

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Mandatory Reliability Standards for  
Calculation of Transfer Capability,  
Capacity Benefit Margins,  
Transmission Reliability Margins,  
Total Transfer Capability, and  
Existing Transmission Commitments  
and Mandatory Reliability Standards  
for the Bulk-Power System

Docket Nos. RM08-19-000  
RM08-19-001  
RM09-5-000  
RM06-16-005

**REQUEST FOR CLARIFICATION OF THE  
AMERICAN PUBLIC POWER ASSOCIATION AND  
THE TRANSMISSION ACCESS POLICY STUDY  
GROUP**

Pursuant to Rules 212 and 713 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and .713 and Section 313 of the Federal Power Act (“FPA”), 16 U.S.C. § 825*l*, the American Public Power Association (“APPA”) and the Transmission Access Policy Study Group (“TAPS”) request clarification of the provisions of Order 729<sup>1</sup> that establish the effective date in the United States for the Reliability Standards approved in that Order.

**I. STATEMENT OF ISSUES AND CONCERNS**

Order 729 (P 269) provides for making “these Reliability Standards effective on the first day of the first calendar quarter that is twelve months beyond the date that the Reliability Standards are approved by all applicable regulatory authorities.” Very similar language is used in Order 729 P 95. *See also* Order 729 P 320 (“the MOD Reliability Standards approved herein will not become effective until the first day of the first quarter

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<sup>1</sup> 129 F.E.R.C. ¶ 61,155 (2009).

no sooner than one calendar year after approval by all appropriate regulatory authorities where approval is required”). Do these effective date provisions make clear which regulatory approvals are required; whether and how long it will take for all applicable regulatory authorities to approve the standards; and how the industry will know when that approval milestone has been achieved?

## II. REQUEST FOR CLARIFICATION

The most complete discussion of the effective date of the Reliability Standards approved by Order 729 appears at P 95 (emphasis added):

As approved, the Reliability Standards shall become effective on the first day of the first calendar quarter that is twelve months beyond the *date that the Reliability Standards are approved by all applicable regulatory authorities*. The Commission finds that the approved implementation schedule strikes a reasonable balance between the need for timely reform and the needs of transmission service providers and transmission operators to make adjustments to their calculations of available transfer capability, capacity benefit margin and transfer reliability margin. To the extent necessary, we clarify that, under this plan, the Reliability Standards shall become effective on the first day of the first quarter occurring 365 days after approval by all applicable regulatory authorities. Approval by the Commission will be effective 60 days after the date of publication of this Final Rule in the Federal Register. If a transmission service provider or transmission operator is unable to implement these Reliability Standards within the time allowed, requests for extension should be considered through NERC’s enforcement and compliance program.

*See also* PP 269, 320.

APPA and TAPS are concerned that the effective date adopted by Order 729 leaves a great deal of uncertainty, including which regulatory approvals are required, whether and how long it will take for *all* applicable regulatory authorities to approve the

standards, and how the industry will know that approval milestone has been achieved. We are not experts on Canadian regulatory authorities, but understand that there is a range in how the Canadian provinces have addressed NERC Reliability Standards and the procedures, if any, for “approving” NERC Reliability Standards. It is also possible that the procedures used by a province may change during the course of the period before *all* applicable regulatory authorities have approved the MOD Reliability Standards.

APPA and TAPS understand that there may be aspects of the MOD Reliability Standards that require coordination of information between entities subject to different regulatory regimens, which coordination may warrant departure from the Commission’s usual determination to make approved standards effective a stated period of time after FERC approval. However, we remain concerned that Order 729’s effective date provision may leave the status of the MOD Reliability Standards in limbo for an extended and potentially open-ended period of time that is difficult to ascertain, and makes no provision for informing the industry of when all applicable regulatory authorities have approved the standards. It is not even clear what regulatory bodies are included in the set of “all appropriate regulatory authorities where approval is required.” *Id.* P 320. Nor is it clear what happens if some regulatory body has some issue with some portion of the MOD Reliability Standards.

For these reasons, APPA and TAPS ask the Commission to clarify the effective date provisions of Order 729. If the current structure is retained, the Commission should adopt procedures to keep the Commission and the industry informed on the status of the required regulatory approval processes. At minimum, these procedures should specify the regulatory approvals required to be obtained; address the need for periodic assessment

of the progress being made in obtaining the various regulatory approvals and the expected date for achieving the approvals (if available); and provide for timely public notification that all appropriate regulatory authorities have approved the MOD Reliability Standards, triggering the one-year period set forth in Order 729's effective date provision.

Respectfully submitted,

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December 23, 2009