

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

North American Electric Reliability Corporation)

Docket No. RR13-2-____

**REPLY COMMENTS OF THE NORTH AMERICAN ELECTRIC RELIABILITY
CORPORATION**

The North American Electric Reliability Corporation (“NERC”)¹ hereby provides these reply comments to the Federal Energy Regulatory Commission’s (“FERC” or the “Commission”) in response to the comments submitted on March 21, 2013 by the City of Santa Clara, California doing business as Silicon Valley Power (“SVP”) on the revisions to the Standard Processes Manual (“SPM”) proposed by NERC.

I. BACKGROUND

On February 28, 2013, NERC submitted proposed revisions to the SPM set forth in Appendix 3A of the NERC Rules of Procedure. The SPM contains all of the procedures governing the Reliability Standards development process, which is a primary function of NERC’s charge as the Electric Reliability Organization (“ERO”).² The proposed revisions to the SPM further enhance the Reliability Standards development process by providing additional clarity and streamlining the drafting, commenting and balloting processes.

On March 21, 2013, the American Public Power Association, the Edison Electric Institute, the Electricity Consumers Resource Council, the Electric Power Supply Association,

¹ The Federal Energy Regulatory Commission certified NERC as the electric reliability organization (“ERO”) in its order issued on July 20, 2006 in Docket No. RR06-1-000. *North American Electric Reliability Corporation*, 116 FERC ¶ 61,062 (2006).

² See *North American Elec. Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh’g and compliance*, 117 FERC ¶ 61,126 (2006), *aff’d*, *Alcoa, Inc. v. F.E.R.C.*, 564 F.3d 1342 (D.C. Cir. 2009).

the Large Public Power Council, the National Rural Electric Cooperative Association, and the Transmission Access Policy Study Group jointly on behalf of their respective members (collectively the “Trade Associations”) supported NERC’s proposed revisions.³

A lone commenter, SVP, submitted comments in opposition to proposed Section 16 of the SPM, which is a new provision entitled “Waiver” (hereinafter, “Waiver “Provision”) that provides:

While it is NERC’s intent to use its ANSI-accredited Reliability Standards development process for developing its Reliability Standards, NERC may need to develop a new or modified Reliability Standard, definition, Variance, or implementation plan under specific time constraints (such as to meet a time constrained regulatory directive) or to meet an urgent reliability issue such that there isn’t sufficient time to follow all the steps in the normal Reliability Standards development process.

The Standards Committee may waive any of the provisions contained in this manual for good cause shown, but limited to the following circumstances:

- In response to a national emergency declared by the United States or Canadian government that involves the reliability of the Bulk Electric System or cyber attack on the Bulk Electric System;
- Where necessary to meet regulatory deadlines;
- Where necessary to meet deadlines imposed by the NERC Board of Trustees; or
- Where the Standards Committee determines that a modification to a proposed Reliability Standard or its Requirement(s), a modification to a defined term, a modification to an interpretation, or a modification to a variance has already been vetted by the industry through the standards development process or is so insubstantial that developing the modification through the processes contained in this manual will add significant time delay.

In no circumstances shall this provision be used to modify the requirements for achieving quorum or the voting requirements for approval of a standard.

A waiver request may be submitted to the Standards Committee by any entity or individual, including NERC committees or subgroups and NERC Staff.

³ See, *Motion to Intervene and Comments of the American Public Power Association, Edison Electric Institute, Electricity Consumers Resource Council, Electric Power Supply Association, Large Public Power Council, National Rural Electric Cooperative Association, and Transmission Access Policy Study Group*, filed in Docket No. RR13-2-000 on March 21, 2013.

Prior to consideration of any waiver request, the Standards Committee must provide five business days notice to stakeholders.

Action on the waiver request will be included in the minutes of the Standards Committee. Following the approval of the Standards Committee to waive any provision of the Standard Process Manual, the Standards Committee will report this decision to the Standards Oversight and Technology Committee.⁴ Actions taken pursuant to an approved waiver request will be posted on the Standard Project page and included in the next project announcement.

In addition, the Standards Committee shall report the exercise of this waiver provision to the Board of Trustees prior to adoption of the related Reliability Standard, Interpretation, definition or Variance.

Reliability Standards developed as a result of a waiver of any provision of the Standard Processes Manual shall not be filed with ANSI for approval as American National Standards.

II. COMMENTS

NERC offers comments in support of the proposed Waiver Provision and respectfully submits that the Commission should approve it unconditionally consistent with Commission precedent and the role and responsibilities of the Standards Committee. The Waiver Provision can only be invoked under very limited circumstances and SVP objects to the exercise of the Waiver Provision under two of those circumstances—(1) where necessary to meet deadlines established by the *independent* NERC Board of Trustees, and (2) where the Standards Committee (which is composed of each of the ten industry segments) determines that a modification has already been vetted by the industry through the standards development process or is so insubstantial that developing the modification through the processes in the SPM would add significant time delay.⁵ As explained herein, SVP's concerns are misplaced.

⁴ Any entity may appeal a waiver decision or any other procedural decision by the Standards Committee pursuant to Section 8.0 of the NERC Standard Processes Manual.

⁵ SVP Comments at 7-8.

A. The Waiver Provision is Consistent with Commission Precedent and the Role and Responsibilities of the NERC Board of Trustees

The Waiver Provision is consistent with Commission precedent noting the need for NERC to be able to address Commission directives and urgent reliability issues expeditiously and is consistent with the responsibilities of the NERC Board of Trustees. Further, the Waiver Provision provides necessary flexibility to administer the standard development process to meet reliability needs.

In order for the ERO model to be successful, NERC must have the ability to meet regulatory deadlines. Pursuant to section 215(d)(5) of the Federal Power Act (“FPA”), the Commission may direct the ERO to submit to the Commission a new or modified Reliability Standard that addresses a specific matter if the Commission considers such a new or modified Standard appropriate to carry out section 215. As the ERO, NERC must be able to comply with a Commission directive pursuant to section 215(d)(5) of the FPA.

The Commission has acknowledged the need for NERC to have the ability to address urgent reliability issues.⁶ The proposed Waiver Provision is intended as an additional mechanism to allow for NERC to respond in a timely manner under certain circumstances, including Commission directives and deadlines that may be imposed by the NERC Board of Trustees.⁷

It should be noted that one of NERC’s fundamental principles is governance by a strong Board (i) that is selected by, but independent of, industry stakeholders; (ii) that is international in

⁶ See *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062 at P 53 (2006)(“in rare instances, the urgent action process may not be sufficiently expedited, such as if necessary to address an imminent threat to national security. We require NERC to address whether the urgent action process, or some other process, can accommodate any such rare circumstances.”).

⁷ The Commission has expressed concern that the standard development process can be misused to “delay or block NERC’s ability to report to a Commission directive” See *North American Electric Reliability Corp.*, 130 FERC ¶ 61,203 at P 23 (2010).

nature; and (iii) whose members collectively possess expertise in the areas necessary to govern an ERO effectively, including management, engineering, industry operations, law and regulation, and government relations. The Board is ultimately responsible for oversight of the process to develop standards and for approval of such standards for submission to the Commission. Thus, to the extent the Board determines to issue a directive regarding the timing of development of a standard (which directive cannot, it should be noted, change the actual voting requirement for approval of such standard), that action should be seen as consistent with the authority and responsibility of an independent board.

It should also be noted that Section 321 of the NERC Rules of Procedure (“Section 321”) was developed in response to Commission concerns⁸ regarding the need for independent action by the NERC Board and that the proposed Waiver Provision is consistent with the underlying rationale for Section 321. Specifically, Section 321 sets out a number of actions the NERC Board may take if it determines that the regular Standards Development Process does not produce a draft Reliability Standard that is responsive to a Commission directive.⁹ Similarly, the proposed Waiver Provision provides the Board with the ability to set deadlines for standards development, providing the Board with appropriate flexibility to ensure that NERC is fulfilling its mission of developing standards that seek to ensure the reliability of the Bulk-Power System.

In *North American Electric Reliability Corp.*,¹⁰ the Commission affirmed that, as the ERO, NERC has responsibility for the content of Reliability Standards as well as for appropriately managing the Standards Development Process. It is in the public interest and

⁸ 130 FERC ¶ 61,203 at P 22 (2010).

⁹ In approving the changes to Section 300 of its Rules of Procedure, the Board expressed its expectation that the usual Standards Development Process would be sufficient to address Commission directives in most cases, and that any new authority granted to the Board would be used rarely.

¹⁰ *North American Electric Reliability Corp.*, 126 FERC ¶ 61,021 at PP 10-12 (2009).

consistent with the intent of section 215 to allow for the ERO to meet its statutory obligations and provide for reliable operation of the Bulk-Power System. For these reasons, the proposed Waiver Provision is consistent with Commission precedent noting the need for NERC to be able to address Commission directives and urgent reliability issues expeditiously and is consistent with the role and responsibilities of the NERC Board of Trustees.

B. The Waiver Provision is Consistent with the Role and Responsibilities of the Standards Committee

SVP expresses concern in its comments regarding the discretion afforded to the Standards Committee and the NERC Board of Trustees pursuant to the proposed Waiver Provision and states that the Standards Committee should bear the burden of proof if confronted with a challenge to its decision to waive any provision of the SPM.¹¹

The proposed Waiver Provision is consistent with the role and responsibilities of the Standards Committee. The Standards Committee is accountable to the NERC Board of Trustees and has the responsibility of keeping the industry segments informed regarding Reliability Standards.¹² The Standards Committee is a representative body and membership consists of two members elected from each industry segment.

The Waiver Provision provides that: “Prior to consideration of any waiver request, the Standards Committee must provide five business days notice to stakeholders.” This provides adequate notice and an opportunity for stakeholders to reach out to their representatives on the Standards Committee. As noted in the explicit language of the proposed Waiver Provision: “Actions taken pursuant to an approved waiver request will be posted on the Standard Project page and included in the next project announcement.” Further, Standards Committee meeting

¹¹ SVP Comments at 6-8, 10.

¹² See Section 2 of the Standards Committee Charter, available here: http://www.nerc.com/docs/standards/sc/SC_Charter-SC_Approved_January_16_2013_clean.pdf.

minutes provide notice of all Standards Committee decisions and such decisions will be reported¹³ to the Board of Trustees, Standards Oversight and Technology Committee.¹⁴

The circumstances under which the Standards Committee can exercise the Waiver Provision are very limited – (1) where a modification has already been vetted by the industry through the standards development process or (2) is so *insubstantial* that developing the modification through the processes in the SPM would add significant time delay. The Standards Committee is a stakeholder committee and these limited circumstances ensure that the integrity of the standard development process is not compromised while providing necessary flexibility to administer the process.

NERC is firmly committed to the consensus-based stakeholder standards development process that is set out in NERC’s Rules of Procedure. The proposed Waiver Provision specifies that a waiver cannot be used to modify the requirements for achieving quorum or the voting requirements for approval of a standard. The proposed Waiver Provision and the other proposed changes to the SPM are part of a comprehensive redesign of the NERC Reliability Standards development process focused on the development of Reliability Standards in a more timely and efficient manner. The proposed revisions were approved by stakeholders with an approval rating of 85.57%. NERC notes that SVP did not participate in the NERC standard development process and is raising its concerns for the first time before the Commission.¹⁵

¹³ For these reasons, SVP’s statement (at 10) that “entities attempting to challenge [a waiver determination] will not have any record upon which the decision was based, nor would it have details regarding the Standard Committee’s reason for the decision” is incorrect.

¹⁴ The Standards Oversight and Technology Committee is composed of a minimum of three members of the NERC Board of Trustees and is responsible for monitoring the overall results of the standard development process, including quality and timeliness of standard development work. See Standards Oversight and Technology Committee Mandate, available here: <http://www.nerc.com/docs/bot/bottc/Mandate/SOTC%20Mandate%20Board%20Approved%2008-16-2012.pdf>.

¹⁵ See *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672 at P 334, FERC Stats. &

As explained herein, the proposed Waiver Provision is consistent with the role and responsibilities of the Standards Committee and provides sufficient notice and transparency to stakeholders and should therefore be approved by the Commission without condition.

III. CONCLUSION

As explained herein, NERC respectfully requests that the Commission accept these comments for consideration.

Respectfully submitted,

/s/ Stacey Tyrewala

Gerald W. Cauley
President and Chief Executive Officer
North American Electric Reliability Corporation
3353 Peachtree Road, N.E.
Suite 600, North Tower
Atlanta, GA 30326
(404) 446-2560
(404) 446-2595– facsimile

Charles A. Berardesco
Senior Vice President and General Counsel
Holly A. Hawkins
Assistant General Counsel
Stacey Tyrewala
Senior Counsel
North American Electric Reliability Corporation
1325 G Street, N.W., Suite 600
Washington, D.C. 20005
(202) 400-3000
(202) 644-8099– facsimile
charlie.berardesco@nerc.net
holly.hawkins@nerc.net
stacey.tyrewala@nerc.net

*Counsel for the North American Electric
Reliability Corporation*

April 5, 2013

Regs. ¶ 31,204, *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006)(“we caution that we will not be sympathetic to arguments by interested parties that choose, for whatever reason, not to participate in the ERO’s Reliability Standard development process if it is conducted in good faith in accordance with the procedures approved by the Commission.”).