REPORT OF SYSTEM RELIABILITY & PLANNING COMMITTEE

Synopsis: The EBA System Reliability and Planning Committee is pleased to submit its annual report. This report provides a summary of the most significant decisions, orders, and rules issued by the Federal Energy Regulatory Commission (FERC) and the North American Electric Reliability Corporation (NERC) regarding electric reliability section 215 of the Federal Power Act (FPA) and transmission planning from July 1, 2013 through June 30, 2014. The Committee's previous report provided a summary of significant FERC and NERC decisions, orders, and rules from July 1, 2011 through June 30, 2013.*

* The System Reliability and Planning Committee wishes to acknowledge the support of the full Committee in producing this report, as well as the following contributors: Andrea J. Chambers, Thomas DeVita, Andrew M. Dressel, Bill Edwards, Jesse Halpern, James P. Johnson, Gregory D. Jones, Katie Leesman, Bruce L. Richardson, David S. Schmitt, Sejal C. Shah, Brittany Sullivan, Jonathan P. Trotta, and Stacey Tyrewala.

I. RELIABILITY GOVERNANCE, STRUCTURE, AND RULES OF PROCEDURE

On September 3, 2013, the FERC issued an order approving revisions to NERC Rules of Procedure (ROP) Appendix 4D (Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Standards) and Appendix 2 (Definitions Used in the Rules of Procedure).[1] The ROP changes were intended to balance the need for adequate information to evaluate Technical Feasibility Exceptions (TFEs) requests with the need to streamline the process for reviewing TFE requests and to eliminate administrative burdens.[2] The FERC directed NERC to submit a compliance filing specifying a time frame for reporting a material change upon identification or discovery; and to make several enhancements to the annual TFE reporting requirement.[3] NERC submitted its compliance filing on December 2, 2013,[4] which the FERC accepted in a January 30, 2014 letter order.[5]

1. *N. Am. Elec. Reliability Corp.*, 144 F.E.R.C. ¶ 61,180 (2013) [hereinafter September 3 Order].
2. Petition of NERC for Approval of Revisions to Appendix 2 and Appendix 4D of the NERC Rules of Procedure at 4, FERC Docket No. RR13-3-000 (Apr. 8, 2013).
3. September 3 Order, *supra* note 1, at PP 12-18.
4. Compliance Filing of NERC in Response to Order Approving Amendments to Electric Reliability Organization's Rules of Procedure, FERC Docket No. RR13-3-001 (Dec. 2, 2013).
5. Letter Order, Amendments to Electric Reliability Organization's Rules of Procedure, FERC Docket No. RR13-3-001 (Jan. 30, 2014).

On April 1, 2014, NERC submitted amendments to NERC ROP Appendix 2 (Definitions) and Appendix 5B (Statement of Compliance Registry Criteria)[6] to update the NERC ROP in accordance with the FERC's March 20, 2014 order approving the Bulk Electric System (BES) definition without modification.[7] The FERC accepted the proposed amendments in a letter order dated June 2, 2014.[8]

II. NERC BUSINESS PLAN AND BUDGET

On August 9, 2013 the FERC issued a letter order approving NERC's May 30, 2013 report of comparisons of budgeted to actual costs for 2012 for NERC and the Regional Entities.[9]

On August 23, 2013, NERC submitted its 2014 Business Plan and Budget Filing.[10] The FERC issued an order conditionally accepting NERC's 2014 Business Plan and Budget Filing on November 1, 2013.[11] Specifically, the FERC accepted the budget of Peak Reliability−the newly-formed, FERC-approved independent entity tasked with performing the reliability coordinator and interchange authority functions in the Western Interconnection−subject to the outcome of a Request for Rehearing in FERC Docket Nos. EL13-52-001, RR13-10-000, and RR13-12-000 and delayed invoices until the matter is resolved.[12] The FERC also rejected NERC's proposal to allocate restricted working capital to offset future liabilities under NERC's lease agreements, and directed NERC to submit a compliance filing within thirty days.[13] On November 22, 2013, NERC submitted this compliance filing,[14] and on December 3, 2014, filed a corrected Appendix 2 to its 2014 Business Plan and Budget.[15] On January 3, 2014, the FERC accepted NERC's compliance filing and corrected Appendix 2.[16]

III. RELIABILITY STANDARDS

A. NERC Petition to Retire Thirty-Four Requirements in Nineteen Standards

On August 27, 2013, NERC submitted comments in support of FERC's June 20, 2013 Notice of Proposed Rulemaking (NOPR),[17] proposing to approve

6. Request of NERC to Update Revised Definition of the Bulk Electric System Definition Phase 2 in the NERC Rules of Procedure, FERC Docket No. RR14-2-000 (Apr. 1, 2014).

7. *N. Am. Elec. Reliability Corp.*, 146 F.E.R.C. ¶ 61,199 (2014).

8. Letter Order, Amendments to NERC Rules of Procedure, FERC Docket No. RR14-2-000 (June 2, 2014).

9. Letter Order, Report of Comparisons of Budgeted to Actual Costs For 2012, FERC Docket No. RR13-6-000 (Aug. 9, 2013).

10. Request of NERC for Acceptance of its 2014 Business Plan and Budget and the 2014 Business Plans and Budgets of Regional Entities and for Approval of Proposed Assessments to Fund Budgets, FERC Docket No. RR13-9-000 (Aug. 23, 2013).

11. *N. Am. Elec. Reliability Corp.*, 145 F.E.R.C. ¶ 61,097 (2013).

12. *Id.* at PP 34-35.

13. *Id.* at P 23.

14. Compliance Filing of NERC in Response to Paragraph 23 of the November 1, 2013 Commission Order, FERC Docket RR13-9-001 (Nov. 22, 2013).

15. Filing of NERC of Corrected Appendix 2 to its 2014 Business Plan and Budget, FERC Docket RR13-9-002 (Dec. 3, 2013).

16. Letter Order, 2014 Business Plans and Budget Findings, FERC Docket Nos. RR13-9-001, RR13-9-002 (Jan. 3, 2014).

17. Notice of Proposed Rulemaking, *Electric Reliability Organization Proposal to Retire Requirements in Reliability Standards*, 143 F.E.R.C ¶ 61,251 (2013) (to be codified at 80 C.F.R. pt. 40).

NERC's petition to retire thirty-four requirements within nineteen reliability standards and proposing to withdraw forty-one outstanding directives.[18] On November 21, 2013, the FERC issued Order No. 788 approving the retirement of thirty-four requirements within nineteen reliability standards, finding that the requirements provide "little protection to the Bulk Electric System" or "are redundant with other existing Reliability Standards."[19] The FERC reasoned that these retirements would provide "an increase in efficiency of the ERO compliance program" while having "little effect on reliability."[20] The FERC also withdrew forty-one reliability directives to NERC.[21]

B. Revisions to Bulk Electric System (BES) Definition

On August 30, 2013, the FERC issued an order[22] denying requests of the National Rural Electric Cooperative Association (NRECA) and American Public Power Association (APPA) for clarification or rehearing of Order No. 773-A, FERC's order affirming Order No. 773 regarding changes to the NERC definition of BES.[23] The FERC rejected arguments by NRECA and APPA that the FERC did not provide sufficient support for its determinations on the impacts of the Order No. 773-A's findings on small entities, particularly with regard to compliance costs.[24] On December 13, 2013, NERC petitioned for approval of proposed revisions to the BES definition in the NERC Glossary of Terms and associated implementation plan.[25] On March 20, 2014, the FERC issued an order approving NERC's revisions to the BES definition,[26] including clarifying revisions to Inclusions I1 (Transformers), I2 (Generating Resources), and I5 (Static or Dynamic Reactive Power Devices), as well as substantive revisions to Inclusion I4 (Dispersed Power Producing Resources) and Exclusions E1 (Radial Systems), E3 (Local Networks), and E4 (Reactive Power Devices).[27] On February 6, 2014, the FERC denied a joint request for rehearing of the Pacific Northwest Generating Cooperative and Northwest Requirements Utilities June 13, 2013 order granting an extension of time of the effective date of NERC's revised BES definition.[28] The FERC rejected petitioners' arguments that the order exceeded the FERC's jurisdiction under the FPA and impermissibly applied the definition of the bulk electric system to facilities used in the local distribution of electric energy.[29] The FERC reasoned that the determination of facilities "used in local distribution" is the first step in a process intended to potentially exclude such

18. Comments of NERC in Response to Notice of Proposed Rulemaking, FERC Docket No. RM13-8-000 (Aug. 27, 2013).

19. Order No. 788, *Electric Reliability Organization Proposal to Retire Requirements in Reliability Standards*, 145 F.E.R.C. ¶ 61,147 (2013) (to be codified at 18 C.F.R. pt. 40).

20. *Id*.

21. *Id.* at P 2.

22. *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, 144 F.E.R.C. ¶ 61,174 (2013).

23. *Id*.

24. *Id*. at PP 3-10.

25. Petition of NERC for Approval of Revisions to the Definition of Bulk Electric System and Request for Expedited Action, FERC Docket No. RD14-2-000 (Dec. 13, 2013).

26. *N. Am. Elec. Reliability Corp., supra* note 7, at P 1.

27. *Id*. at PP 41-49.

28. *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, 146 F.E.R.C. ¶ 61,070 at P 1 (2014) [hereinafter February 6 Order].

29. *Id*. at PP 5-6.

facilities "from being defined as part of the bulk electric system."[30] On April 1, 2014, NERC filed for FERC approval to update NERC's Phase 2 BES definition in the NERC Rules of Procedure, Appendix 2 (Definitions Used in the Rules of Procedure), and Appendix 5B (Statement of Compliance Registry Criteria).[31] On June 2, 2014, the FERC issued a letter order accepting NERC's filing and making the BES definition revisions effective July 1, 2014, as NERC requested.[32]

C. Multiple Reliability Standards

1. Generator Requirements at the Transmission Interface Reliability Standards

On September 19, 2013, the FERC issued Order No. 785 approving revisions to Reliability Standards FAC-001-1 (Facility Connection Requirements), FAC-003-3 (Transmission Vegetation Management), PRC-004-2.1a (Analysis and Mitigation of Transmission and Generation Protection System Misoperations), and PRC-005-1.1b (Transmission and Generation Protection System Maintenance and Testing).[33] According to the FERC, the approved modifications are intended to improve reliability by either extending or clarifying that the standards apply to Generator Owners and Generator Operators and/or to their generator interconnection facilities.[34] The FERC's Order No. 785 also confirmed that the term "generator interconnection facility" refers to "generator interconnection tie-lines and their associated facilities extending from the secondary (high) side of a generator owner's step-up transformer(s) to the point of interconnection with the host transmission owner."[35] In addition, the FERC stated that while "additional Reliability Standards or individual requirements may need to be applied on a case-by-case basis to generator interconnection facilities in certain circumstances,"[36] for the majority of Generator Owners and Generator Operators, NERC will not pursue registration of Generator Owners and Generator Operators as Transmission Owners or Transmission Operators "due solely to their ownership or operation of generator interconnection facilities."[37]

2. Resource and Demand Balancing (BAL) Standards

On July 18, 2013, the FERC issued a NOPR proposing to approve Reliability Standard BAL-003-1 (Frequency Response and Frequency Response Bias Setting).[38] On September 27, 2013, NERC submitted comments in response to the

30. *Id.* at P 7.

31. Request of NERC to Update Revised Definition of the Bulk Electric System Definition Phase 2 in the NERC Rules of Procedure, FERC Docket No. RR14-2-000 (Apr. 1, 2014).

32. Letter Order, Amendments to NERC Rules of Procedure, FERC Docket No. RR14-2-000 (June 2, 2014).

33. Order No. 785, *Generator Requirements at the Transmission Interface*, 144 F.E.R.C. ¶ 61,221 at P 1 (2013) (to be codified at 18 C.F.R. pt. 40).

34. *Id.* at P 15, 19.

35. *Id.* at P 37.

36. *Id.* at P 53.

37. *Id.* at P 19, 49.

38. Notice of Proposed Rulemaking, *Frequency Response and Frequency Bias Setting Reliability Standard*, 144 F.E.R.C. ¶ 61,057 (2013) (to be codified at 18 C.F.R. pt. 40).

NOPR.[39] On October 15, 2013, NERC submitted reply comments in response to comments filed on September 27, 2013.[40] On December 30, 2013, NERC submitted its Annual Analysis of Frequency Response for the administration and support of Reliability Standard BAL-003-1 in FERC Docket No. RM13-11.[41] On January 16, 2014, the FERC issued Order No. 794 approving Reliability Standard BAL-003-1, and directing NERC to submit certain follow-up reports.[42] On August 20, 2013, NERC and the Western Electricity Coordinating Council (WECC) submitted a joint petition for approval of Reliability Standard BAL-001-1 and Regional Reliability Standard BAL-004-WECC-02.[43] On October 16, 2013, the FERC issued a letter order approving both standards.[44] On April 2, 2014, NERC filed a petition for approval of Reliability Standard BAL-001-2 (Real Power Balancing Control Performance) and associated definitions "Regulation Reserve Sharing Group," "Reserve Sharing Group ACE," and "Interconnection."[45] On May 9, 2014, NERC submitted supplemental information to its April 2, 2014 petition to address the status of a FERC directive in Order No. 693 and to update the FERC regarding the status of a field trial for Reliability Standard BAL-001-2.[46]

3. Communications (COM) Standards

On May 14, 2014, NERC filed a petition for approval of proposed Reliability Standards COM-001-2 (Communications) and COM-002-4 (Operating Personnel Communications Protocols).[47] In its petition, NERC stated that proposed COM-001-2 "establishes a clear set of requirements for what communications capabilities various functional entities must maintain for reliable communications."[48] NERC added that proposed COM-002-4 improves communications surrounding the issuance of Operating Instructions by "employing predefined communications protocols, thereby reducing the possibility of miscommunication that could lead to action or inaction harmful to the reliability of the Bulk Electric System."[49]

39. Comments of NERC in Response to Notice of Proposed Rulemaking, FERC Docket No. RM13-11-000 (Sept. 27, 2013).

40. Reply Comments of NERC, FERC Docket No. RM13-11-000 (Oct. 15, 2013).

41. NERC Informational Filing, Frequency Response Annual Analysis, FERC Docket No. RM13-11-000 (Dec. 30, 2013).

42. Order No. 794, *Frequency Response and Frequency Bias Setting Reliability Standard*, 146 F.E.R.C. ¶ 61,024 (2014) (to be codified at 18 C.F.R. pt. 40).

43. Joint Petition of NERC and WECC for Approval of BAL-004-WECC-02 & BAL-001-1, FERC Docket No. RM13-11-000 (Aug. 20, 2013).

44. Letter Order, Petition for Approval of Proposed Regional Reliability Standard BAL-004-WECC-02 and Reliability Standard BAL-001-1, FERC Docket No. RD13-11-000 (Oct. 16, 2013).

45. Petition of NERC for Approval of Reliability Standard BAL-001-2—Real Power Balancing Control Performance, FERC Docket No. RM14-10-000 (Apr. 2, 2014).

46. Supplemental Information to Petition of NERC for Approval of Reliability Standard BAL-001-2—Real Power Balancing Control Performance, FERC Docket No. RM14-10-000 (May 9, 2014).

47. Petition of NERC for Approval of Proposed Reliability Standards COM-001-2 and COM-002-4, FERC Docket No. RM14-13-000 (May 14, 2014).

48. *Id*. at 15.

49. *Id*. at 23.

4. Emergency Preparedness and Operations (EOP) Standards

On November 14, 2013, NERC petitioned for approval of proposed Reliability Standard EOP-010-1 (Geomagnetic Disturbance Operations).[50] According to NERC, the proposed standard was developed to mitigate potential reliability impacts of Geomagnetic Disturbance (GMD) events (*i.e.*, events that can occur when solar storms on the surface of the sun impact the Earth's magnetic field)[51] by requiring owners and operators of the Bulk-Power System to develop and implement operational procedures that may help "alleviate abnormal system conditions" during GMD events.[52] Proposed EOP-010-1 would allow entities to tailor their operational procedures based on certain entity-specific factors such as geography, geology, and system topology.[53]

On January 16, 2014, the FERC proposed to approve, without modification, NERC's proposed Reliability Standard EOP-010-1.[54] On March 24, 2014, NERC submitted comments in support of the FERC's proposal.[55] On June 19, 2014, the FERC issued Order No. 797,[56] approving Reliability Standard EOP-010-1 and directing NERC to implement the new reliability standard within six months.[57] The FERC found that while operational procedures do not present a complete solution to the risks that a GMD event could pose to the Bulk-Power System, they do "constitute 'an important first step'" because they can be "implemented relatively quickly."[58]

5. Facilities Design, Connections, and Maintenance (FAC) Standards

In Order No. 777,[59] the FERC approved Reliability Standard FAC-003-2 (Transmission Vegetation Management) and directed NERC, among other things, to develop empirical data to support the flashover distances between conductors and vegetation.[60] On July 12, 2013, NERC submitted a compliance filing describing its plan to conduct testing to develop empirical data,[61] which the Director of FERC's Office of Electric Reliability approved by delegated letter order on September 4, 2013.[62]

50. Petition of NERC for Approval of Proposed Reliability Standard EOP-010-1—Geomagnetic Disturbance Operations, FERC Docket No. RM14-1-000 (Nov. 14, 2013).

51. *Id*. at 2.

52. *Id*. at 2-3.

53. *Id*.

54. Notice of Proposed Rulemaking, *Reliability Standards for Geomagnetic Disturbance Operations*, 146 F.E.R.C. ¶ 61,015 (2014) (to be codified at 18 C.F.R. pt. 40).

55. Comments of NERC in Response to Notice of Proposed Rulemaking, FERC Docket No. RM14-1-000 (Mar. 24, 2014).

56. Order No. 797, *Reliability Standards for Geomagnetic Disturbance Operations*, 147 F.E.R.C. ¶ 61,209 at P 1 (2014) (to be codified at 18 C.F.R. pt. 40).

57. *Id.* at P 41.

58. *Id.* at P 34.

59. Order No. 777, *Revisions to Reliability Standard for Transmission Vegetation Management*, 142 F.E.R.C. ¶ 61,208 (2013) (to be codified at 18 C.F.R. pt. 40).

60. *Id.* at P 1-2.

61. NERC Compliance Filing, FERC Docket No. RM12-4-000 (July 12, 2013).

62. Delegated Letter Order, NERC Compliance Filing in Response to Order No. 777, FERC Docket No. RM12-4-001 (Sept. 4, 2013).

6. Interchange Scheduling and Coordination (INT) Standards

On February 27, 2014, NERC petitioned for approval of Reliability Standards INT-004-3 (Dynamic Transfers), INT-006-4 (Evaluation of Interchange Transactions), INT-009-2 (Implementation of Interchange), INT-010-2 (Interchange Initiation and Modification for Reliability), and INT-011-1 (Intra-Balancing Authority Transaction Identification).[63] According to NERC, these standards are designed to make interchange transactions more apparent for reliability assessments and to clarify the functional responsibility for Interchange Authority tasks.[64] The FERC approved the proposed standards in a June 30, 2014 letter order.[65]

7. Interconnection Reliability Operations and Coordination (IRO) and Transmission Operations (TOP) Standards

On November 21, 2013, the FERC issued a NOPR[66] proposing to: (1) approve NERC's proposed revisions to Reliability Standard TOP-006-3 (Monitoring System Conditions);[67] (2) remand three revised TOP Reliability Standards and one PRC Reliability Standard proposed by NERC;[68] and (3) remand four revised IRO Reliability Standards proposed by NERC.[69] The FERC raised concerns that NERC "removed critical reliability aspects that are included in the currently-effective standards without adequately addressing these aspects in the proposed standards."[70]

On December 20, 2013, NERC filed a motion asking the FERC to defer acting until January 31, 2015, to allow NERC time to consider the issues raised by the FERC in its November 21, 2013, NOPR.[71] On January 14, 2014, the FERC granted NERC's motion to defer action.[72] On April 1, 2014, NERC submitted to

63. Petition of NERC for Approval of Proposed Reliability Standards for Interchange Scheduling and Coordination, FERC Docket No. RD14-4-000 (Feb. 27, 2014).

64. *Id.* at 3.

65. Letter Order, Petition of NERC for Approval of Proposed Reliability Standards for Interchange Scheduling and Coordination, FERC Docket No. RD14-4-000 (June 30, 2014).

66. Notice of Proposed Rulemaking, *Monitoring System Conditions- Transmission Operations Reliability Standard Transmission Operations Reliability Standards Interconnection Reliability Operations and Coordination Reliability Standards*, 145 F.E.R.C. ¶ 61,158 (2013) (to be codified at 18 C.F.R. pt. 40) [hereinafter TOP, PRC, and IRO NOPR].

67. *Id.*

68. The proposed revised standards at issue were: TOP-001-2 (Transmission Operations), TOP-002-3 (Operations Planning), TOP-003-2 (Operational Reliability Data), and PRC-001-2 (System Protection Coordination). *See generally* NERC Petition for Approval of Three Transmission Operation Standards, One Protection and Control Reliability Standard, and Retirement of Nine Existing Reliability Standards and One Requirement from an Existing Reliability Standard, FERC Docket No. RM13-14-000 (Apr. 16, 2013).

69. The proposed revised standards at issue were: IRO-001-3 (Responsibilities and Authorities), IRO-002-3 (Analysis Tools), IRO-005-4 (Current Day Operations), and IRO-014-2 (Coordination among Reliability Coordinators). *See generally* Petition of NERC for Approval of Proposed Reliability Standards IRO-001-3, IRO-002-3, IRO-005-4, and IRO-014-2, FERC Docket No. RM13-15-000 (Apr. 16, 2013).

70. TOP, PRC, and IRO NOPR, *supra* note 66, at P 4.

71. Motion of NERC to Defer Action, FERC Docket Nos. RM13-12-000, RM13-14-000, RM13-15-000 (Dec. 20, 2013).

72. *Monitoring System Conditions - Transmission Operations Reliability Standard, Transmission Operations Reliability Standards, Interconnection Reliability Operations and Coordination Reliability Standards*, 146 F.E.R.C. ¶ 61,023 (2014).

the FERC its first quarterly status report detailing progress made towards revising the proposed TOP and IRO Standards.[73]

8. Modeling, Data, and Analysis (MOD) Standards

On February 10, 2014, NERC filed a petition with the FERC requesting approval of proposed Reliability Standard MOD-001-2,[74] developed by NERC and industry to replace and consolidate existing Reliability Standards MOD-001-1a, MOD-004-1, MOD-008-1, MOD-028-2, MOD-029-1a, and MOD-030-2.[75] On June 19, 2014, the FERC issued a NOPR proposing to approve Reliability Standards MOD-001-2.[76]

On February 25, 2014, NERC filed a petition for approval of proposed Reliability Standards MOD-032-1 and MOD-033-1,[77] which the FERC approved on May 1, 2014.[78]

On May 13, 2014, NERC filed a petition with the FERC requesting approval of proposed Reliability Standard MOD-031-1.[79] NERC's petition remains pending before the Commission.[80]

On September 19, 2013, the FERC issued a NOPR proposing Generator Verification Reliability Standards MOD-025-2 (Verification and Data Reporting of Generator Real and Reactive Power Capability and Synchronous Condenser Reactive Power Capability), MOD-026-1 (Verification of Models and Data for Generator Excitation Control System or Plant Volt/Var. Control Functions), MOD-027-1 (Verification of Models and Data for Turbine/Governor and Load Control or Active Power/Frequency Control Functions), PRC-019-1 (Coordination of Generating Unit or Plant Capabilities, Voltage Regulating Controls, and Protection), and PRC-024-1 (Generator Frequency and Voltage Protective Relay Settings).[81] On March 20, 2014, the FERC issued Order No. 746, approving the proposed Generator Verification Reliability Standards.[82]

73. Quarterly Status Report of NERC, FERC Docket Nos. RM13-12-000, RM13-14-000, and RM13-15-000 (Apr. 1, 2014).

74. NERC Petition for Approval of Proposed Reliability Standard MOD-001-2 and Retirement of Reliability Standard MOD-001-1a, MOD-004-1, MOD-008-1, MOD-028-2, MOD-029-1a & MOD-030-2, FERC Docket No. RM14-7-000 (Feb. 10, 2014).

75. *Id*. at 2.

76. Notice of Proposed Rulemaking, *Modeling, Data, and Analysis Reliability Standards*, 147 F.E.R.C. ¶ 61,208 (2014) (to be codified at 18 C.F.R. pt. 40).

77. Petition of NERC for Approval of Proposed Reliability Standards MOD-032-1 and MOD-033-1, FERC Docket No. RD14-5-000 (Feb. 25, 2014).

78. Letter Order, Petition for Approval of Proposed Reliability Standards MOD-032 and MOD-033-1, FERC Docket No. RD14-5-000 (May 1, 2014).

79. Petition of NERC for Approval of Proposed Reliability Standards MOD-031-1 and Retirement of Reliability Standards MOD-016-1.1, MOD-017-0.1, MOD-018-0, MOD-019-0.1, & MOD-021-1, FERC Docket No. RD14-12-000 (May 13, 2014).

80. *Id*. at 2-3.

81. Notice of Proposed Rulemaking, *Generator Verification Reliability Standards*, 144 F.E.R.C. ¶ 61,205 (2013) (to be codified at 18 C.F.R. pt. 40).

82. Order No. 796, *Generator Verification Reliability Standards*, 146 F.E.R.C. ¶ 61,213 (2014).

9. Protection and Control (PRC) Standards

On July 18, 2013, the FERC issued a NOPR proposing to approve Reliability Standard PRC-005-2 (Protection System Maintenance).[83] According to the FERC, Protection System Maintenance establishes minimum acceptable maintenance activities and accompanying maximum allowable maintenance intervals, reflecting various technologies of the components being addressed.[84]

On December 19, 2013, the FERC issued Order No. 793[85] approving PRC-005-2, including a twelve-year phased implementation plan. The FERC directed NERC to submit an informational filing on the development of a guidance report concerning the commissioning of power system protection systems.[86] In its comments in response to the NOPR, NERC indicated that it is engaged in efforts "to reduce protection system [m]isoperations through improved commissioning testing practices."[87] Additionally, NERC asked the FERC to refrain from issuing a directive to modify PRC-005-2 until NERC completes its work.[88]

On February 14, 2014, the FERC filed a petition for approval of Reliability Standard PRC-005-3.[89] NERC stated this would require entities to develop an appropriate Protection System Maintenance Program in order to implement their program and to initiate follow-up activities to resolve certain maintenance issues in the event they are unable to restore Automatic Reclosing Components to proper working order while performing maintenance.[90]

On September 30, 2013, NERC submitted a petition for approval of Reliability Standard PRC-025-1 (Generator Relay Loadability)[91] which, according to NERC, is "designed to prevent generator tripping when conditions do not pose a direct risk to the generator and the associated equipment."[92] According to NERC, the Generator Relay Loadability will "reduce the risk of unnecessary generator tripping—events that increase the severity of disturbances."[93] On December 17, 2013, NERC filed Reliability Standard PRC-023-3 (Transmission Relay Loadability) as a supplemental filing to its PRC-025-1 petition.[94]

83. Notice of Proposed Rulemaking, *Protection System Maintenance Reliability Standard*, 144 F.E.R.C. ¶ 61,055 (2013) (to be codified at 18 C.F.R. pt. 40).

84. *Id*. at P 2.

85. Order No. 793, *Protection System Maintenance Reliability Standard*, 145 F.E.R.C. ¶ 61,253 (2013) (to be codified at 18 C.F.R. pt. 40).

86. *Id*. at P 3.

87. Comments of NERC in Response to Notice of Proposed Rulemaking on PRC-005-2 (Protection System Maintenance), FERC Docket No. RM13-7-000 (Sept. 23, 2013).

88. *Id*.

89. Petition of NERC for Approval of Proposed Reliability Standard PRC-005-3—Protection System Maintenance, FERC Docket No. RM14-8-000 (Feb. 14, 2014). NERC filed its petition in response to a prior FERC directive to include in Reliability Standard PRC-005 maintenance and testing of reclosing relays that can affect the Reliable Operation of the Bulk-Power System. *Id*. at 2-3.

90. *Id*. at 8.

91. Petition of NERC for Approval of Proposed Reliability Standard PRC-025-1—Generator Relay Loadability, FERC Docket No. RM13-9-000 (Sept. 30, 2013). NERC filed its petition to address the second part of a FERC directive in Order No. 733, which required NERC to develop a standard governing generator protective relay loadability. *Id*. at 1-2.

92. *Id.* at 4.

93. *Id*.

94. Supplemental Information to the Petition of NERC for Approval of Proposed Reliability Standard PRC-025-01—Generator Relay Loadability, FERC Docket No. RM14-3-000 (Dec. 17, 2013).

On March 20, 2014, the FERC issued a NOPR proposing to approve Reliability Standards PRC-025-1 (Generator Relay Loadability) and PRC-023-3 (Transmission Relay Loadability).[95]

10. Personnel Performance, Training, and Qualifications (PER) Standards

On June 19, 2014, the FERC approved Reliability Standard PER-005-2 (Operations Personnel Training), as well as a new NERC Glossary term, "Operations Support Personnel," and proposed changes to the existing NERC Glossary term "System Operator."[96]

11. Transmission Planning (TPL) Standards

On October 17, 2013, the FERC approved Reliability Standard TPL-001-4 (Transmission System Planning Performance Requirements), which increases the "specificity of data required for modeling conditions and requires annual assessments addressing [near- and long-term] planning horizons for steady state, short circuit and stability conditions."[97] The FERC also directed NERC to modify TPL-001-4 to address concerns that the standard "could exclude planned maintenance outages of significant facilities from future planning assessments."[98] TPL-001-4 consolidates Reliability Standards TPL-001 through TPL-004 into a single standard, and supersedes NERC's proposed TPL-001-2 standard.[99]

12. Voltage and Reactive (VAR) Standards

On June 9, 2014, NERC petitioned for approval of Reliability Standards VAR-001-4 (Voltage and Reactive Control) and VAR-002-3 (Generator Operation for Maintaining Network Voltage Schedules) that, according to NERC, are "designed to maintain voltage stability on the Bulk-Power System" by ensuring the appropriate amount of Reactive Power.[100]

IV. CRITICAL INFRASTRUCTURE PROTECTION (CIP) RELIABILITY STANDARDS

A. Version 5 of the CIP Standards

On November 22, 2013, the FERC issued Order No. 791,[101] in which it conditionally approved NERC's proposed Version 5 CIP Reliability Standards. Version 5 CIP Reliability Standards identify and categorize all BES Cyber

95. Notice of Proposed Rulemaking, *Generator Relay Loadability and Revised Transmission Relay Loadability Reliability Standards*, 146 F.E.R.C. ¶ 61,189 (2014) (to be codified at 18 C.F.R. pt. 40).

96. *N. Am. Elec. Reliability Corp*., 147 F.E.R.C. ¶ 61,226 at P 2 (2014). *See generally* Petition of NERC for Approval of Proposed Reliability Standard PER-005-2 and Retirement of Reliability Standard PER-005-1, FERC Docket No. RD14-7-000 (Mar. 7, 2014).

97. Order No. 786, *Transmission Planning Reliability Standards*, 145 F.E.R.C. ¶ 61,051, at P 1 (2013) (to be codified at 18 C.F.R. pt. 40).

98. *Id*. at P 2-3.

99. *Id*. at PP 6, 8.

100. Petition of NERC for Approval of Proposed Reliability Standards VAR-001-4 and VAR-002-3 and the Retirement of Reliability Standards VAR-001-3 and VAR-002-2b, FERC Docket No. RD14-11-000 at P 3 (June 9, 2014).

101. Order No. 791, *Version 5 Critical Infrastructure Protection Reliability Standards*, 145 F.E.R.C. ¶ 61,160 (2013) (to be codified at 18 C.F.R. pt. 40).

Systems based on "Low," "Medium," or "High" impact on the reliable operation of the Bulk Electric System.[102] The FERC approved NERC's proposal to allow entities to transition directly from compliance with CIP Version 3 to CIP Version 5, though it directed NERC to remove from seventeen CIP Version 5 requirements language enabling entities to implement those requirements in a manner to "identify, assess, and correct" deficiencies.[103]

In addition, the FERC called on NERC to: (1) develop security controls or objective criteria for Low Impact Assets; (2) develop requirements that protect transient electronic devices; and (3) include communications networks within the definition of "Cyber Asset" as well as develop Reliability Standards that address the protection of communications networks.[104] The FERC also directed its staff to convene a technical conference to review various issues identified in Order No. 791.[105]

On April 29, 2014, FERC staff convened a technical conference to review various operational and technical issues identified by the FERC in its Final Rule, including:

> (1) [W]hether additional definitions and/or security controls are needed to protect Bulk-Power System communications networks, including remote systems access; (2) the adequacy of the approved CIP version 5 Standards' protections for Bulk-Power System data being transmitted over data networks; and (3) functional differences between the respective methods utilized for identification, categorization, and specification of appropriate levels of protection for cyber assets using CIP version 5 Standards . . . [versus] the National Institute of Standards and Technology Security Risk Management Framework.[106]

B. Physical Security CIP Standards

On March 7, 2014, the FERC directed NERC to develop reliability standards requiring owners and operators of the Bulk-Power System to address risks due to physical security threats and vulnerabilities in order to enhance the resilience of the transmission grid.[107] The proposed reliability standards would require owners and operators of the Bulk-Power System to take the following steps to address physical security:[108] (1) perform a risk assessment of their systems to identify facilities "that, if rendered inoperable or damaged, could have a critical impact on the operation of the interconnection through instability, uncontrolled separation or cascading failures on the Bulk-Power System" (Critical Facilities);[109] (2) evaluate potential threats and vulnerabilities to identified Critical Facilities;[110] and (3) develop and implement a security plan to address such potential threats and vulnerabilities.[111] According to the FERC, the proposed reliability standards would enhance the FERC's "ability to assure the public that critical facilities are

102. *Id.* at P 2.
103. *Id.* at P 4.
104. *Id.* at PP 5-7.
105. *Id.* at P 7.
106. Notice of Technical Conference, *Version 5 Critical Infrastructure Protection Reliability Standards*, FERC Docket No. RM13-5-000 (Feb. 27, 2014).
107. *Reliability Standards for Physical Security Measures*, 146 F.E.R.C. ¶ 61,166 at P 1 (2014).
108. *Id.* at P 6.
109. *Id.*
110. *Id.* at P 8.
111. *Id.* at P 9.

reasonably protected against physical attacks."[112] NERC was directed to submit proposed standards within ninety days.[113]

On May 23, 2014, NERC petitioned for approval of proposed reliability standard CIP-014-1 (Physical Security).[114] According to NERC, "[t]he purpose of the proposed Reliability Standard is to enhance physical security measures" at the "most critical Bulk-Power System facilities" and, by doing so, "lessen the overall vulnerability of the Bulk-Power System to physical attack."[115] Proposed CIP-014-1 would require Transmission Owners to: (1) perform risk assessments identifying critical transmission stations, substations, and associated primary control centers; (2) evaluate physical attack vulnerabilities of those facilities; and (3) develop and implement plans to protect against attacks.[116] The proposed standard places similar obligations on Transmission Operators operating primary control centers that are identified by a Transmission Owner[117] and requires third-party review of entity evaluations and security plans.[118]

V. REGIONAL ENTITIES AND REGIONAL STANDARDS DEVELOPMENT

On August 19, 2013, the FERC issued a letter order accepting proposed amendments to the Amended and Restated Regional Delegation Agreement between NERC and Texas Reliability Entity, Inc. (TRE) updating the hearing procedures in the TRE Compliance Monitoring and Enforcement Program.[119]

On January 16, 2014, the FERC approved Reliability Standard BAL-001-TRE-01,[120] which, according to the FERC, is designed "to maintain ERCOT Interconnection steady-state frequency within defined limits by balancing real-power demand and supply in real-time."[121]

On July 22, 2013, the Edison Electric Institute (EEI) filed for rehearing[122] of the FERC's June 20, 2013 declaratory order,[123] in which it confirmed that a separate independent company, known as Peak Reliability, created by the WECC to perform the reliability coordinator and interchange authority functions in the Western Interconnection, would be eligible for funding under FPA section 215. On August 26, 2013, NERC filed a petition for approval of: (1) revisions to its Amended and Restated Delegation Agreement with WECC, and (2) Peak Reliability's governance documents.[124] The amendments to the NERC–WECC Delegation Agreement were designed to implement WECC's decision to "separate

112. 146 F.E.R.C. ¶ 61,166 at P 5.
113. *Id.* at P 1.
114. Petition of NERC for Approval of Proposed Reliability Standard CIP-014-1, FERC Docket No. RM14-15-000 (May 23, 2014).
115. *Id.* at 2.
116. *Id.* at 3, 15-17.
117. *Id.* at 26-27.
118. *Id.* at 33-38.
119. Letter Order, Amendments to Delegation Agreement with Texas Reliability Entity, Inc., FERC Docket No. RR13-7-000 (Aug. 19, 2013).
120. Letter Order, Joint Petition of NERC and TRE for Approval of Proposed Regional Reliability Standard BAL-001-TRE-01, FERC Docket No. RD13-12-000 (Jan. 16, 2014).
121. *Id.* at P 2.
122. EEI Request for Rehearing, FERC Docket No. EL13-52-001 (July 22, 2013).
123. *W. Elec. Coordinating Council*, 143 F.E.R.C. ¶ 61,239 at P 40 (2013).
124. NERC Petition for Approval of Further Amendments to the Amended and Restated Delegation Agreement with the Western Electricity Coordinating Council, FERC Docket No. RR13-10-000 (Aug. 26, 2013).

its compliance monitoring and enforcement function from the Reliability Coordinator and Interchange Authority functions for the Western Interconnection."[125] On December 6, 2013, the FERC issued an Order on Rehearing in which it: (1) denied EEI's request for rehearing of the FERC's June 20, 2013, Declaratory Order; (2) permitted FPA section 215 funding for Peak Reliability; and (3) conditionally accepted amendments to the NERC–WECC Delegation Agreement and the Peak Reliability governance documents, subject to subsequent compliance filing.[126] On January 27, 2014, EEI petitioned the D.C. Circuit Court of Appeals for review of the FERC's December 6, 2013 Order.[127]

On September 24, 2013, the FERC accepted NERC's August 9, 2013 petition for approval of revisions to the Southwest Power Pool (SPP) bylaws.[128] According to NERC in its petition, the amendments corrected and updated procedures in the bylaws regarding cost allocation and financial obligation issues associated with withdrawal of SPP membership.[129]

On November 21, 2013, the FERC issued Order No. 789, approving regional Reliability Standard BAL-002-WECC-2 (Contingency Reserve).[130] The FERC initially proposed to approve the regional standard in a July 18, 2013 NOPR.[131]

On December 11, 2013, NERC filed a notice to withdraw its April 26, 2013 joint petition for approval of PRC-006-SPP-01 (Automatic Underfrequency Load Shedding).[132]

On December 20, 2013, NERC and WECC filed a joint petition for approval of proposed regional Reliability Standard IRO-006-WECC-2 (Qualified Transfer Path Unscheduled Flow Relief) and a proposed regional definition of Relief Requirement.[133]

On January 31, 2014, the FERC accepted NERC's December 20, 2013 proposed revisions to the SPP Regional Entity Standards Development Process Manual, which addressed improvements and revisions to the Regional Reliability Standards Development Process.[134]

125. *Id*.

126. *W. Elec. Coordinating Council*, 145 F.E.R.C. ¶ 61,202 at P 2 (2013) [hereinafter December 6, 2013 Order].

127. EEI also requested rehearing of the FERC's February 12 Order on Compliance. *See generally* EEI Request for Rehearing, Docket No. RR13-10-001 (Mar. 14, 2014). The FERC denied this request for rehearing on April 23, 2014, and EEI subsequently petitioned the D.C. Circuit Court of Appeals for review on May 13, 2014.

128. Letter Order, Revisions to Southwest Power Pool, Inc.'s Delegation Agreement, FERC Docket No. RR13-8-000 (Sept. 24, 2013).

129. NERC Petition for Approval of Amendments to Exhibit B to the Delegation Agreement with Southwest Power Pool, Inc.–Amendments to Southwest Power Pool, Inc.'s Bylaws, FERC Docket No. RR13-8-000 (Aug. 9, 2013).

130. Order No. 789, *Regional Reliability Standard BAL-002-WECC-2–Contingency Reserve*, 145 F.E.R.C. ¶ 61,141 (2013) (to be codified at 18 C.F.R. pt. 40).

131. Notice of Proposed Rulemaking, *Regional Reliability Standard BAL-002-WECC-2–Contingency Reserve*, 144 F.E.R.C. ¶ 61,048 (2013) (to be codified at 18 C.F.R. pt. 40).

132. NERC Notice of Withdrawal of the Joint Petition for Approval of Proposed Regional Reliability Standard PRC-006-SPP-01–Underfrequency Load Shedding, FERC Docket No. RD13-9-000 (Dec. 11, 2013).

133. Joint Petition of NERC and WECC for Approval of WECC Regional Reliability Standard IRO-006-WECC-2, FERC Docket No. RD14-9-000 (Dec. 20, 2013).

134. Letter Order, Revised Southwest Power Pool Regional Entity Standards Development Process Manual, FERC Docket No. RR14-1-000 (Jan. 31, 2014).

On March 12, 2014, NERC filed a petition for approval of a proposed interpretation of Requirement R1 of regional Reliability Standard TOP-007-WECC-1 and proposed Reliability Standard TOP-007-WECC-1a.[135] According to NERC's petition, "[t]he proposed interpretation clarifies that regional Reliability Standard TOP-007-WECC-1, specifically Requirement R1, applies only to Transmission Operators."[136]

On June 6, 2014, NERC petitioned for approval of amendments to Exhibit B of the Delegation Agreement with SERC Reliability Corporation.[137]

VI. REGISTRATION

A. Retail-Only Utilities

In *City of Holland, Michigan Board of Public Works*, the FERC denied rehearing of its prior decision finding that NERC properly included the City of Holland Board of Public Works' (Holland) 138 kV transmission facilities as part of the Bulk Electric System.[138] The FERC rejected Holland's argument that (1) its facilities are used in the local distribution of power because they serve a transmission function by delivering significant generation to substations where the voltage is stepped down to distribution levels;[139] (2) Holland's facilities qualify for the radial exemption because they are interconnected through two separate transmission lines, do not serve "only load," deliver significant generating resources, and experience bi-directional flows;[140] and (3) Holland's facilities do not have a material impact on the bulk electric system.[141]

In *Southern Louisiana Electric Cooperative Association* (SLECA), the FERC granted SLECA's appeal to deregister as a distribution provider and load-serving entity, finding that NERC had not adequately supported SLECA's registration based on the registry thresholds in the NERC Compliance Registry (NCR).[142] Specifically, the FERC found that SLECA's load is not "directly connected" to the bulk power system, as required by the NCR, because SLECA is interconnected to radial facilities.[143] On August 19, 2013, NERC filed a request for rehearing in SLECA arguing, in part, that the FERC: (1) misapplied the NCR criteria in finding that SLECA was not "directly connected" to the bulk-power system; (2) improperly expanded the NCR criteria; and (3) erred in its technical analysis of SLECA's facilities.[144]

135. Petition of NERC for Approval of Interpretation of Regional Reliability Standard TOP-007-WECC-1, FERC Docket No. RM09-14-000 (Mar. 12, 2014).

136. *Id.* at 3.

137. Petition of NERC for Approval of Amendments to Exhibit B of the Delegation Agreement with SERC Reliability Corporation, FERC Docket No. RR14-3-000 (June 6, 2014).

138. *City of Holland, Mich. Bd. of Pub. Works*, 145 F.E.R.C. ¶ 61,054 (2013), *reh'g denied* 139 F.E.R.C. ¶ 61,055 (2012)).

139. 145 F.E.R.C. ¶ 61,054 at PP 29-30.

140. *Id.* at PP 27, 39.

141. *Id.* at P 41.

142. *S. La. Elec. Coop. Ass'n*, 144 F.E.R.C. ¶ 61,050 (2013). The FERC found that the facilities to which SLECA interconnects are radial because a normally-open switch prevents looped or network power flow from occurring. *Id.* at P 28.

143. *Id.* at PP 28-29.

144. Request of NERC for Rehearing of Order, FERC Docket No. RC13-4-000 (Aug. 19, 2013).

On December 19, 2013, the FERC denied NERC's request for rehearing,[145] finding that it properly applied the NCR criteria;[146] its analysis of whether facilities to which SLECA interconnects have bi-directional or looped flow capabilities goes to whether SLECA is "directly connected" to the bulk-power system;[147] and that it did not err in finding that a normally open switch may operate to prevent facilities from being part of the bulk electric system.[148]

B. NERC Risk-Based Registration Draft Design Framework and Implementation Plan

On June 2, 2014, NERC issued its Risk-Based Registration (RBR) Draft Design Framework and Implementation Plan as part of its RBR initiative, which is designed to reduce industry's compliance burden through a consistent approach to risk assessment and registration that ensures the right entities are subject to the right set of applicable Reliability Standards.[149] NERC's RBR proposal includes four elements: (1) remove three functional categories that are commercial in nature, including the purchasing-selling entity, interchange authority, and load-serving entity functions; (2) refine the registration threshold for the distribution provider function; (3) synchronize the thresholds for the generator owner, generator operator, transmission owner, and transmission operator functions to the revised bulk electric system definition; and (4) develop a low-risk category for certain transmission operators.[150]

VII. COORDINATED, OPEN, AND TRANSPARENT REGIONAL TRANSMISSION PLANNING

Following the issuance of Order Nos. 1000, 1000-A and 1000-B,[151] the FERC has acted on regional transmission planning and cost allocation compliance proposals filed by numerous jurisdictional public utilities.[152] In each instance, the FERC has directed parties to submit a further compliance filing addressing varying concerns identified in the order.[153]

On May 15, 2014, the FERC issued three orders addressing requests for rehearing and round-two Order No. 1000 regional planning compliance filings submitted by the South Carolina Electric and Gas Company, the MidContinent

145. *S. La. Elec. Coop. Ass'n.*, 145 F.E.R.C. ¶ 61,232 (2013).

146. *Id.* at P 33.

147. *Id*. at P 34.

148. *Id*. at P 38.

149. NERC RISK-BASED REGISTRATION DRAFT DESIGN FRAMEWORK AND IMPLEMENTATION PLAN (2014), *available at* http://www.nerc.com/pa/comp/CAC/riskbasedregistrationdl/RBR%20Design%2020140602%20FINAL.pdf.

150. *Id.*

151. Order No. 1000, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, F.E.R.C. STATS. & REGS. ¶ 31,323, 76 Fed. Reg. 49,842 (2011) (codified at 18 C.F.R. pt. 35), *order on reh'g and clarif.*, Order No. 1000-A, 139 F.E.R.C. ¶ 61,132 (2012), *order on reh'g and clarif.*, Order No. 1000-B, 141 F.E.R.C. ¶ 61,044 (2012).

152. *See, e.g.*, *Louisville Gas & Elec. Co. & Ky. Utilities Co.*, 144 FERC ¶ 61,054 (2013); *Sw. Power Pool, Inc.*, 144 F.E.R.C. ¶ 61,059 (2013); *Duke Energy Carolinas LLC*, 145 F.E.R.C. ¶ 61,252 (2013); *Cal. Indep. Sys. Operator Corp*., 146 F.E.R.C. ¶ 61,198 (2014); *PacifiCorp*, 147 F.E.R.C. ¶ 61,057 (2014); *S.C. Elec. & Gas Co.*, 147 F.E.R.C. ¶ 61,126 (2014); *Midwest Indep. Transmission Sys. Operator, Inc.*, 147 F.E.R.C. ¶ 61,127 (2014); *PJM Interconnection, L.L.C.*, 147 F.E.R.C. ¶ 61,128 (2014).

153. *See, e.g.*, *Sw. Power Pool, Inc.*, 144 F.E.R.C. ¶ 61,059 at P 20 (2013).

Independent Transmission System Operator, Inc., and PJM Interconnection, L.L.C.[154] In those orders, the FERC reversed its policy regarding inclusion of provisions in FERC-approved Open Access Transmission Tariffs that recognize state-based Rights of First Refusal (ROFRs) afforded to incumbent utilities to develop certain transmission projects in their service territories.[155]

Specifically, the FERC granted rehearing of its prior requirement to remove provisions from Open Access Transmission Tariffs that provide for consideration of state and local laws and regulations–including state laws allowing for ROFRs–when designating a developer to build a transmission project.[156] The FERC found that ignoring such state laws at the outset of the transmission planning process could cause inefficiencies and delay new transmission projects.[157] According to the FERC, while it continues to require elimination of federal ROFRs for incumbent transmission providers, Order No. 1000 does not affect state or local laws or regulations with respect to siting, permitting or construction of transmission facilities, regardless of whether those laws are expressly acknowledged in a transmission provider's Open Access Transmission Tariff.[158] The FERC concluded that prohibiting these tariff provisions could result in a regional planning process that does not efficiently account for relevant state or local laws, and could cause regions to expend time and resources evaluating potential developers for transmission projects that ultimately must be assigned to the incumbent.[159]

VIII. MISCELLANEOUS ISSUES

A. Gas-Electric Coordination

On July 18, 2013, the FERC issued a NOPR regarding the communication of information between natural gas pipelines and electric transmission operators,[160] which provided "explicit authority to interstate natural gas pipelines and public utilities that own, operate, or control [interstate electric transmission] facilities" to voluntarily share non-public, operational information they determine would help promote reliable service on their systems.[161] The FERC also proposed to implement a "No-Conduit Rule" to prohibit recipients of such information from disclosing it to an affiliate or third party.[162] On November 15, 2013, the FERC issued a final rule approving all elements of the NOPR.[163]

On March 20, 2014, the FERC issued a NOPR proposing several key changes to the natural gas day and scheduling practices used by interstate pipelines to

154. *S.C. Elec. & Gas Co.*, 147 F.E.R.C. ¶ 61,126 (2014); *Midwest Indep. Transmission Sys. Operator, Inc.*, 147 F.E.R.C. ¶ 61,127 (2014); *PJM Interconnection, L.L.C.*, 147 F.E.R.C. ¶ 61,128 (2014).

155. *See, e.g.*, 147 F.E.R.C. ¶ 61,126 at PP 125-28.

156. *Id.*

157. *Id.* at P 128.

158. *Id.* at P 127.

159. *Id.* at P 128.

160. Notice of Proposed Rulemaking, *Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators*, 144 F.E.R.C. ¶ 61,043 (2013) (to be codified at 18 C.F.R. pts 38 and 284) [hereinafter March 20 NOPR].

161. *Id.* at P 1.

162. *Id.* at P 26.

163. Order No. 787, *Communication of Operational Information between Natural Gas Pipelines and Electric Transmission Operators*, 145 F.E.R.C. ¶ 61,134 (2013) (to be codified at 18 C.F.R. pts. 38 and 284).

further facilitate its gas-electric coordination efforts:[164] (1) moving the start of the natural gas day from 9:00 a.m. Central Time (CT) to 4:00 a.m. CT, to ensure gas-fired generators are able to provide power during critical periods and have access to liquid markets for gas; (2) moving the timely nomination cycle later in the day, from 11:30 a.m. CT to 1:00 p.m. CT, to allow electric industry to finalize scheduling; (3) increasing the number of intra-day nomination cycles, from two to four, to give all shippers added flexibility; (4) modifying the no-bump rule by allowing bumping in the intra-day 3 cycle; and (5) requiring interstate pipelines to allow multi-party agreements, which will allow multiple shippers to share under a single agreement.[165] The NOPR also delegated responsibility of developing an industry-wide consensus position on these issues to the North American Energy Standards Board (NAESB).[166]

NAESB convened a series of meetings from April to June 2014, which included hundreds of industry representatives.[167] Although this NAESB process was unable to develop a supermajority consensus position, the NAESB Board of Directors reached a position on several elements at the beginning of June 2014.[168] NAEB's Board of Directors authorized the organization to develop new standards and modify existing standards that will move the timely day-ahead nomination cycle to 1:00 p.m. CT, support three intra-day cycles, and allow bumping in the first and second cycles only (making the final cycle a no-bump cycle).[169] The Board of Directors was unable to reach a consensus on the start of the gas day and accordingly instructed that the standards development remain neutral on the gas day start time, due to the separate and distinct positions taken by the wholesale gas and electric market participants.[170] NAESB developed a series of standards that align with this Board proposal and submitted the proposed standards for industry-wide comment on July 18, 2014.[171]

In a companion order to the March 20 NOPR, the FERC initiated new proceedings under FPA section 206 requiring Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) to file tariff changes to synchronize their day-ahead markets with any changes adopted by the FERC through the March 20 NOPR.[172]

B. Open Access and Priority Rights for Capacity on Interconnection Facilities

On May 15, 2014, the FERC proposed to streamline its open-access requirements for generator tie-lines and interconnection facilities, to ease the requirements for interconnection customers owning interconnection facilities

164. Notice of Proposed Rulemaking, *Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities*, 146 F.E.R.C. ¶ 61,201 (2014) (to be codified at 18 C.F.R. pt. 284).

165. *Id.* at P 8, 9.

166. *Id.* at P 10.

167. *See generally* NAESB REPORT, Docket No. RM14-2-000 (2014) at Appendix A, *available at* https://www.naesb.org/Noprs.asp.

168. *Id.* at 10.

169. *Id.* at Appendix E, p. 5.

170. *Id.* at Appendix E, p. 9.

171. *Id.* at 11.

172. *See generally Cal. Indep. Sys. Operator Corp.*, 146 F.E.R.C. ¶ 61,202 (2014).

(ICIF) to retain priority rights to use capacity on their tie lines, as well as providing guidance for allowing third party access where appropriate.[173]

Specifically, the NOPR proposes "to grant a blanket ICIF waiver" from the FERC's Open Access Transmission Tariff, Open Access Same-Time Information System and Standards of Conduct requirements to public utilities subject to those requirements solely by virtue of their ownership or operation of ICIF facilities.[174] The FERC proposed to require third parties seeking to access transmission service over these facilities to follow procedures in FPA sections 210 and 211, which allow the FERC to order interconnection and transmission services.[175] Under the proposal, ICIF owners may wait until a third party requests service on their facilities under FPA sections 210 and 211 before having to demonstrate plans and milestones to justify reserving excess transmission capacity for future use.[176] Additionally, the FERC also proposed to establish a safe harbor period for ICIF owners, during which time they would enjoy a rebuttable presumption that they will not be required to share, or expand, their facilities for five years after being energized.[177] According to the FERC, this would reduce risks for ICIF owners during the early years of their projects.[178]

C. Small Generator Interconnection

On November 22, 2013, the FERC issued Order No. 792,[179] a final rule revising both the *pro forma* Small Generator Interconnection Procedures (SGIP) and Small Generator Interconnection Agreement (SGIA), which establish terms and conditions under which public utilities must provide interconnection service to small generating facilities of up to twenty megawatts.[180] Order No. 792 provided small generator interconnection customers with the option of requesting from a transmission provider a pre-application report containing existing information about system conditions at a possible point of interconnection.[181] In addition, Order No. 792 increased from two megawatts to five megawatts the threshold for participating in the SGIP's "Fast Track Process," and make eligibility to participate in that process based on individual system and generator characteristics.[182]

The FERC, in Order No. 792, also revised the SGIP's "customer options meeting" and supplemental review following an interconnection customer's "failure of the Fast Track screens so that the supplemental review is performed at the discretion of the Interconnection Customer and includes minimum load and other screens to determine if a Small Generating Facility may be interconnected

173. Notice of Proposed Rulemaking, *Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, 147 F.E.R.C. ¶ 61,123 (2014) (to be codified at 18 C.F.R. pt. 35).

174. *Id.* at P 35.

175. *Id.* at PP 41-42.

176. *Id.* at P 48.

177. *Id.* at P 54.

178. Notice of Proposed Rulemaking, 147 F.E.R.C. ¶ 61,123 (2014).

179. Order No. 792, *Small Generation and Interconnection Procedures*, 145 F.E.R.C. ¶ 61,159, P 1, 78 Fed. Reg. 73,240 (2013) (to be codified at18 C.F.R. pt. 35); *order on clarif.*, Order No. 792-A, 146 F.E.R.C. ¶ 61,214 (2014).

180. Order No. 792, 145 F.E.R.C. ¶ 61,159 at P 2.

181. *Id.* at P 28.

182. *Id.* at P 76.

safely and reliably."[183] Further, Order No. 792 revised the *pro forma* SGIP Facilities Study Agreement to allow small generator interconnection customers the opportunity to provide written comments to the transmission provider on upgrades required for the interconnection.[184]

D. Integration of Variable Energy Resources

On September 19, 2013, the FERC issued Order No. 764-B,[185] granting in part and denying in part requests for clarification and denying requests for rehearing of Order No. 764-A,[186] the FERC's order largely affirming Order No. 764.[187] Order No. 764 required:

> [P]ublic utility transmission provider[s] to: (1) offer intra-hourly transmission scheduling; and, (2) incorporate provisions into the *pro forma* Large Generator Interconnection Agreement requiring interconnection customers whose generating facilities are variable energy resources [(VERs)] to provide meteorological and forced outage data to the public utility transmission provider for the purpose of power production forecasting.[188]

In Order No. 764-B, the FERC among other things, clarified that its prior order "did not address the specific application of curtailments," but reiterated that a transmission provider must "exhaust all other options before curtailing service on a [non-discriminatory] basis."[189]

E. Framework for Improving Critical Infrastructure Cybersecurity (NIST Framework)

On February 12, 2014, the National Institute of Standards and Technology (NIST) released Version 1.0 of its Framework for Improving Critical Infrastructure Cybersecurity,[190] which is a set of voluntary industry standards and best practices designed to assist organizations in managing cybersecurity risks.[191] The NIST Framework is designed to provide organizations with an ability to determine their current cybersecurity posture, assess their desired security status, "identify and prioritize opportunities for improvement," assess progress, and share information with stakeholders.[192] The intention of the NIST Framework is not to replace risk management and cybersecurity processes internal to an organization, but rather to provide opportunities to align those existing processes with industry practices. Released as Version 1.0, the NIST Framework is intended to "evolve with technical advances" and industry practices.[193]

183. *Id.* at P 117.
184. *Id.* at PP 189, 203.
185. Order No. 764-B, *Integration of Variable Energy Resources*, 144 F.E.R.C. ¶ 61,222 (2013).
186. Order No. 764-A, *Integration of Variable Energy Resources*, 141 F.E.R.C. ¶ 61,232 (2012).
187. Order No. 764, *Integration of Variable Energy Resources*, F.E.R.C. STATS. & REGS. ¶ 31,331, 77 Fed. Reg. 41,482 (2012) (to be codified at 18 C.F.R. pt. 35).
188. *Id.*
189. Order No. 764-B, *supra* note 185, at P 10.
190. *Framework for Improving Critical Infrastructure Cybersecurity*, Version 1.0, NAT'L INST. OF STANDARDS & TECH. (Feb. 12, 2014), *available at* http://www.nist.gov/cyberframework/upload/cybersecurity-framework-021214-final.pdf.
191. *Id.* at 3.
192. *Id.* at 4, 14.
193. *Id.* at 4.

Contemporaneously with the NIST Framework, NIST released its Roadmap for Improving Critical Infrastructure Cybersecurity,[194] a companion-planning document for the industry that outlines the next steps NIST intends to undertake within the NIST Framework, as well as identifies "key areas for development" of cybersecurity best practices going forward.[195]

194. *Roadmap for Improving Critical Infrastructure Cybersecurity*, NAT'L INST. OF STANDARDS & TECH. (Feb. 12, 2014), *available at* http://www.nist.gov/cyberframework/upload/roadmap-021214.pdf.

195. *Id*. at 1.

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Thomas DeVita
Bill Edwards
N. Beth Emery
Frank A. Felder
Jesse Halpern
Jennifer June Kubicek Herbert
James P. Johnson
Gregory D. Jones
Bruce L. Richardson
David S. Schmitt
Sejal C. Shah
Stephen M. Spina