

137 FERC ¶ 61,144
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Nebraska Public Power District

Docket No. RR11-1-002

Southwest Power Pool Regional Entity

ORDER DENYING REHEARING

(Issued November 17, 2011)

1. Nebraska Public Power District (NPPD) and Southwest Power Pool Regional Entity (SPP RE) filed separate requests for rehearing of the Commission's July 21, 2011 order in this proceeding. In that order, the Commission denied petitions for review of a decision by the North American Electric Reliability Corporation (NERC) denying a request to transfer the compliance registrations of NPPD and several other entities located within Nebraska from Midwest Reliability Organization (MRO) to SPP RE.¹ For the reasons discussed in the body of this order, we deny rehearing.

I. Background

2. In March 2011, NPPD and SPP RE sought Commission review of NERC's decision to deny the Nebraska Entities request to transfer their compliance registrations from MRO to SPP RE.² The NERC Board voted to deny the requested transfer by a vote of six to five.³ In the July 21 Order, the Commission denied NPPD's and SPP RE's

¹ *Nebraska Public Power District, et al.*, 136 FERC ¶ 61,047 (2011) (July 21 Order).

² The original entities that requested transfer were Nebraska Public Power District (NPPD), City of Grand Island, Nebraska (Grand Island), City of Hastings, Nebraska (Hastings), and Omaha Public Power District (Omaha Public Power). Omaha Public Power did not join SPP RE's petition seeking reconsideration of NERC's decision to deny the transfer requests. SPP RE's petition covers NPPD, Grand Island, and Hastings (collectively, the "Nebraska Entities"). See SPP RE Petition at 1.

³ July 21 Order, 136 FERC ¶ 61,047 at P 6.

requests to permit transfer of the Nebraska Entities' transfer request. The Commission held, based on the specific facts and circumstances associated with the petition, that the "record does not support a finding that the transfer of the Nebraska Entities to SPP RE would promote the effectiveness or efficiency of the administration of reliability."⁴ The Commission explained that because the Nebraska Entities have more interties with MRO than with SPP RE and because NPPD shares joint facilities with other entities registered in MRO, a transfer would likely result in compliance auditing inefficiencies and the need for increased coordination between Regional Entities. The Commission found that this increased coordination would create an administrative burden rather than promote effectiveness or efficiency.⁵ The Commission also rejected petitioners' assertion that different requirements in SPP RE's and MRO's real capability guidelines would create inefficiencies, and found that any efficiencies gained by aligning the Nebraska Entities Regional Entity membership with their RTO membership were not, based on the record before the Commission, sufficient to justify the transfer.⁶

3. The Commission further noted that since the Nebraska Entities originally presented their transfer request to NERC, the Commission approved revisions to NERC's Rules of Procedure pertaining to transfer requests. Specifically, the Commission approved section 1208, which sets forth the "Process for Considering Registered Entity Requests to Transfer to Another Regional Entity."⁷ While this process will inform NERC's consideration of future transfer requests, NPPD specifically requested that it not apply to its transfer request.⁸ In approving the new process, the Commission granted this request.

⁴ July 21 Order, 136 FERC ¶ 61,047 at P 38.

⁵ *Id.* P 32.

⁶ *Id.* P 33, 35 (finding that the benefits to the Nebraska Entities were "inadequate" to justify their transfer).

⁷ July 21 Order, 136 FERC ¶ 61,047 at P 4; *see also*, *North American Electric Reliability Corp.*, 133 FERC ¶ 61,061 (2010) (Order approving section 1208 governing Regional Entity transfer requests).

⁸ *North American Electric Reliability Corp.*, 133 FERC ¶ 61,061 at P 67, 71, and 75.

II. Requests for Rehearing

A. NPPD Petition

4. NPPD raises several arguments in its petition for rehearing. First, NPPD argues that the Commission erred by concluding that the record in this proceeding does not support a finding that the transfer would promote effectiveness or efficiency, claiming that the transfer request has both qualitative and quantitative benefits. NPPD believes a number of redundancies and inefficiencies it experiences would be eliminated if it belonged to both the SPP RTO and SPP RE. NPPD also argues that the Commission erred by relying on evidence not in the record that was before the NERC Board.

5. Next, NPPD also believes that the Commission incorrectly concluded that the number of interties between NPPD and registered entities in MRO, NPPD's transfer would result in compliance inefficiencies and increased Regional Entity coordination. Specifically, NPPD argues that the claimed number of interties between NPPD and entities within the MRO provides no support for the conclusion. NPPD argues that a number of the interties identified by the MRO are interties that NPPD has with Omaha Public Power District, which was one of the original Nebraska Entities seeking transfer.⁹ NPPD states that the significance of the interties between NPPD and entities in the MRO and SPP RE footprints are material facts in dispute.

6. In addition, NPPD claims that the Commission erred by concluding that jointly owned facilities would create auditing inefficiencies and increased administrative burdens on entities registered in MRO. Specifically, NPPD argues that it does not have any jointly-owned facilities with MRO entities. Further, NPPD states that the Commission erred by concluding that increased efficiencies related to individual registered entities seeking a transfer should not be a factor in considering the transfer and that NPPD's RTO membership did not support the requested transfer.

B. SPP RE Petition

7. SPP RE states that the Commission attributed undue weight to the number of interconnections between NPPD and entities within MRO and that such interconnections should have little to no bearing on the transfer request. SPP RE states that interconnection agreements establish operations and maintenance responsibilities so even if owners or operators of jointly-owned or collocated facilities are in different regions, the scope of each entity's duties is readily determinable. SPP RE adds that the July 21 Order cited no substantive evidence that any administrative matters related to jointly-owned

⁹ According to SPP RE's Petition, Omaha Public Power did not pursue the proposed transfer to SPP RE after NERC's Board decision.

facilities would be material to the administration of reliability compliance programs by SPP RE or MRO. SPP states that the Commission should have granted the transfers because: (1) the proposed transfers will have little to no effect on other Bulk-Power System owners, operators and users, other than a modest reallocation of the affected Regional Entities' respective costs; (2) the transfers can be effected efficiently and will not adversely affect administration of the Bulk-Power System reliability; and (3) the transfers will provide the transferring entities with the administrative and cost efficiencies that the Commission had previously acknowledged when Regional Entities and RTO boundaries coincide.

III. Discussion

8. The Commission denies rehearing. Since transfer requests require changes to the delegation agreements between NERC and the relevant Regional Entities, the statutory standard of review for approving a transfer request is whether the transfer will promote effective or efficient administration of Bulk-Power System reliability.¹⁰ The Commission has emphasized that transfers should be carefully considered and should not merely benefit an individual registered entity.¹¹ We remain persuaded that the record before the Commission does not support a finding that the transfer of the Nebraska Entities to SPP RE would promote the effectiveness or efficiency of the administration of Bulk-Power System reliability.

9. As an initial matter, NPPD correctly recognizes the applicable standard of review but then misapplies that standard because it fails to explain how its proposed transfer to SPP RE promotes effective or efficient administration of Bulk-Power System reliability as a whole. NPPD focused chiefly on the benefits that it will receive as a result of the proposed transfer while downplaying the burden that the transfer will have on registered entities. Similarly, the only benefits SPP RE identified in its request for rehearing are benefits to the transferring entities.¹² However, MRO and some of the commenting registered entities identified specific costs and inefficiencies that would result from the transfer. In addition, the number of interties between the registered entities will increase the need for coordination between Regional Entities. Further, because of shared joint

¹⁰ *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, at P 673, 685, *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006). *See also* 16 U.S.C. § 824o(e)(4)(C) (2006); 18 C.F.R. § 39.8(c)(3) (2011).

¹¹ *North American Electric Reliability Corporation*, 133 FERC ¶ 61,061 at P 72.

¹² *See* SPP RE Request for Rehearing at 5.

facilities in Nebraska, e.g., Western Area Power Administration and NPPD both own and maintain equipment within the Grand Island substation, neighboring registered entities will be required to enhance their coordination with SPP RE to effectuate the proposed transfer.

10. In the rehearing requests, NPPD and SPP RE repeat their claim that the record demonstrates that there are efficiencies that would be realized by approving the proposed transfer, specifically with respect to belonging to both SPP RTO and SPP RE. In the same vein, NPPD asserts that the Commission has departed from previous findings regarding the connection between RTO membership and efficient administration of reliability.¹³ While we recognize the potential benefits of aligning the Nebraska Entities' RTO and Regional Entity memberships, neither NPPD nor SPP RE has demonstrated that the requested transfer would promote effective and efficient administration of Bulk-Power System reliability as a *whole*. In other words, while we considered the administrative efficiencies that NPPD and presumably the other Nebraska Entities would likely receive as a result of the transfer (including but not limited to savings related to the administrative costs associated with travel and meeting expenses), we concluded, based on the record before us, that NPPD did not adequately demonstrate that the benefits of the transfer outweighed the administrative burdens that it created.¹⁴

11. Additionally, we did not find merit with the argument that different requirements in real time capability guidelines cause inefficiencies. As we explained, NPPD's current registration only requires it to comply with MRO's guidelines and methodologies.

12. Further, the Commission is not persuaded by NPPD's argument that the Commission erred by relying on evidence not provided to the NERC Board. The Commission has statutory authority to review a transfer of a registered entity's compliance registration from one Regional Entity to another. The Commission has no restriction on how it evaluates a transfer request other than the statutory obligation of whether the transfer promotes effective and efficient administration of system reliability. Thus, it was appropriate for the Commission to consider the MRO's comments, as well as the affected registered entities' comments, in the course of this proceeding along with all the additional information provided by NPPD, SPP RE in their petitions and their answers to the comments.

13. NPPD also claims that the aforementioned facts constitute disputed issues of material fact appropriate for an evidentiary hearing. We disagree. The Commission has emphasized that it is not sufficient for a protesting party merely to allege an issue of

¹³ See NPPD Request for Rehearing at 19.

¹⁴ July 21 Order, 136 FERC ¶ 61,047 at P 33.

disputed fact. Rather, parties “must make an adequate proffer of evidence to support them.”¹⁵ NPPD’s argument in favor of a hearing is based on unsupported allegations, and “mere allegations of disputed facts are insufficient to mandate a hearing; petitioners must make an adequate proffer of evidence to support them.”¹⁶ In addition, the Commission “is only required to provide a trial-type hearing if the material facts in dispute cannot be resolved on the basis of written submissions in the record.”¹⁷ For these reasons, we reject NPPD’s claim that a hearing is necessary.

14. SPP RE states that the Commission gave undue weight to the number of interconnections between NPPD and entities within MRO. In the same vein, NPPD argues that the Commission erred by concluding that the number of interties between NPPD and MRO registered entities shows that the transfer would result in compliance audit inefficiencies and the need for increased coordination between Regional Entities and notes that a number of the interties identified by MRO are interties that NPPD has with Omaha Public Power District, which would have been included within the SPP RE if NERC had approved the original transfer request. We find these arguments unpersuasive.

15. In rejecting the transfer request, the Commission pointed to the number of interties that would be affected by the proposed transfer, specifically noting that NPPD has approximately ten times more interties with entities in MRO than with entities in SPP RE.¹⁸ Thus, NPPD’s transfer necessarily would significantly increase the required coordination between SPP RE and MRO. Given these facts, the Commission reasonably concluded in the July 21 Order that the proposed transfer would not promote the effectiveness or efficiency of the administration of Bulk-Power System Reliability. Moreover, while the Commission found this evidence persuasive, it did not consider it in isolation. The Commission also considered the resulting administrative burden the proposed transfer would impose on neighboring entities, and evaluated arguments indicating that the transfer would create additional costs relating to reporting and compliance efforts for their facilities.¹⁹ The Commission considered these facts along with others from the pleadings. Thus, NPPD and SPP RE appear to ignore the other

¹⁵ *Pioneer Transmission LLC*, 130 FERC ¶ 61,044, at P 35 (2010) (quoting *Cerro Wire & Cable Co. v. FERC*, 677 F.2d 124, 129 (D.C. Cir. 1982)).

¹⁶ *Cerro Wire & Cable Co. v. FERC*, 677 F.2d at 129.

¹⁷ *Id.* n.73.

¹⁸ July 21 Order, 134 FERC ¶ 61,047 at P 32.

¹⁹ *Id.* P 32, 35-37.

bases upon which the Commission articulated its decision concerning, *inter alia*, audit and real-time capability guideline differences and corresponding inefficiencies, and cost considerations.²⁰

16. In addition to these factors, we are not persuaded by NPPD's assertion that the Commission relied on inaccurate evidence about the number of interties between NPPD and MRO. NPPD does not dispute the basic accuracy of the evidence the Commission relied on. Instead, it argues that if NERC had approved the Nebraska Entities' initial transfer request, then fourteen of the interties identified by the Commission as interties with MRO would be interties with SPP RE. However, NERC did not approve the petition, and NPPD neglects the fact that those fourteen interties are with Omaha Public Power, and Omaha Public Power did not petition the Commission for review of NERC's decision. Thus, even if the Commission granted rehearing and approved the transfer, the fourteen interties identified by NPPD would still be interties with an entity in MRO. As such, we find nothing in NPPD's assertion that would cause us to reconsider our decision.

17. We also reject NPPD's argument that diminishes the joint monitoring between Regional Entities as typical and easily resolved by agreements. NPPD states that "separate ownership of transmission facilities within a substation commonly occurs on the bulk power system, and its occurrence on the borders of neighboring [Regional Entities], as is the case here will not create inefficiencies or otherwise affect reliability because the responsibility for maintenance and operation of the separately-owned facilities is addressed in an interconnection agreement." While we agree that separate ownership of transmission facilities within a substation is fairly common on the Bulk-Power System, we note that such arrangements are usually dealt with through negotiated interconnection agreements, and that the proposed transfer would necessarily force changes onto other registered entities as a result. NPPD's argument does not account for the reporting and compliance costs listed above and, thus, NPPD's arguments do not persuade us that the Nebraska Entities' proposed transfers would not complicate matters.

18. We also affirm that increased efficiencies related to individual registered entities seeking a transfer should not be the only factor in considering a proposed transfer,²¹ And we disagree with NPPD's argument that our finding ignored "SPP RE's demonstration that the addition of NPPD will lead to increased system efficiencies in its administration of [Bulk-Power System] reliability."²² As stated above, we evaluated the transfer request in the context of the administrative efficiency of the Bulk-Power System as a whole and

²⁰ *Id.* P 33-38.

²¹ *See* July 21 Order, 134 FERC ¶ 61,047 at P 35.

²² NPPD Request for Rehearing at 18.

found that the individual benefits conferred to NPPD were not sufficient to justify the transfer. While NPPD may benefit in this case, we found that there would be a greater burden on other users of the Bulk-Power System.²³

19. While we deny rehearing based on the record currently before the Commission, nothing prohibits the Nebraska Entities from submitting a new transfer request and developing a new record under section 1208 of NERC's Rules of Procedure.

20. Finally, while we deny the requests for rehearing, we clarify the July 21 Order in one respect. In the July 21 Order, the Commission stated that "RTO functions are completely separate from compliance with Reliability Standards."²⁴ While this is true, we did not intend to indicate that the Commission cannot or will not consider whether alignment of RTO and Regional Entity membership can create efficiencies for reliability, or that the transmission planning and other activities of RTOs have no bearing on reliability. Instead, we intended to convey that alignment of RTO and Regional Entity membership is not the sole criterion that the Commission will consider in evaluating transfer requests, and that the Commission will consider any efficiencies created by such an alignment along with other relevant facts. While such efficiencies may exist, we refer to the separation of RTO functions from Regional Entity functions (which the Commission has emphasized in several orders)²⁵ to suggest that this separation may limit those efficiencies. As we have explained, based on the record before us in this proceeding, we find that any benefits that accrue as a result of the transfer in this case are outweighed by the burden the transfer would impose on other users of the Bulk-Power System.

²³ "This process ... should not merely benefit an individual registered entity." *North American Electric Reliability Corp.*, 133 FERC ¶ 61,061, at P 72 (2010), *order denying reh'g*, 134 FERC ¶ 61,179 (2011).

²⁴ July 21 Order, 136 FERC ¶ 61,047 at P 34.

²⁵ *See e.g., Southwest Power Pool, Inc.*, 126 FERC ¶ 61,045 (2009); *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 at P 698-700, *order on reh'g*, Order No. 672-A, FERC Stats & Regs ¶ 31,212 (2006); *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060, *order on reh'g*, 120 FERC ¶ 61,260 (2007), *order on compliance filing*, 122 FERC ¶ 61,245 (2008), *order on compliance filings*, 125 FERC ¶ 61,330 (2008).

Docket No. RR11-1-002

- 9 -

The Commission orders:

NPPD's and SPP RE's requests for rehearing are denied.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

Document Content(s)

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