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March 11, 2010

Mark J. Langer Clerk
United States Court of Appeals
For the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue NW
Washington, DC 20001-2866

Re: *NRG Power Marketing LLC and Louisiana Generating LLC v. Federal Energy Regulatory Commission, Case No. 10-____*

Dear Mr. Langer:

Pursuant to Section 313(b) of the Federal Power Act, 16 U.S.C. § 825*l*(b) (2000), and Rule 15 of the Federal Rules of Appellate Procedure, NRG Power Marketing LLC and Louisiana Generating LLC hereby submit an original and four (4) copies of a Petition for Review of orders issued by the Federal Energy Regulatory Commission.

In addition, enclosed is Check No. 66111 in the amount of $450.00.

Copies of this filing have been served on the parties to the underlying agency proceeding.

Please do not hesitate to contact me at the number above if you have any questions concerning this filing.

Respectfully submitted,

Christopher C. O'Hara
Assistant General Counsel - Regulatory and Regulatory Compliance Officer
NRG Energy, Inc.
District of Columbia Bar No. 452386

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NRG Power Marketing LLC and Louisiana Generating LLC,	)	
Petitioners,	)	
v.	)	Case No. 10-_____
Federal Energy Regulatory Commission,	)	
Respondent.	)	

PETITION FOR REVIEW

Pursuant to section 313(b) of the Federal Power Act ("FPA"), 16 U.S.C. § 825l(b) (2008), Rule 15 of the Federal Rules of Appellate Procedure ("FRAP"), and 28 U.S.C §§ 2342-2344, NRG Power Marketing LLC and Louisiana Generating LLC (collectively the "NRG Companies"), hereby submit this petition for review of the following orders issued by the Federal Energy Regulatory Commission ("FERC"), copies of which are attached hereto as Exhibit A:

1. *Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards*, Order No. 713, 124 FERC ¶ 61,071 (July 21, 2008);

2. *Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards*, Order No. 713-A, Final Rule, 126 FERC ¶ 61,252 (March 19, 2009); and

3. *Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards*, Order No. 713-B, Order Denying Request for Rehearing and Clarification, 130 FERC ¶ 61,032 (January 21, 2010).

Respondent issued these two Orders in Docket No. RM08-7-000, *et al.*

These orders involve FERC's approval of "Transmission Load Relief," or TLR, reliability standards submitted by the North American Electric Reliability Corporation, pursuant to section 215 of the FPA. The TLR standards accepted by FERC codify procedures for curtailing electricity contracts at times when available transmission capacity is less than the demand to send power across the line. Curtailing excess flows of power is necessary to preserve reliability, but can have an adverse economic impact on the parties whose transactions are cut. FERC approved the standards over objections from the NRG Companies and others that: (1) FERC adopted the reliability standard without adequately considering its effects on competition, as required by FPA section 215; and (2) the standards violated the curtailment priorities established by prior FERC orders.

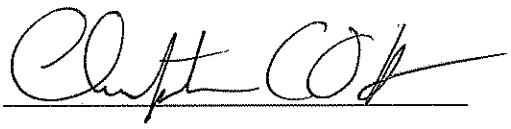
The NRG Companies are both "public utilities" as defined by section 201(e) of the FPA, 16 U.S.C. § 824(e) and are subject to the mandatory reliability rules adopted by FERC under FPA § 215. As such, the NRG Companies are subject to FERC's jurisdiction and aggrieved by certain of FERC's rulings in the above-referenced orders. Both of the NRG Companies sought rehearing of the

proceeding below. This Court has jurisdiction pursuant to 16 U.S.C. § 825*l*(b) and venue in this Court is proper pursuant to 28 U.S.C. § 2343.

In compliance with Rule 26.1 of the Federal Rules of Appellate Procedure, the NRG Companies are submitting their "Corporate Disclosure Statement" contemporaneously with this Petition for Review. Pursuant to Fed. R. App. P. 15(c), a copy of the Petition is enclosed to be served upon the Respondent, Robert H. Solomon, FERC Solicitor, 888 First Street, NE, Room 91-01, Washington, DC 20426. Pursuant to 18 C.F.R. § 385.2012 (2009) and 28 U.S.C. § 2112(a) (2006), the NRG Companies will deliver a date-stamped copy of this Petition to FERC.

Respectfully submitted,

THE NRG COMPANIES

By: 

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Dated: March 11, 2010

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NRG Power Marketing LLC and Louisiana Generating LLC,	)	
Petitioners,	)	
v.	)	Case No. 10-_____
Federal Energy Regulatory Commission,	)	
Respondent.	)	

DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Rule 26.1 of the Circuit Rules of the United States Court of Appeals for the District of Columbia Circuit, NRG Power Marketing LLC and Louisiana Generating LLC (collectively, the "NRG Companies") submit the following disclosure statement:

NRG Power Marketing LLC is a Delaware corporation with its principal office in Princeton, New Jersey, that engages in wholesale sales for capacity, energy, and ancillary services in interstate markets. Louisiana Generating LLC owns and operates power generation facilities in Louisiana, and engages in energy transactions throughout the region.

The NRG Companies are each a subsidiary of NRG Energy, Inc. ("NRG"), a publicly held corporation (NYSE: NRG), with its principal place of business

located at 211 Carnegie Center, Princeton, New Jersey 08540. At this time, only NRG Energy, Inc. has issued shares to the public. Neither of the NRG Companies have issued shares to the public. On January 7, 2010, BlackRock, Inc., a publicly held company, informed the Securities and Exchange Commission that it indirectly exercises voting rights with respect to 10% or more of the securities of NRG Energy, Inc. through its investment management subsidiaries. BlackRock, Inc. is a fiduciary investment management company.[1] BlackRock, Inc. later indicated that its schedule 13G filing may have been premature. No other publicly held company has a 10% or greater ownership interest in NRG or the NRG Companies.

Respectfully submitted,

THE NRG COMPANIES

By: _____

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Dated: March 11, 2010

[1] A copy of BlackRock, Inc.'s Schedule 13G filing is attached hereto as Exhibit B.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing documents on the Solicitor of the Federal Energy Regulatory Commission by overnight delivery and by electronic mail on each party to the proceeding below (as set forth in the attached list).

Dated at Princeton, New Jersey this 11th day of March, 2010.

Kathryn B. Wig

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EXHIBIT A

124 FERC ¶ 61,071
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 40

(Docket No. RM08-7-000; Order No. 713)

Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards

(Issued July 21, 2008)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: Pursuant to section 215 of the Federal Power Act, the Federal Energy Regulatory Commission (Commission) approves five of six modified Reliability Standards submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC). The Commission directs NERC to submit a filing that provides an explanation regarding one aspect of the sixth modified Reliability Standard submitted by NERC. The Commission also approves NERC's proposed interpretations of five specific requirements of Commission-approved Reliability Standards.

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

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SUPPLEMENTARY INFORMATION:

124 FERC ¶ 61,071
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards

Docket No. RM08-7-000

ORDER NO. 713

FINAL RULE

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards	Docket No. RM08-7-000

ORDER NO. 713

FINAL RULE

(Issued July 21, 2008)

1. Pursuant to section 215 of the Federal Power Act (FPA),[1] the Commission approves five of six modified Reliability Standards submitted to the Commission for review by the North American Electric Reliability Corporation (NERC). The five Reliability Standards pertain to interchange scheduling and coordination. The Commission directs NERC to submit a filing that provides an explanation regarding one aspect of the sixth modified Reliability Standard submitted by NERC, which pertains to transmission loading relief (TLR) procedures. The Final Rule also approves interpretations of five specific requirements of Commission-approved Reliability Standards.

[1] 16 U.S.C. 824o (2006).

I. Background

A. EPAct 2005 and Mandatory Reliability Standards

2. Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to propose Reliability Standards for the Commission's review. Once approved by the Commission, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[2]

3. Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO[3] and, subsequently, certified NERC as the ERO.[4] On April 4, 2006, as modified on August 28, 2006, NERC submitted to the Commission a petition seeking approval of 107 proposed Reliability Standards. On March 16, 2007, the Commission issued a Final Rule, Order No. 693, approving 83 of these 107 Reliability Standards and directing other action related to these Reliability Standards.[5] In addition, pursuant to

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[2] See FPA 215(e)(3), 16 U.S.C. 824o(e)(3) (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 (ERO Rehearing Order) (2006), appeal docketed sub nom. Alcoa, Inc. v. FERC, No. 06-1426 (D.C. Cir. Dec. 29, 2006).

[5] 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).

section 215(d)(5) of the FPA, the Commission directed NERC to develop modifications to 56 of the 83 approved Reliability Standards.

4. In April 2007, the Commission approved delegation agreements between NERC and each of the eight Regional Entities, including the Western Electricity Coordinating Council (WECC).[6] Pursuant to such agreements, the ERO delegated responsibility to the Regional Entities to carry out compliance monitoring and enforcement of the mandatory, Commission-approved Reliability Standards. In addition, the Commission approved as part of each delegation agreement a Regional Entity process for developing regional Reliability Standards.

5. NERC's Rules of Procedure provide that a person that is "directly and materially affected" by Bulk-Power System reliability may request an interpretation of a Reliability Standard.[7] The ERO's "standards process manager" will assemble a team with relevant expertise to address the clarification and also form a ballot pool. NERC's Rules provide that, within 45 days, the team will draft an interpretation of the Reliability Standard, with subsequent balloting. If approved by ballot, the interpretation is appended to the

[6] See North American Electric Reliability Corp., 119 FERC ¶ 61,060, order on reh'g, 120 FERC ¶ 61,260 (2007).

[7] NERC Rules of Procedure, Appendix 3A (Reliability Standards Development Procedure), at 26-27.

Reliability Standard and filed with the applicable regulatory authority for regulatory approval.[8]

B. NERC Filings

6. As explained in the Notice of Proposed Rulemaking (NOPR),[9] this rulemaking proceeding consolidates and addresses three NERC filings.

7. On December 19, 2007, NERC submitted for Commission approval five interpretations of requirements in four Commission-approved Reliability Standards: BAL-001-0 (Real Power Balancing Control Performance), Requirement R1; BAL-003-0 (Frequency Response and Bias), Requirement R3; BAL-005-0 (Automatic Generation Control), Requirement R17; and VAR-002-1 (Generator Operation for Maintaining Network Voltage Schedules), Requirements R1 and R2.[10] On April 15, 2008, NERC submitted a petition to withdraw the earlier request for approval of NERC's interpretation

[8] We note that the NERC board of trustees approved the interpretations of Reliability Standards submitted by NERC for approval in this proceeding. However, Appendix 3A of NERC's Rules of Procedure is silent on NERC board of trustees approval of interpretations before they are filed with the regulatory authority. The Commission is concerned that NERC's Rules of Procedure do not properly reflect this approval step.

[9] Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards, Notice of Proposed Rulemaking, 73 FR 22,856 (Apr. 28, 2008), FERC Stats. & Regs. ¶ 32,632 (2008) (NOPR).

[10] In its filing, NERC identifies the Reliability Standards together with NERC's proposed interpretations as BAL-001-0a, BAL-003-0a, BAL-005-0a, and VAR-002-1a.

of BAL-003-0, Requirement R17, and instead to approve a second interpretation of Requirement R17 submitted by NERC in the April 15 filing.

8. On December 21, 2007, NERC submitted for Commission approval modifications to Reliability Standard IRO-006-4 (Reliability Coordination – Transmission Loading Relief) that applies to balancing authorities, reliability coordinators, and transmission operators. According to NERC, the modifications "extract" from the Reliability Standard the business practices and commercial requirements from the current IRO-006-3 Reliability Standard. The business practices and commercial requirements have been transferred to a North American Energy Standards Board (NAESB) business practices document. The NAESB business practices and commercial requirements have been included in Version 001 of the NAESB Wholesale Electric Quadrant (WEQ) Standards which NAESB filed with the Commission on the same day, December 21, 2007.[11] Further, the modified Reliability Standard includes changes directed by the Commission in Order No. 693 related to the appropriateness of using the TLR procedure to mitigate violations of interconnection reliability operating limits (IROL).[12]

9. On December 26, 2007, NERC submitted for Commission approval modifications to five Reliability Standards from the "Interchange Scheduling" (INT) group of

[11] NAESB December 21, 2007 Filing, Docket No. RM05-5-005.

[12] An IROL is a system operating limit that, if violated, could lead to instability, uncontrolled separation, or cascading outages that adversely impact the reliability of the Bulk-Power System.

Reliability Standards: INT-001-3 (Interchange Information); INT-004-2 (Dynamic Interchange Transaction Modifications); INT-005-2 (Interchange Authority Distributes Arranged Interchange); INT-006-2 (Response to Interchange Authority); and INT-008-2 (Interchange Authority Distributes Status). NERC stated that the modifications to INT-001-3 and INT-004-2 eliminate waivers requested in 2002 under the voluntary Reliability Standards regime for entities in the WECC region. According to NERC, modifications to INT-005-2, INT-006-2, and INT-008-2 adjust reliability assessment time frames for proposed transactions within WECC.[13]

10. Each Reliability Standard that the ERO proposed to interpret or modify in this proceeding was approved by the Commission in Order No. 693.

C. Notice of Proposed Rulemaking

11. On April 21, 2008, the Commission issued a NOPR that proposed to approve the six modified Reliability Standards submitted to the Commission for approval by NERC and to approve NERC's proposed interpretations of five specific requirements of Commission-approved Reliability Standards. On May 16, 2008, the Commission supplemented the NOPR,[14] proposing to approve NERC's modified interpretation of Reliability Standard BAL-005-0, Requirement R17.

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[13] The Reliability Standards and interpretations addressed in this Final Rule are available on the Commission's eLibrary document retrieval system in Docket No. RM08-7-000 and also on NERC's website, http://www.nerc.com.

[14] Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements (continued)

12. In response to the NOPR, comments were filed by the following eight interested persons: Alcoa Inc. (Alcoa); Independent Electricity System Operator of Ontario (IESO); ISO/RTO Council; International Transmission Company, Michigan Electric Transmission Company, LLC and Midwest LLC (collectively, ITC); Lafayette Utilities and the Louisiana Energy and Power Authority (Lafayette and LEPA); NERC; NRG Companies;[15] and Southern Company Services, Inc. (Southern).

II. Discussion

A. NERC's December 19, 2007 Filing: Interpretations of Reliability Standards

13. As mentioned above, NERC submitted for Commission approval interpretations of five specific requirements in four Commission-approved Reliability Standards.

1. BAL-001-0 – Real Power Balancing Control Performance and BAL-003-0 – Frequency Response and Bias

14. The purpose of Reliability Standard BAL-001-0 is to maintain interconnection steady-state frequency within defined limits by balancing real power demand and supply in real-time.[16] It uses two averages, covering the one-minute and ten-minute area control

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of Four Reliability Standards, Supplemental Notice of Proposed Rulemaking, 73 FR 30,326 (May 27, 2008), FERC Stats. & Regs. ¶ 32,635 (2008) (Supplemental NOPR).

[15] NRG Companies includes Louisiana Generating LLC, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, NRG Sterlington Power LLC, and NRG Power Marketing, LLC.

[16] See Reliability Standard BAL-001-0. Each Reliability Standard developed by the ERO includes a "Purpose" statement.

error (ACE) performance (CPS1 and CPS2, respectively), as measures for determining compliance with its four Requirements. Requirement R1 of BAL-001-0 obligates each balancing authority, on a rolling twelve-month basis, to maintain its clock-minute averages of ACE, modified by its frequency bias and the interconnection frequency, within a specific limit based on historic performance.[17]

15. The purpose of Reliability Standard BAL-003-0 is to ensure that a balancing authority's frequency bias setting is accurately calculated to match its actual frequency response. Frequency bias may be calculated in a number of ways provided that the frequency bias is as close as practical to the frequency response. Requirement R3 of BAL-003-0 requires each balancing authority to operate its automatic generation control on "tie line frequency bias," unless such operation is adverse to system interconnection reliability.[18]

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[17] Frequency bias is an approximation, expressed in megawatts per 0.1 Hertz, of the frequency response of a balancing authority area which estimates the net change in power from the generators that is expected to occur with a change in interconnection frequency from the scheduled frequency (which is normally 60 Hertz).

[18] Automatic generation control refers to an automatic process whereby a balancing authority's mix and output of its generation and demand-side management is varied to offset the extent of supply and demand imbalances reflected in its ACE. North American Electric Reliability Corporation, 121 FERC ¶ 61,179, at P 19 n.14 (2007). "Tie line frequency bias" is defined in the NERC Glossary of Terms Used in Reliability Standards as "[a] mode of Automatic Generation Control that allows the Balancing Authority to 1.) maintain its Interchange Schedule and 2.) respond to Interconnection frequency error."

a. Proposed Interpretation

16. In its December 19, 2007 filing, NERC explained that WECC requested the ERO to provide a formal interpretation whether the use of WECC's existing automatic time error correction factor that is applied to the net interchange portion of the ACE equation violates Requirement R1 of BAL-001-0 or Requirement R3 of BAL-003-0.

17. In response, the ERO interpreted of BAL-001-0 Requirement R1 as follows:

- The [WECC automatic time error correction or WATEC] procedural documents ask Balancing Authorities to maintain raw ACE for [control performance standard or CPS] reporting and to control via WATEC-adjusted ACE.

- As long as Balancing Authorities use raw (unadjusted for WATEC) ACE for CPS reporting purposes, the use of WATEC for control is not in violation of BAL-001 Requirement 1.

The ERO interpreted BAL-003-0 Requirement R3 as follows:

- Tie-Line Frequency Bias is one of the three foundational control modes available in a Balancing Authority's energy management system. (The other two are flat-tie and flat-frequency.) Many Balancing Authorities layer other control objectives on top of their basic control mode, such as automatic inadvertent payback, [control performance standard] optimization, [and] time control (in single [balancing authority] interconnections).[[19]]

- As long as Tie-Line Frequency Bias is the underlying control mode and CPS1 is measured and reported on the associated ACE

[19] The "flat frequency" control mode would increase or decrease generation solely based on the interconnection frequency. The "flat tie" mode would increase or decrease generation within a balancing authority area depending solely on that balancing authority's total interchange. The "tie-line frequency bias" mode combines the flat frequency and flat tie modes and adjusts generation based on the balancing authority's net interchange and the interconnection frequency.

equation,[20] there is no violation of BAL-003-0 Requirement 3:

$$ACE = (NI_A - NI_S) - 10B (F_A - F_S) - I_{ME}$$

(NERC December 19, 2007 Filing, Ex. A-3.)

18. In the NOPR, the Commission proposed to approve the ERO's formal interpretations of Requirement R1 of BAL-001-0 and Requirement R3 of BAL-003-0.

b. Comments

19. NERC and IESO support the Commission's proposal to approve these interpretations.

c. Commission Determination

20. The Commission approves the ERO's formal interpretations of Requirement R1 of BAL-001-0 and Requirement R3 of BAL-003-0. The ERO's interpretation of BAL-001-0, Requirement R1, is reasonable in that it requires all balancing authorities in WECC to calculate CPS1 and CPS2 as defined in the Requirements. Thus, the interpretation upholds the reliability goal to minimize the frequency deviation of the interconnection by constantly balancing supply and demand.

21. The ERO's interpretation of BAL-003-0, Requirement R3 is appropriate because it maintains the goal of Requirement R3 by obligating a balancing authority to operate automatic generation control on tie-line frequency bias as its underlying control mode, unless to do so is adverse to system or interconnection reliability. Further, the

[20] "CPS1" refers to Requirement R1 of BAL-001-0.

interpretation fosters the purpose of Requirement R3 as it allows that a balancing authority may go beyond Requirement R3 and "layer other control objectives on top of their basic control modes, such as automatic inadvertent payback, [control performance standard] optimization, [and] time control (in single [balancing authority] interconnections),"[21] although such layering is not required by the Reliability Standard.

22. For the reasons stated above, the Commission finds that the ERO's interpretations of Requirement R1 of BAL-001-0 and Requirement R3 of BAL-003-0 are just, reasonable, not unduly discriminatory or preferential, and in the public interest. Accordingly, the Commission approves the ERO's interpretations.

2. Requirement R17 of BAL-005-0 – Automatic Generation Control

a. Proposed Interpretation

23. Requirement R17 of Reliability Standard BAL-005-0 is intended to annually check and calibrate the time error and frequency devices under the control of the balancing authority that feed data into automatic generation control necessary to calculate ACE. Requirement R17 mandates that the balancing authority must adhere to an annual calibration program for time error and frequency devices. The requirement states that a balancing authority must adhere to minimum accuracies in terms of ranges specified in Hertz, volts, amps, etc., for various listed devices, such as digital frequency transducers,

[21] NERC interpretation of BAL-003-0, Requirement R3.

voltage transducers, remote terminal unit, potential transformers, and current transformers.

24. On April 15, 2008, NERC submitted an interpretation of Requirement R17 regarding the type and location of the equipment to which Requirement R17 applies.[22] The interpretation provides that BAL-005-0, Requirement R17

> applies only to the time error and frequency devices that provide, or in the case of back-up equipment may provide, input into the reporting or compliance ACE equation or provide real-time time error or frequency information to the system operator. Frequency inputs from other sources that are for reference only are excluded. The time error and frequency measurement devices may not necessarily be located in the system operations control room or owned by the Balancing Authority; however the Balancing Authority has the responsibility for the accuracy of the frequency and time error devices….
>
> New or replacement equipment that provides the same functions noted above requires the same calibrations. Some devices used for time error and frequency measurement cannot be calibrated as such. In this case, these devices should be cross-checked against other properly calibrated equipment and replaced if the devices do not meet the required level of accuracy.

25. In a supplemental NOPR issued May 16, 2008, the Commission proposed to approve NERC's interpretation of BAL-005-0, Requirement R17. In addition, the Commission noted that tie-line megawatt metering data is an important aspect of ensuring the accurate calculation of ACE, and the interpretation limits the specific accuracy requirements of Requirement R17 to frequency and time error measurement devices. The

[22] As mentioned earlier, in April 2008, NERC submitted a petition seeking to withdraw an earlier interpretation of Requirement R17 and substituting a new interpretation for Commission approval.

Commission asked for comment on (1) whether the interpretation could decrease the accuracy of frequency and time error measurements by not requiring calibration of tie-line megawatt metering devices; (2) what conditions would preclude the requirement to calibrate these devices; and (3) whether the accuracy of these devices is assured by other requirements within BAL-005-0 in the absence of calibration.

b. Comments

i. Whether interpretation could decrease accuracy of frequency and time error measurements

26. Southern, ITC, ISO/RTO Council, and NERC claim that the interpretation could not decrease the accuracy of frequency and time error measurements by not requiring calibration of tie-line megawatt metering devices because tie-line metering data is not an input to either time error or frequency measurements and has no impact on the accuracy of these devices. NERC further suggests that the Commission may have intended to ask whether the interpretation adversely affects the accuracy of the balancing authority ACE calculation. NERC provides that it does not, because calibration of tie-line metering historically was included in the guide section of NERC Operating Policy 1 and was not intended to be translated into a requirement. NERC asserts that calibration of tie-line metering remains a sound practice and there are safeguards, checks, and balances to ensure inadvertent flows in the interconnection equal zero, thus ensuring that errors in ACE are bounded to protect the interconnections.

27. As a general comment on the proposed interpretation of Requirement R17, Southern suggests that the metering specifications table in Requirement R17 may be

creating some confusion because the NERC committee that developed this Reliability Standard intended to include the frequency metering specifications from this table but inadvertently included other metering specifications that are not required to fulfill Requirement R17. Southern claims that Requirement R17 is intended to only address time error and frequency devices, and this table was added in error and should have been limited to specifications for those devices.

ii. What conditions would preclude requirement to calibrate devices

28. NERC, ISO/RTO Council, and Southern claim that there are no conditions which would preclude the requirement to calibrate tie-line megawatt metering devices. NERC suggests that, if the question relates to a possible new requirement to calibrate all tie-line metering equipment on a given schedule, a new standards authorization request should be submitted through the Reliability Standards Development Process. NERC believes that the industry may not want to divert resources away from other important tasks unless a case can be made that calibration of these devices presents a risk to reliability. Similarly, ITC comments that, if the Commission believes it is necessary to annually calibrate the tie-line megawatt metering devices, such a requirement belongs in BAL-005-0 and not in Requirement R17. ISO/RTO Council claims such a requirement is unnecessary because it is redundant, not needed for reliability, and poses the possibility of financial sanctions for no good reason.

29. ITC states that tie-line meters would be precluded from calibration requirements if they are digital devices that the equipment vendor has indicated do not require

calibration. They claim that there are no field calibration procedures which can be performed by end-users for such devices. According to ITC, Requirement R17 of BAL-005-0 should recognize that there are modern digital devices that do not require calibration as analog devices do.

iii. Whether accuracy of devices is assured by other requirements

30. NERC, ITC, ISO/RTO Council, and Southern state that tie-line metering accuracy is addressed by Requirement R13 of BAL-005-0, which requires each balancing authority to perform hourly error checks using tie-line megawatt-hour meters with common time synchronization to determine the accuracy of its control equipment and make adjustments accordingly. ITC claims that Requirement R13 of BAL-005-0 provides a more timely identification of errors than a requirement for annual calibration.

31. NERC comments that tie-line metering accuracy is not assured by any other requirement. According to NERC, requirements relating to Reliability Standards BAL-005-0 and BAL-006-1, along with the associated NERC processes, provide several layers of overlapping protection to address tie-line accuracy. NERC further claims that BAL-005-0 requires balancing authorities to operate in conformance with common metering equipment in comparison to that of their neighbors, so there is no net balancing authority error in the interconnection as a whole. In addition, NERC claims that many balancing authorities have secondary or backup metering on critical tie lines and have access to the NERC Resource Adequacy application, which can provide alerts to the balancing authority of tie-line metering errors.

c. Commission Determination

32. The Commission approves the ERO's formal interpretation of Requirement R17 of BAL-005-0 as set forth in the ERO's April 2008 filing. Based on the comments, we find that this interpretation will not decrease the accuracy of frequency and time error measurements by not requiring calibration of tie-line megawatt metering devices. In addition, we are persuaded by the commenters that the need to calibrate tie-line megawatt metering devices is addressed by other requirements such as Requirement R13 that require hourly checks to ensure continuous accuracy. The Commission notes that the applicable requirement for the accuracy of calibration of tie-line megawatt metering devices is identified in Requirement R17. While Southern has stated that the metering specifications table in Requirement R17 was added in error, an interpretation cannot change the substance of a Reliability Standard. Notwithstanding the question of relevancy of particular components of the metering specifications table, the accuracy requirements of this table remain part of Reliability Standard BAL-005-0 as reference for mandatory reliability practices. The Commission encourages further clarification of tie-line metering device calibration requirements through the ERO standards development process.

33. ITC comments that digital devices are precluded from the calibration requirement. We note that the interpretation provides that "[s]ome devices used for time error and frequency measurement cannot be calibrated as such. In this case, these devices should be cross-checked against other properly calibrated equipment and replaced if the devices

do not meet the required level of accuracy." Thus, while ITC's comment is accurate, the ERO's interpretation acknowledges the concern and provides a response, i.e., modern digital devices that cannot be calibrated must be cross-checked against other equipment and replaced if they do not meet the required level of accuracy.

34. The ERO's interpretation of BAL-005-0, Requirement R17 provides that "frequency inputs from other sources that are for reference only are excluded." The Commission notes that this Reliability Standard establishes requirements concerning the inputs to the ACE equation to correctly operate automatic generation control. Frequency inputs used for other purposes are not covered by this Reliability Standard. Therefore, we understand the ERO's interpretation to exclude frequency devices that do not provide input into the reporting or compliance with the ACE equation or provide real-time time error or frequency information to the system operator. Any devices that provide reference input from which a balancing authority calibrates other time error and frequency devices, however, do provide real-time time error and frequency information to the system operator and therefore must be calibrated under this requirement.

3. Requirements R1 and R2 of VAR-002-1 Generator Operation for Maintaining Network Voltage Schedules

a. Proposed Interpretations

35. The stated purpose of Reliability Standard VAR-002-1 is to ensure that generators provide reactive and voltage control necessary to ensure that voltage levels, reactive flows, and reactive resources are maintained within applicable facility ratings to protect

equipment and the reliable operation of the interconnection. Requirement R1 of VAR-002-1 provides:

> The Generator Operator shall operate each generator connected to the interconnected transmission system in the automatic voltage control mode (automatic voltage regulator in service and controlling voltage) unless the Generator Operator has notified the Transmission Operator.

Requirement R2 provides:

> Unless exempted by the Transmission Operator, each Generator Operator shall maintain the generator voltage or Reactive Power output (within applicable Facility Ratings) as directed by the Transmission Operator.

36. The ERO received a request to provide a formal interpretation of Requirements R1 and R2. The request first asked whether automatic voltage regulator operation in the constant power factor or constant Mvar modes complies with Requirement R1. Second, the request asked the ERO whether Requirement R2 gives the transmission operator the option of directing the generation owner to operate the automatic voltage regulator in the constant power factor or constant Mvar modes rather than the constant voltage mode.

37. NERC's formal interpretation provides that a generator operator that is operating its automatic voltage regulator in the constant power factor or constant Mvar modes does not comply with Requirement R1.[23] The interpretation rests on the assumptions that the generator has the physical equipment that will allow such operation and that the

[23] NERC's interpretation of VAR-002-1, Requirement R1 is quoted in full in the NOPR, FERC Stats. & Regs. ¶ 32,632 at P 32, n.27.

transmission operator has not directed the generator to run in a mode other than constant voltage. The interpretation also provides that Requirement R2 gives the transmission operator the option of directing the generation operator to operate the automatic voltage regulator in the constant power factor or constant Mvar modes rather than the constant voltage mode.

38. In the NOPR, the Commission proposed to approve the ERO's interpretation of Requirement R1 and Requirement R2 of VAR-002-1.

b. Comments

39. NERC and IESO support the Commission's proposal to approve the interpretation.

c. Commission Determination

40. The Commission concludes that the interpretation is just, reasonable, not unduly discriminatory or preferential, and in the public interest. Therefore, the Commission approves the ERO's interpretation of Requirements R1 and R2 of VAR-002-1.

B. NERC's December 21, 2007 Filing: Modification of TLR Procedure

41. NERC submitted for Commission approval proposed Reliability Standard IRO-006-4, which modifies the Commission-approved Reliability Standard, IRO-006-3.

1. Background

42. In Order No. 693, the Commission approved an earlier version of this Reliability Standard, IRO-006-3. This Reliability Standard ensures that a reliability coordinator has a coordinated transmission service curtailment and reconfiguration method that can be used along with other alternatives, such as redispatch or demand-side management, to

avoid transmission limit violations when the transmission system is congested. Reliability Standard IRO-006-3 established a detailed TLR procedure for use in the Eastern Interconnection to alleviate loadings on the system by curtailing or changing transactions based on their priorities and the severity of the transmission congestion. The Reliability Standard referenced other procedures for WECC and Electric Reliability Council of Texas (ERCOT).[24]

2. ERO TLR Filing, Reliability Standard IRO-006-4

43. In its December 2007 filing, NERC submitted for Commission approval a modified TLR procedure, Reliability Standard IRO-006-4, which contains five requirements. Requirement R1 obligates a reliability coordinator experiencing a potential or actual system operating limit (SOL) or IROL violation within its reliability coordinator area to select one or more procedures to provide transmission loading relief. The requirement also identifies the regional TLR procedures in WECC and ERCOT.

3. NOPR

44. In the NOPR, the Commission proposed to approve IRO-006-4 as just, reasonable, not unduly discriminatory or preferential, and in the public interest.[25] The Commission also proposed to approve the Reliability Standard based on the interpretation that using a

[24] The equivalent interconnection-wide TLR procedures for use in WECC and ERCOT are known as "WSCC Unscheduled Flow Mitigation Plan" and section 7 of the "ERCOT Protocols," respectively.

[25] NOPR, FERC Stats. & Regs. ¶ 32,632 at P 48.

TLR procedure to mitigate an IROL violation is a violation of the Reliability Standard. The Commission asked for comments on whether any compromise in the reliability of the Bulk-Power System may result from the removal and transfer to NAESB of the business-related issues formerly contained in Reliability Standard IRO-006-3. In addition, the Commission proposed to direct the ERO to modify the violation risk factors assigned to Requirements R1 through R4 by raising them to "high."

4. Comments

45. The Commission received comments on the NOPR proposal. Because the Final Rule does not approve or remand the proposed Reliability Standard and, rather, directs the ERO to submit a filing that provides an explanation regarding specific language of one requirement of IRO-006-4, the Commission will address the comments in a future issuance in this proceeding.

5. Commission Determination

46. Because the Commission has concern regarding the understanding of certain language of Requirements R1 and R1.1 of IRO-006-4, the Commission is not approving or remanding the proposed Reliability Standard at this time. Rather, the Commission directs that the ERO, within 15 days of the effective date of this Final Rule, submit a filing that provides an explanation regarding specific language of Requirements R1 and R1.1 of IRO-006-4. The Commission will then issue a notice allowing public comment on the ERO's filing, and will act on the proposed Reliability Standard in a future issuance in this proceeding.

47. In the Final Blackout Report, an international team of experts studying the causes of the August 2003 blackout in North America recommended that NERC "[c]larify that the transmission loading relief (TLR) process should not be used in situations involving an actual violation of an Operation Security Limit."[26] Based on the Final Blackout Report recommendation, the Commission, in Order No. 693, directed NERC to develop a modification to the TLR procedure (IRO-006-3) that "(1) includes a clear warning that the TLR procedure is an inappropriate and ineffective tool to mitigate actual IROL violations and (2) identifies in a Requirement the available alternatives to mitigate an IROL violation other than use of the TLR procedure."[27]

48. In response to this directive, NERC proposed in Requirement R1.1 of IRO-006-4 that "[t]he TLR procedure [for the Eastern Interconnection] alone is an inappropriate and ineffective tool to mitigate an IROL violation due to the time required to implement the procedure." (Emphasis added.) The Commission is concerned whether this language is adequate to satisfy the concern of the Final Blackout Report and Order No. 693. Specifically, we note that the use of the term "alone" seems to imply that a TLR procedure could be used in response to an actual violation of an IROL whereas the Final Blackout Report recommendation would prevent the use of the TLR procedure in such

[26] See U.S.-Canada Power System Outage Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations, at 163 (April 2004) (Final Blackout Report) (Recommendation 31).

[27] See Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 577, 964.

situations. Moreover, Requirement R1 of IRO-006-4 further appears to contradict the Final Blackout Report recommendation by allowing a reliability coordinator to implement transmission loading relief procedures to mitigate not only potential SOL or IROL violations but also actual SOL or IROL violations.[28] The Commission is concerned that Recommendation 31 of the Final Blackout Report and the directive in Order No. 693, both of which state the TLR procedures should not be used in situations involving an actual violation of an IROL, may not be clearly addressed in the proposed Reliability Standard.

49. The Commission notes that an entity is not prevented from using the TLR procedure to avoid a potential IROL violation before a violation occurs. If, while a TLR procedure is in progress, an IROL violation occurs, it is not necessary for the entity to terminate the TLR procedure. However, the Commission believes that it is inappropriate and ineffective to rely on the TLR procedure, even in conjunction with another tool, to address an actual IROL violation.

[28] Requirement R1 provides that "[a] reliability Coordinator experiencing a potential or actual SOL or IROL violation within its Reliability Coordinator Area shall, with its authority and at its discretion, select one or more procedures to provide transmission loading relief. This procedure can be a "local" . . . transmission loading relief procedure or one of the following Interconnection-wide procedures…." Sub-requirement R1.1 provides that "[t]he TLR procedure alone is an inappropriate and ineffective tool to mitigate an IROL violation due to the time required to implement the procedure. Other acceptable and more effective procedures to mitigate actual IROL violations include: reconfiguration, redispatch, or load shedding."

50. Therefore, the Commission does not approve or remand IRO-006-4. Rather, the Commission directs the ERO to submit a filing, within 15 days of the effective date of this Final Rule, that provides an explanation regarding Requirements R1 and R1.1 of IRO-006-4. Specifically, in light of the above discussion, the Commission directs the ERO to provide an explanation regarding the phrase "[t]he TLR procedure alone is an inappropriate and ineffective tool to mitigate an IROL violation . . ." Further, the ERO should explain whether Requirements R1 and R1.1 only allow the TLR procedure to be continued when already deployed prior to an actual IROL violation or, alternatively, whether Requirements R1 and R1.1 allow use of the TLR procedure as a tool to address actual violations after they occur. If the latter, the ERO is directed to explain why this application is not contrary to both Blackout Report Recommendation 31 and the Commission's determination in Order No. 693. The ERO's filing should include an explanation of those actions that are acceptable, and those that are unacceptable, pursuant to Requirement R1 and R1.1.

C. NERC's December 26, 2007 Filing: Modification to Five "Interchange and Scheduling" Reliability Standards

51. NERC submitted for Commission approval proposed modifications to five Reliability Standards from the INT group of Reliability Standards.

1. INT-001-3 – Interchange Information and INT-004-2 – Dynamic Interchange Transaction Modifications

52. The Interchange Scheduling and Coordination or "INT" group of Reliability Standards address interchange transactions, which occur when electricity is transmitted

from a seller to a buyer across the Bulk-Power System. Reliability Standard INT-001 applies to purchasing-selling entities and balancing authorities. The stated purpose of the Reliability Standard is to "ensure that Interchange Information is submitted to the NERC-identified reliability analysis service." Reliability Standard INT-004 is intended to "ensure Dynamic Transfers are adequately tagged to be able to determine their reliability impacts."

53. In Order No. 693, the Commission approved earlier versions of these Reliability Standards, INT-001-2 and INT-004-1.[29] Further, when NERC initially (in April 2006) submitted these two Reliability Standards for Commission approval, NERC also asked the Commission to approve a "regional difference" that would exempt WECC from requirements related to tagging dynamic schedules and inadvertent payback provisions of INT-001-2 and INT-004-1. The Commission, in Order No. 693, stated that it did not have sufficient information to address the ERO's proposed regional difference and directed the ERO to submit a filing either withdrawing the regional difference or providing additional information needed for the Commission to make a determination on the matter.[30] The effect of NERC's December 26, 2007 filing is to withdraw the regional difference with respect to WECC.

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[29] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 821, 843. In addition, the Commission directed that the ERO develop modifications to INT-001-2 and INT-004-1 that address the Commission's concerns.

[30] Id. P 825.

54. In its December 26, 2007 filing, NERC stated that, by rescinding the e-tagging waivers, NERC maintains uniformity and makes no structural changes to the requirements in the current Commission-approved version of the Reliability Standards.

55. In the NOPR, the Commission proposed to approve INT-001-3 and INT-004-2.

a. Comments

56. NERC and the IESO support the Commissions proposal to approve these Reliability Standards.

b. Commission Determination

57. Pursuant to section 215(d) of the FPA, the Commission approves Reliability Standards INT-001-3 and INT-004-2 as mandatory and enforceable.

2. INT-005-2 – Interchange Authority Distributes Arranged Interchange, INT-006-2 – Response to Interchange Authority, and INT-008-2 – Interchange Authority Distributes Status

58. Reliability Standard INT-005-1 applies to the interchange authority. The stated purpose of proposed Reliability Standard INT-005-1 is to "ensure that the implementation of Interchange between Source and Sink Balancing Authorities is distributed by an Interchange Authority such that Interchange information is available for reliability assessments."

59. Reliability Standard INT-006-1 applies to balancing authorities and transmission service providers. The stated purpose of the Reliability Standard is to "ensure that each Arranged Interchange is checked for reliability before it is implemented."

60. Reliability Standard INT-008-1 applies to the interchange authority. The stated purpose of the Reliability Standard is to "ensure that the implementation of Interchange between Source and Sink Balancing Authorities is coordinated by an Interchange Authority." This means that it is an interchange authorities' responsibility to oversee and coordinate the interchange from one balancing authority to another.

61. In its December 26, 2007 filing, NERC addressed a reliability need identified by WECC in its urgent action request. Specifically, Requirement R1.4 of INT-007-1 requires that each balancing authority and transmission service provider provide confirmation to the interchange authority that it has approved the transactions for implementation. NERC stated that for WECC the timeframe allotted for this assessment is five minutes in the original version of the Commission-approved Reliability Standards.

62. Reliability Standards for INT-005-2, INT-006-2, and INT-008-2 increase the timeframe for applicable WECC entities to perform the reliability assessment from five to ten minutes for next hour interchange tags submitted in the first thirty minutes of the hour before. According to NERC, this modification is needed because the majority of next-hour tags in WECC are submitted between xx:00 and xx:30. The existing five minute assessment window makes it nearly impossible for balancing authorities and transmission service providers to review each tag before the five minute assessment time expires. According to NERC, when the time expires, the tags are denied and must be resubmitted.

63. In its December 26, 2007 filing, NERC stated that WECC has experienced numerous instances of transactions being denied because one or more applicable

reliability entities did not actively approve the tag. In NERC's view, the current structure causes frustration and inefficiencies for entities involved in this process, as requestors are required to re-create tags that are denied. Further, NERC stated that there is no reliability basis for a five minute assessment period for tags submitted at least thirty minutes ahead of the ramp-in period.

64. NERC noted that, prior to January 1, 2007, when the new INT group of Reliability Standards was implemented WECC had a ten-minute reliability assessment period for next-hour tags. NERC states that the urgent action request restores assessment times back to ten minutes.

65. In the NOPR, the Commission proposed to approve INT-005-2, INT-006-2, and INT-008-2.

a. Comments

66. NERC and IESO support the Commissions proposal to approve these Reliability Standards.

b. Commission Determination

67. Pursuant to section 215(d) of the FPA, the Commission approves Reliability Standards INT-005-2, INT-006-2, and INT-008-2 as mandatory and enforceable.[31]

[31] The Commission notes that NERC's compliance with Order No. 693, with respect to Reliability Standard INT-006-1, is ongoing. See Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 866.

III. Information Collection Statement

68. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[32] The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.[33] As stated above, the Commission previously approved, in Order No. 693, each of the Reliability Standards that are the subject of the current rulemaking. In the NOPR, the Commission explained that the modifications to the Reliability Standards are minor and the interpretations relate to existing Reliability Standards; therefore, they do not add to or increase entities' reporting burden. Thus, in the NOPR, the Commission stated that the modified Reliability Standards and interpretations of Reliability Standards do not materially affect the burden estimates relating to the earlier version of the Reliability Standards presented in Order No. 693.[34]

69. In response to the NOPR, the Commission received no comments concerning its estimate for the burden and costs and therefore uses the same estimate here.

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[32] 5 CFR 1320.11.

[33] 44 U.S.C. 3507(d).

[34] See Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1905-07. The NOPR, FERC Stats. & Regs. ¶ 32,632 at P 76-78, provided a detailed explanation why each modification and interpretation has a negligible, if any, affect on the reporting burden.

Title: Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards.

Action: Proposed Collection.

OMB Control No.: 1902-0244.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On Occasion.

Necessity of the Information: This Final Rule approves five modified Reliability Standards that pertain to interchange scheduling and coordination. It directs NERC to make a filing with the Commission regarding one modified Reliability Standard that pertains to transmission loading relief procedures. In addition, the Final Rule approves interpretations of five specific requirements of Commission-approved Reliability Standards. The Final Rule finds the Reliability Standards and interpretations just, reasonable, not unduly discriminatory or preferential, and in the public interest.

70. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, 888 First Street, N.E. Washington, D.C. 20426, Tel: (202) 502-8415, Fax: (202) 273-0873, E-mail: michael.miller@ferc.gov, or by contacting:
Office of Information and Regulatory Affairs, Attn: Desk Officer for the Federal Energy Regulatory Commission (Re: OMB Control No. 1902-0244), Washington, D.C. 20503, Tel: (202) 395-4650, Fax: (202) 395-7285, E-mail: <oira_submission@omb.eop.gov>.

IV. Environmental Analysis

71. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[35] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[36] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act

72. The Regulatory Flexibility Act of 1980 (RFA)[37] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's Office of Size Standards develops the numerical definition of a small business. (See 13 CFR 121.201.) For electric utilities, a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of

[35] Regulations Implementing the National Environmental Policy Act of 1969, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[36] 18 CFR 380.4(a)(2)(ii).

[37] 5 U.S.C. 601-12.

electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours. The RFA is not implicated by this Final Rule because the minor modifications and interpretations discussed herein will not have a significant economic impact on a substantial number of small entities.

VI. Document Availability

73. 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 hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington D.C. 20426.

74. 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.

75. 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 e-mail 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.

VII. Effective Date and Congressional Notification

76. These regulations are effective [insert date 30 days from publication in **FEDERAL REGISTER**]. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of subjects in 18 CFR Part 40

Electric power, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)

19442742.DOC.....1-37

126 FERC ¶ 61,252
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 40

[Docket Nos. RM08-7-000 and RM08-7-001; Order No. 713-A]

Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards

(Issued March 19, 2009)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule

SUMMARY: Pursuant to section 215 of the Federal Power Act (FPA), the Federal Energy Regulatory Commission (Commission) approves Reliability Standard IRO-006-4, submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC). The Reliability Standard addresses transmission loading relief requirements, which provide a mechanism to manage and, if necessary, curtail interchange transactions. In addition, pursuant to section 215(d)(5) of the FPA, the Commission directs NERC to develop modifications to Reliability Standard IRO-006-4 to address specific Commission concerns.

EFFECTIVE DATE: This rule will become effective **[insert date that is 30 days after publication in the FEDERAL REGISTER]**

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards	Docket Nos.	RM08-7-000 and RM08-7-001

ORDER NO. 713-A

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Acting Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards	Docket Nos.	RM08-7-000 and RM08-7-001

ORDER NO. 713-A

FINAL RULE

(Issued March 19, 2009)

1. Pursuant to section 215 of the Federal Power Act (FPA)[1] the Commission approves Reliability Standard IRO-006-4, submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC). The Reliability Standard addresses transmission loading relief requirements, which provide a mechanism to manage and, if necessary, curtail interchange transactions. In addition, pursuant to section 215(d)(5) of the FPA, the Commission directs NERC to develop modifications to Reliability Standard IRO-006-4 to address specific concerns identified by the Commission.

[1] 16 U.S.C. 824o (2006).

I. Background

A. Procedural Background

2. On December 21, 2007, NERC, the Commission-certified electric reliability organization (ERO), submitted for Commission approval modifications to Reliability Standard IRO-006-4 (Reliability Coordination – Transmission Loading Relief), known as the transmission loading relief or "TLR" procedure.[2]

3. On April 21, 2008, as supplemented on May 16, 2008, the Commission issued a Notice of Proposed Rulemaking (NOPR) that proposed to approve three NERC filings, including Reliability Standard IRO-006-4.[3] In response, nine interested persons filed comments, six of which address the TLR procedure at issue here.[4] (The Commission consolidated three ERO submissions in the RM08-7-000 rulemaking proceeding. This Supplemental Final Rule only addresses the ERO's December 21, 2007 filing pertaining

[2] Reliability Standard IRO-006-4 is not codified in the Commission's regulations and is not attached to this Supplemental Final Rule. It is, however, available on the Commission's eLibrary document retrieval system in Docket No. RM08-7-000 and also is available on the ERO's website, http://www.nerc.com.

[3] Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards, Notice of Proposed Rulemaking, 73 FR 22856 (Apr. 28, 2008), FERC Stats. & Regs. ¶ 32,632, at P 48 (2008) (NOPR), Supplemental Notice of Proposed Rulemaking, 73 FR 30326 (May 27, 2008), FERC Stats. & Regs. ¶ 32,635 (2008) (Supplemental NOPR).

[4] Appendix A identifies the NOPR commenters.

to the TLR Reliability Standard. The Commission addressed the other two ERO filings in Order No. 713, i.e., the Final Rule in this proceeding.)

4. On July 21, 2008, the Commission issued a Final Rule in this proceeding, which approved five Reliability Standards and approved NERC's interpretation of other Reliability Standards.[5] The Commission, however, did not make a determination in the Final Rule regarding Reliability Standard IRO-006-4 and, instead, directed NERC to submit a filing explaining one aspect of the TLR procedure.

5. On September 11, 2008, NERC submitted a filing as directed in the Final Rule. Notice of NERC's September 11, 2008 filing was published in the Federal Register, 73 FR 75,429. Three interested persons submitted comments.[6]

B. Reliability Standard IRO-006-4

6. Reliability Standard IRO-006-4 applies to balancing authorities, reliability coordinators, and transmission operators. Reliability Standard IRO-006-4 modifies Reliability Standard IRO-006-3, which the Commission approved in Order No. 693.[7] In

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[5] Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards, Order No. 713, 73 FR 43613 (July 28, 2008), 124 FERC ¶ 61,071 (2008) (Order No. 713 or Final Rule).

[6] Appendix B identifies the commenters on NERC's September 11, 2008 filing. In addition, NERC filed reply comments.

[7] 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).

its December 2007 filing, NERC explained that it modified the TLR procedure to "extract" commercial requirements and business practices.[8] Further, the modified Reliability Standard includes changes directed by the Commission in Order No. 693 related to the appropriateness of using the TLR procedure to mitigate a violation of an interconnection reliability operating limit (IROL).[9]

7. Reliability Standard IRO-006-4 contains five requirements. Requirement R1 obligates a reliability coordinator experiencing a potential or actual system operating limit (SOL) or IROL violation within its reliability coordinator area to select one or more procedures to mitigate potential or actual transmission overloads. The requirement also identifies the regional TLR procedures in WECC and ERCOT. Requirement R1 includes a warning that the TLR procedure alone is an inappropriate and ineffective tool to mitigate an actual IROL violation and provides alternatives.

[8] The commercial requirements were transferred to a North American Energy Standards Board (NAESB) business practices document. The Commission approved the NAESB TLR standard, WEQ-008, to coincide with the effective date of Reliability Standard IRO-006-4. See Standards for Business Practices and Communication Protocols for Public Utilities, Order No. 676-C, 73 FR 43848 (July 29, 2008), FERC Stats. & Regs. ¶ 31,274, at P 7 n.11, P 9, P 80 (2008); see also Order No. 713, 124 FERC ¶ 61,071 at P 8.

[9] An IROL is a system operating limit that, if violated, could lead to instability, uncontrolled separation, or cascading outages that adversely impact the reliability of the Bulk-Power System.

8. Requirement R2 mandates that the reliability coordinator only use local TLR or congestion management procedures to which the transmission operator experiencing the potential or actual SOL or IROL is a party.

9. Requirement R3 establishes that a reliability coordinator with a TLR obligation from an interconnection-wide procedure follow the curtailments as directed by the interconnection-wide procedure. It also requires that a reliability coordinator desiring to use a local procedure as a substitute for curtailments as directed by the interconnection-wide procedure must obtain prior approval from the ERO.

10. Requirement R4 mandates that each reliability coordinator comply with interconnection-wide procedures, once they are implemented, to curtail transactions that cross interconnection boundaries. Requirement R5 directs balancing authorities and reliability coordinators to comply with applicable interchange-related Reliability Standards during the implementation of TLR procedures.

II. Discussion

A. Approval of Reliability Standard IRO-006-4

11. In the NOPR, the Commission proposed to approve IRO-006-4 as just, reasonable, not unduly discriminatory or preferential, and in the public interest.[10]

[10] NOPR, FERC Stats. & Regs. ¶ 32,632 at P 47.

12. NERC and IESO support approval of the Reliability Standard. Lafayette and LEPA state that they support the Commission's effort to reduce the use of TLRs; they support adoption of the Reliability Standards as proposed by the Commission.

13. Pursuant to section 215(d) of the FPA, the Commission approves Reliability Standard IRO-006-4 as mandatory and enforceable. The ERO's proposal implements the Commission's directives in Order No. 693 to include a warning that the TLR procedure is an inappropriate and ineffective tool to mitigate actual IROL violations and identify available alternatives to mitigate an IROL violation.[11] Further, as discussed below, the Commission believes that the separation of business practices from the Reliability Standards will not compromise Bulk-Power System reliability. Accordingly, the Commission approves IRO-006-4 as just, reasonable, not unduly discriminatory or preferential, and in the public interest, as discussed below.

14. As a separate matter, pursuant to section 215(d)(5) of the FPA, the Commission directs the ERO to develop, pursuant to its Reliability Standards development procedure, modifications to IRO-006-4 to address the Commission's specific concerns, as discussed below. Further, the Commission approves the proposed violation risk factors and violation severity levels and directs the ERO to submit a filing within 60 days of the

[11] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 577.

effective date of this Supplemental Final Rule revising specified violation risk factors and violation severity levels.

1. Transfer of Business-Related Requirements to NAESB

15. The Commission, in the NOPR, sought comments on whether the removal and transfer to NAESB of the business-related issues formerly contained in Reliability Standard IRO-006-3 could compromise Bulk-Power System reliability.[12]

a. Comments

16. NERC states that it has coordinated with NAESB and believes there is no compromise in reliability as a result of the removal and transfer to NAESB of the business-related issues formerly contained in the earlier standard, IRO-006-3. NERC notes that there are minor differences in terminology and language between the NERC and NAESB documents. It states that, although these differences may be confusing to industry, they do not affect the ability to successfully implement the standards as written. Further, NERC indicates that it is working with NAESB to develop more in-depth coordination procedures to ensure that language is consistent.

b. Commission Determination

17. Based on the ERO's explanation, we are persuaded that the separation of business practices from the Reliability Standards will not compromise Bulk-Power System reliability. However, we are concerned with respect to the ERO's acknowledgement that

[12] NOPR, FERC Stats. & Regs. ¶ 32,632 at P 49.

there are differences in terminology and language used between the ERO Reliability Standard and the NAESB standard that pertain to TLR procedures. The ERO indicates that it is currently working with NAESB to develop more in-depth coordination procedures to ensure that language is consistent. Thus, we expect that the ERO, working with NAESB, will resolve the inconsistencies in terminology between the Reliability Standard and NAESB standard regarding TLR procedures as their agendas permit; we do not find a need to direct changes at this time.

2. Improvements to the TLR Procedure

a. Comments

18. Several commenters raise concerns regarding needed improvements to the TLR procedure. Lafayette and LEPA comment that they have often "suffered" from the curtailment of firm transmission service pursuant to the TLR procedure and support efforts to reduce its use. NRG comments that the excessive use of TLRs is reducing system reliability in some non-organized markets and that the Commission should require NERC to modify its TLR rules to limit the excessive use of TLRs. NRG states that the Interchange Distribution Calculator (IDC) is critical to the TLR process,[13] since reliability coordinators rely on the curtailments specified by the IDC. NRG identifies two

[13] The IDC is a mechanism used by the reliability coordinators in the Eastern Interconnection to calculate the distribution of interchange transactions over specific flowgates. It includes a database of all interchange transactions and a matrix of the distribution factors for the Eastern Interconnection.

significant problems with the IDC that IRO-006-4 does not address: (1) the generation and load data relied on by the IDC is static, with no requirement that it be regularly updated or accurately reflect real-time conditions; and (2) the IDC methodology does not curtail certain schedules or determine native network load obligations accurately in some cases, leading to a discriminatory assignment of reliability obligations. NRG urges the Commission to direct NERC to modify the IDC to base its curtailment decisions on accurate native load information and to base them consistently on local load and generation amounts.

19. Further, NRG states that there is a gap in the proposed TLR procedures that allows certain non-firm transactions to escape curtailment prior to the issuance of a Level 5 TLR (i.e., curtailment of firm transactions and firm native load). NRG reiterates its concerns in its comments on NERC's September 11, 2008 filing in this proceeding.

20. ISO/RTO Council suggests that the Commission clarify that, although TLR should not be ruled out as a congestion management tool, NERC should address the use of more sophisticated tools to respond to the impacts that loop flow and the lack of transparency in non-RTO regions can have on congestion management at the "seams."

b. Commission Determination

21. The above comments on suggested improvements to the TLR procedure are beyond the scope of this proceeding, which pertains to the separation of business practices from the ERO's TLR procedure and implementation of the Commission's

directives set forth in Order No. 693.[14] We note, however, that the ERO indicated in its December 21, 2007 filing that it has a three-phase plan to improve the TLR procedures, and the third phase will consist of "a complete redrafting to incorporate enhancement and changes beyond the separation of reliability and business practice issues."[15] Therefore, the phase three proceeding would provide a proper forum for commenters to raise their concerns. The Commission believes that NRG and other commenters raise valid issues and urges the commenters to raise—and expects the ERO to consider—these matters in an appropriate proceeding. We also note that NERC states it is currently updating the IDC to more accurately determine the impacts of native load and network service.[16]

B. Requirement R1

22. Requirement R1 of IRO-006-4 provides, in part:

> R1. A Reliability Coordinator experiencing a potential or actual SOL or IROL violation within its Reliability Coordinator Area shall, with its authority and at its discretion, select one or more procedures to provide transmission loading relief. These procedures can be a "local" (regional, interregional, or sub-regional) transmission loading relief procedure or one of the following Interconnection-wide procedures:

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[14] NERC's comments in reply to NRG, as well as Constellation's and, in their joint supplemental pleading, Lafayette and LEPA's comments relating to the TLR procedure are likewise beyond the scope of this proceeding.

[15] NERC December 21, 2007 Filing at 7. Moreover, pursuant to the ERO's Rules of Procedure, a commenter can submit a Standard Authorization Request to the ERO to propose revisions to a Reliability Standard.

[16] See NERC September 11, 2008 Response at 10.

> R1.1 The Interconnection-wide Transmission Loading Relief (TLR) procedure for use in the Eastern Interconnection is provided in Attachment 1-IRO-006-4. The TLR procedure alone is an inappropriate and ineffective tool to mitigate an IROL violation due to the time required to implement the procedure. Other acceptable and more effective procedures to mitigate actual IROL violations include: reconfiguration, redispatch, or load shedding.

Below, we address three concerns regarding Requirement R1: (1) use of the TLR procedure in conjunction with other procedures to mitigate an IROL violation; (2) use of the TLR procedure to mitigate an actual IROL violation is a violation of the Reliability Standard; and (3) use of demand-side management as an effective procedure to mitigate IROL violations.

1. Use of TLR Procedure in Conjunction with Other Procedures to Mitigate an IROL Violation

a. Final Rule Discussion

23. In the Final Rule, the Commission did not approve or remand IRO-006-4 but rather directed the ERO to submit a filing addressing the Commission's concerns regarding Requirements R1 and R1.1 of the Reliability Standard.[17] Specifically, the Final Rule explained that, consistent with the Final Blackout Report,[18] Order No. 693 directed

[17] Order No. 713, 124 FERC ¶ 61,071 at P 46-50.

[18] See U.S.-Canada Power System Outage Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations, at 163 (April 2004) (Final Blackout Report), available at http://www.ferc.gov/industries/electric/indus-act/blackout.asp. Recommendation 31 of the report provides that NERC should "[c]larify that the [TLR] process should not be used in situations involving an actual violation of an Operation Security Limit."

NERC to develop a modification to the TLR procedure that the Commission accepted in IRO-006-3 that "(1) includes a clear warning that the TLR procedure is an inappropriate and ineffective tool to mitigate actual IROL violations and (2) identifies in a Requirement the available alternatives to mitigate an IROL violation other than use of the TLR procedure."[19]

24. In its December 2007 filing, NERC stated that it modified the Reliability Standard in response to the Order No. 693 directive. In particular, the ERO modified Requirement R1.1 of IRO-006-4 to provide that "[t]he TLR procedure [for the Eastern Interconnection] alone is an inappropriate and ineffective tool to mitigate an IROL violation due to the time required to implement the procedure." (Emphasis added.)

25. In Order No. 713, the Commission queried whether the language of Requirements R1 and R1.1 are adequate to satisfy the concern of the Final Blackout Report and Order No. 693 that the TLR procedure not be used in response to an actual IROL violation. The Commission explained:

> An entity is not prevented from using the TLR procedure to avoid a potential IROL violation before a violation occurs. If, while a TLR procedure is in progress, an IROL violation occurs, it is not necessary for the entity to terminate the TLR procedure. However, the Commission believes that it is inappropriate and ineffective to rely on the TLR procedure, even in conjunction with another tool, to address an actual IROL violation.[20]

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[19] See Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 577, 964.

[20] Order No. 713, 124 FERC ¶ 61,071 at P 49.

Accordingly, the Commission directed the ERO to explain Requirements R1 and R1.1 of IRO-006-4 in light of this concern.

b. NERC Responsive Filing

26. NERC responds that the most immediate reliability goal is the mitigation of the IROL violation. NERC states that there are four acceptable options to respond to an IROL violation: inter-area redispatch, intra-area redispatch, reconfiguration of the transmission system, and voluntary or involuntary reductions in load. According to NERC, Requirement R1.1 of IRO-006-4 identifies these options as "reconfiguration, redispatch, or load shedding."

27. Further, NERC believes that taking concurrent action, i.e., using TLR in conjunction with one of the above operation actions, "can result in positive outcomes." [21] NERC agrees with the Commission that the use of TLR prior to an actual IROL violation is an acceptable practice. NERC also agrees that a TLR should not be terminated following the occurrence of an IROL violation if the TLR procedure was already in progress. However, NERC points out that it is impossible to decouple the TLR actions of the previous hour from those of the current hour. According to NERC, the progressive nature of TLR requires constant management to ensure that reliability and open access are maintained. NERC maintains that the Commission should endorse a situation where,

[21] NERC September 11, 2008 Response at 4.

on a continuing basis, a TLR can be reissued for a constrained facility in order to assist in providing relief, in addition to the more immediate operator actions taken to alleviate the actual overload. NERC disagrees that all interchange transactions should be frozen at current levels while any new transactions are held, because this could result in aggravation of the IROL violation from an increase in native load and/or parallel flows. For similar reasons, NERC also believes it is inappropriate to let the curtailments issued for the current hour expire and not reissue the TLR, because this practice also could aggravate the IROL violation, as the single-hour established curtailments would expire and transactions would be reloaded.

28. NERC avers that the intent of the Commission's directive is that, should an entity experience an actual IROL violation, that entity should not invoke the TLR process with the belief that the IROL violation will be mitigated by the TLR within an acceptable timeframe. NERC contends, however, that any standard that would require a reliability coordinator to explicitly not use TLR as one of the tools it has in responding to an actual IROL violation could compromise reliability, open access, or both. NERC states that it is appropriate for an entity to use the TLR process in response to an actual IROL, provided such use is a complementary action to other operator actions employed to mitigate the IROL violation more expeditiously and, as such, invoking TLR is not the only action taken.

29. NERC provides examples of use of TLR in conjunction with other acceptable options to provide a more rapid and effective return from emergency conditions. For example, NERC states that if an entity redispatches generation and invokes a TLR at the same time in response to an actual IROL violation, that entity may utilize the generation to respond immediately to mitigate the violation and bring the flow below the IROL, then reduce the generation once the TLR is able to effectively and more equitably address the issue.

c. Comments on NERC Responsive Filing

30. Southern agrees with NERC's explanation regarding the ways in which a reliability coordinator may use the TLR procedure. Southern believes that the TLR procedure, when used in conjunction with reconfiguration, redispatch, or load shedding, is an indispensable means for providing relief for constrained facilities. Southern comments that any revision to Reliability Standard IRO-006-4 should be developed through the Reliability Standards development process.

31. ISO/RTO Council comments that it generally agrees with the sequencing of TLR procedures as explained by NERC. While ISO/RTO Council supports limiting the wide-scale use of TLR as a congestion management tool, it believes that the Commission's interpretation may draw too fine a line in "hard wiring" a particular sequence of the use of TLRs. It agrees with NERC that "it is impossible to decouple the actions of the

previous hour from those of the current hour," and urges the Commission to avoid placing artificial barriers in the sequencing of the use of the TLR procedure.

d. Commission Determination

32. The Commission is satisfied with the ERO's response. We agree with the ERO that acceptable immediate actions to mitigate an IROL violation may include one or more of the following: inter-area redispatch, intra-area redispatch of generation, reconfiguration of the transmission system, and voluntary or involuntary load reductions. When an IROL violation occurs, the reliability coordinator should use the above tools appropriate to the circumstance and duration of the actual IROL violation for mitigation.

33. We understand from its explanation that the ERO agrees that use of the TLR procedure is not one of the acceptable immediate actions to mitigate an IROL violation. Rather, use of the TLR procedure is complementary to, and may be used in conjunction with, the identified tools to mitigate an IROL violation, provided that the action to implement the TLR procedure does not interfere with or delay an entity taking the immediate action required to mitigate the IROL violation.[22] The Commission understands this is the intent of the language in Requirement R1.1 that "[t]he TLR

[22] The ERO states that "it is appropriate for an entity to use the TLR process in response to an actual IROL, provided that it is a complementary action to other operator actions employed to mitigate the IROL violation more expeditiously and, as such, invoking TLR is not the only action taken." NERC September 11, 2008 Response at 5 (emphasis added).

procedure alone is an inappropriate and ineffective tool to mitigate an IROL violation due to the time required to implement the procedure."

34. The Commission reiterates that the use of a TLR is not required to be terminated following the occurrence of an IROL violation if the TLR procedure was already in progress prior to exceeding the IROL. Thus, if an IROL is exceeded after a TLR procedure is in progress, the reliability coordinator does not need to revoke the TLR. Moreover, in the event that a potential IROL violation progresses to an actual IROL violation near the top of the hour and a TLR is already in progress, it is acceptable for the reliability coordinator to reissue the TLR to prevent reloading or exacerbating interchange schedules, while more immediate actions are taken to relieve the IROL violation.

35. During an actual IROL violation, the primary concern of the reliability coordinator should be to mitigate the violation immediately. Because the TLR procedure may take an extended time to fully implement, it is not acceptable for a reliability coordinator to invoke the TLR process with the belief that the IROL violation will be mitigated by the TLR. Therefore, during an actual IROL violation, a reliability coordinator should initiate more immediate actions to relieve the IROL violation before initiating a TLR and at no point should implementing a TLR divert operator resources or delay implementation of more immediate IROL mitigation actions. In accord with this understanding, we find Requirement R1.1 consistent with the Final Blackout Report and Order No. 693.

36. As discussed above, based on the ERO's response we believe that our understanding of Requirement R1.1 comports with that of the ERO. While IRO-006-4, Requirement R1.1, should be implemented and enforced with the above understanding, we believe that the term "alone" in the provision could be improved to more precisely convey that it is a violation of Requirement R1.1 to rely on the TLR procedure when an entity is in the process of mitigating an IROL violation and the entity has not taken more immediate and effective means to achieve relief. Accordingly, pursuant to section 215(d)(5) of the FPA, the Commission directs the ERO to develop a modification of Requirement R1.1 with respect to the term "alone," consistent with this discussion.

2. Use of TLR Procedure Alone to Mitigate an IROL Violation

37. In the NOPR, the Commission proposed to approve the Reliability Standard based on the interpretation that using a TLR procedure alone to mitigate an actual IROL violation is a violation of the Reliability Standard.[23]

a. Comments

38. ISO/RTO Council objects to the Commission's proposal to approve the proposed Reliability Standard IRO-006-4 based on the interpretation that using a TLR alone to mitigate an IROL violation is a violation of the Reliability Standard. ISO/RTO Council expresses concern that the ERO has procedures for interpreting Reliability Standards and those procedures may be eroded through after-the-fact Commission interpretation without

[23] NOPR, FERC Stats. & Regs. ¶ 32,632 at P 48.

the opportunity for NERC stakeholder review. ISO/RTO Council urges greater deference to following the Commission-approved NERC process for the interpretation of Reliability Standards. Should that process prove too time-consuming, ISO/RTO Council suggests that the Commission revisit the process itself rather than undertaking de facto amendments to it by interpreting the Reliability Standard in ways not addressed through the NERC stakeholder process.

b. Commission Determination

39. This issue raised in the NOPR is somewhat overtaken by the further Commission inquiry in the Final Rule regarding the appropriate tools for mitigating an IROL violation and our discussion immediately above on this issue. As we state above, IRO-006-4, Requirement R1.1, should be "implemented and enforced" based on our understanding in this order of the issue.

40. In any case, we adopt our NOPR proposal and approve Reliability Standard IRO-006-4 with the understanding that using a TLR procedure to mitigate an actual IROL violation is a violation of the Requirement R1.1 of the Reliability Standard, as discussed above. While ISO/RTO Council raises procedural concerns regarding the Commission's interpretation, neither ISO/RTO Council nor any other commenter expresses concern regarding the substance of the Commission's interpretation. Further, the Commission

previously has determined—or interpreted—when a violation of a Reliability Standard would occur.[24]

3. Use of Demand-Side Management to Mitigate IROL Violations

41. In a joint concurrence to the NOPR, then-Commissioner Wellinghoff and Commissioner Kelly noted that demand-side management is not explicitly included in Requirement R1.1 of IRO-006-4 among the acceptable tools to mitigate an IROL violation. The concurrence noted that nothing in the Reliability Standard precludes the use of demand-side management that can quickly respond to emergencies and discussed available demand-side management technologies currently used that may be deployed as readily, if not faster, than involuntary load shedding. The joint concurrence expressed a preference to expressly include demand-side management among the list of tools to mitigate IROL violations, set forth in Requirement R1.1.

a. Comments

42. NERC comments that it did not intend the list of tools in Requirement R1.1 for addressing IROL violations to be an exhaustive list; effective demand-side response could also be considered.

43. Alcoa comments that demand-side management should be included in the list of alternatives to the TLR procedure in IRO-006-4. Alcoa claims that its smelters have

[24] N. Am. Elec. Reliability Corp., 119 FERC ¶ 61,321, at P 10 (2007) ("A vegetation-related transmission outage would result in a violation of Requirement R1, R2 or both.").

demonstrated an ability to curb demand to assist in TLR efforts and alleviate IROL violations. In addition, Alcoa claims that in some instances load may be able to respond to IROL violations more quickly and effectively than generation reserves. According to Alcoa, flexible loads served at transmission voltages are most effective for immediate demand response to IROL violations.

44. ISO/RTO Council comments that IRO-006-4 does not preclude reliance on demand-side management that can respond quickly to emergencies. It believes that the Reliability Standards should be resource-neutral in their application. ISO/RTO Council states that, consistent with Order No. 693, so long as a resource can address system conditions, it should be recognized in the Reliability Standards as a tool upon which the system operator can rely. ISO/RTO Council also notes initiatives by NERC and NAESB to develop rules for classifying demand-side management and identifying methods for measurement and verification.

b. Commission Determination

45. It is clear from the comments of the ERO, Alcoa, and ISO/RTO Council that the Reliability Standard includes effective demand-side management as a tool to mitigate an IROL violation pursuant to Requirement R1.1 of IRO-006-4. In its September 11, 2008 filing, the ERO states that there are four acceptable options to respond to an IROL violation: inter-area redispatch, intra-area redispatch, reconfiguration of the transmission system, and voluntary or involuntary reductions in load. The ERO further explains that

the reference in Requirement R1.1 to "load shedding" refers to voluntary or involuntary reductions in load.[25] Thus, as clarified by NERC, Requirement R1.1 allows the use of effective demand-side management as one tool to mitigate an IROL violation. The Commission will implement and enforce this Reliability Standard as clarified by NERC.

C. Violation Risk Factors

46. In the NOPR, the Commission proposed to direct the ERO to modify the violation risk factors assigned to Requirements R1 through R4 by raising them to "high." This proposal was based on the Commission's guidelines for evaluating validity of violation risk factor assignments.[26] In particular, the Commission reasoned that a "high" violation risk factor assignment for Requirements R1 through R4 is consistent with findings of the Final Blackout Report.[27]

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[25] NERC September 11, 2008 Response at 4.

[26] The guidelines are: (1) consistency with the conclusions of the Blackout Report; (2) consistency within a Reliability Standard; (3) consistency among Reliability Standards; (4) consistency with NERC's definition of the violation risk factor level; and (5) treatment of requirements that co-mingle more than one obligation. The Commission also explained that this list was not necessarily all-inclusive and that it retains the flexibility to consider additional guidelines in the future. A detailed explanation is provided in North American Electric Reliability Corp., 120 FERC ¶ 61,145, at P 8-13 (2007).

[27] Recommendation 31 states, "Clarify that the transmission loading relief (TLR) process should not be used in situations involving an actual violation or an Operation Security Limit." Final Blackout Report at 163.

1. Comments

47. NERC, IESO, and ISO/RTO Council urge the Commission to adopt the violation risk factors proposed by NERC. NERC contends that the Commission's reliance on the violation risk factors for IRO-006-3, Requirements R1 through R4, submitted in 2007 is not appropriate.[28] NERC explains that the violation risk factors submitted in the current proceeding for IRO-006-4 received significant industry review and scrutiny, which was not the case with the 2007 submission.

a. Violation Risk Factors for Requirement R1

48. NERC agrees with the Commission that Requirements R1.1 through R1.3 are explanatory text and that a violation risk factor need not be assigned to each subsection. However, NERC, ISO/RTO Council, and IESO disagree with the Commission's proposal to direct the ERO to raise the violation risk factor from "medium" to "high."

49. Specifically, NERC and ISO/RTO Council disagree with the Commission's statement that a "high" violation risk factor assignment is consistent with the findings of the Final Blackout Report. According to NERC, the main thrust of Recommendation 31 in the Final Blackout Report (regarding the use of TLR in response to actual violations) has been addressed in Requirement R1.1 of the Reliability Standard and does not warrant a "high" violation risk factor designation. ISO/RTO Council contends that the Final

[28] See NOPR, FERC Stats. & Regs. ¶ 32,632 at P 51 (noting that the corresponding requirements in the earlier Commission-approved version of the Reliability Standard were assigned a "high" violation risk factor).

Blackout Report does not identify and rank the associated risk of not implementing each recommendation. ISO/RTO Council claims that the Final Blackout Report Recommendation 31 simply focuses on reliability coordinators using tools other than TLRs for a real-time emergency.

50. Further, NERC contends that IRO-006-4, Requirement R1 and its sub-requirements are procedural in nature, because they focus on how relief is achieved rather than on whether relief is achieved. NERC recognizes that "the result of an ineffective application of this requirement could impact the electrical state of the grid."[29] However, NERC posits that IRO-005-1, Requirement R5 is the principal source of the reliability coordinator's obligation to relieve actual or potential IROL violations. For these reasons, NERC believes Requirement R1 merits a "medium" violation risk factor.

51. IESO agrees with NERC's assessment that Requirement R1 is administrative in nature. IESO states that Requirement R1 provides the initiating reliability coordinator options from which to choose to relieve transmission constraints, and it becomes a reliability requirement only when a reliability coordinator chooses an interconnection-wide procedure as one of the means to relieve transmission constraints. IESO explains that if a reliability coordinator chooses other control actions but not an interconnection-wide TLR procedure to prevent or mitigate an IROL violation, this Reliability Standard

[29] NERC Comments at 19. Unless otherwise indicated, citations to parties' comments refer to comments filed after the NOPR, prior to the Final Rule.

will not apply, and the reliability coordinator will not be subject to the requirements in the standard. Further, IESO contends that if a reliability coordinator chooses to apply an interconnection-wide procedure and the requirements stipulated therein are not complied with, there is a potential risk on the control and operation of the system, because non-compliance with the TLR procedure may affect other actions that are also being applied to prevent or mitigate an IROL violation.

52. IESO and ISO/RTO Council disagree with the Commission's statement that, if the reliability coordinator chooses an unapproved and ineffective procedure for relief or fails to choose a procedure entirely, potential or actual IROL violations will not be mitigated as intended by the reliability coordinator.[30] According to IESO and ISO/RTO Council, with or without the interconnection-wide relief procedure, reliability coordinators and transmission operators are required by other Reliability Standards such as TOP-002, TOP-004, and IRO-005 to apply local control actions and procedures to prevent and mitigate SOL and IROL violations.

53. ISO/RTO Council also favors a "medium" violation risk factor assignment for Requirement R1, stating that interconnection-wide procedures are only one tool in the toolbox to restore system integrity.

[30] See NOPR, FERC Stats. & Regs. ¶ 32,632 at P 52.

b. Violation Risk Factors for Requirement R2

54. NERC does not believe that a reliability coordinator could successfully implement a local procedure to which the particular transmission operator is not a party. In any event, NERC does not believe that the implementation of such a procedure would in itself create a "high" reliability risk. NERC states that if the reliability coordinator were able to achieve the relief, then it would be considered as having the lesser infraction of using the wrong tools to achieve the correct results. Further, it states that if such a procedure did not provide the required relief, the reliability coordinator would be in violation of IRO-005-1, Requirement R5. NERC claims this requirement is focused on "how" the relief is provided, not "whether" the relief is provided. In addition, NERC states that the use of a local procedure is implemented at the discretion of the reliability coordinator and is not obligatory. Accordingly, NERC believes that a violation risk factor of "lower" is appropriate.

55. IESO argues the intent of Requirement R2 is to ensure that a reliability coordinator who initiates actions to relieve transmission constraints in a transmission operator's area applies the actions that are either totally local to the transmission operator's area or which have been developed by the transmission operator jointly with other transmission operators. IESO states that choosing which procedures to relieve transmission constraints is an administrative requirement since the reliability coordinator, having the authority to ensure wide area reliability, may apply any procedures that it

deems necessary to relieve transmission constraints. IESO contends that in the event the reliability coordinator applies a relief procedure to which the constrained transmission operator is not a party, it should not be a presumption that prevention or mitigation of an IROL violation will not be achieved since the reliability coordinator is obligated to ensure operating reliability through compliance with IRO-005-1. For these reasons, IESO believes that Requirement R2 is administrative and deserves a "lower" violation risk factor.

56. IESO disagrees with the Commission assessment that "[v]iolation risk factors should not be assigned differently for requirements in separate Reliability Standards based on compliance with another Reliability Standard," on the basis that "[t]wo requirements either achieve separate reliability goals and, therefore, violation of them represents independent risks, or two requirements share the same reliability goal."[31] IESO states that, while the IRO-005-1 requirements and the TLR requirements share the same reliability goal, the latter is in fact subordinate to the former. Thus, IESO maintains that there should not be two simultaneous "high" risk penalties assessed for a reliability coordinator for failing to comply with the TLR procedure of Requirements R1 or R2 and for failing to prevent or mitigate an IROL violation as required in IRO-005-1.

[31] IESO Comments at 8 (quoting NOPR, FERC Stats. & Regs. ¶ 32,632 at P 53).

c. Violation Risk Factors for Requirement R3

57. NERC maintains that Requirement R3 is focused on the procedural aspects of the Reliability Standard, i.e., how the relief is provided rather than whether the relief was provided. NERC argues that if the entity is able to achieve the relief through other means that were not pre-approved, then it would have committed an administration violation of using the wrong tools to achieve the correct results. According to NERC, if such a procedure did not provide the required relief, the reliability coordinator would be in violation of IRO-005-1, Requirement R5. For reasons similar to those provided for Requirement R2, IESO agrees with NERC that Requirement R3 is administrative and deserves a "lower" violation risk factor.

d. Violation Risk Factors for Requirement R4

58. NERC claims that a violation of Requirement R4 is "a specific kind of violation of the INT family of Reliability Standards that is being caused by a reliability coordinator's inaction, resulting in an imbalance in one or both of the interconnections involved."[32] NERC comments that Requirement R4 complements the INT group of Reliability Standards in the same fashion as Requirement R5, which the Commission supported with a violation risk factor of "medium." IESO concurs with NERC's assignment of a "medium" violation risk factor to Requirement R4. IESO reasons that complying with the provisions of the interconnection-wide procedure of the initiating reliability

[32] NERC Comments at 21-22.

coordinator is no more stringent than complying with the request for relief based on the TLR procedure within the same interconnection, the latter being the requirement in R1.

2. Commission Determination on Violation Risk Factors

59. For the reasons stated in the NOPR and as discussed below, the Commission directs the ERO to modify the violation risk factors of Requirements R1 through R4 of IRO-006-4 to "high."

60. The Commission disagrees with NERC and others and finds that it is appropriate to use the Final Blackout Report as a basis for setting violation risk factors of the proposed Reliability Standard at "high" for several reasons. The Final Blackout Report is the result of the U.S-Canada Task Force's investigation of the August 14, 2003 blackout where the Task Force identified contributing factors and causes that put the Bulk-Power System at risk for that event. Specifically, the Final Blackout Report identified an attempt to use the TLR process to address transmission power flows without recognizing that the imposition of a TLR procedure would not solve the problem as one contributing cause for the initiation of the blackout of August 2003. Based on its findings, the Task Force developed recommendations to reduce the possibility of future outages and to reduce the scope of future blackouts that may nonetheless occur.[33] Thus, the Task Force developed Recommendation No. 31 to prevent the initiation of a TLR procedure during

[33] Final Blackout Report at 20.

an actual violation of an SOL.[34] Since the Final Blackout Report was developed to document the August 14, 2003 blackout's contributing factors and causes, which include specific violations of then voluntary reliability policies, guidelines, and standards, the Commission believes it is appropriate to use the findings of the Final Blackout Report as one of the guidelines for the determination of a requirement's violation risk factor. Specifically, the Commission believes the findings of the Final Blackout Report are particularly relevant in the determination of violation risk factors of then-voluntary reliability policies, guidelines, and standards identified as causes and factors of the August 14, 2003 blackout that the ERO proposes as mandatory Reliability Standards, such as IRO-006-4. The Commission also disagrees for the same reasons with commenters that argue the Final Blackout Report does not identify and rank the associated risk of not implementing each recommendation.

61. While we agree that Requirement R.1.1 discourages the use of a TLR to mitigate a real-time IROL violation, Requirement R1.1, is merely explanatory text. It is Requirement R1 that establishes that the reliability coordinator shall choose one or more of the procedures, listed as sub-requirements, to provide the appropriate transmission relief. The selection of a procedure to provide relief to address a potential or actual SOL or IROL violation is directly relevant to Final Blackout Report Recommendation No. 31.

[34] Id. at 163.

If an inappropriate procedure is selected in an attempt to mitigate an IROL, the Bulk-Power System is vulnerable to cascading outages, as was the case on August 14, 2003.

62. The Commission is not persuaded by NERC's argument relative to "using the wrong tools to achieve the correct results" in the assignment of a requirement's violation risk factor. Contrary to this argument, the Commission has recognized that there may be some Reliability Standards where the means, or the "how," is inextricably linked to the effectiveness of the Reliability Standard.[35] We find that this is the case here. The Commission has explained that the inclusion of implementation practices within requirements of such a standard is to reduce uncertainty and further objectives that foster reliability which, if violated, would pose increased reliability risk to the Bulk-Power System.[36]

63. Similarly, NERC's argument that, if the reliability coordinator were able to achieve the relief desired without complying with Requirement R1, it would be considered as having the lesser infraction of using the wrong tools to achieve the correct results is also flawed. The purpose of the violation risk factor is to accurately portray the

[35] 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 260; see also id., Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

[36] N. Am. Elec. Reliability Corp., 121 FERC ¶ 61,179, at P 15 (2007).

risk a violation poses to the Bulk-Power System,[37] notwithstanding a violator's avoidance of reliability problems in a particular case by using an unreliable operation. This Commission determination is relevant to arguments that a "high" violation risk factor is not appropriate because the subject requirement overlaps other requirements, duplicates other requirements, or could be implemented by alternative means. The Commission has previously determined that NERC should address those issues through the Reliability Standard development process.[38]

64. The Commission also disagrees with the characterization of Requirements R1, R2, and R3 as procedural choices without reliability-related consequences. For example, failure to implement Requirement R1, i.e., failure to select one or more procedures to provide transmission relief, is not just a procedural or administrative choice; it is a decision that has the potential to place the Bulk-Power System at risk of cascading outages. Although commenters argue that a violation of Requirement R2 is essentially administrative in nature and that the prevention or mitigation of the potential or actual SOL or IROL may be achieved through compliance with another Reliability Standard, which would justify a "lower" violation risk factor, the Commission disagrees. Requirements R1 through R4 require that a reliability coordinator choose and follow the

[37] Id. P 16.

[38] Id. P 39.

appropriate procedure to provide relief. If the reliability coordinator chooses an unapproved and/or ineffective procedure for relief or fails to choose a procedure entirely, potential or actual IROL violations will not be mitigated as intended by the reliability coordinator. Therefore, the Commission finds that violation of Requirements R1 through R4 present a high reliability risk to Bulk-Power System. Assigning a "high" violation risk factor to Requirements R1 through R4 is consistent with the Final Blackout Report.

65. A violation risk factor represents the reliability risk a violation of that requirement presents to the Bulk-Power System. Violation risk factors should not be assigned differently for requirements in separate Reliability Standards based on compliance with another standard. This assessed reliability risk is independent and not contingent upon compliance with other requirements of Reliability Standards. While the Commission recognizes the complementary nature of proposed Reliability Standard IRO-006-4, Requirement R1 and Reliability Standard IRO-005-1, Requirement R5, the fact that requirements may share the same reliability objective as another requirement does not justify lowering one or more of the requirements' violation risk factors. In fact, the Commission expects the assignment of violation risk factors corresponding to requirements that address similar reliability goals in different Reliability Standards to be

treated comparably.[39] The Commission notes that Reliability Standard IRO-005-1, Requirement R5, is assigned a "high" violation risk factor.

66. Further, the argument that a "lower" violation risk factor assigned to Requirement R1 is appropriate since Requirement R1 is administrative in nature (because it provides the initiating reliability coordinator with options to choose among available procedures and only becomes a reliability requirement when a reliability coordinator chooses an interconnection-wide procedure) is flawed. First, the fact that a requirement provides "options" does not automatically make that requirement administrative. It is the potential reliability risks the failure to take options mandated by the requirement presents to the Bulk-Power System that determines that requirement's violation risk factor. Second, requirements become mandatory and enforceable reliability requirements only after Commission approval and not after any action, or inaction, by an applicable entity.

67. For the same reasons explained above, the Commission disagrees with comments that Requirement R3 focuses on procedural aspects of the Reliability Standard founded on the arguments that the requirement related to "how" the relief is provided rather than "whether" the relief was provided, where the "wrong tools" were used to achieve the "correct results." Even if an entity, having violated a Reliability Standard, achieves

[39] N. Am. Elec. Reliability Corp., 119 FERC ¶ 61,145, at P 25 (2007).

correct results, the entity's success should be attributed to a matter of chance and may be more risky than the operation set forth in the Reliability Standard.

68. IESO's comment that there should not be two simultaneous "high" risk penalties assessed to a reliability coordinator who fails to comply with the TLR procedure of Requirements R1 and R2 is outside the scope of this proceeding. The determination of monetary penalties for a violation of a requirement is a compliance issue, which is best addressed in the context of a compliance proceeding.[40]

69. We do not agree that a violation of Requirement R4 is a specific type of violation of the INT Reliability Standards as NERC and IESO suggest. Requirement R4 requires a reliability coordinator to comply with interconnection-wide curtailment procedures whereas Requirement R5 requires reliability coordinators and balancing authorities to adhere to INT standards that largely specify interchange scheduling procedures. Failure to implement curtailment procedures poses a higher reliability risk, since it may place the Bulk-Power System at risk of cascading outages, than failure to implement scheduling procedures; therefore, it should receive a "high" violation risk factor.

3. Commission Determination on Violation Severity Levels

70. The ERO's December 21, 2007 filing included proposed violation severity levels corresponding to the requirements of IRO-006-4. Violation severity levels, which the

[40] We note that section 3.10 of NERC's Sanction Guidelines addresses multiple violations related to a single act or common incidence of noncompliance.

ERO or the Regional Entity will apply to establish an initial base penalty range when assessing a penalty for the violation of a Reliability Standard, constitutes a post-violation measurement of the degree to which a requirement was violated.[41] The Commission accepts the violation severity levels proposed by the ERO that correspond to the Requirements of Reliability Standard IRO-006-4.

71. Further, in the Violation Severity Levels Order, the Commission directed the ERO to submit a compliance filing certifying that it has reviewed each of the violation severity level assignments for consistency with certain guidelines set forth in that order.[42] The Commission also directed that the ERO either validate the existing violation severity level designations or propose revisions to specific approved violation severity level assignments where the ERO determines that such assignments do not meet the specified guidelines. Consistent with the Violation Severity Levels Order, the Commission now directs the ERO to review the violation severity levels for IRO-006-4. The ERO must include in the compliance filing required by Ordering Paragraph (E) of the Violation Severity Levels Order a certification that it has reviewed each violation severity level assignment corresponding to the requirements of IRO-006-4 for consistency with certain

[41] See N. Am. Elec. Reliability Corp., 123 FERC ¶ 61,284, at P 3 (Violation Severity Levels Order), order on reh'g, 125 FERC ¶ 61,212 (2008) (extending compliance date).

[42] See Violation Severity Level Order, 123 FERC ¶ 61,284 at P 41 and Ordering Paragraph (E).

guidelines (specifically, guidelines 2b, 3, and 4), validating the assignments that meet the guidelines and proposing revisions to those that fail to meet the guidelines.

72. Accordingly, with respect to the violation risk factors and severity levels, we approve IRO-006-4 as mandatory and enforceable. In addition, we direct the ERO submit a compliance filing within 60 days that revises violation risk factors to "high" for Requirements R1 through R4. The Commission approves the proposed violation severity levels and requires the ERO to submit a compliance filing, as discussed above.

III. Information Collection Statement

73. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[43] The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.[44] As stated above, the Commission previously approved, in Order No. 693, Reliability Standard IRO-006, which is the subject of this supplemental final rule. In the NOPR, the Commission explained that the modifications to the Reliability Standard are minor; therefore, they do not add to or increase entities' reporting burden. Thus, in the NOPR, the Commission stated that the modified

[43] 5 CFR 1320.11.

[44] 44 U.S.C. 3507(d).

Reliability Standard does not materially affect the burden estimates relating to the earlier version of Reliability Standard IRO-006 presented in Order No. 693.[45]

74. In response to the NOPR, the Commission received no comments concerning its estimate for the burden and costs and therefore uses the same estimate here.

Title: Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards.

Action: Proposed Collection

OMB Control No.: 1902-0244

Respondents: Businesses or other for-profit institutions; not-for-profit institutions

Frequency of Responses: On Occasion

Necessity of the Information: This Supplemental Final Rule approves one modified Reliability Standard that pertains to transmission loading relief procedures. The Supplemental Final Rule finds the Reliability Standard just, reasonable, not unduly discriminatory or preferential, and in the public interest.

75. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the

[45] See Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1905-07. The NOPR, FERC Stats. & Regs. ¶ 32,632 at P 76-78, provided a detailed explanation why each modification has a negligible, if any, effect on the reporting burden.

Executive Director, 888 First Street, NE, Washington, DC 20426, Tel: (202) 502-8415, Fax: (202) 273-0873, E-mail: <michael.miller@ferc.gov>, or by contacting: Office of Information and Regulatory Affairs, Office of Information and Regulatory Affairs, Attn: Desk Officer for the Federal Energy Regulatory Commission (Re: OMB Control No. 1902-0244), Washington, DC 20503, Tel: (202) 395-4650, Fax: (202) 395-7285, E-mail: <oira_submission@omb.eop.gov>.

IV. Environmental Analysis

76. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[46] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[47] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

[46] Regulations Implementing the National Environmental Policy Act, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[47] 18 CFR 380.4(a)(2)(ii).

V. Regulatory Flexibility Act

77. The Regulatory Flexibility Act of 1980 (RFA)[48] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's Office of Size Standards develops the numerical definition of a small business. (See 13 CFR 121.201.) For electric utilities, a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours. The RFA is not implicated by this Final Rule because the minor modifications and interpretations discussed herein will not have a significant economic impact on a substantial number of small entities.

VI. Document Availability

78. 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

[48] 5 U.S.C. 601-12.

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

79. 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.

80. 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 e-mail 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>.

VII. Effective Date and Congressional Notification

81. The Supplemental Final Rule is effective [insert date that is 30 days from publication in **FEDERAL REGISTER**]. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of subjects in 18 CFR Part 40

Electric power, Electric utilities, Reporting and recordkeeping requirements

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

NOPR Commenters[49]

Alcoa Inc. (Alcoa)*

Constellation Energy Commodities Group, Inc. (Constellation)*

Independent Electricity System Operator of Ontario (IESO)*

ISO/RTO Council*

ITC*Transmission*; Michigan Electric Transmission Company, LLC; and ITC Midwest LLC

Lafayette Utilities and the Louisiana Energy and Power Authority (Lafayette and LEPA)*

North American Electric Reliability Corp. (NERC)*

NRG Companies (NRG)*

Southern Company Services, Inc. (Southern)

Appendix B

Comments in Response to NERC's September 11, 2008 Filing[50]

ISO/RTO Council

NRG

Southern

[49] An asterisk (*) indicates that the commenter addressed Reliability Standard IRO-006-4.

[50] M-S-R Public Power Agency filed a motion to intervene without comments.

Document Content(s)

20130948.DOC.....1-46

130 FERC ¶ 61,032
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards	Docket No. RM08-7-002

ORDER NO. 713-B

ORDER DENYING REQUEST FOR REHEARING AND CLARIFICATION

(Issued January 21, 2010)

1. The NRG Companies, Electric Power Supply Association, and Constellation Energy Commodities Group (collectively, Rehearing Parties) filed a joint request for rehearing and clarification of Order No. 713-A, in which the Commission accepted revisions to the North American Electric Reliability Corporation's (NERC) transmission load relief (TLR) requirements as set forth in Reliability Standard IRO-006-4.[1] In this order, we deny rehearing and clarification, as discussed below. While we conclude that the concerns raised by the Rehearing Parties regarding a potential conflict between the TLR Procedure and the curtailment priority provisions of the open access transmission tariff are beyond the scope of the current proceeding, we believe that this issue merits further inquiry and, therefore, are issuing a notice of inquiry proceeding in Docket No. RM10-9-000 concurrently with this order.

I. Background

2. On December 21, 2007, NERC, the Commission-certified electric reliability organization (ERO), submitted for Commission approval modifications to Reliability

[1] *Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards*, Order No. 713-A, 126 FERC ¶ 61,252 (2009).

Standard IRO-006-4 (Reliability Coordination – Transmission Loading Relief), known as the TLR procedure.

3. Reliability Standard IRO-006-4 provides Interconnection-wide transmission loading relief procedures that can be used to prevent or manage potential or actual system operating limit (SOL) or Interconnection reliability operating limit (IROL) violations.[2] Reliability Standard IRO-006-4 modifies Reliability Standard IRO-006-3, which the Commission approved in Order No. 693.[3] In its December 2007 filing, NERC explained that it modified the TLR procedure to "extract" business practices since these elements are not related to reliability.[4] Further, the modified Reliability Standard includes changes directed by the Commission in Order No. 693 related to the appropriateness of using the TLR procedure to mitigate a violation of an IROL.

4. On July 21, 2008, the Commission issued Order No. 713, which, *inter alia*, directed NERC to submit a filing explaining one aspect of the TLR procedure. On September 11, 2008, NERC submitted a responsive filing. On March 19, 2009, the Commission issued Order No. 713-A, which approved Reliability Standard IRO-006-4. In addition, Order No. 713-A directed the ERO to develop a modification to IRO-006-4, pursuant to section 215(d)(5) of the Federal Power Act (FPA).[5] In response to comments regarding competitive concerns and the application of the Interchange Distribution Calculator (IDC),[6] the Commission concluded:

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[2] A SOL is the value (such as MW, MVar, amperes, frequency, or volts) that satisfies the most limiting of the prescribed operating criteria for a specified system configuration to ensure operation within acceptable reliability criteria. An IROL is a system operating limit that, if violated, could lead to instability, uncontrolled separation, or cascading outages that adversely impact the reliability of the Bulk-Power System.

[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).

[4] *See infra* P 12 and accompanying note.

[5] 16 U.S.C. § 824o(d)(5) (2006).

[6] The IDC is a mechanism used by the reliability coordinators in the Eastern Interconnection to calculate the distribution of interchange transactions over specific flowgates. It includes a database of all interchange transactions and a matrix of the distribution factors for the Eastern Interconnection.

> The above comments on suggested improvements to the TLR procedure are beyond the scope of this proceeding, which pertains to the separation of business practices from the ERO's TLR procedure and implementation of the Commission's directives set forth in Order No. 693. We note, however, that the ERO indicated in its December 21, 2007 filing that it has a three-phase plan to improve the TLR procedures, and the third phase will consist of "a complete redrafting to incorporate enhancement and changes beyond the separation of reliability and business practice issues." Therefore, the phase three proceeding would provide a proper forum for commenters to raise their concerns. The Commission believes that NRG and other commenters raise valid issues and urges the commenters to raise—and expects the ERO to consider—these matters in an appropriate proceeding. We also note that NERC states it is currently updating the IDC to more accurately determine the impacts of native load and network service.[7]

II. Request for Rehearing and Clarification

5. The Rehearing Parties argue that the Commission erred in approving IRO-006-4. The Rehearing Parties state that the FPA requires the Commission to find a proposed Reliability Standard just and reasonable and not unduly discriminatory or preferential, to "ensure that proposed Reliability Standards are fair and that they do not adversely affect competition."[8] They contend that the Commission failed to apply this statutory standard, finding the proposed Reliability Standard just and reasonable notwithstanding inconsistent record evidence. Further, they contend that the Commission accepted the Reliability Standard without considering its impact on competition. The Rehearing Parties also dispute the Commission's finding that comments relating to competitive concerns are beyond the scope, noting that "NERC presented the mandatory TLR reliability rules in this docket."[9] The Rehearing Parties maintain that there is no evidence that the Commission considered the effect of the proposed Reliability Standard on competition, instead relying on NERC's analysis.

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[7] Order No. 713-A, 126 FERC ¶ 61,252 at P 21 (footnotes omitted).

[8] Request for Rehearing at 4 (citing FPA § 215(d), 16 U.S.C. § 824o(d) (2006)).

[9] *Id.* at 6.

6. The Rehearing Parties next contend that the TLR Reliability Standard violates the curtailment priorities established in Order Nos. 888[10] and 890[11] and the *pro forma* open access transmission tariff (OATT), because the standard favors native network load transactions over interchange transactions with respect to curtailment priority. They cite to NRG's comments in the underlying proceeding that point to problems with the IDC, upon which the Reliability Standard relies to determine curtailments.[12] The Rehearing Parties cite sections 13.6 and 14.7 of the Commission's *pro forma* OATT for the propositions that non-firm transmission services must be curtailed before firm transmission services, and firm point-to-point and network integration transmission service customers have an equal priority with the transmission provider's use of the system to deliver Network Resources to its native load.[13] They maintain that, because of its reliance on the flawed IDC, the TLR standard would direct a Reliability Coordinator to curtail a firm interchange transaction crossing over a constrained flowgate prior to curtailing a non-firm native network load transaction across the same flowgate. Lastly, the Rehearing Parties point out that the Commission has recognized such flaws in the IDC and has directed NERC to address them.[14] According to the Rehearing Parties, earlier reforms to the TLR process and IDC have not remedied flaws that have been identified.

7. The Rehearing Parties further contend that in the TLR Order the Commission acknowledges that the TLR Reliability Standard is discriminatory. They contend that the

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[10] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

[11] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008) *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

[12] Request for Rehearing at 7 (citing NRG Comments at 12-16).

[13] *Id.*

[14] *Id*. at 8 (citing *N. Am. Elec. Reliability Corp.*, 85 FERC ¶ 61,353 (1998)).

Commission erred in accepting the standard while conceding that the proposed TLR process discriminates against certain market participants and that the issues raised by the Rehearing Parties are valid.[15] They specifically aver that the TLR Reliability Standard discriminates against merchant generators and provides an unlawful preference for transactions by load-serving entities. For example, they explain that the IDC does not include power purchases by a host balancing authority in the native network load curtailment calculations, because native network load is calculated by taking into account only those generation facilities owned by the host balancing authority. Thus, in this example, transactions involving independent power producers are curtailed in favor of transactions involving the host balancing authority.

8. Finally, the Rehearing Parties contend that the Commission erred in not remanding the TLR Reliability Standard back to NERC. In response to NERC's estimation that its efforts to improve the IDC will take two to five additional years, the Rehearing Parties state that this "is simply too long for the Commission to wait to address the OATT violations caused by the existing standard."[16]

9. The Rehearing Parties request that the Commission clarify that Order No. 713-A directs NERC to revise the TLR Reliability Standard to address the issues raised by the Rehearing Parties pursuant to section 215(d) of the FPA. Alternatively, the Rehearing Parties seek rehearing and request the Commission to reject the Reliability Standard as discriminatory and direct NERC to immediately develop a TLR process that addresses the competitive concerns raised.

III. Discussion

10. We deny the Rehearing Parties' request for rehearing and clarification. While the Rehearing Parties reiterate the concerns raised in their earlier rulemaking comments, they provide a limited response to the Commission's conclusion that the issues raised are beyond the scope of the immediate rulemaking proceeding. Namely, the Rehearing Parties claim that "[b]ecause NERC presented the mandatory TLR reliability rules in this docket, there is no justification for finding that the Rehearing Parties' concerns are better addressed in some other proceeding or that the Commission is not required to address discrimination claims when approving a mandatory Reliability Standard."[17]

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[15] *Id.* at 9, 10 (citing Order No. 713-A, 126 FERC ¶ 61,252 at P 21).

[16] *Id.* at 11.

[17] *Id.* at 6.

11. We are not persuaded by the Rehearing Parties' argument. In Order No. 693, the Commission approved Reliability Standard IRO-006-3 (Reliability Coordination – Transmission Loading Relief).[18] This approval made the TLR procedures mandatory under section 215 of the FPA. Reliability Standard IRO-006-3 sets forth the entire TLR process, including the application of the IDC.

12. NERC's submission of the revised TLR procedure, as IRO-006-4, was limited in scope. NERC explained that the filing addressed two specific matters, namely, the separation of business practices that were "transferred" to a North American Energy Standards Board (NAESB) business practice document[19] and a prohibition regarding the use of the TLR procedure to mitigate an actual IROL violation. All other provisions of the modified TLR procedure, previously approved by the Commission in Order No. 693, remain the same. The Commission disagrees with the Rehearing Parties that all issues regarding any aspect of a previously-approved Reliability Standard must be addressed when the Commission is presented with narrowly tailored modifications to the standard. Thus, the Commission upholds its earlier conclusion that comments regarding improvements to the Reliability Standard to address certain competitive issues are beyond the scope of the immediate proceeding. Indeed, if the Commission were to grant the Rehearing Parties' requested relief of remanding Reliability Standard IRO-006-4, the previously approved version of the TLR procedure, IRO-006-3, would remain in effect and enforceable, which would not resolve the competitive issues raised by the Rehearing Parties.

13. Further, we disagree with the Rehearing Parties' claim that the Commission erred in failing to reject Reliability Standard IRO-006-4 "even after conceding that the proposed TLR process discriminates against certain market participants …."[20] Contrary to the Rehearing Parties' characterization, the Commission did not "concede" or, for that matter, make any substantive finding or conclusion on the competitive issues raised by commenters. Rather, consistent with the conclusion that the matters raised were beyond the scope of the immediate proceeding, the Commission stated:

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[18] *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 960-964.

[19] The Commission approved the NAESB TLR standard, WEQ-008, to coincide with the effective date of Reliability Standard IRO-006-4. *See Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-C, FERC Stats. & Regs. ¶ 31,274, at P 7 n.11, P 9, 80 (2008); *see also* Order No. 713, 124 FERC ¶ 61,071 at P 8.

[20] Request for Rehearing at 9.

> [NERC's] phase three proceeding would provide a proper forum for commenters to raise their concerns. The Commission believes that NRG and other commenters raise valid issues and urges the commenters to raise—and expects the ERO to consider—these matters in an appropriate proceeding.[21]

This statement is consistent with the Commission's approach set forth in Order No. 693, in which the Commission explained that when a commenter suggests improvements to a Reliability Standard, a Commission directive that the ERO address the comments "does not direct any outcome other than that the comments receive consideration."[22] Merely stating that the concerns are "valid" while directing that the ERO consider the comments is not properly characterized as a concession or determination by the Commission.

14. For the same reasons, the above statement does not support the Rehearing Parties' request that the Commission clarify that the ERO must address the Rehearing Parties' concerns within a set time period and fix the IDC or eliminate reliance on the IDC to make curtailment decisions.[23] The Rehearing Parties suggest that the statement in the introduction to Order No. 713-A, "pursuant to section 215(d)(5) of the FPA, the Commission directs NERC to develop modifications to Reliability Standards IRO-006-4," mandates that NERC address the competitive issues with a certain result and in a set time period.[24] Again, consistent with our approach in Order No. 693, the Commission (urged commenters to raise and) directed NERC to "consider" these issues in an appropriate proceeding, but did not mandate a particular result.[25]

15. Thus, the Commission in Order No. 713-A properly determined that the modified Reliability Standard IRO-006-4, at issue in this proceeding, is just and reasonable, not

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[21] Order No. 713-A, 126 FERC ¶ 61,252 at P 21.

[22] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 188.

[23] Request for Rehearing at 12.

[24] Order No. 713-A, 126 FERC ¶ 61,252 at P 1.

[25] In contrast, where the Commission directed the ERO to develop a modification to IRO-006-4, the Commission clearly stated, "Accordingly, pursuant to section 215(d)(5) of the FPA, the Commission directs the ERO to develop a modification of Requirement R1.1 with respect to the term "alone," consistent with this discussion." *Id.* P 36.

unduly discriminatory or preferential, and in the public interest. Accordingly, we deny the Rehearing Parties' request for rehearing and clarification.

16. While the issues raised by Rehearing Parties related to the TLR procedure and the curtailment priorities are beyond the scope of this immediate rulemaking proceeding, we believe that certain issues raised by Rehearing Parties merit further inquiry. Accordingly, we are issuing a notice of inquiry (i.e., NOI) proceeding in Docket No. RM10-9-000 concurrently with this order with respect to the TLR procedure and its interplay with the curtailment priority provisions of the OATT.[26]

The Commission orders:

The Rehearing Parties' request for rehearing and clarification is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Norris voting present.

(S E A L)

Kimberly D. Bose,
Secretary.

[26] *Transmission Loading Relief Reliability Standard and Curtailment Priorities*, 130 FERC ¶ 61,033 (2010).

Document Content(s)

RM08-7-002.DOC.....1-8

EXHIBIT B

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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13G

Under the Securities Exchange Act of 1934

(Amendment No:)

NRG ENERGY INC

(Name of Issuer)

Common Stock

(Title of Class of Securities)

629377508

(CUSIP Number)

December 31, 2009

(Date of Event Which Requires Filing of this Statement)

Check the appropriate box to designate the rule pursuant to
which this Schedule is filed:

[X] Rule 13d-1(b)
[ ] Rule 13d-1(c)
[ ] Rule 13d-1(d)

*The remainder of this cover page shall be filled out
for a reporting person's initial filing on this form with
respect to the subject class of securities, and for any
subsequent amendment containing information which
would alter the disclosures provided in a prior cover page.

The information required in the remainder of this cover
page shall not be deemed to be "filed" for the purpose
of Section 18 of the Securities Exchange Act of 1934
("Act") or otherwise subject to the liabilities of that
section of the Act but shall be subject to all other
provisions of the Act (however, see the Notes).

CUSIP No. 629377508

(1)Names of reporting persons. BlackRock, Inc.

(2) Check the appropriate box if a member of a group (see instructions)
(a)
(b)

(3) SEC use only

(4) Citizenship or place of organization

Delaware

Number of shares beneficially owned by each reporting person with:

(5)Sole voting power

25810188

(6)Shared voting power

None

(7)Sole dispositive power

25810188

(8)Shared dispositive power

None

(9)Aggregate amount beneficially owned by each reporting person

25810188

(10)Check if the aggregate amount in Row (9) excludes certain shares

(11)Percent of class represented by amount in Row 9

10.07%

(12)Type of reporting person (see instructions)

HC

Item 1.

Item 1(a) Name of issuer:

NRG ENERGY INC

Item 1(b) Address of issuer's principal executive offices:

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211 Carnegie Center
Princeton, NJ 08540

Item 2.

2(a) Name of person filing:

BlackRock, Inc.

2(b) Address or principal business office or, if none, residence:

BlackRock Inc.
40 East 52nd Street
New York, NY 10022

2(c) Citizenship:

See Item 4 of Cover Page

2(d) Title of class of securities:

Common Stock

2(e) CUSIP No.:
See Cover Page

Item 3.

If this statement is filed pursuant to Rules 13d-1(b), or 13d-2(b) or (c), check whether the person filing is a:
[ ] Broker or dealer registered under Section 15 of the Act;
[ ] Bank as defined in Section 3(a)(6) of the Act;
[ ] Insurance company as defined in Section 3(a)(19) of the Act;
[ ] Investment company registered under Section 8 of the Investment Company Act of 1940;
[ ] An investment adviser in accordance with Rule 13d-1(b)(1)(ii)(E);
[ ] An employee benefit plan or endowment fund in accordance with Rule 13d-1(b)(1)(ii)(F);
[X] A parent holding company or control person in accordance with Rule 13d-1(b)(1)(ii)(G);
[ ] A savings associations as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813);
[ ] A church plan that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940;
[ ] A non-U.S. institution in accordance with Rule 240.13d-1(b)(1)(ii)(J);
[ ] Group, in accordance with Rule 240.13d-1(b)(1)(ii)(K). If filing as a non-U.S. institution in accordance with Rule 240.13d-1(b)(1)(ii)(J), please specify the type of institution:

Item 4. Ownership

Provide the following information regarding the aggregate number and percentage of the class of securities of the issuer identified in Item 1.

Amount beneficially owned:

25810188

Percent of class

10.07%

Number of shares as to which such person has:

Sole power to vote or to direct the vote

25810188

Shared power to vote or to direct the vote

None

Sole power to dispose or to direct the disposition of

25810188

Shared power to dispose or to direct the disposition of

None

Item 5.

Ownership of 5 Percent or Less of a Class. If this statement is being filed to report the fact that as of the date hereof the reporting person has ceased to be the beneficial owner of more than 5 percent of the class of securities, check the following [ ].

Instruction. Dissolution of a group requires a response to this item.

Item 6. Ownership of More than 5 Percent on Behalf of Another Person

If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement to that effect should be included in response to this item and, if such interest relates to more than 5 percent of the class, such person should be identified. A listing of the shareholders of an investment company registered under the Investment Company Act of 1940 or the beneficiaries of employee benefit plan, pension fund or endowment fund is not required.

Various persons have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of the common stock of NRG ENERGY INC. No one person's interest in the common stock of NRG ENERGY INC is more than five percent of the total outstanding common shares.

Item 7. Identification and Classification of the Subsidiary Which Acquired the Security Being Reported on by the Parent Holding Company or Control Person.

See Exhibit A

Item 8. Identification and Classification of Members of the Group

If a group has filed this schedule pursuant to Rule 13d-1(b)(ii)(J), so indicate under Item 3(j) and attach an exhibit stating the identity and Item 3 classification of each member of the group. If a group has filed this schedule pursuant to Rule 13d-1(c) or Rule 13d-1(d), attach an exhibit stating the identity of each member of the group.

Item 9. Notice of Dissolution of Group

Notice of dissolution of a group may be furnished as an exhibit stating the date of the dissolution and that all further filings with respect to transactions in the security reported on will be filed, if required, by members of the group, in their individual capacity.

See Item 5.

Item 10. Certifications
By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired and are held in the ordinary course of business and were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect.

Signature.

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: January 07, 2010
BlackRock, Inc.

Signature: Rick F. Froio

Name/Title Attorney-In-Fact

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative other than an executive officer or general partner of the filing person, evidence of the representative's authority to sign on behalf of such person shall be filed with the statement, provided, however, that a power of attorney for this purpose which is already on file with the Commission may be incorporated by reference. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

Attention: Intentional misstatements or omissions of fact constitute Federal criminal violations (see 18 U.S.C. 1001).

Exhibit A

Subsidiary

BlackRock Advisors LLC
BlackRock Advisors (UK) Limited
BlackRock Asset Management Australia Limited
BlackRock Asset Management Canada Limited
BlackRock Asset Management Japan Limited
BlackRock Capital Management, Inc.
BlackRock Financial Management, Inc.
BlackRock Fund Advisors
BlackRock Institutional Trust Company, N.A.
BlackRock Investment Management, LLC
BlackRock Investment Management (Australia) Limited
BlackRock Investment Management (Dublin) Ltd
BlackRock (Luxembourg) S.A.
BlackRock Fund Managers Ltd
BlackRock International Ltd
BlackRock Investment Management UK Ltd
State Street Research & Management Co.

Exhibit B

POWER OF ATTORNEY

The undersigned, BLACKROCK, INC., a corporation duly organized under the laws of the State of Delaware, United States (the "Company"), does hereby make, constitute and appoint each of Robert Connolly, Howard Surloff, Edward Baer, Bartholomew Battista, Daniel Waltcher, Karen Clark, John Stelley Denis Molleur, Daniel Ronnen, Brian Kindelan, Nicholas Hall, Con Tzatzakis , John Belvin, Rick F. Froio and Matthew Fitzgerald acting severally, as its true and lawful attorneys-in-fact, for the purpose of, from time to time, executing in its name and on its behalf, whether the Company is acting individually or as representative of others, any and all documents, certificates, instruments, statements, other filings and amendments to the foregoing (collectively, "documents") determined by such person to be necessary or appropriate to comply with ownership or control-person reporting requirements imposed by any United States or non-United States governmental or regulatory authority, including without limitation Forms 3, 4, 5, 13D, 13F and 13G and any amendments to any of the foregoing as may be required to be filed with the Securities and Exchange Commission, and delivering, furnishing or filing any such documents with the appropriate governmental, regulatory authority or other person, and giving and granting to each such attorney-in-fact power and authority to act in the premises as fully and to all intents and purposes as the Company might or could do if personally present by one of its authorized signatories, hereby ratifying and confirming all that said attorney-in-fact shall lawfully do or cause to be done by virtue hereof. Any such determination by an attorney-in-fact named

herein shall be conclusively evidenced by such person's execution, delivery, furnishing or filing of the applicable document.

This power of attorney shall expressly revoke the power of attorney dated January 11, 2008 in respect of the subject matter hereof, shall be valid from the date hereof and shall remain in full force and effect until either revoked in writing by the Company, or, in respect of any attorney-in-fact named herein, until such person ceases to be an employee of the Company or one of its affiliates.

IN WITNESS WHEREOF, the undersigned has caused this power of attorney to be executed as of this 14th day of December, 2009.

BLACKROCK, INC.

By:_ /s/ Robert W. Doll, Jr.
Name: Robert W. Doll, Jr.
Title: Vice Chairman

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