

Standard IRO-006-4 (Reliability Coordination – Transmission Loading Relief), known as the TLR procedure.

3. Reliability Standard IRO-006-4 provides Interconnection-wide transmission loading relief procedures that can be used to prevent or manage potential or actual system operating limit (SOL) or Interconnection reliability operating limit (IROL) violations.² Reliability Standard IRO-006-4 modifies Reliability Standard IRO-006-3, which the Commission approved in Order No. 693.³ In its December 2007 filing, NERC explained that it modified the TLR procedure to “extract” business practices since these elements are not related to reliability.⁴ Further, the modified Reliability Standard includes changes directed by the Commission in Order No. 693 related to the appropriateness of using the TLR procedure to mitigate a violation of an IROL.

4. On July 21, 2008, the Commission issued Order No. 713, which, *inter alia*, directed NERC to submit a filing explaining one aspect of the TLR procedure. On September 11, 2008, NERC submitted a responsive filing. On March 19, 2009, the Commission issued Order No. 713-A, which approved Reliability Standard IRO-006-4. In addition, Order No. 713-A directed the ERO to develop a modification to IRO-006-4, pursuant to section 215(d)(5) of the Federal Power Act (FPA).⁵ In response to comments regarding competitive concerns and the application of the Interchange Distribution Calculator (IDC),⁶ the Commission concluded:

² A SOL is the value (such as MW, MVar, amperes, frequency, or volts) that satisfies the most limiting of the prescribed operating criteria for a specified system configuration to ensure operation within acceptable reliability criteria. An IROL is a system operating limit that, if violated, could lead to instability, uncontrolled separation, or cascading outages that adversely impact the reliability of the Bulk-Power System.

³ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh’g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

⁴ *See infra* P 12 and accompanying note.

⁵ 16 U.S.C. § 824o(d)(5) (2006).

⁶ The IDC is a mechanism used by the reliability coordinators in the Eastern Interconnection to calculate the distribution of interchange transactions over specific flowgates. It includes a database of all interchange transactions and a matrix of the distribution factors for the Eastern Interconnection.

The above comments on suggested improvements to the TLR procedure are beyond the scope of this proceeding, which pertains to the separation of business practices from the ERO's TLR procedure and implementation of the Commission's directives set forth in Order No. 693. We note, however, that the ERO indicated in its December 21, 2007 filing that it has a three-phase plan to improve the TLR procedures, and the third phase will consist of "a complete redrafting to incorporate enhancement and changes beyond the separation of reliability and business practice issues." Therefore, the phase three proceeding would provide a proper forum for commenters to raise their concerns. The Commission believes that NRG and other commenters raise valid issues and urges the commenters to raise—and expects the ERO to consider—these matters in an appropriate proceeding. We also note that NERC states it is currently updating the IDC to more accurately determine the impacts of native load and network service.^{7]}

II. Request for Rehearing and Clarification

5. The Rehearing Parties argue that the Commission erred in approving IRO-006-4. The Rehearing Parties state that the FPA requires the Commission to find a proposed Reliability Standard just and reasonable and not unduly discriminatory or preferential, to "ensure that proposed Reliability Standards are fair and that they do not adversely affect competition."⁸ They contend that the Commission failed to apply this statutory standard, finding the proposed Reliability Standard just and reasonable notwithstanding inconsistent record evidence. Further, they contend that the Commission accepted the Reliability Standard without considering its impact on competition. The Rehearing Parties also dispute the Commission's finding that comments relating to competitive concerns are beyond the scope, noting that "NERC presented the mandatory TLR reliability rules in this docket."⁹ The Rehearing Parties maintain that there is no evidence that the Commission considered the effect of the proposed Reliability Standard on competition, instead relying on NERC's analysis.

⁷ Order No. 713-A, 126 FERC ¶ 61,252 at P 21 (footnotes omitted).

⁸ Request for Rehearing at 4 (citing FPA § 215(d), 16 U.S.C. § 824o(d) (2006)).

⁹ *Id.* at 6.

6. The Rehearing Parties next contend that the TLR Reliability Standard violates the curtailment priorities established in Order Nos. 888¹⁰ and 890¹¹ and the *pro forma* open access transmission tariff (OATT), because the standard favors native network load transactions over interchange transactions with respect to curtailment priority. They cite to NRG's comments in the underlying proceeding that point to problems with the IDC, upon which the Reliability Standard relies to determine curtailments.¹² The Rehearing Parties cite sections 13.6 and 14.7 of the Commission's *pro forma* OATT for the propositions that non-firm transmission services must be curtailed before firm transmission services, and firm point-to-point and network integration transmission service customers have an equal priority with the transmission provider's use of the system to deliver Network Resources to its native load.¹³ They maintain that, because of its reliance on the flawed IDC, the TLR standard would direct a Reliability Coordinator to curtail a firm interchange transaction crossing over a constrained flowgate prior to curtailing a non-firm native network load transaction across the same flowgate. Lastly, the Rehearing Parties point out that the Commission has recognized such flaws in the IDC and has directed NERC to address them.¹⁴ According to the Rehearing Parties, earlier reforms to the TLR process and IDC have not remedied flaws that have been identified.

7. The Rehearing Parties further contend that in the TLR Order the Commission acknowledges that the TLR Reliability Standard is discriminatory. They contend that the

¹⁰ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

¹¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008) *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

¹² Request for Rehearing at 7 (citing NRG Comments at 12-16).

¹³ *Id.*

¹⁴ *Id.* at 8 (citing *N. Am. Elec. Reliability Corp.*, 85 FERC ¶ 61,353 (1998)).

Commission erred in accepting the standard while conceding that the proposed TLR process discriminates against certain market participants and that the issues raised by the Rehearing Parties are valid.¹⁵ They specifically aver that the TLR Reliability Standard discriminates against merchant generators and provides an unlawful preference for transactions by load-serving entities. For example, they explain that the IDC does not include power purchases by a host balancing authority in the native network load curtailment calculations, because native network load is calculated by taking into account only those generation facilities owned by the host balancing authority. Thus, in this example, transactions involving independent power producers are curtailed in favor of transactions involving the host balancing authority.

8. Finally, the Rehearing Parties contend that the Commission erred in not remanding the TLR Reliability Standard back to NERC. In response to NERC's estimation that its efforts to improve the IDC will take two to five additional years, the Rehearing Parties state that this "is simply too long for the Commission to wait to address the OATT violations caused by the existing standard."¹⁶

9. The Rehearing Parties request that the Commission clarify that Order No. 713-A directs NERC to revise the TLR Reliability Standard to address the issues raised by the Rehearing Parties pursuant to section 215(d) of the FPA. Alternatively, the Rehearing Parties seek rehearing and request the Commission to reject the Reliability Standard as discriminatory and direct NERC to immediately develop a TLR process that addresses the competitive concerns raised.

III. Discussion

10. We deny the Rehearing Parties' request for rehearing and clarification. While the Rehearing Parties reiterate the concerns raised in their earlier rulemaking comments, they provide a limited response to the Commission's conclusion that the issues raised are beyond the scope of the immediate rulemaking proceeding. Namely, the Rehearing Parties claim that "[b]ecause NERC presented the mandatory TLR reliability rules in this docket, there is no justification for finding that the Rehearing Parties' concerns are better addressed in some other proceeding or that the Commission is not required to address discrimination claims when approving a mandatory Reliability Standard."¹⁷

¹⁵ *Id.* at 9, 10 (citing Order No. 713-A, 126 FERC ¶ 61,252 at P 21).

¹⁶ *Id.* at 11.

¹⁷ *Id.* at 6.

11. We are not persuaded by the Rehearing Parties' argument. In Order No. 693, the Commission approved Reliability Standard IRO-006-3 (Reliability Coordination – Transmission Loading Relief).¹⁸ This approval made the TLR procedures mandatory under section 215 of the FPA. Reliability Standard IRO-006-3 sets forth the entire TLR process, including the application of the IDC.

12. NERC's submission of the revised TLR procedure, as IRO-006-4, was limited in scope. NERC explained that the filing addressed two specific matters, namely, the separation of business practices that were "transferred" to a North American Energy Standards Board (NAESB) business practice document¹⁹ and a prohibition regarding the use of the TLR procedure to mitigate an actual IROL violation. All other provisions of the modified TLR procedure, previously approved by the Commission in Order No. 693, remain the same. The Commission disagrees with the Rehearing Parties that all issues regarding any aspect of a previously-approved Reliability Standard must be addressed when the Commission is presented with narrowly tailored modifications to the standard. Thus, the Commission upholds its earlier conclusion that comments regarding improvements to the Reliability Standard to address certain competitive issues are beyond the scope of the immediate proceeding. Indeed, if the Commission were to grant the Rehearing Parties' requested relief of remanding Reliability Standard IRO-006-4, the previously approved version of the TLR procedure, IRO-006-3, would remain in effect and enforceable, which would not resolve the competitive issues raised by the Rehearing Parties.

13. Further, we disagree with the Rehearing Parties' claim that the Commission erred in failing to reject Reliability Standard IRO-006-4 "even after conceding that the proposed TLR process discriminates against certain market participants"²⁰ Contrary to the Rehearing Parties' characterization, the Commission did not "concede" or, for that matter, make any substantive finding or conclusion on the competitive issues raised by commenters. Rather, consistent with the conclusion that the matters raised were beyond the scope of the immediate proceeding, the Commission stated:

¹⁸ See Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 960-964.

¹⁹ The Commission approved the NAESB TLR standard, WEQ-008, to coincide with the effective date of Reliability Standard IRO-006-4. See *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-C, FERC Stats. & Regs. ¶ 31,274, at P 7 n.11, P 9, 80 (2008); see also Order No. 713, 124 FERC ¶ 61,071 at P 8.

²⁰ Request for Rehearing at 9.

[NERC's] phase three proceeding would provide a proper forum for commenters to raise their concerns. The Commission believes that NRG and other commenters raise valid issues and urges the commenters to raise—and expects the ERO to consider—these matters in an appropriate proceeding.^[21]

This statement is consistent with the Commission's approach set forth in Order No. 693, in which the Commission explained that when a commenter suggests improvements to a Reliability Standard, a Commission directive that the ERO address the comments "does not direct any outcome other than that the comments receive consideration."²² Merely stating that the concerns are "valid" while directing that the ERO consider the comments is not properly characterized as a concession or determination by the Commission.

14. For the same reasons, the above statement does not support the Rehearing Parties' request that the Commission clarify that the ERO must address the Rehearing Parties' concerns within a set time period and fix the IDC or eliminate reliance on the IDC to make curtailment decisions.²³ The Rehearing Parties suggest that the statement in the introduction to Order No. 713-A, "pursuant to section 215(d)(5) of the FPA, the Commission directs NERC to develop modifications to Reliability Standards IRO-006-4," mandates that NERC address the competitive issues with a certain result and in a set time period.²⁴ Again, consistent with our approach in Order No. 693, the Commission (urged commenters to raise and) directed NERC to "consider" these issues in an appropriate proceeding, but did not mandate a particular result.²⁵

15. Thus, the Commission in Order No. 713-A properly determined that the modified Reliability Standard IRO-006-4, at issue in this proceeding, is just and reasonable, not

²¹ Order No. 713-A, 126 FERC ¶ 61,252 at P 21.

²² Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 188.

²³ Request for Rehearing at 12.

²⁴ Order No. 713-A, 126 FERC ¶ 61,252 at P 1.

²⁵ In contrast, where the Commission directed the ERO to develop a modification to IRO-006-4, the Commission clearly stated, "Accordingly, pursuant to section 215(d)(5) of the FPA, the Commission directs the ERO to develop a modification of Requirement R1.1 with respect to the term "alone," consistent with this discussion." *Id.* P 36.

unduly discriminatory or preferential, and in the public interest. Accordingly, we deny the Rehearing Parties' request for rehearing and clarification.

16. While the issues raised by Rehearing Parties related to the TLR procedure and the curtailment priorities are beyond the scope of this immediate rulemaking proceeding, we believe that certain issues raised by Rehearing Parties merit further inquiry. Accordingly, we are issuing a notice of inquiry (i.e., NOI) proceeding in Docket No. RM10-9-000 concurrently with this order with respect to the TLR procedure and its interplay with the curtailment priority provisions of the OATT.²⁶

The Commission orders:

The Rehearing Parties' request for rehearing and clarification is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Norris voting present.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁶ *Transmission Loading Relief Reliability Standard and Curtailment Priorities*, 130 FERC ¶ 61,033 (2010).

Document Content(s)

RM08-7-002.DOC.....1-8