

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Mandatory Reliability Standards for the Bulk-Power System)	Docket No. RM06-16-000
)	
)	
North American Electric Reliability Corporation)		Docket No. RR08-1-000

**FURTHER COMPLIANCE FILING OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
IN RESPONSE TO PARAGRAPH 18 OF FEBRUARY 21, 2008 ORDER**

The North American Electric Reliability Corporation (NERC) hereby submits this further compliance filing in response to the Federal Energy Regulatory Commission’s (FERC or the Commission) February 21, 2008, in Docket Nos. RM06-16-000 and RR08-1-000.¹ In support of this filing, NERC states as follows:

CURRENT STATUS AND BACKGROUND

In P 12 of the February 21 Order, the Commission noted the following comment submitted by the Bonneville Power Administration (“Bonneville”) concerning proposed Section 1600:

Bonneville states that it is concerned that its ability to protect information under the Freedom of Information Act (FOIA) could be affected by NERC’s proposed section 1600. Bonneville points out that as a federal agency it is subject to FOIA and that under FOIA, release of information to an external party generally waives any privileges against disclosure with respect to subsequent requests to the federal agency for that same information. If disclosure of such information to NERC and any applicable Regional Entities did constitute a waiver under FOIA, Bonneville contends that waiver would frustrate the purpose of the confidentiality provision of proposed section 1600. Bonneville also

¹ *Order Conditionally Approving Amended Rules of Procedure*, 122 FERC ¶61,142 (2008) (“February 21 Order”). The Commission directed that any future filings relating to Docket No. RR08-1-000 should be filed in Docket No. RM06-16-000 as well. February 21 Order at P 1 n.1.

suggests that external reviewers of critical federal security information may need to obtain federal security clearances before federal entities can allow such review. Bonneville states that it is willing to work with the Commission and NERC to find a way to meet NERC's needs for data and information while also protecting the confidential nature of sensitive federal information. [Footnote omitted]

In P 18, the Commission addressed Bonneville's comment:

In response to Bonneville, however, we agree that a governmental entity subject to FOIA should not be required to submit sensitive information that could be deemed a waiver of a FOIA exemption that is otherwise available. Accordingly, we direct NERC to work with Bonneville and other federal agencies listed on NERC's compliance registry to develop procedures that would allow the review of the requested information without risking waiver of FOIA protection. NERC should submit a compliance filing within 90 days of the date of this order detailing procedures to allow the review of federal agency data under section 1600. The Commission recognizes, however, that developing such procedures may take longer than 90 days. If necessary, NERC may instead file a status report 90 days from the date of this order detailing its progress in developing such procedures. [Footnote omitted.]

As NERC noted in its May 16, 2008 compliance filing in this proceeding, NERC has had ongoing conference calls (most recently on July 28, 2008) and meetings (most recently on June 26, 2008) with Bonneville (and others) on this issue as part of a task force of the NERC Legal Advisory Committee² that is examining confidentiality issues generally and specifically. However, given the complexity of the issues, additional work is required with respect to the white paper that is being developed to address, among other things, the federal agency FOIA protection issue.

NERC continues to believe that ongoing discussions and the development of the white paper are appropriate and will ultimately lead to the development and

² As stated in the Charter of the Legal Advisory Committee, which was approved by the NERC Board on May 2, 2007, the purposes of this Committee are (i) to provide a forum for discussing legal issues involving NERC activities, (ii) to alert NERC and NERC stakeholders to emerging legal issues involving NERC matters, (iii) to provide advice to the NERC General Counsel, and (iv) to develop common legal products related to reliability for the benefit of the NERC stakeholders. The Committee Charter also provides that membership on the Committee is open to attorneys of NERC stakeholders and shall be balanced among NERC sectors.

implementation of an acceptable solution. However, a specific proposal could not be finalized in time for presentation to the NERC Board for approval at its July 29-30, 2008 meeting. NERC will continue to work with Bonneville on a proposal to address this issue.

CONCLUSION

Wherefore, for the reasons set forth above, NERC respectfully requests that the Commission accept this filing as compliant with its February 21 Order.

Respectfully submitted,

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Dated: August 14, 2008

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 Washington, D.C. this 14th day of August, 2008.

/s/ Rebecca J. Michael

Rebecca J. Michael

*Attorney for North American Electric
Reliability Corporation*