

Supporting Statement for  
**FERC-725A, Mandatory Reliability Standards**  
As Proposed in Docket No. RM06-16-000  
(A Notice of Proposed Rulemaking Issued October 20, 2006)

The Federal Energy Regulatory Commission (Commission) (FERC) requests that the Office of Management and Budget (OMB) review and approve **FERC-725A, Mandatory Reliability Standards**, for a three year period. FERC-725A (Control No. 1902-xxxx) is a new Commission data collection, (filing requirements), as contained in 18 Code of Federal Regulations, Part 40.

FERC-725A is a new information collection implementing standards that were previously part of a voluntary program. The Commission requests that OMB approve the projected estimates reported in this submission. The Commission's estimates are based on the potential number of entities who will have to come into compliance with the mandatory standards. The Commission will revise the initial estimate for these requirements as the ERO completes its registration process and as mandatory standards are updated and enforced. Implementation of these requirements is in response to passage of the Energy Policy Act of 2005 or more specifically the Electricity Modernization Act of 2005.

### **Background**

The Electricity Modernization Act of 2005 was enacted into law as part of the Energy Policy Act of 2005 by President George W. Bush on August 8, 2005. Subtitle A of the Electricity Modernization Act amended the Federal Power Act (FPA) by adding a new section 215, titled "Electric Reliability." Section 215 of the FPA buttresses the Commission's efforts to strengthen the reliability of the interstate grid through the grant of new authority which provides for a system of mandatory Reliability Standards developed by the Electric Reliability Organization (ERO)<sup>1</sup> and reviewed and approved by FERC.

In the aftermath of the 1965 Blackout in the northeast United States, the electric industry established the North American Electric Reliability Council (NERC), a voluntary reliability organization. Since its inception, NERC has developed Operating Policies and Planning Standards that provide voluntary guidelines for operating and planning the North American bulk-power system. In April 2005, NERC adopted "Version O" reliability standards that translated the NERC Operating Policies, Planning Standards and compliance requirements into a comprehensible set of measurable standards. While NERC has developed a compliance enforcement program to ensure compliance with the reliability standards it developed, industry compliance is still voluntary and not subject to mandatory enforcement penalties. Although NERC's efforts have been important in maintaining the reliability of the nation's bulk-power system, NERC itself has recognized the need for mandatory, enforceable reliability standards

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1 "Electric Reliability Organization" or "ERO" means the organization certified by the Commission the purpose of which is to establish and enforce Reliability Standards for the Bulk-Power System, subject to Commission review.

and has been a proponent of legislation to establish a FERC-jurisdictional ERO that would propose and enforce mandatory reliability standards.

### **RM06-16-000 NOPR**

On October 20, 2006, the Commission issued a NOPR in Docket No. RM06-16-000. The proposed regulation is to implement the processes and procedures of section 215(b) which obligates all users, owners and operators of the bulk-power system to comply with Reliability Standards that become effective in accordance with the processes set forth in the statute. This NOPR proceeding addresses NERC's submission of Reliability Standards and represents the next significant step toward achieving the statutory goal of mandatory and enforceable Reliability Standards.

### **Background**

On August 8, 2005, The Electricity Modernization Act of 2005, which is Title XII of the Energy Policy Act of 2005 (EPAAct 2005), was enacted into law.<sup>2</sup> EPAAct 2005 adds a new section 215 to the FPA, which requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight. Below is a summary of the provisions of Subtitle A of the Electricity Modernization Act of 2005.

- (1) Section 215(a) defines relevant terms used in the Act.
- (2) Section 215(b) (Jurisdiction and Applicability) provides that, for purposes of approving Reliability Standards and enforcing compliance with such standards, FERC will have jurisdiction over the certified ERO, any Regional Entities<sup>3</sup>, and all users, owners and operators of the bulk-power system, including but not limited to the public and governmental entities described in section 201(f) of the FPA. Section 215(b) (2) requires FERC to issue a final rule to implement the requirements of the section no later than 180 days after the date of enactment.
- (3) Section 215(c) (Certification) authorizes the Commission to certify a person as an ERO, provided that the applicant meets specified criteria.
- (4) Section 215 (d) (Reliability Standards) provides the process for the ERO to propose Reliability Standards, subject to FERC review and approval. This subsection also directs FERC to adopt rules to provide for fair processes for the identification and timely resolution of any conflict between a Reliability Standard and any function, rule, order, tariff, rate schedule or agreement accepted, approved, or ordered by FERC and applicable to a transmission organization.

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<sup>2</sup> The Energy Policy Act of 2005, Pub. L. No 109-58, Title XII, Subtitle A, 119 Stat. 594, 941 (2005), to be codified at 16 U.S.C. 824o (2000).

<sup>3</sup> "Regional Entity" means any entity having enforcement authority pursuant to section 38.6 of FERC's proposed regulation.

(5) Section 215(e) (Enforcement) authorizes the ERO, after notice and opportunity for hearing, to impose a penalty for a violation of a Reliability Standard; subject to review by the Commission. This section also provides for enforcement initiated by FERC on its own motion. This subsection also requires that FERC issue regulations under which the ERO will be authorized to enter into an agreement to delegate authority to a qualified Regional Entity for the purpose of proposing Reliability Standards to the ERO and enforcing these standards. Further, section 215(e) requires that any penalty imposed shall bear a reasonable relation to the seriousness of the violation and take into consideration timely remedial efforts.

(6) Section 215(f) (Changes in Electric Reliability Organization Rules) requires FERC approval of any proposed ERO rule or proposed rule change.

(7) Section 215(g) (Reliability Reports) requires the ERO conduct periodic assessments of the reliability and adequacy of the North American bulk-power system.

(8) Section 215(h) (Coordination with Canada and Mexico) urges the President to negotiate international agreements with the governments of Canada and Mexico to provide for effective compliance with Reliability Standards and the effectiveness of the ERO in the United States and Canada or Mexico.

(9) Section 215(i) (Savings Provisions) states that the ERO shall have authority to develop and enforce compliance with Reliability Standards for only the bulk-power system and makes clear that section 215 of the FPA is not to be interpreted as preempting any state authority to take action to ensure the safety, adequacy, and reliability of electric service within that state, as long as the state action is not inconsistent with any Reliability Standard.

(10) Section 215(j) (Regional Advisory Bodies)<sup>4</sup> requires FERC to establish Regional Advisory Bodies upon petition of at least 2/3 of the state within a region that have more than 1/2 of their electric load served within the region. These Regional Advisory Bodies may provide advice to the ERO, a Regional Entity, or FERC.

(11) Section 215(k) (Application to Alaska and Hawaii) provides that section 215 of the FPA does not apply to Alaska and Hawaii.

On February 3, 2006, the Commission issued Order No. 672, which implements section 215 of the FPA and provides specific processes for the certification of one entity as the ERO, the development and approval of mandatory Reliability Standards, and the compliance with and enforcement of approved Reliability Standards (see 1902-0225). On April 4, 2006, NERC made two filings: (1) an application for certification of NERC Corporation as the ERO and (2) a petition for Commission approval of 102 Reliability Standards, as well as eight regional

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<sup>4</sup> “Regional Advisory Body” term is used but not defined in the statute. FERC proposes to define the term as follows: an entity established upon petition to the Commission pursuant to section 215(j) of the FPA that is organized to advise the ERO, a Regional Entity, or the Commission regarding certain reliability-related matters in accordance with section 38.9 of the proposed regulation.

differences and a glossary of terms.<sup>5</sup> On July 20, 2006, the Commission issued an order certifying NERC Corporation as the ERO.<sup>6</sup>

The ERO's filing is a comprehensive and significant effort by NERC, the industry representatives who serve on NERC's standards development teams, and the entities that participate in NERC's Reliability Standards development process. After the August 2003 cascading blackout that affected large portions of the central and eastern United States and Canada, NERC revised many of the then-existing NERC operating policies and planning standards to provide greater clarity and compliance guidance. These revised standards (referred to as "Version 0" and "Version 1") were developed using NERC's American National Standards Institute (ANSI)-accredited Reliability Standards development process and are what has been filed with the Commission for approval.

The Commission believes that these Reliability Standards will form a solid foundation on which to develop and maintain the reliability of the North American Bulk-Power System. However, the Commission recognizes, as does NERC, that the Version 0 and Version 1 standards were developed as an initial step in the transition to clear, enforceable Reliability Standards. Therefore, some technical, enforceability and policy aspects of the 107 proposed Reliability Standards submitted by the ERO need to be improved.

In evaluating NERC's proposal, the Commission acknowledges that the Reliability Standards are in a state of transition and that NERC has ongoing plans to improve them. The Commission at this time will approve a proposed Reliability Standard that needs clarification, improvement, or strengthening, provided that it is confident that the standard satisfies the statutory requirement that a Reliability Standard must be "just, reasonable, not unduly discriminatory or preferential, and in the public interest."<sup>7</sup> Rather than remanding an imperfect Reliability Standard, the NOPR proposes to approve these types of Reliability Standards. In addition, the Commission proposes to direct the ERO to modify such Reliability Standards, pursuant to section 215(d)(5) of the FPA, to address the identified issues or concerns. Using this approach allows the proposed Reliability Standard to be enforceable while the ERO develops any required modifications.

The Commission believes that, for this period of transition from a voluntary to a mandatory system of compliance, the course of action identified above, is appropriate when reviewing the ERO's first set of proposed Reliability Standards. This action provides the benefit that mandatory and enforceable Reliability Standards will be in effect prior to the summer of 2007, the next anticipated peak season for the nation's Bulk-Power System. Critical to our decision to propose to approve such Reliability Standards is NERC's representation to the Commission that approval of the existing Reliability Standards "will reinforce the importance of

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<sup>5</sup> The April 4, 2006 filing contained 102 Reliability Standards, a Glossary of Terms Used in Reliability Standards and eight regional differences. On August 28, 2006, NERC filed an additional 19 Reliability Standards and withdrew three of the 102 Reliability Standards. Eleven of the nineteen reliability Standards replace those filed on April 4, 2006.

<sup>6</sup> ERO Certification Order, 116 FERC ¶ 61,062.

<sup>7</sup> 16 U.S.C. 824o (d)(2).

these standards and will have an immediate positive benefit with regard to the reliability performance of all bulk power system owners, operator and users....”<sup>8</sup>

The Commission proposes to approve the Reliability Standards based on recognizing this period of transition, the importance of making them mandatory before the summer of 2007, and by giving due weight to the technical expertise of the ERO with the expectation that the Reliability Standards will accomplish the purpose represented to the Commission by the ERO; and that they will improve the reliability of the Bulk-Power System by proactively preventing situations that can lead to blackouts. By taking this approach, the Commission believes that the responsibility for the technical adequacy of the proposed Reliability Standards falls squarely on the ERO, and the Commission expects the ERO to monitor the effectiveness of the proposed Reliability Standards and inform the Commission if any Reliability Standard proves, in practice, to be inadequate in protecting and improving Bulk-Power System reliability.

In addition, the Commission is proposing to request additional information with regard to 24 proposed Reliability Standards. These proposed Reliability Standards would not be approved or remanded by the Commission until further action is taken by the ERO. This group of Reliability Standards includes NERC’s so-called “fill-in-the-blank” standards that require regional reliability organizations to develop - and users, owners, or operators to comply with - regional criteria.<sup>9</sup> Until the Commission receives this supplemental information to fill in the “blanks”<sup>10</sup> and assurances that the processes to fill in the blanks satisfy the Commission’s procedural requirements, the Commission is not in a position to approve or remand such Reliability Standards. Second, a proposed Reliability Standard that would apply only to regional reliability organizations will not be approved or remanded until the ERO identifies a user, owner or operator of the Bulk-Power System as the applicable entity.<sup>11</sup>

Although the proposed Reliability Standards for which the Commission is requesting additional information will not be enforceable under section 215, this does not mean that no standards governing a particular matter are in place. Rather, in the interim, though not enforceable under section 215, compliance with these Reliability Standards would be expected as a matter of good utility practice.

#### A. Justification

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<sup>8</sup> NERC Petition at 25.

<sup>9</sup> See *id.* at 87-90.

<sup>10</sup> In the NOPR, the ERO is reminded when filling in these blanks that a regional difference is generally permitted when it is more stringent or when there is a geographical/physical reason for the difference. Consolidation of regional standards into a single continent-wide standard should not result in a lowest common denominator. Order No. 672 at P 291.

<sup>11</sup> In addition, some of the proposed Reliability Standards overlap with other Commission regulatory initiatives. For example, in a recent Notice of Proposed Rulemaking, the Commission has proposed to direct public utilities, in conjunction with NERC and the North American Energy Standards Board to provide for greater consistency in Available Transmission Capacity (ATC) calculation. See Preventing Undue Discrimination and Preference in Transmission Service, 71 FR 32636 (June 6, 2006), 71 FR 39251 (July 12, 2006), FERC Stats. & Regs. ¶ 39,602 (May 19, 2006) (OATT Reform NOPR).

## 1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

Since 1935, the Commission has regulated certain electric utility activities under the Federal Power Act (FPA). Under FPA Sections 205 and 206, the Commission oversees the rates, terms and conditions of sales for resale of electric energy and transmission service in interstate commerce by public utilities. The Commission must ensure that those rates, terms and conditions are just and reasonable and not unduly discriminatory or preferential. One of the Commission's continuing priorities is to promote electricity grid reliability. Recent legislation has enhanced the Commission's efforts to strengthen the reliability of the interstate grid by granting it with new authority.

### Recent Events

A common cause of the past three major regional blackouts (noted above) was violation of NERC's then Operating Policies and Planning Standards. During July and August 1996, the west coast of the United States experienced two cascading blackouts caused by violations of voluntary Operating Policies.<sup>12</sup> In response to the outages, the Secretary of Energy convened a task force to advise the Department of Energy (DOE) on issues needed to be addressed to maintain the reliability of the bulk-power system. In a September 1998 report, the task force recommended, among other things, that federal legislation should grant more explicit authority for FERC to approve and oversee an organization having responsibility for bulk-power reliability standards.<sup>13</sup> Further, the task force recommended that such legislation provide for Commission jurisdiction for reliability of the bulk-power system and FERC implementation of mandatory, enforceable reliability standards.

Electric reliability legislation was first proposed after issuance of the September 1998 task force report and was a common feature of comprehensive electricity bills since that time. A stand-alone electric reliability bill was passed by the Senate unanimously in 2000. In 2001, President Bush proposed making electric Reliability Standards mandatory and enforceable as part of the National Energy Policy.<sup>14</sup>

As noted above, on August 8, 2005, EPAAct was enacted into law. Section 215 of the FPA provides for a system of mandatory, enforceable Reliability Standards. Under the new electric power reliability system enacted by the Congress, the United States will no longer rely on voluntary compliance by participants in the electric industry with industry reliability requirements for operating and planning the Bulk-Power System. Congress directed the

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12 The Electric Power Outages in the Western United States, July 2-3, 1996, at 76 ([ftp://www.nerc.com/pub/sys/all\\_updl/docs/pubs/doerept.pdf](ftp://www.nerc.com/pub/sys/all_updl/docs/pubs/doerept.pdf)) and WSCC Disturbance Report, For the Power System outage that Occurred on the Western Interconnection August 10, 1996, at 4 ([ftp://www.nerc.com/pub/sys/all\\_updl/docs/pubs/AUG10FIN.pdf](ftp://www.nerc.com/pub/sys/all_updl/docs/pubs/AUG10FIN.pdf)).

13 Maintaining Reliability in a Competitive U.S. Electricity Industry. Final report of the Task Force on Electric System Reliability. Secretary of Energy Advisory Board, U.S. Department of Energy (September 1998), at 25-27, 65-67.

14 Report of the National Energy Policy Development Group, May 2001, at p. 7-6.

development of mandatory, Commission-approved, enforceable electricity Reliability Standards. The Commission believes that, to achieve this goal, it is necessary to have a strong ERO that promotes excellence in the development and enforcement of Reliability Standards.

A mandatory Reliability Standard should not reflect the “lowest common denominator” in order to achieve a consensus among participants in the ERO’s Reliability Standard development process. Therefore, the Commission will carefully review each Reliability Standard submitted and, where appropriate, later remand if necessary, an inadequate Reliability Standard to ensure that it protects reliability, has no undue adverse effect on competition, and can be enforced in a clear and even-handed manner.

## **2. HOW, BY WHOM, AND FOR WHAT PURPOSE THE INFORMATION IS TO BE USED AND THE CONSEQUENCES OF NOT COLLECTING THE INFORMATION**

Prior to enactment of section 215, FERC had acted primarily as an economic regulator of wholesale power markets and the interstate transmission grid. In this regard, the Commission acted to promote a more reliable electric system by promoting regional coordination and planning of the interstate grid through regional independent system operators (ISOs) and regional transmission organizations (RTOs), adopting transmission pricing policies that provide price signals for the most reliable and efficient operation and expansion of the grid, and providing pricing incentives at the wholesale level for investment in grid improvements and assuring recovery of costs in wholesale transmission rates.

As part of FERC’s efforts to promote grid reliability, the Commission created a new Division of Reliability within the Office of Markets, Tariffs and Rates. One task of this office has been to participate in North American Reliability Council’s (NERC’s) Reliability readiness reviews of balancing authorities, transmission operators and reliability coordinators in North America to determine their readiness to maintain safe and reliable operations. FERC also directed transmission owners to report by June 2004, on the vegetation management practices they use for transmission and rights of way.<sup>15</sup> FERC’s Reliability Division has also engaged in studies and other activities to assess the longer-term and strategic needs and issues related to power grid reliability.

Sufficient supplies of energy and a reliable way to transport those supplies to customers are necessary to assure reliable energy availability and to enable competitive markets. Reasonable supply relative to demand is essential for competitive markets to work. Without sufficient delivery infrastructure, some suppliers will not be able to enter the market, customer choices will be limited, and prices will be needlessly volatile. The Commission assists in creating a more reliable electric system by:

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<sup>15</sup> 1902-0207, FERC-723 “Vegetation Report” in Docket No. EL04-52-000. EL04-52-000. This was a one-time information collection that expired 10/31/04. FERC submitted a report to Congress in September 2004 that set forth the Commission’s findings and recommendations, including the need for mandatory, enforceable reliability rules.

- Fostering regional coordination and planning of the interstate grid through independent system operators and regional transmission organizations;
- Adopting transmission policies that provide price signals for the most reliable and efficient operation and expansion of the grid; and
- Providing pricing incentives at the wholesale level for investment in grid improvements and ensuring opportunities for cost recovery in wholesale transmission rates.

The passage of the Electricity Modernization Act of 2005 added to the Commission's efforts identified above, by giving it the authority to strengthen the reliability of the interstate grid through the grant of new authority pursuant to section 215 of the FPA which provides for a system of mandatory Reliability Standards developed by the ERO, established by FERC, and enforced by the ERO and Regional Entities.

**3. DESCRIBE ANY CONSIDERATION OF THE USE OF IMPROVED TECHNOLOGY TO REDUCE BURDEN AND TECHNICAL OR LEGAL OBSTACLES TO REDUCING BURDEN.**

The Commission has developed the capability for electronic filing of all major submissions to the Commission. In Order No. 619, the Commission established an electronic filing initiative that permits over 40 qualified types of documents to be filed over the Internet to its website. This includes the ability to submit standard forms using software that is readily available and easy to use. Electronic filing, combined with electronic posting and service over the web site, permits staff and the public to obtain filings in a faster and more efficient manner. The Commission is working to expand the qualified types of documents that can be filed over the Internet.

In order that the Commission is able to perform its oversight function with regard to Reliability Standards that are proposed by the ERO and established by the Commission, it is essential that the Commission receive timely information regarding all or potential violations of Reliability Standards. While section 215 of the FPA contemplates the filing of the record of an ERO or Regional Entity enforcement action, FERC needs information regarding violations and potential violations at or near the time of occurrence. Therefore, it will work with the ERO and regional reliability organizations to be able to use the electronic filing of information so the Commission receives timely information.

**4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION AND SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S) DESCRIBED IN INSTRUCTION NO. 2**

Filing requirements are periodically reviewed as OMB review dates arise or as the Commission may deem necessary in carrying out its responsibilities under the FPA in order to eliminate duplication and ensure that filing burden is minimized. There are no similar sources



of information available that can be used or modified for these reporting purposes. Currently reliability requirements are implemented by NERC on a voluntary basis. The filing requirements in proposed FERC-725A will incorporate NERC's requirements. However, all reliability requirements will be subject to FERC approval along with the requirements developed by Regional Entities and Regional Advisory Bodies and the ERO.

## 5. METHODS USED TO MINIMIZE BURDEN IN COLLECTION OF INFORMATION INVOLVING SMALL ENTITIES

FERC-725A is a filing requirement concerning the implementation of reliability standards by the Electric Reliability Organization and its responsibilities as well as those of Regional Entities and Regional Advisory Bodies in the development of Reliability Standards. The Electricity Modernization Act specifies that the ERO and Regional Entities are not departments, agencies or instrumentalities of the United States government and will not be like most other businesses, profit or not-for-profit. Congress created the concept of the ERO and Regional Entities as select, special purpose entities that will transition the oversight of the Bulk-Power System reliability from voluntary, industry organizations to independent organizations subject to Commission jurisdiction.

Section 215(b) of the FPA requires all users, owners and operators of the Bulk-Power System to comply with Commission-approved Reliability Standards. Each proposed Reliability Standard submitted for approval by NERC applies to some subset of users, owners and operators. Each proposed Reliability Standard includes an "applicability" statement that identifies the functional classes of entities responsible for compliance. Such functional classes include reliability coordinators, balancing authorities, transmission operators, transmission owners, generator operators, generator owners, interchange authorities, transmission service providers, market operators, planning authorities, transmission planners, resource planners, load-serving entities, purchasing-selling entities, and distribution providers.<sup>16</sup>

As explained by NERC, a generator operator, for example, could include any entity that operates a generator interconnected to the grid, be it a large unit in excess of 1,000 MW or a small generator of one MW or less. NERC states that to ensure that Reliability Standards are applied cost effectively and that the applicability of Reliability Standards is focused on entities having a material impact on Bulk-Power System reliability; it will begin providing greater specificity in the applicability section of a Reliability Standard.<sup>17</sup> For example, a Reliability Standard may identify limitations on applicability based on electric facility characteristics, such as generators with a minimum nameplate rating or a transmission facility energized at a

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<sup>16</sup> See NERC Petition at 9-10.

<sup>17</sup> *Id.* at 81-82.

specified kV level or greater.<sup>18</sup> NERC plans to establish a set of guidelines to address this matter.

The Commission believes that the proposed Reliability Standards may cause some small entities to experience significant economic impact. While the Commission is mindful of the possible impact on small entities, the Commission is also concerned that Bulk-Power System reliability not be compromised based on an unwillingness of entities, large or small, to incur reasonable expenditures necessary to preserve such reliability. As the Commission explained in Order No. 672:

A proposed Reliability Standard may take into account the size of the entity that must comply with the Reliability Standard and the cost to those entities of implementing the proposed Reliability Standard. However, the ERO should not propose a “lowest common denominator” Reliability Standard that would achieve less than excellence in operating system reliability solely to protect against reasonable expenses for supporting this vital national infrastructure. For example, a small owner or operator of the Bulk Power-System must bear the cost of complying with each Reliability Standard that applies to it.<sup>[19]</sup>

While the Commission cannot rule on the merits until a specific proposal has been submitted, the Commission believes that reasonable limits on applicability based on size may be an acceptable alternative to lessen the economic impact on the proposed rule on small entities. The Commission emphasizes, however, that any such limits must not weaken Bulk-Power System reliability.

#### **6. CONSEQUENCE TO FEDERAL PROGRAM IF COLLECTION WERE CONDUCTED LESS FREQUENTLY**

The Electric Reliability Organization will conduct periodic assessments of the reliability and adequacy of the Bulk-Power System in North America and report its findings to the Commission, the Secretary of Energy, Regional Entities, and Regional Advisory Bodies annually or more frequently if so ordered by the Commission. The ERO and Regional Entities will report to FERC on their enforcement actions and associated penalties and to the Secretary of Energy, relevant Regional entities and relevant Regional Advisory Bodies annually or quarterly in a manner to be prescribed by the Commission. If the information were conducted less frequently or discontinued, the Commission would be placed at a disadvantage in not having the data necessary for monitoring its mandated obligations.

#### **7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION**

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<sup>18</sup> *Id.* at 10.

<sup>19</sup> Order No. 672 at P 330.

FERC-725A is a filing requirement necessary to comply with the applicable provisions of the Electricity Modernization Act of 2005 and section 215 of the Federal Power Act.

In accordance with section 39.5 of the Commission's regulations, the ERO must file each Reliability Standard or a modification to a Reliability Standard with the Commission. The filing is to include a concise statement of the basis and purpose of the proposed Reliability Standard, either a summary of the Reliability development proceedings conducted by the ERO or a summary of the Reliability Standard development proceedings conducted by a Regional Entity together with a summary of the Reliability Standard review proceedings of the ERO and a demonstration that the proposed Reliability Standard is "just, reasonable, not unduly discriminatory or preferential, and in the public interest.

The ERO must make each effective Reliability Standard available on its Internet website. Copies of the effective Reliability Standards will be available from the Commission's Public Reference Room.

The Commission requires an original and seven of the proposed Reliability Standard or to the modification to a proposed Reliability Standard to be filed. This exceeds the OMB guidelines in 5 CFR 1320.5(d) (2) (iii) because of the number of divisions within the Commission that must analyze the standard and corresponding reports in order to carry out the regulatory process. The original is docketed, imaged through e-Library and filed as a permanent record for the Commission. The remaining copies are distributed to the necessary offices of the Commission with one being placed immediately in the Commission's Public Reference Room for public use. Since the time frame for responses to the request is very limited, the multiple hard copies are necessary for the various offices to review, analyze and prepare the final order at the same time. The electronic filing initiative at FERC, may in the near future, allow for relief of the number of copies, but at this time, the program turn around time for docketing, imaging and retrieval does not permit sufficient time to review the filings and to prepare the necessary documents for the processing of these filings.

#### **8. DESCRIBE EFFORTS TO CONSULT OUTSIDE THE AGENCY: SUMMARIZE PUBLIC COMMENTS AND THE AGENCY'S RESPONSE TO THESE COMMENTS**

Each Commission rulemaking (both NOPR and Final Rules) are published in the Federal Register, thereby affording all public utilities and licensees, state commissions, Federal agencies, and other interested parties an opportunity to submit data, views, comments or suggestions concerning the proposed collection of data. The notice procedures also allow for public conferences to be held as required. The Commission has held several workshops and technical conferences to address reliability issues including transition to the NERC reliability standards, operator tools, and reactive power.

Stakeholders in the electric utility industry have also participated in dialogues on the

international implications of the ERO and Cross-Boarder Regional Entities during three public bilateral workshops held in the United States and Canada. On August 9, 2005, the Federal – Provincial-Territorial (FPT) Working Group in Canada and DOE jointly submitted to the Commission “Principles for an Electric Reliability Organization that can Function on an International Basis” (bilateral principles) based on these stakeholder dialogues.

As noted above on April 4, 2006, as modified on August 28, 2006 NERC submitted to the Commission a petition seeking approval of the 107 proposed Reliability Standards that are the subject of this NOPR (NERC Petition). In addition, the April 4, 2006 filing includes 12 new Reliability Standards that were approved by the NERC board of trustees for implementation in February 2006. According to NERC, the 107 proposed Reliability Standards collectively define overall acceptable performance with regard to operation, planning and design of the North American Bulk-Power System. Seven of these Reliability Standards specifically incorporate one or more “regional differences” (which can include an exemption from a Reliability Standard) for a particular region or subregion, resulting in eight regional differences. NERC requests that the Reliability Standards become effective on January 1, 2007, or an alternative date determined by the Commission. NERC also states that it simultaneously filed the proposed Reliability Standards with governmental authorities in Canada.

Each proposed Reliability Standard follows a common format that includes five organizational elements:

**A. Introduction**

1. **Title:** a phrase that describes the topic of the Reliability Standard.
2. **Number:** A unique identification number that starts with three letters to identify the group followed by a dash and a three digit number, followed by a dash and the version number e.g., PRC-014-0.
3. **Purpose:** One or more sentences that explicitly states the outcome to be achieved by the adoption of the Reliability Standard.
4. **Applicability:**
  - 4.1 Each entity, as defined by the NERC Functional Model, that must comply with the Reliability Standard, such as Transmission Owner.

**B. Requirements**

- R1. A listing of explicitly stated technical, performance and preparedness requirements and who is responsible for achieving them.

**C. Measures**

- M1. A listing of the factors and the process NERC will use to assess performance and outcomes in order to determine non-compliance, and who is responsible for achieving the measures. Measures are “the evidence that must be presented to show compliance” with a standard and “are not intended to contain the quantitative metrics for determining satisfactory performance.”<sup>20</sup>

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<sup>20</sup> NERC Comments at 104. NERC clarified its position that Measures did not include metrics after the Staff Preliminary

**D. Compliance****1. Compliance Monitoring Process**

**1.1 Compliance Monitoring Responsibility:** NERC's explanation of who is responsible for assessing performance or outcomes.

**1.2 Compliance Monitoring Period and Reset Timeframe:** The timeframe for each compliance monitoring period before it is reset for the next period.

**1.3 Data Retention:** How long compliance documentation needs to remain on file.

**1.4 Additional Compliance Information:** Any other information relating to compliance.

**2. Levels of Non-Compliance:** Usually four levels of non-compliance are identified, with level 1 being used for the least severe non-compliance and level 4 for the most severe non-compliance.

**E. Regional Differences:** Identification of any regional differences that have been approved by the applicable NERC Committee (including Regions that are exempt).

On May 11, 2006, Commission staff issued a "Staff Preliminary Assessment of the North American Electric Reliability Council's Proposed Mandatory Reliability Standards" (Staff Preliminary Assessment). The Staff Preliminary Assessment identified staff's preliminary observations and concerns regarding NERC's then-current voluntary reliability standards. The Staff Preliminary Assessment describes issues common to a number of proposed Reliability Standards. It reviewed and identified issues regarding each individual Reliability Standard but did not make specific recommendations regarding the appropriate action on a particular proposal.

The Staff Preliminary Assessment provided a basis for soliciting input regarding which of the proposed Reliability Standards should be approved, approved on an interim basis, or remanded to the ERO; established a platform from which to identify and prioritize potential problems with the proposed Reliability Standards; and provided a comprehensive and objective assessment of NERC's then-current 102 Reliability Standards.

Comments on the Staff Preliminary Assessment were due by June 26, 2006. Entities that filed comments are listed in Appendix A to this NOPR. Approximately 50 persons filed comments in response to the Staff Preliminary Assessment. In addition, on July 6, 2006, the Commission held a technical conference to discuss NERC's proposed Reliability Standards, the Staff Preliminary Assessment and other related issues. The technical conference was transcribed, and is a part of the record in this docket.

The written comments as well as the panel discussions at the technical conference have

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Assessment interpreted the Measures section as including metrics.

been very informative, and reference to the public comments is mentioned throughout the NOPR. Moreover, the Commission's proposed disposition of the Reliability Standards reflects the Commission's consideration of all comments that were submitted.

9. **EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS**

No payments or gifts have been made to respondents.

10. **DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS**

The Commission generally does not consider the data filed to be confidential. However, certain standards may have confidentiality provisions in the standard. For example, TOP-002-1 requires transmission operators and balancing authorities to look ahead to the next hour, day and season, and have operating plans ready to meet any unscheduled changes in system configuration and generation dispatch. The proposed Reliability Standard covers a broad array of matters, including: (1) procedures to mitigate System Operating Limit (SOL) and Interconnection Reliability Operating Limit (IROL) violations; (2) verification of real and reactive reserve capabilities; (3) communications; (4) modeling; (5) information exchange; and (6) data confidentiality restrictions. The goal of TOP-002-1 is to ensure that resources and operational plans are in place to enable system operators to maintain the Bulk-Power System in a reliable state. NERC indicates that it plans to modify the Reliability Standard to address the lack of Measures and Levels of Non-Compliance.

**Commission Response:** In accordance with section 215(d)(5) of the FPA and § 39.5(f) of the Commission's regulations, the Commission proposes to direct that NERC submit a modification to TOP-002-1 that: (1) includes Measures and Levels of Non-compliance; (2) deletes references to confidentiality agreements in Requirements R3 and R4, but addresses the issue separately to ensure that necessary protections are in place related to confidential information; and (3) requires the next-day analysis for all IROLs to identify and communicate control actions to system operators that can be implemented within 30 minutes following a contingency to return the system to a reliable operating state and prevent cascading outages.

Section 215(e) of the FPA as well as section 39.7(d) of the Commission's regulations regarding enforcement of Reliability Standards provides for public notice and opportunity for a hearing with respect to both the ERO (or Regional Entity) enforcement proceedings and proceedings before the Commission involving review of a proposed penalty for violation of a reliability standard. Section 39.7(b)(4) provides a limited exception to this notice requirement and allow non-public proceedings for enforcement actions that involve a Cybersecurity Incident,<sup>21</sup> unless FERC determines on a case-by-case basis that such protection is not necessary. The Commission has in place procedures to prevent the disclosure of sensitive information, such as

<sup>21</sup> The term "Cybersecurity Incident" is defined as a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communications networks including hardware, software and data that are essential to the Reliable Operation of the Bulk-Power System.

the use of protective orders and rules establishing critical energy infrastructure information (CEII). However, the Commission believes that the specific, limited area of Cybersecurity Incidents requires additional protections because it is possible that system security and reliability would be further jeopardized by the public dissemination of information involving incidents that compromised the cybersecurity system of a specific user, owner or operator of the Bulk-Power System. In addition, additional information provided with a filing may be submitted with a specific request for confidential treatment to the extent permitted by law and considered pursuant to 18 C.F.R. 388.112 of FERC's regulations.

**11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE THAT ARE CONSIDERED PRIVATE.**

There are no questions of a sensitive nature that are considered private.

**12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION**

As noted above, the Commission proposes to approve 83 of the 107 proposed Reliability Standards in a final rule, that make up the current NERC standards the electric industry currently is expected to comply with on a voluntary basis. Therefore, in proposing to adopt the Reliability Standards, the Commission is adopting reporting requirements that have been implemented on a voluntary basis for many years in most instances. Because the reporting requirements are usual and customary practices in the industry, and respondents incur the time and financial resources in the course of their regular activity, the transition from voluntary to mandatory Reliability Standards effected by the NOPR will not increase the reporting burden nor impose any additional information collection requirements.

However, the Commission also recognizes that there may be some smaller entities such as municipal utilities, cooperatives and small generators that may not have been members of NERC and may not have been participants in NERC's voluntary standards program. For such entities, compliance with the proposed mandatory Reliability Standards will include compliance with reporting requirements for the first time.

It is difficult to determine exactly how many entities fall into this category. First, as discussed above with regard to applicability issues, not every proposed Reliability Standard would apply to every user, owner or operator of the Bulk-Power System, and each proposed Reliability Standard contains its own set of reporting requirements. For example, only 24 proposed Reliability Standards would apply to generators, which contain 142 reporting requirements.

Further, as discussed in greater detail in item no. 5 above with regard to small businesses, NERC has indicated that it will propose specific limits on the applicability of Reliability Standards to small entities that do not have a material impact on the Bulk-Power System. While the Commission does not pre-judge this proposal, should the Commission accept this proposal it

could have a significant impact on the reporting burden for small entities that have not previously complied with the NERC standards on a voluntary basis.

In addition, some small entities may join together in Joint Action Agencies or other such organizations that will be responsible for certain aspects of their members’ compliance with mandatory Reliability Standards. Such umbrella organizations may lessen the reporting burden of individual users, owners and operators. Accordingly, the reporting burden estimate below, while based on the Commission’s best information, is subject to numerous variables. Although there is considerable uncertainty regarding the number of entities or the burden on those entities for which compliance with reliability standards will be a new exercise and not a customary practice, the Commission provides below what it believes to be a reasonable estimate based on available information.

Data Collection	Number of Respondents	Number of Responses	Number of Hours per Response	Total Annual Hours
FERC-725A	2,000	1	100	200,000

**13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

Further, as discussed in greater detail in item no. 12 above, because has proposed to apply specific limits with regard to applicability to the Reliability Standards so that for many who may not have a material impact on the Bulk-Power System, there may be little if any financial impact imposed on them. Until greater specificity is in place and whether or not the Commission adopts NERC’s guidelines, the Commission will use the following as a preliminary assessment. The Commission projects that the average annualized cost to be the following: 200,000 hours @ \$200 an hour = \$40,000,000.

**14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT**

The estimate of the cost to the Federal Government is based on salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than anyone particular function or activity. As the Commission is adopting 87 of the 107 the Reliability Standards which have already been in place on a voluntary basis, it is difficult to provide an assessment at this stage of what the costs will be to the Commission in its review and of Reliability Standards submitted to it. In these requirements are at the preliminary stages and the Regional Entities and Regional Advisory bodies have been created, both organizations who will play a role in standards development prior to their submission to the Commission.



**15. REASONS FOR CHANGES IN BURDEN INCLUDING THE NEED FOR ANY INCREASE**

This is a new information collection requirement that implements the provisions of the Electricity Modernization Act of 2005. The Act created section 215 of the Federal Power Act which provides for a system of mandatory reliability rules developed by the ERO, established by the Commission, and enforced by the Commission, subject to Commission review.

**16. TIME SCHEDULE FOR THE PUBLICATION OF DATA**

The filed proposed Reliability Standards are available on the Commission's eLibrary document retrieval system in Docket No. RM06-16-000 and are available on the ERO's website, [http://www.nerc.com/~filez/nerc\\_filings\\_ferc.html](http://www.nerc.com/~filez/nerc_filings_ferc.html).

Copies of the filings are made available to the public within two days of submission to FERC via the Commission's web site. There are no other publications or tabulations of the information.

**17. DISPLAY OF THE EXPIRATION DATE**

It is not appropriate to display the expiration date for OMB approval of the information collected. The information will not be collected on a standard, preprinted form which would avail itself to that display. Rather the Electric Reliability Organization must prepare and submit filings that reflect unique or specific circumstances related to the Reliability Standard. In addition, the information contains a mixture of narrative descriptions and empirical support that varies depending on the nature of the transaction.

**18. EXCEPTIONS TO THE CERTIFICATION STATEMENT**

Item No. 19(g) (vi) see Instruction No. 17 above for further elaboration. In addition, the data collected for this reporting requirement is not used for statistical purposes. Therefore, the Commission does not use as stated in item no. 19(i) "effective and efficient statistical survey methodology." The information collected is case specific to each Reliability Standard.

**B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS.**

This is not a collection of information employing statistical methods.