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

**NORTH AMERICAN ELECTRIC RELIABILITY )  
CORPORATION PROPOSED RELIABILITY )  
STANDARD BAL-502-RFC-01: PLANNING )     **Docket No. RM10-10-000**  
RESOURCE ADEQUACY ANALYSIS ASSESSMENT )  
RELIABILITY STANDARD )**

**MOTION FOR LEAVE TO FILE REPLY COMMENTS AND REPLY COMMENTS OF  
THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION REGARDING  
COMMENTS RECEIVED ON NOTICE OF PROPOSED RULEMAKING**

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January 11, 2011

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## I. INTRODUCTION

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure, 19 C.F.R. §§385.212 and 385.213 (2010), the North American Electric Reliability Corporation ("NERC") hereby submits this Motion for Leave to File Reply Comments and Reply Comments in the above captioned proceeding. NERC is filing these reply comments in response to comments filed by Interveners in FERC Docket No. RM10-10-000. In that docket, NERC submitted a petition for approval of a proposed regional Reliability Standard BAL-502-RFC-02 on December 14, 2009. FERC issued a Notice of Proposed Rulemaking ("NOPR") on the BAL-502-RFC-02 standard on October 27, 2010, proposing to approve the regional Reliability Standard.

The National Association of Public Utility Commissioners ("NARUC") and the Public Utilities Commission of Ohio ("Ohio Commission") filed comments in response to the NOPR, asserting that the proposed BAL-502-RFC-02 Reliability Standard exceeds the proper bounds of a Reliability Standard by mandating that planning authorities utilize a resource adequacy criterion, which they assert basically imposes a capacity requirement of a one in ten year loss of load criterion. NARUC additionally asserts that the Commission lacks authority under Section 215 of the Federal Power Act ("FPA") to approve a capacity requirement, even if understood as a planning or analysis tool. NERC hereby provides these Reply Comments to address arguments presented by certain of the Interveners in this proceeding.

## **II. NOTICES AND COMMUNICATIONS**

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

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\*Persons to be included on the  
Commission's service list are indicated  
with an asterisk.

## **III. MOTION FOR LEAVE TO FILE REPLY COMMENTS**

FERC has not issued a notice in this proceeding permitting the filing of reply comments in response to comments received on the NOPR. However, NERC submits that the acceptance of these reply comments at this point in this proceeding will assist the Commission in its decision-making process by clarifying the issues under consideration, helping to develop a complete and accurate record, and correcting unfounded assertions contained in the comments filed by certain parties. While the Commission's rules generally do not permit the filing of reply comments unless otherwise permitted by the Commission,<sup>1</sup> the Commission has granted motions to leave to file such responses if they will clarify issues in dispute, ensure a complete and accurate record, or otherwise provide information to assist the Commission in its decision-

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<sup>1</sup> See 18 C.F.R. §385.213(a)(2) (2010).

making process.<sup>2</sup> NERC's Reply Comments will help clarify certain matters regarding the Commission's authority under Section 215 to approve capacity requirements now before the Commission in this docket because of comments raised by interveners. Additionally, NERC's Reply Comments will provide information that will assist the Commission in its decision-making process. Therefore, NERC requests permission to submit these Reply Comments.

#### IV. REPLY

In their comments on the NOPR, NARUC and the Ohio Commission assert that the BAL-502-RFC-02 standard, proposed for approval under the Commission's Section 215(d)(1) FPA authority to approve a Reliability Standard, exceeds FERC's jurisdiction because of the inclusion of a resource adequacy planning criterion in the proposed standard. NARUC further asserts that FERC is clearly precluded in Section 215 from instituting capacity requirements.

Section 215 of the FPA provides:

"The term [reliability standard] includes requirements for the operation of existing bulk power system facilities, including cybersecurity protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity."<sup>3</sup>

NERC is required, in accordance with Section 215 of the FPA, to include requirements for the operation of existing bulk power facilities necessary to provide for the reliable operation of the bulk power system. The important distinction is between NERC's ability to include resource

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<sup>2</sup> *San Diego Gas & Electric v. Sellers of Energy and Ancillary Services*, 108 FERC ¶ 61,219, at P14, n. 7 (2004) (answer was accepted as it "provided information that assisted [FERC in its] decision-making process"); *see also Michigan Electric Transmission Co.*, 106 FERC ¶ 61,064, at P 3 (2004) (the permitted answer "provides information that clarifies the issues"); *North American Electric Reliability Corporation, Order Certifying NERC as the Electric Reliability Organization and Ordering Compliance Filing*, 116 FERC ¶ 61,062, at P 24 (2006) (reply comments of NERC and others accepted "because they have provided information that assisted us in our decision making process"); *North American Electric Reliability Corporation, Order Conditionally Accepting 2007 Business Plan and Budget of the North American Electric Reliability Corporation, Approving Assessments to Fund Budgets and Ordering Compliance Filings*, 117 FERC ¶ 61,091, at P 18 (2006) (same); *North American Electric Reliability Corporation*, 119 FERC ¶ 61,248 (2007) at P 6 (same).

<sup>3</sup> FPA Section 215(a)(3), 16 U.S.C. §824o(a)(3).

adequacy planning criterion in a Reliability Standard, which is clearly allowed under Section 215(a)(3) and prior Commission orders, and in NERC's ability to require the building or acquisition of new generating capacity, which is prohibited by Section 215(a)(3) of the FPA.

In Order No. 672, the Commission states:

806. We agree with PG&E's recommendation that the Commission require the ERO to obtain information on resource adequacy and make related recommendations where entities are found to have inadequate resources. Resource adequacy is a fundamental aspect of reliability. The ERO is in a unique position to obtain and analyze information regarding resource adequacy across all regions of the Bulk-Power System in interconnected North America. Although section 215(a)(3) of the FPA provides that the term Reliability Standard does not include any requirement to enlarge Bulk-Power System facilities or to construct new transmission capacity or generation capacity, it does not preclude the ERO from obtaining information relating to resource adequacy for the purposes of making its required reports on the adequacy of the Bulk-Power System pursuant to section 215(g) of the FPA. Accordingly, section 39.11(b) of the Final Rule sets forth a separate requirement that the ERO conduct assessments of the adequacy of the Bulk-Power System in North America and report its findings to the Commission and others. Further, the ERO may obtain pertinent information on resource adequacy from any relevant user, owner or operator of the Bulk-Power System.<sup>4</sup>

The Commission specifically states in Order No. 672 that "the ERO [is] to *obtain information on resource adequacy and make related recommendations* where entities are found to have inadequate resources" (*emphasis added*). Additionally, the Commission states that "resource adequacy is a fundamental aspect of reliability." The Commission's Order No. 672 further clarifies that NERC may obtain information addressing resource adequacy and the planned additions and modifications necessary to achieve a reliable bulk power system.

Therefore, while Section 215 precludes NERC from requiring construction or modifications to the bulk power system, it does not preclude NERC from setting a criterion that addresses what is and what is not adequate for reliability. That is, NERC can include

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<sup>4</sup> *Rules Concerning Certification of the Electric Reliability Organization; Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards, FERC Stats. & Regs.*, ¶ 31,204 at P 806 ("Order No. 672"), *order on reh'g*, FERC Stats. & Regs. ¶ 31,212 (2006) ("Order No. 672-A").

requirements for the design of planned additions and modifications necessary for a reliable bulk power system, such as loss of load criterion for future reliability setting, if those requirements are necessary for a reliable bulk power system.

The proposed BAL-502-RFC-02 standard includes two main requirements applicable to Planning Coordinators in the Reliability *First* Region. Requirement R1 requires the Planning Coordinator to document and perform a Resource Adequacy analysis annually. The sub-requirements to Requirement R1 provide additional guidance regarding specific items that must be considered and documented in the analysis that is performed by the Planning Coordinator. This common criterion is necessary so that recommendations can be made in the Reliability *First* Region regarding inadequate resource adequacy requirements that could negatively impact the reliability of the bulk power system.

Requirement R2 requires the Planning Coordinator to annually document its projected load and resource capability for each area or transmission constrained sub-area identified in its Resource Adequacy analysis. The proposed standard does not require the building or acquisition of new generating capacity, nor does it require entities to secure the needed resources as an outcome of the Planning Coordinators' Resource Adequacy analysis.

The proposed BAL-502-RFC-02 Requirements R1 and R2 and their subrequirements are consistent with the mandate of Section 215, which allows for the establishment of common resource adequacy criterion necessary to determine what is adequate for the reliable operation of the bulk power system. Accordingly, because the proposed BAL-502-RFC-02 standard establishes criterion for planning resource analyses for load within the Reliability *First* Region footprint, the requirements proposed in the standard are consistent with Section 215 and the Commission's Order No. 672.

#### IV. CONCLUSION

For the reasons stated above, NERC respectfully requests that the Commission take action consistent with these Reply Comments when it issues its Final Rule regarding Regional Reliability Standard BAL-502-RFC-02.

Respectfully submitted,

/s/ Holly. A Hawkins

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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 Washington, D.C. this 11th day of January, 2011.

*/s/ Holly A. Hawkins*  
Holly A. Hawkins  
*Attorney for North American Electric  
Reliability Corporation*