

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

**NEW HARQUAHALA ) Docket No. RC08-4-000  
GENERATING COMPANY, LLC )**

**MOTION TO ANSWER AND ANSWER OF THE  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
TO COMMENTS REGARDING  
THE NEW HARQUAHALA GENERATING COMPANY, LLC APPEAL**

**I. INTRODUCTION**

The instant proceeding involves New Harquahala Generating Company, LLC’s (“Harquahala’s”) appeal of the decision of North American Electric Reliability Corporation (“NERC”) Board of Trustees Compliance Committee (“BOTCC”) to include Harquahala on the NERC Compliance Registry within the Western Electricity Coordinating Council (“WECC”) for the functions of transmission owner (“TO”) and transmission operator (“TOP”). On March 5, 2008, NERC submitted a timely motion to intervene and comments in the proceeding. On or about March 5, 2008, 23 other entities (or sets of entities)<sup>1</sup> also filed interventions, protests and/or comments (“intervenors”)

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<sup>1</sup>Motion to Intervene and Comments of American Transmission Company LLC (“ATCLLC”); Motion to Intervene and Comments of the California Independent System Operator (“CAISO”); Motion to Intervene and Comments of the Calpine Corporation in Support of Appeal (“Calpine”); Motion to Intervene and Comments of the Cogeneration Association of California; Motion to Intervene and Comments of Constellation Energy Commodities Group, Inc. and Constellation Power Source Generation, Inc.; Motion to Intervene and Comments of Direct Energy Services, LLC (“Direct Energy”); Motion to Intervene and Comments of Dynegy Inc. (“Dynegy”); Motion to Intervene and Comments of Edison Mission Energy and Edison Mission Marketing & Trading, Inc.; Motion to Intervene and Comments of Electricity Consumers Resource Council (“ELCON”); Motion to Intervene and Comments of the Electric Power Supply Association (“EPSA”); Motion to Intervene and Comments of Horizon Wind Energy LLC (“Horizon Wind”); Motion to Intervene and Comments of Invenergy Investment Company (“Invenergy”); Motion to Intervene and Comments of LS Power Associates, L.P. (“LS Power”); Motion to Intervene and Comments of Mesquite Power, LLC (“Mesquite”); Motion to Intervene and Comments of Pacific Gas and Electric Company; Motion to Intervene and Comments of the PPL Companies; Motion to Intervene of PPM Energy, LLC; Motion to Intervene and Comments of Reliant Energy, Inc. (“Reliant”); Motion of Transalta Centralia Generation LLC for Leave to Intervene; Motion to Intervene and Comments of Tyr Energy, LLC

regarding Harquahala's February 4, 2008 appeal. By this filing, NERC requests leave to file this Answer to certain limited issues raised in the intervenors' comments.

## **II. MOTION FOR LEAVE TO FILE ANSWER**

The Federal Energy Regulatory Commission's ("FERC" or the "Commission") rules permit the filing of answers to motions in which parties seek substantive relief. The Commission's rules generally do not permit the filing of answers to protests, unless otherwise permitted by the Commission.<sup>2</sup> However, the Commission has granted motions for leave to file such answers if 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.<sup>3</sup> NERC's Answer is limited and will clarify certain concerns about Harquahala's appeal filed at FERC that were raised in the intervenors' comments and provide information that will assist the Commission in its decision-making process. Moreover, while NERC, as the entity whose decision is the subject of Harquahala's appeal, has had the opportunity to respond to Harquahala's comments,

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and Starwood Power-Midway, LLC in Support of New Harquahala Generating Company LLC's Request for Appeal ("Tyr and Starwood"); Motion of Union Carbide Corporation for Leave to Intervene and Comments in Support ("UCC"); and Western Electricity Coordinating Council's Motion to Intervene and Comments to New Harquahala Generating Company, LLC's Request for Appeal from North American Electric Reliability Corporation Decision Erroneously Including New Harquahala Generating Company, LCC in the Transmission Owner and Transmission Operator Categories in the NERC Compliance Registry ("WECC").

<sup>2</sup> See 18 C.F.R. §385.213(a)(2).

<sup>3</sup> *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).

NERC has not had the opportunity to address the comments of the numerous intervenors. Therefore, NERC requests permission to submit this Answer.

### **III. ANSWER**

#### **A. CONSISTENT APPLICATION OF THE NERC STATEMENT OF COMPLIANCE REGISTRY CRITERIA ACROSS THE REGIONS IS OCCURRING.**

For several reasons, the intervenors' arguments that there is no consistency among the Regional Entities in applying the NERC *Statement of Compliance Registry Criteria* (*Registry Criteria*) to generators that also own or operate transmission facilities<sup>4</sup> are unsupported. First, the NERC BOTCC has already issued two final decisions<sup>5</sup> involving entities located in the footprint of another Regional Entity on the very issue of registration of radial generator transmission interconnection facilities that is now before the Commission in Harquahala's appeal. As a result, there are other generators (even in other Regions), with radial transmission interconnection facilities, that are registered as TOs and TOPs because they meet the *Registry Criteria*, and are therefore subject to compliance with applicable TO and TOP Reliability Standards. The fact that these other entities did not file an appeal with the Commission does not mean there is inconsistency in registration.

Second, several intervenors make generalized assertions that it is the practice in Regions, other than WECC, not to register generators that own "interconnection facilities" as TOs/TOPs.<sup>6</sup> NERC is actively monitoring the registration activities of all the Regional Entities. If NERC becomes aware of any generator that appears to be

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<sup>4</sup> See, e.g., Calpine at 7-8 and Invenenergy at 7-8.

<sup>5</sup> See Decision on RA070081 - Kiowa Power Partners, LLC (issued September 25, 2007) and Decision on RA070083 - Western Farmers Electric Cooperative (issued September 25, 2007). These decisions were not appealed to FERC. See also NERC Rules of Procedure Section 501.1.3.4.

<sup>6</sup> See, e.g., Direct Energy at 5-7.

eligible for registration as a TO or TOP but has not been registered by the applicable Regional Entity, NERC will investigate to determine if registration is warranted under the *Registry Criteria*.

Third, WECC has made clear, most recently in its intervention and comments in this proceeding,<sup>7</sup> that it has registered, and is continuing to register, similarly situated generators in its footprint. Organization registration is an on-going dynamic process, as recognized by the Commission's orders, and registration decisions are based on specific facts and circumstances when applying the criteria. This does not lead to the conclusion that there is an inconsistency; rather it fully supports the positions of NERC and WECC that there *is* consistency. Indeed, as indicated above, NERC has always maintained that, as it becomes aware of entities that should be registered and are not, that it will act to add them to the Compliance Registry. Therefore, there is no support for the notion that Harquahala is a test case of first impression and there is no support for intervenors' claims there is inconsistency in application of the NERC *Registry Criteria*.

Fourth, the intervenors fail to recognize that, as allowed under Sections 501 and 507 of the NERC Rules of Procedure, there are many situations in which generators have agreements with third parties to undertake TO and TOP obligations on their behalf, so it is not surprising that these generators are not objecting to registration because the responsibility for compliance as TOs and TOPs has been transferred by an acceptable agreement to others. Having a third party perform functions on one's behalf is an option to all generators, including Harquahala. Indeed, Harquahala is familiar with this process because it has entered into an agreement with a third party to undertake obligations,

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<sup>7</sup> See, e.g., WECC at 6.

including the requirement to have certified operators, for the balancing authority function for which it is registered.

Fifth, even if the intervenors' generalized assertions are credited, there is no inconsistency among the Regions shown by the mere fact that not all generators with interconnection facilities have been registered as TOs/TOPs, as the intervenors contend. The decision to register Harquahala as a TO/TOP is based on the specific characteristics of its transmission facilities, *i.e.*, a 26-mile, 500 kV line connecting a generating station into a substation that is, in turn, interconnected with the switchyard for a major generating station, with the substation and switchyard operated as a common bus which connects over 10,000 MW of generation to the grid and is operated as a major trading hub. It does not fall within the radial line exclusion in the *Registry Criteria*.<sup>8</sup> Other generators' transmission facilities connecting to the grid may present far different physical configurations and operating conditions than those presented by Harquahala's facilities and may not satisfy the registration criteria for TOs/TOPs. Alternatively, such entities may not yet be registered because their possible registration is still under evaluation by the Regional Entity; or such entities are not registered because other entities are registered on their behalf for the TO/TOP functions.

Sixth, there is no support for the claim that supplemental registration criteria have been applied by WECC with respect to the registration of Harquahala.<sup>9</sup> Rather, the WECC and NERC BOTCC decisions are based on a straightforward application of the NERC *Registry Criteria*, as evident in both the WECC Regional Assessment and the NERC BOTCC decision. Harquahala is a generator that owns and operates transmission

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<sup>8</sup> *Lee County, Florida*, 121 FERC ¶ 61,143 at P 28 (2007), *reh'g denied*, 122 FERC ¶ 61,141 (2008).

<sup>9</sup> *See, e.g.*, Direct Energy at 6-7; PPL Companies at 12; and Reliant at 10-11.

facilities greater than 100 kV, thereby meeting the definitions of a TO and TOP.

Harquahala's 500 kV transmission line connects its generating plant 500 kV bus into a 500 kV switching station at which other transmission lines are terminated. Harquahala's 500 kV transmission facilities are interrelated and coordinated with other transmission facilities at a major bulk power interconnection facility connecting over 10,000 MW of generation to the grid, and are therefore integrated elements of the bulk power system. As such, Harquahala's transmission facilities meet the criteria for registration as a TO and TOP. (*See* further discussion of this point in III.B below.)

**B. NERC'S APPLICATION OF THE TERM "INTEGRATED TRANSMISSION ELEMENT" IS APPROPRIATE.**

In responding to intervenors' arguments regarding the term "integrated transmission element" in the NERC *Registry Criteria*,<sup>10</sup> a back-to-basics review is in order. Congress, in the Energy Policy Act of 2005, defined the bulk power system as follows:

(1) The term "bulk-power system" means—

(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and

(B) electric energy from generation facilities needed to maintain transmission system reliability.

The term does not include facilities used in the local distribution of electric energy.<sup>11</sup>

It is undisputed that Harquahala's 1,092 MW plant generates electric energy.

There also is no dispute that Harquahala owns 500 kV transmission facilities,

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<sup>10</sup> *See, e.g.*, ATCLLC at 5-8; EPSA at 4-5; Horizon Wind at 1, 3-6; Invenergy at 5-7; LS Power at 5-6; Tyr and Starwood at 6-8; PPL Companies at 9-10; and Reliant at 3-7.

<sup>11</sup> 16 U.S.C. 824o(a).

approximately 26 miles in length, (a transmission line) over which Harquahala’s electric energy flows into the grid and is not used for the local distribution of electric energy.<sup>12</sup>

And, there is no dispute that Harquahala’s 500 kV transmission facilities are interconnected into the grid.<sup>13</sup>

Accordingly, the contention that “integrated” is not synonymous with “connected” (or “interconnected”) is a strained interpretation that falls flat. Intervenors ignore the plain meaning of the term “integrated” that is consistent with Federal Power Act (“FPA”) Section 215 and NERC’s long-standing application of that term from a reliability perspective, which has spanned more than four decades. In simple, commonly used terms, “integrated” means “combining or coordinating separate elements so as to provide a harmonious, interrelated whole.”<sup>14</sup> The transmission facilities at issue here link Harquahala’s generating station (admitted to be a part of the bulk power system) with the Hassayampa substation (also admitted to be a part of the bulk power system). NERC’s *Registry Criteria* uses “integrated” in that sense, combining the generating stations with other elements of the bulk power system.

The NERC BOTCC decision considered the well-known engineering and operational fact, from a reliability perspective, that the interconnection facilities are physically and electrically connected to the bulk power system. Indeed, the laws of physics that apply to transmission elements connected to the bulk power system are not bound by an interconnection pricing policy, open access requirements or data collection

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<sup>12</sup> See, e.g., Harquahala FERC appeal at 1-2.

<sup>13</sup> See, e.g., Harquahala FERC appeal at 10.

<sup>14</sup> See dictionary.com (last visited Feb. 27, 2008).

requirements, all of which are economic policy decisions and are not based on reliability issues.<sup>15</sup>

Importantly, in approving NERC's *Registry Criteria*, the Commission approved NERC's terms, definitions and criteria applicable, among other things, to a TO and TOP. NERC's terms, definitions and criteria were not dependent, nor based, on definitions arising under Section 205 of the FPA. Rather, in developing the *Registry Criteria*, NERC relied on its 40 years of reliability experience and on its authority with respect to reliability matters arising under FPA Section 215. Further, the *Registry Criteria* was not formulated by NERC in an isolation chamber but rather was developed through a very open, public process available to industry stakeholders – as several intervenors acknowledge.<sup>16</sup> The term “integrated” in the *Registry Criteria* has a plain language meaning, consistent with FPA Section 215 (and has been so applied by NERC). As such, there is no need to separately define this term, as some intervenors suggest, nor is it appropriate to apply the definitions and interpretations the Commission has used under FPA Section 205 for its economic regulation. The Commission did not do so when approving the *Registry Criteria*.

NERC's use and application of the term “integrated,” does not, as intervenors argue, unwind decades of Commission precedent under FPA Section 205 in developing interconnection cost allocation policies, determinations of whether facilities are local distribution or transmission facilities or networks, transmission tariff provisions or any other policies thereunder that predate the Energy Policy Act and FPA Section 215 and were decided or established under authority of other sections. (Even Harquahala, in its

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<sup>15</sup> See NERC Intervention and Comments at 10.

<sup>16</sup> See, e.g., ELCON at 2.



appeal, recognized that the Commission's interconnection policy under FPA Section 205 was developed at a time when FPA Section 215 did not exist.) FPA Sections 205 and 215 serve very different purposes. The Commission's reach under FPA Section 215 is far broader than under FPA Section 205. The Commission has had occasion to consider other integral and integrated transmission elements associated with the bulk power system that are consistent with NERC's use of the same terms. In Order No. 693, the Commission found that:

Protection systems on Bulk-Power System elements are an integral part of reliable operations. They are designed to detect and isolate faulty elements on a power system, thereby limiting the severity and spread of disturbances and preventing possible damage to protected elements. If a protection system can no longer perform as designed because of a failure of its relays, system reliability is reduced or threatened. In deriving SOLs and IROLs, moreover, the functions, settings, and limitations of protection systems are recognized and integrated. Systems are only reliable when protection systems perform as designed. This is what PRC-001-1 means in linking a reduction in system reliability with a protection relay failure or other equipment failure.<sup>17</sup>

The same holds true here. Harquahala's 500 kV transmission facilities are facilities over which electric energy is transmitted from Harquahala's generating facility into the common bus at the Palo Verde hub and thence into the bulk power system grid. Harquahala's 500 kV transmission facilities are a necessary part of operating an interconnected electric energy transmission network for the purposes of bulk power system planning and operation and hence bulk power system reliability, the subject of FPA Section 215. These facilities are integrated as part of the electric energy bulk power transmission network.

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<sup>17</sup> *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 FR 16,416 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242 at P 1435 (2007).

The 26-mile radial 500 kV transmission line to a switching station adjacent to the Palo Verde nuclear plant can directly impact the bulk power system. If the owner of that line (or a third party on its behalf) is not registered as a TO or TOP, then the transmission line protection system at either end of that line is not subject to either standard PRC-001 — System Protection Coordination or standard PRC-005 — Transmission and Generation Protection System Maintenance and Testing.

The requirements of standard PRC-001 state in part:

“Each Transmission Operator shall coordinate protection systems on major transmission lines and interconnections with neighboring Generator Operators, Transmission Operators, and Balancing Authorities.”

If there is no Transmission Operator for the 26-mile 500 kV line, with whom is the coordination?

The requirements of standard PRC-005 state in part:

“Each Transmission Owner and any Distribution Provider that owns a transmission Protection System and each Generator Owner that owns a generation Protection System shall have a Protection System maintenance and testing program for Protection Systems that affect the reliability of the BES.”

A Generator Owner’s responsibility under PRC-005 is for maintenance to the *generation* protection systems that affect the bulk power system, not the line relays that protect the transmission line.

Unmaintained or uncoordinated protection systems can and do cause disturbances beyond the boundaries of that line any time a line has a breaker or protection system failure that requires remote clearing of the fault. If the protection systems are unmaintained or uncoordinated with the rest of the system, the problem is exacerbated. And this is not a hypothetical risk. On June 14, 2004, a single-line-to-ground fault on a 230 kV transmission line in the same vicinity caused by bird excrement (it does not have

to be a tree), coupled with a protection system failure that caused the breaker not to open, led to a delayed, remote clearing of the fault. That event caused all three of the Palo Verde nuclear units to trip, along with other generation, totaling about 5,000 MW. That certainly had an impact on the bulk power system.

To ensure that these transmission facilities are maintained and operated in accordance with applicable Reliability Standard requirements, it is both necessary and appropriate to register Harquahala as a TO and TOP.

**C. A GAP IN RELIABILITY WILL EXIST IF HARQUAHALA IS NOT REGISTERED AS A TO AND TOP AND REQUIRED TO COMPLY WITH APPLICABLE RELIABILITY STANDARD REQUIREMENTS WITH RESPECT TO ITS 500 KV TRANSMISSION FACILITIES.**

Intervenors also are incorrect in arguing that NERC has not identified a gap in reliability, or that no gap in reliability will exist, if Harquahala is not registered as a TO and TOP.<sup>18</sup> The gap is obvious. As made clear in the NERC BOTCC decision<sup>19</sup> and NERC's Intervention and Comments,<sup>20</sup> if Harquahala is not registered as a TO and TOP, with respect to its 500 kV transmission facilities (or does not enter into an agreement with a third party to assume the applicable responsibilities under the Reliability Standards), it would evade compliance with applicable TO and TOP Reliability Standards. No one else would be required to comply with those standards, yet compliance with those standards with respect to Harquahala's 500 kV transmission facilities is critical to reliability of the bulk power system. Therefore, the gap with respect to Harquahala is that the requirements of the TO and TOP Reliability Standards

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<sup>18</sup> See, e.g., Reliant at 8-10.

<sup>19</sup> See, e.g., NERC BOTCC decision at 5-6.

<sup>20</sup> See NERC Interventions and Comments at 22-24.

would not have to be observed with respect to 26 miles of 500 kV transmission facilities connecting a generating station with a major transmission hub.

Registration of Harquahala as a GO and GOP is not sufficient, because registration as a GO and GOP does not obligate Harquahala to comply with applicable transmission facility standards, including vegetation management, coordination of system protection devices or ensuring competent transmission system operators.<sup>21</sup> Vegetation management failure was a leading cause of the 2003 Northeast Blackout. In addition, in Order No. 693, the Commission expressly noted the importance of having competent transmission operator personnel, stating that it “expects the entity registered as the transmission operator to ensure that these personnel are competent for the tasks that they perform.”<sup>22</sup> The intervenors contend that it would be too expensive for Harquahala (and similarly situated entities) to hire, retain and certify transmission operator personnel for the 500 kV transmission facilities.<sup>23</sup> However, this cost consideration should not justify excusing from registration an entity that meets the *Registry Criteria* for a function, as Harquahala does with respect to its 26 miles of 500 kV transmission facilities. Moreover, the intervenors again fail to recognize that Harquahala (and any similarly situated generator) can enter into agreements with third parties to perform such functions on its behalf.

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<sup>21</sup> See, e.g., NERC BOTCC decision at 5-6.

<sup>22</sup> Order No. 693 at n.368.

<sup>23</sup> See, e.g., EPSA at 5; Invenergy at 9-10; and Tyr and Starwood at 11.

**D. APPLICATION OF TO AND TOP RELIABILITY STANDARDS TO A GENERATOR SUCH AS HARQUAHALA DOES NOT THWART STANDARDS OF CONDUCT OR CODES OF CONDUCT.**

Some intervenors argue that registration of Harquahala as a TO and TOP would lead to the result of violating Standards of Conduct and Codes of Conduct, or alternatively, necessitating additional costs for compliance.<sup>24</sup> While NERC recognizes the importance of the Commission's Standards of Conduct/Code of Conduct Requirements, and does not intend to appear unsympathetic to cost considerations, the applicability of the Standards of Conduct and Codes of Conduct is outside the scope of NERC's authority and responsibility under FPA Section 215 and as the electric reliability organization ("ERO") designated by the Commission. NERC's Reliability Standards are designed to ensure reliable operation of the bulk power system, in accordance with its statutory and regulatory mandate as the ERO. They do not govern or address market behavior. NERC is not in a position to determine whether a generator registered as a TO or TOP would thereby become subject to Standards of Conduct or Codes of Conduct, or would have to incur additional costs for compliance. What is clear, however, is that NERC does not have authority to, nor should it, waive registration of an entity that meets the *Registry Criteria* on the grounds that if registered, the entity would have to comply with Standards of Conduct or Codes of Conduct and either incur additional costs for compliance or risk being in non-compliance. In light of its statutory and Commission-assigned responsibilities, NERC must respectfully suggest that any conflicts or problems created by the juxtaposition of registration of a generator as a TO or TOP, on the one hand, and the applicability of Standards of Conduct or Codes of Conduct, on the other

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<sup>24</sup> See, e.g., CAISO at 3, 6-10.

hand, should be addressed by the Commission through review of the latter set of regulatory requirements.

**E. THE APPLICABILITY OF RELIABILITY STANDARDS TO GIVEN FUNCTIONS HAS ALREADY BEEN ADDRESSED.**

Some take issue with the proposition that NERC has said that once an entity is registered for a function, NERC will work with the entity to determine which Reliability Standards requirements apply to the entity, and some may not apply.<sup>25</sup> Intervenors have misinterpreted NERC's statement. As the Commission has held, where an entity is registered for a reliability function, all Reliability Standards requirements applicable to that function apply to the entity.<sup>26</sup> NERC recognizes, however, that based on the nature of an entity's facilities or operations, the entity may not have to do anything to comply with certain requirements. Therefore, NERC is willing to work with an entity that claims it should not be subject to certain requirements under otherwise applicable Reliability Standards. For example, one standard applicable to transmission owners relates to special protection systems. If the entity registered as a transmission owner does not own such systems, the standard would not apply. However, if the entity subsequently installs a special protection system, it would be subject to those standards. It is unreasonable to expect that NERC can fully know and understand the operational arrangements of any given registered entity or agreements among various parties to the bulk power system delineating responsibilities for compliance unless the entity itself provides sufficient information for NERC make such determinations.

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<sup>25</sup> See, e.g., CAISO at 10-13; EPSA at 6.

<sup>26</sup> See, e.g., Order No. 693 at P 94; See also CAISO at 12 & nn.11 and 12.

**F. THERE IS NO VIOLATION OF DUE PROCESS.**

Several intervenors complain that there is a violation of due process for NERC to now apply the TO/TOP standards to GOs/GOPs; that it was not apparent that the Registry Criteria definition of TO/TOP would apply to GOs/GOPs in the way NERC has applied it; and/or that NERC should have "given notice" to GOs/GOPs during the development of the Registry Criteria and/or Reliability Standards that GO/GOPs could be registered as TOs/TOPs and be subject to TO/TOP standards.<sup>27</sup> Both the Registry Criteria and the Reliability Standards were developed through open public processes in which all stakeholders and interested parties could participate, and that it should have been apparent that there was at least the possibility that GOs/GOPs owning interconnection facilities above 100 kV could be required to register as TOs/TOPs. Any entity that made the assumption that the FERC's policies and interpretations in the Section 205 context would apply under Section 215 did so at its own risk. Further, with respect to suggestions that NERC should either change the Registry Criteria, or the Reliability Standards, or both, to create new categories (*e.g.*, transmission facilities owned by GOs/GOPs solely for purposes of interconnecting to the grid),<sup>28</sup> there are procedures available for anyone to propose amendments to a NERC Rule of Procedure or to an approved Reliability Standard.

**G. OTHER ISSUES ARE COLLATERAL ATTACKS ON FERC ORDERS AND SHOULD BE REJECTED.**

There are a number of arguments that the Commission should reject as collateral attacks on prior Commission orders. Under the auspices of the instant appeal, intervenors

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<sup>27</sup> *See, e.g.*, EPSA at 13-14; Mesquite at 21.

<sup>28</sup> *See, e.g.*, CAISO at 13-15; Cogeneration Association of California at 3-4.

raise again requests for safe harbors and exemptions from penalties.<sup>29</sup> These are issues the Commission has already considered and rejected.<sup>30</sup> It is appropriate for the Commission to do so here as a collateral attack on prior Commission orders.

Challenges to the process for registration and appeals also are collateral attacks on prior Commission orders and similarly should be rejected.<sup>31</sup>

#### **H. OTHER ISSUES ARE NOT RIPE FOR COMMISSION REVIEW.**

There are a few intervenors, who have not yet filed appeals nor have they exhausted their remedies under the NERC Rules of Procedure, that are seeking to use this proceeding as an opportunity to argue their future appeals.<sup>32</sup> However, the instant proceeding is limited to an appeal by one entity and the specific facts and circumstances presented in the appeal. The Commission should decline to prejudge those other cases in the context of the instant appeal.

#### **I. REQUESTED RELIEF.**

NERC does not believe the instant appeal warrants a technical conference,<sup>33</sup> it does not warrant a generic determination as to all radial lines,<sup>34</sup> nor does it warrant a remand back to NERC and WECC.<sup>35</sup> The NERC *Registry Criteria* is clear and has been appropriately applied. The Commission should decline to accept the invitation of the intervenors to create a reliability gap where one does not now exist. Harquahala clearly owns and is responsible for operation of its 26-mile 500 kV transmission line and has

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<sup>29</sup> See, e.g., EPSA at 13-14.

<sup>30</sup> *Applicability of Federal Power Act Section 215 to Qualifying Small Power Production and Cogeneration Facilities*, 119 FERC ¶ 61,320 at P 9 (2007) (Order Denying Stay) and *Applicability of Federal Power Act Section 215 to Qualifying Small Power Production and Cogeneration Facilities*, 119 FERC ¶ 61,092 at PP 11-12 (2007) (Order Denying Request for Rehearing).

<sup>31</sup> See, e.g., Order No. 693 at P 95.

<sup>32</sup> See, e.g., Dynegy and Mesquite.

<sup>33</sup> See, e.g., Mesquite at 28.

<sup>34</sup> See, e.g., UCC at 4-5.

<sup>35</sup> See, e.g., Dynegy at 14.



failed to produce another entity willing to accept responsibility for compliance with the NERC Reliability Standards. There already are existing processes in place to allow Harquahala to enter agreements with third parties to assume the TO and TOP obligations on its behalf or to work with NERC and WECC to identify any Reliability Standards for which it need not do anything to comply, based on its specific facts and circumstances.<sup>36</sup> NERC urges the Commission to let these processes work as designed and approved.

## V. CONCLUSION

The North American Electric Reliability Corporation respectfully requests that the Commission (1) allow this Answer to the March 5 comments, and (2) issue an order affirming the NERC BOTCC decision that Harquahala is appropriately registered as a TO and TOP under the NERC *Registry Criteria*.

Respectfully submitted,

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<sup>36</sup> See, e.g., NERC Rules of Procedure at Sections 501 and 507.

**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 20th day of March, 2008.

/s/ Rebecca J. Michael  
Rebecca J. Michael

*Attorney for North American Electric  
Reliability Corporation*