

122 FERC ¶ 61,101
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

North American Electric Reliability Corporation

Docket No. RR08-3-000

ORDER APPROVING AMENDMENT TO THE NERC STATEMENT OF
COMPLIANCE REGISTRY CRITERIA

(Issued February 5, 2008)

1. On November 13, 2007, the North American Electric Reliability Corporation (NERC) submitted a request to amend the NERC Statement of Compliance Registry Criteria (Registry Criteria). The proposed amendment would add the definition of interchange authority, as approved in Order No. 693, as a function type to the Registry Criteria.¹ In this order we approve NERC's proposed amendment.

I. Background

2. On July 20, 2006, the Commission issued an order² certifying NERC as the Electric Reliability Organization (ERO) for the United States pursuant to section 215 of the Federal Power Act (FPA).³ In the *Certification Order*, the Commission found NERC's compliance registry process to be a reasonable means to ensure that the proper entities are registered and that each knows which Commission-approved Reliability Standard(s) are applicable to it.⁴ The Commission also approved NERC's Rules of

¹ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242 (2007), *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

² *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062 (*Certification Order*), *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006).

³ 16 U.S.C. § 824o (2000 & Supp.V 2005).

⁴ Order No. 693 at P 689.

Procedure, including section 500 (Organization Registration and Certification), subject to certain revisions. Section 501.3.4 of NERC's Rules of Procedure provides that an entity may "appeal" a NERC registration determination to the "applicable governmental authority."

3. In Order No. 693, the Commission formally approved NERC's compliance registry process, the related Registry Criteria and NERC's Glossary of Terms.⁵ Pursuant to the registration process, NERC, with the assistance of the Regional Entities, identifies users, owners and operators of the Bulk-Power System that must comply with specific Commission-approved Reliability Standards based on the functional activities of the user, owner, or operator. Further, NERC developed Registry Criteria that describe how NERC will identify organizations for registration, including guidelines for determining when an entity should be excluded. The Commission explained that it would rely on the NERC registration process to identify the set of entities that are responsible for compliance with particular Reliability Standards.⁶ The Commission approved NERC's latest version of its Registry Criteria on July 19, 2007.⁷

4. Most relevant to this proceeding, Order No. 693 approved the definition of an interchange authority and the corresponding Reliability Standards that apply to such an entity. The NERC Glossary defines interchange authority as "the responsible entity that authorizes implementation of valid and balanced Interchange Schedules between Balancing Authority Areas, and ensures communication of Interchange information for reliability assessment purposes."⁸ The Commission found that this definition indicates that an interchange authority is intended to provide essentially a quality control function in verifying and approving interchange schedules and communicating that information.⁹ The Commission also found that any interchange authority should be registered by the ERO in the ERO compliance registry.¹⁰ In the instant filing, NERC seeks to add this definition of interchange authority to its Registry Criteria.

⁵ *Id.* P 92-96.

⁶ *Id.* P 95.

⁷ *Mandatory Reliability Standards for the Bulk-Power System*, 120 FERC ¶ 61,065 (2007).

⁸ NERC Glossary at 9.

⁹ Order No. 693 at P 801.

¹⁰ *Id.*

II. Notice of Filings and Responsive Pleadings

5. Notice of NERC's request to amend the NERC Registry Criteria was published in the *Federal Register*, 72 Fed. Reg. 67,926 (2007), with interventions, comments, and protests due on or before December 4, 2007. Wisconsin Electric Power Company filed a motion to intervene without comments. Motions to intervene and protests were filed by the Electric Power Supply Association (EPSA) and the Midwest Independent System Operator, Inc. (Midwest ISO). NERC filed an answer to those protests on December 17, 2007.

III. Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept NERC's answer and will, therefore, reject it.

B. NERC's Amendment

8. NERC states that it is adding interchange authority as a functional entity included in the NERC Registry Criteria as requested in Order No. 693. NERC states that it has further clarified the role and responsibilities of an interchange authority in the NERC Functional Model Version 3,¹¹ approved by the NERC Board of Trustees on February 13, 2007. According to NERC, the amendment to the Registry Criteria will enable NERC and the Regional Entities to ensure that all entities meeting the criteria of an interchange authority are included in the NERC Compliance Registry and are subject to the Commission-approved mandatory and enforceable Reliability Standards applicable to such entities. NERC states that this amendment is the only change that it is making to the criteria.

Protests

9. Midwest ISO states that while it is not concerned with the definition of interchange authority, it is concerned with the broad brush application of the term to the Registry Criteria without opportunity for review of the effects such an application may

¹¹ The Functional Model describes the specific categories of users, owners and operators found in the Registry Criteria. *See* Order No. 693 at P 94.

have on entities involved in interchange schedules. Midwest ISO requests that, if NERC determines that all balancing authorities will be considered interchange authorities, the Commission should require NERC to allow for industry comment on the matter.

10. Midwest ISO states that some balancing authorities, acting under scheduling agent waivers, rely on their scheduling agent and tagging service vendors to perform many of the functions associated with an interchange authority. Midwest ISO contends that applying the definition of interchange authority to all balancing authorities would make them responsible for requirements over which they have no control. For example, Midwest ISO states that a balancing authority would have no means by which to ensure its tagging service vendor's compliance with Critical Infrastructure Protection Reliability Standards. The Midwest ISO also states that, under the proposed scheme, NERC would have to audit many balancing authorities as opposed to only a handful of tagging service vendors who perform their work.

11. EPSA states that it is concerned with the immediate effectiveness of a NERC notice of intent to register an interchange authority. EPSA states that, under NERC's current procedures, an entity must comply with NERC's Reliability Standards on the date it is registered, immediately subjecting the entity to up to \$1 million in penalties for each day that it remains noncompliant. EPSA contends that this leaves no time for an entity to become compliant. EPSA therefore requests that the Commission require NERC to issue a notice of intent to register an entity that it will register such entity 90 days after the notice is issued or, if the registration is appealed, 90 days after a final decision has been issued. EPSA contends that NERC should allow the registered entity to appeal the registration within 21 days after the notice of intent.

Commission Determination

12. We approve of NERC's proposed amendment to its Statement of Compliance Registry Criteria. In Order No. 693, the Commission stated that any entity meeting the definition of interchange authority "should be registered by the ERO in the ERO compliance registry."¹² NERC's incorporation of this definition into its Registry Criteria is consistent with that finding.

13. Midwest ISO raises concerns regarding how the ERO will implement the registration of interchange authorities. NERC has not indicated in its filing that it intends to register all balancing authorities, and we believe that Midwest ISO's concerns are speculative. Thus, the Commission is not persuaded by Midwest ISO's comments to delay the approval of the ERO's proposed modification of the Registry Criteria pending further stakeholder input. That being said, Midwest ISO may raise its concerns directly

¹² Order No. 693 at P 801.

with the ERO either informally, or if it is registered as an interchange authority, formally through the registration procedures.

14. The Commission will also deny EPSA's protest. In eliminating the exemption of qualifying facilities (QFs) from the requirements of section 215 of the FPA, and thus allowing QFs to be put on the Compliance Registry, the Commission stated that whether a stay of a registry decision should be granted depends on a number of factors that are fact specific, therefore such a decision is more appropriately made on a case-by-case basis.¹³ In Order No. 696, the Commission determined that it was premature to decide whether an appeal to the Commission should stay a NERC decision that a particular QF be placed on the compliance registry. However, this determination was without prejudice to any entity seeking a stay at the time it files an appeal of a NERC determination with which it disagrees. EPSA has provided no compelling arguments why we should treat the registration of interchange authorities differently, therefore, we deny its request.

The Commission orders:

NERC's modifications to its Statement of Compliance Registry Criteria (Revision 4.0) are hereby approved, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹³ See *Applicability of FPA section 215 to Qualifying Small Power Production and Cogeneration Facilities*, Order No. 696, FERC Stats. & Regs. ¶ 61,248, at P 36 (denying a blanket stay for newly-registered qualifying facilities), *order denying stay* 119 FERC ¶ 61,320 (2007). See also *Mosaic Fertilizer, LLC*, 121 FERC ¶ 61,058, at P 35 (2007).