

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

**North American Electric Reliability        )       Docket No. NP09-26-000  
Corporation                                    )**

**MOTION TO INTERVENE AND COMMENTS OF  
MID-WEST ELECTRIC CONSUMERS ASSOCIATION  
AND  
THE SOUTHWESTERN POWER RESOURCES ASSOCIATION**

Mid-West Electric Consumers Association, Inc. (“Mid-West”) and the Southwestern Power Resources Association (“SPRA”) (collectively, “Federal Power Customers”), by and through counsel, respectfully tender for filing this Motion to Intervene and Comments (“Comments”) in the above-captioned proceeding concerning the request of the Federal Energy Regulatory Commission (“Commission”) for comments regarding the applicability of mandatory Reliability Standards under section 215 of the Federal Power Act (“FPA”) to the U.S. Army Corps of Engineers—Tulsa District and other federal agencies. In support thereof, Federal Power Customers state as follows:

**I.       PRELIMINARY STATEMENT**

1.       This Motion is tendered pursuant to sections 205, 206 and 215 of the FPA, 16 U.S.C. §§ 824d, 824e and 824o (2000); Rules 212 and 214 of the Rules of Practice and Procedure of the Commission, 18 C.F.R. §§ 385.212 and 385.214 (2009); and the Commission’s June 26, 2009 “Notice of Filing Regarding Notice of Penalty and Request for Decision on Jurisdiction Issue,” as modified by the “Errata Notice” of June 30, 2009, establishing July 24, 2009 as the date by which motions to intervene and comments are to be filed in this proceeding.

2. The persons to whom correspondence, pleadings, and other papers in relation to this proceeding should be addressed and the persons whose names are to be placed on the Commission's official service list are designated as follows pursuant to Rule 203, 18 C.F.R. § 385.203 (2009):

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## II. INTERESTS OF THE FEDERAL POWER CUSTOMERS

3. Mid-West was founded in 1958 as the regional coalition of consumer-owned electric utilities—rural electric cooperatives, municipal electric utilities and public power districts—that purchase hydropower generated at federal multi-purpose

projects operated by the U.S. Army Corps of Engineers (“Corps”) and the U.S. Bureau of Reclamation (“Bureau”). Mid-West members utilize federal hydropower marketed by the Western Area Power Administration (“Western”) under the Pick-Sloan Missouri River Basin Program in nine states, including Colorado, Iowa, Kansas, Minnesota, Montana, Nebraska, North Dakota, South Dakota and Wyoming.

4. SPRA is the service organization representing rural electric cooperatives, municipally owned electric utilities, and public power agencies in the States of Arkansas, Kansas, Louisiana, Missouri, Oklahoma, and Texas. SPRA’s members purchase hydroelectric power from twenty-four multi-purpose projects operated and maintained by the Corps. This hydroelectric power is marketed to the members of SPRA, and others, by the Southwestern Power Administration (“Southwestern”).

5. As demonstrated above, the members of both of the Federal Power Customers are purchasers of energy generated and/or marketed by federal agencies. Due to the relationships the Federal Power Customers and their members have with the Corps, the Bureau, Southwestern, and Western, it is unclear whether potential penalties assessed by the North American Electric Reliability Corporation (“NERC”) and the Commission against any of the aforementioned federal agencies may become subsumed in the costs passed on to the Federal Power Customers or their members. The Federal Power Customers have no direct control over any actions of these federal agencies. Accordingly, the Federal Power Customers have a vital interest in whether the Commission and NERC have authority to enforce compliance with the Reliability Standards developed, approved, and enforced under the authority of section 215 of the FPA on the Corps, the Bureau, Southwestern, and Western.

### **III. RELEVANT BACKGROUND**

6. On June 24, 2009, NERC submitted to the Commission for approval a Notice of Penalty regarding the failure of the U.S. Army Corps of Engineers—Tulsa District (“Corps—TD”) to comply with Reliability Standards, and it assessed a penalty in the amount of zero dollars. In the filing, NERC stated that the Corps—TD challenged NERC’s jurisdiction under section 215 of the FPA to apply and enforce mandatory Reliability Standards against federal agencies. NERC included in its filing correspondence between NERC and the Corps—TD preceding the Notice of Penalty that demonstrate that the two entities hold fundamentally opposing views on the jurisdictional scope of the FPA, as amended by the Energy Policy Act of 2005: NERC argued that the FPA expressly grants the Commission (and NERC) jurisdiction over federal entities, while the Corps—TD argued that the statutory language fails to overcome the sovereign immunity of federal agencies. NERC noted that other federal entities are raising jurisdictional challenges similar to those raised by the Corps—TD in a number of enforcement proceedings currently pending before NERC. In order to resolve the dispute, NERC requested that the Commission issue a decision clarifying the scope of jurisdiction under section 215 of the FPA and whether NERC has jurisdiction to enforce Reliability Standards and impose penalties and sanctions against the Corps—TD and other federal entities.

7. On June 26, 2009, as modified by its June 30, 2009 errata notice, the Commission sought public comment regarding the applicability of mandatory Reliability Standards to the Corps and other federal agencies.

#### **IV. COMMENTS**

8. The Federal Power Customers understand that the federal agencies are attempting to resolve this issue with the Commission and NERC. They also understand the significance of the Commission's determination with respect to the scope of jurisdiction over federal agencies under section 215 of the FPA. The Federal Power Customers support providing the federal agencies the opportunity to fully develop their position and understanding of this important jurisdictional issue.

9. Furthermore, the Federal Power Customers note that the notices provided to interested parties establishing the deadlines for intervention and comments may have been muddled. On June 29, 2009, the Commission issued a second notice (in addition to the June 26th notice) of NERC's initial filing. Subsequently, on June 30, 2009, the Commission issued a notice rescinding the June 29th notice. On that same day, the Commission issued an errata notice revising the deadline established by the initial notice. These additional notices in the record may lead to confusion regarding the deadline by which comments and motions to intervene are due.

10. Therefore, for the foregoing reasons, the Federal Power Customers respectfully request that the Commission extend the date for comments for an additional 30 days (to August 24, 2009). This extension will afford the federal agencies additional time to attempt to resolve this issue with the Commission and NERC and to fully develop their position in comments for this proceeding. It will also provide clarity to other interested parties with respect to the deadline by which comments and motions to intervene are due.

**V. RESERVATION OF RIGHTS**

11. The Federal Power Customers reserve the right to posit and address any additional issues that it or others may identify or raise herein that are developed before or after discovery or during the course of any hearing that may be conducted in this proceeding.

**VI. CONCLUSION**

**WHEREFORE**, for the foregoing reasons, the Federal Power Customers respectfully request that the Commission grant the following relief:

1. Grant their Motion to Intervene and order that each be allowed to participate fully as parties in this proceeding;
2. Adopt the recommendation of the Federal Power Customers for a 30-day extension of time to file comments in this proceeding;
3. Clarify that, in reaching a jurisdictional determination, such determination does not contain any inference regarding the federal agencies' ability to pass through penalties to customers; and

4. Grant such other relief as the Commission may deem necessary and appropriate.

Dated: July 21, 2009

Respectfully submitted,

/s/ Jeffrey C. Genzer

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding. Dated at Washington, D.C., this 21st day of July 2009.

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