

126 FERC ¶ 61,021  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

North American Electric Reliability Corporation      Docket Nos. RR08-6-001 and  
RR07-14-002

ORDER GRANTING CLARIFICATION

(Issued January 15, 2009)

1. On November 14, 2008, the North American Electric Reliability Corporation (NERC) requested clarification of the Commission's October 16, 2008 order on NERC's proposed 2009 business plan and budget.<sup>1</sup> In this order, we grant NERC's request for clarification of the Budget Order, as discussed below.

**I. Background**

2. On August 22, 2008, as corrected on August 31, 2008, NERC, the Commission-certified Electric Reliability Organization (ERO),<sup>2</sup> filed its 2009 Business Plan and Budget, as well as the 2009 business plans and budgets of each Regional Entity and of the Western Interconnection Regional Advisory Body (WIRAB). In the Budget Order, the Commission conditionally accepted the business plans and budgets of NERC, the Regional Entities, and WIRAB. The Commission, however, expressed concern about whether NERC's budget provides adequate funding for certain activities. The Commission stated that its acceptance of the NERC budget is conditioned on a compliance filing that provides further explanation regarding funding levels by NERC and a possible supplemental request for funding.<sup>3</sup>

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<sup>1</sup> *No. Am. Elec. Reliability Corp.*, 125 FERC ¶ 61,056 (2008) (Budget Order).

<sup>2</sup> *See No. Am. Elec. Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006).

<sup>3</sup> The Commission also accepted NERC's July 21, 2008 "reliability enhancement programs" compliance filing, and directed NERC to submit an update of its enhancement programs as part of the 2010 Business Plan and Budget filing.

3. The Commission explained in the Budget Order that, “[w]hile NERC relies on volunteer technical experts and stakeholders to develop proposed Reliability Standards under the facilitation of NERC’s professional staff, NERC as the ERO is ultimately responsible for both the process and content of Reliability Standards proposed for Commission approval.”<sup>4</sup> Further, the Budget Order stated that:

the Commission expects that NERC should have or acquire the necessary high level of internal technical expertise to further the development and improve the quality of proposed Reliability Standards. Utilization of industry technical expertise does not discharge the ERO of its obligation to ensure Reliability Standards are developed that are responsive to the Commission’s orders and provide for reliable operation of the Bulk-Power System.<sup>[5]</sup>

4. Accordingly, the Commission addressed NERC’s proposed funding and staffing levels needed for the anticipated development projects, as follows:

NERC anticipates over 35 Reliability Standards development projects and needs to be technically fluent about all of these projects to ensure that the development of the standards and NERC’s subsequent approval or remand are based on its own technical expertise in addition to that of the industry’s used to help draft the standards. Accordingly, the Commission directs NERC to reassess its allocation of FTEs and other resources, such as consultants, budgeted in 2009 for the Reliability Standards program, to provide an explanation in its compliance filing and, if appropriate, to request supplemental funding to support this program.<sup>[6]</sup>

## **II. NERC Request for Clarification**

5. NERC seeks clarification that the Commission, in the Budget Order, did not intend to modify previous orders approving NERC’s use of its Reliability Standards development process. Specifically, NERC seeks clarification that the Commission is not directing that NERC staff take responsibility for determining the substantive content of Reliability Standards, “to the extent of substantively modifying the content of new and

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<sup>4</sup> Budget Order, 125 FERC ¶ 61,056 at P 24.

<sup>5</sup> *Id.* P 25 (footnote omitted).

<sup>6</sup> *Id.*

modified Reliability Standards that are developed through NERC's open, public and industry consensus-based Reliability Standards development process and approved by the registered ballot body."<sup>7</sup> NERC argues that NERC staff's revision of the substantive content of a Reliability Standard that has been approved by the registered ballot body is inconsistent with section 215(c)(2)(D) of the Federal Power Act (FPA),<sup>8</sup> which specifies that the certified ERO must have "established rules that . . . provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards. . . ."

6. Further, according to NERC, these principles of openness, due process, and balance of stakeholder interests in developing Reliability Standards are embedded in NERC's Commission-approved Rules of Procedure, including NERC's Reliability Standards Development Procedure.<sup>9</sup> According to NERC, these characteristics would be "rendered a nullity" if NERC staff could unilaterally make substantive revisions to a Reliability Standard after approval by the stakeholder body and before it is submitted to the NERC board of trustees (NERC board) for approval.

7. NERC recognizes that there are important roles for the technical expertise of NERC's Reliability Standards Program staff in the development and approval of new and modified Reliability Standards. For example, pursuant to NERC's Rules of Procedure, NERC staff provides managerial assistance, and technical advice and assistance, to Reliability Standards drafting teams.<sup>10</sup> Likewise, in addition to administering and facilitating the Reliability Standards development process, NERC technical and professional staff is responsible for ensuring the integrity of the process and the consistency of quality and completeness of Reliability Standards.<sup>11</sup> Further, NERC states that its staff plays a key role in providing independent analyses, advice and recommendations to the NERC board on whether a new or modified Reliability Standard should be accepted or rejected by the NERC board. NERC states that it assumes that the Commission, in the Budget Order, is directing NERC to have sufficient technical and professional staff to perform the above activities.

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<sup>7</sup> NERC Request at 2.

<sup>8</sup> 16 U.S.C. § 824o(c)(2)(D) (2006).

<sup>9</sup> See NERC Rules of Procedure § 300 (addressing Reliability Standards development); *id.* App. 3A (Reliability Standards Development Procedure), available at [Http://www.nerc.com/files/NERC\\_Rules\\_of\\_Procedure\\_EFFECTIVE\\_2008321.pdf](http://www.nerc.com/files/NERC_Rules_of_Procedure_EFFECTIVE_2008321.pdf).

<sup>10</sup> *Id.* at 16 (citing Reliability Standards Development Procedure at 12).

<sup>11</sup> *Id.* at 15-16 (citing NERC Rules of Procedure, section 307).

### **III. Additional Pleadings**

8. Exelon Corp. and ISO New England Inc. filed motions to intervene out-of-time. The following entities submitted motions to intervene out-of-time and requests for rehearing: Georgia Transmission Corp. and Georgia System Operations Corp.; Transmission Access Policy Study Group; Wisconsin Electric Power Company; and, jointly, American Public Power Association, Edison Electric Institute, and the National Rural Electrical Cooperative Association.

### **IV. Discussion**

#### **A. Procedural Matters**

9. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and the burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention. The entities seeking late intervention in this proceeding have not met this high burden of justifying their late intervention.<sup>12</sup> In light of our decision to deny the late motions to intervene, we will dismiss the movants' requests for rehearing. Because they are not parties to this proceeding, they lack standing to seek rehearing of the Budget Order under the FPA and the Commission's regulations.<sup>13</sup>

#### **B. Commission Determination**

10. The Budget Order states that "the Commission expects that NERC should have or acquire the necessary high level of internal technical expertise to further the development and improve the quality of proposed Reliability Standards."<sup>14</sup> We clarify that the Budget Order did not intend to modify the existing role of NERC staff or to suggest that NERC staff can substantively modify the text of a Reliability Standard approved by the NERC

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<sup>12</sup> See, e.g., *Mw. Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003).

<sup>13</sup> See 16 U.S.C., § 8251 (2006); 18 C.F.R. § 385.713(b) (2008); *Southern Company Services, Inc.*, 92 FERC ¶ 61,167 (2000). Further, we note that in addressing NERC's request for clarification, the entities seeking late intervention and rehearing substantially receive the relief that they seek.

<sup>14</sup> Budget Order, 125 FERC ¶ 61,056 at P 25.

ballot body.<sup>15</sup> Rather, NERC correctly understands that the Budget Order directs NERC to further assess whether NERC has sufficient professional and technical staff in its Reliability Standards Development Program to (i) ensure the timely and efficient management of the Reliability Standards development process, (ii) work to achieve the “highest degree of integrity and consistency of quality and completeness” in Reliability Standards,<sup>16</sup> and (iii) advise the NERC board on whether to accept or reject a Reliability Standard approved by the stakeholder ballot body.<sup>17</sup>

11. We agree with NERC that one role of NERC’s Reliability Standards Program technical and professional staff is to work to achieve the “highest degree of integrity and consistency of quality and completeness” in Reliability Standards.<sup>18</sup> We understand this to mean that NERC staff provides technically informed analysis, advice, and recommendations to the Standards Authorization Request drafting teams and Reliability Standards drafting teams.<sup>19</sup>

12. We agree with NERC that NERC’s Reliability Standards Program technical and professional staff “has a key role to play in providing independent analysis, advice, and recommendations to the NERC Board on whether a proposed standard should be accepted or rejected by the Board, and as to what reasons would support rejection (which can be stated so as to provide a roadmap to modifications that would make the proposed standard acceptable).”<sup>20</sup> We understand NERC’s statement to mean that NERC staff will provide independent analysis, advice, and recommendations—both procedural and technical—to the NERC board. Likewise, as NERC indicates, after the NERC board accepts a new or modified Reliability Standard, the NERC staff plays an important role in

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<sup>15</sup> Where appropriate, the Commission may propose a change to the ERO Rules, which would take effect after notice and opportunity for comment and a upon a finding by the Commission that the change is just, reasonable, not unduly discriminatory or preferential and is in the public interest, and satisfies the requirements of section 215(c). *See* 16 U.S.C., § 824o(f) (2006); 18 C.F.R. § 39.10 (2008).

<sup>16</sup> NERC Rules of Procedure § 307.

<sup>17</sup> *See* NERC Request at 2, 15-17. Because it is not necessary to resolve the matter in the current proceeding, we do not address NERC’s argument that a revision to a Reliability Standard after stakeholder balloting and before approval by the NERC board is inconsistent with section 215(c) of the FPA.

<sup>18</sup> NERC Rules of Procedure § 307.

<sup>19</sup> *See* NERC Request at 15-16.

<sup>20</sup> *Id.* at 17.

presenting to the Commission the reasons why the proposed standard should be approved.

13. As indicated in the Budget Order, the Commission is concerned and has directed the ERO to reassess whether it has adequate staff to perform the above functions and activities. As NERC recognizes, the responsibilities described above cannot be successfully carried out unless the NERC Reliability Standards Program has a sufficiently “deep” staff of personnel with the requisite expertise.<sup>21</sup>

14. Accordingly, we grant NERC’s request for clarification, as discussed above.

The Commission orders:

NERC’s request for clarification is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>21</sup> *Id.*