

120 FERC ¶ 61,145  
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.

North American Electric Reliability Corporation

Docket Nos. RR07-9-001  
RR07-9-002  
RR07-10-001  
RR07-10-002

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued August 9, 2007)

1. In this order, the Commission addresses the City of Santa Clara, California's (Santa Clara's) request for rehearing of the Commission's *May 2007 Order* on Violation Risk Factors.<sup>1</sup> Additionally, the Commission addresses the North American Electric Reliability Corporation's (NERC's) compliance filing submitted pursuant to the *May 2007 Order*. As discussed below, the Commission denies Santa Clara's request for rehearing and approves NERC's compliance filing.

**I. Background**

2. In February 2007, NERC, the certified Electric Reliability Organization (ERO) responsible for developing and enforcing mandatory Reliability Standards, submitted for Commission approval Violation Risk Factors associated with the Requirements of the Reliability Standards. A Violation Risk Factor indicates the relative risk to the Bulk-Power System associated with the violation of each Requirement.<sup>2</sup> In its *May 2007*

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<sup>1</sup> *North American Electric Reliability Corp.*, 119 FERC ¶ 61,145 (2007) (*May 2007 Order*).

<sup>2</sup> *See May 2007 Order*, 119 FERC ¶ 61,145 at P 9 for the complete definition of each level of Violation Risk Factor.

*Order*, the Commission approved over 700 Violation Risk Factors submitted by NERC and directed NERC, within 15 days, to: (1) file modifications to 28 of the Violation Risk Factor assignments; (2) assign Violation Risk Factors to Reliability Standard MOD-016-1, Requirements R2, R2.1, R3, and R3.1; (3) remove Violation Risk Factors that were inappropriately assigned to explanatory statements, phrases and/or text; and (4) submit a complete Violation Risk Factor matrix encompassing each Commission-approved Reliability Standard and including the correct corresponding version number for each Requirement.

## **II. Compliance Filing**

3. On June 1, 2007, NERC submitted a compliance filing in response to the Commission's directive in the *May 2007 Order*. NERC states that: (1) it has modified its assignment of Violation Risk Factors to 28 Requirements of Reliability Standards; (2) it has submitted Violation Risk Factors for Requirements R2, R2.1, R3 and R3.1 of Reliability Standard MOD-016-1, for which it had not previously submitted Violation Risk Factors; (3) it has removed 12 Violation Risk Factors that had been inappropriately assigned to provisions of certain Reliability Standards where Violation Risk Factors were unnecessary, such as explanatory statements, phrases, or text; and (4) it has submitted a complete Violation Risk Factor matrix encompassing each Commission-approved Reliability Standard. NERC further states that the revisions listed above were approved by the NERC Board of Trustees through action without a meeting, in accordance with NERC Bylaws.

## **III. Procedural Matters**

4. Notice of NERC's June 1, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 33,478 (2007), with interventions and protests due on or before July 2, 2007. Santa Clara filed comments reiterating the arguments made in its rehearing request, discussed below.

## **IV. Request for Rehearing**

5. On June 18, 2007, Santa Clara filed a request for rehearing of the *May 2007 Order*. Santa Clara states that it does not object to the majority of the substance of the Commission's modifications, but rather is concerned about the precedent set by the Commission directing NERC to modify Violation Risk Factors without allowing NERC to go through the normal or expedited process for Reliability Standards development.

6. Santa Clara states that the Commission violated section 215 of the Federal Power Act (FPA) when it directed NERC to modify its proposed Violation Risk Factors without going through the Reliability Standards development process or urgent action process.

Santa Clara argues that the Violation Risk Factors are incorporated into the Reliability Standards to which they apply and, therefore, any modifications to the Violation Risk Factors are modifications to the Reliability Standards. Thus, Santa Clara contends, any modifications must comport with section 215 of the FPA. Specifically, Santa Clara cites to section 215(c)(2)(D), which requires that the ERO must “provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties.”<sup>3</sup>

7. In further support, Santa Clara quotes the Commission’s statement that:

any modification to a Reliability Standard, including a modification that addresses a Commission directive, must be developed and fully vetted through a process that provides, “reasonable notice and opportunity for comment, due process, openness and balance of interests,” such as NERC’s normal or expedited Reliability Standard development process. A Commission directive will not usurp or supplant such a procedure.<sup>4</sup>

8. Santa Clara requests that the Commission grant rehearing and order NERC to use its normal or its expedited Reliability Standard development process to consider the directives in the Commission’s *May 2007 Order* and then make a compliance filing that either complies with the Commission directive or justifies why no change is necessary.

9. Santa Clara does raise a substantive concern with respect to the revision of Reliability Standard MOD-017-0 Requirement R1.4, where the Commission directed that the assignment of a Violation Risk Factor be changed from “Lower” to “Medium.” Santa Clara asserts that, because long-term forecasts, by their very nature, are vague and yield uncertain results, they do not, and cannot, provide concrete predictions of the future. Santa Clara believes the “Lower” Violation Risk Factor is appropriate because the submittal of forecasts is “administrative in nature” and not expected to affect the electrical state or capability of the Bulk-Power System, or the ability to effectively monitor and control the Bulk-Power System. Santa Clara further contends that, in the case of other Requirements, a “medium” assignment is limited to instances when a violation could directly affect the electrical state or the capability of the Bulk-Power System, or the ability to effectively monitor and control the Bulk-Power System. Santa Clara requests that NERC and the Commission take its comments on Reliability Standard

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<sup>3</sup> 16 U.S.C. § 824o(c)(2)(D) (2000).

<sup>4</sup> *North American Electric Reliability Corp.*, 119 FERC ¶ 61,046 at P 15 (2007) (*April 2007 Order*).

MOD-017-0 Requirement R1.4 into consideration in any future compliance filing on this issue.

**V. Discussion**

**A. Request for Rehearing**

10. The Commission disagrees with Santa Clara that the Violation Risk Factors are a part of the Reliability Standards and that, therefore, changes to the Violation Risk Factors must be made through the Reliability Standard development process.

11. Reliability Standards set forth Requirements with which responsible entities must comply. Violation Risk Factors, in contrast, do not set forth Requirements, but instead associate a violation of a Requirement with its potential impact on the reliability of the Bulk-Power System for the purpose of determining a reasonable penalty range for noncompliance. Violation Risk Factors are not part of the Reliability Standard itself. Rather, they function as one tool in administering a penalty scheme to ensure that any penalty is proportionate to the reliability risk incurred.

12. In the *January 2007 Order*, the Commission discussed appropriate treatment of Violation Risk Factors:

Because NERC proposes to employ Violation Risk Factors solely in determining penalties for violations of Reliability Standards, we believe that, like the Sanction Guidelines, Violation Risk Factors may be appropriately treated as an appendix to NERC's Rules of Procedure. As such, NERC approval of the Violation Risk Factors would be governed by section 1400 of NERC's Rules of Procedure, which addresses amendments to the Rules of Procedure. Thus, we believe that NERC should not use its Reliability Standards Development Procedure to develop the Violation Risk Factors for filing with the Commission.<sup>5</sup>

13. The Commission, in its *April 2007 Order*, also stated that having NERC's Reliability Standards, including Violation Risk Factors, in place in sufficient time for their use when NERC's enforcement program became effective was vital to the establishment of a comprehensive reliability enforcement program.<sup>6</sup> The Commission

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<sup>5</sup> *North American Reliability Corp.*, 118 FERC ¶ 61,030 at P 91 (*January 2007 Order*), *order on clarification and reh'g*, 119 FERC ¶ 61,046 (2007).

<sup>6</sup> *April 2007 Order*, 119 FERC ¶ 61,046 at P 31.

clarified that it did not object to use of the Reliability Standards development process to develop Violation Risk Factors *so long as it produced timely results.*<sup>7</sup> In addition, the Commission reserved the “ability to take appropriate action to ensure that the penalty-setting process described in the Sanction Guidelines is operative.”<sup>8</sup>

14. Given the importance of having the penalty-setting process in place by the time the Reliability Standards became effective, the Commission’s directive in the *May 2007 Order* that NERC file revisions to its assignment of Violation Risk Factors within 15 days of the date of the order was appropriate.

15. Santa Clara’s assertion that the Commission should not direct NERC to modify its proposed Violation Risk Factors without going through the Reliability Standards development process or urgent action process is a collateral attack on the *January 2007 Order* and the *April 2007 Order*. In the *April 2007 Order*, protestors sought rehearing of the *January 2007 Order* arguing that the Violation Risk Factors are performance elements of the Reliability Standards and, as such, must be developed with the same opportunity for public comment, due process, openness and a balance of interests as the Reliability Standards development process affords.<sup>9</sup> The Commission denied the requests for rehearing on this point.<sup>10</sup> Santa Clara makes the same argument here.

16. Accordingly, the Commission finds that NERC’s revision of the assignment of Violation Risk Factors is not a modification to the Reliability Standards and thus, is not required to comport with the Reliability Standard development provisions of section 215. Therefore, we deny Santa Clara’s request for rehearing.

17. Santa Clara also expresses concern with regard to the Commission-directed revision of the Violation Risk Factor assignment to Reliability Standard MOD-017-0 Requirement R1.4. Again, the Commission disagrees with Santa Clara’s argument.

18. Requirement R1.4 establishes the provision of “annual peak hour forecast demands (summer and winter) in MW and annual Net Energy for load in GWh for at least five years and up to ten years into the future, as requested.” The Commission understands that, because information can change, the further out the forecast, the less

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<sup>7</sup> *Id.* (emphasis added).

<sup>8</sup> *January 2007 Order*, 118 FERC ¶ 61,030 at P 93.

<sup>9</sup> *April 2007 Order*, 119 FERC ¶ 61,046 at P 29.

<sup>10</sup> *Id.* P 34.

reliable. However, one purpose of this Reliability Standard is to ensure that the data necessary to assess the need for system reinforcement is available. This Reliability Standard does not address the content or the accuracy of the forecast; rather, it addresses whether the forecast data is in place so that an assessment of future system needs can be made. This is more than administrative in nature. A “medium” Violation Risk Factor is appropriate for a “requirement in a planning time frame that, if violated, could, under emergency, abnormal, or restorative condition anticipated by the preparations, directly affect the electrical state or capability of the Bulk-Power system, or the ability to effectively monitor, control, or restore the Bulk-Power system.”<sup>11</sup> The absence of annual forecast data could directly affect the electrical state or capability of the Bulk-Power System anticipated in the planning time frame because this information is instrumental in determining anticipated conditions and the system changes needed to handle those conditions.

19. Furthermore, the assignment of a “medium” Violation Risk Factor in this instance is consistent with the treatment of MOD-012-0, to which NERC assigned a “medium” Violation Risk Factor. Both Reliability Standards require the provision of data necessary for system analysis. Therefore, the Commission believes the medium Violation Risk Factor that it directed NERC to assign more appropriately describes the risk associated with the Requirement.

### **B. Compliance Filing**

20. NERC’s compliance filing addresses each of the Commission’s directives in the *May 2007 Order*. The Commission approves NERC’s filing.

21. Santa Clara’s protest of the compliance filing duplicates the arguments made in its request for rehearing. The Commission denies Santa Clara’s protest for the reasons discussed above.

22. In the *May 2007 Order*, the Commission directed NERC to change 28 Violation Risk Factor assignments. NERC revised them according to Commission directives. The Commission approves the 28 Violation Risk Factors as submitted.

23. In the *May 2007 Order*, the Commission also directed NERC to assign Violation Risk Factors to MOD-016-1, Requirements R2, R2.1, R3, and R3.1, for which no assignment had been made. NERC has done so and the Commission approves the Violation Risk Factors as submitted. The Requirements at issue here are administrative

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<sup>11</sup> *May 2007 Order*, 119 FERC ¶ 61,145, at P 9.

in nature and, as such, are consistent with NERC's definition of a Lower Risk Requirement.

24. The Commission also approves NERC's removal of Violation Risk Factors that, in 12 instances, were inappropriately assigned, and accepts the filing of the Violation Risk Factor matrix.

The Commission orders:

(A) The request for rehearing is hereby denied, as discussed in the body of this order.

(B) NERC's compliance filing is hereby approved, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.