

137 FERC ¶ 61,130
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

North American Electric Reliability Corporation

Docket No. RR11-5-000

ORDER APPROVING AMENDMENTS TO RULES OF PROCEDURE

(Issued November 17, 2011)

1. On June 13, 2011, the North American Electric Reliability Corporation (NERC) filed a petition requesting approval of proposed amendments to the NERC Rules of Procedure. As discussed below, pursuant to section 215(f) of the Federal Power Act (FPA) and section 39.10(a) of the Commission's regulations, we approve the proposed amendments.¹

I. Background

A. Section 215

2. Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. The statute also requires, *inter alia*, that the ERO establish Rules that: (1) assure independence, while assuring fair stakeholder representation and balanced decision-making; (2) equitably allocate reasonable dues, fees and other charges; (3) provide fair and impartial procedures for enforcing Reliability Standards through imposition of penalties; and (4) provide reasonable notice and opportunity for public comment, due process and balance in developing Reliability Standards.

3. Section 215(f) provides that the ERO shall file with the Commission any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. Similarly, the Commission, upon its own motion or complaint, may propose a change to the rules of the ERO. A proposed rule or proposed rule change shall take effect upon a finding by the Commission "after notice and opportunity for comment that the change is

¹ 16 U.S.C. § 824o(f)(2006) and 18 C.F.R. § 39.10(a) (2011).

just, reasonable, not unduly discriminatory or preferential, is in the public interest and satisfies the requirements of subsection (c).”²

B. Order No. 672 and NERC’s Certification as the ERO

4. On February 3, 2006, the Commission issued Order No. 672 to implement the requirements of section 215 of the FPA.³ Order No. 672, *inter alia*, sets forth the process for certifying an ERO to develop and enforce compliance with mandatory Reliability Standards, subject to Commission approval and oversight.

5. On July 20, 2006, the Commission certified NERC as the ERO under section 215(c) of the FPA.⁴ The Commission found that NERC satisfies the criteria to be the ERO responsible for developing and enforcing mandatory Reliability Standards for the United States except for Alaska and Hawaii. Further, the Commission approved NERC’s Rules of Procedure and, in addition, identified needed revisions to the NERC Rules. Through a series of subsequent filings, NERC refined its Rules of Procedure, including NERC’s Reliability Standards Development Procedure, and Compliance Monitoring and enforcement program.⁵

II. Proposed Amendments to NERC Rules of Procedure

6. In its June 13, 2011 petition, NERC proposes to amend *Appendix 3B Election Procedure for Members of NERC Standards Committee* of the NERC Rules of Procedure. Specifically, NERC’s proposed amendments: (1) require the Chair and Vice Chair of the NERC Standards Committee to serve as non-voting members; (2) add a criterion for the Canadian representative on the Standards Committee to require that the representative is an individual that has Canadian citizenship and resides in Canada; (3) simplify the process for managing special Standards Committee elections to fill vacant positions that

² 16 U.S.C. § 824o(f)(2006).

³ *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).

⁴ *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062 (ERO Certification Order), *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).

⁵ *E.g., North American Electric Reliability Corp.*, 118 FERC ¶ 61,030 (2007).

occur mid year by eliminating the need to collect petitions and hold a ratifying vote; and (4) make additional minor conforming changes.

7. Regarding the proposal to require the Chair and Vice Chair of the NERC Standards Committee to serve as non-voting members, NERC explains that during the past year, the elected officers on the Standards Committee faced a conflict of interest when determining whether to vote on behalf of the industry segment that elected them or on behalf of the industry as a whole. NERC states that the purpose of the proposed change is to eliminate this conflict of interest, to ensure that each industry segment maintains two representatives on the Standards Committee and to clarify that the officers of the Standards Committee are expected to act on behalf of the industry as a whole rather than on behalf of any particular industry segment.

8. NERC states that its clarification to add a criterion for the Canadian Representative of the Standards Committee is consistent with the definition of “Canadian” in section 200 of the NERC Rules of Procedure, and that the purpose of this change is to increase the likelihood that the Canadian Representative is familiar with Canadian issues. NERC further states that the purpose of its proposal is to simplify the process for managing special Standards Committee elections and to improve efficiency and result in shorter vacancies for these positions.

9. NERC also proposes to incorporate new *Appendix 3D Registered Ballot Body Criteria* into the NERC Rules of Procedure. NERC explains that on September 3, 2010, the Commission approved NERC’s Standards Process Manual to replace the Reliability Standards Development Procedure Version 7, and that the Standards Process Manual did not include registered ballot body criteria.⁶ NERC believes that it is appropriate to re-incorporate the Registered Ballot Body Criteria into the NERC Rules of Procedure with certain modifications that are intended to add clarity and bring the criteria up to date with changes in the industry.

10. The proposed changes include: (1) replacing the term “persons” (in addition to entities) with “individuals” in the criteria of potential Registered Ballot Body members for clarity purposes; (2) clarifying the segment qualification guidelines to state that after members of each segment are selected, registered participants may apply to change those segments annually on a schedule determined by the Standards Committee; (3) expanding the criteria for Regional Transmission Organizations to include Independent System Operators; (4) allowing agents or associations to represent groups of load serving entities; (5) allowing agents or associations to represent groups of electricity generators; and (6) allowing agents or associations to represent groups of electricity brokers, aggregators, or marketers, and also a new provision for inclusion of demand-side management providers.

⁶ *North American Electric Reliability Corp.*, 132 FERC ¶ 61,200 (2010).

11. In addition, NERC proposes to add a provision to clarify that: (1) individuals or entities such as consultants, vendors, or trade associations, providing products or services related to Bulk-Power System reliability within the previous 12 months to another entity eligible to join Segments 1 through 7 (and that are therefore eligible to join one of these segments) are not eligible to join Segment 8; (2) individuals or entities that elect to participate in Segment 8 are not eligible to participate in multiple segments; and (3) individuals who are employed by an entity registered in another segment are not eligible to join Segment 8.⁷ NERC also proposes to add a new criterion in Segment 5 – Electric Generators allowing agents or associations to represent groups of electric generators and, for clarity, to expand the language to expressly include variable and other renewable resources. Also, NERC proposes to replace the phrase Regional Reliability Organizations in Segment 10 with Regional Entities.⁸

III. Notice and Responsive Pleadings

12. Notice of NERC’s June 13, 2011, Filing was published in the *Federal Register*, 76 Fed. Reg. 35,876 (2011), with interventions and protests due on or before July 5, 2011. A motion to intervene was timely filed by American Municipal Power, Inc. (AMP). Louisville Gas and Electric Company and Kentucky Utilities Company (LG&E) filed a timely comment but did not seek to intervene in this proceeding.

13. LG&E supports NERC’s proposal except for two specific changes to the *Appendix 3D Registered Ballot Body Criteria*. LG&E indicates that it does not support the proposed language regarding Segment 5 – Electric Generators. Specifically, LG&E states that the phrase “including variable and other renewable resources” is unnecessary, only serves to make such generators a special class without justification, and believes the inclusion of this language creates the opportunity to discriminate against those generators

⁷ In accordance with *Appendix 3D*, each participant chooses which of the Segments it wishes to join. NERC reviews the choices and makes a determination of whether the selection satisfies at least one of the guidelines to belong to that Segment. If a guideline is satisfied, the entity or individual will then be “credentialed” to participate as a voting member of that Segment. The Segments include: Segment 1 - Transmission Owners, Segment 2 - Regional Transmission Organizations and Independent System Operators, Segment 3 - Load-Serving Entities, Segment 4 - Transmission Dependent Utilities, Segment 5 - Electric Generators, Segment 6 - Electricity Brokers, Aggregators, and Marketers, Segment 7 - Large Electricity End Users, Segment 8 - Small Electricity Users, Segment 9 - Federal, State and Provincial Regulatory or other Government Entities, and Segment 10 - Regional Entities.

⁸ NERC Petition at 5.

that do not fit within this special class. LG&E states that if such generators produce energy, then they fall into this segment without the additional language.

14. In addition, LG&E suggests that “agents or associations” representing groups of Segment-Eligible entities should be precluded from casting ballots where the agent or association’s membership consists of entities eligible to cast their own individual ballots as a Segment-Eligible entity. LG&E suggests that this would prevent a registered ballot body member from having more than one vote. LG&E suggests that the provision should state that “(a) affiliated entities may collectively be registered only once within a segment; (b) agents and associations may not register within the same segment in which any entity or individual represented by the agent or association is also registered; and (c) consultants, employees and vendors providing services related to bulk power system reliability within the previous 12 months to another entity or individual may not register within the same segment in which the entity or individual receiving those products or services is also registered.”⁹

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motion to intervene filed by AMP serves to make it a party to this proceeding. In addition, we accept LG&E’s timely filed comments.

B. Commission Determination

16. Pursuant to the Commission’s authority under section 215(f) of the FPA and section 39.10(a) of the Commission’s regulations, we approve the proposed modifications to the NERC Rules of Procedure. We agree with NERC that the modifications to *Appendix 3B* relative to the changes to the roles of the Chair and Vice Chair of the Standards Committee will eliminate the potential conflict of interest and ensure that each industry segment maintain the appropriate number of representative on the Standards Committee. In addition, we accept as reasonable NERC’s addition of a criterion to ensure that each Canadian representative on the Standards Committee has Canadian citizenship and resides in Canada. We also agree with NERC that the amendments simplify the process for managing special elections to fill vacant positions that occur during the course of the year.

⁹ LG&E Comments at 3-4.

17. With regard to LG&E's comment, we are not persuaded that the language "including variable and other renewable resources" creates the opportunity to discriminate against other generators who do not fit within this class. Rather, it is reasonably understood that this language helps to clarify the qualifications for membership in Segment 5 by providing one example of acceptable types of generation and additionally signals to variable and other renewable resource generators that they are able to participate in this voting Segment.

18. Further, we accept NERC's proposal to include "agents and associations" in the individual Segments in *Appendix 3D* of the NERC Rules of Procedure. While the Commission agrees that the addition of Agents or Trade Associations as voting members may impact several of the smaller segments, we are not persuaded that the proposed changes will have a material impact on the balance or fairness of those individual voting segments. Rather, NERC's addition of these entities is consistent with the Commission's general policy of inclusiveness with regard to the NERC Standards Development Process.¹⁰ Recognizing that Agents and Trade Associations may provide additional perspectives of their members, some of which may not be participating in, or represented by the NERC Standards Development Process, we believe that the addition of these entities to the Registered Ballot Body Criteria may ultimately lead to the creation of more balanced Reliability Standards. For these reasons, we will not adopt LG&E's suggestions with regard to this issue.

The Commission orders:

NERC's petition is hereby approved, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁰ See Order No. 672 at P 268; *ERO Certification Order*, 116 FERC ¶ 61,062 at P 93.