

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

North American Electric Reliability Corporation

Docket No. RR06-1-005

ORDER ON COMPLIANCE FILING

(Issued March 9, 2007)

1. On January 12, 2007, the North American Electric Reliability Corporation (NERC) submitted a filing (January 12 Filing) in compliance with the Commission's October 30, 2006 Order<sup>1</sup> on requests for rehearing and clarification of an earlier order<sup>2</sup> certifying NERC as the Electric Reliability Organization (ERO) for the United States under section 215 of the Federal Power Act (FPA).<sup>3</sup> NERC's January 12 Filing addresses the Commission's directives requiring NERC to make certain modifications to its Rules of Procedure regarding the makeup of NERC committees and subgroups. In this order, we conditionally accept NERC's filing and direct NERC to submit an additional compliance filing within 60 days of the date of this order.

**I. Background**

2. On August 8, 2005, the Energy Policy Act of 2005 (EPAAct) was enacted into law. EPAAct added section 215 to the FPA. On February 3, 2006, the Commission issued

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<sup>1</sup> *North American Electric Reliability Corp., Order on Petitions for Rehearing and Clarification; Order on Compliance Filing*, 117 FERC ¶ 61,126 (2006) (*Rehearing Order*).

<sup>2</sup> *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062 (2006) (*ERO Certification Order*).

<sup>3</sup> The Energy Policy Act of 2005, Pub. L. No. 109-58, Title XII, Subtitle A, § 1211(a), 119 Stat. 594, 941 (2005) to be codified at 16 U.S.C. § 824o (2000).

Order No. 672<sup>4</sup> to implement the requirements of section 215 of the FPA. Order No. 672 set forth the process for certifying an independent ERO, responsible for proposing and enforcing mandatory reliability standards subject to the Commission's review and oversight.<sup>5</sup>

3. On April 4, 2006, NERC filed its application to become the ERO, including a comprehensive set of documents defining the structure, governance, and operational procedures of the ERO, which was accepted, subject to compliance, in the *ERO Certification Order*.

4. In the *ERO Certification Order*, among other things, the Commission directed NERC, as the certified ERO, to provide additional information and to make specific revisions to its Bylaws and Rules of Procedure. On September 18, 2006, in Docket No. RR06-1-002, NERC submitted a compliance filing limited to matters pertaining to its governance and balanced decision-making and requested expedited Commission action so that the revised Bylaws could be approved by NERC's Board of Trustees at the November 1, 2006 board meeting. On October 30, 2006, the Commission issued an order (the *Rehearing Order*) accepting most of NERC's September 18th filing.

5. In the *Rehearing Order*, the Commission, among other things, required NERC to make certain revisions to section 1302 of its Rules of Procedure regarding the makeup of NERC committees and subgroups. In its January 12 Filing, NERC provides its revisions and clarifications to section 1302 of NERC's Rules of Procedure.

## **II. Procedural Matters**

6. Notice of NERC's January 12 Filing was published on January 16, 2007, with comments due on or before February 2, 2007. Transmission Access Policy Study Group (TAPS) filed a timely "conditional protest."

## **III. Discussion**

7. In Order No. 672, the Commission requires that "on a committee or other subordinate organizational structure, no two stakeholder sectors should be able to control

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<sup>4</sup> *Rules Concerning Certification of the Electric Reliability Organization; Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204 (2006), *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

<sup>5</sup> Order No. 672 at P 31.

the vote on any matter, no single sector should be able to defeat a matter . . . unless the ERO adequately explains why it cannot apply these principles.”<sup>6</sup> In the *Rehearing Order*, the Commission found that section 1302 of NERC’s Rules of Procedure regarding ERO committee membership composition did not adequately reflect this requirement of Order No. 672. The Commission directed NERC to file revisions to section 1302 providing that NERC shall have committee representation from each sector unless there is a lack of diversity of opinions, technical knowledge, and expertise in a subject area rather than merely allowing NERC to provide for committee membership by sector.<sup>7</sup> Further, in the *Rehearing Order*, we stated that we disagreed with NERC that when votes by subgroups are not binding on NERC or are subject to final approval by the board or a “properly constituted” standing committee (such as the standards committee), the criteria from Order No. 672 should not be strictly applied.<sup>8</sup>

8. NERC proposes several changes to section 1302 of its Rules of Procedure in its January 12 Filing. First, NERC changed the word “can” to “shall” in the second sentence of section 1302 to ensure that the obligation to provide representation by sector where possible is clear and, where not possible, ensure that NERC remains obligated to bring together a wide diversity of opinions from industry experts in a particular subject area. Second, NERC proposes to add the following underlined language: “[a]ll committees and other subgroups (except for those organized on other than a sector basis because sector representation will not bring together the necessary diversity of opinions, technical knowledge and expertise in a particular subject area) must ensure that no two stakeholder sectors are able to control the vote on any matter, and no single sector is able to defeat a matter.” NERC asserts that these revisions will ensure that, wherever possible, NERC committees and subgroups will be structured such that no two stakeholder sectors are able to control the vote on any matter, and no single sector is able to defeat a matter.

9. TAPS claims that the proposed revisions to section 1302 do not fully comply with the Commission’s *Rehearing Order*. TAPS states that, while the *Rehearing Order* directed the ERO to adopt certain revisions to section 1302 proposed by TAPS, these were not fully reflected in the ERO’s January 12 Filing. TAPS proposes additional language that, if allowed to augment the revisions to section 1302 proposed by NERC, will address the concerns that gave rise to TAPS’ earlier protests and NERC’s

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<sup>6</sup> Order No. 672 at P 153.

<sup>7</sup> *Rehearing Order* at P 86.

<sup>8</sup> *Id.* at P 87.

compliance obligation.<sup>9</sup> TAPS notes that it is authorized to state that NERC agrees with and supports the language as set forth in the TAPS conditional protest.

10. The Commission finds that, with the revision proposed by TAPS, section 1302 of the Rules of Procedure addresses our concerns regarding sector representation on ERO committees. The proposal also provides flexibility in allowing the ERO to create

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<sup>9</sup> Section 1302 of the Rules of Procedure, as revised by the ERO, and with additional language proposed by TAPS (underlined) would read as follows:

Each committee shall have a defined membership composition that is explained in its charter. Committee membership may be unique to each committee, and shall provide for balanced decision-making by providing for representatives from each sector or, where sector representation will not bring together the necessary diversity of opinions, technical knowledge and experience in a particular subject area, by bringing together a wide diversity of opinions from industry experts with outstanding technical knowledge and experience in a particular subject area. Committee membership shall also provide the opportunity for an equitable number of members from the United States and Canada, based approximately on proportionate net energy for load. All committees and other subgroups (except for those organized on other than a sector basis because sector representation will not bring together the necessary diversity of opinions, technical knowledge and expertise in a particular subject area) must ensure that no two stakeholder sectors are able to control the vote on any matter, and no single sector is able to defeat a matter. With regard to committees and subgroups pertaining to development of, interpretation of, or compliance with standards, NERC shall provide a reasonable opportunity for membership from sectors desiring to participate. Committees and subgroups organized on other than a sector basis shall be reported to the NERC board and the Member Representatives Committee, along with the reasons for constituting the committee or subgroup in the manner chosen. In such cases and subject to reasonable restrictions necessary to accomplish the mission of such committee or subgroup, NERC shall provide a reasonable opportunity for additional participation, as members or official observers, for sectors not represented on the committee or subgroup.

TAPS conditional protest at pages 2-3.

effective and efficient committees and subgroups, while also providing opportunities for broader participation and openness. Accordingly, the Commission directs NERC to file a compliance filing within 60 days of the date of this order that incorporates into section 1302 of its Rules of Procedure the language proposed by TAPS and supported by NERC.

The Commission orders:

(A) NERC's January 12, 2007 compliance filing is hereby conditionally accepted, as discussed in the body of this order.

(B) NERC is hereby directed to file a compliance filing within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Philis J. Posey,  
Acting Secretary.