

143 FERC ¶ 61,252
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

North American Electric Reliability Corporation

Docket No. RD13-3-000

ORDER APPROVING RELIABILITY STANDARD

(Issued June 20, 2013)

1. On December 31, 2012, as amended on January 4, 2013, the North American Electric Reliability Corporation (NERC) submitted a petition for approval of Reliability Standard EOP-004-2 – Event Reporting (Petition). Reliability Standard EOP-004-2 identifies types of reportable events and thresholds for reporting, requires responsible entities to have an operating plan for reporting applicable events to NERC and other entities (including law enforcement), and requires reporting of threshold events within a 24 hour period. NERC requests that Reliability Standard EOP-004-2 become effective the first day of the first calendar quarter beginning six months following the effective date of a final order in this proceeding, and that it replace currently-effective Reliability Standards EOP-004-1 – Disturbance Reporting and CIP-001-2a – Sabotage Reporting.

2. As explained below, pursuant to section 215(d) of the Federal Power Act (FPA),¹ we approve Reliability Standard EOP-004-2, and find that it is just, reasonable, not unduly discriminatory or preferential, and in the public interest. We further approve NERC's requested effective date for EOP-004-2, along with the retirement of existing Reliability Standards EOP-004-1 and CIP-001-2a.

I. Background

3. The Commission certified NERC as the Electric Reliability Organization (ERO), as defined in section 215 of the FPA, in July 2006.² In Order No. 693, the Commission

¹ 16 U.S.C. § 824o(d) (2006).

² *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 ¶ 61,190,

(continued...)

reviewed an initial set of Reliability Standards as developed and submitted for review by NERC, and approved 83 standards as mandatory and enforceable, including the currently-effective Disturbance Reporting Reliability Standard, EOP-004-1.³

4. In Order No. 693, the Commission also approved Reliability Standard CIP-001-1 - Sabotage Reporting. In addition, the Commission directed that NERC develop certain modifications to the standard, to further define the term sabotage and provide guidance on triggering events, specify baseline requirements for recognizing sabotage events, incorporate periodic review of sabotage reporting procedures, and require that applicable entities contact appropriate governmental authorities within a specified time period.⁴

5. Project 2009-1 -- Disturbance and Sabotage Reporting was initiated in April 2009, by PJM Interconnection, LLC, as a request for revision to existing standard CIP-001-1.⁵ The standard drafting team developed EOP-004-2, Event Reporting, as a means of combining the requirements of EOP-004-1 and CIP-001 into a single reporting standard.⁶

II. Proposed Reliability Standard EOP-004-2 and NERC's Petition

6. NERC explains in its Petition that currently-effective Reliability Standard EOP-004-1 contains the requirements for reporting and analyzing disturbances, while CIP-001-2a addresses sabotage reporting. NERC states that proposed Reliability Standard EOP-

order on reh'g 119 FERC ¶ 61,046 (2007), *aff'd sub nom. Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

³ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 617, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

⁴ Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 471. The Commission subsequently approved an interpretation of CIP-001-1 (Letter Order issued on Feb. 2, 2011 in Docket No. RR10-11-000, accepting NERC's clarification regarding the "appropriate parties" to which reports of a sabotage event must be made), as well as a regional modification to CIP-001-1a (Letter Order issued on August 2, 2011 in Docket RD11-6-000, approving a regional variance for ERCOT to add transmission owners and generator owners as responsible entities). Thus, the currently-effective version of the sabotage reporting standard is CIP-001-2a.

⁵ NERC Petition at 7.

⁶ *Id.* at 8.

004-2 merges EOP-004-1 and CIP-001-2a, and represents a significant improvement in the identification and reporting of events.⁷ According to NERC, proposed Reliability Standard EOP-004-2 provides a comprehensive approach to reporting disturbances and events that have the potential to impact the reliability of the bulk electric system in accordance with several Commission directives.⁸

7. As proposed, EOP-004-2 would require the following:

- Responsible entities must have an operating plan for reporting applicable events to NERC and others (e.g., Regional Entities, applicable reliability coordinators, and law enforcement), including procedures for reporting the specific events at thresholds identified in Attachment 1 (Requirement R1);
- Responsible entities must report events as defined in their operating plan “within 24 hours of recognition of meeting an event type threshold for reporting,” or by the end of the next business day if the event occurs on a weekend (Requirement R2); and
- Responsible entities must validate contact information contained in the operating plan on an annual basis (Requirement R3).

8. Reliability Standard EOP-004-2 includes two attachments. Attachment 1 (Reportable Events) identifies types of events and thresholds for reporting, such as damage or destruction of a facility, physical threats to facilities, firm load loss, and generation loss. Attachment 2 is a standardized form for event reporting. NERC notes that in an effort to minimize administrative burden, U.S. entities may elect to use DOE Form OE-417 (Emergency Incident and Disturbance Report), rather than Attachment 2, to report under EOP-004-2.⁹

9. NERC asserts that the results-based approach of EOP-004-2 includes clear criteria for reporting and consistent reporting timelines. NERC also explains that the proposed reporting requirements will “allow governmental authorities and critical infrastructure members the opportunity to react in a meaningful manner” to disturbance or other event

⁷ *Id.* at 5.

⁸ *Id.* at 3.

⁹ *Id.* at 16.

information, thereby “support[ing] reliability principles and ultimately help[ing] to protect against future malicious physical attacks.”¹⁰

10. NERC notes, however, that the revised Reliability Standard does not further define the term “sabotage” as directed in Order No. 693. NERC explains that the standard drafting team determined that such a definition could be ambiguous and “inherently subjective.”¹¹ NERC explains that the standard drafting team elected instead to develop a specific list of reportable events and thresholds (Attachment 1 of the standard), as a means of meeting the Commission’s directive to provide guidance on reportable events. NERC asserts that the development of a list of reportable events and thresholds is an equally effective and efficient means of addressing the Commission’s directive in Order No. 693.¹²

III. Notice of Filing, Interventions and Comments

11. Notices of NERC’s Petition and its errata were issued on January 2 and January 7, 2013, respectively, with comments, protests and motions to intervene due on or before February 4, 2013. American Municipal Power, Inc. (AMP) filed a timely motion to intervene, on January 30, 2013.

12. On March 7, 2013, seven Independent System Operators and Regional Transmission Organizations (Joint ISOs/RTOs) filed a joint motion to intervene out-of-time and comments on NERC’s Petition.¹³ In support of their request for leave to intervene out-of-time, Joint ISOs/RTOs maintain that they only learned that a Notice of Proposed Rulemaking would *not* issue in the docket after the January 30, 2013 close of the intervention and comment period. Joint ISOs/RTOs maintain that their late comments will not prejudice NERC because ISOs and RTOs raised similar comments during the standards development process, and that late intervention will not prejudice any other party or otherwise disrupt this proceeding as the Commission has not yet issued a dispositive order.

¹⁰ *Id.* at 4.

¹¹ *Id.* at 8-9.

¹² *Id.* at 9.

¹³ Joint ISOs/RTOs are the California Independent System Operator Corporation; Electric Reliability Council of Texas, Inc.; Ontario’s Independent Electricity System Operator; ISO New England Inc.; Midwest Independent Transmission System Operator, Inc.; New York Independent System Operator, Inc.; and Southwest Power Pool, Inc.

13. Joint ISOs/RTOs assert that event reporting does not provide for “reliable operations” and, therefore, should not be incorporated in mandatory Reliability Standards. Joint ISOs/RTOs contend that event reporting is “an *ex post* activity” that provides only prospective benefits to system reliability.¹⁴ Joint ISOs/RTOs argue that the Commission should “distinguish between an obligation that is a ‘requirement . . . to provide for reliable operation of the bulk-power system,’ as those terms are defined in Section 215, and those obligations that do not, such as administrative record-keeping and ex-post reporting tasks.”¹⁵ Joint ISOs/RTOs further maintain that the event reporting requirements in EOP-004-2 are redundant to other federal regulations, and that they expose registered entities to unnecessary liability and burden.¹⁶ Based on these arguments, Joint ISOs/RTOs take the position that the Commission should not only reject EOP-004-2, but should also consider retiring or otherwise revisiting the existing Reliability Standards governing disturbance and sabotage reporting (EOP-004-1 and CIP-001-2a).

14. Joint ISOs/RTOs argue, in the alternative, that if the Commission approves EOP-004-2, the Commission should direct certain modifications.¹⁷ In particular, Joint ISOs/RTOs advocate (1) limiting reportable events “to those that give third parties the opportunity to act to mitigate the impact of the event” such as vandalism;¹⁸ and (2) limiting the scope of entities to receive reports to those that can act to mitigate the actual event. Joint ISOs/RTOs further maintain that certain thresholds for reportable events in Attachment 1 should be modified to remove ambiguities. Joint ISOs/RTOs provide one example of such ambiguity, claiming that, while Attachment 1 requires reporting when “[d]amage or destruction of a Facility . . . results in actions to avoid a BES emergency,” reliability coordinators and balancing authorities take actions on a daily basis to “avoid a BES Emergency” without knowing whether the underlying system conditions resulted from damage or destruction to a facility. According to Joint ISOs/RTOs, the reliability coordinator or balancing authority will often not have the

¹⁴ Comments of Joint ISOs/RTOs at 6.

¹⁵ *Id.* at 5 (quoting from FPA section 215).

¹⁶ *See id.* at 7.

¹⁷ *Id.* at 8-14. Joint ISOs/RTOs acknowledge that, “[i]f the Commission disagrees with the Joint ISOs/RTOs’ position that event reporting should not be included in the Reliability Standards . . . , proposed standard EOP-004-2 is an improvement over the two events reporting standards it would replace” *Id.* at 8.

¹⁸ *Id.* at 9.

information to determine whether to submit a report. Finally, Joint ISOs/RTOs assert that a strict 24-hour reporting obligation is overly-stringent and provides no reliability benefit since registered entities would have separately mitigated the event.

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214, the timely, unopposed motion to intervene filed by AMP serves to make it a party to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), we will also grant Joint ISOs/RTOs' late-filed motion to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Commission Determination

16. Pursuant to section 215(d) of the FPA, we approve Reliability Standard EOP-004-2 as just, reasonable, not unduly discriminatory or preferential, and in the public interest.¹⁹ We also approve NERC's proposed implementation plan for the revised standard, including the retirement of existing Reliability Standards EOP-004-1 and CIP-001-2a when EOP-004-2 becomes effective. Finally, we approve the proposed violation risk factors and violation severity levels incorporated in Reliability Standard EOP-004-2.

17. We find that EOP-004-2 enhances the reliability of the Bulk-Power System by requiring timely reporting of specific system disturbance or sabotage events, allowing for both a real-time operational benefit for near-term mitigation of the event, as well as a prospective benefit through subsequent analysis and investigation, including dissemination of lessons learned from the event. We conclude that EOP-004-2 represents an improvement over the currently-effective Reliability Standards, CIP-001-2a and EOP-004-1, in that it provides a comprehensive approach to reporting disturbances and events that have the potential to impact the reliability of the Bulk-Power System and provides greater clarity concerning reportable events. Further, we find that NERC has adequately addressed the Commission's directives pertaining to event reporting, including requiring the periodic update of reporting procedures. With regard to the Order No. 693 directives that NERC further refine the definition of "sabotage" and provide guidance on events that trigger reporting,²⁰ we find that NERC's development of Attachment 1, which lists

¹⁹ 16 U.S.C. § 824o(d)(2).

²⁰ Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 471.

specific types of reportable events and thresholds for reporting, represents an equally efficient and effective approach to address our underlying concern.

18. In addition, we are not persuaded by Joint ISOs/RTOs' arguments in support of their request that we either reject or direct modification of the proposed standard.

19. First, we reject Joint ISOs/RTOs' argument that event reporting is not a proper subject for Reliability Standards because it is prospective in nature and is not directly related to or otherwise supportive of "reliable operations" as that term is used in FPA section 215. The prospective benefits from certain aspects of the reporting requirements are not only valuable, but also a sufficient basis for imposition of a mandatory and enforceable reliability requirement. Events reporting allows entities to gain an early understanding of the scope of an event, enabling requests for assistance from other entities within the industry with appropriate expertise and from other governmental agencies who otherwise might not know about the event. While assistance would not always be in real time, operational planning and system planning can benefit from outside expertise to support planning for physical and cyber security, and even to support and improve day-ahead and week-ahead operational planning. Moreover, patterns of simple events can trigger further analysis and recognition of the possibility that corrective measures should be taken to prevent even more egregious events that might ensue if left unchecked.²¹

20. Moreover, EOP-004-2 has been designed to minimize redundancies and multiple reporting obligations to the extent possible, by allowing responsible entities to report an event either through submission of its Attachment 2 *or* DOE Form OE-417.²²

21. Nor are we persuaded by Joint ISOs/RTOs that EOP-004-2, if adopted, requires modification. We find no reason to require NERC to limit reportable events to those that give third parties time to act to mitigate the event, or to limit the recipients of such reports to those that can act to mitigate actual, real-time events. It is unclear that such events could be readily identified, leading to greater confusion concerning reporting requirements and a possible loss of information about those mitigable events. More importantly, as noted above, we do not agree that FPA section 215 limits the scope of

²¹ We have previously approved Reliability Standards that do not affect "real-time operations" yet still support the reliable operation of the Bulk-Power System, including Reliability Standards within the several different transmission categories including personnel performance, training and qualifications (PER); transmission planning (TPL); and facility connection and coordination (FAC-001 and FAC-002).

²² See NERC Petition at 16.

Reliability Standards to those that directly affect real-time operations, and therefore do not agree with the underlying basis for Joint ISOs/RTOs' proposed modification.

22. Further, based on the one example provided by Joint ISOs/RTOs, we are not persuaded that the triggering events delineated in Attachment 1 require clarification. Joint ISOs/RTOs contend that, while Attachment 1 requires reporting when “[d]amage or destruction of a Facility . . . results in actions to avoid a BES emergency,” reliability coordinators and balancing authorities may take actions to avoid a BES Emergency without knowing whether the underlying system conditions resulted from damage or destruction to a facility. Requirement R2 of EOP-004-2 requires reporting of an event “within 24 hours of recognition of meeting an event type threshold” NERC explains that the language of Requirement R2 is based on “recognition” of an event threshold because “an entity may not be immediately aware of destruction or damage to a remote piece of equipment” and “requiring Responsible Entities to constantly monitor all equipment and property for destruction or damage would be a waste of resources”²³ We agree that NERC has developed a practical solution to reporting that, rather than creating ambiguity, provides a more clear and rational trigger for reporting.

23. Finally, we reject Joint ISOs/RTOs' objection that the 24-hour reporting window is too stringent. As indicated by the Attachment 2 standardized Event Reporting Form, entities are only required to provide limited, specified information pertaining to an event. No underlying investigation or analysis is required. If Joint ISOs/RTOs believe that improvements can be made to EOP-004-2, through clarifying language or other modifications as the industry gains experience with EOP-004-2's revised reporting requirements, they can seek to do so through NERC's standard development process.

24. Accordingly, we approve Reliability Standard EOP-004-2 pursuant to FPA section 215(d)(2), as we find that it is just, reasonable, not unduly discriminatory or preferential, and in the public interest. We also approve the associated violation risk factors and violation severity levels, NERC's requested effective date for EOP-004-2, and the retirement of existing Reliability Standards EOP-004-1 and CIP-001-2a.

V. Information Collection Statement

25. The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency action.²⁴ Upon approval of a collection(s) of information, OMB will assign an OMB control number and an

²³ NERC Petition at 13.

²⁴ 5 C.F.R. 1320.11.

expiration date. Respondents subject to the filing requirements of this Order will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

26. The Commission will submit these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act. This order is effective immediately; however, the revised information collection requirements will not be effective or enforceable until OMB approves the information collection changes described in this order. Comments are solicited within 60 days of the date this order is published in the Federal Register on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques. Submit comments following the Commission's submission guidelines at <http://www.ferc.gov/help/submission-guide.asp> and reference Docket No. RD13-3.

27. Rather than creating entirely new obligations to report a system disturbance, the revised Reliability Standard, EOP-004-2, primarily clarifies the thresholds that can trigger a reporting obligation, and reduces the reporting burden for certain individual respondents due to the use of a simplified form in Attachment 2. However, the revised Reliability Standard would increase the reporting burden for some individual entities, because it would apply for the first time to transmission owners and generator owners. We do not anticipate a large increase in the number of respondents because the existing Reliability Standard applies to transmission operators and generator operators, which includes the majority of the entities registered as transmission owners and generator owners.

28. Burden Estimate: Our estimate below regarding the number of respondents is based on the NERC compliance registry as of March 2013. According to the registry, there are 7 transmission owners that are not also transmission operators, 128 generator owners that are not also generator operators, and 101 distribution providers that are not also registered as another functional entity covered by the current event reporting standards. Thus, we estimate that a total of 236 entities may be subject to the event reporting requirements of EOP-004-2 for the first time.²⁵

²⁵ Although distribution providers are included as responsible entities under the revised Reliability Standard, their reporting obligations will be *de minimis*, as explained in the Guidelines and Technical Basis attached to the revised standard. See NERC Petition, Ex. B at 13. For purposes of this analysis, however, we included distribution providers as part of the assumed number of reports per year.

29. The number of annual reports required could vary widely based on the individual entity and the extent of its facilities. The estimate below is based on an assumption that, on average, 25 percent of the entities covered by EOP-004-2 will have one reportable event per year. As demonstrated below, the primary increase in cost associated with the revised standard is expected in Year 1, when newly covered entities must develop an operating plan for reporting. In Years 2 and 3, an overall *reduction* in reporting and recordkeeping burden is expected, due to the simplified reporting form:

Type of Respondent	Reporting/ Record-keeping Req't	Number of Respondents	Number of Responses Per Respondent	Total Number of Responses	Average Burden Hours per Response	Estimated Total Annual Burden	Estimated Total Annual Cost
		(A)	(B)	(A)x(B)=(C)	(D)	(C)x(D)	(see below)
New Entities (GO, TO, DP)	Developing Operating Plan (Yr 1 Only)	236	1	236	8	1888	\$113,280.00
	Reporting Event (Yr 1, 2, and 3)	59	1	59	0.17	10.03	\$601.80
Entities Subject to Existing Reporting Requirements	Conforming Operating Plan to New Thresholds (Yr 1 Only)	1164	1	1164	2	2328	\$139,680.00
	Reporting Event (using new form) (Yrs 1, 2, and 3)	291	1	291	-0.33	-96.03	\$(5,761.80)
Total for Year 1²⁶						4,130	\$247,800
Total for each of Years 2 & 3						(81)	\$(5,160)

²⁶ Year 1 costs include implementation costs for entities that must comply with the standard for the first time, plus the cost for entities that are currently subject to NERC event reporting requirements to review and make changes to their existing plans. The Year 1 total also includes the savings from the reduction in reporting time due to the new Event Reporting Form.

The estimated breakdown of annual cost is as follows:

- Year 1
 - New Entities, Development of Operating Plan: 236 entities * 1 response/entity * (8 hours/response * \$60/hour²⁷) = \$113,280.
 - New Entities, Event Reporting: 59 entities * 1 response/entity * (.17 hours/response * \$60/hour) = \$601.80.
 - Current Responsible Entities, Conforming Operating Plan: 1164 entities * 1 response/entity * (2 hours/response * \$60/hour) = \$139,680.
 - Current Responsible Entities, Event Reporting Using New Event Reporting Form: 291 entities * 1 response/entity * [(.17 hours/response - .5 hours/response)²⁸ * \$60/hour] = (\$5,761.80).
- Year 2 and ongoing
 - New Entities, Using “Event Reporting Form”: 59 entities * 1 response/entity * (.17 hours/response * \$60/hour) = \$601.80.
 - Old Entities, Using “Event Reporting Form”: 291 entities * 1 response/entity * [(.17 hours/response - .5 hours/response) * \$60/hour] = (\$5,761.80).

Title: FERC-725A, Mandatory Reliability Standards for the Bulk Power System

Action: Proposed Collection of information

OMB Control No: 1902-0244

²⁷ For the burden categories above, the estimated hourly loaded cost (salary plus benefits) for an engineer was assumed to be \$60/hour, based on salaries as reported by the Bureau of Labor Statistics (BLS) (http://bls.gov/oes/current/naics2_22.htm). Loaded costs are BLS rates divided by 0.703 and rounded to the nearest dollar (<http://www.bls.gov/news.release/ecec.nr0.htm>).

²⁸ It is estimated that the average time to complete the required event report under Reliability Standard EOP-004-1 is 30 minutes, versus an estimated 10 minutes under the proposed Reliability Standard, EOP-004-2.

Respondents: Business or other for profit, and/or not for profit institutions.

Frequency of Responses: On occasion.

Necessity of the Information: Reliability Standard EOP-004-2 satisfies certain prior directives of the Commission, including a requirement to provide further guidance and specificity about reportable incidents of sabotage. The revised Reliability Standard requires reporting of specified system disturbances and potential events of sabotage in a timely manner, thereby allowing NERC as the Electric Reliability Organization, governmental authorities and relevant electric industry entities the opportunity to react. The revised standard accordingly enhances reliability in real-time through the opportunity to mitigate the impact of a disturbance, and in the future through investigation, analysis, and dissemination of lessons learned.

30. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, e-mail: DataClearance@ferc.gov, Phone: (202) 502-8663, fax: (202) 273-0873].

VI. Effective Date

31. This order will become effective upon issuance.

The Commission orders:

(A) Reliability Standard EOP-004-2 is hereby approved as just, reasonable, not unduly discriminatory, and in the public interest.

(B) NERC's proposed Violation Risk Factors and Violation Severity Levels and implementation plan for Reliability Standard EOP-004-2 are hereby approved, including the retirement of existing Reliability Standards EOP-004-1 and CIP-001-2a when EOP-004-2 goes into effect.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.