

132 FERC ¶ 61,200
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

North American Electric Reliability Corporation Docket No. RR10-12-000

ORDER APPROVING PETITION
AND DIRECTING COMPLIANCE FILING

(Issued September 3, 2010)

1. On June 10, 2010, the North American Electric Reliability Corporation (NERC) filed a petition seeking approval to replace in its entirety Version 7 of its Reliability Standards Development Procedure (RSDP) with its proposed Standard Processes Manual. Pursuant to section 215(f) of the Federal Power Act (FPA),¹ the Commission approves NERC's petition. The Commission, however, also directs NERC to submit a compliance filing to address our concerns with one provision of the Standards Processes Manual, as discussed below.

I. Background

2. Section 215(f) of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to file with the Commission for approval any proposed rule or rule change. Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO² and, subsequently, certified NERC as the ERO.³ In so certifying, the Commission accepted NERC's Rules of

¹ 16 U.S.C. § 824o(f) (2006).

² *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, *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

³ *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g & compliance*, 117 FERC ¶ 61,126 (2006), *aff'd*, *Alcoa, Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

Procedure. NERC now seeks to amend those rules by replacing the currently-approved RSDP with the Standard Processes Manual as Appendix 3A to the Rules of Procedure.

II. NERC Petition

3. NERC states that the proposed changes to its RSDP are intended to clarify the various activities involved in Reliability Standards development, to make more efficient use of limited industry resources and to enhance the overall quality of the standards. Modifications to the current process proposed by NERC include empowering the Standards Committee to prioritize Reliability Standards development activity, allowing informal stakeholder feedback and enhancing technical writing support and quality control of draft standards. In addition, NERC states that the proposed changes clarify various processes for, among other things, the expedited development or modification of a Reliability Standard under time constraints (such as to meet an urgent reliability issue or a regulatory directive), developing defined terms, conducting field tests, appealing an action or inaction, and developing a standard related to a confidential issue. The proposed Standard Processes Manual sets forth as its scope prospective new, revised, reaffirmed and withdrawn standards, as well as interpretations, definitions, variances, violation risk factors, violation severity levels, and reference documents.

III. Notice and Responsive Pleadings

4. Notice of NERC's petition was published in the *Federal Register*, with interventions and protests due on or before July 12, 2010.⁴ American Municipal Power (AMP) and Modesto Irrigation District (MID) timely filed motions to intervene. The American Public Power Association, the Edison Electric Institute, the Electric Power Supply Association, the Large Public Power Council, the National Rural Electric Cooperative Association, and the Transmission Access Policy Study Group (collectively, the Trade Associations) timely filed a joint motion to intervene and comments.

5. The Trade Associations support NERC's petition, commenting that the new Standard Processes Manual will improve the quality of Reliability Standards, reduce the time to develop a standard, and reduce resource burdens on NERC and industry. The Trade Associations recommend that the Commission promptly approve NERC's petition without condition and with the earliest possible effective date.

⁴ 75 Fed. Reg. 35,011 (2010).

IV. Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁵ the timely, unopposed motions to intervene serve to make AMP, MID and the Trade Associations parties to this proceeding.

B. Commission Determination

7. The Commission approves NERC's proposed Standard Processes Manual to be incorporated as the amended Appendix 3A of the NERC Rules of Procedure. In addition, the Commission directs NERC to submit a compliance filing to address one issue, discussed below. The Commission agrees with NERC that improvements to the procedures, including added flexibility over the timing of new projects, informal stakeholder feedback, and a formal comment opportunity during the ballot period will provide for more efficient Reliability Standard processes. The new quality review before a draft standard is posted for formal review and enhanced technical writing support will bring additional focus on the quality of Reliability Standards. Also, the Commission agrees with NERC that the new procedures will clarify Reliability Standards processes that involve expedited development or modifications of a Reliability Standard, developing defined terms or conducting field tests.

8. With regard to the section addressing the Elements of a Reliability Standard,⁶ NERC states that its Standard Processes Manual subdivides the elements of a standard "into categories with the intent of clarifying which elements of a standard are mandatory and enforceable, which elements are informational and which elements are used for compliance."⁷ The Manual identifies the title, identification number, purpose statement, effective dates, requirements, and measures (including evidence retention and variances) of a Reliability Standard as "mandatory and enforceable." NERC identifies other elements of a Reliability Standard such as application guidelines and time horizon as "informational."⁸

⁵ 18 C.F.R. § 385.214 (2010).

⁶ Proposed Standard Processes Manual at 6-7.

⁷ NERC Petition at 8.

⁸ *Id.*, Exhibit A at 6.

9. We are concerned about the consistency of NERC's classification of elements of a Reliability Standard as enforceable with previous policy set forth by the Commission. In particular, the Commission stated in Order No. 693 that the essential element of a Reliability Standard is its Requirement and that compliance with a standard "will in all cases be measured by determining whether a party met or failed to meet the Requirement given the specific facts and circumstances of its use, ownership or operation of the Bulk-Power System."⁹ The Commission also stated that "while Measures and Levels of Non-Compliance provide useful guidance to the industry, compliance will in all cases be measured by determining whether a party met or failed to meet the Requirement given the specific facts and circumstances of its use, ownership or operation of the Bulk-Power System."¹⁰ However, as discussed above, the Standard Processes Manual identifies elements beyond the Requirement that are proposed to be enforceable such as the title, number, purpose, effective dates and measures.

10. The Commission is concerned that designating additional elements beyond the Requirement as enforceable in the Standard Processes Manual could create confusion and uncertainty, and may go beyond the Commission's prior statements in Order No. 693 regarding what is enforceable in any given Standard. We, therefore, direct NERC to submit a compliance filing to address the concerns expressed above regarding the consistency of the "Elements of a Reliability Standard" provision with the Commission's policy set forth in Order No. 693 regarding the enforceable components of a Reliability Standard. Further, while the distinction between those elements of a Reliability Standard that are enforceable and those elements that are not is important, it is not clear that it is necessary to draw this distinction in the Standard Processes Manual. As a result, in its compliance filing, NERC may choose to either revise the "Elements of a Reliability Standard" provision to address our concerns, or it may choose to remove the designation of particular elements of a Reliability Standard as enforceable if, on further analysis, it determines that including such designations in the Standard Processes Manual is unnecessary.

11. Accordingly, the Commission approves the Standard Processes Manual as just, reasonable, not unduly discriminatory or preferential, in the public interest, and as satisfying the requirements of section 215(c) of the FPA,¹¹ effective as of

⁹ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 253, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

¹⁰ *Id.*

¹¹ 16 U.S.C. § 824o(f).

the date of issuance of this order, as requested by NERC. In addition, the Commission directs NERC to submit a compliance filing to address our concerns regarding the “Elements of a Reliability Standard” provision, as discussed above.

The Commission orders:

(A) NERC’s petition is hereby approved, as discussed in the body of this order.

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Document Content(s)

RR10-12-000.DOC.....1-5