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

Order Setting Deadline for Compliance

)

Docket No. RM06-16-009

**REQUEST OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
FOR REHEARING AND MOTION FOR STAY OF THE ORDER SETTING DEADLINE
FOR COMPLIANCE**

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I. INTRODUCTION

Pursuant to Rules 713 and 212¹ of the Federal Energy Regulatory Commission's ("FERC" or the "Commission") Rules of Practice and Procedure, 18 C.F.R. §§ 385.713 and 385.212, the North American Electric Reliability Corporation ("NERC") hereby requests Rehearing and submits a Motion for Stay of the Commission's March 18, 2010 Order Setting Deadline for Compliance ("March 18 TPL-002 Order").² The Commission's March 18 TPL-002 Order directed NERC to submit a modification to the TPL-002-0 Reliability Standard that is responsive to the Commission's directives in Order No. 693³ and to modify the TPL-002-0 standard by June 30, 2010. In Order No. 693, the Commission stated that "[t]he [Order No. 693] NOPR proposed a modification that would clarify footnote (b) as disallowing a loss of such firm load or the curtailment of firm transactions after a first contingency of the bulk electric system,"⁴ but noted that "[s]ome commenters now argue otherwise, and in some cases cite examples where, based on a balance of economic and reliability considerations, it may be preferable to plan the bulk electric system in such a manner that contemplates the interruption of some firm load customers in the event of an N-1 contingency."⁵ In response, the Commission stated that:

The Commission considers this matter to be a fundamental issue of transmission service. Indeed, the ERO's definition of 'firm transmission service' specifically states that it is the 'highest quality (priority) service offered to customers under a filed rate schedule that anticipates no planned interruption.' Based on the record before us, we [the Commission] believe that the transmission planning Reliability Standard should not allow an entity to plan for the loss of non-consequential load in the event of a single contingency.⁶

¹ See 18 C.F.R. §§ 385.713 and 385.212 (2009).

² *Order Setting Deadline for Compliance*, 130 FERC ¶ 61,200 (March 18, 2010).

³ See *Mandatory Reliability Standards for the Bulk-Power System*, 18 C.F.R. pt. 40, Docket No. RM06-16-000 at P 375 (March 16, 2007) ("Order No. 693").

⁴ Order No. 693 at P 1792.

⁵ *Id.*

⁶ *Id.* at PP 1793, 1794

Accordingly, in the March 18 TPL-002 Order, the Commission directed NERC to submit, by June 30, 2010, a modification to Table 1, footnote b of the TPL-002-0 Reliability Standard that complies with the Commission's directive in Order No. 693 regarding the loss of non-consequential load in the event of a single contingency.

By this filing, NERC requests rehearing with respect to one key element of the March 18 TPL-002 Order. Additionally, NERC requests that the Commission stay the Commission's order directing that a modification to Table 1, footnote b be made, and that the Commission first hold a technical conference open to the public with the opportunity to submit written comments to assess the technical adequacy of the Commission's directive.

II. STATEMENT OF ISSUE FOR REHEARING

Pursuant to 18 C.F.R. § 385.713, NERC seeks rehearing on one issue in Paragraph 8 of the March 18 BAL-003-0 Order, in which FERC directed the following:

Pursuant to section 39.5(g) of the Commission's regulations, the Commission directs the ERO to submit, by June 30, 2010, a modification to Table 1, footnote b of TPL-002-0 that complies with the Commission's directive as set forth in Order No. 693 regarding the loss of non-consequential load in the event of a single contingency. Non-consequential load loss includes the removal, by any means, of any firm load that is not directly served by the elements that are removed from service as a result of the contingency.

Issue 1: The Commission should grant rehearing of its directive to revise the TPL-002-0 Reliability Standard because it exceeded the scope of its authority under Section 215 of the Federal Power Act by directing that a specific change be made to the standard. *See, e.g., Chevron U.S.A., Inc. v. Nat. Res. Defense Council*, 467 U.S. 837, 842-43 (1984); *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 11 (D.C. Cir. 2002); *Michigan v. EPA*, 268 F.3d 1075, 1082 (D.C. Cir. 2001).

Issue 2: The Commission should grant NERC's Motion for Stay in order to hold a technical conference to provide parties the opportunity to analyze the technical considerations of the directive. *See*, 5 U.S.C. §705 (2000), which provides: "When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent

necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.”

III. DISCUSSION OF ISSUE ADDRESSED BY THE REQUEST FOR REHEARING

The March 18 TPL-002-0 Order sets a deadline for NERC to comply with the directive on the TPL-002-0 Reliability Standard approved by FERC in Order No. 693 by June 30, 2010. Although FERC acknowledged that it did not set a deadline in Order No. 693 for submitting modifications to the TPL-002-0 standard, it noted that almost three years have passed since the issuance of the directive. FERC also noted that it was particularly concerned that Table 1, footnote b has yet to be clarified as directed by the Commission in Order No. 693, since it believes “that certainty is needed regarding the loss of non-consequential load for a single contingency event.” FERC has now directed NERC to submit a modification to the TPL-002-0 standard that is responsive to FERC’s Order No. 693 directive by June 30, 2010.

NERC submits in this rehearing request that FERC’s directive is overly prescriptive by requiring “that the transmission planning Reliability Standard should not allow an entity to plan for the loss of non-consequential load in the event of a single contingency”⁷ and by directing NERC to submit a modification to Table 1, footnote b of TPL-002-0 that complies with this directive. Although in Order No. 693, FERC stated that, pursuant to Section 215(d)(2) of the Federal Power Act and §39.5(c) of the Commission’s regulations, it would give “due weight to the technical expertise of the ERO with respect to the content of a Reliability Standard,” the March 18 TPL-002 Order leaves NERC with no alternative. Not only is FERC abusing its

⁷ March 18 TPL-002 Order at P 7.

discretion by mandating that a specific directive be made,⁸ the Commission's decision to direct such a specific modification does not include a technical explanation for *why* the specific directive is necessary to ensure bulk power system reliability.⁹

Accordingly, the Commission should grant rehearing to revise the directive in Paragraph 8 of the March 18 TPL-002 Order to allow NERC the necessary time to incorporate changes to the TPL-002 Reliability Standard through the Reliability Standards Development Process that are necessary to achieve bulk power system reliability. Additionally, NERC requests that the Commission grant NERC's Motion for Stay to stay this Order so that a public technical conference with opportunity for comment can be held in order to provide parties an opportunity to meet and discuss the technical considerations of developing a modification to the TPL-002 standard that prohibits the loss of non-consequential firm load in the event of an N-1 contingency.

A. The Commission's March 18 TPL-002 Order is Overly Prescriptive and Directly Challenges the Purpose for Which the Reliability Standards Were Intended

The purpose of the Reliability Standards are to prevent cascading outages and protect equipment. Section 215(a)(3) of the Federal Power Act defines a "Reliability Standard" as a "requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system." In defining the meaning of "reliable operation", Section 215(a)(4) provides that:

The term "reliable operation" means operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as

⁸ See, e.g., *Chevron U.S.A., Inc. v. Nat. Res. Defense Council*, 467 U.S. 837, 842-43 (1984); *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 11 (D.C. Cir. 2002); *Michigan v. EPA*, 268 F.3d 1075, 1082 (D.C. Cir. 2001).

⁹ The Commission's decision was unexplained. See, e.g., *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970).

a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements.

In essence, NERC's mandate under Section 215 is to prevent three major types of events—instability, uncontrolled separation, and cascading failures—to ensure the Reliable Operation of the bulk power system. If the Commission's directive to disallow the loss of non-consequential firm load for an N-1 contingency is implemented, a question is presented regarding whether the Reliability Standard still serves the purpose of ensuring the Reliable Operation of the bulk power system by preventing instability, uncontrolled separation, and cascading failures. That is, the Commission's directive sets forth an expectation that NERC is to implement standards that address *all* loss of load at costs that may not be commensurate with bulk power system reliability, as statutorily defined, which is fundamentally different from what the Reliability Standards were intended to do. Furthermore, the Commission provides no *technical* explanation for why the directive is necessary for bulk power system reliability except to say that it “considers this matter to be a fundamental issue of transmission service.”¹⁰

The key technical consideration that must be assessed before such a change is made to TPL-002-0 is the relationship of the TPL-002-0 directive and its ability to prevent instability, uncontrolled separation, and cascading failures, relative to local load effects. Additionally, the resultant infrastructure improvement costs at the local level to meet the performance expectations at the bulk power system level must also be considered. This issue is likely to be of consequence at the fringes of the various systems, and an absolute requirement such as the Commission's directive could impose significant costs on relatively small systems without a resultant impact on bulk power system reliability. While NERC recognizes that the TPL-002 project has been ongoing and an alternative to the Table 1, footnote b has not been proposed, an overly

¹⁰ Order No. 693 at P 1794.

prescriptive directive mandating that a change be made that is not necessarily in the best interests of reliability is also not a solution.

FERC stated in Order No. 693 that entities should not plan to have any loss of non-consequential load (or firm transactions) for a single contingency Category B event. However, in the same paragraph, FERC stated that: “NERC may consider the comments of Northern Indiana and Entergy regarding the need to balance infrastructure improvements, expansion, and local load effects on the bulk power system as it revises the TPL standards.”¹¹ Entergy, in its comments in response to the Order No. 693 *Notice of Proposed Rulemaking*, opposed the Commission’s guidance regarding footnote (b) to Table 1 by arguing that, “despite the Commission’s view, which suggests that all transmission outages have the same level of importance to and impact on the Interconnected transmission grid, the effect of transmission outages can be local in nature and have no impact on the reliability of the Bulk Power System.”¹² Entergy went on to argue that “Removing the ability of the transmission operator to shed load or enact other system adjustments as appropriate for a single contingency would result in significant costs associated with upgrading facilities simply to avoid the consequence of a local outage.”¹³

Similarly, Northern Indiana argued that: “Attempting to reduce the probability of load loss to zero would greatly increase capital spending, and therefore increase rates to customers, and all in the name of achieving a goal that is unattainable.”¹⁴ Northern Indiana therefore, “urge[d] the Commission to acknowledge that planning studies by [] nature must balance

¹¹ *Id.*

¹² *See Comments of Entergy Services, Inc.*, Docket No. RM06-16-000, at 33 (January 3, 2007).

¹³ *See Id.*

¹⁴ *See Comments of Northern Indiana Public Service Company*, Docket No. RM06-16-000, at 28 (January 3, 2007).

infrastructure improvement and expansion against site-specific and regional load projections, using available resources.”¹⁵

Given Entergy and Northern Indiana’s comments, NERC must carefully assess whether prohibiting the loss of non-consequential load for a single contingency is in the best interest of reliability *before* it can present such a modification to the Commission for consideration. The TPL Standard Drafting Team is assessing the issue in Project No. 2006-02. However, given the volume and complexity of comments on this issue, NERC must have an opportunity to appropriately assess the Commission’s modification and be provided sufficient time to do so.

NERC circulated an initial ballot proposing a modification to the TPL-002 standard on March 1, 2010. While the TPL Standard Drafting Team is currently working on the response to the numerous comments received from the initial ballot, the team’s attention has been diverted to the March 18 TPL-002 Order, which is the subject of this request. This activity, coupled with the uncertainty surrounding the issues of the TPL-002 Pacificorp interpretation *Notice of Proposed Rulemaking*,¹⁶ which the TPL drafting team is also working on, will introduce an additional delay to the completion of the response to ballot comments. Under the current schedule, the TPL drafting team anticipates the need for at least one more stakeholder comment opportunity before proceeding once again to the ballot phase. Assuming one additional round of comments is sufficient to reach consensus, the revised standard will be filed in the first quarter of 2011. Additionally, if the Commission agrees to hold a technical conference on this issue, NERC may require additional time to consider comments received in response to that conference.

¹⁵ *See Id.*

¹⁶ *See, Interpretation of Transmission Planning Reliability Standard*, 130 FERC ¶61,208 (March 18, 2010).

Accordingly, NERC respectfully requests that FERC grant rehearing of this issue to provide NERC with the opportunity to present a modification to the TPL-002 standard that serves the purpose of ensuring the Reliable Operation of the bulk power system in accordance with NERC's mandate under Section 215 of the Federal Power Act.

B. FERC is Directly Contravening Order No. 693 Which Provides That FERC Will Defer to the “Technical Expertise” of the ERO Regarding the Content of a Reliability Standard

Section 215 of the Federal Power Act requires that Reliability Standards be developed under rules that ensure “reasonable notice and opportunity for public comment, due process, openness, and balance of interests.” Section 215(d)(2) of the Federal Power Act provides that: [t]he Commission shall give due weight to the technical expertise of the Electric Reliability Organization with respect to the content of a proposed standard or modification to a reliability standard.” In Order No. 693, FERC noted that it would defer to the “technical expertise” of the ERO with respect to the content of a Reliability Standard.¹⁷ FERC stated:

Pursuant to section 215(d)(2) of the FPA and § 39.5(c) of the Commission's regulations, the Commission will give due weight to the technical expertise of the ERO with respect to the content of a Reliability Standard or to a Regional Entity organized on an Interconnection-wide basis with respect to a proposed Reliability Standard or a proposed modification to a Reliability Standard to be applicable within that Interconnection.

Additionally, the Commission noted in Order No. 693 that NERC could respond to a Commission directive with an alternative approach that produces an equally effective alternative to the Commission's proposal. The Commission stated:

We emphasize that we are not, at this time, mandating a particular outcome by way of these directives, but we do expect the ERO to respond with an equivalent alternative and adequate support that fully explains how the alternative produces a result that is as effective as or more effective than the Commission's example or directive.¹⁸

¹⁷ Order No. 693 at P 8.

¹⁸ *Id.* at P 31.

Up to now, the Commission has provided NERC with the discretion to respond to directives with an equivalent alternative and adequate support that explains how the alternative produces an as good or better solution. However, by now directing NERC to establish a process whereby it must comply with and implement a *specific* Commission directive without regard to the nature and scope, the Commission is effectively precluding NERC's technical expertise on the issue from being considered and preventing NERC from proposing an equally effective alternative. The Commission's order therefore accomplishes indirectly that which it is prohibited from doing directly, in contravention of well-established judicial precedent.¹⁹

NERC is not proposing an alternative to the proposed Table 1, footnote b in this filing. However, NERC's ability under Section 215 to develop Reliability Standards for North America in accordance with the Section 215 process is fundamentally challenged by the Commission's March 18 TPL-002 Order, which prescribes that a specific modification to a Reliability Standard be made, leaving NERC with no ability to propose an equivalent alternative to the Commission's proposal and precluding NERC from using its technical expertise to do so.

Accordingly, NERC requests that the Commission grant rehearing to revise the directive in Paragraph 8 of the March 18 TPL-002 Order by allowing NERC an opportunity to evaluate the TPL-002 standard and propose an equally and effective alternative to the directive, as appropriate, with the necessary time to incorporate any necessary modifications to the standard.

¹⁹ As the Commission is well aware, the Courts have consistently held that the Commission cannot do indirectly that which it cannot do directly; *National Fuel Gas Supply Corp. v. FERC*, 909 F.2d 1519, 1522 (D.C. Cir. 1990); *Richmond Power & Light v. FERC*, 574 F.2d 610, 620 (D.C. Cir. 1978).

IV. MOTION FOR STAY

As discussed above, NERC is requesting that the Commission grant a Motion for Stay to stay the directives in this Order until such time that a technical conference with opportunity for written comments on the Commission's TPL-002-0 directive can be held in order to afford an opportunity to examine the technical aspects of the proposed modification. The Commission may grant a Motion for Stay in a proceeding when "justice so requires."²⁰ The test for determining whether a Motion for Stay should be granted is: (1) whether the moving party will suffer irreparable injury without the stay; (2) whether issuing the stay will substantially harm other parties; and (3) whether a stay is in the public interest.

A. Whether the Moving Party Will Suffer Irreparable Injury Without the Stay

Based on the Commission's directive in the March 18 TPL-002 Order, NERC will suffer irreparable injury if the stay is not granted. As discussed above, FERC is narrowly-prescribing a directive in the March 18 TPL-002 Order that exempts any alternative means of compliance – even though NERC was granted the authority to propose alternatives in the event that an equivalent or better, alternative proposal to a Commission directive is available. NERC's authority to recommend standards based on its technical expertise is also challenged.

By prohibiting NERC in this way, FERC is essentially challenging NERC's ability to serve as the Electric Reliability Organization under Section 215 of the Federal Power Act, which mandates that NERC shall establish Reliability Standards for the reliability of the bulk power system. The Commission's March 18 TPL-002 Order directly challenges NERC's authority to

²⁰ 5 U.S.C. §705 (2000). This section provides: "When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings."

write standards given its technical expertise as the Electric Reliability Organization for North America. Accordingly, there is little doubt that NERC as the moving party will suffer irreparable injury if the stay is not granted.

B. Whether Issuing the Stay Will Substantially Harm Other Parties

Issuing the Stay will not substantially harm other parties. In fact, issuing the stay will provide NERC and other parties (*i.e.*, the industry) with the opportunity to evaluate the Commission's directive to determine whether the proposal is in the best interests of reliability. The comments provided by Entergy and Northern Indiana clearly prove that there are reliability issues that must be resolved before NERC can recommend a modification to the TPL-002 standard in compliance with the Commission's directive.

Granting the Motion for Stay and agreeing to hold a technical conference will provide NERC and the industry the necessary time to fully evaluate the technical considerations of the Commission's directive and its impact on reliability. In NERC's technical judgment, additional time to consider the issues does not pose a risk to the reliable operation of the bulk power system, as defined in section 215(a)(4). What is at stake in this case is the issue of whether all elements of the transmission system must be designed and operated to the N-1 criteria, even if local load is all that is at risk. Accordingly, issuing the stay will not harm other parties and is necessary in this proceeding so that NERC can develop a modification to the TPL-002-0 standard that is in the best interest of reliability.

C. Whether a Stay is in the Public Interest

One concern with the Commission's directive in the March 18 TPL-002 Order is whether the costs of implementing the directive outweigh the reliability benefit that many technical experts on this issue believe will be achieved when considering the local load effects. This

concern was highlighted in the comments of Northern Indiana and Entergy, which the Commission noted in Order No. 693 NERC should consider. Accordingly, the complex issue of whether entities should be prohibited from non-consequential load loss for a single contingency warrants a more detailed consideration. Therefore, granting a Stay is in the public interest and should be granted in order to afford NERC an opportunity to consider the Commission's directive and a proposal that is best for the reliable operation of the bulk power system.

IV. CONCLUSION

For the reasons described above, NERC requests that FERC grant rehearing of Paragraph 18 of the March 18 TPL-002 Order to afford NERC the necessary time to incorporate changes to the TPL-002 Reliability Standard, through the Reliability Standards Development Process, that are necessary to achieve bulk power system reliability while deferring to the technical expertise of NERC with respect to the development of the content of the Reliability Standard. Additionally, NERC requests that the Commission grant a Motion for Stay of this Order so that a public technical conference with opportunity for written comment can be held. Such a conference would provide parties an opportunity to meet and discuss the technical implications of developing a modification to the TPL-002 standard that addresses the Commission's Order No. 693 directive on Table 1, footnote b.

For the reasons set forth in this filing, NERC requests that FERC issue an Order granting the Request for Rehearing and the Motion for Stay as set forth above.

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 19th day of April, 2010.

/s/ Holly A. Hawkins
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