

Shifting The Center Of Reliability Power

Law360, New York (June 21, 2010) -- Following its March 2010 Open Meeting, the Federal Energy Regulatory Commission issued a series of orders that represent significant modifications in the way mandatory reliability standards are developed and enforced by the North American Electric Reliability Corp. (NERC).

First, the commission ordered NERC to propose modifications to its Rules of Procedure to ensure that NERC responds to FERC-issued directives on proposed reliability standards by essentially adopting FERC's proposed modifications without changes.

Second, the commission issued orders directing modifications to three reliability standards within short time frames established in those orders.

Third, FERC issued a Notice of Proposed Rulemaking seeking comments on a bright-line rule that any facility rated 100 kV or above is per se part of the bulk-power system and thus subject to mandatory reliability standards.

Fourth, the commission proposed its own interpretation of a reliability standard requirement to replace an interpretation put forward by NERC.

These orders and proposed changes suggest that the commission intends to exercise far greater control over the development and enforcement of reliability standards than it has in the past, pushing back more forcefully against what it views as insufficient regulation or enforcement by NERC.

For those electric utilities that are subject to mandatory reliability standards, these changes, if carried through by the commission, will limit the discretion that can be exercised by NERC, the regional entities, and industry stakeholders in the reliability standard development process. As a result, reliability enforcement is likely to become more stringent in the future than it has been under the first few years of mandatory compliance.

NERC's Role as the Electric Reliability Organization

NERC is the organization that has been certified as the Electric Reliability Organization (ERO) under Section 215 of the Federal Power Act, created as part of the Energy Policy Act of 2005. As the ERO, NERC is the only entity that can develop and propose to the commission for approval the reliability standards that regulate the reliability-related activities of users, owners and operators of the bulk power system.

Reliability standards cover protection system maintenance and coordination, transmission planning, communication protocols, cyber security, system emergency operations and planning, transmission system operations, and many other areas. These standards often address highly technical areas of power system

engineering and operations and deal with many of the day-to-day issues related to the operation of the electric system in the United States.

Under the process established by the Federal Power Act, NERC, as the ERO, uses a balanced stakeholder-driven process to develop, vet and approve reliability standards. Once approved by the NERC stakeholders, the standards are sent to the NERC Board of Trustees for approval. Following approval by the NERC Board of Trustees, NERC submits the reliability standards to FERC.

When reviewing proposed reliability standards, the commission may approve them as mandatory and enforceable within the United States, reject the standards and remand them to NERC, or remand the standards to NERC with directions regarding any revisions that must be made before the commission will approve them. Following remand, the NERC stakeholder process starts again regarding proposed changes to the standards.

Under the mandatory reliability compliance regime, each user, owner and operator of the bulk-power system is “registered” with NERC for one of more than a dozen “functions” such as transmission operator, balancing authority, or generator owner. An entity that is registered in this manner is referred to as a “Registered Entity.”

Each reliability standard then specifies the functions that are responsible for complying with that standard. Failures to comply with the terms of a reliability standard approved by the commission as mandatory and enforceable are subject to sanctions of up to \$1,000,000 per violation per day.

The Commission Orders NERC to Adjust Its Rules of Procedure

While any new or revised reliability standards must be approved by the industry through the NERC stakeholder voting process and then approved by the NERC Board of Trustees before it can be approved by the commission, in a recent vote in this stakeholder process NERC stakeholders voted down a revision to Reliability Standard FAC-008-2 Requirement R7 that NERC had developed to comply with a FERC directive in Order No. 693, the order in which FERC had approved that reliability standard.

In discussing this rejection, the commission noted that in voting on the revision the industry had raised objections to the requirement that the commission had already rejected in Order No. 693, and that the deadline for a request for rehearing of Order No. 693 had passed. As such, the commission viewed such a rejection by NERC as a misuse of NERC processes, potentially thwarting the Federal Power Act policy of protecting the reliability of the bulk-power system.

In light of NERC’s rejection of the FAC-008-2 modification, in March the commission ordered NERC to modify its Rules of Procedure to ensure that NERC will comply with directives from the commission to develop or modify a reliability standard.[1]

The commission stated that it would defer to NERC on drafting the necessary changes to its Rules of Procedure to ensure compliance with FERC directives, but the commission gave NERC only until June 16, 2010, to propose the changes.

The commission also ordered NERC to comply with the original directive in Order No. 693 to modify Reliability Standard FAC-008-1 and to propose a revised standard by June 16, 2010.

The Commission Imposes Deadlines on Modifications to Reliability Standards

In two other orders issued following the March 2010 Open Meeting, the commission directed NERC to modify Reliability Standards TPL-002-0 and BAL-003-0 under a short deadline, particularly given the normal pace of reliability standard revisions.

TPL-002-0 concerns system performance following the loss of a single bulk electric system element. The commission directed NERC to clarify Table 1, footnote b to resolve the uncertainty surrounding the loss of nonconsequential load for a single contingency event.[2]

The commission ordered that the clarification be responsive to Order No. 693 where the commission directed that “the transmission planning Reliability Standard should not allow an entity to plan for the loss of non-consequential load in the event of a single contingency.”[3] The commission directed NERC to submit the proposed change by June 30, 2010.

For BAL-003-0, which addresses frequency and response bias, the commission directed NERC to modify the standard by (1) determining the appropriate periodicity of frequency response surveys necessary to ensure BAL-003-0 is being met and (2) defining the necessary amount of frequency response needed for reliable operation for each Balancing Authority with methods of obtaining and measuring that frequency response.[4] FERC ordered NERC to submit a modified reliability standard to the commission by Sept. 14, 2010.

The Commission Proposes to Expand the Scope of the “Bulk Electric System”

Following the March 2010 Open Meeting the commission also issued a Notice of Proposed Rulemaking which, if enacted, would set a bright-line rule for identifying bulk electric system facilities that would be subject to compliance with mandatory reliability standards.

Up to this point, each of the eight regional entities with delegated authority from NERC to enforce compliance with mandatory reliability standards has had discretion to define what “bulk electric system” means within its geographic region, and therefore identify the facilities that are considered part of the bulk electric system and subject to mandatory reliability standards.

In the Notice of Proposed Rulemaking, the commission proposed to direct NERC to include all transmission facilities greater than or equal to 100 kV within NERC’s definition of “bulk electric system,” thereby removing the distinctions between NERC Regions.[5]

The new proposed rule would require any of the regional entities to seek both NERC and FERC approval prior to finding that any facility rated at 100 kV or above is not part of the bulk electric system and therefore exempt from reliability standards compliance.

The Commission Proposes to Substitute Its Judgment on a Reliability Standard

Finally, the commission issued a Notice of Proposed Rulemaking proposing to interpret one of the requirements in an existing FERC-approved reliability standard.[6] Under the existing NERC Standards Development Procedure, NERC will develop a formal interpretation of a reliability standard in response to a request for clarification of a standard from a stakeholder.

In this case, NERC had developed an interpretation of Reliability Standard TPL-002-0 Requirement R1.3.10 to clarify how redundant and backup protection systems are considered for single contingency transmission planning. The interpretation developed by NERC was approved overwhelmingly by the NERC stakeholders and then approved by the NERC Board of Trustees.

The commission proposed to reject the NERC interpretation. However, rather than proposing to direct a modification to the interpretation as the commission has done in the past when it does not approve a reliability standard, the commission proposed to make mandatory an interpretation of the requirement that FERC had developed on its own.

As a result, if the commission issues a Final Rule adopting this interpretation, the commission will have legislated the compliance obligations of registered entities under this reliability standard without using the NERC standards development procedures.

Conclusion

As indicated by these orders, FERC intends to fundamentally change the way in which reliability standards are developed and enforced within the United States. Although multiple requests for rehearing on these orders and comments on these Notices of Proposed Rulemaking have been filed by interested parties, the commission has not yet indicated that it will turn back from this more engaged approach to reliability oversight.

As a result, these orders may represent a permanent shift in the commission's approach to its responsibilities under Section 215 of the Federal Power Act.

While the implications for the electric industry will not be known until the conclusions of these proceedings, the commission's goal is clear; from now on, FERC intends to be active in shaping and enforcing reliability standards within the United States, using its statutory authority to its fullest extent to preserve bulk power system reliability.

This expansion of the commission's role, if carried out to the extent outlined in these orders, will necessarily be accompanied by a diminished role for NERC, the regional entities, and the industry stakeholders themselves.

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The opinions expressed are those of the authors and do not necessarily reflect the views of Morgan Lewis & Bockius LLP or Portfolio Media, publisher of Law360.

[1] North American Electric Reliability Corp., 130 FERC ¶ 61,203 (2010), reh'g pending.

[2] Mandatory Reliability Standards for the Bulk Power System, 130 FERC ¶ 61,200 (2010), reh'g pending.

[3] *Id.* at P 7 (quoting Mandatory Reliability Standards for the Bulk Power System, Order No. 693, 72 Fed. Reg. 16,416 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242 at P 1791-94 (2007), order on reh'g, Order No. 693-A, 72 Fed. Reg. 40,717 (July 25, 2007), 120 FERC ¶ 61,053 (2007).

[4] Mandatory Reliability Standards for the Bulk Power System, 130 FERC ¶ 61,218 (2010), reh'g pending.

[5] Revision to Electric Reliability Organization Definition of Bulk Electric System, Notice of Proposed Rulemaking, 130 FERC ¶ 61,204 (2010).

[6] Interpretation of Transmission Planning Reliability Standard, Notice of Proposed Rulemaking, 130 FERC ¶ 61,208 (2020).