

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Retrospective Analysis of Existing Rules | Docket No. AD12-6-002

**COMMENTS OF THE AMERICAN PUBLIC POWER
ASSOCIATION AND TRANSMISSION ACCESS
POLICY STUDY GROUP**

Pursuant to the notice published in the Federal Register on November 3, 2016,¹ the American Public Power Association (“APPA”) and the Transmission Access Policy Study Group (“TAPS”) (collectively, “APPA/TAPS”) comment on the October 27, 2016 Staff Memorandum concerning retrospective analysis of existing rules.²

I. INTERESTS OF APPA AND TAPS

APPA is the national service organization representing the interests of not-for-profit, publicly owned electric utilities throughout the United States. More than 2,000 public power systems provide over 15% of all kilowatt-hour sales to ultimate customers and serve over 48 million people, doing business in every state except Hawaii. Public power systems own approximately 10.4% of the total installed generating capacity in the United States. Approximately 265 APPA members are subject to compliance with North American Electric Reliability Corporation (“NERC”) standards applicable to users, owners, and operators of the Bulk Power System.

¹ Fed. Energy Regulatory Comm’n, Retrospective Analysis of Existing Rules; Notice of Staff Memorandum, 81 Fed. Reg. 76,542 (Nov. 3, 2016).

² Fed. Energy Regulatory Comm’n, 2016 Biennial Staff Memo Concerning Retrospective Analysis of Existing Rules (Oct. 27, 2016), eLibrary No. 20161028-4001 (“Staff Memorandum”).

TAPS is an association of transmission-dependent utilities (“TDUs”) in more than 35 states, promoting open and non-discriminatory transmission access.³ TAPS members have long recognized the importance of grid reliability. As TDUs, TAPS members are users of the Bulk Power System, highly reliant on the reliability of facilities owned and operated by others for the transmission service required to meet TAPS members’ loads. In addition, many TAPS members participate in the development of and are subject to compliance with NERC reliability standards.

Communications regarding these proceedings should be directed to:

Delia D. Patterson, General Counsel and
VP, Regulatory Affairs
Randolph Elliott, Senior Regulatory
Counsel
AMERICAN PUBLIC POWER ASSOCIATION
2451 Crystal Drive, Suite 1000
Arlington, VA 22202
Tel:
(202) 467-2993
(202) 467-2952
Email:
dpatterson@publicpower.org
relliott@publicpower.org

Cynthia S. Bogorad
Latif Nurani
SPIEGEL & MCDIARMID LLP
1875 Eye Street, N.W.
Suite 700
Washington, DC 20006
Tel:
(202) 879-4000
Email:
cynthia.bogorad@spiegelmc.com
latif.nurani@spiegelmc.com

John Twitty
Executive Director
TRANSMISSION ACCESS POLICY STUDY
GROUP
P.O. Box 14364
Springfield, MO 65814
Tel:
(417) 838-8576
Email:
835consulting@gmail.com

³ David Geschwind, Southern Minnesota Municipal Power Agency, chairs the TAPS Board. Jane Cirrincione, Northern California Power Agency, is TAPS Vice Chair. John Twitty is TAPS Executive Director.

II. COMMENTS

The Staff Memorandum identifies Order No. 693 as a rule that must be reviewed pursuant to the Regulatory Flexibility Act (“RFA”) because the rule has a significant economic impact on a substantial number of small entities.⁴ Staff concludes that “any reforms pertaining to significant economic impacts [of Order No. 693] upon a substantial number of small entities have been already addressed in previous Commission proceedings or can be addressed in future ones.”⁵

In Order No. 693, the Commission approved 83 proposed Reliability Standards developed by NERC.⁶ The Commission also revised section 40 of its Regulations to require (1) each mandatory Reliability Standard to identify the subset of users, owners and operators of the bulk-power system to which the standard applies; and (2) each applicable user, owner or operator of the bulk-power system to comply with Commission-approved Reliability Standards.⁷ The Commission also approved NERC’s compliance registry process, and stated that it would rely on that process “to identify the set of entities that are responsible for compliance with particular Reliability Standards.”⁸

⁴ Staff Memorandum at 1.

⁵ *Id.* at 10.

⁶ Mandatory Reliability Standards for the Bulk-Power System, Order No. 693, 72 Fed. Reg. 16,416 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242 (2007), *effective date stayed*, 72 Fed. Reg. 31,452 (June 7, 2007), *aff’d*, Order No. 693-A, 72 Fed. Reg. 40,717 (July 25, 2007), 120 FERC ¶ 61,053 (2007).

⁷ *Id.* at 16,421, FERC Stats. & Regs. ¶ 31,242, PP 39, 43.

⁸ *Id.* at 16,427, FERC Stats. & Regs. ¶ 31,242, P 95. Order No. 693 also accepted, “at least initially,” NERC’s proposed definition of the Bulk Electric System (“BES”), to avoid “expanding the scope of facilities subject to the Reliability Standards.” *Id.* at 16,425, FERC Stats. & Regs. ¶ 31,242, P 75. The Commission subsequently directed NERC to revise the BES definition, and accepted a new definition that, by the Commission’s estimation, was expected to cost fifty small entities \$39,414 each in the first year alone. Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure, Order No. 773-A, 78 Fed. Reg. 29,210, 29,230 (May 17, 2013), 143 FERC ¶ 61,053, P 133 (2013) (subsequent history omitted).

The economic impact of Order No. 693 on small entities has grown in the decade since the order was issued. While many of the specific Reliability Standards approved in Order No. 693 have evolved, small entities face many more reliability requirements today than they did in 2007.⁹ Not only are small entities subject to more requirements today, but many of those requirements are more intrusive, more complex, and more difficult to demonstrate compliance with than the requirements in 2007. For example, Order No. 693 approved the first mandatory version of the PRC-005 Reliability Standard for protection system maintenance and testing (i.e., PRC-005-1), but directed NERC to modify the standard.¹⁰ Since then, the Commission has approved *five more versions* of the PRC-005 Reliability Standard (the most recent version being PRC-005-6),¹¹ imposing more testing and maintenance obligations on small entities and creating overlapping compliance obligations that will continue to evolve until 2029.¹²

Additionally, many small entities are now subject, or soon will be subject, to NERC's Critical Infrastructure Protection ("CIP") Reliability Standards. The total economic burden on small entities resulting from Version 5 of the CIP Reliability

⁹ See NERC, *Reliability Standards: Standards Oversight and Technology Quarterly Report* at 5 (Aug. 4, 2016), http://www.nerc.com/gov/bot/BOTSOTC/Board%20of%20Trustees%20Standards%20Oversight%20and%20Tech1/SOTC_Open_August_4_2016_Package_Participant.pdf (showing that the total number of NERC Requirements has grown from around 350 in 2007 to over 500 in 2016).

¹⁰ Order No. 693, 72 Fed. Reg. at 16,554-55, FERC Stats. & Regs. ¶ 31,242, PP 1474-1475.

¹¹ NERC, Docket No. RD16-2-000, Letter Order Approving Reliability Standard PRC-005-6 (Dec. 18, 2015), eLibrary No. 20151218-3011.

¹² Even a "simplified" chart of the PRC-005 implementation plan reveals the complexity facing small entities. See Fla. Reliability Coordinating Council, *Standard PRC-005-2(i) and PRC-005-6: Protection System, Automatic Reclosing, and Sudden Pressure Relaying Maintenance Implementation Plan* (May 2, 2016), [https://www.frcc.com/Standards/Implementation%20Plans/PRC-005-6%20Protection%20System,%20Automatic%20Reclosing,%20and%20Sudden%20Pressure%20Relaying%20Maintenance%20\(Enforcement%20Date%201.1.2016\)/PRC-005-6%20Implementation%20Plan%20\(Enforcement%20Date%2001.01.2016\).pdf](https://www.frcc.com/Standards/Implementation%20Plans/PRC-005-6%20Protection%20System,%20Automatic%20Reclosing,%20and%20Sudden%20Pressure%20Relaying%20Maintenance%20(Enforcement%20Date%201.1.2016)/PRC-005-6%20Implementation%20Plan%20(Enforcement%20Date%2001.01.2016).pdf).

Standards, which expand the applicability of CIP requirements to low-impact cyber systems, is over \$56 million.¹³

While the Commission has taken some actions to provide relief to small entities, the economic impact of Order No. 693 remains heavy and more work needs to be done. For example, the Commission approved the first phase of NERC's Risk-Based Registration ("RBR") Initiative in March 2015, which reduced the compliance obligation for some small entities.¹⁴ However, this effort provided relief only with regard to certain functional registrations, and the burden on small entities that remain registered for compliance remains significant and continues to grow.

Rather than engaging in a formal review of Order No. 693, the Staff Memorandum states that evaluation of any further reforms for small entities can be addressed in future proceedings. Such an approach cannot succeed unless the Commission engages in more robust RFA analysis in those future proceedings. In prior proceedings, commenters that are well-situated to understand the needs of and impacts on small entities have submitted evidence seeking to refine or correct the Commission's RFA analysis, and the Commission has declined to accept that evidence.¹⁵

In the future, the Commission should take its RFA responsibilities more seriously, particularly when issuing directives for further changes to Reliability Standards. It should provide greater transparency and information regarding the basis for its determination of

¹³ Am. Pub. Power Ass'n, Docket No. RM13-5-000, Comments of the American Public Power Association at 28-29 (Jun. 24, 2013), eLibrary No. 20130624-5161.

¹⁴ *N. American Elec. Reliability Corp.*, 150 FERC ¶ 61,213 (2015).

¹⁵ *See, e.g.*, Nat'l Rural Elec. Coop. Ass'n & Am. Pub. Power Ass'n, Docket Nos. RM12-6-002, RM12-7-002, Joint Motion For Clarification, or in the Alternative, Request For Rehearing, of the National Rural Electric Cooperative Association and the American Public Power Association (May 17, 2013), eLibrary No. 20130517-5186.

impact on small entities, especially where the record contains contrary evidence. In addition, it should be more receptive to commenter evidence of deficiencies in the Commission's RFA assessments, and consider more realistic assessments in shaping its rules to minimize the impact on small entities.

Respectfully submitted,

American Public Power Association Transmission Access Policy Study Group

Delia D. Patterson, General Counsel
and VP, Regulatory Affairs
Randolph Elliott, Senior Regulatory
Counsel
American Public Power Association
2451 Crystal Drive, Suite 1000
Arlington, VA 22202
202-467-2900
dpatterson@publicpower.org

/s/ Cynthia S. Bogorad
Cynthia S. Bogorad
Latif M. Nurani
Spiegel & McDiarmid LLP
1875 Eye Street, NW, Suite 700
Washington, DC 20006
202-879-4000

*Counsel for the
Transmission Access Policy Study Group*

Dated: December 5, 2016

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated on this 5th day of December, 2016.

/s/ Latif M. Nurani

Latif M. Nurani

Law Offices of:
Spiegel & McDiarmid LLP
1875 Eye Street, NW
Suite 700
Washington, DC 20006
(202) 879-4000