



NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

October 22, 2009

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

**RE: North American Electric Reliability Corporation, FERC Docket No. NP09-26-000**

Dear Secretary Bose:

By this letter, the North American Electric Reliability Corporation (“NERC”) responds to the October 7, 2009 United States Department of Energy (“DOE”) Motion for Stay in the above-referenced docket and requests that it be denied. *See* 18 C.F.R. § 385.213(a)(3).

On October 15, 2009, the Federal Energy Regulatory Commission (“FERC” or “Commission”) issued an order addressing the jurisdictional issue in the referenced docket and held that, pursuant to Section 215 of the Federal Power Act, federal entities that are registered as users, owners and operators of the bulk power system must comply with mandatory Reliability Standards.<sup>1</sup> While the Commission acknowledged DOE’s Motion for Stay seeking to suspend enforcement activity in cases where a civil fine against a DOE entity is at issue, the Commission determined “that the issue of civil fines is beyond the scope of this proceeding, [and] we do not discuss DOE’s motion here.”<sup>2</sup> The Commission further determined that the additional question of whether federal entities are subject to monetary penalties for non-compliance with mandatory Reliability Standards is “a separate and distinct issue. We need not and do not address it here.”<sup>3</sup>

NERC respectfully requests that the Commission deny DOE’s Motion for Stay, because it is premature and would be against the public interest to grant a stay of compliance and enforcement programs in light of the Commission’s October 15 Order on jurisdiction. With respect to the

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<sup>1</sup> *North American Electric Reliability Corporation*, 129 FERC ¶ 61,033 (2009).

<sup>2</sup> *Id.* at P 19 and n.20.

<sup>3</sup> *Id.* at P 32.

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imposition of penalties, due process mechanisms are already in place pursuant to the FERC-approved NERC Rules of Procedure and DOE should not be permitted to circumvent them. For these reasons, NERC urges the Commission to deny DOE's Motion for Stay.

Respectfully submitted,

/s/ Rebecca J. Michael

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cc: Official Service List in *Docket No. NP09-26-000*