), and Transmission Access Policy Study Group (“TAPS”) (collectively, “Joint Commenters”) filed an intervention and comments in strong support of NERC’s important Risk-Based Registration (“RBR”) initiative.² Reflecting NERC’s development of the RBR proposals through an inclusive process, with multiple avenues for industry input, the overwhelming majority of interventions filed supported the Petition or raised no concerns. However, two commenters raised issues: (1) PSEG Companies;³ and (2) Cogeneration Association of California and the Energy Producers and Users Coalition.⁴ Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R.

¹ eLibrary No. 20141211-5214.

² eLibrary No. 20150112-5155 (“Joint Comments”).

³ Comments of the PSEG Companies, Jan. 12, 2015, eLibrary No. 20150112-5195 (“PSEG Comments”).

⁴ Motion to Intervene and Protest of the Cogeneration Association of California and the Energy Producers and Users Coalition, Jan. 12, 2015, eLibrary No. 20150112-5224 (“QF Parties Comments”).

§ 385.213, Joint Commenters respond to the PSEG and QF Parties Comments.⁵ As demonstrated by our Joint Comments and this Response, the Commission should promptly approve NERC's Petition without change.

I. THE COMMISSION SHOULD SUPPORT, RATHER THAN HAMSTRING, NERC'S EFFORTS TO ALIGN ITS COMPLIANCE REGISTRY WITH RISK

As described in the Joint Comments, APPA, NRECA, and TAPS strongly support NERC's RBR Petition, which is a key step towards achieving NERC's objective of moving to a more risk-informed enterprise. Having adopted a more risk-informed approach to reliability standards and to compliance and enforcement, NERC now seeks to apply a risk-informed approach to registration to better focus resources where they will yield the maximum benefit to Bulk Electric System ("BES") reliability.

The PSEG Comments largely boil down to a complaint that NERC's Petition circumvents the standards development process ("SDP") to which NERC Standards and the NERC Glossary of Terms Used in NERC Reliability Standards⁶ (but not the NERC Rules of Procedure) are subject. For example, PSEG objects to NERC's proposal to eliminate registrations for functions that are largely commercial in nature—Purchasing-Selling Entity ("PSE"), Interchange Authority ("IA"), and Load-Serving Entity ("LSE")—because references to those functions have not also been eliminated from the

⁵ To the extent leave is required to file this response, Joint Commenters request such leave. While the Commission's rules generally prohibit answers to protests or answers to answers (18 C.F.R. § 385.213(a)(2)), the Commission will waive this rule when the otherwise impermissible answer provides information that assists the Commission in its decision-making process. *See, e.g., Indicated Load-Serving Entities v. Midcontinent Indep. Transmission Sys. Operator, Inc.*, 148 FERC ¶ 61,018, P 41 (2014).

⁶ Glossary of Terms Used in NERC Reliability Standards (Dec. 31, 2014), *available at* http://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf ("Glossary").

Standards.⁷ Similarly, PSEG objects to any deviation between the terms used in NERC's Registry Criteria and its Glossary, targeting (a) NERC's modifications of the Registry Criteria's definition of Generator Owner ("GO") and Generator Operator ("GOP"),⁸ and (b) its proposal to establish, through the Registry Criteria, qualifications for continued registration of certain small (under 75 MW) Distribution Providers ("DPs") as UFLS-Only DPs that would be responsible for compliance with an identified subset of otherwise applicable DPs standards.⁹

PSEG's "SDP trumps all" approach confuses the regulatory regimen applicable to registration, and needlessly creates hurdles to NERC's effort to use its authority to adopt sensible procedures to right size the Compliance Registry on a risk-informed basis. First, changes to NERC's rules are subject to different procedures than reliability standards, which are subject to the SDP; Federal Power Act, Section 215(f), 16 U.S.C. § 824o, not FPA Section 215(d), applies to changes in NERC rules. Further, the Commission has repeatedly recognized NERC's ability to determine, through its Registry Criteria or case-by-case determination, the scope of the standards applicable to particular registered entities.¹⁰

Nor is there a solid basis for PSEG's assumption that the terms used in the Registry Criteria must precisely match those used in the NERC Glossary. Without taking into account the proposed modifications in NERC's Petition, the majority of functional

⁷ PSEG Comments at 2, 4-6.

⁸ PSEG Comments at 3, 7-8, 13-14.

⁹ PSEG Comments at 3-4, 11-13.

¹⁰ See, e.g., *Cedar Creek Wind Energy, LLC*, 139 FERC ¶ 61,214 (2012); *New Harquahala Generating Co., LLC*, 123 FERC ¶ 61,173, *clarifying order*, 123 FERC ¶ 61,311 (2008).

entity definitions already are *not* entirely identical in the two documents; there are differences in capitalization (including of Glossary-defined terms), punctuation, and word choice.¹¹ These differences have not caused any problems in the past, and will not going forward: a function may be defined differently for registration purposes than for standards applicability, particularly where the Registry Criteria definition is narrower than the Glossary definition. To avoid any potential for confusion in this regard, NERC's Petition amends its Organization Registration and Certification Manual, Appendix 5A of its Rules of Procedure, to leave no doubt that it is the definitions used in the Registry Criteria itself, not the Glossary, that govern registration.¹² Indeed, the proposed modifications to the terms used in the Registry Criteria will make registration clearer. Thus, PSEG's concerns should not be permitted to create an impediment to prompt Commission approval of NERC's proposal to reform its Registry Criteria on a risk-informed basis.

For example, as explained in the Joint Comments (at 7-8), NERC's proposed revisions to the Part II definitions of GO and GOP to eliminate the undefined term "generating units" (in favor of "Facilities," which ties directly to the new BES definition), allow for alignment of the Registry Criteria with the BES definition and

¹¹ For example, compare the Glossary definition of Transmission Operator ("[T]he entity responsible for the reliability of its 'local' transmission system, and that operates or directs the operations of the transmission Facilities") with that in the Statement of Compliance Registry Criteria ("The entity responsible for the reliability of its local transmission system and operates or directs the operations of the transmission Facilities").

¹² See NERC Rules of Procedure, Appendix 5A, Proposed Organization Registration and Certification Manual § II (Oct. 28, 2014), available at http://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/Appendix_5A_OrganizationRegistration_2013_1004.pdf. "All industry participants responsible for one or more of the functions below must register for each function through the Organization Registration Program. The entities are defined in the NERC *Statement of Compliance Registry Criteria*" (emphasis in original).

elimination of the Part III limitations on registrations of GO/GOPs (Sections III.c and III.d), which are similar but not identical to the BES definition. The Glossary's broader GO/GOP definitions do not pose a barrier to determining which owners and operators of generation must register and be subject to compliance with GO/GOP standards based on a Registry Criteria definition that eliminates possible confusion between the Registry Criteria and the results of the application of the new BES definition (including the exception process and any local distribution facility determination by this Commission). PSEG's objections to this change (Comments at 13) should be rejected.

Also without merit is PSEG's argument against use of the "undefined" term UFLS-Only DP to define a set of DPs subject to a defined subset list of Reliability Standards; this argument (Comments at 11-13) improperly seeks to transform the Glossary into a straitjacket barring NERC from efficient registration practices, consistent with the risk posed. As noted above, the Commission has expressly recognized NERC's ability to limit the scope of the standards applicable to particular registered entities, and PSEG itself states (Comments at 12) that it does not object to creating a limited set of standards applicable to certain DPs. PSEG's argument that this can only be accomplished in a very cumbersome manner – through the case-by-case determination by a NERC-led panel – is irrational. PSEG provides no basis for imposing a UFLS-Only DP implementation process that is not a sensible use of anyone's resources with regard to very small DPs that pose at most minimal risk to the BES.¹³ NERC's proposed use of the Registry Criteria to define the UFLS-Only DP subset list of standards, as well as criteria for DPs qualifications for that subset list treatment, also address PSEG's request that the

¹³ See also discussion in Part II below.

standards applicable to such entities be publicly displayed (Comments at 13), and make clear that the list can be expanded through the standards development process if explicitly stated in the applicability section (contrary to PSEG's claim of confusion, Comments at 11-12).¹⁴

NERC plainly has an obligation to consider the reliability impacts of its rule changes and how they interact with standards. It has done so here. As described in NERC's Petition and the accompanying Technical Report,¹⁵ and the Joint Comments, including Attachment B,¹⁶ NERC's proposal to remove PSEs, IAs, and LSEs from the Registry Criteria, and then address through the SDP any required clean up of standards that identify PSEs, IAs, or LSEs among those to which the standards are applicable, will not result in a material risk to BES reliability. The NERC Petition, its Technical Report, and the Joint Comments (at 10-14) also demonstrate that no material reliability risk is posed by NERC's proposed treatment of UFLS-Only DPs.

PSEG's arguments therefore should not encumber NERC's efforts to bring risk assessment sensibly into the determination of which entities are subject to compliance with reliability standards.

¹⁴ See NERC Rules of Procedure, Appendix 5B, Proposed Registry Criteria § III(b) (Oct. 28, 2014), available at http://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/Attachment_4_ROP_Revisions_October2014.pdf.

¹⁵ Risk-Based Registration Technical and Risk Considerations—Revised (December 2014), attached as Exhibit C to NERC's Petition ("Technical Report").

¹⁶ Because of their importance to our members, Joint Commenters included in Attachment B to the Joint Comments additional context and details regarding the technical support for elimination of LSE registration. See also Joint Comments at 8-9.

II. OTHER CONCERNS DO NOT WARRANT DENIAL OF PROMPT APPROVAL OF NERC'S PETITION

Most of PSEG's additional issues should be rejected for many of the same reasons as discussed in Part I above: they would add significant and unjustified burden to NERC's registration processes. For example, PSEG objects (Comments at 9) to allowing the NERC-led multi-regional panel discretion on whether to review aggregate system-wide impacts. It argues that *whenever* the panel receives any request for a registration or standards applicability decision, it should be required to identify similarly situated entities and consider the impact in the event such entities elect to request similar treatment. PSEG includes no explanation as to why the NERC-led panel cannot be trusted to invoke this option in instances where it is appropriate. Combining this request with PSEG's other (similarly burdensome and unnecessary) request to require DPs qualifying for registration as UFLS-Only DPs to proceed through the NERC-led panel (even though NERC has fully assessed the aggregate impacts of such registration changes,¹⁷ as shown in the Technical Report) highlights the unreasonableness of PSEG's position.

PSEG also requests revision of the proposed reactivation process to make clear that a Regional Entity or NERC must use the materiality test to reverse or modify previous NERC-led panel decisions that were initially based on the application of the materiality test (i.e., where an entity has been deactivated or granted sub-set list treatment pursuant to the materiality test).¹⁸ However, Section III.C.3 of proposed Appendix 5A already requires use, for reactivation, of the "procedures in NERC ROP Section 500 and

¹⁷ PSEG Comments at 11-13, which should be rejected for the reasons discussed in Part I above.

¹⁸ PSEG Comments at 8.

Section III.A and, as applicable, Section III.D of this Appendix 5A.” As provided by Section III.A.9(a), Section III.D (the NERC-led review panel process) is applicable to reactivation determinations involving sub-set lists or materiality. Thus, no change is required.

Finally, PSEG and the QF Parties raise concerns about NERC’s proposed non-exclusive tests for assessing whether an entity is material to the BES. The QF Parties would revise several of them; PSEG would clarify them or eliminate them altogether. These non-exclusive tests are intended to provide guidance to registered entities and Regional Entities as to the types of factors to be considered by the NERC-led multi-regional panel in assessing material impact on a case-by-case basis. Retaining them as proposed by NERC would therefore be appropriate.

CONCLUSION

For the reasons set forth above and the Joint Comments, the Commission should promptly approve NERC's Petition as proposed. The Commission should also support NERC's active pursuit of Phase 2 of RBR.

Respectfully submitted,

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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 26th day of January, 2015.

/s/ Cynthia S. Bogorad

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