

120 FERC ¶ 61,065  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Mandatory Reliability Standards for the Bulk-Power System      Docket No. RM06-16-003

ORDER ON JOINT REGISTRATION ORGANIZATION FILING

(Issued July 19, 2007)

1. On May 15, 2007, the North American Electric Reliability Corporation (NERC) filed procedures which permit an organization, such as a joint action agency, G&T cooperative or similar organization to accept compliance responsibility on behalf of its members, in compliance with Order No. 693.<sup>1</sup> The Commission approves NERC's filing.

**Background**

2. Order No. 693 approved, pursuant to section 215 of the Federal Power Act (FPA),<sup>2</sup> proposed Reliability Standards developed by NERC. In its comments to the NOPR in this proceeding, NERC outlined proposed procedures for an organization to accept compliance responsibility on behalf of its members.<sup>3</sup> NERC stated that each "central" organization should be able to register as being responsible for compliance for itself and collectively on behalf of its members. Each member within a central organization may separately register to be accountable for a particular reliability function defined by the Reliability Standards. Under NERC's proposal, if the central organization

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<sup>1</sup> *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 FR 16,416 (Apr. 4, 2007), FERC Stats. & Regs., ¶ 31,242, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

<sup>2</sup> 16 U.S.C. § 824o (2000).

<sup>3</sup> *See* Order No. 693 at P 103; *see also* NERC supplemental filing, Statement of Compliance Registry Criteria (Revision 3) at 9.

and a member organization cannot agree that one organization or the other is responsible, or if the parties agree that the responsibilities for a particular reliability function should be split, NERC would register both entities concurrently. NERC and the Regional Entities would then have the authority to find either organization or both accountable for a violation of a Reliability Standard, based on the facts of the case and circumstances surrounding the violation. Order No. 693 directed the ERO to file these procedures.

3. In Order No. 693, the Commission stated that an organization should not be required to assume compliance responsibility for its members for any reliability-related functions and all Reliability Standards.<sup>4</sup> The Commission believed that NERC's proposal to allow a member within a central organization to separately register to be accountable for a particular reliability function so the responsibility for reliability functions can be split would provide flexibility and would not require an entity to assume responsibility where it is not possible to do so. In addition, we stated that NERC's proposal adequately addressed concerns that a joint action agency should be allowed to achieve compliance at the joint action agency level. Finally, we directed NERC, in developing its procedures relating to joint action agencies and similar organizations, to consider the concerns regarding the need for ensuring clear lines of responsibility.

### **Procedural Matters**

4. Notice of NERC's filing was published on May 31, 2007, with interventions, answers and protests due on or before June 14, 2007. The Midwest Independent Transmission System Operator, Inc. filed a timely motion to intervene. FirstEnergy Service Company (FirstEnergy) and Georgia Cooperatives<sup>5</sup> filed comments to NERC's filing. On June 19, 2007, National Rural Electric Cooperative Association (NRECA), the American Public Power Association (APPA), and the Transmission Access Policy Study Group (TAPS) (collectively, Joint Movants) filed a joint motion to intervene out-of-time and answer to FirstEnergy. On June 26, 2007, FirstEnergy filed an answer to Joint Movants' answer. On July 2, 2007, NERC filed an answer to FirstEnergy's answer.

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. The Commission also finds that good cause exists to grant the Joint Movant's late-filed motion to intervene given its

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<sup>4</sup> Order No. 693 at P 108.

<sup>5</sup> The Georgia Cooperatives are Georgia System Operations Corporation, Georgia Transmission Corporation and Oglethorpe Power Corporation.

interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

### **NERC Proposal**

6. NERC has removed the substantive provisions pertaining to joint registrations and joint registration organizations from the statement of compliance registry criteria and included the provisions on this topic into section 500 of the NERC Rules of Procedure. Specifically, NERC revised section 501.1.2.7 of the Rules of Procedure and added a new section 507 to the Rules of Procedure to reflect its proposal as laid out in its comments to the NOPR in this proceeding. Correspondingly, NERC revised the Statement Of Compliance Registry Criteria (Revision 3) to cross reference sections 501 and 507 of the Rules of Procedure.

### **Comments**

7. Georgia Cooperatives support NERC's proposed provisions for joint registration organizations and request that the Commission approve these provisions so they take effect as quickly as possible. The Georgia Cooperatives state that NERC's proposed procedures are consistent with Order No. 693 and will enable cooperatives and similar organizations to accept responsibility for the Reliability Standards on behalf of their members, and to make an appropriate allocation between affiliated companies of responsibilities for the different Reliability Standards.

8. FirstEnergy states that it supports allowing entities to establish joint action agencies, but is concerned that the proposed rules could be read to allow users, owners or operators that are members of a joint registration organization to transfer legal accountability for compliance with the mandatory Reliability Standards to the joint registration organization. For example, FirstEnergy states that the Rules of Procedure could be read as authorizing a joint registration organization to "accept" certain reliability "functions" from a member.<sup>6</sup> Further, FirstEnergy points to several sections of the Rules of Procedure that discuss a joint registration organization accepting "compliance

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<sup>6</sup> Rules of Procedure, § 501.1.2.7.

responsibility”<sup>7</sup> for its members. Another provision provides that, in certain circumstances, a joint registration organization, and not its members, will have legal accountability for violating the mandatory Reliability Standards.<sup>8</sup>

9. FirstEnergy argues that it is possible that a joint registration organization member that has transferred legal accountability for its compliance obligations to the joint registration organization may have a reduced incentive to comply, or to ensure that the joint registration organization complies, with any obligations that it might have under one or more of the Reliability Standards. According to FirstEnergy, allowing joint registration organization members to transfer legal accountability to a joint registration organization may result in a perverse incentive to join a joint registration organization to avoid legal exposure for failure to comply with one or more of the Reliability Standards.

10. Further, FirstEnergy maintains that owners and operators of Bulk-Power System facilities that interconnect with joint registration organization members will be forced to demand financial security and other assurances to protect themselves from the risks that may accrue by virtue of the fact that the joint registration organization member is shielded from legal accountability for its compliance or noncompliance with one or more Reliability Standards.

11. FirstEnergy also argues that there is no language in section 215 of the FPA that suggests that a user, owner or operator of the Bulk-Power System should be authorized under certain circumstances to transfer legal accountability for its compliance with the mandatory Reliability Standards to another entity. To the contrary, section 215 requires “all users, owners and operators of the Bulk-Power System shall comply with the Reliability Standards.”<sup>9</sup> According to FirstEnergy, it would be difficult to reconcile the statutory mandate that all affected entities are to comply with an ERO rule that authorizes certain entities to transfer legal accountability to another organization. FirstEnergy also says that rules allowing an entity to transfer legal authority cannot be approved because they do not meet the requirement that ERO rules be not unduly discriminatory or preferential. Therefore, FirstEnergy asks the Commission to affirm its guidance that all users, owners and operators of the Bulk-Power System must be legally accountable for their respective compliance records.

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<sup>7</sup> *Id.* § 507.1; 507.5; 507.6; 507.6

<sup>8</sup> *Id.* § 507.7

<sup>9</sup> FirstEnergy at 7, *citing* 16 U.S.C. § 824o(b)(1).

12. In order to resolve the flaws in the compliance filing without delaying the benefits that establishment of joint action agencies will bring to joint registration organization members, FirstEnergy requests that the Commission: (i) clarify that while users, owners and operators of the Bulk-Power System can transfer performance of compliance obligations under one or more of the mandatory Reliability Standards to a joint registration organization, legal accountability for compliance (or failure to comply) cannot be transferred; (ii) accept the ERO's proposed changes to its Rules of Procedure subject to this clarification; and (iii) direct the ERO to submit amendments to its Rules of Procedure that implement this clarification within 30 days of the Commission's order in this docket.

13. Joint Movants argue that FirstEnergy's comments are a collateral attack on Order No. 693. They assert that, instead of discussing whether NERC's filing complies with Order No. 693, FirstEnergy seeks to alter substantially what the Commission previously considered and addressed in Order No. 693. Joint Movants contend that, because this docket involves a compliance filing, the relevant issue is whether NERC has appropriately complied with the Commission's earlier order. Other matters, such as whether the earlier order was appropriate or should be clarified, are not properly considered in a compliance proceeding.<sup>10</sup> Joint Movants note that Order No. 693 itself addressed "compliance responsibility" and stated that "there should not be overlaps in responsibility nor should there be any gaps."<sup>11</sup> According to Joint Movants, nothing in Order No. 693 suggests that compliance responsibility should be bifurcated into performance and legal accountability. Joint Movants argue that if one entity were responsible for performance and another entity were responsible for accountability, there could be precisely the sort of potential overlaps and gaps in the role of the two entities that the Commission sought to avoid.

14. Joint Movants contend that, even assuming that FirstEnergy's criticisms could be permissibly presented and considered at this time, they are still unsound and should be rejected on the merits. Joint Movants argue that the bifurcated approach suggested by FirstEnergy could undermine efficiency, create uncertainty and increase costs. Under FirstEnergy's approach, the original entity would need to exercise constant oversight over the joint registration organization, because it retains legal accountability, even though the original and typically smaller entity is ill-equipped to do so, thus precluding compliance

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<sup>10</sup> Joint Movants at 8, citing *East Tennessee Natural Gas Co.*, 108 FERC ¶ 61,135 at P 9 (2004) ("[t]he only issue in a compliance filing proceeding is whether the company has complied with the directive of the Commission's prior order").

<sup>11</sup> Order No. 693 at P 107.

with the objectives of the Regulatory Flexibility Act of 1980 (RFA).<sup>12</sup> Further, the Joint Movants maintain that the ERO and the Regional Entity would need to investigate the relationship and relative roles of the joint registration organization and the original entity in order to determine relative culpability and an appropriate penalty or other sanction. Additionally, a non-monetary sanction to ensure compliance would likely be directed to the joint registration organization in any event, further obscuring whatever distinction FirstEnergy seeks to make. Joint Movants therefore argue that FirstEnergy's approach presents precisely the sorts of overlaps and gaps that Order No. 693 sought to avoid.

15. In its answer, FirstEnergy argues that its comments are not a collateral attack on Order No. 693. It states that the Joint Movants have failed to address FirstEnergy's contention that section 215 requires all users, owners and operators of the Bulk-Power System to comply with Reliability Standards. Further, FirstEnergy states that the Joint Movants' argument that enforcement resources would be diverted essentially assumes that oversight is most needed for some classes of users, owners and operators. FirstEnergy also maintains that its approach would not undermine the RFA because the RFA only requires the Commission to demonstrate a good faith effort to minimize regulatory compliance cost.

16. In NERC's answer, it states that it complied with the Commission's directive in Order No. 693 and that FirstEnergy's proposal goes beyond the scope of the NERC compliance filing. Further, NERC argues that FirstEnergy's proposal is unworkable and would defeat the purpose of allowing joint registrations. NERC asserts that if the smaller entity were to remain "legally accountable" for noncompliance, it would have no choice but to "stay involved" in the larger organization's performance of the compliance functions and would not save resources. Further, according to NERC, FirstEnergy's proposed approach would muddy, not clarify, the lines of compliance responsibility.

17. NERC contends that a joint registration organization must either "accept" responsibility for a reliability function(s) in lieu of its members or related entities, or the joint registration organization and its members or related entities must enter into a written agreement as to which of them will be responsible for one or more Reliability Standards or requirements of Reliability Standards. It stresses that the entity that is responsible for performance of a Reliability Standard requirement must also be accountable for the consequences of noncompliance.

18. NERC submits that, if FirstEnergy is concerned that if a joint registration organization becomes accountable for noncompliance, it will not be able to get its

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<sup>12</sup> 5 U.S.C. § 601 – 612 (2006).

members to take actions (or refrain from actions) that the joint registration organization directs them to take, the answer to this concern is to develop an appropriate written agreement among the joint registration organization and its members as to the obligations of all parties.

### **Discussion**

19. The Commission approves NERC's proposal.

20. We disagree with FirstEnergy that a joint registration organization should not take on legal responsibility where it has agreed to perform certain functions for its members. First, with respect to language in the Rules of Procedure that allow a joint registration organization to accept "compliance responsibility," this is exactly what the Commission intended. In Order No. 693, the Commission stated that it "directs the ERO to file procedures which permit (but do not require) an organization, such as a joint registration organization, G&T cooperative or similar organization *to accept compliance responsibility* on behalf of its members."<sup>13</sup> Compliance responsibility means that the organization is responsible for ensuring compliance with a Reliability Standard and that the organization is liable for failure to comply. FirstEnergy did not request rehearing of this determination. Therefore, its arguments as to those sections in which NERC references a joint registration organization having "compliance responsibility" are an impermissible collateral attack on Order No. 693.

21. FirstEnergy's concern that a joint registration organization member that has transferred legal accountability may have a reduced incentive to comply with the Reliability Standards is unfounded. This is precisely the situation in which the ERO must ensure that there are no gaps in coverage. The Rules of Procedure state that, where a joint registration organization and any of its members agree to divide the compliance responsibility, there must be a written agreement specifying their respective responsibilities submitted as part of the joint registration. Therefore, if there is no written agreement, the member does not retain compliance responsibility. If a joint registration organization member retains any compliance responsibility, it must also be registered as a responsible entity. Therefore, if a joint registration organization member has transferred all of the responsibility for performing functions under the Reliability Standards, the member has no compliance responsibility. Further, we agree with NERC that if a joint registration organization is concerned that it might require a member to perform some action under the Reliability Standards, the agreement between the joint registration organization and its members should reflect completely such arrangements.

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<sup>13</sup> Order No. 693 at P 107 (emphasis added).

22. Even assuming that there is some reduced incentive for a member to ensure that its joint registration organization complies with Reliability Standards under NERC's proposed rules, as FirstEnergy asserts, this would be more than offset by the extra incentive for the joint registration organization to comply. In accepting compliance responsibility on behalf of other users, owners or operators of the Bulk-Power System, a joint registration organization accepts the risk of incurring penalties that it would not be exposed to otherwise and, therefore, has at least as much incentive to comply as the members would individually. Moreover, if an entity that becomes a joint registration organization has greater capability to comply with Reliability Standards than its members individually, as may likely be the case, compliance with Reliability Standards is enhanced.

23. The Commission also disagrees with FirstEnergy that owners and operators of Bulk-Power System facilities that interconnect with joint registration organization members will need further assurance to protect themselves. FirstEnergy's claims are unfounded. The fact that compliance responsibility has been transferred to a joint registration organization does not authorize them to violate a Reliability Standard, it merely transfers responsibility to another entity. FirstEnergy does not provide any reasonable explanation why it believes that the transfer of responsibility will result in a degradation of compliance with mandatory Reliability Standards. Assigning compliance, therefore, should not harm neighboring systems.

24. Section 215 of the FPA does not preclude allowing joint registration organizations to accept compliance responsibility. While section 215 of the FPA requires all users, owners and operators of the Bulk-Power System to comply with the Reliability Standards, it does not prescribe how they must comply. The Commission believes that allowing joint registration provides greater flexibility for organizations to achieve compliance with Reliability Standards, and will, therefore, likely facilitate compliance resulting in improved reliability. Transferring compliance responsibility to a joint registration organization does not mean that the user, owner or operator of the Bulk-Power System is not complying with Reliability Standards. Rather, it is providing for compliance through the joint registration organization. Finally, FirstEnergy does not explain its reasoning that NERC's joint registration organization rules do not meet the statutory requirement that they be not unduly discriminatory or preferential.

The Commission orders:

NERC's modifications to its Rules of Procedure and NERC Statement of Compliance Registry Criteria (Revision 3.1) are hereby accepted, as discussed in the body of this order.

By the Commission.  
( S E A L )

Kimberly D. Bose,  
Secretary.