

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

North American Electric Reliability Corporation	)	Docket No. RR15-2-000
	)	

**MOTION TO INTERVENE OUT OF TIME AND COMMENTS
OF THE ISO/RTO COUNCIL IN SUPPORT OF
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION'S
COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM FILING**

On February 21, 2017, the North American Electric Reliability Corporation (“NERC”) made an annual filing of its Compliance Monitoring and Enforcement Program (“CMEP”)¹ where it petitioned the Federal Energy Regulatory Commission (“FERC”) to accept enhancements to the CMEP. The ISO/RTO Council (“IRC”)² respectfully submits these comments in support of NERC’s proposal to provide Self-Logs of minimal risk Compliance Exceptions (“CEs”) to FERC on a confidential basis, and expand the use of CEs to include certain moderate risk potential non-compliance instances that are currently processed through the Find, Fix, Track and Report (“FFT”) disposition method.

¹ *North American Electric Reliability Corp., Docket No. RR15-2-000 (February 21, 2017)(“Petition”) .*

² The IRC comprises the Alberta Electric System Operator (“AESO”), California Independent System Operator (“CAISO”), Electric Reliability Council of Texas, Inc. (“ERCOT”), the Independent Electricity System Operator of Ontario, Inc. (“IESO”), ISO New England, Inc. (“ISO-NE”), Midcontinent Independent System Operator, Inc. (“MISO”), New York Independent System Operator, Inc. (“NYISO”), PJM Interconnection, L.L.C. (“PJM”), and Southwest Power Pool, Inc. (“SPP”). AESO is not subject to FERC jurisdiction and does not join these comments.

I. MOTION TO INTERVENE OUT OF TIME

The IRC moves to intervene out of time and to file late comments in this proceeding. Rule 214(d) of the Commission's regulations provides that, in acting on any motion to intervene filed out of time, the Commission will consider whether: (i) the movant has good cause for failing to file the motion within the time prescribed; (ii) the granting of the motion will disrupt the proceeding; (iii) the movant's interest is not adequately represented by other parties in the proceeding; (iv) any prejudice to, or additional burdens upon, the existing parties might result from permitting the intervention; and (v) the motion conforms to the regulations set forth in Rule 214(b).

The following factors should weigh in the consideration of this motion to intervene out of time. First, the IRC did not timely intervene only as a result of an administrative oversight. Second, the IRC agrees to accept the record as it has developed to the date of the granting of this motion. Third, because its members are ISOs and RTOs that comply with NERC standards and may utilize the self-logging program, the IRC has a unique and substantial interest in this proceeding, which cannot adequately be represented by any other party. Fourth, granting the IRC's motion will neither prejudice nor place additional burdens upon the existing parties to this proceeding. Fifth, the IRC's motion complies with the requirements of Rule 214(b). Good cause thus exists for this motion, and the IRC respectfully requests that the Commission grant its motion to intervene out of time and to file late comments.

II. COMMENTS IN SUPPORT

The IRC supports NERC's primary Self-Logging Program goals of: (1) promoting the development of strong internal controls to identify, assess, and correct non-compliance; (2) enhancing NERC and the Regional Entities' (hereinafter "ERO Enterprise") visibility of those internal controls that identify, assess and correct minimal risk incidents that are potential non-compliance events; and (3) driving processing efficiencies of NERC, the Regional Entities, and registered entities through streamlined, non-public resolution of minimal risk non-compliance logged by program participants. The IRC also supports the continuing efforts by the ERO Enterprise to move toward a risk-based approach to enforcement of non-compliance with Reliability Standards so that the ERO Enterprise and registered entities can focus their time and efforts on the higher risks to the reliability of the Bulk Power System.

A. Publicly Identifying Non-Compliance of Registered Entities May Dissuade Participation in the Self-Logging Program

When the industry and the ERO Enterprise originally developed the idea of self-logging minimal risk non-compliance, anonymity was an important feature of the program.³ The industry believed that in order to accomplish the goals of the program—have a majority of registered entities participate, maximize the lessons learned regarding the effectiveness of controls and mitigation steps, and provide processing efficiencies for the ERO Enterprise and the industry—the identity of the non-compliant party should be withheld from public view.

³ *North American Electric Reliability Corp., Docket No. RR15-2-000, at 44 (Dec. 3, 2014)(NERC RAI Filing).*

The IRC supports NERC's conclusion that the requirement to post self-logged items publicly appears to have limited the incentive to participate in self-logging. That may be the reason why, of the over 1,200 registered entities at NERC, only 59 participated in the Self-Logging Program by the end of 2016.⁴

The most important aspect of the Self-Logging Program is the sharing of information to enhance and secure the reliability of the Bulk Power System. The identity of the non-compliant entity is far less critical. Therefore, to encourage such information sharing, the name of the entity who self-logged the non-compliance should remain confidential. The IRC believes that eliminating the identification of registered entities may recast the apparent focus of the program from potential compliance failure to a successful identification and correction.

The IRC also has no objection to NERC publicly posting a list of those entities participating in the Self-Logging Program, which may incentivize others to participate.⁵

B. Treating Certain Moderate Risk Non-compliances as Compliance Exceptions Would Provide Flexibility and Focus Efforts on Greater Risks to Reliability.

The IRC supports NERC's proposal to expand the CE program to allow for the resolution of certain moderate risk non-compliance events. NERC's enforcement program and tools have continued to evolve and mature to the betterment of the program. The IRC agrees with NERC that "[t]he implementation of the CE program has been successful"⁶ and the IRC believes the program is ripe for expansion by including certain

⁴ 2016 ERO Enterprise Compliance Monitoring and Enforcement Annual Report at p. 7 (February 8, 2017).

⁵ Petition at 14.

⁶ *Id.* at 15.

moderate risk non-compliance events. Expansion of the program allows for additional efficiency gains across the ERO Enterprise, as registered entities whose compliance programs mature may still encounter potential non-compliance events with moderate risk profiles, yet effectively manage that risk through timely identification and correction worthy of streamlined processing.

The IRC supports the criteria outlined in the Petition⁷ as appropriate to determine which moderate risk non-compliance events will be considered for CE treatment.

III. CONCLUSION

In response to NERC's Petition to enhance its CMEP, the IRC respectfully requests that the Commission consider the comments contained herein.

Respectfully submitted,

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⁷ *Id.* at 16-17.

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March 22, 2017

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 Holyoke, MA, this 22nd day of March, 2017.

/s/ Julie Horgan

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