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

MANDATORY RELIABILITY STANDARDS)	
FOR THE CALCULATION OF AVAILABLE)	Docket Nos. RM08-19-000
TRANSFER CAPABILITY, CAPACITY)	RM08-19-001
BENEFIT MARGINS, TRANSMISSION)	RM09-5-000
RELIABILITY MARGINS, TOTAL)	RM06-16-005
TRANSFER CAPABILITY, AND EXISTING)	
TRANSMISSION COMMITMENTS AND)	
MANDATORY RELIABILITY STANDARDS)	
FOR THE BULK-POWER SYSTEM)	

**COMMENTS OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING**

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I. INTRODUCTION

The North American Electric Reliability Corporation (“NERC”)¹ is pleased to provide these comments in response to the Federal Energy Regulatory Commission’s (“FERC” or the “Commission”) Notice of Proposed Rulemaking for Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability Standards for the Bulk-Power System (“NOPR”).² NERC commends the Commission’s determination to approve the six Available Transfer Capability (“ATC”) Reliability Standards that NERC proposed in accordance with Section 215(d)(1) of the Federal

¹ The Federal Energy Regulatory Commission (“FERC” or “Commission”) certified NERC as the electric reliability organization (“ERO”) in its order issued on July 20, 2006 in Docket No. RR06-1-000. *North American Electric Reliability Corporation*, “Order Certifying North American Electric Reliability Corporation as the Electric Reliability Organization and Ordering Compliance Filing,” 116 FERC ¶ 61,062 (July 20, 2006).

² *Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability Standards for the Bulk-Power System*, (“NOPR”), 126 FERC ¶ 61,249 (2009).

Power Act (“FPA”)³ and Section 39.5 of the Commission’s regulations.⁴ The six proposed standards (MOD-001-1, MOD-004-1, MOD-008-1, MOD-028-1, MOD-029-1, and MOD-030-2) set requirements for the calculation of ATC, Capacity Benefit Margin (“CBM”), and Transmission Reliability Margin (“TRM”) and will be referred to herein as the ATC Reliability Standards.

NERC supports the Commission’s proposal to approve the proposed ATC Reliability Standards and responds to some of the specific proposals included in the Commission’s NOPR.

II. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to:

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*Persons to be included on the Commission’s service list are indicated with an asterisk. NERC requests waiver of the Commission’s rules and regulations to permit the inclusion of more than two people on the service list.

³ §16 U.S.C. 824o.

⁴ 18 C.F.R. § 39.5 (2006).

III. BACKGROUND

A. Regulatory Framework

Through its enactment of the Energy Policy Act of 2005 (“the Act”), Congress entrusted the Commission with the duties of approving and enforcing rules to ensure the reliability of the Nation’s bulk power system, and with the duties of certifying an electric reliability organization (“ERO”) that would be charged with developing and enforcing mandatory Reliability Standards, subject to Commission approval.⁵ Section 215 of the Act provides that all users, owners and operators of the bulk power system in the United States will be subject to Commission approved Reliability Standards.

On July 20, 2006, the Commission certified NERC as the ERO.⁶ Pursuant to Section 215 of the Act, the ERO is charged with developing mandatory and enforceable Reliability Standards, which are subject to Commission review and approval.⁷ Upon approval by the Commission, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or the Commission can independently enforce these Reliability Standards.⁸

B. Basis for Approval of Additional Proposed Reliability Standards

Under Section 215(d) of the Act, the Commission is authorized to approve proposed Reliability Standards if the Commission determines that the proposed standards are “just, reasonable, not unduly discriminatory or preferential, and in the public interest.”⁹

⁵ 16 U.S.C. § 824o.

⁶ *Rules Concerning Certification of the Electric Reliability Organization: Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards*, Order No. 672, 71 FR 8662 (February 17, 2006), FERC Stats. & Regs. ¶ 31,204 (2006), *order on reh’g*, Order No. 672-A, 71 FR 19814 (April 18, 2006), FERC Stats. & Regs. ¶ 31,212 (2006).

⁷ 16 U.S.C. § 824o.

⁸ *Id.*

⁹ *Id.*

When evaluating proposed Reliability Standards, the Commission is expected to give “due weight” to the technical expertise of the ERO, but is not to defer to the ERO on matters affecting competition.¹⁰ Order No. 672 provides guidance on the factors the Commission will consider when determining whether proposed reliability standards meet the statutory criteria.¹¹

C. Reliability Standards Development Procedure

As described in more detail in NERC’s requests to approve the six proposed ATC Reliability Standards, these standards were developed and approved by industry stakeholders using NERC’s *Reliability Standards Development Procedure*, and were approved by the NERC Board of Trustees on August 26, 2008, November 13, 2008 and February 10, 2009 for filing with the Commission.

D. Overview of the ATC Reliability Standards

On February 16, 2007, the Commission issued Order No. 890,¹² which required industry-wide consistency and transparency of all components of ATC calculation and certain definitions, data and modeling assumptions. On March 16, 2007, the Commission issued Order No. 693, and directed NERC to ensure that the ATC-related MOD Reliability Standards, which were currently in development, be consistent with the requirements of Order No. 890.¹³ In response to the requirements of Order No. 890 and related directives of Order No. 693, on August 29, 2008 NERC submitted for Commission approval five MOD Reliability Standards: MOD-001-1 –

¹⁰ See 18 C.F.R. § 39.5(c)(1) and Order No. 672 at PP 40, 249.

¹¹ Order No. 672 at PP 320-338.

¹² *Preventing Undue Discrimination and Preference in Transmission Service*, 118 FERC ¶ 61,119 (2007) (Order No. 890).

¹³ *Mandatory Reliability Standards for the Bulk-Power System*, FERC Stats. & Regs. ¶ 31,242 (2007) (Order No. 693).

Available Transmission System Capability; MOD-008-1 – Transmission Reliability Margin Calculation Methodology; MOD-028-1 – Area Interchange Methodology; MOD-029-1 – Rated System Path Methodology; and MOD-030-1 – Flowgate Methodology. In addition, NERC submitted for Commission approval twenty associated definitions. On November 21, 2008, NERC submitted for Commission approval a sixth MOD Reliability Standard, MOD-004-1 – Capacity Benefit Margin, and two associated definitions. On March 6, 2009, NERC submitted for Commission approval MOD-030-2 – a revised Flowgate Methodology Reliability Standard and withdrew its request for approval of MOD-030-1.

MOD-001-1, the Available Transmission System Capability Reliability Standard, serves as an “umbrella” Reliability Standard that requires each applicable entity to select and implement one or more of the three ATC methodologies found in MOD-028-1, MOD-029-1, or MOD-030-2. MOD-004-1 and MOD-008-1 provide for the calculation of CBM and TRM, which are inputs into the ATC calculation.

IV. DISCUSSION

A. Introduction

While NERC is generally supportive of the Commission’s NOPR, there are two proposals that are of significant concern: (1) the proposed requirement that NERC audit all Transmission Service Providers on an accelerated audit schedule;¹⁴ and (2) the proposal to have NERC expand its availability requirements for Implementation Documents.¹⁵ Additionally, NERC offers clarification in response to the proposal regarding information used in determining CBM in order to clarify the intent of the standard and eliminate the need for the proposed action.

¹⁴ NOPR at PP 83-84.

¹⁵ *Id.* at PP 104-105.

In response to the Commission's proposal to more clearly address the modeling of designated resources, NERC provides reference to a specific section of the MOD-028-1 standard based on industry feedback received. NERC also requests clarification of the proposed directives to retain FAC-012 and FAC-013. Finally, NERC expresses concern with regard to the proposed timelines suggested by the Commission for completion of tasks proposed in the NOPR.

B. Auditing of Implementation Documents

The Commission proposes in the NOPR that no later than 180 days after the effective date of the Reliability Standards, NERC should complete audits of all Transmission Service Providers¹⁶ in order

to confirm that the complete available transfer capability methodologies reflected therein, including the calculation of each component of available transfer capability, are sufficiently transparent to allow the Commission and others to replicate and verify those calculations and thereby ensure that they are being implemented consistently for all transmission customers.¹⁷

NERC objects to the proposal to require NERC to audit all Transmission Service Providers to assure that their ATC methodologies are sufficiently transparent so that the Commission and others can replicate and verify calculations to ensure consistent treatment of all transmission customers. NERC especially objects to the requirement to complete all such audits within 180 days of the effective date of the ATC Reliability Standards. Under rules approved by the Commission, NERC and the Regional Entities audit Reliability Coordinators, Balancing Authorities, and Transmission Operators on a three-year cycle. Those are the entities with primary responsibility for the reliability of the bulk power system. The NOPR provides no explanation of the *reliability* benefits that would necessitate an audit cycle accelerated beyond

¹⁶ As of May 26, 2009, the NERC Compliance Registry includes 111 entities registered as Transmission Service Providers.

¹⁷ NOPR at P 83.

the three years defined for bulk power system users, owners and operators with primary reliability responsibility.¹⁸ Transmission Service Providers do not have primary reliability responsibility and the NOPR offers no justification as to why such entities should have their implementation documents audited on any schedule other than that established by the NERC Uniform Compliance Monitoring and Enforcement Program.

Of equal concern is the Commission's stated intent in establishing an accelerated audit schedule for all Transmission Service Providers to ensure that the implementation documents and ATC methodologies "are being implemented consistently for all transmission customers."¹⁹ With this proposed requirement, the Commission crosses the line between reliability functions and functions related to competition and markets. Section 215 itself recognizes the distinction between reliability matters (where the Commission is to give "due weight to the technical expertise of the ERO"), and matters affecting competition (where the Commission is to give no such deference). While NERC understands that consistent treatment of transmission customers in functions related to competition and markets is an important part of the Commission's open access policies, this is not within NERC's mandate to address as the ERO. The Energy Policy Act provides that "[t]he ERO shall have authority to develop and enforce compliance with reliability standards for only the bulk power system."²⁰ NERC is concerned that the Commission's proposal that NERC audit all Transmission Service Providers on an accelerated schedule, when considered in the context provided by the Commission, essentially engages

¹⁸ Section 403.11.1 of NERC's Rules of Procedure define the periodicity of audits as follows: "For those bulk power system owners and operators with primary reliability responsibility (i.e., entities requiring organizational certification), the compliance audit will be performed at least once every three years. For other bulk power system owners, operators, and users on the NERC Compliance Registry, compliance audits shall be performed on a schedule established by NERC."

¹⁹ NOPR at 83.

²⁰ 16 U.S.C. § 824o(i)(2).

NERC in the Commission's market oversight functions, and expands the scope of the ERO considerably beyond that of reliability of the bulk power system.

Furthermore, even if the Commission determines that it is within NERC's mandate to conduct audits to ensure consistency aimed at protecting markets and competition, the imposition of a 180-day deadline to complete these audits²¹ places a higher priority on these issues than is warranted. Consistency in ATC practices (or the lack thereof) in the treatment of transmission has a relatively low reliability impact on the bulk power system. NERC's business plan and budget prioritizes the matters to which NERC devotes significant resources. Elevating the urgency of completing these audits to a level higher than normal will result in significant changes to the scope of NERC's activities. Specifically, the reassignment of staff from reliability endeavors of greater reliability significance and hiring of staff or consultants in order to meet the 180-day schedule will impact NERC's ability to carry out its mandate focused on ensuring and improving the reliability of the bulk power system. While NERC recognizes the commercial importance of open access, NERC questions whether the NOPR's proposal to have consistent treatment of transmission customers is more critical to the reliability of the bulk power system than the numerous other core areas under which NERC has responsibilities.

Importantly, the accelerated 180-day schedule combined with the technical expertise needed to evaluate the implementation of these audits will result in staffing challenges that could be more complex than the Commission foresees. If the Commission's final rule further expands the role of the ERO to begin enforcement of Open Access provisions, employees or consultants with the appropriate qualifications to not only review an implementation document for its

²¹ NOPR at P 84; the Commission proposes in the NOPR that the ERO would be required to complete these audits no later than 180 days after the effective date of the Reliability Standards, as approved by a final rule in this docket.

engineering merits but also for its commercial implications may prove to be extremely difficult to locate and acquire.

Additionally, the Commission proposes in the NOPR to direct NERC to submit a timeline for the completion of these audits within 30 days of the issuance of the final rule in this docket.²² NERC believes that this amount of time is not sufficient to develop such a timeline. At a minimum, NERC and the Regional Entities will require sufficient time to work collaboratively to develop such a timeline, and it is likely that this process will take more than 30 days. Should expansion of the ERO's scope proceed as proposed in the NOPR, NERC requests that the ERO be provided sufficient time to appropriately consider the best ways to restructure its resources in light of its new responsibilities.

C. Availability of Implementation Documents

The NOPR states that “[t]he Commission is concerned that the proposed Reliability Standards potentially restrict the disclosure of the available transfer capability, capacity benefit margin, and transmission reliability margin implementation documents,” and “NERC does not explain in its filings why only certain entities would have access to these materials, nor why the specified list of recipients varies for each document.”²³ The NOPR further provides that “[t]he Commission’s jurisdiction under section 215 of the FPA is broader than our jurisdiction to require compliance with the [North American Energy Standards Board (“NAESB”)] standards under sections 205 and 206 of the FPA,” and that “[t]hese documents will describe how the transmission provider will implement the Reliability Standards.”²⁴ Therefore, the Commission proposes that these documents “should be disclosed by all transmission service providers, not

²² *Id.*

²³ *Id.* at P 104.

²⁴ *Id.*

only those who are also public utilities.”²⁵ Therefore, to ensure sufficient transparency, the Commission proposes to direct the ERO in the NOPR to modify the proposed Reliability Standards to make the ATC, CBM, and TRM implementation documents available to all customers eligible for transmission service in a manner that is consistent with relevant NAESB standards.²⁶

Again, the proposal in the NOPR crosses the line between reliability matters and commercial and Open Access matters. NERC’s August 29, 2008 filing requesting approval of a number of the ATC Reliability Standards explained that as part of its collaboration with NAESB, NERC and NAESB agreed that NAESB business practices should address commercial issues related to ATC, while NERC standards would focus solely on the “activities pertaining to planning or operations of the bulk power system.”²⁷ Accordingly, only those entities that have a reliability-based need to review the documents have been specified as entities required to have access to those documents. In general, the implementation documents are to be shared with entities that have oversight of, or are likely to be impacted by, the entity implementing the specific methodology. In the specific case of the CBM Implementation Document, this was expanded to include entities that are expected to meet obligations specified within the documents (*e.g.*, Load-Serving Entities and Resource Planners that must follow provisions for requesting and scheduling CBM).

More importantly, NERC is concerned that the Commission’s proposal provides no explanation of how reliability could be compromised by not making these implementation documents available to all customers eligible for transmission service. The NOPR suggests that

²⁵ *Id.*

²⁶ *Id.* at PP 104-105.

²⁷ *Preventing Undue Discrimination and Preference in Transmission Service*, “Compliance Filing in Response to Paragraph 223 of Order No. 890,” Docket No. RM08-19-000 (August 29, 2008) at p. 12.

one of the goals of this proposal is “to ensure sufficient transparency,”²⁸ and that the vehicle to ensure this transparency is the Reliability Standards because “the Commission’s jurisdiction under section 215 of the FPA is broader than [FERC’s] jurisdiction to require compliance with the NAESB standards under sections 205 and 206 of the FPA.”²⁹ While NERC agrees it is critical that reliability entities have access to the necessary information regarding bulk power system reliability, NERC does not agree that transparency related to ensuring Open Access and consistent treatment for all transmission customers is critical to reliability or is within NERC’s area of responsibility.

As discussed previously in this filing, the Energy Policy Act of 2005 provides that “[t]he ERO shall have authority to develop and enforce compliance with reliability standards for only the bulk power system.”³⁰ A proposal that would require NERC to develop mandatory and enforceable Reliability Standard requirements with the intent of enforcing Open Access provisions is inconsistent with the ERO’s role as envisioned by Congress. NERC is concerned that the Commission’s proposed directive blurs the line between commercial interests and reliability interests and is not based on an objective evaluation of the impact to the reliability of the bulk power system. The Commission has other tools and other authorities to police its Open Access policies.

NERC’s mandate is to ensure the reliability of the bulk power system. NERC and NAESB have established joint coordination procedures to address the appropriate assignment of tasks that could have a reliability or a commercial impact, and the actions proposed by the Commission could undermine that coordination.

²⁸ NOPR at P 105.

²⁹ *Id.* at P 104.

³⁰ 16 U.S.C. § 824o(i)(2).

For these reasons, NERC reiterates its opposition to the Commission’s proposal, and urges the Commission to address its desired goals articulated in the NOPR through more appropriate business practice standards developed by NAESB and through specific Commission rulemakings that direct entities to which the Commission’s market-based jurisdiction applies to take action consistent with the Commission’s Open Access goals.

D. CBM Information Requirements

In the NOPR, the Commission expresses concern with a perceived inconsistency between what a Load-Serving Entity or Resource Planner must provide when requesting CBM and what a Transmission Service Provider or Transmission Planner must consider when establishing a CBM value. The Commission proposes “to direct the ERO to develop a modification to MOD-004-1 to require load-serving entities and resource planners to determine generation capability import requirements by reference to relevant studies and applicable reserve margin or resource adequacy requirements, as relevant.”³¹ NERC provides additional information regarding this perceived disparity so that the Commission may understand more fully the intent of the language included in the standard.

In discussions with stakeholders that developed the MOD-004-1 Reliability Standard, it was determined that the actual manner in which a Load-Serving Entity or Resource Planner determines its Generation Capability Import Requirement may differ significantly based on the requestor’s internal practices, as well as the regulatory regime under which it operates. In some cases, local regulators may establish specific requirements; in other cases, entities may perform one or more studies; while in other cases, both may occur. The use of the words “one or more” in the Reliability Standard was intended to indicate that an entity desiring to have CBM withheld

³¹ NOPR at P 111.

for its potential use could establish that need using any one of the methods described. The entity also had the option to provide additional studies or information if it so desired or was obligated to do so (*e.g.*, its regulator-imposed requirement *and* the study used to determine that number).

In the case of the Transmission Service Provider or Transmission Planner, however, the Reliability Standard drafting team felt that it was important that *any* information provided be considered when establishing an appropriate level of CBM. In other words, if a Load-Serving Entity chooses to provide two studies, the Transmission Service Provider and/or Transmission Planner cannot simply choose one and ignore the other; they are required to evaluate both when making their determination.

NERC therefore asserts, based on stakeholder guidance, that the Reliability Standard requirements are written correctly, and therefore respectfully disagrees with the Commission's proposed modification to Reliability Standard MOD-004-1.

E. Designated Resources

According to the NOPR, the Commission indicates that NERC has not explained the failure to include in each of the ATC methodologies a requirement that base generation dispatch schedules will reflect the modeling of all designated network resources and other resources that are committed to or have the legal obligation to run, as they are expected to run.³² While such language is included in Reliability Standard MOD-030-2, the NOPR states it is not addressed in MOD-028-1 or MOD-029-1. While the NOPR is correct that MOD-029-1 does not contain this language, Reliability Standard MOD-028-1, R 3.1.3 of the standard may address this concern when describing the key components to determining Total Transfer Capability:

³² *Id.* at P 120.

3.1.3 Unit commitment and dispatch order, to include all designated network resources and other resources that are committed or have the legal obligation to run, (within or out of economic dispatch) as they are expected to run.

F. FAC-012 and FAC-013

FERC proposes to “direct the ERO to submit a revised FAC-012-1 and a modification to FAC-013-1 to comply with the relevant directives of Order No. 693 and as otherwise necessary to make the requirements of those Reliability Standards consistent with those of the proposed MOD Reliability Standards and the final rule in this proceeding.”³³ In order to ensure an accurate understanding of the Commission’s expectations, NERC requests clarification of the proposed Commission directive. NERC interprets the proposed directive to mean that these FAC standards:

(1) must be changed to address the Planning Horizon to ensure continuity with the ATC-related MOD standards;

(2) should not address the Operating Horizon, because the ATC-related MOD standards already address this area;

(3) should not delegate oversight and responsibility for this standard to Regional Entities, but rather do so at the ERO level;

(4) must not conflict with the ATC-related MOD standards; and (5) must include Violation Risk Factors (“VRF”) and Violation Severity Levels (“VSL”).

NERC seeks confirmation that this understanding is consistent with the expectations of the Commission regarding this topic.

The Commission proposed in the NOPR to require NERC to file these modifications to Reliability Standards FAC-012 and FAC-013 within 120 days prior to the effective date of the

³³ *Id.* at P 138.

ATC-related MOD Reliability Standards.³⁴ NERC proposes that the Commission instead require that these changes be filed 60 days before the ATC-related standards become effective. This will provide NERC additional time to develop these changes in accordance with NERC's Reliability Standards Development Process, and minimize the probability that special exceptions to the process be granted in order to meet the Commission's proposed deadline. Additionally, this will help ensure that these changes to FAC-012 and FAC-013 do not take undue precedence ahead of other issues currently prioritized and being addressed in the NERC standards development work plan.

³⁴ *Id.*

V. CONCLUSION

NERC respectfully requests that the Commission adopt a final rule consistent with the comments set forth herein.

Respectfully submitted,

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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 26th day of May, 2009.

/s/ Holly A Hawkins

Holly A. Hawkins

*Attorney for North American Electric
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