

131 FERC ¶ 61,231
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Mandatory Reliability Standards for the Bulk
Power System

Docket No. RM06-16-012

ORDER DENYING REHEARING AND GRANTING PARTIAL CLARIFICATION,
DENYING REQUEST FOR STAY, AND GRANTING EXTENSION OF TIME

(Issued June 11, 2010)

1. In a March 18, 2010 order,¹ pursuant to section 39.5(g) of the Commission's regulations,² the Commission directed the North American Electric Reliability Corporation (NERC) to submit a modification to Table I, footnote b of Transmission Planning (TPL) Reliability Standard TPL-002-0 that is responsive to a Commission directive regarding footnote b set forth in Order No. 693, by June 30, 2010.³ NERC and other entities seek rehearing and clarification of the March 18, 2010 Order. In addition, NERC petitioned the Commission to stay the directives of the March 18, 2010 Order.

2. We deny the requests for rehearing and grant partial clarification. In the March 18, 2010 Order, the Commission explained that almost three years had passed since the Commission issued Order No. 693 and the directive to develop a modification to footnote b of Table I of Reliability Standard TPL-002-0. The March 18, 2010 Order established a June 30, 2010 compliance deadline based on a target date for completion of modifications to TPL Reliability Standards stated by NERC in an informational filing

¹ *North American Electric Reliability Corp.*, 130 FERC ¶ 61,200 (2010) (March 18, 2010 Order).

² 18 C.F.R. § 39.5(g) (2009).

³ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

that NERC submitted to the Commission.⁴ We continue to believe that a compliance deadline in these circumstances is warranted and reasonable.

3. We deny a stay of the compliance deadline set forth in the March 18, 2010 Order, as requested by NERC. As explained herein, and based on our decision herein, we do not believe that a technical conference will be necessary, or that irreparable injury will occur without a stay. Further, we believe that it is in the public interest that NERC expeditiously provide the Commission with a clarification to Table I of Reliability Standard TPL-002-0. While we deny the request for an open-ended stay of the compliance deadline, we believe that additional time is warranted to assure that NERC develops a modification that is responsive to the Commission's directive. Thus, as discussed below, we grant NERC an nine-month extension of time of the compliance deadline, until March 31, 2011.

I. Background

4. On April 4, 2006, NERC, as the Commission-certified Electric Reliability Organization (ERO) in the United States, submitted a petition seeking approval of 107 proposed Reliability Standards, including TPL-001-0 through TPL-004-0.⁵ On March 16, 2007, the Commission issued Order No. 693 approving 83 of these 107 Reliability Standards, and directing other actions related to 56 of the approved Reliability Standards, including modifications to Reliability Standards TPL-001-0 through TPL-004-0.

5. Reliability Standard TPL-002-0 addresses system planning related to performance under contingency conditions involving an event associated with a single element. Requirement R1 of TPL-002-0 requires that each Planning Authority and Transmission Planner "demonstrate through a valid assessment that its portion of the interconnected transmission system is planned such that the Network can be operated to supply projected customer demands and projected Firm (non-recallable reserved) Transmission Services, at all demand levels over the range of forecast system demands, under the contingency conditions as defined in Category B of Table I." Table I (Transmission System Standards – Normal and Emergency Conditions) identifies different Categories of contingencies and allowable system impacts in the planning process. Table I further provides that a

⁴ *Citing* NERC Informational Filing of 2010 Development Plan Pursuant to Section 310 of the NERC Rules of Procedure at 8-9, Docket No. RM06-16-000, *et al.*

⁵ *See Petition of the North American Electric Reliability Council and North American Electric Reliability Corporation for Approval of Reliability Standards*, April 4, 2006 at 28-29, Docket No. RM06-16-000.

Category B (single) contingency must not result in cascading outages or “loss of demand or curtail firm transfers.” Table I, footnote b states:

Planned or controlled interruption of electric supply to radial customers or some local Network customers, connected to or supplied by the Faulted element or by the affected area, may occur in certain areas without impacting the overall reliability of the interconnected transmission systems.
...

6. In Order No. 693, the Commission directed NERC to develop a modification to clarify Table I, footnote b.⁶

7. In the March 18, 2010 Order, the Commission, pursuant to section 39.5(g) of the Commission’s regulations,⁷ directed the ERO to submit, by June 30, 2010, a modification to Table I, footnote b of Reliability Standard TPL-002-0 that complies with the Commission’s directive as set forth in Order No. 693 regarding the loss of non-consequential load in the event of a single contingency.⁸ In the March 18, 2010 Order, the Commission recognized the efforts of NERC and industry stakeholders, through the ERO’s Reliability Standards Development Process, in the revision of TPL standards. However, the Commission found that clarification of the issue of the loss of non-consequential load in the event of a single contingency should not be further delayed by the development process related to other revisions related to the TPL standards. Accordingly, the Commission stated if the ERO is unable to submit the modified set of TPL Reliability Standards that address all of the modifications in the second quarter of 2010, as represented in its December 2, 2009 Informational Filing, the ERO must file a compliant modification to Table 1, footnote b as a “stand alone” modification to the currently effective TPL-002-0 Reliability Standard.

⁶ Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1794. See March 18, 2010 Order, 130 FERC ¶ 61,200 at P 5-7 for additional background.

⁷ 18 C.F.R. § 39.5(g) (2009).

⁸ In Order No. 693, the Commission explained that the term “consequential load loss” referred to “the load that is directly served by the elements that are removed from service as a result of the contingency.” Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1794, n.461.

II. Rehearing Requests

8. Requests for rehearing and/or clarification of the Commission's March 18, 2010 Order were filed by NERC, Georgia Transmission Corporation and Georgia System Operations Corporation (Georgia Companies), and Duke Carolinas (Duke).⁹

A. NERC Requests

9. NERC requests rehearing of the March 18, 2010 Order to afford it the necessary time to incorporate changes to the TPL-002 Reliability Standard, through the Reliability Standards Development Process, that are necessary to achieve Bulk-Power System reliability while deferring to the technical expertise of NERC with respect to the development of the content of the Reliability Standard. NERC argues that the Commission's directive "is overly prescriptive" and "leaves NERC with no alternative" by requiring that the Reliability Standard "should not allow an entity to plan for the loss of non-consequential load in the event of a single contingency."¹⁰ Thus, NERC contends that "[n]ot only is FERC abusing its discretion by mandating that a specific directive be made, the Commission's decision to direct such a specific modification does not include a technical explanation for *why* the specific directive is necessary to ensure bulk power system reliability."¹¹

10. In support of its rehearing request, NERC states that the Commission's directive to disallow the loss of non-consequential firm load for an single contingency presents a question whether the Reliability Standard would still serve the purpose of ensuring the Reliable Operation of the Bulk-Power System. NERC characterizes the Commission's directive as setting forth an expectation that NERC "is to implement standards that address *all* loss of load at costs that may not be commensurate with bulk power system

⁹ Tampa Electric Company filed a motion to intervene and comments in support of the NERC request for rehearing and clarification. Similarly, the eight Regional Entities (ReliabilityFirst Corporation, Midwest Reliability Organization, Florida Reliability Coordinating Council, Texas Regional Entity, Northeast Power Coordinating Council, Inc., Western Electricity Coordinating Council, SERC Reliability Corporation, and Southwest Power Pool Regional Entity) jointly filed a motion to intervene and comments in support of the NERC pleading, and Wisconsin Electric filed comments in support of the NERC pleadings.

¹⁰ NERC Rehearing Request at 3 (quoting March 18, 2010 Order, 130 FERC ¶ 61,200 at P 7).

¹¹ NERC Rehearing Request at 3-4 (footnote omitted) (emphasis in original).

reliability, as statutorily defined.”¹² Additionally, NERC maintains that the resultant infrastructure improvement costs at the local level to meet the performance expectations at the Bulk-Power System level must be considered. NERC states that this issue is likely to be of consequence at the “fringes” of the various systems, and an absolute requirement could impose significant costs on relatively small systems without a resultant impact on Bulk-Power System reliability. As a result, NERC, referencing concerns raised by Entergy and Northern Indiana in the Order No. 693 rulemaking,¹³ states that it must assess whether prohibiting the loss of non-consequential load for a single contingency is in the best interest of reliability before it can present such a modification to the Commission for consideration.

11. NERC also argues that the Commission directive contravenes the Commission’s statement in Order No. 693 that it would give due weight to the technical expertise of the ERO with respect to the content of a Reliability Standard. NERC notes that, in Order No. 693, the Commission stated that it was not “mandating a particular outcome” and that the ERO could respond to a Commission directive with an alternative approach provided that the ERO “explains how the alternative produces a result that is as effective or more effective than the Commission’s example or directive.”¹⁴ According to NERC, the Commission is precluding NERC from exercising its technical expertise by directing that NERC implement a specific Commission directive without regard to nature and scope. NERC asks that the Commission grant rehearing to allow NERC the necessary time to evaluate Reliability Standard TPL-002 and propose an equally effective alternative to the directive, as appropriate.

12. NERC also requests that the Commission stay the directives in the March 18, 2010 Order until such time that a technical conference with opportunity for written comments can be held to afford an opportunity to examine the technical aspects of the proposed modification. NERC states that the test for determining whether a motion for stay should be granted is: (1) whether the moving party will suffer irreparable injury without the stay; (2) whether issuing the stay will substantially harm other parties; and (3) whether a stay is in the public interest. NERC maintains that it is irreparably harmed because the March 18, 2010 Order exempts any alternative means of compliance – even though NERC was granted the authority to propose alternatives in the event that an equivalent or better, alternative proposal to a Commission directive is available. NERC states that granting the motion for stay and agreeing to hold a technical conference will provide

¹² *Id.* at 5 (emphasis in original).

¹³ See Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1780-1781, 1792-1794.

¹⁴ NERC Rehearing Request at 8 (citing Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 31).

NERC and the industry the necessary time to fully evaluate the technical considerations of the Commission's directive and its impact on reliability. According to NERC, the stay would not harm other parties. Further, NERC contends that granting a stay is in the public interest and should be granted in order to afford NERC an opportunity to consider the Commission's directive and a proposal that is best for the reliable operation of the bulk power system.

B. Duke Carolinas

13. Duke Carolinas contends that the Commission has not given due weight to the technical expertise of NERC in modifying Reliability Standard TPL-002-0 and that it has not permitted NERC to uphold its rules that provide for reasonable notice and opportunity for public comment and due process in developing and modifying Reliability Standards. Duke Carolinas also states that the Commission has not explained how the March 18, 2010 Order gives due weight to the technical expertise of NERC as the ERO. Duke Carolinas requests that the Commission grant rehearing on this issue in order to provide NERC with adequate time to (1) provide its members with reasonable notice and opportunity to comment on a modified standard using its Commission-approved Reliability Standards Development Process and (2) submit such modified standard to the Commission.

14. Duke Carolinas also contends that the Commission's directive to prohibit loss of non-consequential load in planning protocols appears to extend the Commission's reach beyond its review of measures that are needed for "reliable operation" of the Bulk-Power System as defined under section 215 of the FPA. Duke Carolinas maintains that such a directive constitutes an overreaching of the Commission's jurisdiction under section 215 of the FPA into the jurisdiction of state commissions, which generally have responsibility for overseeing quality of service issues applicable to local load.¹⁵

15. Duke Carolinas also maintains that the Commission's directive to prohibit loss of non-consequential load would implicitly require construction of additional transmission infrastructure in violation of section 215 of the FPA, and without allowing adequate time for such construction. Duke Carolinas requests that the Commission clarify that its March 18, 2010 Order is not intended to require the construction of new transmission facilities to meet any transmission system performance requirements that are contained in a Reliability Standard concerning system performance following the loss of a single bulk electric system element.

¹⁵ Duke Carolinas requests that the Commission clarify that the scope of its jurisdiction does not extend into the jurisdiction of state commissions that traditionally regulate local load quality of service matters.

C. Georgia Companies

16. Georgia Companies request rehearing of the March 18, 2010 Order because the deadline would not enable the Commission to benefit from, or defer to, the ERO's technical expertise, because the deadline would not afford sufficient time for the ERO to solicit and consider industry comments, perform its technical evaluation of the modification, and balance the affected interests. In addition to exceeding the Commission's statutory authority, Georgia Companies contend that the March 18, 2010 Order is inconsistent with the Commission's own implementing orders that explicitly require NERC's in depth technical analysis of Reliability Standards when developing them.¹⁶

17. Georgia Companies maintain that by providing too little opportunity for transmission system owners, operators and other industry participants to evaluate technical soundness and reliability impacts of the modification, the March 18, 2010 Order does not serve to advance reliability and may have unintended consequences leading to unpredictable adverse effects on the Bulk Power System.

III. Commission Determination

A. Requests for Rehearing and Clarification

18. We deny rehearing and grant partial clarification of the March 18, 2010 Order. As an initial matter, the March 18, 2010 Order set a compliance deadline for the substantive directive set forth in Order No. 693. Many of the arguments raised on rehearing, however, challenge the substance of the Order No. 693 directive and contend that the Order No. 693 directive is overly prescriptive. These arguments are beyond the scope of the March 18, 2010 Order, which simply set a compliance deadline of June 30, 2010 pursuant to section 39.5(g) of the Commission's regulations.¹⁷

19. Further, we reject the arguments of NERC, Duke Carolinas and Georgia Companies that the Commission's June 30, 2010 compliance deadline effectively denies the ERO the ability to exercise its technical expertise to develop an appropriate modification to the Reliability Standard. As explained in the March 18, 2010 Order, approximately three years have passed since the Commission directed NERC to develop the modification to Table I of Reliability Standard TPL-002-0. The Commission set the compliance deadline based on a schedule NERC filed with the Commission. In these

¹⁶ Georgia Companies Request at 6.

¹⁷ 18 C.F.R. § 39.5(g).

circumstances, we reject the claim that the Commission's compliance deadline effectively denies NERC the ability to exercise its technical expertise.

20. Further, NERC, and Duke Carolinas and Georgia Companies are mistaken in their claim that the Commission directive denies the ERO to develop alternatives that are equally effective. According to NERC, the Commission's directive "is overly prescriptive by requiring 'that the transmission planning Reliability Standard should not allow an entity to plan for the loss of non-consequential load in the event of a single contingency.'"¹⁸ The language quoted by NERC, however, is one passage of a larger discussion in Order No. 693, as follows:

Based on the record before us, we believe that the transmission planning Reliability Standard should not allow an entity to plan for the loss of non-consequential load in the event of a single contingency. The Commission directs the ERO to clarify the Reliability Standard. Regarding the comments of Entergy and Northern Indiana that the Reliability Standard should allow entities to plan for the loss of firm service for a single contingency, the Commission finds that their comments may be considered through the Reliability Standards development process. However, we strongly discourage an approach that reflects the lowest common denominator. The Commission also clarifies that an entity may seek a regional difference to the Reliability Standard from the ERO for case-specific circumstances.¹⁹

In this passage of Order No. 693, the Commission articulated that the transmission planning Reliability Standard should not allow an entity to plan for the loss of non-consequential firm load in the event of a single contingency. NERC, in comments submitted in the Order No. 693 rulemaking proceeding, recognized that a "practice that permits the planned interruption of 'firm transmission service' is a misapplication of the Reliability Standard."²⁰ Furthermore, NERC stated that the "standards, including footnote (b), are not intended to endorse or approve planning the interconnection using radial configurations as a preferred method for reliably serving load, nor do NERC

¹⁸ NERC Petition at 3 (quoting Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1794).

¹⁹ Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1794 (footnotes omitted).

²⁰ Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P1792 (citing NERC comments to Staff Preliminary Assessment at 57-58).

standards consider load shedding acceptable for a single contingency.”²¹ Thus, the Commission’s statements in Order No. 693 reflected the ERO’s technical opinion on the matter.

21. At the same time, the above passage from Order No. 693 acknowledged that the ERO could consider the comments of Entergy and Northern Indiana regarding planning for the loss of firm service “at the fringes of various systems,” as NERC now characterizes the issue.²² However, the Commission expressed concern that whatever approach is chosen by the ERO does not reflect a “lowest common denominator,” i.e., “[t]he proposed Reliability Standard must not simply reflect a compromise in the ERO’s Reliability Standard development process based on the least effective North American practice – the so-called ‘lowest common denominator’ – if such practice does not adequately protect Bulk-Power System reliability.”²³ Moreover, the Commission, in the same passage from Order No. 693, then provided a clarification that an entity may seek a regional difference to the Reliability Standard from the ERO for case-specific circumstances. We believe that a regional difference, or a case-specific exception process that can be technically justified, to plan for the loss of firm service “at the fringes of various systems” would be an acceptable approach. Thus, the Commission did not dictate a single solution as NERC and others now claim. In any event, NERC must provide a strong technical justification for its proposal.

22. On rehearing, Duke Carolinas raises a concern that the March 18, 2010 Order constitutes an overreaching of the Commission’s jurisdiction under section 215 of the FPA into the jurisdiction of state commissions which generally have responsibility for overseeing quality of service issues applicable to local load. Duke Carolinas also requests that the Commission clarify that its March 18, 2010 Order is not intended to require the construction of new transmission facilities to meet any transmission system performance requirements that are contained in a Reliability Standard. As previously stated, the March 18, 2010 Order simply set a compliance deadline for the substantive directive set forth in Order No. 693. Thus, Duke Carolina’s request is beyond the scope of the March 18, 2010 Order. Moreover, we believe that Duke Carolina’s concerns are adequately addressed by the discussion above.

²¹ *Id.*

²² See NERC Rehearing Request at 5.

²³ *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 329, *order on reh’g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

B. Request for Stay

23. NERC moves for stay of the compliance deadline directed in the March 18, 2010 order until such time that the Commission convenes a technical conference followed by opportunity for written comments. As noted by NERC, the Commission may grant a stay when “justice so requires.”²⁴ The test for determining whether a motion for stay should be granted is (1) whether the moving party will suffer irreparable injury without the stay; (2) whether issuing the stay will substantially harm other parties; and (3) whether a stay is in the public interest.²⁵

24. We find that NERC has not demonstrated that a stay of the March 18, 2010 Order is warranted. NERC claims that it will suffer irreparable harm because the March 18, 2010 Order challenges NERC’s ability to serve as the ERO under section 215 of the FPA by “directly challeng[ing] NERC’s authority to write standards given its technical expertise” as the ERO.²⁶ According to NERC, the March 18, 2010 Order narrowly prescribes a directive that precludes the development of alternatives based on the ERO’s expertise. However, as discussed above, the March 18, 2010 Order only directed a compliance deadline of June 30, 2010. The substantive directive to develop a modification to TPL-002-0 was set forth in Order No. 693. Further, for the reasons discussed above, we disagree that the earlier Commission order precludes the ERO from exercising its technical expertise to develop Reliability Standards. Thus, we conclude that NERC has not demonstrated that irreparable harm will result without a stay.

25. Further, we will not convene a technical conference on the Commission’s directive set forth in Order No. 693 regarding Table I, footnote b of Reliability Standard TPL-002-0. While we agree that there are technical considerations that must be addressed as NERC conducts the standards development process, NERC has not demonstrated that a technical conference at the Commission is necessary or in the public interest.

26. While we deny the request for an open-ended stay of the March 18, 2010 Order, upon further consideration, we believe that limited additional time is warranted to assure that the ERO develops a modification to TPL-002-0 that is responsive to the

²⁴ Under section 705 of the Administrative Procedure Act, the Commission may stay its action when it finds that “justice so requires.” 5 U.S.C. § 705 (2006).

²⁵ See *Ameren Servs. Co.*, 127 FERC ¶ 61,121, at P 44 (2009) (citing *Pinnacle West Capital Corp.*, 115 FERC ¶ 61,064, at P 8 (2006)); see also *Columbia Gas Transmission LLC*, 129 FERC ¶ 61,021, at P 6 (2009); *Cal. Indep. Sys. Operator, Corp.*, 127 FERC ¶ 61,177, at P 39 (2009).

²⁶ NERC Rehearing Request at 10-11.

Commission's directive in Order No. 693. Accordingly, we grant NERC a nine-month extension of time of the compliance deadline, until March 31, 2011.

The Commission orders:

(A) The Commission hereby denies the requests for rehearing and grants partial clarification, as discussed in the body of the order.

(B) The Commission hereby denies NERC's request for a stay, as discussed in the body of the order.

(C) The Commission hereby grants an extension of the compliance deadline until March 31, 2011, as discussed in the body of the order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.