

131 FERC ¶ 61,237
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

North American Electric Reliability Corporation

Docket No. RR09-6-000

ORDER GRANTING EXTENSION OF TIME TO COMPLY WITH COMMISSION
DIRECTIVE

(Issued June 15, 2010)

1. In a March 18, 2010 order,¹ the Commission directed the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), to propose revisions to its Rules of Procedure that pertain to the development of Reliability Standards.² Specifically, the Commission directed NERC to address a possible conflict between its Standards Development Process and its obligation as the ERO to submit to the Commission a new or modified Reliability Standard pursuant to a Commission directive under section 215(d)(5) of the Federal Power Act (FPA).³ The Commission directed NERC to submit the proposed revisions to the Commission no later than 90 days from the date of the March 2010 Order, i.e., June 16, 2010. The Commission stated that it would notice the proposed revisions and issue an order after considering public comment.⁴

¹ *North American Electric Reliability Corp.*, 130 FERC ¶ 61,203 (2010) (March 2010 Order).

² See NERC Rules of Procedure, Section 300 (Reliability Standards Development), and Appendix 3A (Reliability Standards Development Procedure). These two provisions of NERC's Rules of Procedure are referred to, collectively, as the "Standards Development Process" throughout this order.

³ 16 U.S.C. § 824o(d)(5) (2006).

⁴ The Commission also directed NERC to fully comply with a previous Commission directive to develop modifications to FAC-008-1, a Reliability Standard governing Bulk-Power System facility ratings. The Commission established a deadline

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2. As the Commission explained in the March 2010 Order, the current voting rules in NERC's Standards Development Process can be used to prevent NERC from complying with its obligation as the ERO to submit to the Commission a new or modified Reliability Standard required by the Commission pursuant to section 215(d)(5) of the FPA. Section 215(d)(5) authorizes the Commission to direct the ERO to submit to the Commission a new or modified Reliability Standard that addresses a specific matter if the Commission considers the Standard appropriate to carry out section 215. Under the current Standards Development Process, however, a draft Reliability Standard cannot be presented to the NERC board of trustees for consideration unless approved by a two-thirds majority of the stakeholder ballot body.⁵ Consequently, if just more than one-third of a ballot pool votes against a Reliability Standard drafted to comply with a Commission directive, the Standard will be rejected and will not be presented to the NERC board of trustees for a vote or to the Commission for review – even in circumstances where the Standard would have complied with the Commission's directive. Thus, under current ERO rules, the ballot body can delay or prevent NERC's compliance with its statutory obligation. As the Commission explained in the March 2010 Order, this situation occurred with respect to its directive to the ERO to modify Reliability Standard FAC-008-1.⁶

3. In the March 2010 Order, the Commission concluded that neither the public interest nor the intent of section 215 of the FPA is served by permitting the continuation of a process that does not allow the ERO to comply with its statutory obligation.⁷ Consequently, the Commission exercised its authority under section 215(f) of the FPA⁸ and directed the ERO to propose revisions to its Standards Development Process to

for compliance of no later than 90 days from the date of the Commission's future order on NERC's proposed revisions.

⁵ For a more complete discussion of the current Standards Development Process, *see* March 2010 Order, 130 FERC ¶ 61,203 at P 8-11.

⁶ For an explanation of the FAC-008-2 development process and the concerns it raised *see id.* P 13-19.

⁷ *Id.* P 21.

⁸ 16 U.S.C. § 824o(f) (2006). Section 215(f) of the FPA provides that the Commission, upon its own motion or complaint, may propose a change to the rules of the ERO. A proposed rule change “shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just and reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of [section 215(c)].”

ensure that the ERO can comply with a Commission directive to develop a new or modified Reliability Standard. The Commission gave the ERO discretion in developing the proposed revisions,⁹ requiring only that they satisfy the requirements of section 215(c)(2)(D) of the FPA by providing for “reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards.”¹⁰

4. NERC, the Trade Associations,¹¹ the Georgia Corporations,¹² and the Canadian Electric Association (CEA) submitted motions to intervene and requests for clarification or rehearing of the March 2010 Order. Several other entities submitted motions to intervene and comments supporting the rehearing requests filed by NERC and/or the Trade Associations and CEA.¹³ On May 17, 2010, the Commission issued a tolling order granting rehearing for the limited purpose of giving the Commission further time to consider the requests for rehearing.

5. We recognize the significant issues that the ERO must consider in developing proposed revisions to its Rules of Procedure that comply with all aspects of our directive. Further, we intend to convene a technical conference in the near future to further discuss this matter as well as other reliability-related issues. Accordingly, we extend the date by which NERC must comply with the directive by 90 days, such that NERC must now comply with the directive no later than 180 days from the date of the March 2010 Order. In taking this action, we do not, in any way, reach the issues raised in the rehearing

⁹ March 2010 Order, 130 FERC ¶ 61,203 at P 1, 26.

¹⁰ See section 215(c)(2)(D), 16 U.S.C. § 824o(c)(2)(D) (2006).

¹¹ The Trade Associations consist of: the Edison Electric Institute, the American Public Power Association, the National Rural Electric Cooperative Association, the Canadian Electric Association, the Large Public Power Council, the Transmission Access Policy Study Group, and the Electricity Consumers Resource Council.

¹² The Georgia Corporations consist of: Georgia Transmission Corporation and Georgia System Operations Corporation.

¹³ These entities are: Dominion Resources Services Inc., Exelon Corporation, the Independent Electricity System Operator, the Regional Entities (ReliabilityFirst Corporation, Midwest Reliability Organization, Florida Reliability Coordinating Council, Texas Regional Entity, Northeast Power Coordinating Council, Inc., Western Electricity Coordinating Council, SERC Reliability Corporation, and Southwest Power Pool Regional Entity), Tampa Electric Company, and the Wisconsin Electric Power Company.

requests in this proceeding or prejudge any potential filing NERC might make to comply with our directive.¹⁴ We continue to consider the arguments and motions set forth in the rehearing requests and render no judgment on any potential NERC proposal.

The Commission orders:

The date by which NERC must comply with the Commission's directive in the March 2010 Order to propose revisions to its Rules of Procedure that pertain to the development of Reliability Standards is hereby extended 90 days, such that NERC must now comply with the directive no later than 180 days from the date of the March 2010 Order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁴ The NERC board of trustees recently approved draft revisions to NERC's Rules of Procedure intended to comply with our directive. These revisions have not yet been filed with the Commission.

Document Content(s)

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