

UNITED STATES OF AMERICA
before the
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability Corporation	Docket No. RR06-1-021
Delegation Agreement Between the North American Electric Reliability Corporation and Texas Regional Entity, a division of ERCOT	Docket No. RR07-1-005
Delegation Agreement Between the North American Electric Reliability Corporation and Midwest Reliability Organization	Docket No. RR07-2-005
Delegation Agreement Between the North American Electric Reliability Corporation and Northeast Power Coordinating Council, Inc.	Docket Nos. RR07-3-006
Delegation Agreement Between the North American Electric Reliability Corporation and Reliability <i>First</i> Corporation	Docket No. RR07-4-005
Delegation Agreement Between the North American Electric Reliability Corporation and SERC Reliability Corporation	Docket No. RR07-5-006
Delegation Agreement Between the North American Electric Reliability Corporation and Southwest Power Pool, Inc.	Docket No. RR07-6-007
Delegation Agreement Between the North American Electric Reliability Corporation and Western Electricity Coordinating Council	Docket Nos. RR07-7-007
Delegation Agreement Between the North American Electric Reliability Corporation and Florida Reliability Coordinating Council.	Docket Nos. RR07-8-006

**MOTION TO ANSWER AND ANSWER OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
TO COMMENTS ON COMPLIANCE FILING
IN RESPONSE TO DECEMBER 19, 2008 ORDER**

March 18, 2009

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I. INTRODUCTION

On February 17, 2009, the North American Electric Reliability Corporation (“NERC”) filed a compliance filing in response to the Commission’s December 19, 2008 Order in the captioned dockets.¹ The February 17, 2009 Compliance Filing included, among other things, a revised uniform Compliance Monitoring and Enforcement Program (“CMEP”) incorporating revisions made in response to directives in the December 19, 2008 Order.²

Only one set of comments on the February 17, 2009 Compliance Filing was filed during the comment period set by the Commission. Those comments were filed by the Transmission Agency of Northern California (“TANC”).³ The TANC Comments addressed only one topic: revisions to Figure 6.1, “Mitigation Plan Process,” of the revised NERC CMEP that had been filed with the February 17, 2009 Compliance Filing. NERC accepts TANC’s comments, which may be addressed and resolved with some simple revisions to Figure 6.1. Accordingly, NERC seeks leave to file this Answer for the purpose of submitting a revised Figure 6.1 to the uniform CMEP (**Attachment 1** to this filing), so that it may be considered by the Commission in passing on the entire February 17, 2009 Compliance Filing.

II. MOTION FOR LEAVE TO FILE ANSWER

The Commission’s rules do not permit the filing of answers to protests. *See* 18 C.F.R. §385.213(a)(2). However, the Commission has granted motions for leave to file such answers if

¹ *Compliance Filing of the North American Electric Reliability Corporation in Response to December 19, 2008 Order*, filed February 17, 2009 (“February 17, 2009 Compliance Filing”). The Commission’s December 19, 2008 Order is *Order Accepting Compliance Filings, Subject to Conditions*, 125 FERC ¶ 61,330 (December 19, 2008) (“December 19, 2008 Order”).

² *See* Attachment 1 to the February 17, 2009 Compliance Filing.

³ *Comments of the Transmission Agency of Northern California on the North American Electric Reliability Corporation’s Compliance Filing in Response to the December 19, 2008 Order*, filed March 9, 2009 (“TANC Comments”).

they will clarify issues in dispute, ensure a complete and accurate record or otherwise provide information to assist the Commission in its decision-making process.⁴ NERC's Answer will not only clarify, but eliminate, the only issue raised by comments on the February 17, 2009 Compliance Filing, by submitting a revised Figure 6.1 to the uniform CMEP that addresses and resolves the points raised in the TANC Comments; and will thereby provide information that will assist the Commission in its decision-making process. Further, by submitting a revised Figure 6.1 responsive to the TANC Comments in this Answer, NERC seeks to avoid the need for another compliance filing to the order the Commission will issue on the February 17, 2009 Compliance Filing. The Commission should, therefore, permit NERC to submit this Answer.

III. ANSWER

The entire scope of the TANC Comments was to identify two respects in which Figure 6.1, "Mitigation Plan Process," of the revised uniform CMEP, included in Attachment 1 to the February 17, 2009 Compliance Filing, did not conform to revised §6.5, "Review and Acceptance or Rejection of Proposed Mitigation Plans," of the uniform CMEP, and revised §403.18 of the NERC Rules of Procedure ("ROP"), included in that compliance filing.⁵ First, revised §6.5 of

⁴*San Diego Gas & Electric v. Sellers of Energy and Ancillary Services*, 108 FERC ¶61,219, at P14, n. 7 (2004) (answer was accepted as it "provided information that assisted [FERC in its] decision-making process"); *see also Michigan Electric Transmission Co.*, 106 FERC ¶61,064, at P 3 (2004) (the permitted answer "provides information that clarifies the issues"); *North American Electric Reliability Corporation, Order Certifying NERC as the Electric Reliability Organization and Ordering Compliance Filing*, 116 FERC ¶61,062, at P 24 (2006) (reply comments of NERC and others accepted "because they have provided information that assisted us in our decisionmaking process"); *North American Electric Reliability Corporation, Order Conditionally Accepting 2007 Business Plan and Budget of the North American Electric Reliability Corporation, Approving Assessments to Fund Budgets and Ordering Compliance Filings*, 117 FERC ¶61,091, at P 18 (2006) (same); *North American Electric Reliability Corporation*, 119 FERC ¶61,248 (2007) at P 6 (same).

⁵ Section 6.5 is included in §6.0, "Mitigation of Violations of Reliability Standards," of the uniform CMEP.

the uniform CMEP and revised §403.18 of the ROP provide that when the Compliance Enforcement Authority (“CEA”, usually the Regional Entity) accepts a proposed Mitigation Plan submitted by a Registered Entity, the CEA is to notify both the Electric Reliability Organization (“ERO”, *i.e.*, NERC) and the Registered Entity of the acceptance. However, Figure 6.1 only showed the CEA notifying the ERO of the acceptance, and not the Registered Entity. Second, revised §6.5 of the uniform CMEP and revised §403.18 of the ROP provide that when the ERO (NERC) approves the Mitigation Plan, the ERO is to notify both the CEA (Regional Entity) and the Registered Entity. However, Figure 6.1 only showed the ERO notifying the CEA of approval of the Mitigation Plan, with the CEA in turn notifying the Registered Entity. TANC requested that NERC be required to revise Figure 6.1 to conform to revised §6.5 of the uniform CMEP and §403.18 of the NERC ROP.⁶

NERC accepts the TANC Comments and agrees that Figure 6.1 of the uniform CMEP should be revised as requested in the TANC Comments. Accordingly, NERC is submitting with this Answer, as **Attachment 1**, a revised version of Figure 6.1 to replace the version of Figure 6.1 included in the uniform CMEP in the February 17, 2009 Compliance Filing. The revised Figure 6.1 included in **Attachment 1** now shows that (1) when the CEA accepts a proposed Mitigation Plan, the CEA will notify both the ERO (NERC) and the Registered Entity of the acceptance, and (2) when the ERO approves the proposed Mitigation Plan, the ERO will notify both the CEA and the Registered Entity.⁷

⁶ See TANC Comments at PP 10-16.

⁷ The revised Figure 6.1 in **Attachment 1** would also be inserted into the CMEPs of those Regional Entities that have included the text of the CMEPs in Exhibit D to their Delegation Agreement with NERC. Those Regional Entities are the Florida Reliability Coordinating Council, ReliabilityFirst Corporation, and the Western Electricity Coordinating Council.

The revised Figure 6.1 included in **Attachment 1** to this Answer will resolve the only issue that has been raised by comments filed in response to NERC's February 17, 2009 Compliance Filing. In addition, submission of the revised Figure 6.1 at this time for the Commission's consideration prior to issuing its order on the February 17, 2009 Compliance Filing, will avoid the need for a future compliance filing of the uniform CMEP to insert the revised Figure 6.1.

IV. CONCLUSION

NERC respectfully requests the Commission to (1) allow this Answer to the TANC Comments, and (2) accept the revised Figure 6.1 to the NERC uniform CMEP in determining whether to accept the revised uniform CMEP submitted with NERC's February 17, 2009 Compliance Filing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Chicago, Illinois this 18th day of March, 2009.

/s/ Owen E. MacBride
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ATTACHMENT 1

**Revised Figure 6.1, “Mitigation Plan Process,” to the
NERC uniform Compliance Monitoring and Enforcement Program,
Appendix 4C to the NERC Rules of Procedure**

Compliance Monitoring and Enforcement Program

Figure 6.1 – Mitigation Plan Process

