

153 FERC ¶ 61,024
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

North American Electric Reliability Corporation

Docket No. RR15-4-001

ORDER ON COMPLIANCE FILING

(Issued October 15, 2015)

1. On July 17, 2015, the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), submitted a compliance filing in response to the Commission's March 19, 2015, order approving, in part, proposed revisions to NERC's Rules of Procedure that would implement NERC's Risk-Based Registration (RBR) initiative in the above referenced docket.¹ The March 19 Order generally approved the RBR proposal, but denied, without prejudice, NERC's proposal to eliminate the load-serving entity function from the registry process, finding that NERC had not adequately justified its proposal. In doing so, the Commission directed NERC to provide additional information to support this aspect of its proposal to address the Commission's concerns. For the reasons discussed below, we accept NERC's compliance filing to remove the load-serving entity as a functional registration category, and direct NERC to submit an informational filing on the actual effects of this change after it is implemented.

I. Background

2. On December 11, 2014, NERC submitted a petition for approval of proposed revisions to its Rules of Procedure that would implement the RBR initiative. NERC proposed major reforms to the registration process in the Rules of Procedure to include the elimination of the purchasing-selling entity, interchange authority, and load-serving entity functional registration categories. NERC also proposed modifications to the

¹ *North American Electric Reliability Corporation*, 150 FERC ¶ 61,213 (2015) (March 19 Order).

thresholds for registering entities as distribution providers and procedural improvements to the registration process.

3. In the March 19 Order, the Commission approved in part, and denied in part, NERC's RBR petition. The Commission found NERC's overall goal of ensuring entities are registered and made subject to the Reliability Standards based on the risk they pose to reliability reasonable and adequately justified. The Commission found that NERC's alignment of the registration process with the risks to the interconnected transmission network posed by different types of entities is an improvement. Further, the Commission found that NERC and stakeholders will benefit from the proposed revisions as efforts will appropriately be directed towards activities with a greater potential impact on bulk electric system reliability. The Commission agreed with NERC that it is important to achieve reliability risk mitigation while ensuring the reliability and security of the interconnected transmission network, and the RBR initiative is consistent with this pursuit.² Thus, the Commission approved most aspects of NERC's proposal with the exception of the removal of the load-serving entity function. The Commission also approved NERC's proposed revisions related to the registration of distribution providers, but directed that NERC must include Reliability Standard PRC-005 (Transmission and Generation Protection System Maintenance and Testing) as applicable to underfrequency load shedding-only distribution providers. Additionally, the Commission directed NERC to modify the Rules of Procedure to provide the Commission with an opportunity to review decisions by the NERC-led review panel in cases where no appeal occurs by notifying the Commission when it posts a NERC-led review panel decision.

4. With regard to removal of the load-serving entity function, the Commission concluded that NERC did not adequately justify eliminating the load-serving entity function and directed NERC to submit within 60 days a compliance filing that addressed the Commission's concerns.³ Specifically, the Commission requested additional information regarding how: (1) the deactivation of distribution providers with peak load between 25 and 75 MW affects NERC's estimate regarding the number of load-serving entities that would be deregistered; (2) applicable entities will continue to receive necessary load information for balancing and forecasting purposes upon elimination of the load-serving entity registration category; (3) continuity of responsibility under Reliability Standards applicable to load serving entities will be ensured; and (4) deactivating load-serving entities will affect reliability over time in areas facing

² March 19 Order, 150 FERC ¶ 61,213 at P 16.

³ NERC requested an additional 30 days to submit its compliance filing, which the Commission granted on April 20, 2015.

significant load growth.⁴ The Commission also sought additional information on NERC's coordination with the North American Energy Standards Board (NAESB) to ensure the timely transfer of commercial-related practices affected by the proposed elimination of the load-serving entity function.⁵

II. NERC Compliance Filing

5. On July 17, 2015, NERC submitted its compliance filing providing additional information, stating that it satisfies the Commission's concerns described in the March 19 Order. In support of its filing, NERC also provides as Exhibit D of its petition an "Analysis Supporting Removal of Load-Serving Entities" (Technical Analysis). NERC states that it developed the Technical Analysis with input from Regional Entities, load-serving entities, reliability coordinators and balancing authorities.

6. Regarding the effect of deactivating distribution providers with peak load between 25 and 75 MW on the number of load-serving entities that would be deregistered, NERC states that out of the 461 registered load-serving entities, 419 will remain registered as another functional category, leaving 41 potential deregistration candidates.⁶ NERC states that the 41 potential deregistration candidates include: (1) its estimate of fourteen load-serving entities to be deregistered as set forth in NERC's initial RBR petition; and (2) the potential deactivation of distribution providers with peak load between 25 and 75 MW based on the increase in the general distribution provider registration threshold.

7. With regard to how balancing authorities and reliability coordinators will continue to receive necessary load information for balancing and forecasting purposes, NERC begins by explaining that load-serving entity tasks generally cover two categories of information: ahead-of-time tasks and real-time tasks. According to NERC, ahead-of-time tasks include submission of load profiles and forecasts to balancing authorities, resource planners and transmission planners, arranging for transmission service from transmission service providers, and submitting requests for interchange-to-interchange coordinators. NERC adds that real-time tasks involve receiving requests for voluntary load curtailment and communicating such requests to end-use customers as directed by a balancing authority or distribution provider. NERC states that it has determined that all

⁴ March 19 Order, 150 FERC ¶ 61,213 at PP 38-41, 43.

⁵ *Id.* P 42.

⁶ According to NERC, the count excludes one entity that will be deregistered separate and apart from the RBR initiative.

41 entities potentially eligible for deregistration as a load-serving entity are subject to applicable market rules, tariffs, and agreements which will ensure the continuation of load-serving entity reliability activities. NERC explains that it focused on the load-serving entity's responsibility for reporting load because this task is covered by NERC Reliability Standard requirements that apply to load-serving entities. NERC evaluated whether the load data collected by load-serving entities would still be provided for under a contractual agreement or other market protocol. NERC represents that it confirmed that all entities participate in an organized market that requires load data to be provided under a market participation agreement or a Commission-approved tariff.

8. NERC provides specific tariff and agreement provisions in Appendix E of Exhibit D of its filing. NERC states that these tariffs and protocols ensure that the load serving entities' ahead-of-time and real-time tasks continue. For example, NERC explains that in the Electric Reliability Council of Texas, Inc. (ERCOT) region - where nearly half (18) of the 41 load-serving entities potentially eligible for deregistration are located - ERCOT protocols call for the development of demand forecasts and load profiles by ERCOT, partly based on the load data research conducted by transmission service providers and distribution service providers. The ERCOT protocols also require load-serving entities to designate a qualified scheduling entity to perform load shedding and interruptible load responsibilities on behalf of the load-serving entity. NERC also explains that five of the 41 are under the California Independent System Operator (CAISO) tariff, where the load serving entity is a metered subsystem which is responsible for balancing its own load and resources within its territory. The CAISO tariff also requires the load-serving entity to coordinate projected load growth for planning purposes. In the same vein, an additional five of the load-serving entities are under the Midcontinent Independent System Operator, Inc. (MISO) tariff, which mandates that transmission operators receive ahead-of-time information, including balancing authority load forecast, day-ahead schedules for all resources, and forecast commitment status, so that the transmission operator can perform local reliability analysis. With respect to real-time data, NERC states that, under the MISO tariff, market participants that are load-serving entities or are purchasing on behalf of a load serving entity must respond to transmission provider directives to curtail load. NERC also includes the remaining entities which are covered by non-ISO or RTO tariffs or agreements.

9. With respect to registered entities that were identified by NERC and the Regional Entities as potentially eligible for removal from the registry criteria, NERC requested that these registered entities provide confirmation of existing contractual obligations or other processes in place through which balancing authorities and reliability coordinators would receive load data. Furthermore, NERC inquired with these entities whether deregistration of their load-serving entity function would change their current processes for providing needed information. According to NERC, the load-serving entities responded that their loads are metered and this information is provided to the balancing authorities in real-time. NERC adds that the 41 entities potentially eligible for deregistration are located in

10 balancing authorities and that it reviewed contractual agreements of these load-serving entities and confirmed that these agreements contain sufficient load data, load forecasting, and load shedding provisions. NERC also independently reviewed potential underlying alternative sources of authority, such as responsibilities of entities that will remain on the compliance registry to cover load-serving entity tasks. Specifically, NERC reviewed: open access transmission tariffs, power purchase agreements, network integration transmission service agreements, operating agreements, ERCOT protocols, market rules and the regulatory framework in Texas, transmission planning data services agreements, and reliability assurance agreements. NERC states that these mechanisms that are already in place further assure that balancing authorities and reliability coordinators will continue to obtain needed information.

10. Further, NERC explains that it surveyed the 18 balancing authorities and reliability coordinators that NERC had identified as having load-serving entities potentially eligible for deregistration, and requested that they review the list of deregistration candidates and the impact on the balancing authority or reliability coordinator's ability to receive metered information. NERC also asked the balancing authorities and reliability coordinators to analyze whether deregistration of the potentially eligible entities would adversely affect their ability to receive such real-time and forecasted load condition data from the same load-serving entities or other entities through other contractual arrangements. According to NERC, all but two entities responded that they have contractual obligations with the relevant load-serving entity. NERC states that of the two that do not, one no longer have entities eligible for registration and the other has agreements with its load serving entities that specify load data sharing and forecasting obligations.

11. NERC also surveyed Regional Entities, balancing authorities, reliability coordinators and entities eligible for deregistration as a result of the proposed elimination of the load-serving entity registration category. NERC states that the surveys requested information on how (1) the deactivation of certain distribution providers affects NERC's estimate regarding the number of load-serving entities that would be deregistered; (2) balancing authorities and reliability coordinators will continue to receive necessary load information for balancing and forecasting purposes upon elimination of the load-serving entity registration category from the compliance registry; (3) continuity of responsibility under Reliability Standards applicable to load-serving entities would be ensured; and (4) deactivating load-serving entities would affect reliability over time in areas facing significant load growth. In addition, NERC states that it asked Regional Entities to review the registration information in their respective footprints regarding all load-serving entities that could be eligible for deregistration as a result of the RBR initiative. NERC states that all eight confirmed the loads of these entities and also verified if distribution providers meeting the peak MW criterion would remain registered as a result of application of other distribution provider registration criteria. NERC also

states that the Regional Entities confirmed the list of potential entities that could be eligible for deregistration.

12. In response to the Commission's concern that NERC did not provide adequate information regarding how certain load-serving entity reliability tasks will be performed going forward, NERC explains that of the 419 entities remaining on the compliance registry, 382 will remain registered as a distribution provider. NERC explains that, of the 38 load-serving entities not also registered as a distribution provider, all but eight are registered as either a balancing authority, generator operator or transmission operator. NERC adds that, of the remaining eight load-serving entities, seven are registered as either a generator owner, transmission owner or resource planner, and they are dispersed through three separate Regional Entity footprints. NERC states that one entity is registered only as a load-serving entity; however, that entity is in the process of deregistration due to no longer performing the function in the region it is registered.⁷ NERC states that entities registered for the seven functions are also subject to the Reliability Standard requirements that currently apply to the load-serving entity function. NERC also provides a mapping document showing that, of the 72 Reliability Standard requirements applicable to load-serving entities, 55 are also applicable to distribution providers.⁸

13. NERC states that the 41 entities eligible for potential deregistration represent between 0.3 percent and 3.39 percent of their areas' peak load. NERC explains that there is no concentration of these deregistered entities in any Regional Entity footprint, other than Texas Regional Entity which has 18. NERC adds that, even in the Regional Entity footprint facing the largest load growth (projected at seven percent), the estimate of load-serving entity-only organizations that would be completely removed from the compliance registry account for approximately 0.17 percent of total load. NERC also states that the reliability coordinators and balancing authorities did not identify any concerns with respect to load or forecast changes, mitigation of contingencies, or changes in reserve margins. According to NERC, because the 41 entities represent a small percentage of load, there is little to no risk to reliability associated with their removal as a load-serving entity from the compliance registry.

14. NERC states that it has coordinated with NAESB, assuring NAESB the opportunity to develop business practice standards where appropriate in light of NERC's anticipated elimination of the load-serving entity registration category. NERC states that

⁷ NERC Compliance Filing at n. 29.

⁸ NERC Compliance Filing, Appendix D of Exhibit D.

it has had extensive discussions with NAESB leadership on whether removal of any of the load-serving entity Reliability Standards warranted development of a NAESB standard. NERC states that NAESB identified Reliability Standard INT-011-1 as a candidate for a standard. NERC states that Reliability Standard INT-011-1 targets older or grandfathered agreements, and none of the entities registered solely for the load-serving entity function have any of these agreements. Further, NERC states that an existing NAESB standard, Electronic Tagging Functional Specification, requires e-tag data to be included for point-to-point transactions including grandfathered agreements. NERC adds that the NAESB Wholesale Electric Quadrant (WEQ) Standards leadership conducted a thorough review and identified Reliability Standard INT-011-1 as a candidate for a commercial process standard. According to NERC, the WEQ Executive Committee Chair and Vice Chair have agreed to submit a request to NAESB to ensure that this commercially-related practice under Reliability Standard INT-011-1 is considered for standards development through the NAESB process.⁹

III. Notice of Filing and Responsive Pleadings

15. Notice of NERC's July 17, 2015 compliance filings was published in the *Federal Register*, 80 Fed. Reg. 44,950 (2015), with interventions and protests due on or before August 17, 2015. American Public Power Association, National Rural Electric Cooperative Association, and Transmission Access Policy Study Group (Joint Commenters) and Dominion Resources Services, Inc. (Dominion) filed timely motions to intervene and comments in support of NERC's filing. On August 18, 2015, MISO filed a motion to intervene out-of-time.

Comments

16. Joint Commenters and Dominion support NERC's compliance filing. Dominion agrees with NERC's rationale for removal of the load-serving entity function. Joint Commenters point to NERC's "comprehensive demonstration" that no material load information gap will be created by removing the load-serving entity function. According to Joint Commenters, in addition to the load information that will continue to be available from load-serving entities through their other registrations, and through tariff and contract

⁹ Subsequent to the NERC compliance filing, the WEQ Executive Committee, at its August 18, 2015 meeting, approved modifications to WEQ-004, Coordinate Interchange Business Practice Standards, to require the tagging of Intra-Balancing Authority transactions, which is currently addressed in Reliability Standard INT-011-1. The modified business practice standard was ratified by the WEQ membership on September 18, 2015. https://www.naesb.org/weq/weq_final.asp.

obligations, the Commission's *pro forma* tariff provides the overarching framework that assures that load information is provided to those that own and operate the transmission system, and curtailments and load shedding are implemented, to ensure bulk electric system reliability. Joint Commenters argue that load-serving entity registration for NERC compliance was not and is not necessary to accomplish these objectives.

17. Joint Commenters contend that the *pro forma* tariff, combined with all of the specific agreements detailed by NERC, demonstrates that any residual reliability risk from eliminating load-serving entity registration is *de minimis*.¹⁰ According to Joint Commenters, the *pro forma* tariff ensures the ability of transmission providers to obtain the data they need from their network customers, and most load-serving entities are network customers or network load of network customers. Joint Commenters state that under the *pro forma* tariff, load-serving entities will continue to provide their data to their transmission provider. Joint Commenters explain that the *pro forma* tariff allows all transmission providers to get the data they need from their network customers and to direct load curtailments when needed to ensure system reliability; and the network operating agreement provided for by the *pro forma* tariff covers operations, information sharing, and any other issue that might affect the provision of network service. Specifically, with respect to information sharing, *pro forma* tariff section 31.6 requires the network customer to provide the transmission provider with annual updates of its network load and network resource forecasts, as well as timely written notice of material changes in any other information provided in its application relating to any aspect of its facilities or operations affecting the transmission provider's ability to provide reliable service. Joint Commenters explain that this provision allows the entities that own and operate transmission facilities to obtain information needed for long-term planning. Joint Comments also point to section 33.6 of the *pro forma* tariff, which states that when the transmission provider determines that it is necessary for the transmission provider and network customer to shed load, the parties shall do so in accordance with the network operating agreement; and section 33.7 gives the transmission provider the authority to curtail network transmission service whenever needed to protect reliability.

IV. Commission Determination

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the timely, unopposed motions to intervene serve to make the entities that filed them parties

¹⁰ Joint Commenters at 11, n.15-17.

to this proceeding.¹¹ We also accept MISO's untimely intervention given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Commission Determination

19. We accept NERC's compliance filing. We find that NERC has complied with the March 19 Order with respect to providing additional information justifying the removal of the load-serving entity function and including Reliability Standard PRC-005 as applicable to underfrequency load shedding-only distribution providers. We also find that NERC's modification to the Rules of Procedure to provide the Commission with an opportunity to review decisions by the NERC-led review panel in cases where no appeal occurs by notifying the Commission when it posts a NERC-led review panel decision is adequate.

20. As we discuss below, we find that NERC has addressed the concerns expressed regarding an accurate estimate of the load-serving entities to be deregistered and the reliability impact of doing so. NERC demonstrates that load data will continue to be available and reliability activities will continue to be performed even after load-serving entities would no longer be registered. We find that NERC has provided adequate additional support in its compliance filing that is responsive to the Commission's concerns described in the March 19 Order, and conclude that the proposed elimination of the load-serving entity function is reasonable. We believe that NERC has demonstrated that the risks posed by the elimination of the load-serving entity functional category registration are likely to be minimal.

21. In the March 19 Order, the Commission noted that eliminating the load-serving entity function does not remove the need to provide information required for reliable operation of the bulk electric system.¹² NERC's compliance filing includes additional information that clarifies whether and how some entities will continue to provide information or who will assume their obligations. For example, NERC notes that the number of affected entities is small, spread across all eight Regional Entity footprints and involves a small percentage of load. In addition, NERC provides explanation and specific tariff and contract language showing how load-serving entities are obligated to continue to provide information and respond to commands from various entities. NERC has also described how the load-serving entities will be required to continue to provide

¹¹ 18 C.F.R. § 385.214 (2015).

¹² March 19 Order, 150 FERC ¶ 61,213 at P 32.

the information through their responsibilities as other registered functions. NERC has explained which entities will continue to provide this information. Further the responses from reliability coordinators, balancing authorities, Regional Entities, and other affected entities that need the information load-serving entities indicate that these entities do not foresee any concerns if load-serving entities are no longer registered entities.

Accordingly, we conclude that NERC and others have provided reasonable support that the elimination of the load-serving entity function will likely have no material impact on the reliability of the bulk electric system.

22. With regard to our concern about the revision of the distribution provider threshold from 25 MW to 75 MW peak load causing an increase in the deactivation of entities that are currently registered as distribution providers,¹³ NERC indicates that an additional 27 entities could be deregistered as load-serving entities and below 75 MW distribution providers. Nevertheless, we are persuaded by NERC's technical analysis and mapping document that other functional entities will take on responsibility for compliance with many Reliability Standards currently assigned to load-serving entities. This evidence combined with NERC's specific explanation of and references to tariffs and agreements persuades us that deregistered entities will continue to perform load-serving entity-related activities.

23. In addition, we find that NERC provides adequate information to show that balancing authorities, planners, and other affected entities will continue to have access to the data to estimate demand and energy forecast for areas where the load-serving entity is deregistered. Additionally we note that NERC proposes no changes to the obligations of the balancing authorities and transmission operators to provide operating data to their reliability coordinators pursuant to the applicable Reliability Standards.¹⁴ Further, NERC has adequately demonstrated that in areas of significant load-growth, the cumulative effect on reliability of deregistered entities not having to provide accurate load data projections is not likely to increase over time as load increases. While we believe that NERC has adequately addressed its coordination with NAESB to ensure the timely transfer of commercial-related practices affected by the proposed elimination of the load-serving entity function, because that process remains incomplete we expect NERC to keep Commission staff informed of any developments regarding the appropriate transfer of functions to NAESB.

¹³ *Id.* P 39.

¹⁴ *See, e.g.,* Reliability Standard IRO-010-001.

24. We accept NERC's proposal to eliminate the load-serving entity as a registered function subject to the Reliability Standards. As discussed above, we do so, in part, based on NERC's explanation that entities needing information from load-serving entities will continue to receive the data needed to fulfill their operational and planning responsibilities from other registered entities subject to Reliability Standards that currently apply to the load-serving entity function, and from deactivated load-serving entities subject to other arrangements.

25. While NERC has provided adequate support on this matter, we believe that it is prudent for NERC to perform a follow-up analysis to assure that affected transmission operators and balancing authorities remain able to perform reasonably accurate next-day studies. Accordingly, we direct NERC to study and report to the Commission, within 15 months from the date of this order, the extent to which the next-day studies by a representative sample of the affected transmission operators and balancing authorities match or differ from their real-time results and, if there are any significant differences, whether those differences are attributable to the changes authorized here. In performing this analysis, NERC may choose to compare these results to results for the same entities before implementation of these changes, or to results for entities not affected by these changes, or both, if NERC deems it appropriate.

The Commission orders:

(A) The Commission hereby accepts NERC's compliance filing, as set forth in the body of this order.

(B) The Commission directs NERC to submit an informational filing within 15 months of the date of this order, as set forth in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.