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June 29, 2009

VIA ELECTRONIC FILING

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: North American Electric Reliability Corporation
Docket Nos. RR06-1-012 and RR07-7-002
Report of the North American Electric Reliability Corporation and
Western Electricity Coordinating Council in Response to Paragraph 230 of
March 21, 2008 Commission Order**

Dear Ms. Bose:

The North American Electric Reliability Corporation and the Western Electricity Coordinating Council hereby submit the "Report of the North American Electric Reliability Corporation and Western Electricity Coordinating Council in Response to paragraph 230 of March 21, 2008 Commission Order" in the above-referenced dockets.

This filing consists of: (1) this transmittal letter and (2) the narrative text of the filing, which follows this transmittal letter. Both of these documents are transmitted in a single pdf file.

Please contact the undersigned if you have any questions concerning this filing.

Respectfully submitted,

/s/ Owen E. MacBride
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Attorney for North American Electric
Reliability Corporation

UNITED STATES OF AMERICA
Before the
FEDERAL ENERGY REGULATORY COMMISSION

**NORTH AMERICAN ELECTRIC RELIABILITY
CORPORATION**

Docket No. RR06-1-012

**DELEGATION AGREEMENT BETWEEN THE NORTH
AMERICAN ELECTRIC RELIABILITY CORPORATION
AND WESTERN ELECTRICITY COORDINATING
COUNCIL**

Docket No. RR07-7-002

**REPORT OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
AND WESTERN ELECTRICITY COORDINATING COUNCIL
IN RESPONSE TO PARAGRAPH 230 OF MARCH 21, 2008 COMMISSION ORDER**

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**REPORT OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
AND WESTERN ELECTRICITY COORDINATING COUNCIL
IN RESPONSE TO PARAGRAPH 230 OF MARCH 21, 2008 COMMISSION ORDER**

I. INTRODUCTION

The North American Electric Reliability Corporation (“NERC”) and the Western Electricity Coordinating Council (“WECC”) file this status report in response to P 230 of the Commission’s Order issued March 21, 2008 in Docket Nos. RR06-1-012 and RR07-7-002.¹ In P 230, the Commission accepted, subject to conditions, WECC's justification for its proposed deviation from the NERC *pro forma* hearing procedures regarding omission of NERC’s shortened hearing procedure from the WECC hearing procedure, but required NERC and WECC to file a report by June 30, 2009 addressing the merits of retaining this deviation.² NERC and WECC are now filing this report in compliance with P 230 of the March 21, 2008 Order and, for the reasons explained herein, propose that this deviation be retained in the WECC hearing procedures and that NERC and WECC file another report by December 31, 2010.

¹ *Order Addressing Revised Delegation Agreements*, 122 FERC ¶ 61,245 (2008) (“March 21, 2008 Order”).

² The WECC hearing procedures are included in Exhibit D to the Amended and Restated Regional Delegation Agreement between NERC and WECC. The shortened hearing procedure is found in P 1.3.2 of the NERC *pro forma* hearing procedures, which are Attachment 2 to the NERC uniform Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure.

II. NOTICES AND COMMUNICATIONS

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

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Commission's official service list.

III. REPORT IN RESPONSE TO P 230 OF MARCH 21, 2008 ORDER

In NERC's Compliance Filing dated October 30, 2007 in this matter, NERC explained that WECC decided to develop a set of hearing procedures that were different in certain respects than the hearing procedures being developed by NERC and the Eastern Interconnection Regional Entities, based on WECC's specific needs.³ NERC further explained that NERC and WECC

³ *Compliance Filing of the North American Electric Reliability Corporation in Response to April 19, 2007 Order*, filed October 30, 2007 ("October 30, 2007 Compliance Filing") at 42. As stated therein, WECC's decision to adopt certain deviations to the *pro forma* hearing procedures was based on its specific need to accommodate efficiently a level of enforcement activity that was expected to be significant, thereby placing a premium on simplicity and flexibility. In addition, WECC sought to organize its hearing procedures in a manner that more closely resembled the Commission's rules of procedure, rather than those of the National Association of Securities

believed these two sets of hearing procedures would not conflict with the Commission's goal of consistency, because there were few substantive differences and therefore the two sets of hearing procedures would not be burdensome for Registered Entities located in both interconnections.⁴

In the October 30, 2007 Compliance Filing, NERC explained the basis for WECC's omission of the shortened hearing procedures as follows:

[In its April 19, 2007 Order in Docket Nos. RR06-1-004, RR07-1-000 through RR07-1-008, and RR06-3-000,⁵] the Commission stated that the shortened hearing procedures included in §6.1 of the previous CMEP Attachment 2 must preclude *ex parte* communications and that NERC must either explain or delete the provisions permitting waiver of a transcript and testimony under oath.²⁴ WECC's procedures do not include any provision for shortened procedures because, without these features, it is unclear to WECC how a shortened procedure would be shorter than the otherwise applicable procedure.²⁵ In addition, to the extent a proceeding does not involve disputed issues of fact, it is likely that the provisions for summary disposition will achieve a result, from a timing perspective, similar to a shortened procedure.⁶

²⁴ April 19 Order at P 159.

²⁵ In the event that there is a need for an expedited determination, WECC's Hearing Procedures provide the Hearing Officer or Compliance Hearing Body with authority to establish procedural deadlines that facilitate this result. *See* §§1.1.2, 1.5.2, 1.8.1(3) of the WECC Hearing Procedures.

Dealers, because WECC's hearing officers were more familiar with the Commission's rules. October 30, 2007 Compliance Filing at 42.

⁴ October 30, 2007 Compliance Filing at 42.

⁵ *North American Electric Reliability Council and North American Electric Reliability Corporation*, Docket No. RR06-1-004; *Delegation Agreements Between the North American Electric Reliability Corporation and Texas Regional Entity, a division of ERCOT, Midwest Reliability Organization, Northeast Power Coordinating Council: Cross Border Regional Entity, Inc., ReliabilityFirst Corporation, SERC Reliability Corporation, Southwest Power Pool, Inc., Western Electricity Coordinating Council, and Florida Reliability Coordinating Council*, Docket Nos. RR07-1-000, RR07-2-000, RR07-3-000, RR07-4-000, RR07-5-000, RR07-6-007, RR07-7-000, and RR07-8-000, respectively; and *North American Electric Reliability Corporation*, Docket No. RR06-3-000, 119 FERC ¶61,060 (2007) ("April 19, 2007 Order").

⁶ October 30, 2007 Compliance Filing at 44.

In P 230 of the March 21, 2008 Order, the Commission ruled as follows:

We accept, subject to conditions, WECC's justification for its proposed deviation regarding the omission of NERC's shortened hearing procedures (*see* NERC hearing procedures, paragraph 1.3.2). Because this deviation represents a significant change from the NERC hearing procedures, we require NERC and WECC to submit a report, by June 30, 2009, addressing the merits of retaining this deviation.

NERC and WECC (and, we presume, the Commission) had expected that by June 30, 2009 (*i.e.*, more than two years after June 18, 2007, the date reliability standards became mandatory and enforceable), there would have been enough disputed compliance matters that had gone through hearings at WECC (and at other Regional Entities) to form a judgment based on experience as to whether inclusion of the shortened hearing procedures would serve a useful function in the WECC hearing process. That is, WECC (and NERC) would have been able to evaluate whether compliance disputes had arisen and been heard under the full hearing procedure that could have been more efficiently handled via the shortened hearing procedure. However, as of May 31, 2009, WECC has had no disputed compliance matters go through its hearing process; and there have been only a small number of disputed compliance matters for which registered entities have requested hearings before the other Regional Entities' hearing bodies. Even in the other Regions, no case has actually gone to hearing. In light of the lack of actual experience to determine whether addition of the shortened hearing procedure to the WECC hearing procedures would be useful (and whether the absence of the shortened hearing procedure is depriving WECC and registered entities of opportunities for efficiencies), WECC continues to believe its original reasons for not including the shortened hearing procedures are valid. For the same reasons, NERC does not have any basis to depart from its previous deference to WECC's judgment on this point.

Because the lack of experience to date with contested hearings on disputed compliance matters precludes WECC and NERC from providing an analysis based on experience as to

whether the shortened hearing procedure should be added to the WECC's hearing procedures, NERC and WECC propose that WECC be allowed to continue this deviation from the *pro forma* hearing procedures, but that WECC and NERC provide another report to the Commission by no later than December 31, 2010.

IV. CONCLUSION

NERC and WECC respectfully request that the Commission (i) accept this report as compliance with P 230 of the March 21, 2008 Order, (ii) allow WECC to continue its deviation from the NERC *pro forma* hearing procedures of omitting the shortened hearing procedure from the WECC hearing procedures, and (iii) direct WECC and NERC to submit a further report in response to P 230 of the March 21, 2008 Order by no later than December 31, 2010.

Respectfully submitted,

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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 Chicago, Illinois this 29th day of June, 2009.

/s/ Owen E. MacBride
Owen E. MacBride

*Attorney for North American Electric
Reliability Corporation*