

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

North American Electric Reliability Corporation)	Docket No.	RR06-1-021
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Delegation Agreement Between the North American Electric Reliability Corporation and Texas Regional Entity, a Division of ERCOT)	Docket No.	RR07-1-005
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Delegation Agreement Between the North American Electric Reliability Corporation and Midwest Reliability Organization)	Docket No.	RR07-2-005
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Delegation Agreement Between the North American Electric Reliability Corporation and Northeast Power Coordinating Council, Inc.)	Docket No.	RR07-3-006
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Delegation Agreement Between the North American Electric Reliability Corporation and Reliability <i>First</i> Corporation)	Docket No.	RR07-4-005
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Delegation Agreement Between the North American Electric Reliability Corporation and SERC Reliability Corporation)	Docket No.	RR07-5-006
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Delegation Agreement Between the North American Electric Reliability Corporation and Southwest Power Pool, Inc.)	Docket No.	RR07-6-007
)		
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Delegation Agreement Between the North American Electric Reliability Corporation and Western Electricity Coordinating Council)	Docket No.	RR07-7-007
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Delegation Agreement Between the North American Electric Reliability Corporation and Florida Reliability Coordinating Council)	Docket No.	RR07-8-006
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)		
)	(Not Consolidated)	

**COMMENTS OF
THE TRANSMISSION AGENCY OF NORTHERN CALIFORNIA
ON THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION'S
COMPLIANCE FILING
IN RESPONSE TO THE DECEMBER 19, 2008 ORDER**

The Transmission Agency of Northern California (“TANC”), by and through counsel, Michael Postar, Eli D. Eilbott and Kristen Connolly McCullough, Duncan, Weinberg, Genzer & Pembroke, P.C., 1615 M Street, NW, Suite 800, Washington, DC 20036, respectfully tenders for filing with the Federal Energy Regulatory Commission (“Commission”) Comments with respect to one aspect of the North American Electric Reliability Corporation’s (“NERC’s”) February 17, 2009 compliance filing (“February Filing”) submitted in response to the Order of December 19, 2008.¹ TANC seeks revisions to Figure 6.1 in the February Filing to conform to the Commission’s December 19 Order. In support thereof, TANC states as follows:

I. RELEVANT BACKGROUND

1. As the Commission-certified Electric Reliability Organization (“ERO”),² NERC is responsible for identifying the entities to which the new mandatory Reliability Standards are applicable in order to enforce compliance and ensure the reliability and security of the Bulk-Power System. As such, NERC developed a *Pro Forma* Delegation Agreement providing for the delegation of certain ERO functions and duties to Regional Entities, including a model Compliance Monitoring and Enforcement Program (“Uniform CMEP”).

¹ See *N. Am. Elec. Reliability Corp., et al.*, 125 FERC ¶ 61,330 (2008) (“December 19 Order”).

² *Order Certifying North American Electric Reliability Corporation as the Electric Reliability Organization and Ordering Compliance Filing*, 116 FERC ¶ 61,062 (2006); *order on reh’g and compliance*, 117 FERC ¶ 61,126 (2006).

2. On April 19, 2007, the Commission approved the delegation agreements between NERC and the eight Regional Entities and their attendant documents.³ The Commission also approved NERC's *Pro Forma* Delegation Agreement, including the Uniform CMEP, to be used by NERC and the Regional Entities to monitor, assess, and enforce compliance with NERC's Reliability Standards.⁴ In addition, this was the first of multiple orders in which the Commission identified areas of concern and required some modifications to the *Pro Forma* Delegation Agreements and Uniform CMEP to be filed in subsequent compliance filings. Since then, NERC has submitted multiple compliance filings revising each of the *pro forma* and individual documents identified above.

3. On December 19, 2008, in the Commission's most recent order in this proceeding, the Commission addressed, among other things, TANC's concern that a Registered Entity should know within a short and defined period of time whether its mitigation plan was accepted. The Commission concluded that a Regional Entity must notify the Registered Entity within 30 days of receipt of the mitigation plan if it intends to extend the period of initial review beyond the 30 days provided for in the CMEP.⁵ In addition, the notice must now "identify the date by which it will complete review of the plan."⁶ Absent such a notice within the initial 30 days or before the end date of a previously noticed extension, the mitigation plan will be deemed accepted with *de facto*

³ See *Order Accepting ERO Compliance Filing, Accepting ERO/Regional Entity Delegation Agreements and Accepting Regional Entity 2007 Business Plans*, 119 FERC ¶ 61,060 (2007) ("April 19 Order").

⁴ *Id.*

⁵ *December 19 Order* at P 50.

⁶ *Id.*

approval by the Regional Entity. At the same time, the Commission stressed its belief that the Compliance Enforcement Authorities are entitled to discretion with respect to determining the period of time necessary for reviewing the mitigation plans.

4. The Commission directed NERC to revise section 6.5 to state that Regional Entities will notify NERC and an affected Registered Entity of acceptance of a mitigation plan in order to provide specific notice to a Registered Entity that a Regional Entity has submitted an approved mitigation plan to NERC for review.⁷ The Commission agreed that NERC should notify the Regional Entity and the Registered Entity simultaneously as to whether NERC has accepted or rejected a mitigation plan that a Regional Entity has approved, and directed NERC to amend section 6.5 accordingly.⁸

5. On February 17, 2009, NERC submitted a filing in purported compliance with the directives in the December 19 Order. As part of NERC's February Filing, NERC submitted a revised Uniform CMEP, including a revised Figure 6.1, certain revisions to section 400 of the NERC Rules of Procedures, and revised Amended and Restated Delegation Agreements with certain Regional Entities, including Western Electricity Coordinating Council ("WECC").

6. On February 18, 2009, the Commission issued a "Combined Notice of Filings #1" establishing March 9, 2009 as the date by which comments on NERC's compliance filing submitted in response to the December 19 Order are due. TANC's Comments are timely submitted in accordance with the Commission's Notice.

II. COMMENTS

7. In NERC's February Filing, NERC proposed several revisions

⁷ *Id.* at P 51.

⁸ *Id.* at P 52.

with respect to the Commission's directives in the December 19 Order. While TANC appreciates the revisions already made by NERC to alleviate TANC's previously specified concerns, TANC submits that the revised Figure 6.1 contained in NERC's February Filing does not address the Commission's directives to conform to the directed revisions to section 6.5 in the December 19 Order.

8. In the December 19 Order at P 51, the Commission directs "NERC to revise the first sentence of the second paragraph to state that Regional Entities will notify NERC and an affected Registered Entity of acceptance of a mitigation plan." Accordingly, in the February Filing at 10, NERC appropriately proposes the following revision to the first sentence of what is now the third paragraph (formerly the second paragraph) of section 6.5 of the CMEP: "Regional Entities will notify NERC and the Registered Entity within (5) five business days of the acceptance of a Mitigation Plan and will provide the accepted Mitigation Plan to NERC."

9. In the February Filing, NERC revised Figure 6.1, which is intended to capture the mitigation plan process outlined in section 6.0 of the CMEP. That revision, however, fails "to conform to the section 6.5 revisions directed herein," as directed by the Commission in footnote 27 of the December 19 Order.

10. As proposed, Figure 6.1 would indicate that once the Regional Entity accepts a mitigation plan, the Regional Entity will provide the accepted mitigation plan to NERC for its review and approval. Figure 6.1, as proposed by NERC, however, does not reflect the revision to section 6.5 (in blackline) that "Regional Entities will notify NERC and the Registered Entity" of the acceptance of a mitigation plan. Revised

Figure 6.1 no longer links the Compliance Enforcement Authority⁹ directly to the Registered Entity when a mitigation plan has been accepted.

11. Revised Figure 6.1 indicates that once the Regional Entity accepts a mitigation plan, it will be sent to NERC (as the ERO) for review. In Figure 6.1, the Compliance Enforcement Authority's "Mitigation plan accepted" diamond is directly connected only to the "ERO Review of Mitigation Plan for Approval" diamond when the plan is accepted. The only instance in which the "Mitigation plan accepted" diamond is directly connected to the Registered Entity appears to be when the plan is rejected indicating the need for a "Hearing Process." According to Figure 6.1, as revised in the February Filing, if the Compliance Enforcement Authority reviews the mitigation plan and accepts it, there is no communication or notification to the Registered Entity until the ERO takes action. The Registered Entity will not be notified of any action on its mitigation plan until after the Compliance Enforcement Authority receives the ERO's "Notification of Approval," which appears to be provided to the Registered Entity via the Regional Entity.

12. In contrast to the revised text of section 6.5 and section 403.18 of the Rules of Procedure, Figure 6.1 requires a Regional Entity (acting as the Compliance Enforcement Authority) to submit an approved mitigation plan to the ERO for its approval, and wait for the ERO's Notification of Approval, before the Compliance Enforcement Authority contacts the Registered Entity. TANC submits that Figure 6.1 should conform to the revised section 6.5 and section 403.18 of the Rules of Procedure

⁹ A "Compliance Enforcement Authority" is defined by section 1.1.7 of the Uniform CMEP (and WECC's CMEP) as: "NERC or the Regional Entity in their respective roles of monitoring and enforcing compliance with the NERC Reliability Standards."

by requiring the Regional Entity to notify the Registered Entity that its mitigation plan has been approved and is being submitted to NERC for NERC's review and approval. Although NERC incorporated this directive in revised section 403.18 of the Rules of Procedure and section 6.5, revised Figure 6.1 does not. Thus, TANC requests the Commission direct NERC to revise Figure 6.1 to include the Commission directive that Regional Entities also notify the Registered Entity of its acceptance of a mitigation plan.

13. Further support for revising Figure 6.1 is found in the December 19 Order at P 52, where the Commission "agree[d] with TANC that NERC should notify the Regional Entity and the Registered Entity at the same time as to whether NERC has accepted or rejected a mitigation plan that the Regional Entity approved." As a result, in the February Filing, NERC proposed the following revision to the second sentence of what is now the third paragraph of section 6.5 of the CMEP: "NERC will review the accepted Mitigation Plan and, within thirty (30) days following its receipt of the Mitigation Plan from the Regional Entity, will notify the Regional Entity and, which will in turn notify the Registered Entity, as to whether the Mitigation Plan is approved or disapproved by NERC."

14. Revised Figure 6.1 shows that NERC (as the ERO) will review the mitigation plan once the Compliance Enforcement Authority accepts it. We note that the figure illustrates the possibility that NERC may either: (1) approve the plan and send a Notification of Approval to the Compliance Enforcement Authority; or (2) reject the mitigation plan and send a Notification of Rejection to the Compliance Enforcement Authority. Notably, these two options are provided for in the revised text of section 6.5 coupled with the requirement to also inform the Registered Entity of NERC's chosen

action. Figure 6.1 does not, however, depict any direct link between NERC and the Registered Entity.

15. Therefore, Figure 6.1 also remains inconsistent with the plain text of section 6.5 and section 403.18 of the Rules of Procedure, to the extent that the revised text dictates that NERC will review a mitigation plan and notify the Regional Entity *and the Registered Entity* simultaneously as to whether the mitigation plan has been approved or rejected by NERC. Figure 6.1 continues to illustrate that a Regional Entity, acting as a Compliance Enforcement Authority, would act as a liaison of information between NERC and the Registered Entity. It illustrates a process in which a Regional Entity continues to be the filter through which a Registered Entity hears about any actions NERC may take with respect to its submitted mitigation plans. As such, TANC requests the Commission to direct NERC to revise Figure 6.1 to illustrate the requirement, as stated in revised section 6.5 and revised section 403.18 of the Rules of Procedure, that NERC must inform the Regional Entity and the Registered Entity at the same time about the acceptance or rejection of a mitigation plan.

16. In sum, TANC requests that NERC be required to revise Figure 6.1 to conform to the revised text of section 403.18 of the Rules of Procedure and section 6.5 of the Uniform CMEP and WECC CMEP in order to guarantee that a Registered Entity will receive timely notifications from WECC and NERC that its mitigation plan was accepted by WECC and NERC, respectively, during the mitigation plan process.

III. RESERVATION OF RIGHTS

17. TANC reserves the right to posit and address any additional issues, which it or others may identify or raise in the proceeding herein.

IV. CONCLUSION

18. **WHEREFORE**, the Transmission Agency of Northern California urges the Commission to accept TANC's Comments and require NERC to revise Figure 6.1 in accordance with the recommendations herein.

Dated: March 9, 2009

Respectfully submitted,

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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 9th day of March, 2009.

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