

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

North American Electric Reliability Corporation)))	Docket No. RR06-1-012
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COMMENTS OF THE CANADIAN ELECTRICITY ASSOCIATION

Introduction

The Canadian Electricity Association (“CEA”) is submitting comments regarding the Compliance Filing submitted by the North American Electric Reliability Corporation (“NERC”) on July 21, 2008 (“July 21 filing”). That filing had been in response to the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) March 21, 2008 order.¹ CEA is seeking to modify certain sections within NERC’s Compliance Monitoring and Enforcement Program (“CMEP”), consistent with modifications NERC made in other sections of the CMEP.

Comments

Prior to the submission of its Compliance Filing, NERC had posted a preliminary version of the filing, which included modifications to the CMEP. CEA had submitted comments, raising three concerns. Two of CEA’s concerns were addressed by NERC and are reflected in the revised CMEP submitted in its Compliance Filing: (1) that NERC’s proposed language would give FERC control over the release of information, even if the investigation had no relevance to FERC; and (2) that while FERC had the ability to restrict U.S. compliance information from being disclosed to Canadian

¹ *Order Addressing Revised Delegation Agreements*, 122 FERC ¶ 61,245 (March 21, 2008) (“March 21 Order”).

governmental authorities, there were no comparable provisions with respect to Canadian authorities. CEA is very supportive of the changes made by NERC in the CMEP in response to these concerns.

The third concern expressed by CEA in its comments was that the proposed language would have provided that FERC be notified of all compliance measures and be provided with all related information, regardless of the legal relevance of such information to FERC. For example, 3.1.6 had required NERC to provide audit reports to “FERC and, where the report pertains to a Registered Entity or to a portion of the bulk power system over which another Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority.” In the way this language had been drafted, NERC would have been required to provide FERC with an audit report even if such report pertained to a Registered Entity located in a Canadian province and was thus outside of FERC’s jurisdiction over reliability. Following CEA’s suggestion, NERC modified 3.1.6 as follows: “Regional Entities will provide the final report to NERC, which will in turn provide the report to FERC if the report pertains to a Registered Entity or to a portion of the bulk power system over which FERC has jurisdiction and/or to another Applicable Governmental Authority if the report pertains to a Registered Entity or to a portion of the bulk power system over which the other Applicable Governmental Authority has jurisdiction.” CEA had also suggested comparable language changes to 3.4 and 3.4.1, step 2, and NERC accepted CEA’s suggested language changes.

In its July 21 filing, NERC discusses the changes it made to the CMEP to reflect CEA’s concerns and explains that such changes were intended to address, in part, the fact that “the disclosure of such non-public reports and other compliance information should

be limited to Applicable Governmental Authorities (including FERC) that have jurisdiction over the Registered Entity or the portion of the bulk power system to which the report or information pertains.” NERC explains that it has modified language in sections 3.1.6, 3.4.1 (steps 2 and 12), 5.1, 5.4, and 8.0 (second paragraph and sixth paragraph) to reflect CEA’s concerns, and provides as an example the language in 3.1.6.

In CEA’s comments to NERC, CEA had requested language changes to 3.1.6, 3.4 and 3.4.1, step 2. NERC incorporated CEA's suggested changes into the proposed modifications to the CMEP. Unfortunately, NERC modified other sections of the CMEP, and incorporated into those sections the language to which CEA had originally objected. Those other sections, as drafted, would thus require NERC to provide FERC with notification of compliance measures and related information, even if such notification or information would not fall under FERC’s jurisdiction. Such a provision would, if implemented, expand FERC’s jurisdiction beyond the limits specified in the Federal Power Act.

CEA believes that NERC intended that all relevant sections within the CMEP reflect the language contained in 3.1.6. We also believe that such language modifications would be consistent with the issues of concern raised by the Commission in its March 21 order. In that order, FERC had expressed concern with foreign governmental authority investigations into U.S. related matters. For example, FERC expressed concern with the release of information to Canadian and Mexican regulatory authorities regardless of whether the information might address matters pertaining to particular Canadian and Mexican portions of the bulk-power system. As FERC was concerned with the release of U.S. information to a particular foreign governmental authority where the information

would not be relevant to that authority and directed NERC to make modifications to the CMEP to reflect such concerns, CEA's requested modifications would similarly clarify that notifications of compliance measures and the release of related information would be made to the Applicable Governmental Authority that has jurisdiction over the applicable Registered Entity or portion of the bulk-power system.

Consistent with NERC's intent that the language in the CMEP limit notifications or release of information to the Applicable Governmental Authority that has jurisdiction over the particular Registered Entity or portion of the bulk-power system, CEA requests that the following changes be made to sections 2, 3.4.1, step 12; 5.1; 5.4; 5.6; 8.0, 2nd paragraph; and 8.0, 6th paragraph :

2: Delete "including FERC" from last sentence

3.4.1, step 12: NERC will in turn notify FERC ~~and~~, if the investigation pertained to a Registered Entity or to a portion of the bulk power system over which FERC has jurisdiction and/or to another Applicable Governmental Authority if the investigation pertained to a Registered Entity or to a portion of the bulk power system over which the other Applicable Governmental Authority has jurisdiction, ~~will also notify such other Applicable Governmental Authority.~~

5.1: NERC shall forward a copy of the notice of Alleged Violation to FERC ~~and~~, if the Alleged Violation pertains to a Registered Entity or to a portion of the bulk power system over which FERC has jurisdiction and/or to another Applicable Governmental Authority if the Alleged Violation pertains to a Registered Entity or to a portion of the bulk power system over which the other Applicable Governmental Authority has jurisdiction, ~~to such other Applicable Governmental Authority...~~

5.4: NERC will report the approved settlement of the violation to FERC ~~and~~, if the settlement related to a Registered Entity or to a portion of the bulk power system over which FERC has jurisdiction and/or to another Applicable Governmental Authority if the settlement relates to a Registered Entity or to a portion of the bulk power system over which the other Applicable Governmental Authority has jurisdiction, ~~to such other Applicable Governmental Authority...~~

5.6: NERC shall file a notice of penalty to FERC ~~and~~, if the Alleged Violation pertains to a Registered Entity or to a portion of the bulk power system over which FERC has jurisdiction and/or to another Applicable Governmental Authority if the

Alleged Violation pertains to a Registered Entity or to a portion of the bulk power system over which the other Applicable Governmental Authority has jurisdiction, to such other Applicable Governmental Authority...

8.0 (2nd paragraph): NERC shall notify FERC ~~and, where the report pertains to a Registered Entity or to a portion of the bulk power system over which FERC has jurisdiction and/or to another Applicable Governmental Authority if the report pertains to a Registered Entity or to a portion of the bulk power system over which the other Applicable Governmental Authority has jurisdiction, shall also notify such Applicable Governmental Authority...~~

8.0 (6th paragraph): NERC will provide reports quarterly to FERC ~~and, where a report contains with information pertaining to a Registered Entity or to a portion of the bulk power system over which FERC has jurisdiction and/or to another Applicable Governmental Authority with information pertaining to a Registered Entity or to a portion of the bulk power system over which the other Applicable Governmental Authority has jurisdiction, shall also notify such Applicable Governmental Authority...~~

Conclusion

For the reasons provided above, CEA requests that sections 3.4.1, step 12; 5.1; 5.4; 5.6; 8.0, 2nd paragraph; and 8.0, 6th paragraph be modified, as describe above.

Respectfully submitted,

_____/s/_____
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Dated: August 6, 2008