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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, SERC Reliability Corporation,
Florida Reliability Coordinating Council and Southwest Power Pool Regional Entity
Docket No. RR010-7-000
Request for Reconsideration, or in the Alternative Rehearing,
Of Paragraph 25 of July 12, 2010 Commission Order**

Dear Ms. Bose:

The North American Electric Reliability Corporation, SERC Reliability Corporation, Florida Reliability Coordinating Council and Southwest Power Pool Regional Entity, hereby submit the "Request of the North American Electric Reliability Corporation, SERC Reliability Corporation, Florida Reliability Coordinating Council and Southwest Power Pool Regional Entity for Reconsideration, or in the Alternative Rehearing, of Paragraph 25 of July 12, 2010 Commission Order" in the above-referenced docket.

This filing consists of: (1) this transmittal letter, and (2) the Request for Rehearing or, in the Alternative Reconsideration, of the July 12, 2010 Commission Order, which are being transmitted in a single pdf file.

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

Respectfully submitted,

/s/ Owen E. MacBride
Owen E. MacBride

Attorney for North American Electric
Reliability Corporation

also approved related amendments to the Delegation Agreements between NERC and SERC, NERC and FRCC and NERC and SPP RE.

The *July 12 Order* rejected the provision in the proposed CMEP Agreements, and the related amendments to the FRCC and SPP RE Delegation Agreements, whereby any penalties paid by FRCC or SPP, Inc., as a registered entity, would be used in a subsequent year to offset the statutory Regional Entity funding requirement of FRCC or SPP RE, respectively.³ Instead, the Commission directed that any penalties assessed against FRCC or SPP, Inc. as a registered entity should be paid to SERC, as the Compliance Enforcement Authority, and used as a general offset to SERC's statutory budget in a subsequent year.⁴

Movants are not requesting reconsideration or rehearing of the Commission's decision that penalties assessed against FRCC or SPP, Inc. as registered entities should *not* be used to reduce the Regional Entity statutory budgets of FRCC or SPP RE, respectively. However, Movants believe that with their original proposal rejected, the CMEP Agreements should be amended to provide that any penalties assessed against FRCC or SPP, Inc. as registered entities should be paid to NERC, and used to offset NERC's statutory budget as the Electric Reliability Organization ("ERO") in a subsequent year. Accordingly, for the reasons detailed below, Movants request that the Commission grant reconsideration or, in the alternative, rehearing, of P 25 of the *July 12 Order*, and on reconsideration or rehearing, direct that the CMEP Agreements and the FRCC and SPP RE Delegation Agreements be revised to provide that any penalties

³ NERC and the Regional Entities have adopted a policy concerning the timing of application of penalties whereby penalty assessments received by NERC or a Regional Entity before July 1 of a year are used to offset the receiving entity's statutory budget in the next year, while penalty assessments received by the receiving entity after July 1 are used to offset its statutory budget in the second succeeding year. This policy is embodied in an amendment to § 1107.2 of the NERC Rules of Procedure currently before the Commission for approval in Docket No. RR10-11-000.

⁴ *July 12 Order* at P 25.

assessed against FRCC or SPP, Inc. as registered entities will be paid to NERC and used to offset NERC's statutory budget as the ERO in a subsequent year.⁵

II. REQUEST FOR RECONSIDERATION

In P 25 of the *July 12 Order*, the Commission stated as follows:

The Commission is not persuaded by NERC's arguments to allow penalty monies collected from SPP or FRCC to offset the funding requirements of the respective regions. The Commission has made it clear that monies from any penalties levied against a registered entity that is also a Regional Entity may not be used to offset the funding of that region, and that the investigating entity should receive any penalty monies resulting from its properly conducted compliance investigations.²⁰ Specifically, we have explained:

In a situation where a monetary penalty is assessed against the operational side of one of these organizations, it is inappropriate for the Regional Entity to receive the penalty money as an offset against its next-year budget. We are concerned that allowing the Regional Entity to retain the penalty money would merely result in an accounting transfer from one division of the umbrella organization to another. Reducing a monetary penalty to an accounting notation would diminish the effectiveness of the statutory penalties and would not serve as sufficient deterrent to ensure that the operational side of the organization is in compliance with all applicable reliability standards. This reasoning applies regardless of whether the investigation and hearing leading up to the penalty assessment are conducted by the Regional Entity or the ERO...[W]e conclude that a monetary penalty assessed against the operational side of the organization should be received by the ERO and should be treated as a general offset of the next year's ERO budget for statutory activities. This will remove the disincentives created by having the same organization pay and receive a monetary penalty.²¹

⁵ In the *July 12 Order*, the Commission directed NERC to submit a compliance filing within 90 days (*i.e.*, by October 11, 2010) with amendments to the CMEP Agreements and the applicable Delegation Agreements implementing the directives in the *July 12 Order*. NERC is contemporaneously filing with the Commission a motion requesting that the Commission change the date for the compliance filing from 90 days following the *July 12 Order*, to 15 days following the date of the Commission's order on this request for reconsideration, or in the alternative, rehearing. This will give Movants sufficient time to adopt, and NERC to submit, conforming amendments to the CMEP Agreements and the Delegation Agreements based on the order on this request for reconsideration, or in the alternative, rehearing.

Based on this rationale, we conclude that it is inappropriate that, when SERC assesses a penalty against SPP or FRCC pursuant to the compliance agreements, the penalty money be treated as an offset against the funding requirements of either the SPP or FRCC Regional Entity, respectively. While the above-quoted statement suggests that the ERO should receive the penalty monies, we believe that it is reasonable in the context of the immediate proceeding for SERC to receive any penalty money as a general offset to its next-year statutory budget, as SERC will be the Compliance Enforcement Authority conducting the audits, investigations or other enforcement activities that result in the assessment of a penalty. Therefore, we direct that the CMEP Agreements be modified such that SERC will receive any monies from penalties against SPP and FRCC, and that there will be no offset to SPP's or FRCC's assessments from the ERO for such penalty monies.

²⁰ Order No. 672, 114 FERC ¶ 61,104 at P 626. Under the current NERC-WECC arrangement, NERC is compensated for its services and, in addition, any penalty monies resulting from violations against the registered entity functions of WECC will offset the funding requirement of NERC, rather than WECC. See WECC Delegation Agreement, Section 8(h) and Exhibit E, Section 4 (Docket No. RR07-1-004).

²¹ *Order Accepting ERO Compliance Filing*, 119 FERC ¶ 61,060 at P 228-229.

Movants do not request reconsideration of the Commission's determination in P 25 that penalties paid by FRCC or SPP, Inc. as a registered entity should not be used to offset the Regional Entity statutory budget of FRCC or SPP RE, respectively. However, Movants request that the Commission reconsider its determination in P 25 that penalties assessed against FRCC or SPP, Inc. as a registered entity should be paid to SERC and used to offset SERC's statutory budget. Movants request that, instead, the Commission authorize Movants to amend the CMEP Agreements and the relevant Delegation Agreements to provide that penalties assessed against FRCC or SPP, Inc. as a registered entity should be paid to NERC and used to offset NERC's statutory budget. Movants submit that this would be a more appropriate application of such penalty monies, for the following reasons:⁶

⁶ Movants, of course, expect that FRCC and SPP, Inc., in performing their registered entity functions, will strive to achieve full compliance with all reliability standard requirements applicable to their activities, so as not to incur any penalties for noncompliance.

First, as the Commission noted in P 25, requiring such penalties to be paid to NERC and used to offset NERC’s statutory budget would be consistent with the approach originally specified by the Commission in P 626 of Order No. 672.⁷

Second, the use of the penalty monies specified by the Commission in P 25 of the *July 12 Order* potentially conveys an unwarranted, “windfall” benefit on the load-serving entities (“LSE”) in the SERC Region. Penalties paid by FRCC or SPP, Inc. for violations of reliability standards as registered entities would result in a reduction in the assessments paid by LSEs in the SERC Region to fund the SERC statutory budget in a subsequent year, and the reduction in assessments could be significant.⁸ In contrast, requiring such penalties to be paid to NERC and used to reduce NERC’s statutory budget will more equitably spread the assessment-reducing benefit of the penalties across the assessments paid by all LSEs in the United States that fund NERC’s statutory activities.

Third, as also noted by the Commission in footnote 20 to P 25 of the *July 12 Order*, requiring any penalties incurred by FRCC and SPP, Inc. in their registered entity functions to be paid to NERC and used to offset NERC’s statutory budget, is consistent with the provisions of NERC’s agreement with the Western Electricity Coordinating Council (“WECC”) pursuant to

⁷ *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, 114 FERC ¶ 61,104 (2006).

⁸ The CMEP Agreements provide for SERC to be compensated by FRCC and SPP RE, respectively, for SERC’s costs in carrying out its CMEP responsibilities under the CMEP Agreements, including an appropriate allocation of SERC’s general and administrative costs. Therefore, the CMEP Agreements already protect the LSEs in the SERC Region from bearing the costs incurred by SERC to perform the CMEP responsibilities with respect to the FRCC and SPP, Inc. registered entity functions. See Section 5 of the SERC-FRCC CMEP Agreement, Section 5 of the SERC-SPP RE CMEP Agreement, and Section 6 of Exhibit E to the amended NERC-SERC Delegation Agreement, Attachments 1, 2 and 3, respectively, to NERC’s original Petition in this docket.

which NERC performs the CMEP responsibilities with respect to WECC's registered entity function as reliability coordinator.

Finally, providing that any penalties incurred by FRCC and SPP, Inc. in their registered entity functions should be paid to NERC and used to offset NERC's statutory budget will allow for a uniform, *pro forma* approach to the treatment of all penalties incurred and paid by a Regional Entity or its affiliate, acting as a registered entity, for noncompliance with an applicable reliability standard. This would be consistent with the provisions of Section 9(j) of the new base *pro forma* Delegation Agreement, and Section 5 of Exhibit E to the new *pro forma* Delegation Agreement, that has been negotiated by NERC and the Regional Entities and is currently pending before the Commission in Docket No. RR10-11-000. Those provisions state as follows:

Section 9(j) of base Delegation Agreement:

Exhibit E to this Agreement sets forth the mechanism through which [REGIONAL ENTITY] shall offset penalty monies it receives (other than penalty monies received from an operational function or division or affiliated entity of [REGIONAL ENTITY]) against its next year's annual budget for carrying out functions under this Agreement, and the mechanism by which [REGIONAL ENTITY] shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of [REGIONAL ENTITY]. *Provided*, that, subject to approval by NERC and the Commission, [REGIONAL ENTITY] may propose and implement an alternative use of penalty monies to that set forth in **Exhibit E**.

Section 5 of Exhibit E:

Except as otherwise approved by the Commission, all penalty monies received by [Regional Entity], other than penalty monies received from an operational function or division or affiliated entity of [Regional Entity], shall be applied as a general offset to [Regional Entity]'s budget requirements for U.S.-related activities under this Agreement for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. Except as otherwise approved by the Commission, any penalty monies received from an operational function or division or affiliated entity of [Regional Entity] shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year.

For these reasons, the Movants request that the Commission grant reconsideration of P 25 of the *July 12 Order* and, on reconsideration, authorize Movants to revise the CMEP Agreements and the relevant Delegation Agreements to provide that penalties assessed against FRCC or SPP, Inc. as a registered entity should be paid to NERC and used to offset NERC's statutory budget.

III. STATEMENT OF ISSUES/SPECIFICATION OF ERROR FOR ALTERNATIVE REQUEST FOR REHEARING

If the Commission disagrees with Movants' request for reconsideration of P 25 of the *July 12 Order*, as discussed in § II above, then Movants, in the alternative, request rehearing with respect to P 25. Pursuant to 18 C.F.R. §385.713(c)(1) and (2), Movants seek, in the alternative, rehearing on the following issue:

Issue: In P 25 of the *July 12 Order*, the Commission has inappropriately and erroneously required that any penalties assessed against FRCC or SPP, Inc., as registered entities, must be paid to SERC and used to offset SERC's statutory budget for a subsequent year, thereby reducing the assessments that would otherwise be paid by LSEs in the SERC Region to fund SERC's statutory activities as a Regional Entity. This directive is inconsistent with the Commission's determination in P 696 of Order No. 672 on the disposition of penalties paid by a Regional Entity or its affiliate acting as a registered entity (*i.e.*, that such penalties should be used to offset the ERO's budget); would result in the LSEs in the SERC Region receiving an unwarranted "windfall" benefit; and departs from the *pro forma* approach otherwise used by NERC and the Regional Entities for application of such penalties. The Commission should instead specify that any penalties assessed against FRCC or SPP, Inc., as registered entities, must be paid to NERC and used to offset NERC's statutory budget for a subsequent year. This application of such penalty monies will more equitably spread the impact of the penalties, in terms of reduction of assessments, across all LSEs in the United States that fund NERC's statutory budget, and be consistent with the Commission's previous determinations concerning application of penalties assessed against a Regional Entity or its affiliate.

In further support of its alternative request for rehearing, Movants respectfully refer the Commission to the discussion in § II of this filing.

IV. CONCLUSION

For the reasons set forth in this filing, NERC, SERC, FRCC and SPP RE request that the Commission grant reconsideration of P 25 of the *July 12 Order* in this docket and, on reconsideration, authorize Movants to amend the CMEP Agreements and the relevant provisions of the Delegation Agreements between NERC and FRCC and NERC and SPP RE to provide that any penalties assessed against FRCC or SPP, Inc. as a registered entity will be paid to NERC and used to offset NERC's statutory budget as the ERO in a subsequent year. Alternatively, if the Commission does not grant Movants' request for reconsideration, then for the reasons set forth in this filing, the Commission should grant rehearing concerning P 25 of the *July 12 Order* in this docket and, on rehearing, authorize Movants to amend the CMEP Agreements and the relevant provisions of the Delegation Agreements between NERC and FRCC and NERC and SPP RE to provide that any penalties assessed against FRCC or SPP, Inc. as a registered entity will be paid to NERC and used to offset NERC's statutory budget as the ERO in a subsequent year.

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 6th day of August, 2010.

/s/ Owen E. MacBride
Owen E. MacBride

*Attorney for North American Electric
Reliability Corporation*