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September 18, 2009

VIA ELECTRONIC FILING

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

**Re: Docket No. RR09-7-000
Motion of the North American Electric Reliability Corporation
To Submit Answer to Comments on
Three-Year Electric Reliability Organization Performance Assessment Report**

Dear Ms. Bose:

The North American Electric Reliability Corporation (NERC) hereby submits its “Motion to Submit Answer to Comments on Three-Year Electric Reliability Organization Performance Assessment Report” (“NERC Motion”).

This filing consists of this transmittal letter and the NERC Motion, 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 the North American Electric
Reliability Corporation

UNITED STATES OF AMERICA
Before the
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric)	
Reliability Corporation)	
)	Docket No. RR09-7-000
Three-Year Electric Reliability Organization)	
Performance Assessment Report)	

MOTION OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
TO SUBMIT ANSWER TO COMMENTS ON
THREE-YEAR ELECTRIC RELIABILITY ASSOCIATION
PERFORMANCE ASSESSMENT REPORT

The North American Electric Reliability Corporation (NERC), pursuant to 18 C.F.R. §§385.212 and 385.213, respectfully requests leave to submit this Answer to the comments filed by interested entities on NERC’s *Three-Year Electric Reliability Organization Performance Assessment Report (Three-Year ERO Report or Report)* that NERC filed with the Commission on July 20, 2009, pursuant to 18 C.F.R. §39.3(c). The Commission allowed interested entities to file comments on the *Three-Year ERO Report* through September 3, 2009.¹

I. MOTION FOR LEAVE TO FILE ANSWER

The Commission’s rules do not permit the filing of answers to protests, unless otherwise ordered.² See 18 C.F.R. §385.213(a)(2) (2006). The Commission has, however, granted motions for leave to file such answers if they will clarify the issues in dispute, ensure a complete and

¹ Comments were filed by the American Public Power Association (APPA), the Edison Electric Institute (EEI), the Electric Power Supply Association (EPSA), Exelon Corporation, and the National Rural Electric Cooperative Association (NRECA). A total of eleven other entities (including seven of the NERC Regional Entities) filed requests to intervene but no comments.

² For purposes of this Motion, NERC treats the comments filed in this proceeding as protests. However, in light of the nature of the proceedings as well as the substance of the comments, they are not “protests” in the traditional sense.

accurate record, or otherwise provide information that will assist the Commission in its decision-making process.³ NERC's answer and its recommendation for further Commission action contained herein will assist the Commission in its decision-making process with respect to the resolution of this proceeding and the process for further consideration and implementation of the proposed actions resulting from the three-year assessment process and NERC's *Three-Year ERO Report*. The Commission should, therefore, permit NERC to submit this answer.

II. ANSWER AND RECOMMENDATION FOR COMMISSION ACTION

A. Summary of Answer

Based on the *Three-Year ERO Report* and the comments filed by entities during the comment period established by the Commission, the Commission should conclude this case, without further proceedings, by issuing an order, pursuant to 18 C.F.R. §39.3(c)(2), finding NERC continues to meet the statutory and regulatory criteria for certification as the ERO. As NERC (along with its stakeholders) continues to work through the specific actions discussed in the *Three-Year ERO Report* and to implement those actions, including budgeting resources for them, the Commission will have the opportunity to review and approve (or, if appropriate, specify modifications to) the specific implementation activities through its review and approval

³ See, e.g., *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 [the Commission in its] decision-making process”); *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 decisionmaking 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, Order on Compliance Filing*, 119 FERC ¶ 61,248, at P 6 (2007) (same); *North American Electric Reliability Corporation, Order on Compliance Filing*, 127 FERC ¶ 61,209 (2009), at P 5 (same).

of (1) NERC's and the Regional Entities' annual business plans and budgets, (2) amendments to the delegation agreements between NERC and the Regional Entities, (3) amendments to the NERC Rules of Procedure and Appendices thereto, and (4) amendments to the NERC Reliability Standards. Additionally, NERC proposes to submit to the Commission a series of comprehensive status reports on progress in implementing the specific actions identified in the *Report*, to be filed six months, 12 months and 24 months following the date of the order concluding this proceeding.

B. Discussion

The Commission's regulations at 18 C.F.R. §39.3(c)(1) specify that the ERO's three-year performance assessment report must include: (i) an explanation of how the ERO satisfies the requirements of §39.3(b), *i.e.*, of the criteria for initial certification as the ERO; (ii) recommendations by Regional Entities, users, owners, and operators of the bulk-power system, and other interested parties for improvement of the ERO's operations, activities, oversight and procedures, and the ERO's response to such recommendations; and (iii) the ERO's evaluation of the effectiveness of each Regional Entity, recommendations by the ERO, users, owners, and operators of the bulk-power system, and other interested parties for improvement of the Regional Entity's performance of delegated functions, and the Regional Entity's response to such evaluation and recommendations. NERC's *Three-Year ERO Report* covered each of these required topics, and more, in extensive detail.⁴ As part of the three-year performance assessment process, NERC developed a list of specific actions that NERC, partly in response to stakeholder and Regional Entity comments and partly on its own initiative, intends to take to improve its

⁴ Item (i) is addressed at pp. 13-39 and 59-67 of the *Report* and in Attachment 1 to the *Report* at pp. 1-41; item (ii) is addressed in Attachments 2, 4 and 5 to the *Report*; and item (iii) is addressed in Attachments 3 and 4 to the *Report*.

programs. This list of Specific NERC Actions was presented in summary form in Appendix A to the *Three-Year ERO Report*, and was presented with accompanying discussion in Attachment 2 of the *Report*.

As described in the *Three-Year ERO Report*, during the process of developing the *Report*, NERC provided several opportunities for stakeholders (including the Regional Entities) to provide comments, recommendations and other input.⁵ Although there was extensive participation and submission of comments and recommendations by stakeholders during the development of the *Three-Year ERO Report*, only five sets of comments on the *Report* were filed with the Commission during the period provided for submission of comments after the *Report* was filed.⁶ None of the five commenters contended that the *Report* did not demonstrate that NERC is continuing to meet the statutory and regulatory criteria for certification as the ERO, or that the *Report* did not satisfy the requirements of §39.3(c)(1). Further, the commenters generally concluded that the list of Specific NERC Actions developed and presented in the *Three-Year ERO Report* is an appropriate list of actions to be addressed by NERC, Regional Entities and other stakeholders, in response to comments and recommendations, to improve NERC's and the Regional Entities' performance of their statutory mission.⁷ (Several of the commenters emphasized one or more of the Specific NERC Actions that are of particular importance to the commenter and deserve, in the commenter's view, higher priority attention.⁸) The commenters did not identify any new or additional areas of concern that were not identified

⁵ See *Three-Year ERO Report* at 2-4.

⁶ See footnote 1 above.

⁷ See APPA at 4-5; EEI at 2-3; EPSA at 3-4; Exelon at 2-3.

⁸ See APPA at 4-5; EEI at 5-7; EPSA at 5-12; NRECA at 3-8.

and discussed in the *Three-Year ERO Report*, nor recommend additional initiatives to be added to the list of Specific NERC Actions presented in the *Report*.

Therefore, at this point there is no dispute (1) that NERC's *Three-Year ERO Report* meets the requirements of §39.3(c)(1), and (2) that NERC continues to satisfy the statutory and regulatory criteria for certification as the ERO. Accordingly, the Commission should issue an order pursuant to §39.3(c)(2) finding that NERC meets the statutory and regulatory criteria, and concluding this proceeding.

In presenting the list of Specific NERC Actions in the *Three-Year ERO Report*, NERC stated that in the coming months, it will develop the schedules, budgets and resource allocations, and the tracking mechanisms, that will be necessary to implement these actions.⁹ The specific plans and steps to implement the Specific NERC Actions will need to be manifested in one or more actions that require Commission review and approval, including inclusion in NERC and/or Regional Entity annual Business Plans and Budgets,¹⁰ amendments to the delegation agreements between NERC and the Regional Entities,¹¹ amendments to the NERC Rules of Procedure (including the Appendices),¹² and amendments to NERC's reliability standards.¹³ Thus, the Commission will have ongoing opportunities to review and approve (or require modifications to) the steps taken by NERC (and the Regional Entities) to implement the Specific NERC Actions (including the budgeting and allocation of resources to carry out these steps).

⁹ See *Three-Year ERO Report*, Appendix A, at 1.

¹⁰ 18 C.F.R. §39.4.

¹¹ Section 215(e)(4) of the Federal Power Act (FPA) and 18 C.F.R. §39.8.

¹² Section 215(f) of the FPA and 18 C.F.R. §39.10.

¹³ Section 215 (d) of the FPA and 18 C.F.R. §39.5.

Moreover, as required by provisions of NERC's Bylaws and Rules of Procedure, the development of business plans and budgets, adoption of amendments to the Rules of Procedure, and adoption of amendments to reliability standards, must include opportunities for stakeholder review and comment (and for some actions, stakeholder approval).¹⁴ Further, in addition to these required opportunities for stakeholder review of and comments on the individual steps that will need to be taken to implement the Specific NERC Actions, NERC anticipates holding one or more stakeholder forums or workshops during the upcoming months to obtain stakeholder comments and input on prioritization of the Specific NERC Actions and plans for funding and implementing them (including timing).

Thus, there is no need for the Commission to keep this docket open as a vehicle for reviewing NERC's development of specific plans and steps to implement the Specific NERC Actions. The Commission will be able to review and approve those plans and steps in its review of NERC's and the Regional Entities' business plans and budgets, proposed amendments to the delegation agreements, proposed amendments to the Rules of Procedure, and proposed amendments to reliability standards. Additionally, stakeholders will have opportunities to review and comment on, and otherwise provide input to, the proposed business plans and budgets, amendments to the Rules of Procedure, and amendments to reliability standards, through the existing processes for those activities.

NERC recognizes, however, that the Commission may also wish to receive more comprehensive information, on a regularly scheduled basis, concerning NERC's progress in developing and effectuating particular plans and steps to implement the Specific NERC Actions.

¹⁴ See, e.g., NERC Bylaws Article IX, section 2 (development of reliability standards), Article XI, section 2 (amendments to the Rules of Procedure) and Article XIII, section 4 (development of annual business plans and budgets); NERC Rules of Procedure, §1101 (development of annual budgets) and §1402 (amendments to the Rules of Procedure).

NERC therefore proposes to file with the Commission a series of three status reports on its activities and progress in implementing the Specific NERC Actions. The status reports would be filed six months, 12 months and 24 months after the date of the Commission's order concluding this proceeding.

III. CONCLUSION

NERC respectfully requests that the Commission: (1) grant NERC's motion for leave to file this Answer; (2) issue an order pursuant to 18 C.F.R. §39.3(c)(2) finding that NERC continues to meet the statutory and regulatory requirements for certification as the ERO, and concluding this proceeding; and (3) accept NERC's proposal to file status reports on its activities and progress in implementing the Specific NERC Actions, on dates that are six months, 12 months and 24 months following the date of the Commission's order concluding this proceeding.

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 18th day of September, 2009.

/s/ Owen E. MacBride
Owen E. MacBride

*Attorney for North American Electric
Reliability Corporation*