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October 21, 2011

VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: *North American Electric Reliability Corporation, Motion to Intervene and Comments of the ISO/RTO Council on the Petition of the North American Electric Reliability Corporation 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; Docket No. RC11-6-000*

Dear Secretary Bose:

Transmitted electronically for filing in the referenced docket are the Motion to Intervene and Comments of the ISO/RTO Council on the Petition of the North American Electric Reliability Corporation 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.

If there are any questions concerning this filing, please call me at (202) 661-2205.

Respectfully submitted,

/s/ Howard H. Shafferman

Howard H. Shafferman
Counsel for ISO New England Inc.
On behalf of the ISO/RTO Council

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

North American Electric Reliability Corporation)

Docket No. RC11-6-000

MOTION TO INTERVENE AND COMMENTS OF THE ISO/RTO COUNCIL

The ISO/RTO Council (“IRC”) respectfully submits this motion to intervene and comments on the Petition of the North American Electric Reliability Corporation (“NERC”) 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”). The Petition was filed with the Federal Energy Regulatory Commission (“FERC” or the “Commission”) on September 30, 2011.

I. INTRODUCTION

The Petition describes NERC’s decision to shift how it deals with Possible Violations that pose lesser risks to the Bulk Power System (“BPS”), and proposes “a more comprehensive and integrated risk control strategy that differentiates and addresses compliance issues according to their significance to the reliability of the BPS.”¹ In addition, the Petition describes the proposed increase in the utilization by NERC and the Regional Entities of their “inherent enforcement discretion in the implementation of compliance and enforcement activities.”²

The Petition includes two initiatives of particular interest to the IRC, and on which the IRC focuses its comments.

¹ Petition, at 1.

² *Id.*

A. The Find, Fix, Track and Report Initiative

First, the Petition proposes that Possible Violations posing lesser risks and that have been corrected would be presented “as Remediated Issues in a Find, Fix, Track and Report (‘FFT’) spreadsheet format that [would] be submitted to FERC in an informational filing on a monthly basis.”³ Inclusion of a Possible Violation in a FFT report would signify that those responsible for enforcement have exercised their “discretion to determine that, once fixed, no additional compliance resources will be expended on [that] particular matter, given other demands and priorities.”⁴ More serious risk violations would be submitted in a new Spreadsheet Notice of Penalty (“NOP”) or Full NOP, as warranted. The goal of this and related prioritization initiatives is to enable Registered Entities, the Regional Entities, NERC and the Commission to focus on more serious risk issues and improve caseload processing, recognizing that “until today, lesser risk issues have been treated in essentially the same fashion as more serious violations, consuming time and resources disproportionate to the risk posed to reliability.”⁵

The Petition also reflects a commitment by NERC “to report back to the Commission and industry stakeholders at six months and one year following this initial filing on experience gained and the results from implementation of the new mechanisms and tools.”⁶

As explained below, the IRC supports NERC’s request that FERC approve the FFT initiative outlined by NERC. To facilitate the identification of any needed improvements and enhance the long-range success of the FFT and related initiatives, the IRC asks the Commission to require use of the NERC stakeholder process in NERC’s preparation of the six-month and

³ *Id.*

⁴ *Id.*, at 3.

⁵ *Id.*

⁶ *Id.*, at 2.

one-year reports described in the Petition. In addition, the IRC requests the Commission to provide an opportunity for public comment on the reports following their filing with the Commission.

B. The Entity Risk Assessment Initiative

Second, the Petition proposes the conduct of a risk assessment for Registered Entities, ostensibly to allow “Regional enforcement and field staff to ... assess a Registered Entity’s compliance program and internal controls linked to reliability performance in order to understand the risk posed by the entity and appropriately scale the scope to be applied in the compliance process.”⁷ The risk assessment would also include a review of the entity’s compliance history.⁸

The five components comprising the entity risk assessment would be:

1) a technical and risk profile of the entity, 2) considerations of reliability metrics where feasible and relevant, 3) review of the internal compliance program, 4) review of the entities [sic] compliance history and 5) and assessment by the Regional Entity that deals with the entity on a day to day basis.⁹

The IRC urges the Commission to remand the entity risk assessment to NERC for additional work with the stakeholders. With respect to that initiative, the Petition lists five components that are vague on their face and do not provide the Commission with any detail regarding what the components mean, or the criteria that NERC intends to use in implementing the components. At this point, the five components listed for the entity risk assessment appear to represent a high-level conceptual outline rather than a comprehensive program that is ready for Commission review and approval. Accordingly, the Commission should remand the entity risk assessment initiative rather than permit NERC to implement it now, and should direct NERC to

⁷ *Id.*, at 36.

⁸ *Id.*

⁹ *Id.*

engage in a stakeholder process with instructions to add reasonably detailed objective criteria and transparency to the assessment's components and processes. Further, the Commission should require the addition of an opportunity for Registered Entities to challenge their assigned risk levels.

II. MOTION TO INTERVENE

The IRC is comprised of the Alberta Electric System Operator (“AESO”), California Independent System Operator (“CAISO”), Electric Reliability Council of Texas (“ERCOT”), the Independent Electricity System Operator of Ontario, Inc. (“IESO”), ISO New England, Inc. (“ISO-NE”), Midwest Independent Transmission System Operator, Inc. (“MISO”), New York Independent System Operator, Inc. (“NYISO”), PJM Interconnection, L.L.C. (“PJM”), Southwest Power Pool, Inc. (“SPP”), and New Brunswick System Operator (“NBSO”).¹⁰ The IRC's mission is to work collaboratively to develop effective processes, tools and standard methods for improving the competitive electricity markets across North America. In fulfilling this mission, it is the IRC's goal to provide a perspective that balances reliability standards with market practices so that each complements the other, thereby resulting in efficient, robust markets that provide competitive and reliable service to customers.

IRC members conduct their operations in compliance with the NERC Reliability Standards. IRC members operate the bulk power system, administer the organized wholesale electricity markets, and act as the planning authorities within their respective regions. As such, their interests cannot be adequately represented by any other party.

¹⁰ The IESO is not subject to the Commission's jurisdiction, and these comments do not constitute agreement or acknowledgement that it can be subject to the Commission's jurisdiction. The AESO and NBSO are also non-jurisdictional members of the IRC, but are not joining in these comments.

III. COMMENTS

A. The IRC Supports the FFT Initiative

The IRC supports NERC's effort to institute prioritization in its Compliance Monitoring and Enforcement Program ("CMEP"). In particular, the IRC supports the use of the FFT mechanism to streamline the processing of Possible Violations that pose lesser risks to the BPS. The IRC agrees with NERC that the FFT initiative represents "a more flexible approach to enforcing compliance in a manner that truly fosters enhanced reliability rather than draining resources on minutia" while providing "for systematic NERC tracking of region- and industry-wide trends in possible violations/issues to ensure continued reliable operations and compliance with standards..."¹¹

To facilitate the identification of any needed improvements and enhance the long-range success of the FFT and related initiatives, the IRC asks the Commission to require use of the NERC stakeholder process in NERC's preparation of the six-month and one-year reports described in the Petition. In addition, the IRC requests the Commission to provide an opportunity for public comment on the reports following their filing with the Commission.

B. The Commission Should Remand the Entity Risk Assessment Proposal for Additional Stakeholder Input

As indicated above, the IRC supports, and concurs with the need to prioritize the deployment of NERC's resources to focus on the detection and correction of violations that pose a relatively higher level of risk to the BPS. However, the IRC has significant concerns about the entity risk assessment initiative summarized in Section I above. With respect to the entity risk assessment initiative, the IRC is not taking a position on the merits of that initiative, but to the extent the Commission has a favorable view of the initiative, the Commission should direct

¹¹ *Id.*, at 25.

NERC to suspend implementation of the initiative and fully develop the components and process with industry input, so that objective and transparent criteria are in place that will permit conduct of the assessments in a fair, objective, and reviewable manner. Given the potential impact to entities' compliance posture and liability exposure, the rights and obligations and impact must be fully understood and the process must be completely transparent before it is put into effect. Further, the Commission should require the addition of an opportunity for Registered Entities to challenge their assigned risk levels.

The stated purpose of the assessment is to understand the risk posed by the entity and appropriately scale the scope to be applied in the compliance process. While obtaining this understanding may be helpful in the conduct of the CMEP, the components on which the assessment as presented in NERC's Petition are both vague and subjective, and the manner in which the components are evaluated is non-transparent. This creates a significant possibility that a Registered Entity may be unfairly saddled with a "risky" reputation without a means to even understand, much less challenge, the manner in which that degree of risk was determined.

As stated in the Petition, the five components of the entity risk assessment are: 1) a technical and risk profile of the entity, 2) considerations of reliability metrics where feasible and relevant, 3) review of the internal compliance program, 4) review of the entities [sic] compliance history and 5) and assessment by the Regional Entity that deals with the entity on a day to day basis.

Some of the five components are unacceptably vague on their face and unfortunately the filing does not provide any additional information to the Commission regarding what these factors mean or how they will be used. None of the components indicates that objective criteria would be used in evaluating the component or, if objective criteria will in fact be utilized, what

these criteria will be. For example, the first component provides no detail regarding what factors would be used to assess the technical and risk profile of an entity, so the IRC is unable to comment on whether it agrees with NERC's proposed metrics to measure such risk, assuming that such metrics would even be developed. Similarly, component 2 provides no indication when reliability metrics will be deemed "feasible and relevant" to entity risk assessments. Likewise, component 5 raises many issues, including: (i) the kind of "assessment" that would be made that would not already be subsumed in the prior four components; and (ii) the indicia that would be considered by the "day-to-day" Regional Entity in rendering that assessment.

Beyond this, the Petition contains no indication that the assessment will be made in a process that is transparent to the pertinent Registered Entity, or that the Registered Entity will even be informed of, or have the opportunity to understand, the "riskiness" assigned to that entity. Moreover, the Petition is silent regarding any opportunity that the Registered Entity might have to challenge its assessment. These gaps indicate insufficient accountability for the persons or entity making the entity risk assessment. As presented in the Petition, the five components listed for the entity risk assessment appears to represent merely a high-level conceptual outline rather than a comprehensive program that is ready for Commission review and approval.

Section 215(c)(2)(C) requires the ERO's enforcement of reliability standards to employ "fair and impartial procedures."¹² Due to the infirmities described above, the entity risk assessment initiative does not satisfy this requirement. Accordingly, the Commission should remand the entity risk assessment initiative for additional consultation in the NERC stakeholder process, with instructions to add reasonably detailed objective criteria, transparency and

¹² 16 U.S.C. § 824o(c)(2)(C) (2006 and Supp. II 2009).

accountability to the assessment's components and process. Further, the Commission should require the addition of an opportunity for Registered Entities to challenge their assigned risk levels.

IV. CONCLUSION

WHEREFORE, for the reasons stated above, the IRC respectfully requests that the Commission rule on the Petition in a manner consistent with these comments.

Respectfully submitted,

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Date: October 21, 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 21st day of October, 2011.

/s/ Pamela S. Higgins

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