

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 40

(Docket No. RM06-16-000; Order No. 693)

Mandatory Reliability Standards for the Bulk-Power System

(Issued March 16, 2007)

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule.

SUMMARY: Pursuant to section 215 of the Federal Power Act (FPA), the Commission approves 83 of 107 proposed Reliability Standards, six of the eight proposed regional differences, and the Glossary of Terms Used in Reliability Standards developed by the North American Electric Reliability Corporation (NERC), which the Commission has certified as the Electric Reliability Organization (ERO) responsible for developing and enforcing mandatory Reliability Standards. Those Reliability Standards meet the requirements of section 215 of the FPA and Part 39 of the Commission's regulations. However, although we believe it is in the public interest to make these Reliability Standards mandatory and enforceable, we also find that much work remains to be done. Specifically, we believe that many of these Reliability Standards require significant improvement to address, among other things, the recommendations of the Blackout Report. Therefore, pursuant to section 215(d)(5), we require the ERO to submit significant improvements to 56 of the 83 Reliability Standards that are being approved as mandatory and enforceable. The remaining 24 Reliability Standards will remain pending at the Commission until further information is provided.

The Final Rule adds a new part to the Commission's regulations, which states that this part applies to all users, owners and operators of the Bulk-Power System within the United States (other than Alaska or Hawaii) and requires that each Reliability Standard identify the subset of users, owners and operators to which that particular Reliability Standard applies. The new regulations also require that each Reliability Standard that is approved by the Commission will be maintained on the ERO's Internet website for public inspection.

EFFECTIVE DATE: This rule will become effective [insert date 60 days from the date the rule is published in the Federal Register]

FOR FURTHER INFORMATION CONTACT:

Jonathan First (Legal Information)
Office of the General Counsel
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426
(202) 502-8529

Paul Silverman (Legal Information)
Office of the General Counsel
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426
(202) 502-8683

Robert Snow (Technical Information)
Office of Energy Markets and Reliability
Division of Reliability
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426
(202) 502-6716

Kumar Agarwal (Technical Information)
Office of Energy Markets and Reliability
Division of Policy Analysis and Rulemaking
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426
(202) 502-8923

SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellingshoff.

Mandatory Reliability Standards for the Bulk-Power System Docket No. RM06-16-000

ORDER NO. 693

FINAL RULE

(Issued March 16, 2007)

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I. Introduction

1. Pursuant to section 215 of the Federal Power Act (FPA), the Commission approves 83 of 107 proposed Reliability Standards, six of the eight proposed regional differences, and the Glossary of Terms Used in Reliability Standards (glossary) developed by the North American Electric Reliability Corporation (NERC), which the Commission has certified as the Electric Reliability Organization (ERO) responsible for developing and enforcing mandatory Reliability Standards. Those Reliability Standards meet the requirements of section 215 of the FPA and Part 39 of the Commission's regulations. However, although we believe it is in the public interest to make these Reliability Standards mandatory and enforceable, we also find that much work remains to be done. Specifically, we believe that many of these Reliability Standards require significant improvement to address, among other things, the recommendations of the Blackout Report.¹ Therefore, pursuant to section 215(d)(5), we require the ERO to submit significant improvements to 56 of the 83 Reliability Standards that are being approved as mandatory and enforceable. The remaining 24 Reliability Standards will remain pending at the Commission until further information is provided.

2. The Final Rule adds a new part to the Commission's regulations, which states that this part applies to all users, owners and operators of the Bulk-Power System within the United States (other than Alaska or Hawaii) and requires that each Reliability Standard identify the subset of users, owners and operators to which that particular Reliability Standard applies. The new regulations also require that each Reliability Standard that is approved by the Commission will be maintained on the ERO's Internet website for public inspection.

A. Background

1. EPAct 2005 and Order No. 672

3. On August 8, 2005, the Electricity Modernization Act of 2005, which is Title XII, Subtitle A, of the Energy Policy Act of 2005 (EPAct 2005), was enacted into law.²

¹ U.S.-Canada Power System Outage Task Force, Final Report on the August 14 Blackout in the United States and Canada: Causes and Recommendations (April 2004) (Blackout Report). The Blackout Report is available on the Internet at <http://www.ferc.gov/cust-protect/moi/blackout.asp>

² Energy Policy Act of 2005, Pub. L. No 109-58, Title XII, Subtitle A, 119 Stat. 594, 941 (2005), to be codified at 16 U.S.C. 824o.

EPAAct 2005 adds a new section 215 to the FPA, which requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight or the Commission can independently enforce Reliability Standards.³

4. On February 3, 2006, the Commission issued Order No. 672, implementing section 215 of the FPA.⁴ Pursuant to Order No. 672, the Commission certified one organization, NERC, as the ERO.⁵ The ERO is required to develop Reliability Standards, which are subject to Commission review and approval.⁶ The Reliability Standards will apply to users, owners and operators of the Bulk-Power System, as set forth in each Reliability Standard.

5. Section 215(d)(2) of the FPA and the Commission's regulations provide that the Commission may approve a proposed Reliability Standard if it determines that the proposal is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission specified in Order No. 672 certain general factors it would

³ 16 U.S.C. 824o(e)(3).

⁴ Rules Concerning Certification of the Electric Reliability Organization; Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards, Order No. 672, 71 FR 8662 (February 17, 2006), FERC Stats. & Regs. ¶ 31,204 (2006), order on reh'g, Order No. 672-A, 71 FR 19814 (April 18, 2006), FERC Stats. & Regs. ¶ 31,212 (2006).

⁵ North American Electric Reliability Corp., 116 FERC ¶ 61,062 (ERO Certification Order), order on reh'g & compliance, 117 FERC ¶ 61,126 (ERO Rehearing Order) (2006), order on compliance, 118 FERC ¶ 61,030 (2007) (January 2007 Compliance Order).

⁶ Section 215(a)(3) of the FPA defines the term Reliability Standard to mean "a requirement, approved by the Commission under this section, to provide for reliable operation of the Bulk-Power System. This term includes requirements for the operation of existing Bulk-Power System facilities, including cybersecurity protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for the reliable operation of the Bulk-Power System, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity." 16 U.S.C. 824o(a)(3).

8. Pursuant to section 215(d)(2) of the FPA and § 39.5(c) of the Commission's regulations, the Commission will give due weight to the technical expertise of the ERO with respect to the content of a Reliability Standard or to a Regional Entity organized on an Interconnection-wide basis with respect to a proposed Reliability Standard or a proposed modification to a Reliability Standard to be applicable within that Interconnection. However, the Commission will not defer to the ERO or to such a Regional Entity with respect to the effect of a proposed Reliability Standard or proposed modification to a Reliability Standard on competition.¹¹

9. The Commission's regulations require the ERO to file with the Commission each new or modified Reliability Standard that it proposes to be made effective under section 215 of the FPA. The filing must include a concise statement of the basis and purpose of the proposed Reliability Standard, a summary of the Reliability Standard development proceedings conducted by either the ERO or Regional Entity, together with a summary of the ERO's Reliability Standard review proceedings, and a demonstration that the proposed Reliability Standard is just, reasonable, not unduly discriminatory or preferential and in the public interest.¹²

10. Where a Reliability Standard requires significant improvement, but is otherwise enforceable, the Commission approves the Reliability Standard. In addition, as a distinct action under the statute, the Commission directs the ERO to modify such a Reliability Standard, pursuant to section 215(d)(5) of the FPA, to address the identified issues or concerns. This approach will allow the proposed Reliability Standard to be enforceable while the ERO develops any required modifications.

11. The Commission will remand to the ERO for further consideration a proposed new or modified Reliability Standard that the Commission disapproves in whole or in part.¹³ When remanding a Reliability Standard to the ERO, the Commission may order a deadline by which the ERO must submit a proposed or modified Reliability Standard.

2. NERC Petition for Approval of Reliability Standards

12. On April 4, 2006, as modified on August 28, 2006, NERC submitted to the Commission a petition seeking approval of the 107 proposed Reliability Standards that

¹¹ 18 CFR 39.5(c)(1), (3).

¹² 18 CFR 39.5(a).

¹³ 18 CFR 39.5(e).

consider when assessing whether a particular Reliability Standard is just and reasonable.⁷ According to this guidance, a Reliability Standard must provide for the Reliable Operation of Bulk-Power System facilities and may impose a requirement on any user, owner or operator of such facilities. It must be designed to achieve a specified reliability goal and must contain a technically sound means to achieve this goal. The Reliability Standard should be clear and unambiguous regarding what is required and who is required to comply. The possible consequences for violating a Reliability Standard should be clear and understandable to those who must comply. There should be clear criteria for whether an entity is in compliance with a Reliability Standard. While a Reliability Standard does not necessarily need to reflect the optimal method for achieving its reliability goal, a Reliability Standard should achieve its reliability goal effectively and efficiently. A Reliability Standard must do more than simply reflect stakeholder agreement or consensus around the “lowest common denominator.” It is important that the Reliability Standards developed through any consensus process be sufficient to adequately protect Bulk-Power System reliability.⁸

6. A Reliability Standard may take into account the size of the entity that must comply and the costs of implementation. A Reliability Standard should be a single standard that applies across the North American Bulk-Power System to the maximum extent this is achievable taking into account physical differences in grid characteristics and regional Reliability Standards that result in more stringent practices. It can also account for regional variations in the organizational and corporate structures of transmission owners and operators, variations in generation fuel type and ownership patterns, and regional variations in market design if these affect the proposed Reliability Standard. Finally, a Reliability Standard should have no undue negative effect on competition.⁹

7. Order No. 672 directs the ERO to explain how the factors the Commission identified are satisfied and how the ERO balances any conflicting factors when seeking approval of a proposed Reliability Standard.¹⁰

⁷ Order No. 672 at P 262, 321-37.

⁸ Id. at P 329.

⁹ Id. at P 332.

¹⁰ Id. at P 337.