

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability)	
Council and North American)	Docket No. RR06-1-000
Electric Reliability Corporation)	

**MOTION TO INTERVENE AND COMMENTS OF THE
AMERICAN PUBLIC POWER ASSOCIATION**

Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure¹ and the “Notice of Filing” issued in the above-noted docket on April 7, 2006, the American Public Power Association (“APPA”) moves to intervene and submits its comments on the April 4, 2006 application of the North American Electric Reliability Council and its affiliate the North American Electric Reliability Corporation (together, “NERC”) for certification as the Electric Reliability Organization (“ERO”) pursuant to Section 215 of the Federal Power Act, as amended by the Energy Policy Act of 2005,² and Commission Order Nos. 672 and 672-A..³

APPA strongly supports and endorses NERC’s application for certification as the ERO, subject to limited revisions to reflect the comments discussed below, and urges prompt Commission action on NERC’s application. Prompt Commission action will

¹ 18 C.F.R. § 385.214 (2006).

² Pub. L. No. 109-58, Title XII, Subtitle A, 119 Stat. 594, 941 to be codified at 16 U.S.C. 824o (2000).

³ Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards, Order No. 672, 71 Fed. Reg. 8,662 (February 17, 2006), FERC Stats. & Regs. Regulations Preambles ¶ 31,204 (2006); Order on Rehearing, Order No. 672-A, 114 FERC ¶ 61,328 (March 30, 2006).

allow the industry, NERC and the Commission to shift focus from issues related to ERO certification to the execution of the transition plan outlined in NERC's application, as well as the review, refinement, and approval of NERC's proposed reliability standards.

I.

SUMMARY OF POSITION

APPA and many of its larger members have been active participants in the development, application and enforcement of voluntary industry reliability standards through the processes conducted by the North American Electric Reliability Council ("NERC") and its constituent regional reliability councils ("RRCs").⁴ APPA strongly supported the passage of the Reliability Subtitle in its various iterations in the years leading up to the passage of H.R. 6, the Energy Policy Act of 2005. APPA believes that a mandatory reliability regime is indeed needed to maintain reliable electric service to the nation's consumers. APPA will continue to work with other industry participants, NERC and its RRCs, and the Commission to help implement that regime now that the Reliability Subtitle is finally enshrined in law and the Commission has issued Order No. 672, its final reliability rule.

NERC's ERO application carries out Congress' intent to create and put in place an industry self-regulatory reliability organization in North America, with clear, enforceable reliability standards applicable to all users, owners and operators of the bulk power system, subject to Commission oversight and review. APPA believes the proposal NERC has laid out in its application, with certain limited refinements and

⁴ APPA and its members also participate in the development of voluntary electric industry business standards through the North American Energy Standards Board's ("NAESB") Wholesale Electric Quadrant ("WEQ").

clarifications, establishes a corporate governance structure and Rules of Procedure that properly build upon and apply the lessons NERC has learned from the voluntary membership regime it administers today. APPA is hopeful that the industry can make a smooth and rapid transition to NERC and Regional Entity (“RE”) enforcement of compliance with mandatory reliability standards by users, owners and operators of the bulk power system, beginning in 2007.

APPA’s specific comments on NERC’s ERO application reflect the following concerns and recommendations:

- Impact of Compliance Registration on Small Entities: APPA supports NERC’s decision to focus its initial compliance registry on *direct* users, owners and operators of the bulk power system whose actions or inactions could have a *material impact* on the bulk power system. Application at 60–62. A rush to register all possible entities would result in a loss of focus in NERC’s compliance program, substantially increased costs to the industry, and minimal additional reliability benefits, as well as triggering the need for Commission review under the Regulatory Flexibility Act (“RFA”).
- Role of Municipal Joint Action Agencies (“JAAs”): JAAs might be willing to register on behalf of their member systems, thereby reducing compliance program burdens and costs for NERC, the REs and the industry, provided that the associated compliance obligations and potential liability for sanctions and penalties are well-defined and limited to specific standards affecting such member systems.
- Payment of NERC Dues: NERC and the REs should collect dues allocated on an NEL basis from Balancing Authorities (“BAs”), each of which has a longstanding business relationship with NERC, not from hundreds or even thousands of Load-Serving Entities (“LSEs”), which are not direct users of the bulk power system. Rate mechanisms can be developed to ensure that such costs are borne by end users.
- Proper Balance of Stakeholder Interests: NERC’s application properly balances stakeholder and regional interests through the functional segments used for the Registered Ballot Body (“RBB”) and the corporate segments used for membership in NERC and election to the Members Representative Committee (“MRC”).
- Limitation of Entity Membership to a Single Segment: APPA agrees with NERC that an entity’s membership in NERC is properly limited to a single industry segment. Conversely, a single corporate entity may properly join each functional segment of the RBB in which it has a legitimate business interest.

- Adoption of NERC's proposed *pro forma* Regional Delegation Agreement ("RDA"): NERC's proposed *pro forma* RDA should be adopted without significant modifications. The Commission should signal its preference for consistency among regions in their proposed compliance enforcement programs.
- Reasonableness of RE Budgets: The Commission should state that it intends to review closely the reasonableness of RE budgets to accomplish statutory activities, since NERC intends only to review such budgets for adequacy.
- Non-Statutory Functions Performed by REs and their Affiliates: The Commission should not take actions that would limit the ability of REs to perform non-statutory functions at the direction of and voluntary funding by the RE's members, provided that such activities do not present a conflict of interest that can not be addressed through a separation of functions or control from the RE's compliance enforcement program.

Finally, APPA has identified a number of what appear to be drafting errors in NERC's filing, which are identified without substantial comment in Attachment A. APPA requests that the Commission direct NERC to make these corrections in any compliance filing submitted in response to a Commission order approving NERC's application for certification as the ERO.

II.

MOTION TO INTEVENE

APPA is the national service organization representing the interests of not-for-profit, publicly owned electric utilities throughout the United States. More than 2,000 public power systems provide over 16 percent of all kilowatt-hour ("kWh") sales to ultimate customers, and do business in every state except Hawaii. Approximately 1,840 of these systems are cities and municipal governments that currently own and control the day-to-day operation of their electric utility systems. Public power systems own about 10 percent of the nation's electric generating capacity, but purchase nearly 70 percent of the power used to serve their ultimate consumers. Public power systems own about eight

percent of the nation's high-voltage transmission lines, although many of these lines are configured to deliver energy to their own load centers, and not to provide transmission service in interstate commerce.

Virtually all APPA members depend on the nation's bulk power transmission system to obtain wholesale power supplies to serve their own loads. However, APPA's members interact with the bulk power transmission system in many ways. While some are direct users of the bulk power system, most APPA members engage only in the distribution of electric power at retail, and rely on the JAAs to which they belong, or other third-party suppliers, to obtain their wholesale power supplies and the bulk power transmission services they need to bring those supplies to their local distribution systems. Conversely, other APPA members are fully vertically integrated utilities that own and operate generation, transmission and distribution facilities, even as they rely on neighboring transmission systems or Regional Transmission Organizations ("RTOs") for wholesale transmission services.

APPA has long participated actively in reliability-related industry activities on behalf of the nation's publicly owned electric utilities. NERC Application at 27–28 (noting APPA's status as a representative of a major stakeholder group, and its long-standing involvement with NERC and NERC's mission of ensuring a reliable North American bulk power system). APPA's interests in this docket cannot be represented by any other party. It is therefore appropriate for the Commission to grant APPA's timely motion to intervene in this proceeding, with all rights appurtenant to that status.

III.

COMMUNICATIONS

APPA requests that service in this proceeding be made upon, and communications directed to, the following:

Susan N. Kelly, Vice President of Policy
Analysis and General Counsel
American Public Power Association
2301 M Street, N.W., Suite 300
Washington, D.C. 20037-1484
202-467-2933
skelly@appanet.org

Allen Mosher
Director of Policy Analysis
American Public Power Association
2301 M Street, N.W., Suite 300
Washington, D.C. 20037-1484
202-467-2944
amosher@appanet.org

IV.

COMMENTS

Criteria for Inclusion in the ERO Compliance Registry: NERC's application establishes criteria that will be used to develop an initial compliance registry of entities that NERC and its REs believe should be subject to NERC's mandatory reliability standards. Application at 59-62. APPA supports NERC's Rule of Procedure § 501.1.2.6 stating that "an entity may be considered a user of the bulk power system" if the entity's "actions or inactions could have a *material impact* on the bulk power system"⁵ (emphasis added). NERC and its REs should use the "material impact" threshold and related criteria to identify those entities that have a direct and measurable impact on the reliability of the bulk power system, for inclusion on the compliance registry.

⁵ FPA Section 215(a)(1) (defines "bulk-power system" to mean "(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and (B) electric energy from generation facilities needed to maintain transmission system reliability," specifically exempting from that definition "facilities used in the local distribution of electric energy"); Section 215(i)(1) (making clear that "[T]he ERO shall have authority to develop and enforce compliance with reliability standards for only the bulk-power system").

APPA also notes that the mere inclusion of an entity on the NERC Compliance Registry itself does not determine whether that entity has a real compliance obligation—because compliance obligations are established through the specific functional scope and applicability of each approved reliability standard. Order No. 672, P 99, P 113, P 325. However, inclusion of an entity on the compliance registry imposes significant costs, because it places the entity on notice that the industry may propose and NERC may adopt reliability standards applicable to the entity. Thus, each entity that is included on the compliance registry will have to incur ongoing costs to monitor the development and understand the content of standards that may apply to it in the future. Section 501 of NERC’s proposed Rules of Procedure states:

The purpose of the compliance registry will be to clearly identify those entities that are responsible for compliance with reliability standards. Organizations listed on the registry will be responsible for knowing the content of and for complying with the NERC reliability standards.

Inclusion of an entity on the compliance registry also imposes significant costs on NERC and the regions, to develop a compliance program that tracks and ensures compliance by each such entity on an ongoing basis.

Nearly all public power systems are LSEs and distribution providers—but the vast majority of these systems are quite small. Of the approximately 1,916 public power systems located within the lower 48 United States that make retail sales, roughly 1,400 have retail peak loads of less than 25 MW.⁶ About 612 public power systems in the lower

⁶ The statistics in this pleading were derived from APPA analysis of 2004 data submitted to the Energy Information Administration, supplemented by APPA data on joint action agency membership. Note that municipal peak loads were estimated based on 2004 retail electricity sales at an assumed 65 percent load factor. Actual peak loads are not readily available.

48 states own electric generation facilities, but 58 percent of these systems have a total nameplate capacity of less than 20 MW. Hundreds of small public power systems that have no current relationship with NERC and the RRCs could be required to register as Distribution Providers, LSEs and/or Generator Owners if, for example, no minimum load threshold were to be adopted or an RE sought to register distribution entities that are not directly connected to the bulk power transmission system. APPA believes that such an outcome would not enhance the reliability of the nation's bulk power transmission system. In fact, it could detract from it, by diverting the resources of the REs and NERC from other activities that would better assure reliability.

APPA fully expects to work with NERC and other stakeholders in the coming weeks to develop and apply reasonable and workable criteria for inclusion of entities on NERC's compliance registry. Those entities whose participation is in fact *necessary* to assure the reliability of the *bulk power transmission system* (and only those entities) should be required to register.⁷ In this context, APPA reminds the Commission, NERC and its RRCs that FPA Section 215 explicitly states that NERC may not adopt and the Commission may not approve and enforce reliability standards for facilities used in the local distribution of electricity.⁸ APPA believes Congress did not intend to subject distribution-only entities to the mandatory bulk power transmission reliability scheme.

⁷ FPA Section 215(a)(1) defines "bulk-power system" to mean "(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and (B) electric energy from generation facilities needed to maintain transmission system reliability," specifically exempting from that definition "facilities used in the local distribution of electric energy."

⁸ FPA Section 215(a)(1) states that the term "bulk-power system": "...does not include facilities used in the local distribution of electric energy." Section 215(i)(1) states: "The ERO shall have authority to develop and enforce compliance with reliability standards for only the bulk-power system."

It would be overreaching for NERC and the RRCs to attempt to do so, or for the Commission to countenance such a result.

Further, the Commission is required to conduct an analysis under the RFA of 1980 (“RFA”)⁹ of the impact of all of its proposed regulations on certain “small entities.”¹⁰ APPA estimates that approximately 1,970 public power utilities meet the Small Business Administration (“SBA”) standard for a “small utility” that the Commission has used for RFA purposes.¹¹ Therefore, if the end result of NERC’s compliance registry regime is

⁹ 5 U.S.C. § 601-12 (2000).

¹⁰ As stated in the Commission’s proposed rule in Docket No. RM05-30-000 at PP 109-110:

The Regulatory Flexibility Act of 1980 (RFA)¹⁰ requires that a rulemaking contain either a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities. However, the RFA does not define “significant” or “substantial” instead leaving it up to an agency to determine the impact of its regulations on small entities....

[T]he RFA directs agencies to consider four regulatory alternatives to lessen the impact on small entities: tiering or establishment of different compliance or reporting requirements for small entities; classification, consolidation, clarification or simplification of compliance and reporting requirements; performance rather than design standards; and exemptions.

Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards, 70 FR 53,117 (September 7, 2005), FERC Stats. & Regs., Proposed Regulations ¶ 32,587 (September 1, 2005).

¹¹ See, e.g., Order No. 888-A, III FERC Stats. and Regs. ¶ 31,048 at pp. 30,496–99 and n. 892 (FERC used the SBA standard of a “small electric utility,” which is a utility that disposes of 4 million MWh per year). The SBA, at 13 C.F.R. Section 121.201, defines the maximum size allowed for a business concern and its affiliates to be considered small.

For electric utilities: — A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.

“Electric output” is not defined in the SBA regulation. To be conservative, APPA assumed that “electric output” includes both sales to consumers and sales for resale. Under this interpretation, using 2003 data, 1,971 of 2,010 systems—or 98 percent of public power utilities—are small utilities under the SBA threshold. Approximately 39 public power utilities had total sales of 4 million megawatt hours or more in 2003.

that a substantial number of “small utilities” will in fact be subject to the mandatory reliability regime, the Commission will be required to undertake this RFA analysis of the economic effects on small entities of compliance with mandatory reliability standards, as well as an analysis of regulatory alternatives designed to lessen the impact of such rules on small entities.¹²

Registration by Municipal JAAs: Registration by JAAs on behalf of their respective utility members, as provided by NERC’s Rule of Procedure § 501.1.2.7, has the potential to reduce substantially the number of small municipal LSEs and distribution providers that may be required to register and comply with NERC reliability standards. JAAs may be able to develop contractual arrangements with their members to assume responsibility for compliance with specific standards. For example, some JAAs may be able to negotiate agreements with their members to turn responsibility over to the JAAs (or to other entities) for the ownership, maintenance, operation and testing of relays located on distribution feeders that are used in regional underfrequency load-shedding schemes. Similarly, JAAs could take on responsibility to provide REs, Planning Authorities and Transmission Planners timely and accurate distribution-level load forecast data required for accurate system planning. However, JAAs are unlikely to be willing to assume an open-ended liability for compliance with any and all reliability

(footnote continued from previous page)

Note that a number of these 39 electric utilities are transmission-dependent distribution utilities that own no Bulk Power System facilities.

¹² While the Commission in Order No. 672 at P 866-867 declined to address this issue, leaving it for a later stage in the ERO certification/standard-setting process, it cannot delay doing so indefinitely if in fact RFA issues are implicated by the ERO’s reliability regime. APPA is not requesting a ruling on the RFA issue at this time, pending the outcome of NERC’s deliberations regarding the entity registration issue. APPA does,

standards that NERC may propose and adopt now or in the future that might affect their members. To the extent that reliability standards compliance obligations faced by a small distribution provider are well defined and limited to specific standards, then JAAs could negotiate agreements to assume such compliance obligations. Assumption of such responsibilities would serve the interests of both NERC and small electric systems, by reducing the number of entities subject to the ERO compliance enforcement program and assigning compliance duties to entities with a more complete and ongoing set of relationships with NERC. If NERC and FERC wish to foster this approach, JAAs will need flexibility and time to attempt to amend their contracts with their members.¹³

Collection of Dues By Balancing Authorities: APPA believes that NERC and its REs should collect dues through the BAs, not directly from LSEs as proposed in the Application (at p. 74–75). APPA has consistently supported collection of NERC and regional entity dues from end-users through an allocation based on Net Energy for Load (“NEL”). Both the Canada-U.S. Bilateral Principles^{14 15} and Order No. 672 embrace the

(footnote continued from previous page)

however, reserve all rights to raise RFA-related issues with the Commission if future events so dictate.

¹³ Both JAAs and municipal electric systems are creatures of state law. Thus, contractual arrangements that are feasible in some jurisdictions may not be allowed in others.

¹⁴ See “Principles for an Electric Reliability Organization that Can Function on an International Basis” (“bilateral principles”), jointly submitted to the Commission on August 9, 2005, by the Federal-Provincial-Territorial (“FPT”) Working Group in Canada and the U.S. Department of Energy. The bilateral principles are posted at: ftp://www.nerc.com/pub/sys/all_updl/bot/plsc/Principles_for_ERO_08032005.pdf. APPA participated as a non-governmental stakeholder in the development of the bilateral principles.

¹⁵ The Canada-U.S. “Bilateral Principles”¹⁵ (at 2) note that “Net Energy for Load”¹⁵ should be the basis upon which of the costs of the ERO related to reliability standards development and enforcement are assigned. The parties that developed the bilateral principles discussed the concept of using the “net energy for load” inside each balancing area for the allocation formula, to avoid double counting of loads served through interchange transactions that cross

NEL approach. However, NEL is a measurement based on net energy delivered to the bulk electric system to serve load within a Balancing Area. NEL is not calculated at an LSE-delivery voltage level, which means that NERC or its REs will be forced to impute, request, or calculate LSE-specific loss factors to convert the annual NEL MWhs used for allocation to the metered energy delivered to each LSE. It makes little sense for NERC to have its REs invoice hundreds or even thousands of small LSEs,¹⁶ most of which are not direct users of the bulk power system and will never have a direct business relationship with NERC, instead of the 135 BAs in the U.S., Canada and northern Mexico, each of which is already registered with NERC, must be certified by NERC, and will be subject to NERC's active enforcement program. BAs should be directed to include the costs of NERC and RE dues in their transmission or ancillary service rates for recovery from retail end-users and wholesale customers that serve end-users within each BA's control area.

In its Application at p. 74, NERC has proposed to not invoice any LSE with an allocated annual charge of less than \$100. APPA very much appreciates this offer on NERC's part. Unfortunately, APPA estimates that if the combined NERC and RE budgets for statutory activities amount to as much as \$50 million per year, NERC and its regions will be required to invoice as many as 1,550 municipal LSEs to execute this

(footnote continued from previous page)

multiple control area boundaries. Under this approach, all balancing authorities would be assessed for the costs of the standards development and enforcement functions based on net energy for load within their balancing areas. The balancing authorities would then recover these costs from the various LSEs and any end-use customers participating directly in wholesale markets within their respective balancing areas. APPA's notes show no discussion of proposals for NERC to allocate costs to and directly invoice LSEs.

¹⁶ This list of LSEs presumably includes retail power marketers in retail choice jurisdictions as well.

funding plan, even with the \$100 cut-off.¹⁷ Even if each and every municipal JAA agreed to take on this task on behalf of its members, NERC would still be required to invoice about 640 municipal systems (plus about 44 JAAs as well). It simply makes more sense for the industry to use the BAs as the billing intermediary and for the BAs to include NERC's dues in their transmission or ancillary service rates for control area services.

Balancing of Stakeholder and Regional Interests. In its application, NERC has proposed to retain the *function-based*, nine-segment Registered Ballot Body ("RBB") model for the development and approval of reliability standards, while carrying forward largely unchanged the *corporate business model-based* twelve-segment design now used for the Stakeholders Committee for the purposes of entity membership in NERC and election of members of the Members Representative Committee ("MRC"). Application at pp. 43–44, p. 35, p. 39. APPA supports this continuity and would oppose suggestions that the voting strength or influence of REs or other regional interests should be increased. APPA has supported NERC's efforts to ensure balance among stakeholder interests in its governance processes and to improve its standards development process to meet the requirements of the American National Standards Institute ("ANSI").¹⁸ Continuation of this voting and governance structure will help ensure that each industry segment has an appropriate voice in NERC deliberations.

¹⁷ Even if the combined NERC and RE budgets for statutory activities were as little as \$25 million per year, APPA estimates that over 1,300 municipal systems would exceed the minimum invoice threshold.

¹⁸ The Commission should consider whether ANSI certification as an industry standards-development organization is a prerequisite for proposals that REs be allowed to develop standards subject to the savings clause at EPCRA Section 215(i)(3) (non-EPCRA 2005 standards) or Regional Standards applicable on an Interconnection-wide basis. See APPA's ERO NOPR comments in response to ¶ 84(9). REs must also meet the requirements of EPCRA 2005 Sections 215(c)(1) and (2).

Membership in NERC. APPA agrees that an entity's membership in NERC is properly limited to a single industry segment. Application at p. 35. APPA notes that while some industry participants may qualify for more than one membership segment, it is appropriate that each entity pick a single segment with which its interests are most closely aligned. Further, the entity should generally select a representative for membership in NERC with expertise in corporate governance, budgeting, management and stakeholder processes. Conversely, members of the NERC RBB should self-nominate based on their technical expertise and their ability to represent a specific functional interest of the entities being represented in the standards development process. However, NERC in its application proposes to automatically register members of the RBB as members of NERC as well. Bylaws Article II, § 2. That procedure will not work, since the nine RBB segments do not map directly to the twelve NERC corporate segments used for membership in NERC. Further, entities are generally allowed to join each of the functional segments of the RBB within which it has an interest, based on the functions the entity performs. The Commission should direct NERC to modify its Bylaws to provide that NERC will invite each entity which becomes a member of the RBB to nominate a single representative to become a member of NERC.

Adoption of the *pro forma* RDA. The *pro forma* RDA¹⁹ should be adopted without significant modifications. Among the many tasks to be completed in the coming months is the negotiation between NERC and its RRCs of RDAs with Exhibits that describe in detail each region's boundaries, governance, standards development procedures, compliance enforcement program, funding mechanism and transition plan. The

¹⁹ Exhibit D to NERC's Application.

Commission should continue to remind the industry that delegation of enforcement to the new REs, as well as reliance on regional processes for standards development and budgetary decisions, requires a degree of consistency across regions and transparency and openness within all regions that has been lacking in the past. Order No. 672, P 712, P 737.

Commission Review of RE Budgets. The Commission should clarify that it will review the reasonableness of RE Budgets to accomplish statutory functions. NERC, in its Application (at 73) and ROP § 1104.2, states that it intends to review the RE budget proposals for *adequacy* of funds collected and used to accomplish statutory functions. However, if the budget has been approved through a regional governance process, NERC will not make findings as to whether the RE's budget is reasonable in amount or make recommendations as to the reasonable allocation of funds among RE programs and activities. While APPA understands NERC's perspective that its responsibilities do not entail micromanaging how the REs spend funds collected from consumers, this approach fails to apply NERC's expertise or adopt a grid-wide perspective to contain regional costs in support of consumer interests in lower electric rates. APPA estimates that the combined NERC and RE budgets for 2007 could total approximately \$50 million, which is not a large amount when allocated to the entire industry. It is nonetheless critical that ratepayers receive value for every dollar they must pay. Many APPA members are very concerned that the ERO and its REs will grow in ways similar to RTOs—in other words, they may become organizations widely perceived to be large and unresponsive, with no financial accountability for the direct and indirect costs they impose on their customers and end-users. It is not in the public interest to permit such a result.

Non-Statutory RE Functions. The Commission should not take actions that would limit the ability of RRCs/REs to undertake non-statutory functions desired by members in those regions. In contrast to the two prior recommendations, APPA strongly supports affording RRCs/REs the flexibility to continue to perform functions that are not required by Section 215 of the Federal Power Act. For example, the Western Electric Coordinating Council (“WECC”) currently performs numerous valuable functions such as business practice development, coordination of regional transmission planning, and transfer capability studies. Other RRCs perform similar duties at the request of their members, at considerably lower costs than would be incurred if those regions were to attempt to create a new organization to perform these activities. If necessary, RE compliance programs to carry out statutory activities can be established with separate corporate identities, governance and employee benefit programs. APPA, however, does continue to believe that it would constitute a conflict of interest for an RE or an affiliate of an RE to directly perform market or transmission service functions or any NERC operating authority function, including certification as a Reliability Coordinator, BA or Transmission Operator.

V.

CONCLUSION

WHEREFORE, APPA requests the Commission to: (1) grant its motion to intervene in this docket, with all rights appurtenant to that status; (2) consider the issues raised in APPA's comments in ruling on NERC's application for certification; and (3) direct NERC to make the limited revisions set forth in Attachment A.

Respectfully submitted,

AMERICAN PUBLIC POWER ASSOCIATION

By /s/ Allen Mosher

Susan N. Kelly
Vice President of Policy Analysis
and General Counsel

Allen Mosher
Director of Policy Analysis

American Public Power Association
2301 M Street, N.W., Suite 300
Washington, D.C. 20037-1484

(202) 467-2900
Fax: (202) 467-2910
Email: skelly@appanet.org
amosher@appanet.org

May 4, 2006

APPENDIX A:
APPA PROPOSED EDITS TO NERC RULES OF PROCEDURE (“ROP”)
DOCKET NO. RR06-1-000

ROP Page and Section	Suggested Edits in Boldface and Highlighted
p. 12, § 305.5.1.4	... (they are eligible to join Segment 2).
p. 13, § 305.5.5.2	... one, two or two multiple generating plants plant entities
p. 13, § 305.5.7.3	Agents or associations may represent groups of large end users. [Add this subsection to §§ 5.1—Transmission Owners; 5.3—Load-Serving Entities; 5.5—Electric Generators.]
p. 14, § 305.5.9	... federal power management marketing agencies
p. 19, § 311.3.1.1	There shall be no undue financial barriers to participation in regional entity standards development processes.
p. 23, § 313.3.1.4	Adverse Impact on Competitive Markets Competition within the Interconnection — The regional reliability standard would create a serious and substantial burden on competitive markets competition within the interconnection that is not necessary for reliability. [Conforms to Order No. 672, PP 376-378.]
p. 30, § 402.7	The appeals process is set forth in Sections 409–411. ... appeals to NERC of any findings of noncompliance
p. 36, § 403.13	... against another that if that entity alleges ... permit interventions, when determining whether
p. 37, § 403.17	... the region's compliance panel or board
p. 49, § 502.1.3	... cost-effectiveness, and participants participation.
p. 49, § 502.1.7	NERC, or by the regional entity

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure,
18 C.F.R. § 385.2010, I hereby certify that I have this day served the foregoing document
by electronic means and upon each person designated on the official service list compiled
by the Secretary in this proceeding.

Dated at Washington, D.C., this 4th day of May, 2006.

By _____ /s/

Allen Mosher
American Public Power Association
2301 M Street, N.W., Suite 300
Washington, D.C. 20037-1484