

143 FERC ¶ 61,273
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. RR13-2-000

ORDER APPROVING REVISIONS TO ELECTRIC RELIABILITY
ORGANIZATION'S STANDARD PROCESSES MANUAL

(Issued June 26, 2013)

1. On February 28, 2013, the North American Electric Reliability Corporation (NERC) filed revisions to its Standard Processes Manual (Manual) as set forth in Appendix 3A of NERC's Rules of Procedure (Petition). As discussed below, pursuant to section 215(f) of the Federal Power Act (FPA) and section 39.10 of the Commission's regulations, the proposed revisions are approved.¹

I. Background

A. FPA Section 215

2. Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Section 215(c) of the FPA establishes the requirements for ERO certification, specifying that the ERO must have the ability to develop and enforce Reliability Standards that provide for an adequate level of reliability of the Bulk-Power System. The statute also requires the ERO to have rules that provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing Reliability Standards.²

¹ 16 U.S.C. § 824o(f) (2006); 18 C.F.R. § 39.10(a) (2012).

² See 16 U.S.C. § 825o(c)(2)(D).

B. Order No. 672 and NERC's ERO Certification

3. On July 20, 2006, the Commission issued an order that certified NERC as the ERO.³ The Commission found that NERC satisfied the criteria to be the ERO responsible for developing and enforcing mandatory Reliability Standards for the United States, and conditionally approved NERC's Rules of Procedure (Rules). In the ERO Certification Order, the Commission also approved the process for developing and approving mandatory Reliability Standards as contained in NERC's Rules section 300, *Reliability Standards Development*, and Appendix 3A, *Reliability Standards Development Procedure*. Subsequently, the Commission approved various revisions to section 300 and Appendix 3A of NERC's Rules.⁴

II. NERC's Proposed Revisions

4. NERC explains it has undertaken steps to improve the NERC Standards Drafting Process. In the Petition, NERC indicates that the Member Representative Committee created a committee of stakeholders, known as the Standards Process Input Group (SPIG), to evaluate steps NERC may take to improve the process. The SPIG issued several recommendations. The proposed revisions to the Manual are a result of some of the SPIG's recommendations.⁵ Other recommendations of the SPIG include changes to the charter of the Standards Committee to "ensure[] that the [Standards Committee] develops a multi-year strategic vision that describes the goals and direction for the development of Reliability Standards consistent with the strategic and business plans of NERC."⁶ NERC explains that it has taken other steps, such as the creation of the Reliability Issues Steering Committee (RISC), to bring improvement to the Standards Drafting Process.

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

⁴ *E.g.*, *North American Electric Reliability Corp.*, 132 FERC ¶ 61,200 (2010) (which revised NERC's Rules by replacing Appendix 3A, *Reliability Standards Development Procedure*, with Appendix 3A, *Standard Processes Manual*); *North American Electric Reliability Corp.*, 134 FERC ¶ 61,216 (2011).

⁵ Petition at 2.

⁶ *Id.* at 3.

5. In its Petition, NERC seeks approval of revisions to the Manual. NERC states that, collectively, the revisions represent a significant improvement to the standard development process by providing more efficient and effective use of industry resources and necessary flexibility in Reliability Standards development. According to NERC, the proposed changes: (1) continue to provide for reasonable notice and opportunity for public comment, due process, openness and balance of interest in developing Reliability Standards in accordance with section 215 of the FPA and (2) continue to meet all of the requirements necessary for NERC to maintain its American National Standards Institute (ANSI) accreditation.

6. In Section 2.0 (Elements of a Reliability Standard), NERC proposes certain changes to refine the categories and elements of Reliability Standards. NERC explains changes to section 3.0 (Reliability Standards Program Organization) to provide for standard drafting teams to include legal and compliance experts. Section 3.6 provides, in part, “[t]he NERC Reliability Standards Staff shall provide, or solicit from the industry, essential support for each of the drafting teams in the form of technical writers, legal compliance, and rigorous and highly trained project management” and “[e]ach drafting team may consists of a group of technical, legal, and compliance experts that work cooperatively with the support of the NERC Reliability Standards Staff.” Section 3.6 also was updated to reflect the SPIG recommendation to incorporate Reliability Standard Audit Worksheet (RSAW) development in parallel with the Reliability Standards requirements. RSAWs are tools used during audits that, while not part of a Reliability Standard, are developed through collaboration with standard drafting teams and NERC compliance staff.

7. NERC also explains that the proposed revisions to section 4.0 (Process for Developing, Modifying, Withdrawing or Retiring a Reliability Standard) streamline the commenting and balloting process. According to NERC, the revised provisions allow summary responses to comments and eliminate the obligation to respond in writing at every stage of the comment process. Further, NERC proposes to revise the calculation of consensus to discount negative votes submitted without comments, and to allow NERC staff to conduct quality review in parallel with Reliability Standards development.⁷

8. In section 7.0 (Process for Developing an Interpretation), NERC proposes to incorporate guidance regarding the appropriate role and scope of Interpretations, to be consistent with guidance from the NERC Board.

9. NERC explains that a new section 16.0 (Waiver) was added that allows the NERC Standards Committee to modify the Reliability Standards development process for good cause with five days notice. Specifically, proposed section 16 provides:

⁷ Petition, Exhibit 1 at 10.

The NERC Standards Committee may waive any of the provisions contained in this manual for good cause shown, but limited to the following circumstances:

- In response to a national emergency declared by the United States or Canadian Government that involves the reliability of the Bulk Electric System or cyber attack on the Bulk Electric System;
- Where necessary to meet regulatory deadlines;
- Where necessary to meet deadlines imposed by the NERC Board of Trustees; or
- Where the Standards Committee determines that a modification to a proposed Reliability Standard or its Requirement(s) ... has already been vetted by the industry through the standards development process or is so insubstantial that developing the modification through the process contained in this manual will add significant time delay.

10. Proposed section 16 provides that the Standards Committee must include any action on a waiver request within its meeting minutes, report any decision to approve a waiver request to the NERC Standards Oversight and Technology Committee, and “report the exercise of this waiver provision to the Board of Trustees prior to adoption of the related Reliability Standard, Interpretation, definition, or Variance.”⁸ Finally, section 16 provides that “Reliability Standards developed as a result of a waiver of any provision of the Standard Process Manual shall not be filed with ANSI for approval as American National Standards.”⁹

III. Notice and Responsive Pleadings

11. Notice of NERC’s February 28, 2013, filing was published in the *Federal Register*, 78 Fed. Reg. 15,361 (2013), with interventions and protests due on or before March 21, 2013. Timely motions to intervene were filed by American Municipal Power (AMP) and the Modesto Irrigation District (MID). The City of Santa Clara (Santa Clara) filed a timely motion to intervene and comments. American Public Power Association, Edison Electric Institute, Electric Consumers Resource Council, Electric Power Supply Association, Large Public Power Council, National Rural Electric Cooperative

⁸ Petition, Exhibit 1 at 48.

⁹ *Id.*

Association, and Transmission Access Policy Study Group (Trade Associations) timely filed a joint motion to intervene and comments. On April 5, 2013, NERC submitted reply comments.

12. Trade Associations support NERC's proposed standards development process changes and request prompt Commission approval. Trade Associations assert that the revisions "provide an important element in support of a broad strategy to improve the efficiency of the standards development process without sacrificing due process and transparency, the ability of subject matter technical expertise to shape the actual requirements, and the quality of the resulting Reliability Standards developed under NERC's process"¹⁰ Trade Associations contend that, if approved as proposed, the process changes will help strengthen standards process management and promote more timely completion of standards projects.

13. Santa Clara comments that proposed new section 16 "would result in increased efficiency at the expense of certainty of process."¹¹ Santa Clara objects to allowing the NERC Board of Trustees (NERC Board) to impose deadlines for standards development that would provide a basis for the Standards Committee's exercise of the proposed waiver authority. Santa Clara is concerned that proposed section 16 provides the Standards Committee with "nearly unfettered discretion" to invoke a waiver when the Standards Committee determines that a standard modification has already been "vetted by the industry" or is so "insubstantial" that additional time delays are unwarranted.¹² Santa Clara requests that the Commission direct NERC to further explain why the Expedited Reliability Standards Development Process currently in place is inadequate.

14. Alternatively, Santa Clara requests that the Commission condition its approval of proposed section 16 on revisions to section 8 of the Manual related to the burdens of proof for appeals. Santa Clara argues that, because proposed section 16 would not require the Standards Committee to provide a "public explanation" when exercising its waiver authority, entities that want to challenge such actions would not have an adequate record upon which to base an appeal. Santa Clara asserts that placing the burden of proof on the entity challenging a waiver decision would violate the FPA section 215 requirement that NERC's rules provide for reasonable notice and opportunity for public

¹⁰ Trade Associations Comments at 1-2.

¹¹ Santa Clara Comments at 5.

¹² *Id.* at 6-7.

comment, due process, openness, and balance of interests in developing reliability standards. Therefore, Santa Clara argues that the Standards Committee should bear the burden of proof in challenges to the exercise of section 16 waiver authority.¹³

15. NERC submitted reply comments in response to Santa Clara's concerns. NERC asserts that the proposed waiver provision is consistent with prior Commission precedent regarding the need for the standards development process to enable NERC to address Commission directives and urgent reliability issues expeditiously.¹⁴ NERC also states that, for the ERO model to be successful, NERC must have the ability to meet regulatory deadlines and comply with Commission directives. Because the NERC Board is ultimately responsible for oversight of the process to develop and approve standards, NERC believes that the proposed waiver authority is consistent with its role and responsibilities, as well as those of the Standards Committee. NERC explains that the Standards Committee is a representative body that is accountable to the NERC Board and is responsible for informing the industry segments regarding Reliability Standards. NERC states that permitting the Standards Committee to use the waiver provision in limited circumstances will ensure that the integrity of the standards development process is not compromised while providing necessary flexibility to administer the process.¹⁵

IV. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make AMP, MID, Santa Clara, and the Trade Associations parties to this proceeding.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless ordered by the decisional authority. We will accept NERC's answer because it has provided information that assisted us in our decision-making process.

¹³ *Id.* at 10.

¹⁴ NERC Reply Comments at 4-5 (citing, *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, at P 53 (2006); *North American Electric Reliability Corp.*, 130 FERC ¶ 61,203, at P 23 (2010)).

¹⁵ NERC Reply Comments at 7.

B. Commission Determination

18. Pursuant to section 215(f) of the FPA and section 39.10(a) of the Commission's regulations, we approve the proposed modifications to the NERC Rules. We find that the revised provisions are reasonable and allow for greater flexibility and efficiency in the Reliability Standards development process. For example, as described above, the revised provisions recognize the need for highly qualified standards drafting teams that include "technical writers, legal compliance, and rigorous and highly trained project management." The proposed revisions to section 4.0 of the Manual streamline the standards development process by allowing summary responses to comments and eliminating the obligation to respond in writing at every stage of the comment process.

19. Further, we conclude that the waiver authority in proposed section 16 is reasonable and adequately supported by NERC in its Petition and Reply Comments. The proposed section 16 waiver authorizes the Standards Committee to expedite the standards development process. We believe that this discretion is consistent with prior Commission orders and the need for NERC to develop or revise Reliability Standards under certain circumstances in a more timely manner than is possible under the current Reliability Standards development process.¹⁶ The waiver authority can only be used under limited circumstances, and cannot be used to modify the requirements for achieving a quorum or alter standard voting requirements. Therefore, the proposed modifications are consistent with the ERO's obligation to provide reasonable notice, ensure an open process that fairly balances interests and otherwise satisfies the due process requirement for the standards development process.

20. We disagree with Santa Clara that section 16 provides the Standards Committee with overly-broad discretion. NERC explains that before a waiver request is considered, the Standards Committee must provide notice to stakeholders, and any action on a waiver request will be included in the Standards Committee minutes. Further, when approving a waiver request, the Standards Committee must notify the NERC Board's Standards Oversight and Technology Committee. Also, the Standards Committee must report use

¹⁶ See *North American Electric Reliability Corp.*, 125 FERC ¶ 61,056, at P 24 (2008) ("While NERC relies on volunteer technical experts and stakeholders to develop proposed Reliability Standards under the facilitation of NERC's professional staff, NERC as the ERO is ultimately responsible for both the process and content of Reliability Standards proposed for Commission approval."). See also *North American Electric Reliability Corp.*, 130 FERC ¶ 61,203 (2010); *North American Electric Reliability Corp.*, 132 FERC ¶ 61,200 (2010) in which the Commission agreed that the improvements to the procedures proposed by NERC, including the added flexibility over the timing of new projects, informal stakeholder feedback, and a formal comment opportunity during the ballot period would provide for more efficient Reliability Standard processes.

of the waiver provision to the NERC Board prior to adoption of the related Reliability Standard, Interpretation, definition, or Variance. Any entity may appeal a waiver decision or any procedural decision by the Standards Committee pursuant to section 8 of the Manual.¹⁷ In any event, the Standards Committee must ensure that any waiver of a Manual provision will maintain a process that continues to adhere to statutory requirements to provide for reasonable notice and opportunity for public comment, due process, openness, and a balance of interests in developing Reliability Standards.¹⁸

21. We deny Santa Clara's request to direct NERC to revise section 8 of the Manual to shift the burden of proof to the Standards Committee for section 8 challenges to its use of the section 16 waiver authority. If an entity objects to the Standard Committee's use of the waiver authority, it is that entity's responsibility to show good cause why it has been or will be adversely affected by that action. Shifting the burden of proof to the Standards Committee could lead to unwarranted challenges and stifle the legitimate use of the waiver provision. Also, the Standards Committee Charter requires Standard Committee meetings to be open to all interested parties, meeting notices and agendas to be publicly posted on the NERC website, meeting agendas to be posted at least five days before a committee meeting, and meeting agendas that include background information on agenda items requiring a decision or vote.¹⁹ Section 16 also requires the Standards Committee to include any action taken regarding a waiver request in its meeting minutes. We believe these activities will generate a sufficient record upon which an entity could pursue an appeal. Therefore, we believe proposed section 16 provides for reasonable notice and opportunity for public comment, due process, openness, and a balance of interests, in accordance with FPA section 215.

22. The Commission agrees that improvement to the Standards Development process is necessary and we appreciate NERC's efforts to improve the process through the proposed changes to the Manual as well as other steps. Whether these changes will improve the process sufficiently, however, remains an open question. Thus, the Commission will continue to monitor the NERC Standards Development processes as these and other changes are implemented.

¹⁷ Section 8 of the Manual (Process for Appealing an Action or Inaction) provides that "[a]ny entity that has directly and materially affected interests and that has been or will be adversely affected by an procedural action or inaction related to the development, approval, revision, reaffirmation, retirement or withdrawal of a Reliability Standard ... shall have the right to appeal."

¹⁸ See 16 U.S.C. § 825o(c)(2)(D).

¹⁹ See Section 8 of the NERC Standards Committee Charter, *available* at: http://www.nerc.com/docs/standards/sc/SC_Charter-SC_Approved_January_16_2013_clean.pdf.

The Commission orders:

NERC's petition is hereby approved, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.