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January 28, 2011

PUBLIC VERSION

The Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20246

**Re: Unidentified Registered Entity
Request for Recovery of Charges in Accordance with Schedule [REDACTED]
[REDACTED] Tariff and Expedited
Treatment
FERC Docket No. ER11-____-000**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act (“FPA”), 16 U.S.C. § 824d, and Part 35 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) regulations, 18 C.F.R. § 35, *et seq.*, and Schedule [REDACTED] to the Unidentified Registered Entity’s (“URE”) [REDACTED] Tariff (“Tariff”), the URE respectfully requests the Commission’s approval to recover the costs associated with a small penalty resulting from an Abbreviated Notice of Penalty (“NOP”) filed by the North American Electric Reliability Corporation (“NERC”) on December 22, 2010 in Docket No. [REDACTED]. Additionally, to remit payment of the penalty amount to the ReliabilityFirst Corporation (“ReliabilityFirst”) in a timely manner, the URE respectfully requests that the Commission provide expedited treatment of its requests herein as described in Section IV below.

The costs for which the URE is seeking recovery result from a settlement agreement and associated penalty identified as NERC Violation Tracking Identification Number RFC200900143. The settlement agreement was entered into by and between the URE and ReliabilityFirst to resolve all outstanding issues arising from a non-public investigation into an

alleged violation concerning NERC Reliability Standard [REDACTED]¹ (“Settlement Agreement”). The URE neither admitted nor denied any violation of these requirements in the Settlement Agreement, and, as discussed in the Settlement Agreement, entered into the Settlement Agreement in order to avoid excessive litigation costs and lingering uncertainty over the alleged violations, as well as to achieve a final resolution of the matters addressed in the Settlement Agreement. The issues that are the subject of the Settlement Agreement do not meet the criteria for direct assignment of costs and, therefore, as required under Schedule [REDACTED], the URE herein submits its proposed methodology to allocate the costs of penalty payment amongst the URE’s Tariff Customers. The URE would emphasize that the impact of the penalty allocation on any one Tariff Customer is anticipated to be extremely small.

As required by Schedule [REDACTED] of the Tariff, and consistent with the Commission’s [REDACTED], this filing serves as notice to all Tariff Customers regarding the URE’s proposed allocation of the costs of the penalty resulting from the Settlement Agreement to all Tariff Customers.² In addition, as also required under Schedule [REDACTED], upon approval of the NOP by the Commission, this filing provides notice to all Tariff Customers of the Commission’s confirmation of a penalty assessment against the URE.

I. BACKGROUND

After issuance of the Commission’s Order Providing Guidance on Recovery of Reliability Penalty Costs by Regional Transmission Organizations and Independent System Operators (“Guidance Order”), which provided direction to Regional Transmission Organizations (“RTOs”) and Independent System Operators (“ISOs”) concerning recovery of penalty costs that may be assessed against them for non-compliance with NERC’s Reliability Standards,³ [REDACTED]

¹ [REDACTED]

² [REDACTED]

³

Order Providing Guidance on Recovery of Reliability Penalty Costs by Regional Transmission Organizations and Independent System Operators, 122 FERC ¶ 61,247 (2008).

[REDACTED]

[REDACTED]

As discussed above, Schedule [REDACTED] to the Tariff allows the URE to recover penalty costs either through direct assignment of the penalty or by spreading the penalty costs among Tariff Customers and Members. When, as a result of the CMEP, NERC or a Regional Entity finds that a Tariff Customer and/or Member directly contributed to or were a “root cause(s)” of a confirmed violation(s) for which the URE was assessed a penalty, the URE may seek direct assignment of penalty costs to the identified Tariff Customer or Member.⁶ For other penalties, including those that the URE may incur due to its own actions or inactions, the URE may seek Commission approval to recover penalty costs from all Tariff Customers and Members pursuant to a FERC-approved methodology for the allocation of the penalty costs.⁷ For recovery of any penalty costs (whether directly assigned or spread amongst all Tariff Customers and Members), Schedule [REDACTED] requires the URE to submit a section 205 filing to the Commission seeking approval of the recovery of costs associated with penalty payments and the proposed methodology for allocation of penalty costs.⁸

II. DESCRIPTION OF FILING

In the instant filing, the URE seeks the Commission’s approval to recover the penalty assessed under the Settlement Agreement, as well as Commission approval of the allocation methodology proposed herein.

A. Request for Recovery and Proposed Allocation of Penalty Costs

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[REDACTED]

5

Guidance Order at P 24.

6

[REDACTED]

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Id.

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Id.

In accordance with the URE's corporate emphasis on sustaining a strong culture of compliance, on June 16, 2009, the URE self-reported a matter [REDACTED]. The ensuing non-public investigation by ReliabilityFirst resulted in the above-referenced Settlement Agreement and associated penalty assessment. As indicated in the NOP, the URE neither admitted nor denied any violation [REDACTED]; however, as stated in the Settlement Agreement, the URE believes that, in light of the costs of litigation and the uncertainties associated with an alleged violation, it was in the best interest of the URE and its stakeholders to have entered into the Settlement Agreement. Furthermore, the issues that are the subject of the Settlement Agreement do not meet the criteria for the direct assignment of costs to a specific Tariff Customer or Member. Therefore, the URE requests Commission approval to recover the costs associated with the Settlement Agreement from all of its Tariff Customers and Members.

In its Guidance Order, the Commission set forth criteria for consideration in approving requests for recovery of penalty costs by RTOs and ISOs. More specifically, the Commission stated,

“In considering such filings, the Commission will consider such matters as whether the RTO or ISO had a sound compliance program in place to prevent the violations (including, for example, personnel policies that place incentives on employees and management to comply with the rules or risk adverse actions), whether the violations were intentional or grossly negligent, rather than negligent, whether management was involved in the violations, the ability of the RTO or ISO to pay the penalty, and the fairness of the assessment mechanism proposed by the RTO or ISO.”⁹

To facilitate the Commission's review of this request to recover penalty costs, the URE submits the following information that is responsive to the Commission's criteria for approval of recovery of penalty costs.

The URE has a well-established, comprehensive, and effective internal compliance program that includes each applicable NERC Reliability Standard. More specifically, compliance at the URE rests atop its [REDACTED]

⁹ Guidance Order at P 27.

[REDACTED]

Further, the URE notes that

[REDACTED]

With respect to the specific issues that were the subject of the NOP, the URE notes that these resulted from an administrative oversight by staff-level personnel at the URE, which resulted in

[REDACTED] The administrative nature of the oversight is described in the Settlement Agreement, as is the URE's history of diligence and commitment relative to the performance [REDACTED]. Hence, the URE submits for the Commission's consideration that the issues that were the subject of the NOP were neither intentional nor grossly negligent, but were simply an administrative oversight by URE personnel at the staff level, *i.e.*, no management personnel were involved. Furthermore, as also recognized by the Settlement Agreement, any risk to the reliability of the Bulk Electric System by this administrative oversight was low.

Finally, the Commission has recognized that RTOs and ISOs "have some unique characteristics" that complicate the assessment of monetary penalties against these types of entities.¹³ As the URE has previously stated,¹⁴ it is a

[REDACTED]

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[REDACTED]

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Order 672, FERC Stats. & Regs. ¶ 31,204 (2006) at P 634.

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[REDACTED]

[REDACTED]

As such, the URE has no ability to pay this penalty without Commission approval of this filing.

The URE's status as a pass-through entity, *i.e.*, an entity for which all funds received have been allocated to specific uses, is clear when its Schedule [REDACTED] are considered. Schedule [REDACTED] to the URE Tariff explicitly describes costs that may be recovered and requires that any amounts received in excess of actual costs incurred [REDACTED]

[REDACTED]

Further, failure to obtain regulatory approval for the recovery of penalty costs would place the URE at risk of insolvency. Hence, the URE is seeking Commission approval to recover the funds necessary to pay the penalty assessed to it in the NOP utilizing the following allocation methodology, which it asserts is the most equitable allocation mechanism for the reasons set forth below.

B. Allocation Methodology

The URE proposes to allocate the costs associated with the penalty under the Settlement Agreement on a *pro rata* basis to all Tariff Customers based upon the Schedule [REDACTED] billing determinants calculated during the calendar month immediately following the month in which this filing is accepted or approved by the Commission. Specifically, for that month, the URE

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See [REDACTED]

Guidance Order, 122 FERC ¶ 61,247 at P 27 (reiterating that penalties must be recovered only on a case-by-case basis by RTOs (rather than passed-through automatically), and outlining criteria to be considered in determining whether pass-through is permitted).

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[REDACTED]

will add total Network Load¹⁷ for that month to total Reserved Capacity for all Point-to-Point Transmission Service for that month. Then, each Tariff Customer's share of the penalty will be calculated by dividing that Tariff Customer's total Network Load for the month or the Tariff Customer's total Reserved Capacity for Point-to-Point Transmission Service for the month (whichever is applicable) by the sum of the total Network Load and total Reserved Capacity for all Point-to-Point Transmission Service for that month.¹⁸

Although not all Tariff Customers may be impacted in a particular month by a penalty charge, the URE believes that this approach is an effective, timely and equitable means of allocating the penalty assessed to the URE in the Settlement Agreement. Furthermore, the URE would emphasize that the impact of the penalty allocation on any one Tariff Customer is estimated to be extremely small. Utilizing forecasted calculations, the URE anticipates that the allocation of the penalty amount for which the URE is requesting recovery would result in a change of less than one one-thousandth of one cent per MWh.

III. DOCUMENTS INCLUDED WITH THIS FILING

1. This filing letter;
2. Attachment A, [REDACTED]
3. Attachment B, [REDACTED]

¹⁷ Unless otherwise defined herein, capitalized terms in this filing have the same meaning as the definitions set forth in the Tariff.

¹⁸ There may be a few Tariff Customers with both Network Load and Reserved Capacity for Point-to-Point Transmission Service. The share of the penalty for these Tariff Customers will be calculated by adding their total Network Load for the month and total Reserved Capacity for Point-to-Point Transmission Service for the month, and then dividing that amount by the sum of the total [REDACTED] Network Load for the month and total [REDACTED] Reserved Capacity for all Point-to-Point Transmission Service for the month.

IV. CORRESPONDENCE AND COMMUNICATIONS

Correspondence and communications with respect to this filing should be sent to, and the parties request the Secretary to include on the official service list, the following:

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An asterisk (*) denotes designated persons for communications pursuant to 18 C.F.R. § 385.203(h). The URE requests that the Secretary include the denoted name(s) on the official service list under Rule 2010(c).

V. PROPOSED EFFECTIVE DATE AND REQUEST FOR WAIVER

Pursuant to 18 C.F.R. § 35.3(a) (2010), the URE respectfully requests that this be filing be made effective on the date that the Commission approves the NOP filed in Docket No. NP11-59-000, or that such NOP becomes effective by operation of law.¹⁹ Finally, the URE respectfully submits that the requirements of Section 35.13 of the Commission's regulations that have not

¹⁹ On January 21, 2011, the Commission issued a notice in NP11-59-000 extending the time period for consideration of the NOP until February 18, 2011, and it appears that the approval of the NOP will occur no earlier than that date. To the extent necessary, the URE respectfully requests that the Commission waive its prior notice requirements under Part 35 in order to permit this filing to become effective as of the date that the NOP is either approved by the Commission or becomes effective by operation of law. The URE respectfully submits that the good cause standard for such waivers, adopted by the Commission in *Central Hudson Gas & Electric Corp., et al.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992), is satisfied here. Permitting this filing to become effective as of the date that the underlying NOP either is approved or becomes effective by operation of law will permit the URE to discharge in a timely manner its remaining obligations under the Settlement Agreement. *See, e.g., California Independent System Operator Corporation, et al.*, 134 FERC ¶ 61,032 at P 38 (2011) (granting waiver of prior notice requirements because waiver would permit applicant, a transmission provider, to timely commence construction of interconnection facilities); [REDACTED]

been specifically addressed herein are inapplicable to this filing. To the extent that the Commission determines any such or other rules to be applicable, the URE respectfully requests waiver of the requirements of such provisions.

VI. SERVICE

[REDACTED]

VII. CONCLUSION

For all of the foregoing reasons, the URE respectfully requests that the Commission approve its request to recover the penalty costs assessed in the Settlement Agreement and its proposed allocation methodology for recovery of such penalty costs in accordance with Schedule [REDACTED] of the Tariff. Furthermore, the URE respectfully requests that the Commission allow this filing expedited treatment and to become effective on the date that the NOP in Docket No. [REDACTED] is approved by the Commission or becomes effective by operation of law, and that the Commission grant all waivers that it deems necessary to permit such an effective date.

Respectfully submitted,

/s/ Brian M. Zimmet
Brian M. Zimmet

Attorney for the Unidentified Registered Entity

Attachments

cc: Jeffrey Hitchings, FERC	Patrick Clarey, FERC
Christopher Miller, FERC	Penny Murrell, FERC
Melissa Lord, FERC	Michael Donnini, FERC
Natalie Tingle-Stewart, FERC	Rebecca Michael, NERC
Jason Blake, ReliabilityFirst Corporation	Michael Austin, ReliabilityFirst Corporation

ATTACHMENT A

ATTACHMENT B