UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability Council )
and North American Electric Reliability Corporation ) Docket No. RR06-01-000 )

MOTION TO INTERVENE AND COMMENTS
OF THE NORTHEAST POWER COORDINATING COUNCIL

Pursuant to Rules 212 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.214 (2005), and the Commission's notice issued on April 7, 2006,¹ the Northeast Power Coordinating Council (“NPCC” or the “Council”) moves to intervene and provides comments in the above-captioned proceeding.

In support hereof, NPCC states as follows:

I. BACKGROUND

On August 8, 2005 the President of the United States signed into law the Electricity Modernization Act of 2005 (the “Act”), which for the first time makes compliance with electric reliability standards mandatory and enforceable within the United States.² Pursuant to the directives in the Act, the Commission instituted a rulemaking on September 1, 2005 and issued a final order on February 3, 2006³ establishing criteria governing the certification of an Electric Reliability Organization

(“ERO”) and develop procedures for the establishment, approval and enforcement of electric reliability standards.

On April 4, 2006, the North American Electric Reliability Council (“NERC Council”) and its affiliate, North American Electric Reliability Corporation (“NERC Corporation) (jointly “NERC”), filed an application for certification as the ERO pursuant to section 215 of the Federal Power Act (“FPA”). NPCC supports this application. NERC proposes that once NERC has been certified as the ERO, NERC Council and NERC Corporation will be merged, with NERC Corporation being the surviving corporation assuming the assets and liabilities of NERC Council. NERC also seeks Commission approval of its certificate of incorporation, its bylaws, and its rules of procedure, all of which will become the “ERO Rules.” NERC’s April 4, 2006 filing focuses primarily on creating an excellent ERO, with little emphasis on addressing or incorporating aspects of the reliability legislation regarding other rights and authorities both established and preserved.

II. COMMUNICATIONS

All communications, including any correspondence, pleadings, or other documents, related to this matter should be directed to the following individual:

Edward A. Schwerdt
Executive Director
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III. DESCRIPTION AND INTERESTS OF THE NORTHEAST POWER COORDINATING COUNCIL

The exact legal name of movant is Northeast Power Coordinating Council ("NPCC") whose principle office is located at 1515 Broadway, 43rd floor, New York, New York 10036. NPCC is a voluntary, not-for-profit organization. Membership is available to all entities that participate in the interconnected electricity markets in Northeastern North America. The NPCC Membership Agreement provides for open, inclusive membership and fair and non-discriminatory governance with NPCC's activities directed by a balanced stakeholder Executive Committee. The NPCC Membership Agreement also allows for non-voting Public Interest membership to be extended to regulatory agencies with jurisdiction over users, owners and operators of the bulk power system within Northeastern North America and organizations expressing interest in the reliability of electric service in Northeastern North America.

NPCC is the Regional Reliability Organization ("RRO") responsible for assuring international reliability of the bulk power system in the Northeastern United States and Eastern Canada. Reliability is assured through the establishment of regionally-specific reliability criteria, which implement and augment broad-based, continent-wide standards; through coordination of system design and operations; through assessment of adequacy and security; and, through monitoring and enforcement of compliance with such reliability criteria. NPCC, through its open, stakeholder process for development of regionally-specific criteria, facilitates, to the extent possible, attainment of fair, effective and efficient competitive electric markets.
NPCC is one of eight Regional Reliability Organizations in North America that together comprise the members of NERC. NPCC's international membership is comprised of electric utilities, transmission owners, transmission providers, independent generators, power marketers, transmission customers, Independent System Operators (“ISOs”), a Regional Transmission Organization (“RTO”), an Independent Electricity System Operator (“IESO”), a statewide sub-regional reliability council, and State and Provincial regulatory authorities. Each member is a signatory to the Council's Membership Agreement, which defines the membership rights and obligations. The Membership Agreement obligates all signatory parties to compliance with NERC Reliability Standards and NPCC Reliability Criteria, creating a mandatory compliance environment for the Northeastern United States and Eastern Canada. A regional compliance program, with State and Provincial regulatory support, is in place to enforce compliance within both the U.S. and Canadian portions of NPCC.

The geographic area of NPCC totals approximately one million square miles and includes New York State, the six New England States, Ontario, Quebec and the Maritime Provinces. The total population served is approximately 56 million people. From an electric load perspective, 20% of the Eastern Interconnection load is served within NPCC. For Canadian electricity requirements, 70% of the country's load is located within the NPCC Region. This represents a current NPCC membership composition by load that is approximately 45% U.S. and 55% Canadian.

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4 A list of NPCC’s members can be found at http://www.npcc.org/members.htm.
IV. MOTION TO INTERVENE

As the Regional Reliability Organization for the Northeastern portion of North America, the organization responsible for establishing regionally-specific reliability criteria for the Northeastern United States and Eastern Canada, and one of the eight members of NERC, NPCC has a direct and substantial interest in this proceeding because the creation of an ERO may affect regional reliability, both in the Northeastern United States and Eastern Canada. No other party can adequately represent NPCC’s interest. Accordingly, it is in the public interest to grant this motion to intervene.

V. COMMENTS

A. The ERO Should Engage In Activities That Focus On Its Primary Statutory Reliability Duties.

As NPCC has previously commented to NERC during the drafting of the ERO application, the ERO should engage in activities that will enhance North American reliability by focusing on its statutory reliability functions and services and by avoiding activities that could distract it from achieving excellence in its statutory obligations. The final ERO Rule supports this objective, stating that:

The Electric Reliability Organization or a Regional Entity may not engage in any activity or receive revenues from any person that, in the judgment of the Commission represents a significant distraction from, or a conflict of interest with, its responsibilities under this part.5

Concurring with the comments filed in the ERO rulemaking proceeding, the Commission has recognized that additional tasks, such as periodic recertification, “would tax the resources of the ERO and take the focus away from its primary function of

5 ERO Final Rule Section 39.4(g).
ensuring the reliability of the Bulk-Power System”;

especially during the early years as the ERO grapples with a multitude of start-up matters. NPCC supports a strong and focused ERO that avoids taking on activities that are beyond those required to support the ERO’s statutory functions and may, likewise, divert valuable resources from core reliability assurance functions.

Under the Electricity Modernization Act of 2005, the statutory functions that form the core of the ERO’s reliability obligations are:

1. Development of reliability standards that provide for an adequate level of reliability of the bulk-power system;
2. Enforcement, through the imposition of penalties, of reliability standards; and,
3. Conducting periodic assessments of the reliability and adequacy of the bulk-power system in North America.

Several activities proposed by NERC fall outside these core obligations. Those proposed additional activities include:

- Organizational Certification (Exhibit C – Section 500);
- Reliability Readiness Audit and Improvements (Exhibit C – Section 700);
- Reliability Performance Analysis (Exhibit C – Section 800);
- Training and Education (Exhibit C – Section 900);
- Event analysis and information exchange;
- Operational Coordination in the form of various ERO provided tools; and,
- Infrastructure Security (Exhibit C – Section 1000).

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6 Order No. 672 at P186.
7 Id. at P184.
8 FPA § 215(c)(1), (2)
9 Id.
10 Id. at § 215(g).
11 NPCC supports NERC registration of entities since it is reasonable that NERC, as the ERO, should be aware of the entities that will perform tasks identified in its standards, however, certification by the ERO is unnecessary as entities’ ability to perform the required tasks is monitored through the statutory compliance and enforcement functions of the ERO.
12 Unlike preparing a reliability assessment, performance analysis is not a statutory function.
13 Since NERC’s infrastructure security must also be evaluated, it would be more appropriate for this service be conducted by an entity other than NERC that has particular subject matter expertise in the area of infrastructure security.
While section 215 of the FPA does not preclude the ERO from pursuing non-statutory activities funded from sources other than the statutory funding mechanism,\(^{14}\) the ERO should not take on activities that have the potential, solely or in combination, to dilute its mission and distract it from achieving excellence in performing its statutory obligations. If NERC proposes such activities, at a minimum, it should: 1) justify each activity as benefiting reliability; 2) explain how the functions do not inhibit ERO statutorily defined functions; 3) identify the amount of funding needed; and, 4) explain how the ERO intends to have those activities funded.

Of more critical importance are two proposed additional activities that could result in potential organizational and operational conflicts:

- Personnel Certification (Exhibit C – Section 600) and
- Situation Awareness (Exhibit C – Section 1000).

NPCC recognizes that NERC could provide a role in coordinating personnel certification, but not performing the certification itself. It is inadvisable for the entity charged with establishing reliability standards and the responsibility for assessing penalties against an entity that does not meet its personnel certification standard to also be responsible for certifying personnel.

Maintaining situational awareness is an essential operating function necessary to achieving reliability. The lack of situational awareness was cited by the U.S./Canada Task Force Report as one of the primary causes of the 2003 Blackout. This function

\(^{14}\) Order No. 672 at P202; Order No. 672-A at P61. Only functions performed under U.S. statutory authority, and as delegated by Canadian provincial authorities, should be funded through the proposed ERO funding mechanism and collected from the LSEs. Non-statutory services should be separately identified and funding should be directly apportioned to individual ERO members who support those functions.
should not be performed by the ERO\textsuperscript{15} since it could result in more than “one set of hands on the wheel” during real time operational conditions.

B. The ERO Stakeholder Process Should Be Robust and Codified.

It is essential that the ERO utilize a robust stakeholder engagement process that builds confidence in, and support for, decisions of the ERO. Such a process should promote meaningful involvement of diverse stakeholders before matters are brought to the Members Committee and before submittal for approval by the NERC Board and, to the extent necessary, by the Commission and Canadian provincial regulators. A process that includes early involvement of stakeholder, subject matter technical expertise makes more efficient use of valuable committee and regulator time. NERC recognizes and often acknowledges that one of its greatest strengths has been its ability to attract technical expertise from within the industry to participate in reliability activities.

While NERC’s application outlines its committee process and structure and its transition plan indicates that it has “initiated a review of its present committees and technical groups to determine an effective and efficient structure and role for these committees in support of the ERO mission,”\textsuperscript{16} the process for strong and effective stakeholder involvement in ERO decisions has not been established. Accordingly, the Commission should require NERC to develop, file and implement a comprehensive stakeholder engagement program that will serve as an integral part of NERC management's work plans, annual Business Plans and Budgets.

\textsuperscript{15} The ERO could coordinate industry development and utilization of tools and other support services for the benefit of reliability coordinators, such as the emergency hotline, IDC and System Data Exchange provided it is shown that such activities will not distract the ERO from its primary statutory duties.

\textsuperscript{16} ERO Application, NERC Transition Plan to Become the Electric Reliability Organization, at 16.
VI. CONCLUSION

WHEREFORE, in view of the foregoing, NPCC respectfully request that the Commission: (1) grant NPCC’s motion to intervene with all the rights that attend to such status as a party to this proceeding; and (2) take action consistent with the comments set forth herein.

Respectfully submitted,

/s/ Edward A. Schwerdt
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Dated: May 4, 2006
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at New York, New York this 4th day of May 2006.

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