

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

**Michigan Public Service Commission)
)
Complainant,)
v.)
North American Electric Reliability)
Corporation, and)
)
Wisconsin Electric Power Company)
)
Respondents.)**

Docket No. EL14-104-000

**THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION'S
ANSWER TO THE MICHIGAN PUBLIC SERVICE COMMISSION'S
COMPLAINT**

Pursuant to Rules 206(f) and 213 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure¹ and the Commission's "Notice of Complaint" issued on September 22, 2014, the North American Electric Reliability Corporation ("NERC") hereby submits this Answer to the Complaint filed by the Michigan Public Service Commission ("MPSC") in the above-captioned docket ("the Complaint"). MPSC seeks an order from the Commission that reverses NERC's certification outlined in the August 28, 2014 Balancing Certification Final Report ("Certification")² issued by ReliabilityFirst ("RF"). MPSC alleges, among other things, that NERC's August 28 Certification approved Wisconsin Electric Power Company's ("WEPCo") proposal to split its existing WEC Balancing Authority ("BA") footprint into two BAs - the new Michigan Upper Peninsula ("MIUP") BA and the WEC BA. MPSC further argues NERC's approval of the new BA could result in an unjust and

¹ See 18 C.F.R. §§ 385.206(f) and 385.213 (2013).

² See Complaint at Exhibit MI-1.

unreasonable change in the allocation of System Support Resource (“SSR”) costs. As discussed in greater detail below, MPSC’s Complaint should be dismissed given that it mischaracterizes NERC’s action in the certification of WEPCo’s proposed MIUP BA, and as a result, seeks an improper form of relief.

I. SUMMARY OF MPSC’S COMPLAINT AND EXECUTIVE SUMMARY OF NERC’S ANSWER

A. SUMMARY OF MPSC’S COMPLAINT

At the core of the MPSC Complaint are the following three allegations:³

- 1) The administrative decision-making process before ReliabilityFirst was procedurally defective, and denied affected parties an opportunity to be heard and to present evidence regarding the impact of WEPCo’s proposal upon ratepayers of affected Load Serving Entities (“LSEs”);
- 2) NERC failed to address evidence that WEPCo’s proposed split of its BA between the portion covering Wisconsin and the portion covering the Michigan Upper Peninsula, either intentionally or coincidentally, could result in a dramatic and unjust and unreasonable change in the allocation of SSR costs recently approved by the Commission in its July 29 Order; and
- 3) There is a lack of substantial evidence supporting any finding that the requested split is needed to address any physical reliability issues.

MPSC argues that for these reasons, NERC’s Certification of the MIUP BA should be reversed.

In the alternative, MPSC requests that the Commission make clear that NERC’s approval will not have any impact upon the allocation of SSR costs that would otherwise occur under the Midcontinent Independent System Operator (“MISO”) Tariff and the related MISO Business Practice Manual. MPSC argues that without the requested reversal or clarification, NERC’s approval could “impose dramatic and unreasonable shifts in the allocation of SSR costs without providing any opportunity or forum for affected parties to be heard and present evidence

³ Complaint at 4–5.

concerning the impact of proposed changes to BA boundaries upon areas potentially outside of NERC’s purview, such as cost allocation.”⁴

B. EXECUTIVE SUMMARY OF NERC’S ANSWER

In response to MPSC’s Complaint, NERC asserts the following:

- 1) The administrative decision-making process before RF was not procedurally defective. NERC complied with its FERC-approved Rules of Procedure (“ROP) in certifying the MIUP BA.
- 2) NERC was not obligated to address evidence that the proposed split of WEPCo’s BA could result in a change in the allocation of SSR costs. Issues related to costs such as the SSR allocation are beyond the scope of NERC’s jurisdiction.
- 3) NERC’s Certification review was properly scoped to evaluate whether the proposed split of the WEC BA would cause reliability concerns. The proper scope of NERC’s review is not to ensure that the proposed BA remedies any physical reliability issues; rather, NERC’s certification review is designed to ensure that the proposed BA does not create any reliability issues.

As a threshold matter, MPSC’s Complaint fails to meet even the minimal requirements set forth in Rule 206 of the Commission’s Rules of Practice and Procedure.⁵ The Complaint does not “clearly identify the action or inaction which is alleged to violate applicable statutory or regulatory requirements” and does not “explain how the action or inaction violates applicable statutory standards or regulatory requirements.”⁶ Instead, the Complaint requests the Commission’s reversal of NERC’s Certification for failure to consider evidence that NERC has no jurisdiction to consider. MPSC’s Complaint should be dismissed and evidence relating to the allocation of SSR costs, the underlying cause of MPSC’s concern, should be evaluated by the only entity with the requisite jurisdiction—FERC.

⁴ Complaint at 2.

⁵ 18 C.F.R. § 385.206(b).

⁶ *Id.* at (b)(1) and (b)(2).

II. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to:

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III. ANSWER

A. NERC’S CERTIFICATION OF THE MIUP BA WAS NOT PROCEDURALLY DEFECTIVE

NERC’s certification of the MIUP BA was done in full accordance with the FERC-approved ROP. The certification review was not procedurally defective and any claims to the contrary demonstrate a fundamental misunderstanding of NERC’s processes. The ROP clearly sets forth the process for registration and certification of a BA. Under the ROP, the purpose of NERC’s Certification program is to ensure that a “new entity (*i.e.*, an applicant seeking to be an RC, BA, or TOP that is not already performing the function for which it is applying to be certified as) has the tools, processes, training, and procedures,” demonstrating its ability to meet the “Requirements/sub-Requirements of all of the Reliability Standards applicable to the function(s) for which it is applying,” demonstrating that it is qualified for certification and operation.⁷

⁷ See ROP § 501.

The registration and certification process requires NERC to ensure that all geographical or electrical areas of the Bulk Power System (“BPS”): (i) do not lack any entity to perform the duties and tasks identified in and required by NERC’s Reliability Standards to the fullest extent practical; and (ii) that there is no unnecessary duplication of such coverage or of required oversight of such coverage.⁸ NERC evaluates each proposed BA under specific criteria articulated in the ROP. In doing so, NERC is to: (i) ensure an applicant’s ability to meet certification requirements; (ii) document the certification process; (iii) maintain records of currently certified entities; and (iv) issue a Certification document to an applicant that successfully demonstrates its competency to perform the evaluated functions.⁹ NERC made each of the relevant determinations required by the ROP.

Contrary to MPSC’s allegations otherwise, NERC is not required to entertain comments or evidence from stakeholders. NERC’s evaluation is limited to a technical evaluation of the entity’s operational capabilities and ability to meet NERC’s Reliability Standards. NERC conducted an in-depth review of WEPCo’s capacity to reliably operate the MIUP BA. Specifically, NERC’s evaluation included: (i) interviewing MIUP’s management and reviewing pertinent documentation to verify necessary requirements for BA operation; (ii) reviewing procedures and other documentation developed by MIUP to meet applicable standards and requirements; (iii) interviewing MIUP system operations personnel; (iv) reviewing MIUP’s Energy Management System, communication facilities, operator displays, etc., to assess its capabilities; (v) performing other validation review as necessary; and (vi) conducting an in-person site check on August 12, 2014 through August 13, 2014.¹⁰ NERC’s evaluation confirmed

⁸ See *Id.* at § 501.1.4.; see also § 501.1.4.2 *et seq.*

⁹ See ROP §§ 501.2–501.2.5 (specifying the criteria NERC must use before issuing certification of a new BA).

¹⁰ See Complaint at Exhibit MI-1.

WEPCo's competency to operate the MIUP BA reliably and thus NERC issued its Certification report on August 28, 2014.

B. MPSC MISCHARACTERIZED NERC'S ACTION: NERC CERTIFIED THE MIUP BA, NERC DID NOT APPROVE WEPCO'S PROPOSAL

Despite NERC's efforts to inform the MPSC of its process and responsibilities, the MPSC has repeatedly failed to recognize NERC's limited and narrowly scoped certification process. Instead, the MPSC continues to assert that NERC approved WEPCo's proposal to create a new BA. NERC did not approve any such proposal, and advised the MPSC of that fact¹¹ before MPSC filed its Complaint with FERC. NERC only certified WEPCo's proposed MIUP BA and, in its review of that Certification, evaluated the competency of WEPCo to reliably operate the BA.¹² NERC's role in the certification process is to ensure that entities are technically capable of performing their functions so as to better ensure grid reliability; issues such as cost allocation are not relevant to that determination and are beyond the scope of NERC's jurisdiction. In fact, under the ROP, cost allocation is not among the factors NERC is to consider as part of its registration or certification program.¹³

MPSC's concerns about cost allocation issues relate to tariff revisions proposed by the MISO that are currently before the Commission in a separate proceeding.¹⁴ Pursuant to Section 205(a) of the FPA, the Commission has exclusive jurisdiction over all rules that affect or pertain to rates and charges received by any public utility for or in connection with the transmission and sale of electric energy. MISO's tariff and the related allocation of SSR rates falls squarely in the

¹¹ See, *inter alia*, NERC's August 29, 2014 Letter to the Michigan Public Service Commission, Attachment L to the Complaint.

¹² See *Id.*

¹³ See ROP § 500 (governing NERC's registration and certification process for BAs); see also Appendices 5A and 5B of the ROP (providing the criteria evaluated and guidance for evaluation in NERC's certification process).

¹⁴ See, *inter alia*, Docket Nos. ER14-1242 and ER14-1243 (In a January 31, 2014 filing, MISO proposed a *pro rata* allocation of SSR costs associated with the Presque Isle generators to all LSEs of the ATC LLC footprint).

Commission's jurisdiction. Therefore, NERC does not have the jurisdiction or ability to evaluate evidence relating to these issues as they are entirely within the Commission's purview.

NERC's Certification of the MIUP BA should not be improperly expanded to provide the MPSC with another attempt to change the Commission's ruling on SSR costs. MPSC has had the opportunity to comment on MISO's tariff restructuring before FERC,¹⁵ and NERC's certification process is not meant to address these issues.

C. NERC's certification review was properly scoped to evaluate whether the proposed split of the WEC BA would cause reliability concerns.

The proper scope of NERC's review is not to ensure that the proposed BA remedies any physical reliability issues; rather, NERC's certification review is designed to assure that the proposed BA does not create any reliability issues. On February 17, 2014, WEPCo submitted an Entity Certification form to RF for certification and registration of the MIUP BA. In its request, WEPCo provided all required documentation including a reliability proposal, procedures, and list of personnel needed for NERC to evaluate and determine whether the MIUP BA would cause any reliability concerns.¹⁶ NERC's primary objective for conducting its certification review is to ensure that the MIUP BA can competently fulfill its responsibilities as a BA and comply with NERC's Reliability Standards (*i.e.* the MIUP BA will not affect reliability in the region).¹⁷ NERC met its responsibility in the evaluation of the MIUP BA and subsequent determination that it has the technical ability to act as a BA. That is the limited, technical role that NERC plays in this process, despite MPSC's protestations to the contrary.

¹⁵ *See Id.*

¹⁶ *See* ROP § 501 (requiring any utility seeking registration to provide proper documentation demonstrating its ability to satisfactorily function as a BA); *see also* Complaint at Exhibit MI-1.

¹⁷ *Id.*

IV. CONCLUSION

WHEREFORE, NERC respectfully requests that the Commission deny the relief sought by MPSC and uphold NERC's certification of the MIUP BA.

Respectfully submitted,

/s/ Meredith M. Jolivert

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C. this 9th day of October, 2014.

/s/ Meredith M. Jolivert

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