

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

North American Electric Reliability Corp.)

Docket No. RC11-6-000

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE NORTH AMERICAN
ELECTRIC RELIABILITY CORPORATION**

On September 30, 2011, the North American Electric Reliability Corporation (“NERC”) submitted for filing a Petition Requesting Approval of New Enforcement Mechanisms and Submittal of Initial Informational Filing Regarding NERC’s Efforts to Refocus Implementation of its Compliance Monitoring and Enforcement Program (the “Petition”). On October 21, 2011, third-party interventions and comments were due. This answer is submitted pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 213.

I. MOTION FOR LEAVE TO ANSWER

The Commission’s rules generally do not permit the filing of answers unless otherwise permitted by the Commission.¹ However, the Commission has granted motions for leave to file such answers if they will clarify issues in dispute, ensure a complete and accurate record or otherwise provide information to assist the Commission in its decision-making process.² In addition, the Commission’s rules permit the filing of answers to pleadings in which parties seek substantive relief. NERC’s Answer is limited and will clarify certain concerns raised in the

¹ 18 C.F.R. §385.213(a)(2).

² *San Diego Gas & Electric v. Sellers of Energy and Ancillary Services*, 108 FERC ¶ 61,219, at P 14, 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*, 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*, 117 FERC ¶ 61,091, at P 18 (2006) (same); *North American Electric Reliability Corporation*, 119 FERC ¶ 61,248 (2007) at P 6 (same).

comments of the ISO/RTO Council (“IRC”). In addition, this Answer will provide information that will assist the Commission in its decision-making process. Accordingly NERC requests permission to submit this Answer.

II. ANSWER

The IRC submitted initial comments (the “Initial Comments”) on two elements of the Petition. As relevant here, the IRC commented on the Petition’s references to the conduct of a risk assessment for Registered Entities. Specifically, the IRC urged the Commission to remand the entity risk assessment to NERC for additional work with the stakeholders and that the Commission direct NERC to engage in a stakeholder process with instructions to add detailed objective criteria and transparency to the assessment’s components and processes. Further, the Initial Comments requested the Commission to require the addition of an opportunity for Registered Entities to challenge their assigned risk levels.

Since the filing of the Initial Comments, NERC representatives have been in communication with IRC contacts to clarify that the registered entity assessment profile was provided in the Petition for informational purposes only. Moreover, NERC representatives further explained that it is not within the scope of the matters for which NERC requested approval in the Petition. During the Open Board of Trustees Compliance Committee meetings last week, two Regional Entities, Northeast Power Coordinating Council and Midwest Reliability Organization, presented updates on how they evaluate registered entity internal compliance programs. NERC intends to provide more transparency on how the assessment is conducted and is developing a template that will be posted for industry comment. NERC is also committing to provide opportunity for stakeholder input on the components of the risk assessment discussed on page 36 of the Petition, and on the refinement of criteria used to evaluate these components.

The entity risk assessment template is a risk profile tool that was referenced in the Petition for informational purposes only. NERC is similarly committed to seeking stakeholder input on this template. As explained, however, NERC is not asking the Commission to act on that particular tool in this proceeding. NERC will develop a deliberate and methodical plan to involve stakeholders in developing a risk assessment template and criteria and present the plan at the February 2012 BOTCC Open meeting in Phoenix. NERC will solicit initial input from the NERC Compliance and Certification Committee.

To be clear, as an enforcement organization, NERC will continue to evaluate risks and is committed to providing transparency and information to the industry. In addition, NERC is committed to providing an opportunity for stakeholder comments and input regarding the risk profile program components, the template, and their prospective use. NERC believes that this answer should resolve the IRC's concerns related to the entity risk assessment. Moreover, NERC believes its commitment to working with stakeholders in connection with the development of the risk assessment components, template and identification of other factors for consideration and any related initiatives, addresses the IRC's comments related to the provision of adequate stakeholder process.

III. CONCLUSION

For the foregoing reasons, NERC respectfully requests that the Commission release the *ex parte* communication restrictions that are currently in place with respect to the Petition in order to facilitate NERC, FERC and industry discussions.

Respectfully submitted,

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Dated: November 14, 2011.

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 14th day of November, 2011.

/s/ Sonia C. Mendonça
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