

120 FERC ¶ 61,239
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 No. RR06-1-009

ORDER ON CLARIFICATION

(Issued September 20, 2007)

1. The North American Electric Reliability Corporation (NERC) seeks clarification or, in the alternative, rehearing of the Commission's June 7, 2007 order¹ that generally accepts a compliance filing submitted by NERC further modifying its Rules of Procedure to comply with the Commission's orders² certifying NERC as the Electric Reliability Organization (ERO) for the United States under section 215 of the Federal Power Act (FPA).³ In this order, we grant NERC's request for clarification and require NERC to further clarify its Rules of Procedure pertaining to "Required Action" alerts.

Background

2. In the *June 2007 Compliance Order*, the Commission discussed changes NERC made to section 807 of its Rules of Procedure, concerning the analysis of significant

¹ *North American Electric Reliability Corp.*, 119 FERC ¶ 61,248 (2007) (*June 2007 Compliance Order*).

² *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062 (*Certification Order*), *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006), *order on compliance*, 118 FERC ¶ 61,030 (*January 2007 Compliance Order*), *order on compliance*, 118 FERC ¶ 61,190, *order on reh'g*, 119 FERC ¶ 61,046 (2007).

³ 16 U.S.C. § 824o (2000).

system events. Section 807.6 of the Rules of Procedure states that, after analyzing a significant system event, NERC can disseminate “operations and equipment alerts” that can require specific actions by Bulk-Power System users, owners and operators. Sections 807.6.c (Analysis of Major Events) and 808.2.c (Analysis of Off-Normal Events and System Performance) of NERC’s Rules of Procedure provide that NERC will screen and analyze the findings and recommendations from the analysis, and those with generic applicability will be disseminated to the industry in the form of operations or equipment alerts of three possible types:

Advisory — these alerts are purely informational, intended to alert owners, operators, and users of the bulk power system to potential problems;

Recommendation — these alerts are intended to recommend specific action be taken by owners, operators, and users of the bulk power system;

Required Action — these alerts are intended to require specific action by owners, operators, and users of the bulk power system. Such alerts require NERC board approval before issuance.

3. In the *June 2007 Compliance Order*, the Commission dismissed a request to require NERC to explain the difference between operations and equipment alerts and remedial action directives. The Commission noted that it did not require NERC to make any modifications to section 807.6 in the *January 2007 Compliance Order*. Therefore, the Commission determined that this section was a settled matter and its acceptance should have been raised on rehearing, but was not. Further, the Commission stated that it believed that NERC should issue operations and equipment alerts only under NERC’s remedial power.⁴

Request for Clarification

4. NERC seeks clarification of the Commission’s statement that NERC should issue operations and equipment alerts requiring specific actions only under NERC’s remedial power. NERC asks the Commission to clarify that the Commission did not intend to

⁴ See *June 2007 Compliance Order* at P 64, citing *Rules Concerning Certification of the Electric Reliability Organization; Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 476-77, *order on reh’g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006); see also Rules of Procedure, Appendix 4B, Sanctions Guidelines, section 6.

prohibit NERC from (i) carrying out its responsibilities as the Electricity Sector Information Sharing and Analysis Center (ES-ISAC) to inform electricity industry participants of corrective action they must take to avoid, reduce, or respond to a newly identified threat to the electricity infrastructure, or (ii) carrying out its responsibilities as the ERO to inform users, owners and operators of the Bulk-Power System of corrective action they must take to avoid, reduce, or respond to a newly identified threat to the reliability of the Bulk-Power System.

5. NERC notes that the Commission accepted section 807.6 and a similar provision, section 807.2 of its Rules of Procedure, in the *January 2007 Compliance Order* and, save for one comment in the *June 2007 Compliance Order*, has not placed any limitation on their use.

6. NERC asserts that a remedial action directive must be based on a violation or possible violation of a Reliability Standard.⁵ However, according to NERC, the situations covered by sections 807.6 and 808.2 of its Rules of Procedure do not necessarily involve a violation of a Reliability Standard. For example, NERC states that, as the ES-ISAC, it may learn of a cybersecurity vulnerability that the industry needs to promptly address. NERC also asserts that, during its reliability assessment and performance analysis activities or its disturbance and event analysis activities, it may learn of a defect in a particular piece of commonly-used equipment, or of an unrecognized flaw in equipment configuration. NERC contends that none of these situations would necessarily involve a violation of a Reliability Standard, yet each could well involve a threat to the reliability of the Bulk-Power System that could be alleviated with a prompt, clear direction to address the problem. NERC maintains that it intended sections 807.6 and 808.2 of its Rules of Procedure to provide a mechanism to address areas of concern and the need for corrective action to be sent to the entire industry, or specific segments of it.

7. NERC maintains that it is in the public interest for it to issue alerts to the industry requiring specific corrective actions where NERC obtains information showing the need for such corrective actions, even where a violation of a Reliability Standard is not involved. Moreover, NERC states that it is the entity best positioned to gather the information that may show a need for corrective actions by the industry, or segments of the industry, to avoid a threat to the reliability of the Bulk-Power System. NERC also asserts that it is the entity best positioned to notify the industry of necessary corrective actions. In fact, NERC points out that the Commission has concluded that “monitoring

⁵ See Rules of Procedure, Appendix 4B, Sanctions Guidelines, section 6.1; NERC Compliance and Enforcement Program, Rules of Procedure, Appendix 4C.

the reliability of the Bulk-Power System” is one of the ERO’s statutory functions under section 215 of the FPA.⁶

8. NERC states that communications pursuant to sections 807.6 and 808.2 of the Rules of Procedure are not remedial action directives under its compliance monitoring and enforcement program and the Sanction Guidelines because they do not necessarily involve violations or possible violations of Reliability Standards. NERC further asserts that it understands that it lacks authority to impose penalties or other sanctions if a registered entity fails to take the corrective action specified in one of these issuances. However, NERC believes that its position as both the ERO and the ES-ISAC will convey sufficient authority to persuade entities to comply with Required Action alerts. In short, NERC fully anticipates that Bulk-Power System users, owners and operators will take seriously Required Action alerts issued by NERC pursuant to sections 807.6 and 808.2, or alerts issued in its role as the ES-ISAC.

9. Accordingly, NERC requests clarification from the Commission that the Commission did not intend, by stating that NERC should issue operations and equipment alerts requiring specific actions only under NERC’s remedial power, to limit NERC’s ability to issue Required Action alerts specifying necessary actions by Bulk-Power System owners, operators and users, as specified in sections 807.6 and 808.2 of the NERC Rules of Procedure, or to limit NERC’s ability to issue similar alerts requiring specific actions in its role as the ES-ISAC, only to situations involving a violation or possible violation of a Reliability Standard. In the alternative, NERC requests rehearing.

Commission Determination

10. The Commission grants NERC’s request for clarification and requires NERC to further clarify its Rules of Procedure pertaining to “Required Action” alerts. In the *June 2007 Compliance Order*, the Commission stated that it believed that NERC should issue Required Action alerts pursuant to sections 807.6 and 808.2 of the Rules of Procedure only under NERC’s remedial power. However, NERC has pointed out that these provisions are in a different context and are not related to NERC’s remedial authority. Therefore, our previous statement was incorrect.

11. This new understanding raises different concerns. NERC acknowledges that “it lacks authority to impose penalties or other sanctions if a Registered Entity fails to take

⁶ NERC July 9, 2007 Request for Clarification at 5 & n.7, *citing* Order No. 672 at P 202.

the corrective action specified in one of these issuances.”⁷ NERC is correct to understand that it only has authority to require specific action in the context of violations of Commission approved reliability standards. While the Commission recognizes the importance of these alerts and that having three levels of alerts (ranging from informational advisories, recommended actions, to “required” actions approved by NERC’s board) is beneficial to distinguishing the seriousness of a situation, we find that labeling the most severe alerts issued pursuant to sections 807.6.c and 808.2.c of the Rules of Procedure “Required Action” alerts is misleading. Therefore, we direct NERC to change the designation of alerts issued pursuant to sections 807.6.c and 808.2.c of the Rules of Procedure to indicate the seriousness of the recommendation rather than to indicate that they are “required.” NERC should submit to the Commission a compliance filing to reflect this revision to the Rules of Procedure within 30 days of the date of this order.⁸

12. The Commission believes that it is important for it to receive notification of any operations or equipment alerts issued by NERC pursuant to sections 807.6 and 808.2 of the Rules of Procedure or in its role as ES-ISAC, prior to the issuance of such alerts.⁹ Such notification will allow the Commission to monitor for potential inconsistencies with the Reliability Standards and may inform the Commission where modifications to existing Reliability Standards or new Reliability Standards may be necessary. Therefore, notification of operations or equipment alerts issued by NERC enhances the Commission’s overall ability to enforce section 215. The ERO is directed to submit operations or equipment alerts to the Commission prior to issuance by the ERO. For this purpose, we also direct NERC to follow each such alert with a report to the Commission no later than 30 days from the date on which NERC requests action in the alert on the level of compliance by relevant owners, users or operators, and the success of actions taken in correcting the vulnerability or deficiency to help determine if Commission action or urgent action is needed. Such notification and reporting will enhance the Commission’s overall ability to implement section 215.

⁷ NERC July 9, 2007 Request for Clarification at 6.

⁸ See 16 U.S.C. 824o(f) (“The Commission ... may propose a change to the rules of the ERO”).

⁹ For this purpose, “prior” means as soon as possible before (not concurrently, not after) NERC issues the alerts. The Commission anticipates that NERC will generally issue these notices in non-emergency situations, with respect to which we would expect to receive the notices at least five business days before their issuance. NERC may submit notices in less time in extraordinary circumstances.

13. The notification of operations or equipment alerts issued by NERC is for information purposes, since neither section 215 of the FPA nor the Commission's regulations require Commission approval of such alerts. The Commission does not intend to notice such submissions or issue orders on each submission. Nevertheless, the Commission does retain the ability to review operations or equipment alerts and take action under section 215 when appropriate, *e.g.*, where the Commission determines that modifications to existing Reliability Standards or new Reliability Standards are warranted.

14. The Commission will treat any informational submission required by this order as non-public information if its public disclosure would reveal information relating to a system vulnerability or information that is required to remain non-public under the Commission's regulations.¹⁰ Therefore, any such submission of an operations or equipment alert will remain non-public unless the Commission has determined that public disclosure is appropriate.

The Commission orders:

(A) NERC's request for clarification is granted, as discussed in the body of this order.

(B) NERC should submit to the Commission a compliance filing within 30 days of the date of this order.

(C) NERC is directed to notify the Commission of operations or equipment alerts prior to the issuance of each alert and to provide a follow-up report within 30 days of the date on which NERC requests action in the alert on compliance with the alert as discussed herein.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.
Acting Deputy Secretary.

¹⁰ Order No. 672 at P 533.