

TABLE OF CONTENTS

I.	NOTICES AND COMMUNICATIONS.....	2
II.	BACKGROUND	3
A.	Regulatory Framework.....	3
B.	NERC Reliability Standards Development Procedure.....	4
C.	Order No. 804.....	4
D.	Development of the Proposed Reliability Standard	7
III.	JUSTIFICATION FOR APPROVAL	7
A.	Proposed Modifications to Reliability Standard MOD-031.....	7
B.	Enforceability of the Proposed Reliability Standards	9
IV.	EFFECTIVE DATE.....	10
V.	CONCLUSION.....	10

Exhibit A	Proposed Reliability Standard
Exhibit B	Implementation Plan
Exhibit C	Order No. 672 Criteria
Exhibit D	Summary of Development History and Record of Development
Exhibit E	Standard Drafting Team Roster

the proposed Reliability Standard meets the criteria identified by the Commission in Order No. 672⁷ (Exhibit C).

In Order No. 804, the Commission approved Reliability Standard MOD-031-1, which provides authority for Bulk Power System planners and operators to collect demand, energy, and related data to support reliability studies and assessments, and enumerates the responsibilities and obligations of requestors and respondents of that data.⁸ The Commission also directed NERC to make certain modifications to that Reliability Standard.⁹ As discussed below, consistent with the directives in Order No. 804, proposed Reliability Standard MOD-031-2 improves upon MOD-031-1 by clarifying the compliance obligations related to (1) providing data to Regional Entities, and (2) responding to a request for data subject to confidentiality restrictions.

I. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to the following:¹⁰

Charles A. Berardesco
Senior Vice President and General Counsel
Holly A. Hawkins
Associate General Counsel
Shamai Elstein*
Senior Counsel
North American Electric Reliability
Corporation
1325 G Street, N.W., Suite 600
Washington, D.C. 20005
202-400-3000
charles.berardesco@nerc.net
holly.hawkins@nerc.net
shamai.elstein@nerc.net

Howard Gugel*
Director of Standards
North American Electric Reliability
Corporation
3353 Peachtree Road, N.E.
Suite 600, North Tower
Atlanta, GA 30326
404-446-9693
howard.gugel@nerc.net

⁷ *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 262, 321-37, *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

⁸ *See* Order No. 804 at PP 14-15.

⁹ *Id.* at P 16.

¹⁰ Persons to be included on the Commission's service list are identified by an asterisk.

II. BACKGROUND

A. Regulatory Framework

By enacting the Energy Policy Act of 2005,¹¹ Congress entrusted the Commission with the duties of approving and enforcing rules to ensure the reliability of the Nation's Bulk-Power System, and with the duty of certifying an ERO that would be charged with developing and enforcing mandatory Reliability Standards, subject to Commission approval. Section 215(b)(1) of the FPA states that all users, owners, and operators of the Bulk-Power System in the United States will be subject to Commission-approved Reliability Standards.¹² Section 215(d)(5) of the FPA authorizes the Commission to order the ERO to submit a new or modified Reliability Standard.¹³ Section 39.5(a) of the Commission's regulations requires the ERO to file for Commission approval each Reliability Standard that the ERO proposes should become mandatory and enforceable in the United States, and each modification to a Reliability Standard that the ERO proposes to make effective.¹⁴

The Commission has the regulatory responsibility to approve Reliability Standards that protect the reliability of the Bulk-Power System and to ensure that such Reliability Standards are just, reasonable, not unduly discriminatory, or preferential, and in the public interest. Pursuant to Section 215(d)(2) of the FPA and Section 39.5(c) of the Commission's regulations, the Commission must give due weight to the technical expertise of the ERO with respect to the content of a Reliability Standard.¹⁵

¹¹ 16 U.S.C. § 824o (2006).

¹² *Id.* § 824o(b)(1).

¹³ *Id.* § 824o(d)(5).

¹⁴ 18 C.F.R. § 39.5(a) (2012).

¹⁵ 16 U.S.C. § 824o(d)(2); 18 C.F.R. § 39.5(c)(1).

B. NERC Reliability Standards Development Procedure

The proposed Reliability Standard was developed in an open and fair manner and in accordance with the Commission-approved Reliability Standard development process.¹⁶ NERC develops Reliability Standards in accordance with Section 300 (Reliability Standards Development) of its Rules of Procedure and the NERC Standard Processes Manual.¹⁷ In its ERO Certification Order, the Commission found that NERC's proposed rules provide for reasonable notice and opportunity for public comment, due process, openness, and a balance of interests in developing Reliability Standards and thus satisfies certain of the criteria for approving Reliability Standards.¹⁸ The development process is open to any person or entity with a legitimate interest in the reliability of the Bulk-Power System. NERC considers the comments of all stakeholders. Further, a vote of stakeholders and adoption by the NERC Board is required before NERC submits the Reliability Standard to the Commission for approval.

C. Order No. 804

In Order No. 804, the Commission approved Reliability Standard MOD-031-1, finding that the standard “should continue to provide planners and operators access to complete and accurate demand and energy data to allow such entities to conduct their own resource adequacy analyses to serve peak demand.”¹⁹ The Commission also found that Reliability Standard MOD-031-1 “should provide for consistent documentation and information sharing practices for demand and energy

¹⁶ *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672 at P 334, FERC Stats. & Regs. ¶ 31,204, *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

¹⁷ The NERC Rules of Procedure are available at <http://www.nerc.com/AboutNERC/Pages/Rules-of-Procedure.aspx>. The NERC Standard Processes Manual is available at http://www.nerc.com/comm/SC/Documents/Appendix_3A_StandardsProcessesManual.pdf.

¹⁸ ERO Certification Order at P 250.

¹⁹ Order No. 804 at P 14.

data, and promotes efficient planning practices across the industry and supports the identification of needed system reinforcements.”²⁰

While approving Reliability Standard MOD-031-1, the Commission also directed that NERC:

1. Develop a modification to MOD-031-1 to clarify that Planning Coordinators and Balancing Authorities must provide demand and energy data upon request of a Regional Entity, as necessary to support NERC’s development of seasonal and long-term reliability assessments.
2. Consider the compliance obligations of an applicable entity upon receipt of a data request that seeks confidential data.

Providing Data to Regional Entities. In Order No. 804, the Commission noted that while MOD-031-1, Requirement R3 requires Planning Authorities and Balancing Authorities to provide the Demand and energy data they collect pursuant to Requirements R1 and R2 of the standard to the applicable Regional Entity, Requirement R3 does not also obligate Planning Authorities and Balancing Authorities to provide Demand and energy data they obtain through alternative mechanisms to the Regional Entities.²¹ The Commission stated that “NERC has the statutory responsibility to conduct periodic assessments of the reliability and adequacy of the Bulk-Power System, and we believe that it is incumbent on users, owners and operators subject to compliance with section 215 of the FPA to provide the necessary data to support such assessments.”²² To that

²⁰ Order No. 804 at P 15.

²¹ *Id.* at P 18. As NERC explained in Docket No. RM14-12-000, Requirements R1 and R2 of MOD-031-1 provide Planning Coordinators and Balancing Authorities the authority to issue data requests for Demand and energy data, but do not require them to do so as they may have alternative mechanisms to attain the data. *Petition of the North American Electric Reliability Corporation for Approval of Proposed Reliability Standard MOD-031-1* at 22-23, Docket No. RM14-12-000 (May 13, 2014); *Comments of the North American Electric Reliability Corporation in Response to Notice of Proposed Rulemaking* at 2-3, Docket No. RM14-12-000 (Dec. 1, 2014) (MOD-031-1 NOPR Comments).

²² Order No. 804 at P 18. In its MOD-031-1 NOPR Comments, NERC stated that while the intent of Requirement R3 was to require Planning Coordinators and Balancing Authorities to provide the necessary data to their Regional Entities to support NERC’s development of seasonal and long-term reliability assessments irrespective of the mechanisms by which they obtain the data, a strict reading of Requirement R3 indicates that it applies only to data collected pursuant to MOD-031-1. MOD-031-1 NOPR Comments at 2-3. As such, NERC

end, the Commission directed NERC to develop a modification to MOD-031 to clarify that Planning Coordinators and Balancing Authorities must provide Demand and energy data to a Regional Entity, upon request, irrespective of whether that data is collected pursuant to the Reliability Standard or through alternative arrangements.²³

Requests for Confidentiality Data. Reliability Standard MOD-031-1, Requirement R4 requires applicable entities, within 45 days of a request, to share their Demand and energy data with certain other entities to help ensure that planners and operators of the Bulk-Power System have access to complete and accurate data necessary to conduct their own resource adequacy assessments. If, however, providing some or all of the requested data would conflict with the applicable entity's confidentiality, regulatory or security requirements, Requirement R4, Part 4.1 stipulates that the entity need not provide the data; however, it must respond to the requesting entity, within 30 days of the request, specifying the data that is not being provided and on what basis.

In response to comments from the Edison Electric Institute ("EEI") related to "potential conflicts" between a transmission provider's obligation to provide data under MOD-031-1 and the transmission provider's confidentiality obligations under an OATT or other confidentiality restrictions, the Commission directed NERC to consider these issues during standard development and, as necessary, clarify the compliance obligations of an applicable entity upon receipt of a request for confidential data.²⁴

committed to modify Requirement R3 to clarify that Planning Coordinators and Balancing Authorities must provide their demand and energy data to their Regional Entity whether that data is collected pursuant to MOD-031-1 or through alternative arrangements.

²³ Order No. 804 at P 18.

²⁴ *Id.* at PP 19-20.

D. Development of the Proposed Reliability Standard

As further described in Exhibit D hereto, following the issuance of Order No. 804, NERC initiated a standard development project to address the directives in Order No. 804. NERC posted a Standard Authorization Request for informal comment from April 16, 2015 through May 19, 2015. Using the same standard drafting team that developed Commission-approved Reliability Standard MOD-031-1, proposed MOD-031-2 was posted for a 45-day initial comment period and ballot on July 31, 2015. The initial ballot resulted in the requisite stakeholder approval, receiving a quorum of 85.57% and an approval of 87.36%. After addressing industry comments on the initial draft of the proposed Reliability Standard, NERC posted the proposed Reliability Standard for a final ballot, which received a quorum of 89.60% and approval of 90.01%. The NERC Board of Trustees adopted proposed Reliability Standard MOD-031-2 and the associated Implementation Plan on November 5, 2015.

III. JUSTIFICATION FOR APPROVAL

As discussed below and in Exhibit C, the proposed Reliability Standard satisfies the Commission's criteria in Order No. 672 and is just, reasonable, not unduly discriminatory, or preferential, and in the public interest. The following section provides an explanation of the manner in which the proposed Reliability Standard addresses the directives in Order No. 804.

A. Proposed Modifications to Reliability Standard MOD-031

1) Providing Data to Regional Entities

Consistent with Order No. 804, proposed Reliability Standard MOD-031-2 modifies Requirement R3 to clarify that Planning Authorities and Balancing Authorities must provide Demand and energy data to their Regional Entity, upon request, whether the Planning Authority

or Balancing Authority collected that data pursuant to Reliability Standard MOD-031 or through alternative mechanisms. Specifically, proposed Requirement R3 states:

The Planning Coordinator or the Balancing Authority shall provide the data listed under Requirement R1 Parts 1.3 through 1.5 for their area to the applicable Regional Entity within 75 calendar days of receiving a request for such data, unless otherwise agreed upon by the parties.

In contrast, the Commission-approved version of MOD-031-1, Requirement R3 provides:

The Planning Coordinator or the Balancing Authority shall provide the data *collected under Requirement R2* to the applicable Regional Entity within 75 calendar days of receiving a request for such data, unless otherwise agreed upon by the parties.

Changing the phrase “collected under Requirement R2” to “listed under Requirement R1 Parts 1.3 through 1.5” clarifies that the requirement to provide data to a Regional Entity applies broadly to the Demand and energy data listed in Requirement R1, whether the data was collected pursuant to a data request under the standard or through alternative mechanisms. The proposed modification will help ensure that NERC and the Regional Entities have the necessary data to conduct reliability assessments.

2) Requests for Confidential Data

After considering EEI’s comments on potential confidentiality conflicts, the standard drafting team modified Requirement R4 to clarify that an entity “shall provide the requested data within 45 calendar days of the written request, subject to part 4.1 of this requirement; *unless providing the requested data would conflict with the Applicable Entity’s confidentiality, regulatory, or security requirements.*” (Emphasis added). The standard drafting team concluded that it could not anticipate all the various confidentiality restrictions that might apply to Demand and energy data and tailor the language of the requirement to account for every type of confidentiality restriction. Instead, in the Rationale for Requirement R4, appended to proposed MOD-031-2, the standard drafting team explained:

The obligation to share data under Requirement R4 does not supersede or otherwise modify any of the Applicable Entity's existing confidentiality obligations. For instance, if an entity is prohibited from providing any of the requested data pursuant to confidentiality provisions of an Open Access Transmission Tariff or a contractual arrangement, Requirement R4 does not require the Applicable Entity to provide the data to a requesting entity. Rather, under Part 4.1, the Applicable Entity must simply provide written notification to the requesting entity that it will not be providing the data and the basis for not providing the data. If the Applicable Entity is subject to confidentiality obligations that allow the Applicable Entity to share the data only if certain conditions are met, the Applicable Entity shall ensure that those conditions are met within the 45-day time period provided in Requirement R4, communicate with the requesting entity regarding an extension of the 45-day time period so as to have additional time to meet all those conditions, or provide justification under Part 4.1 as to why those conditions cannot be met under the circumstances.

In short, if data is subject to a confidentiality restriction that prohibits the sharing of that data, the entity need not provide that data. It is the responsibility of each entity receiving a data request under Requirement R4, however, to understand any confidentiality obligations applicable to the requested data and act accordingly.

B. Enforceability of the Proposed Reliability Standards

The proposed Reliability Standard includes VRFs and VSLs. The VRFs and VSLs provide guidance on the way that NERC will enforce the requirements of the proposed Reliability Standard. The VRFs and VSLs for the proposed Reliability Standard comport with NERC and Commission guidelines related to their assignment.

The proposed Reliability Standard also include measures that support each requirement by clearly identifying what is required and how the ERO will enforce the requirement. These measures help ensure that the requirements will be enforced in a clear, consistent, and non-preferential manner and without prejudice to any party.²⁵

²⁵ Order No. 672 at P 327.

IV. EFFECTIVE DATE

NERC respectfully requests that the Commission approve the proposed Reliability Standards to become effective as set forth in the proposed Implementation Plan, provided in Exhibit B hereto. The proposed Implementation Plan is designed to match the effective date of the proposed Reliability Standard with the effective date of MOD-031-1, while also ensuring that entities will have sufficient time to develop the necessary process to implement this standard following Commission approval. The Implementation Plan provides that proposed MOD-031-2 shall become effective on the later of the effective date of MOD-031-1 or the first day of the first calendar quarter that is six months after the date that this standard is approved.

V. CONCLUSION

For the reasons set forth above, NERC respectfully requests that the Commission approve

- the proposed Reliability Standard and associated elements included in Exhibit A;
- the proposed Implementation Plan included in Exhibit B; and
- the retirement of Commission-approved Reliability Standard MOD-031-1.

Respectfully submitted,

/s/ Shamai Elstein

Charles A. Berardesco
Senior Vice President and General Counsel
Holly A. Hawkins
Associate General Counsel
Shamai Elstein
Senior Counsel
North American Electric Reliability Corporation
1325 G Street, N.W., Suite 600
Washington, D.C. 20005
202-400-3000
charles.berardesco@nerc.net
holly.hawkins@nerc.net
shamai.elstein@nerc.net

Counsel for the North American Electric Reliability Corporation

Date: November 13, 2015