

124 FERC ¶ 61,243
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 and
North American Electric Reliability Corporation

Docket Nos. RM06-16-004
RR08-1-001

ORDER DISMISSING REQUEST FOR CLARIFICATION

(Issued September 18, 2008)

1. On October 12, 2007, the North American Electric Reliability Corporation (NERC) filed an amendment to its Rules of Procedure proposing a new section 1600, which establishes a process for NERC or a Regional Entity to issue requests for data or information. In an order issued February 21, 2008, the Commission conditionally approved section 1600 of NERC's Rules of Procedure and directed NERC to make a compliance filing.¹ On March 24, 2008, Edison Electric Institute (EEI) filed a motion for clarification of the Commission's *Order on Amended Procedure*. In this order, the Commission dismisses as premature EEI's request for clarification of the *Order on Amended Procedure*.

I. Background

2. On July 20, 2006, the Commission issued an order² certifying NERC as the Electric Reliability Organization (ERO) for the United States pursuant to section 215 of the Federal Power Act (FPA).³ In the *Certification Order*, the Commission found that

¹ *Mandatory Reliability Standards for the Bulk-Power System*, 122 FERC ¶ 61,142 (2008) (*Order on Amended Procedure*).

² *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062 (*Certification Order*), *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006).

³ 16 U.S.C. § 824o (2006).

NERC generally satisfied the criteria to become the ERO responsible for developing and enforcing mandatory Reliability Standards.⁴ As the ERO, NERC must submit any proposed rule or rule change to the Commission for its approval.⁵

3. Section 39.2(d) of the Commission's regulations authorizes both the ERO and Regional Entities to request information necessary to implement section 215 of the FPA and obligates users, owners and operators of the Bulk-Power System to respond to such requests.⁶ To implement this provision, NERC proposed section 1600, which encompasses sections 1601 through 1605, establishing a process for NERC or a Regional Entity to issue requests for data or other information that are necessary for either organization to fulfill its obligations under section 215 of the FPA. In its *Order on Amended Procedure*, the Commission conditionally approved the addition of section 1600 to NERC's Rules of Procedure.⁷ Among other things, the Commission directed NERC to provide the Commission with advance notice of any proposed request for data or other information for informational purposes, adding that the Commission has ultimate authority for determining the pertinence, scope and relevance of any ERO or Regional Entity request.⁸ NERC submitted its compliance filing on May 16, 2008. Commission staff accepted NERC's uncontested compliance filing by delegated authority on August 13, 2008.

II. Request for Clarification

4. EEI interprets the *Order on Amended Procedure* and section 39.2(d) of the Commission's regulations as giving the Commission the authority to direct NERC to undertake information collection activities. EEI seeks clarification as to the relationship between Commission-directed information collection activities of the ERO and Regional Entities under section 1600 of the NERC Rules of Procedure and the Paperwork Reduction Act of 1995 (PRA).⁹ EEI points out that the PRA defines the collection of

⁴ See *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

⁵ 16 U.S.C. § 824o (2006); *see also* 18 C.F.R. § 39.10 (2008).

⁶ 18 C.F.R. § 39.2(d).

⁷ 122 FERC ¶ 61,142 at P 15.

⁸ *Id.* P 19.

⁹ 44 U.S.C. § 3501-20 (2006).

information to include “the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format.”¹⁰ If the Commission directs NERC to request information from its registered members, EEI asks the Commission how it intends to comply with the PRA to the extent it is applicable.

III. Discussion

5. The Commission is mindful of the requirements under the PRA. Nonetheless, we find EEI’s request for clarification premature. Section 1600 of NERC’s Rules of Procedure governs the collection of information by NERC and Regional Entities from users, owners and operators of the Bulk-Power System. In its *Order on Amended Procedure*, the Commission directed NERC to notify the Commission of, and to provide, any proposed request for data or information at least 21 days before NERC posts that request for public comment. The Commission explained that this notification of proposed requests is for informational purposes, and will ensure that the Commission has an opportunity to review the requests and to take action as may be appropriate.¹¹ Any application of the Commission’s right to “take action as may be appropriate” is speculative at this time; it is premature to address here any future situations in which the Commission may direct NERC or Regional Entities to seek information. However, the Commission will address its obligations under the PRA when and where appropriate.

The Commission orders:

EEI’s request for clarification is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁰ 44 U.S.C. § 3502(3).

¹¹ *Order on Amended Procedure*, 122 FERC ¶ 61,142 at P 19 & n.17.