

132 FERC ¶ 61,027
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 38 and 40

(Docket Nos. RM08-19-003, RM05-5-019;
Order No. 729-B)

Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments; Mandatory Reliability Standards for the Bulk-Power System; and Standards for Business Practices and Communications Protocols for Public Utilities

(Issued July 15, 2010)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on Rehearing and Reconsideration.

SUMMARY: In this order, the Commission grants several requests for rehearing of Order No. 729-A, which, *inter alia*, provided clarification of the implementation timeline for the six Modeling Data, and Analysis Reliability Standards submitted by the North American Electric Reliability Corporation and approved by the Commission in Order No. 729. As discussed below, the Commission grants rehearing on the implementation timeline. In addition, the Commission is revising the implementation deadline for compliance with the related North American Electric Standards Board business practice standards incorporated by reference in Order No. 676-E, so that the deadlines for compliance with the requirements of Order Nos. 729 and 676-E remain consistent.

EFFECTIVE DATE: This rule will become effective **[30 days after publication in the**

FEDERAL REGISTER]. Accordingly, the North American Electric Reliability Corporation Reliability Standards approved in Order No. 729 shall be implemented on April 1, 2011. The related North American Electric Standards Board business practice standards shall be implemented on the same date as the Reliability Standards, as discussed below.

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SUPPLEMENTARY INFORMATION:

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

Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments; Mandatory Reliability Standards for the Bulk-Power System Docket Nos. RM08-19-003

Standards for Business Practices and Communication Protocols for Public Utilities RM05-5-019

ORDER NO. 729-B

ORDER ON REHEARING AND RECONSIDERATION

(Issued July 15, 2010)

1. In this order, the Commission grants several requests for rehearing of Order No. 729-A, which, *inter alia*, provided clarification of the implementation timeline for six Modeling Data, and Analysis (MOD) Reliability Standards submitted by the North American Electric Reliability Corporation (NERC) and approved by the Commission in Order No. 729.¹ As discussed below, the Commission grants rehearing on the

¹ *Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability*

(continued)

implementation timeline. In addition, the Commission is revising the implementation deadline for compliance with the related North American Electric Standards Board (NAESB) business practice standards incorporated by reference in Order No. 676-E,² so that the deadlines for compliance with the requirements of Order Nos. 729 and 676-E remain consistent.

I. Background

2. On November 24, 2009, the Commission issued Order No. 729, which approved six MOD Reliability Standards submitted to the Commission by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO) for the United States.³ The approved Reliability Standards pertain to methodologies for the consistent and transparent calculation of available transfer capability or available flowgate capability. Pursuant to section 215(d)(5) of the Federal Power Act (FPA),⁴ the Commission directed the ERO to develop certain modifications to

Standards for the Bulk-Power System, Order No. 729, 129 FERC ¶ 61,155 (2009), *order on reh'g*, Order No. 729-A, 131 FERC ¶ 61,109 (2010).

² *Standards for Business Practices and Communication Protocol for Public Utilities*, Order No. 676-E, 74 FR 63288 (Dec. 3, 2009), FERC Stats. & Regs. ¶ 31,299, at P 126 (Nov. 24, 2009).

³ *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g & compliance*, 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

⁴ 16 U.S.C. § 824o(d)(5) (2006).

the MOD Reliability Standards. The Commission also directed NERC to retire the existing MOD Reliability Standards replaced by the versions approved in the Final Rule once the new versions became effective.

3. On the same date, the Commission issued Order No. 676-E, which revised the Commission's regulations to incorporate by reference in its regulations the latest version (Version 002.1) of certain business practice standards adopted by the Wholesale Electric Quadrant (WEQ) of NAESB. In addition, the Commission directed public utilities to file any necessary tariff revisions, including any revisions to Attachment C to their Open Access Transmission Tariff (OATT), at least ninety days before the prescribed date of compliance with the revised business practice standards, which was meant to be coincident with the implementation date for compliance with the MOD Reliability Standards approved in Order No. 729.

II. Discussion

4. In Order No. 729, the Commission directed that the Reliability Standards become effective according to the schedule proposed by the ERO.⁵ Thus, the Commission stated that the MOD Reliability Standards shall become effective on the first calendar quarter that is twelve months beyond the date that the Reliability Standards are approved "by all

⁵ Order No. 729, 129 FERC ¶ 61,155 at P 95.

applicable regulatory authorities.”⁶ The Commission found that this implementation schedule struck a reasonable balance between the need for timely reform and the needs of transmission service providers and transmission operators to make adjustments to their calculations of available transfer capability, capacity benefit margin and transfer reserve margin. In response to comments on its notice of proposed rulemaking, the Commission clarified that, under this plan, the Reliability Standards shall become effective on the first day of the first quarter occurring 365 days after approval by all applicable regulatory authorities. Approval by the Commission would be effective 60 days after the date of publication of the Final Rule in the *Federal Register*.⁷

5. Order No. 676-E set the implementation date for compliance with the NAESB business practice standards coincident with the implementation date of the MOD Reliability Standards approved in Order No. 729. Accordingly, public utilities subject to the NAESB business practice standards were directed to comply with these Version 002.1 business practice standards as of the first day of the first quarter occurring 365 days after approval of the MOD Reliability Standards by all applicable regulatory authorities. Implementation of some of the NAESB business standards will require tariff revisions. The Commission also directed public utilities to submit necessary tariff revisions,

⁶ *Id.*

⁷ *Id.*

including any revisions to Attachment C of their OATT, at least ninety days before the prescribed date for compliance with the revised standards.

6. In response to several requests for clarification, the Commission issued Order No. 729-A, which, among other things, clarified the implementation timeline of the MOD Reliability Standards. Again, the Commission accepted the clarification offered by the ERO in its comments and clarified that the Reliability Standards shall become effective within the United States on the first day of the first quarter occurring 365 days after Order No. 729 was published in the *Federal Register*, i.e., January 1, 2011.⁸

7. The Commission also recognized that compliance with these MOD Reliability Standards requires an exchange of information and data among neighboring transmission service providers. The Commission stated that, in some instances, a transmission service provider within the United States may need to exchange information and data with a neighboring transmission service provider located in a jurisdiction where the Reliability Standard is not yet enforceable, such as some Canadian provinces. In this situation, the Commission determined that the transmission service provider within the United States must share information with the transmission service provider located in another jurisdiction pursuant to the requirements of the MOD Reliability Standards. But, the Commission clarified, the transmission service providers and transmission operators

⁸ Order No. 729-A, 131 FERC ¶ 61,109 at P 7.

within the continental United States who must rely on information and data from utilities located in another country to comply with these Reliability Standards shall not be penalized solely for the failure of a utility located in another jurisdiction to provide such information and data, until such time that the MOD Reliability Standards become mandatory in that foreign jurisdiction.

Requests for Rehearing

8. Several petitioners requested rehearing of the clarified implementation schedule. Bonneville Power Administration (Bonneville), the Large Public Power Council (LPPC), Southwest Area Transmission Subregional Planning Group (SWAT), and WestConnect request a July 1, 2011, implementation date. Bonneville suggests that the Commission do this by clarifying that the effective date of the MOD Reliability Standards is the first day of the first quarter occurring 365 days after publication of Order No. 729-A in the *Federal Register*, i.e., July 1, 2011. By contrast, LPPC and WestConnect argue that their members reasonably presumed a July 1, 2011, implementation date when the Canadian authorities failed to approve the MOD Reliability Standards within three months of the Commission's approval and have been acting in reliance of that date. SWAT simply states that a July 1, 2011, effective date is consistent with the notice given to industry in Order No. 729 and that for the sake of the reliable operation of the Bulk-Power System and efficient and orderly implementation of the new MOD Reliability Standards, the effective date in the United States should be set as July 1, 2011. If the Commission

rejects the proposed July 1, 2011, effective date, all of these petitioners request, in the alternative, that the Commission set the effective date no earlier than April 1, 2011, which is the first day of the first quarter occurring 365 days after Commission approval of the MOD Reliability Standards.

9. Other petitioners advocate for an April 1, 2011, effective date. Midwest Independent Transmission System Operation, Inc. (MISO), NorthWestern Corp. (NorthWestern), PJM Interconnection, L.L.C. (PJM) and Southwest Power Pool, Inc. (SPP) argue that they have relied upon April 1, 2011, as the earliest possible effective date of the MOD Reliability Standards. MISO argues that Order No. 729-A's acceleration of the Order No. 729 compliance deadline is unexpected, unnecessary, and likely to impose unreasonable burdens on responsible entities who planned for compliance no earlier than April 1, 2011. PJM also contends that it has expended resources in reliance upon an April 1, 2011, effective date and that an accelerated effective date creates a substantial hardship for PJM. Accordingly, these petitioners urge the Commission to grant rehearing and set April 1, 2011, as the effective date for the MOD Reliability Standards.

10. In support of their arguments, petitioners comment on how the effective dates for other requirements are linked to the implementation schedule of the MOD Reliability Standards. MISO, NorthWestern, SWAT and Westconnect state that Order No. 729 aligned the effective date of the MOD Reliability Standards with the effective date of the

NAESB WEQ business practice standards Version 002.1. MISO and Northwestern also point out that, in Order No. 676-E, the Commission directed utilities to file a revised Attachment C to their Open Access Transmission Tariff (OATT) on or before 275 days after approval of the MOD Reliability Standards. These petitioners argue that the Commission's decision in Order No. 729-A to accelerate the implementation of the MOD Reliability Standards has disrupted the coordinated implementation of the NAESB business practice standards and the OATT Attachment C revisions.

11. In addition, MISO expresses concern about the Commission's statement in Order No. 729-A that transmission service providers within the United States who rely upon information and data from transmission service providers within Canadian provinces to comply with these Reliability Standards shall not be penalized solely for the failure of a utility located in another jurisdiction to provide such information and data, until such time that the MOD Reliability Standards become effective in that foreign jurisdiction. MISO expresses concerns that the last clause of this statement could be read to mean that once the standards have become mandatory in Canada, transmission operators within the United States could be subjected to penalties if the Canadian transmission operators fail, for whatever reason, to supply the information mandated by the Reliability Standards. Accordingly, MISO requests clarification that Order No. 729-A did not create automatic liability for transmission operators that comply with their own data requirements, but do not receive needed data from other transmission operators.

12. Finally, MISO requests that the Commission act expeditiously and issue an order on rehearing by July 1, 2010. MISO states that the compliance deadline under the Order No. 729-A framework, i.e., September 9, 2010, is rapidly approaching. MISO argues that expedited action will provide MISO and others with needed certainty and allow them to schedule their compliance efforts accordingly.

Commission Determination

13. Upon further consideration, the Commission has determined that the implementation schedule of the MOD Reliability Standards should be keyed to the date of approval of the Reliability Standards, as originally contemplated in Order No. 729, and not the date of publication of Order No. 729 in the *Federal Register*. Accordingly, the Commission grants rehearing of its determination in Order No. 729-A and directs that the MOD Reliability Standards shall become effective within the United States as of the first day of the first quarter occurring 365 days after their approval by the Commission, i.e., April 1, 2011.

14. Thus, the Commission rejects arguments raised by Bonneville, LPPC, SWAT and WestConnect that the implementation of the MOD Reliability Standards should be delayed because the original implementation plan contemplated approval of all applicable regulatory authorities, including certain Canadian provinces, and those entities did not act within the same quarter as the Commission. It is unclear whether and when the Canadian provinces will act on these MOD Reliability Standards. This uncertainty is the reason

why the Commission granted clarification in Order No. 729-A. Although the Commission appreciates that industry acted in reliance of the original implementation plan, we believe that the most reasonable clarification of the Commission's directive in Order No. 729 is to make the MOD Reliability Standards effective within the United States on the first day of the first quarter occurring 365 days following approval by the Commission, i.e., April 1, 2011.

15. When the Commission issued Order No. 676-E, it purposely set an implementation timeline for compliance with the NAESB business practice standards that was identical to the one prescribed in Order No. 729 for the related NERC reliability standards.⁹ In this order and in Order No. 729-A, the Commission has modified the compliance schedule for the MOD Reliability Standards such that it no longer matches the compliance schedule for the WEQ Version 002.1 Business Practice Standards that the Commission incorporated by reference in Order No. 676-E. Thus, to maintain the consistency that the Commission determined was appropriate in Order Nos. 676-E and 729, we will modify the compliance deadline that we prescribed in Order No. 676-E to match the compliance deadline that we are prescribing for the MOD Reliability Standards

⁹ See Order No. 676-E, FERC Stats. & Regs. ¶ 31,299 at P 126; Order No. 729 at P 95.

within the continental United States.¹⁰ Thus, the NAESB business practice standards shall become effective on the same date as the MOD Reliability Standards.

16. Consistent with our determination in Order No. 676-E, public utilities shall file any necessary tariff revisions, including any revisions to Attachment C of their OATT, at least ninety days before the prescribed date for compliance with the revised NAESB business practice standards.¹¹ Consistent with our prior practice, if a public utility fails to file the required tariff revisions prior to the compliance date, it nonetheless must abide by the NAESB Version 002.1 WEQ standards even before it has updated its tariff to incorporate these changes.

17. In response to MISO's request, the Commission clarifies that Order No. 729-A did not create automatic liability for transmission operators that comply with their own data requirements, but do not receive needed data from other transmission operators. The Commission intended, in Order No. 729-A, to clarify that to the extent transmission providers within the United States rely on information provided by transmission providers in other countries to complete their calculations of available transfer or flowgate capability, and the transmission providers in other countries do not provide

¹⁰ In contrast to the compliance dates the Commission is establishing for the NERC MOD Reliability Standards, the compliance date for the WEQ Version 002.1 Business Practice Standards do not establish a separate compliance date for transactions outside of the continental United States.

¹¹ Order No. 676-E, FERC Stats. & Regs. ¶ 31,299 at P 128.

sufficiently transparent information for the transmission providers within the United States to complete their implementation documents, the transmission operators within the United States would not violate the MOD Reliability Standards approved in Order No. 729 as a result of that lack of information from counterparts in other countries.

III. Information Collection Statement

18. The Office of Management and Budget (OMB) regulations require that OMB approve certain information collection requirements imposed by an agency.¹² The revisions to the information collection requirements for transmission service providers and transmission operators adopted in Order No. 729 were approved under OMB Control No. 1902-0244. This order clarifies these requirements in order to more clearly state the obligations imposed in Order No. 729, but does not substantively alter those requirements. OMB approval of this order is therefore unnecessary. However, the Commission will send a copy of this order to OMB for informational purposes only.

IV. Document Availability

19. In addition to publishing the full text of this document in the *Federal Register*, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business

¹² 5 CFR 1320 (2010).

hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington DC 20426.

20. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

21. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

V. Effective Date and Congressional Notification

22. Rehearings and clarifications adopted in this Order on Rehearing and Reconsideration will become effective [**insert date that is 30 days from publication in Federal Register**].

List of subjects in 18 CFR Parts 38 and 40

By the Commission. Commissioner LaFleur voting present.

(S E A L)

Kimberly D. Bose,
Secretary.