

144 FERC ¶ 61,174
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.

Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure Docket Nos. RM12-6-002
RM12-7-002

ORDER ON REHEARING AND CLARIFICATION

(Issued August 30, 2013)

1. On May 17, 2013, the National Rural Electric Cooperative Association and the American Public Power Association (NRECA-APPA) requested clarification or in the alternative rehearing of the Commission's Order No. 773-A.¹ NRECA-APPA seek clarification of the revised information collection estimate under the Paperwork Reduction Act and the Commission's Regulatory Flexibility Act (RFA) certification contained in Order No. 773-A. In this order, we deny the requested clarification and rehearing.

I. Background

2. On December 20, 2012, the Commission issued Order No. 773, a final rule approving the North American Electric Reliability Corporation's (NERC) modifications to the definition of "bulk electric system" and the Rules of Procedure exception process to be effective July 1, 2013. In Order No. 773-A, the Commission largely affirmed its findings in Order No. 773. However, the Commission revised certain aspects of the information collection statement estimates, revised its estimate of the impact on small entities and reaffirmed the RFA certification.

¹ *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, Order No. 773, 141 FERC ¶ 61,236 (2012), *order on reh'g and clarification*, Order No. 773-A, 143 FERC ¶ 61,053 (2013).

II. Request for Clarification or, in the Alternative, Rehearing

3. NRECA-APPA argue that the Commission did not provide enough information to support the information collection statement burden estimates and RFA certification. With regard to the information collection estimates, they request that the Commission provide additional information to support the rationale for selecting an increase of ten percent as the number of additional exception requests per year that will be attributable to looped configurations operating below 100 kV. NRECA-APPA also request that the Commission clarify the data from the Bureau of Labor Statistics relied upon for estimated hourly wages of various personnel required for compliance with Order No. 773. In addition, NRECA-APPA seek clarification of the Commission conclusion that NERC and Regional Entities will not incur additional costs associated with compliance with Order No. 773, even though the Commission changed the number of exception requests and expects up to eight jurisdictional determination proceedings per year in which NERC and/or the Regional Entities may be required to participate. NRECA-APPA also seek clarification of why, for the 111 registered entities in the NPCC region and 75 registered entities from other regions, the Commission's revised information collection estimate no longer identifies a compliance burden. They also seek clarification for the basis for the determination that the Commission will receive eight local network jurisdictional requests per year.

4. Similarly, NRECA-APPA argue that the Commission did not provide enough information to support the RFA certification. NRECA-APPA request that the Commission identify: (1) the eight small entities, or the rationale for identifying the total number of small entities, that may have to file local network jurisdictional requests; and (2) the ten small entities, or the rationale for identifying the total number of small entities, within the additional 25 exception requests. NRECA-APPA also seek clarification whether the Commission's determination that such small entities are already complying with the current definition of the bulk electric system is supported by review or consultation with NERC and the Regional Entities. NRECA-APPA believe that the clarifications are necessary because the Commission has not adequately supported its rejection of statements made by commenters that the Commission's studies assessing impacts under the RFA requirements are not sufficient. Further, NRECA-APPA argue that the Commission has declined to accept the evidence provided by commenters seeking to refine or correct the Commission's studies.

5. In the alternative, NRECA-APPA request rehearing on the grounds that the Commission failed to meet the requirements of information collection under the Paperwork Reduction Act and failed to meet the requirements of the RFA by certifying there is not a significant economic burden on small entities.

III. Discussion

6. We deny NRECA-APPA's request for clarification with respect to the information collection requirements. The collection of information contained in a Notice of Proposed Rulemaking (NOPR) and Final Rule is subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.² OMB's regulations require approval of certain information collection requirements imposed by agency rules.³ The Commission solicits comment on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.⁴ Specifically, the Commission asks that any revised burden estimates submitted by commenters be supported by sufficient detail to understand how the estimates are generated.⁵ NRECA-APPA do not explain how the Commission's revised information collection estimates do not satisfy the obligations imposed by the Paperwork Reduction Act and provide no contrary data. Instead, they argue that the information collection estimates should include information not required under the statute or presented to the Commission.

7. In addition, NRECA-APPA assert incorrectly that Order No. 773-A revised the information collection estimates such that NERC and Regional Entities will not incur any additional costs associated with compliance and that Order No. 773-A eliminated certain estimates. Order No. 773-A included only those estimates that the Commission revised since the Final Rule.⁶ All the other estimates in the Final Rule remained unchanged.

8. Similarly, we deny NRECA-APPA's request for clarification of the RFA certification. The RFA certification on the potential economic impact of the revised definition of bulk electric system on small entities satisfies the RFA requirement with a "statement providing the factual basis for such certification," including the number of affected entities, the size of the economic impacts, underlying assumptions and an

² 44 U.S.C. § 3507(d) (2006).

³ 5 C.F.R. § 1320.11 (2013).

⁴ 5 C.F.R. § 1320.8(d)(1) (2013).

⁵ See, e.g., *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, NOPR, 139 FERC ¶ 61,247, at P 125 (2012).

⁶ See Order No. 773-A, 143 FERC ¶ 61,053 at P 129 and n.158.

explanation why certification was appropriate.⁷ NRECA-APPA claim that more information is needed to justify the Commission's RFA certification but do not explain how the Commission failed to satisfy its RFA obligations or provide contrary data. Instead, they argue that the RFA certification should include information not required under the statute or presented to the Commission.

9. While NRECA-APPA assert that the RFA certification was flawed because it did not identify which entities are subject to the revised definition of bulk electric system or the rationale for identifying the total number of small entities affected, the Commission is not required to provide an RFA certification at such a level of detail. This position is supported by the SBA Guidance Document, which explains that only "a description of the number of affected entities" is required. Indeed, such a requirement is not imposed even under a RFA analysis, which is required when an agency does not certify that an action will not have a significant impact on a substantial number of small entities. Even in those situations, in the initial regulatory flexibility analysis, an agency must provide "a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply."⁸ In the final regulatory flexibility analysis, the agency must provide "a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available."⁹ The Commission satisfied this requirement by estimating the number of small entities that would be affected by the revised definition, that may choose to use the exception process

⁷ 5 U.S.C. § 605(b) (2006). The Small Business Administration (SBA) offers the following guidance on the meaning of "factual basis:"

What is a "factual basis?" The Office of Advocacy interprets the "factual basis" requirement to mean that, at a minimum, a certification should contain a description of the number of affected entities and the size of the economic impacts and why either the number of entities or the size of the impacts justifies the certification. The agency's reasoning and assumptions underlying its certification should be explicit in order to elicit public comment.

Small Business Administration, *A Guide for Government Agencies: How to Comply with Regulatory Flexibility Act* at 10 (May 2012), http://www.sba.gov/sites/default/files/rfaguide_0512_0.pdf ("SBA Guidance Document").

⁸ 5 U.S.C. § 603(b)(3).

⁹ *Id.* § 604(a)(3).

and seek a local distribution determination.¹⁰ Also, NRECA-APPA have not submitted any data from their members regarding the RFA certification in their request for clarification, even though those entities are arguably in the best position to supply the information to the Commission.

10. Finally, with respect to the alternative request for rehearing, we disagree with NRECA-APPA's assertion that the Commission did not meet the requirements of information collection established by OMB under the Paperwork Reduction Act and the analysis supporting the Commission's RFA certification is unsubstantiated and unsupported by the record. The record on this matter consists of NERC's petition and the NOPR comments. Further, the Commission analyzed data regarding applicable entities available in NERC's Compliance Registry.¹¹ NRECA-APPA offer no independent analysis of the industry survey data or any other record data in their request for rehearing. We find that the record supports our information collection estimate and the RFA certification that the revised definition will not have a significant impact on a substantial number of small entities. Accordingly, we deny NRECA-APPA's request for clarification or, in the alternative, rehearing for the reasons discussed above.

The Commission orders:

The Commission hereby denies clarification or, in the alternative, rehearing, for the reasons discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁰ Order No. 773, 141 FERC ¶ 61,236 at P 338, Order No. 773-A, 143 FERC ¶ 61,053 at PP 133-138.

¹¹ NOPR, 139 FERC ¶ 61,247 at PP 132-133.