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October 29, 2010

VIA ELECTRONIC FILING

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

**Re: North American Electric Reliability Corporation
Docket No. RR10-1-001
Request for Reconsideration, or in the Alternative, Rehearing,
of Paragraph 26 of October 1, 2010 Commission Order**

Dear Ms. Bose:

The North American Electric Reliability Corporation hereby submits the “Request of the North American Electric Reliability Corporation for Reconsideration, or in the Alternative, Rehearing, of Paragraph 26 of October 1, 2010 Commission Order” in the above-referenced docket.

This filing consists of: (1) this transmittal letter, and (2) the Request for Reconsideration or, in the Alternative, Rehearing, of the October 1, 2010 Commission Order, which are being transmitted in a single pdf file.

Please note that, for the reasons states at pages 2-3 of the Request for Reconsideration or, in the Alternative, Rehearing, of the October 1, 2010 Commission Order, NERC is respectfully requesting expedited consideration of this Request for Reconsideration or, in the Alternative, Rehearing, and that the Commission issue its ruling by on or about December 10, 2010, so that the Commission’s ruling may be reflected in NERC’s compliance filing to the October 1, 2010 Order, which is due to be filed by December 30, 2010.

Please contact the undersigned if you have any questions concerning this filing.

Respectfully submitted,

/s/ Owen E. MacBride
Owen E. MacBride

Attorney for North American Electric
Reliability Corporation

NERC is requesting reconsideration, or in the alternative rehearing, of one directive in the *October 1 Order*. That directive is the directive in P 26 that the TFE Procedure should be revised to allow a Responsible Entity that “received differing TFE determinations on the same type of covered assets” to submit a request for reconsideration of the approval, disapproval or rejection of a TFE Request to the Regional Entity that made the determination.⁴ NERC requests that this directive be modified so that only NERC, not a Responsible Entity, would be allowed to request a Regional Entity to reconsider its determination to approve, disapprove or reject a TFE Request, based on an apparent inconsistency in determinations. However, under NERC’s proposal, the TFE Procedure would be revised to establish a process for a Responsible Entity to inform NERC of purported inconsistent determinations of TFE Requests by one or more Regional Entities, for NERC’s consideration in deciding whether to ask the applicable Regional Entity(ies) to reconsider the applicable determination(s).

Request for Expedited Determination. The *October 1 Order* directs NERC to make a compliance filing within 90 days of the date of that Order – *i.e.*, by December 30, 2010 – submitting a revised version of the TFE Procedure responsive to the directives in the *October 1 Order*.⁵ By the instant pleading, NERC is requesting reconsideration, or in the alternative, rehearing, and modification, of one directive in the *October 1 Order*. The Commission’s ruling on this request for reconsideration, or in the alternative, rehearing, will affect the revisions to be

⁴ As defined in the TFE Procedure, a Responsible Entity is “An entity that is registered for a reliability function in the NERC *Compliance Registry* and is responsible for complying with an Applicable Requirement, as specified in the “Applicability” section of the CIP Standard” (TFE Procedure §2.22); a “Covered Asset” is a “Cyber Asset or Critical Cyber Asset that is subject to an Applicable Requirement” (TFE Procedure §2.9); and a “TFE Request is “A request submitted by a Responsible Entity in accordance with this Appendix for an exception from Strict Compliance with an Applicable Requirement” (TFE Procedure §2.27). Other capitalized terms used in this filing are defined in §2.0 of the TFE Procedure.

⁵ *October 1 Order* at P 1 and ordering paragraph (B).

made to the TFE Procedure. NERC wishes to submit the required compliance filing, including the revised TFE Procedure, on time by December 30, 2010, with the revised TFE Procedure reflecting the Commission's determination on this request for reconsideration, or in the alternative, rehearing. Accordingly, NERC respectfully requests a Commission decision on this request for reconsideration, or in the alternative, rehearing, by on or about December 10, 2010.⁶

II. REQUEST FOR RECONSIDERATION

In PP 25-26 of the *October 1 Order*, the Commission stated:

25. NERC's proposed new section 11, Consistency in Approval and Disapproval of TFE Requests, is a step in the right direction to achieving consistency. The Commission recognizes that the steps proposed by NERC will likely result in the development of criteria to help ensure consistency and security in administering the TFE process. This is useful and appropriate. However, in the absence of a fully developed uniform framework to assess TFE requests, the Commission believes that NERC's proposal does not go far enough to ensure consistency. Therefore, the Commission directs NERC to make the following revisions to section 3.3 and section 11 of the TFE Procedure.

26. First, NERC should revise section 3.3 to allow for reconsideration of a TFE determination by a Regional Entity solely on the grounds that the approval, disapproval or rejection of the TFE request would result in an inconsistent application of the criteria specified in section 3.1 within a Regional Entity or between Regional Entities. This right to seek reconsideration would be limited to NERC and to responsible entities who received differing TFE determinations on the same type of covered assets.

NERC shares the Commission's concern that there be processes in place to monitor the Regional Entities' determinations on TFE Requests for consistency of application of the Section 3.1 criteria. As the Commission recognized in P 25, new Section 11.0 of the TFE Procedure, Consistency in the Approval and Disapproval of TFE Requests, "is a step in the right direction to

⁶ Concurrently with the Commission's consideration of this request for reconsideration, or in the alternative rehearing, NERC is posting for stakeholder consideration, through its internal processes for amendments to its Rules of Procedure, proposed alternative revised versions of the TFE Procedure, one of them reflecting the directives in the *October 1 Order*, and the other reflecting the directives in the *October 1 Order* under the assumption that the Commission grants the relief requested in this request for reconsideration, or in the alternative rehearing.

achieving consistency. The Commission recognizes that the steps proposed by NERC will likely result in the development of criteria to help ensure consistency and security in administering the TFE process. This is useful and appropriate.” The activities in Section 11.0 (including the additional activity, directed by P 27 of the *October 1, 2010 Order*, that NERC submit an annual informational report to the Commission on consistency issues and their resolution) all revolve around NERC as the entity responsible to monitor and drive consistency among the Regional Entities in their application of the Section 3.1 criteria in approving or disapproving TFE Requests.⁷ This is appropriate because NERC alone is in the unique position to monitor the determinations being made by all the Regional Entities on TFE Requests, to identify areas of inconsistency within and among the Regional Entities in the application of the Section 3.1 criteria and in other matters relating to the determination of TFE Requests, and to give guidance and direction to the Regional Entities for the purpose of improving and ensuring consistency.

Accordingly, NERC agrees with the directive in P 26 that the TFE Procedure should be revised to provide for NERC to be able to ask a Regional Entity to reconsider its determination of a TFE Request on the grounds that the Regional Entity’s determination would result in an inconsistent application of the Section 3.1 criteria by that Regional Entity or among Regional Entities. Providing for NERC to request reconsideration of TFE Request determinations is consistent with, and appropriate in light of, NERC’s role in the TFE Procedure as the overall

⁷ The “consistency” activities specified in §11.2 of the TFE Procedure, as revised and submitted in the *April 21 TFE Compliance Filing*, are that NERC will (1) review reports of approved and disapproved TFE Requests from the Regional Entities and issue guidance to the Regional Entities to achieve greater consistency in approval and disapproval of TFE Requests; (2) maintain a catalogue accessible to Regional Entities of the types of Covered Assets for which TFE Requests have been approved and disapproved; and (3) form a committee of NERC and Regional Entity representatives to review the approved and disapproved TFE Requests for consistency and to issue guidance to the Regional Entities to achieve greater consistency.

monitor of the Regional Entities' application of the Section 3.1 criteria in approving, disapproving and rejecting TFE Requests.

However, NERC requests that the Commission reconsider the directive that a Responsible Entity should also be allowed to ask a Regional Entity to reconsider the approval, disapproval or rejection of a TFE Request, on the grounds that the Regional Entity's determination was purportedly inconsistent with other TFE Request determinations on the same type of Covered Assets. NERC is concerned that giving Responsible Entities a right to ask Regional Entities to reconsider the approval, disapproval or rejection of TFE Requests, even on the limited grounds that the determination was inconsistent with the determination(s) made by the same Regional Entity or a different Regional Entity for the same type of Covered Assets, may result in a flood of such requests that will swamp the TFE Request process and overwhelm the resources the Regional Entities have devoted to the process.

The Commission stated in P 26 of the *October 1 Order* that the right to request reconsideration would be limited solely to the grounds that the determination for which reconsideration is sought reflected an application of the Section 3.1 criteria that was inconsistent with the application of the criteria by the same or another Regional Entity for the same type of Covered Assets. While such grounds may be limited in the abstract, one can foresee broad-ranging efforts by Responsible Entities to characterize the disapproval or rejection of a TFE Request as inconsistent with the approval received by the same or another Responsible Entity on another TFE Request to the same or another Regional Entity. Similarly, one can foresee broad-ranging efforts by Responsible Entities to characterize their Covered Assets that were the subject of a disapproved or rejected TFE Request, as "the same type of" Covered Assets that were the subject of an approved TFE Request of that Responsible Entity or another Responsible Entity.

The result is likely to be the submission of a large volume of requests for reconsideration by Responsible Entities to the Regional Entities.

Further, it is to be expected that Responsible Entities would only request reconsideration of the disapproval or rejection of a TFE Request. It is extremely unlikely that a Responsible Entity would request reconsideration of the approval of its TFE Request on the grounds that the approval was inconsistent with the disapproval of another TFE Request for the same type of Covered Assets. Under the reasonable assumption that some of the requests for reconsideration of disapprovals or rejections will result in the TFE Requests being approved on reconsideration, addition of the reconsideration procedure can be expected to result in an increase in the total amount of exceptions from Strict Compliance with Applicable Requirements that are granted through the TFE process.⁸

Under the P 26 directive, the TFE Procedure would need to be revised to establish a formal process at the Regional Entity for receiving, processing and deciding requests for reconsideration. This would require devoting additional resources to the TFE process at the Regional Entity level. The additional process would be complex, as it would require the Regional Entity not only to again review the original TFE Request, but to compare it to one or more other determinations of TFE Requests from the same and/or other Responsible Entities. If the request for reconsideration is based on purported inconsistency with a TFE Request determination made by a different Regional Entity, the Regional Entity receiving the request for reconsideration would have to contact the other Regional Entity to obtain information about the

⁸ If a Responsible Entity bases its request for reconsideration of the disapproval of its TFE Request on the grounds that another Responsible Entity's TFE Request for the same type of Covered Assets was approved, it is possible that the reconsideration request could result in the termination of the other Responsible Entity's approved TFE, pursuant to §9.0 of the TFE Procedure – which would be an unexpected outcome for the other Responsible Entity that had followed the TFE Procedure and obtained an approved TFE.

other TFE Request determination. This would impact the resources of the other Regional Entity as well. Consistent with due process and the existing procedure for providing notice of determinations on TFE Requests (*see, e.g.*, TFE Procedure §5.2.5), the Regional Entity's notice of its decision on the request for reconsideration would need to state the reasons for the decision. This would also require additional Regional Entity resources.

The Commission has previously expressed concerns as to whether the Regional Entities have sufficient resources to carry out their responsibilities under the TFE Procedure as originally proposed and approved, although NERC and the Regional Entities subsequently provided information that satisfactorily addressed these concerns.⁹ However, implementation of additional processes and procedures at the Regional Entity level for receiving and determining Responsible Entities' requests for reconsideration, as directed in P 26 of the *October 1 Order*, would add to the demands on the Regional Entity resources currently engaged in receiving, processing and determining TFE Requests.

⁹ At P 36 of the its October 15, 2009 Order accepting the NERC and Regional Entity 2010 Business Plans and Budgets, the Commission stated, "We are concerned that, once the ERO develops the procedure and the Regional Entities implement the process of reviewing technical feasibility exceptions, Regional Entities may not have budgeted adequate funding of this potential labor-intensive activity;" the Commission directed NERC to file a report 90 days after implementation of the TFE process evaluating the adequacy of ERO and Regional Entity resources for this activity. *Order Conditionally Accepting 2010 Business Plan and Budget of the North American Electric Reliability Corporation and Ordering Compliance Filing*, 129 FERC ¶ 61,040 (2009) at P 36. NERC submitted compliance filings in response to P 36 on January 11 and May 3, 2010. The May 3, 2010 filing stated (based on a detailed discussion of the volumes of TFE Requests received and the NERC and Regional Entity resources engaged in the TFE process) that "although the volumes of TFE Requests submitted through the first quarter of 2010 have generally been greater than what the Regional Entities anticipated in preparing their 2010 Business Plans and Budgets, NERC and the Regional Entities believe they have sufficient available resources to carry out their responsibilities for processing TFE Requests during 2010." *Further Report of the North American Electric Reliability Corporation in Response to Paragraph 36 of October 15, 2009 Order on 2010 Business Plans and Budgets*, at 1-2. On June 10, 2010, the Commission issued a letter Order in Docket No. RR09-9-003 accepting the May 3, 2010 filing.

Moreover, as a NERC Rule of Procedure (“ROP”), the TFE Procedure has gone through several rounds of posting for stakeholder comment, both through NERC’s internal ROP-approval processes and in connection with the original filing and the *April 21 TFE Compliance Filing* with the Commission. Through these several rounds of comments, there has not been a demand from stakeholders – who also pay assessments to support NERC’s and the Regional Entities’ resource requirements – that the TFE Procedure include a right to request reconsideration by the Regional Entity (or a right to appeal the Regional Entity’s determination to NERC).

Although, as described above, NERC is concerned about the impact of allowing Responsible Entities to submit requests for reconsideration of TFE Requests to the Regional Entities on the Regional Entities’ resources and the overall viability of the TFE process, NERC does recognize there are likely to be instances in which a Responsible Entity identifies a real inconsistency in the application, by one or more Regional Entities, of the Section 3.1 criteria to TFE Requests for the same type of Covered Assets. NERC recognizes that allowing Responsible Entities to point out inconsistencies in application of the Section 3.1 criteria should not be lost as a resource in the overall tool box of activities to improve and ensure consistency.

NERC believes the appropriate resolution of the concerns and objectives articulated above is to revise the TFE Procedure to establish a process whereby Responsible Entities can submit information to NERC on possible inconsistent applications of the Section 3.1 criteria – rather than allowing Responsible Entities to file requests for reconsideration of TFE Request determinations with Regional Entities based on such inconsistencies. Under this approach, a Responsible Entity that believes it has received a TFE Request determination that reflects inconsistent application of the Section 3.1 criteria as compared to other applications of the criteria for the same types of Covered Assets, would be allowed to submit information to NERC

identifying the Responsible Entity(ies), Regional Entity(ies) and TFE Requests involved, and detailing the observed inconsistency(ies).¹⁰ The Responsible Entity would be required to make a clear and compelling showing of inconsistent applications of the Section 3.1 criteria to TFE Requests involving the same type of Covered Assets. NERC would review these submissions, along with the applicable Regional Entity report(s) on the TFE Request determinations at issue (the Regional Entity reports are required by Section 5.2.7 of the TFE Procedure). Based on its review of the Responsible Entity's submission and the applicable Section 5.2.7 report(s), NERC would determine which submissions demonstrated sufficient indications of inconsistent application of the Section 3.1 criteria to warrant asking the applicable Regional Entity(ies) to reconsider the applicable TFE Request(s). NERC would then use its authority (to be established in the revised TFE Procedure per the Commission's directive in P 26 of the *October 1 Order*) to request the applicable Regional Entity(ies) to reconsider the applicable TFE Request(s).

This approach would (1) appropriately keep the focus of efforts to maintain consistency in the application of the Section 3.1 criteria at NERC; (2) avoid creating additional, substantial resources requirements at the Regional Entities and bogging down the TFE Request process as could be the case if Responsible Entities were allowed to file requests for reconsideration with the Regional Entities; (3) still provide an avenue for Responsible Entities to raise issues of apparent inconsistencies in the application of the Section 3.1 criteria in TFE Request determinations by one or more Regional Entities; and (4) allow NERC – again, in conformance with its role as the entity principally responsible to monitor the Regional Entities' activities for

¹⁰ NERC would provide a copy of any such submissions received to the applicable Regional Entity(ies), for information, regardless of whether NERC asked the Regional Entity to reconsider the TFE Request determination(s) that was the subject of the Responsible Entity's submission. Information gleaned from Responsible Entities' submissions to NERC would also be an additional source of information for NERC to use in issuing guidance to the Regional Entities to achieve greater consistency in the approval and disapproval of TFE Requests.

consistency – to act as the “filter” to identify those submissions from Responsible Entities that in fact evidence problems of inconsistency that should be addressed.¹¹

Accordingly, NERC requests that the Commission reconsider its directive in P 26 of the *October 1 Order* that the TFE Procedure should be revised to allow Responsible Entities to submit requests to Regional Entities to reconsider TFE Requests; and instead direct that the TFE Procedure be revised to establish a process whereby a Responsible Entity can submit to NERC information indicating that one or more Regional Entities has made determinations on TFE Requests for the Responsible Entity that indicate inconsistent application of the Section 3.1 criteria to the same type of Covered Assets, for NERC’s consideration in determining whether to request the applicable Regional Entity(ies) to reconsider the determinations made on the applicable TFE Request(s). Only NERC would be allowed to request a Regional Entity to reconsider the determination it made on a TFE Request.

III. STATEMENT OF ISSUES/SPECIFICATION OF ERROR FOR ALTERNATIVE REQUEST FOR REHEARING

If the Commission disagrees with NERC’s request for partial reconsideration of P 26 of the *October 1 Order*, as discussed in §II above, then NERC, in the alternative, requests rehearing with respect to P 26. Pursuant to 18 C.F.R. §385.713(c)(1) and (2), NERC seeks, in the alternative, rehearing on the following issue:

Issue: In P 26 of the *October 1 Order*, the Commission has inappropriately and erroneously required that the TFE Procedure should be revised to establish a process and procedure whereby a Responsible Entity can request a Regional Entity to reconsider the approval, disapproval or rejection of a TFE Request, on the grounds that the approval, disapproval or rejection of the TFE Request would result in

¹¹ NERC expects that with its wide-area view, it will be able to determine that many submissions from Responsible Entities do not reflect inconsistent determinations warranting asking the Regional Entity to reconsider its determination. Therefore, the total TFE Request workload for the Regional Entities will be lower than in a scenario in which the Regional Entities must receive, process and respond to requests for reconsideration directly from Responsible Entities.

inconsistent application of the criteria specified in Section 3.1 of the TFE Procedure to the same type of Covered Assets. Implementation of this directive would likely result in a large volume of requests for reconsideration from Responsible Entities, which would result in an unreasonable increase in the resource burden on the Regional Entities associated with the TFE process, and risk unduly complicating and bogging down that process. Further, the directive inappropriately and erroneously focuses on the Regional Entities as responsible for improving and ensuring the consistency of TFE Request determinations. Under the TFE Procedure, that responsibility is appropriately focused at NERC, which is uniquely positioned to perform the functions of monitoring the Regional Entities' implementation of the TFE Request process, identifying inconsistencies in implementation of the criteria for approving and disapproving TFE Requests, both within a Regional Entity and among Regional Entities, and giving guidance and direction to the Regional Entities for the purpose of improving and ensuring consistency in their TFE Request determinations. The Commission should grant rehearing with respect to this directive in P 26 and, on rehearing, should eliminate the directive that Responsible Entities be allowed to submit requests for reconsideration of the approval, disapproval or rejection of a TFE Request to the Regional Entity, and instead direct NERC to revise the TFE Procedure to establish a process whereby a Responsible Entity can submit to NERC information indicating that one or more Regional Entities has made a TFE Request determination(s) for the Responsible Entity that indicate inconsistent application of the Section 3.1 criteria to the same types of Covered Assets, for NERC's consideration in determining whether to request the applicable Regional Entity(ies) to reconsider the determinations made on the applicable TFE Request(s). Only NERC would be allowed to request a Regional Entity to reconsider the determination it made on a TFE Request.

In further support of its alternative request for rehearing, NERC respectfully refers the Commission to the discussion in §II of this filing.

IV. CONCLUSION

For the reasons set forth in this filing, NERC requests that the Commission grant reconsideration of P 26 of the *October 1 Order* and, on reconsideration, eliminate the directive that the TFE Procedure should be revised to allow Responsible Entities to submit requests for reconsideration of the approval, disapproval or rejection of TFE Requests to Regional Entities; and instead direct NERC to revise the TFE Procedure to establish a process whereby a Responsible Entity can submit to NERC information indicating that one or more Regional Entities has made a TFE Request determination(s) for the Responsible Entity that indicate

inconsistent application of the Section 3.1 criteria to the same type of Covered Assets, for NERC's consideration in determining whether to request the applicable Regional Entity(ies) to reconsider the determinations made on the applicable TFE Request(s). Alternatively, if the Commission does not grant NERC's request for reconsideration, then for the reasons set forth in this filing, the Commission should grant rehearing of P 26 of the *October 1 Order* and, on rehearing, eliminate the directive that the TFE Procedure be revised to allow Responsible Entities to submit requests for reconsideration of the approval, disapproval or rejection of TFE Requests to Regional Entities; and instead direct NERC to revise the TFE Procedure to establish a process whereby a Responsible Entity can submit to NERC information indicating that one or more Regional Entities has made a TFE Request determination(s) for the Responsible Entity that indicate inconsistent application of the Section 3.1 criteria to the same types of Covered Assets, for NERC's consideration in determining whether to request the applicable Regional Entity(ies) to reconsider the determinations made on the applicable TFE Request(s).

For the reasons stated on pages 2-3 above, NERC respectfully requests that the Commission issue its ruling on this request for reconsideration, or in the alternative, rehearing, by on or about December 10, 2010.

October 29, 2010

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 29th day of October, 2010.

/s/ Owen E. MacBride
Owen E. MacBride

*Attorney for North American Electric
Reliability Corporation*