

164 FERC ¶ 61,023
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

North American Electric Reliability Corporation

Docket No. RR17-6-000

ORDER APPROVING IN PART AND DENYING IN PART REVISIONS TO
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION RULES OF
PROCEDURE AND REQUIRING COMPLIANCE FILING

(Issued July 19, 2018)

1. On June 26, 2017, North American Electric Reliability Corporation (NERC) filed a petition requesting approval of proposed amendments to section 600 (Personnel Certification) and section 900 (Training and Education) of the NERC Rules of Procedure. Pursuant to section 215(f) of the Federal Power Act (FPA) and section 39.10 of the Commission's regulations, subject to the exceptions discussed herein, the Commission conditionally approves NERC's petition.¹ The Commission also directs NERC to submit a compliance filing within 120 days of the date of this order to address our concerns as discussed below.

I. Background

2. Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Section 215(c) of the FPA establishes the requirements for ERO certification, specifying that the ERO must have the ability to develop and enforce Reliability Standards that provide for an adequate level of reliability of the Bulk-Power System. Section 215(c)(2) also requires the ERO to have rules that, *inter alia*, (1) assure its independence of the users and owners and operators of the Bulk-Power System, while assuring fair stakeholder representation in the selection of its directors and balanced decision-making in any ERO committee or subordinate organizational structure; and (2) provide reasonable notice and opportunity for public

¹ 16 U.S.C. § 824o(f) (2012); 18 C.F.R. § 39.10(a) (2017).

comment, due process, openness, and balance of interests in developing Reliability Standards and otherwise exercising its duties.²

3. Section 215(f) provides that the ERO shall file with the Commission any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. Similarly, the Commission, upon its own motion or complaint, may propose a change to the rules of the ERO. A proposed rule or proposed rule change shall take effect upon a finding by the Commission “after notice and opportunity for comment that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest and satisfies the requirements of subsection (c).”³

4. On February 3, 2006, the Commission issued Order No. 672 to implement the requirements of section 215 of the FPA governing electric reliability.⁴ In July 2006, the Commission certified NERC as the ERO.⁵

II. NERC’s Petition

5. NERC states that the purpose of the proposed revisions is to: (1) clarify the scope of NERC’s Personnel Certification Program, the Training and Education Program and the Continuing Education Program; and (2) streamline and align the language of the NERC Rules of Procedure with current practices.⁶ NERC explains that the proposed changes to section 600 and 900 of the NERC Rules of Procedure are part of a comprehensive review to modernize and align the language of the Rules of Procedure with current ERO practices, specifically by delineating the responsibilities, governance and scope of the Personnel Certification Program, the Training and Education Program and the Continuing Education Program. NERC also contends that the proposed revisions streamline the

² 16 U.S.C. § 824o(c)(2)(A), (D) (2012).

³ 16 U.S.C. § 824o(f) (2012).

⁴ *Rules Concerning Certification of the Electric Reliability Organization; and 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).

⁵ *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh’g and compliance*, 117 FERC ¶ 61,126 (2006), *order on compliance*, 118 FERC ¶ 61,030, *order on clarification and reh’g*, 119 FERC ¶ 61,046 (2007), *aff’d sub nom. Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

⁶ NERC Petition at 1.

Rules of Procedure by eliminating detailed programmatic requirements duplicated in existing program manuals for the ERO.⁷

6. NERC states that the proposed changes to section 600 of the Rules of Procedure relate to the scope, structure, and responsibilities of the Personnel Certification Program. In proposed section 601, NERC clarifies that the purpose of the Personnel Certification Program is to (1) provide the mechanism to determine system operators' essential knowledge relating to NERC Reliability Standards and principles for Bulk-Power System operations; (2) administer a system operator certification exam; and (3) award the certification credential to system operators who pass the examination. NERC also proposes to revise section 601 to state that the NERC Reliability Standards specify which personnel require certification pursuant to the NERC Personnel Certification Program.

7. NERC proposes to consolidate section 602 (Structure of ERO Personnel Certification Program) and section 603 (Examination and Maintenance of NERC System Operator Certification Credentials), leaving section 603 as a placeholder. Specifically, NERC proposes to delete the governance authority and structure of the Personnel Certification and Governance Committee (PCGC) provisions, stating that this information is addressed verbatim in the PCGC charter, which is reviewed by NERC annually for updates and revisions and is approved by the NERC Board of Trustees.⁸ NERC also specifies in revised section 602 that the PCGC must develop a certification program manual and outlines the mandatory elements of this manual.⁹

8. NERC proposes to eliminate programmatic details concerning the certification program from the Rules of Procedure, stating that the provisions are duplicated verbatim in the Personnel Certification Program manual and that the proposed revisions will allow program participants and NERC staff to only consult one resource for certification requirements.

9. Specifically, NERC contends that current section 603 contains procedural requirements for obtaining the system operator certification, which are duplicated

⁷ *Id.* at 3.

⁸ *Id.* at 5.

⁹ In its Petition, NERC uses different terms when referring to the manual referenced in section 600 of the NERC Rules of Procedure, including "certification program manual," "Personal Certification and Governance manual," and "Personnel Certification Program manual." On NERC's website, the manual is titled "System Operator Certification Program Manual." For purposes of this order, we will use the term "Personnel Certification Program manual."

verbatim in the Personnel Certification Program manual. For this reason, NERC proposes to delete section 603 in its entirety and revise section 602 to note that the manual must include “requirements for administering the system operation examinations,” “requirements for exam eligibility,” “requirements for awarding the Certification Credential,” and “requirements for Certification Credential maintenance.”¹⁰

10. NERC proposes to delete the programmatic detail in section 604 (Dispute Resolution Process) and section 605 (Disciplinary Action) and cross-reference the same requirements in the Personnel Certification Program manual.¹¹ NERC explains that the Personnel Certification Program manual is reviewed regularly for updates and revisions are presented to the NERC Board of Trustees. NERC notes that during the revision development process, stakeholders questioned whether the removal of these requirements from the Rules of Procedure would deprive stakeholders of the public notice and comment opportunities mandated for proposed changes to the Rules of Procedure under section 215(f). NERC states that “Section 215 of the FPA, the [Rules of Procedure] and NERC Bylaws do not require NERC to provide a separate, formal public notice and opportunity to comment on changes to the Personnel Certification Program manual.”¹² NERC further notes that “[u]nder Section 215, due process requirements apply to (1) the development of Reliability Standards, (2) changes to ERO rules and (3) penalties for violations of Reliability Standards.”¹³

11. In section 606, the proposed revisions clarify that the PCGC develops policies and procedures to protect the integrity of the certification exam administered under the Personnel Certification Program. NERC states that revised section 607 includes proposed ministerial changes to the types of information maintained and published about the Personnel Certification Program.¹⁴ In section 608, NERC proposes to remove the requirement to include a statement of nondiscrimination in program announcements.¹⁵ NERC proposes to revise section 609 to clarify that the exams administered pursuant to

¹⁰ *Id.* at 6.

¹¹ *Id.*

¹² *Id.* at 7.

¹³ *Id.*

¹⁴ *Id.* at 8.

¹⁵ *Id.*

the Personnel Certification Program are solely designed to measure essential knowledge relating to NERC Reliability Standards and general principles of the Bulk-Power System.

12. NERC proposes to revise section 900 to clarify the scope and governance structure of the Training and Continuing Education Programs.¹⁶ Specifically, in section 901, NERC proposes to streamline the scope of the Training and Education Program to oversee the coordination and delivery of training materials for (1) ERO Enterprise staff supporting statutory and delegation-related activities; and (2) Bulk-Power System industry participants consistent with ERO functional program requirements. In section 902, NERC proposes revisions to outline the governance structure of the Continuing Education Program by identifying the Personnel Subcommittee, which reports to the NERC Operating Committee, as the governing body. NERC also proposes to designate the Personnel Subcommittee, which reports to the NERC Operating Committee, as responsible for developing and updating a manual that describes various requirements related to continuing education providers and audits.¹⁷

III. Notice and Responsive Pleadings

13. Notice of NERC's petition was published in the *Federal Register*, 82 Fed. Reg. 30,852 (2017), with interventions and protests due on or before July 17, 2017. No motions to intervene were filed.

14. On July 17, 2017, Alberta Electric System Operator, California Independent System Operator Corporation, The Independent Electricity System Operator, ISO New England, Inc., and PJM Interconnection, LLC (collectively, Protesters) submitted comments objecting to aspects of NERC's filing. Protesters assert that although changes are needed to the NERC Rules of Procedure, Protesters disagree with NERC's proposed changes as written and the rationale supporting those proposed changes.¹⁸ First,

¹⁶ *Id.* at 9.

¹⁷ The manual referenced in section 900 of the NERC Rules of Procedure is the Continuing Education Administrative Manual, which is separate from the Personnel Certification Program manual referenced throughout section 600 of the NERC Rules of Procedure.

¹⁸ Protestors' Comments at 1.

Protesters argue that because Reliability Standard PER-005-2¹⁹ is now an enforceable NERC Reliability Standard, the NERC Continuing Education program is redundant and should be eliminated.²⁰ Second, Protesters argue that provisions that relate to compliance with Reliability Standards should not be removed from the Rules of Procedure, particularly where the provisions relate to Reliability Standard PER-003-1 (Operating Personnel Credentials).²¹ Finally, Protesters argue that certain other proposed sections and references should be rejected or deleted because they are redundant.²²

15. On October 17, 2017, NERC filed a motion for leave to answer and an answer. In the answer, NERC states that the Personnel Certification Program and the Continuing Education Program are not redundant with PER-005-2. NERC also highlights the different purposes served by the Reliability Standards related to system operator certification and training and NERC's separate certification, education and training programs in the Rules of Procedure.

IV. Procedural Matters

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to a protest unless ordered by the decisional authority. We accept NERC's answer because it provides information that is useful in our decision-making process.

¹⁹ The purpose of Reliability Standard PER-005-2 is to "ensure that personnel performing or supporting Real-time operations on the Bulk Electric System are trained using a systematic approach." Reliability Standard PER-005-2, Purpose. [https://www.nerc.com/_layouts/15/PrintStandard.aspx?standardnumber=PER-005-2&title=Operations%20Personnel%20Training&jurisdiction=United States](https://www.nerc.com/_layouts/15/PrintStandard.aspx?standardnumber=PER-005-2&title=Operations%20Personnel%20Training&jurisdiction=United%20States).

²⁰ Protesters' Comments at 2.

²¹ The purpose of Reliability Standard PER-003-1 is to "ensure that System Operators performing the reliability-related tasks of the Reliability Coordinator, Balancing Authority and Transmission Operator are certified through the NERC System Operator Certification Program when filling a Real-time operating position responsible for control of the Bulk Electric System." Reliability Standard PER-003-1, Purpose. [https://www.nerc.com/_layouts/15/PrintStandard.aspx?standardnumber=PER-003-1&title=Operating%20Personnel%20Credentials&jurisdiction=United States](https://www.nerc.com/_layouts/15/PrintStandard.aspx?standardnumber=PER-003-1&title=Operating%20Personnel%20Credentials&jurisdiction=United%20States).

²² Protesters assert that section 902 of the NERC Rules of Procedure should be rejected and that references to NERC's Continuing Education Program, Continuing Education Hours, and Re-Certification should be deleted. Protesters' Comments at 2-4.

V. Discussion

17. We approve NERC's proposed revisions to sections 601, 602, 606, 607, 608 and 609, as well as sections 901 and 902 of NERC's Rules of Procedure. Pursuant to section 215(f) of the FPA, we find that the proposed revisions we approve are just, reasonable, not unduly discriminatory or preferential, and in the public interest and that they satisfy the requirements of section 215(c) of the FPA. The proposed streamlining and clarifications set forth in these provisions improve the efficiency and clarity of the NERC Rules of Procedure.

18. However, we deny NERC's proposed revisions with regard to sections 603, 604, and 605 of the Rules of Procedure. We disagree with NERC's characterization of the proposed modifications to section 603, 604 and 605 as "programmatic detail" that can be eliminated from the Rules of Procedure. Rather, these provisions pertain to the rights, obligations, and procedures regarding the suspension of an operator's certification (section 603); resolving disputes arising in the certification process through a dispute resolution process (section 604); and initiating disciplinary actions against operators for matters such as "willful, gross, and/or repeated violation" of Reliability Standards or performance of duties as a certified system operator (section 605). If these provisions were removed from the NERC Rules of Procedure and remain only in a NERC manual, they would be subject to further change with minimal, if any, stakeholder input and without Commission review. This is not appropriate because changes in the provisions for suspension, dispute resolution, or disciplinary actions could have a significant impact on a stakeholder's or individual's rights and obligations. NERC provides no explanation as to why it regards these provisions as "programmatic detail" that can be removed from the Rules of Procedure. Accordingly, we conclude that Section 603, 604, and 605 should remain as part of the NERC Rules of Procedure. This decision will continue to allow for stakeholder input and opportunity for Commission review in the development of modifications to the NERC Rules of Procedure – and ultimately provide a greater level of certainty to stakeholders and individuals.

19. Moreover, NERC previously identified the provisions of section 600 as "substantive" in explaining why NERC proposed to move them from an appendix (i.e., former Appendix 6) of the Rules of Procedure to current sections 603, 604, and 605, which the Commission approved.²³ At that time, NERC explained that "the substantive provisions of Appendix 6 [of the Rules of Procedure] are being moved into [Rule of

²³ NERC, Petition, Docket No. RR12-8-000, at 18-21, 83-84 (filed May 7, 2012) (May 7, 2012 Petition); *North American Electric Reliability Corp.*, 141 FERC ¶ 61,241 (2012) (approving, *inter alia*, shift of certain provisions in NERC Rules of Procedure, Appendix 6 "System Operator Certification Program Manual" to section 600, including provisions related to dispute resolution and disciplinary action).

Procedure section] 600.”²⁴ NERC also distinguished the substantive provisions that were moved into section 600 from other provisions in Appendix 6 that were simply deleted by stating that “Appendix 6 is being deleted from the [Rules of Procedure] because it contains a significant amount of administrative detail about the System Operator Certification Program that does not rise to the level of an ‘ERO Rule’...”²⁵ NERC does not explain why it now regards the once-considered “substantive” provisions to constitute “programmatically detail” that can be removed. Rather, NERC asserts that the provisions are duplicative of NERC’s Personnel Certification Program manual. This, however, is an insufficient alternative as the NERC manuals are not submitted for Commission review and can be modified by NERC with minimal stakeholder participation. As discussed above, this is an inadequate approach for matters impacting, for example, a certified operator’s possible suspension or ability to employ dispute resolution procedures. Accordingly, we deny NERC’s proposal with respect to sections 603, 604, and 605 of the Rules of Procedure.

20. We direct NERC to submit a compliance filing within 120 days of the date of this order, removing the proposed revisions and restoring sections 603, 604, and 605.²⁶ We also direct NERC to correct certain typographical errors in proposed sections 600 and 900.²⁷

21. Finally, in approving NERC’s proposed revisions to sections 901 and 902 concerning the coordination and delivery of learning materials, resources and activities for training and education, and manual requirements for NERC’s Continuing Education Program, we acknowledge Protesters’ concerns about the continuing relevance of that program. However, we find Protesters’ assertion that Reliability Standard PER-005-2

²⁴ May 7, 2012 Petition at 84.

²⁵ *Id.*

²⁶ As referenced above, Protesters expressed concern that NERC’s proposal to move provisions related to maintaining the NERC System Operator Certification Credential to committee charters and manuals may impact compliance with Reliability Standard PER-003-1 and thus the due process rights of registered entities. Protesters’ Comments at 2-3. We note that the denial of the revisions to sections 603, 604, and 605, should resolve the Protesters’ concern on this matter.

²⁷ Specifically, in section 602.6 “displinary” should be changed to “disciplinary.” In section 606.2.1, “access” should be changed to “assess.” In section 902.3, “The PS shall develop and update, as necessary, manual, approved...” should be “The PS shall develop and update, as necessary, a manual, approved...”

renders section 902, and references to the Continuing Education Program, re-certification and related items, unnecessary and obsolete, to be beyond the scope of this proceeding.²⁸

The Commission orders:

(A) NERC's revised Rules of Procedure are hereby conditionally approved, with the exceptions discussed in the body of this order.

(B) NERC is hereby directed to submit a compliance filing within 120 days from the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁸ Protesters' Comments at 2, 4.