

**114 FERC ¶ 61, 104**

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 39

(Docket No. RM05-30-000; Order No. 672)

Rules Concerning Certification of the Electric Reliability Organization;  
and Procedures for the Establishment, Approval, and Enforcement  
of Electric Reliability Standards

(Issued February 3, 2006)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: Pursuant to Subtitle A (Reliability Standards) of the Electricity Modernization Act of 2005, which is Title XII of the Energy Policy Act of 2005 (EPAct) and which added a new section 215 to the Federal Power Act (FPA), the Commission is amending its regulations to incorporate:

- (1) Criteria that an entity must satisfy to qualify to be the Electric Reliability Organization (ERO) which the Commission will certify as the organization that will propose and enforce Reliability Standards for the Bulk-Power System in the United States, subject to Commission approval;
- (2) Procedures under which the ERO may propose new or modified Reliability Standards for Commission review;

- (3) A process for timely resolution of any conflict between a Reliability Standard and a Commission-approved tariff or order;
- (4) A process for resolution of an inconsistency between a state action and a Reliability Standard;
- (5) Regulations pertaining to the funding of the ERO;
- (6) Procedures governing an enforcement action by the ERO, a Regional Entity or the Commission;
- (7) Criteria under which the ERO may enter into an agreement to delegate authority to a Regional Entity for the purpose of proposing Reliability Standards to the ERO and enforcing Reliability Standards;
- (8) Regulations governing the issuance of periodic reliability reports by the ERO that assess the reliability and adequacy of the Bulk-Power System in North America; and
- (9) Procedures for the establishment of Regional Advisory Bodies that may provide advice to the Commission, the ERO or a Regional Entity on matters of governance, applicable Reliability Standards, the reasonableness of proposed fees within a region, and any other responsibilities requested by the Commission.

EFFECTIVE DATE: This Final Rule will become effective [insert date that is 30 days after publication in the **FEDERAL REGISTER**]

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UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Rules Concerning Certification of the Electric  
Reliability Organization; and Procedures for  
the Establishment, Approval, and Enforcement  
of Electric Reliability Standards

Docket No. RM05-30-000

ORDER NO. 672

FINAL RULE

(Issued February 3, 2006)

**I. INTRODUCTION**

1. Pursuant to Subtitle A (Reliability Standards) of the Electricity Modernization Act of 2005, which is Title XII of the Energy Policy Act of 2005 (EPAct)<sup>1</sup> and which added a new section 215 to the Federal Power Act (FPA), the Commission is amending its regulations to incorporate:

- (1) Criteria that an entity must satisfy to qualify to be the Electric Reliability Organization (ERO), which the Commission will certify as the organization

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<sup>1</sup> Pub. L. No. 109-58, Title XII, Subtitle A, 119 Stat. 594, 941 to be codified at 16 U.S.C. 824o (2000).

**EXCERPT FROM FERC FINAL ERO RULE**

that will propose and enforce Reliability Standards for the Bulk-Power System<sup>2</sup> in the United States, subject to Commission approval;

(2) Procedures under which the ERO may propose new or modified Reliability Standards for Commission review;

(3) A process for timely resolution of any conflict between a Reliability Standard and a Commission-approved tariff or order;

(4) A process for resolution of an inconsistency between a state action and a Reliability Standard;

(5) Regulations pertaining to the funding of the ERO;

(6) Procedures governing an enforcement action by the ERO, Regional Entity or the Commission;

(7) Criteria under which the ERO may enter into an agreement to delegate authority to a Regional Entity for the purpose of proposing Reliability Standards to the ERO and enforcing Reliability Standards;

(8) Regulations governing the issuance of periodic reliability reports by the ERO that assess the reliability and adequacy of the Bulk-Power System in North America; and

(9) Procedures for the establishment of Regional Advisory Bodies that may provide advice to the Commission, the ERO or a Regional Entity on matters of

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<sup>2</sup> Capitalized terms used in this Final Rule have the meanings specified in section IV.B.1 of the Preamble.

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governance, applicable Reliability Standards, the reasonableness of proposed fees within a region, and any other responsibilities requested by the Commission.

2. The Commission believes incorporating this reliability rule into the Commission's regulations pursuant to the direction of Congress is an important step toward ensuring more reliable and secure electric utility service.

**II. BACKGROUND**

3. On August 8, 2005, EPAct was enacted into law by President Bush. New section 215 of the FPA provides for a system of mandatory, enforceable Reliability Standards. Reliability Standards are to be developed by the ERO, subject to Commission review and approval. An approved Reliability Standard may be enforced by the ERO, subject to the Commission's review, or the Commission may initiate an investigation or imposition of a penalty. Below, we summarize the provisions of Subtitle A of the EPAct:

4. Section 215(a) (Definitions) defines relevant terms used in the Act.

5. Section 215(b) (Jurisdiction and Applicability) provides that, for purposes of approving Reliability Standards and enforcing compliance with such standards, the Commission shall have jurisdiction over the certified ERO, any Regional Entities, and all users, owners and operators of the Bulk-Power System, including but not limited to the

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public and governmental entities described in section 201(f) of the FPA.<sup>3</sup> Section 215(b)(2) requires the Commission to issue a Final Rule to implement the requirements of section 215 of the FPA no later than 180 days after the date of enactment.

6. Section 215(c) (Certification) authorizes the Commission to certify a person as an ERO, provided that the applicant meets specified criteria.

7. Section 215(d) (Reliability Standards) provides the process for the ERO to propose a Reliability Standard, subject to Commission review and approval. This subsection also directs the Commission to adopt rules to establish a fair process for the identification and timely resolution of any conflict between a Reliability Standard and any function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to a Transmission Organization.

8. Section 215(e) (Enforcement) authorizes the ERO, after notice and opportunity for hearing, to impose a penalty for a violation of a Reliability Standard, subject to review by the Commission. This section also provides for enforcement initiated by the Commission on its own motion. Section 215(e)(4) requires that the Commission issue regulations

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<sup>3</sup> Section 201(f) of the FPA, 16 U.S.C. 824(f), provides that “[n]o provision in this Part shall apply to, or be deemed to include, the United States, a state or any political subdivision of a State, an electric cooperative that receives financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) or that sells less than 4,000,000 megawatt hours of electricity per year, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.”

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under which the ERO will be authorized to enter into an agreement to delegate authority to a qualified Regional Entity for the purpose of proposing Reliability Standards to the ERO and enforcing them. Further, subsection 215(e)(6) requires that any penalty imposed shall bear a reasonable relation to the seriousness of the violation and take into consideration timely remedial efforts.

9. Section 215(f) (Changes In Electric Reliability Organization Rules) requires Commission approval of any proposed ERO Rule or proposed Rule change.

10. Section 215(g) (Reliability Reports) requires that the ERO conduct periodic assessments of the reliability and adequacy of the North American Bulk-Power System.

11. Section 215(h) (Coordination With Canada and Mexico) urges the President to negotiate international agreements with the governments of Canada and Mexico to provide for effective compliance with Reliability Standards and the effectiveness of the ERO in the United States and Canada or Mexico.

12. Section 215(i) (Savings Provisions) states that the ERO shall have authority to develop and enforce compliance with Reliability Standards for only the Bulk-Power System and provides that section 215 of the FPA shall not be construed to preempt any authority of any state to take action to ensure the safety, adequacy, and reliability of electric service within that state, as long as such action is not inconsistent with any Reliability Standard. Section 215 also contains a provision relating specifically to reliability rules established by the State of New York.

13. Section 215(j) (Regional Advisory Bodies) requires the Commission to establish a Regional Advisory Body upon petition of at least two-thirds of the states within a region

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that have more than one-half of their electric load served within the region. A Regional Advisory Body may provide advice to the ERO, a Regional Entity or the Commission.

14. Section 215(k) (Application to Alaska And Hawaii) provides that section 215 of the FPA does not apply to Alaska or Hawaii.

15. The statute directs the Commission to issue a Final Rule to implement the requirements of section 215 no later than 180 days after enactment, or by February 5, 2006. On September 1, 2005 the Commission issued a Notice of Proposed Rulemaking (NOPR) that proposed regulations regarding certification of the ERO, development of Reliability Standards, enforcement of Reliability Standards, ERO delegation of authority to Regional Entities, ERO funding and other matters necessary to implement the statute.<sup>4</sup>

**III. PROCEDURAL MATTERS**

16. The statute directs the Commission to issue a Final Rule to implement the requirements of section 215 of the FPA no later than 180 days after enactment, or by February 5, 2006. The Commission issued the NOPR on September 1, 2005. It required that comments be filed by October 7, 2005 to assist the Commission in meeting the statutory 180-day deadline. Several parties submitted late-filed comments. The

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<sup>4</sup> Additional background information is provided in the NOPR, discussing the Commission's reliability-related activities and the development of voluntary reliability guidelines. Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards, 70 FR 53,117 (Sept. 7, 2005), FERC Stats. & Regs., Proposed Regulations ¶ 32,587 (Sept. 1, 2005).

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Commission will accept these late-filed comments. A list of commenters appears in Appendix A.

17. Although the Commission did not request reply comments because of the relatively short statutory time frame for issuing a Final Rule, several commenters nonetheless submitted reply comments. The Commission will reject such reply comments. The Commission did not solicit reply comments and, therefore, accepting such comments from those who chose to submit them would be unfair to others.

18. The Commission held two technical conferences on this rulemaking. The first technical conference was held on November 19, 2005. Comments on the first technical conference were due by December 8, 2005. The technical conference was transcribed and is a part of the record in this docket.

19. The second technical conference was held on December 9, 2005. Comments on the second technical conference were due by December 23, 2005. The technical conference was transcribed and is a part of the record in this docket. A list of commenters for both technical conferences is in Appendix B.

**EXCERPT FROM FERC FINAL ERO RULE****11. Reliability Reports – Section 39.11**

20. The NOPR provided that the ERO shall conduct periodic assessments of the reliability and adequacy of the Bulk-Power System and report its findings to the Commission, the Secretary of Energy, Regional Entities, and any Regional Advisory Bodies annually, or more frequently if directed by the Commission.<sup>5</sup> Commenters address the required frequency of such reports, the scope and content of these reports, and whether they should be noticed and made available to the public.

**Comments**

21. MRO submits that, if the Commission were to require quarterly reporting, this obligation would be unnecessarily burdensome, and possibly redundant, given the other reporting obligations proposed in the NOPR. MRO recommends that the Commission require the ERO to provide an annual report assessing the reliability and adequacy of the Bulk-Power System.

22. PG&E submits that the regulations should additionally require that the ERO, at least on a yearly basis, obtain specific information on the contribution of all entities, including entities referenced in section 201(f) of the FPA, toward adequacy, including the amount of capacity and energy that such entities have under contract, and further require that the ERO make recommendations where entities have inadequate resources. PG&E

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<sup>5</sup> NOPR at P 95.

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notes that the ERO will be uniquely situated to evaluate adequacy, as the adequacy of generation and transmission resources on which reliability depends are governed by a wide array of federal, state and local jurisdictions within and between regions and control areas. In PG&E's view, only a uniform evaluation of readiness of the resources within these various jurisdictions can meaningfully reveal the extent to which the Bulk-Power System can be relied upon in both the near-term and long-term. Moreover, only an entity with broad authority to conduct such inquiries can reveal whether the burden of achieving adequacy is being equitably distributed or whether entities are "free-riding." PG&E further asserts that, otherwise, the proposed regulation does not properly implement the Congressional intent manifest in the interplay of the requirements of sections 215(g) and (i)(2) of the FPA.<sup>6</sup> PG&E recommends that the ERO must be empowered to provide timely alerts to the Commission, all other jurisdictional entities responsible for adequacy, and the Congress.

23. Hydro One notes that, currently, the regional reliability councils play an important role in coordination of the conduct of periodic assessments of the reliability and adequacy of the Bulk-Power System within a region. It asks that the Commission ensure that the Regional Entities continue this important coordination function.

24. NASUCA suggests that the Final Rule should provide that all reliability and

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<sup>6</sup> While section 215(g) of the FPA pertains to ERO reporting on reliability and adequacy, section 215(i)(2) of the FPA notes that section 215 does not authorize either the Commission or the ERO to order construction of additional generation or transmission capacity or set and enforce compliance with standards for adequacy.

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adequacy reports filed pursuant to the regulation on reliability reports be made available to the public. PG&E submits that the ERO's reliability and adequacy reports, including those regarding section 201(f) entities, should be publicly noticed and made available to the public, while respecting confidentiality and competitiveness concerns, because the resulting public pressure would assist in convincing such entities to supplement their resource procurement programs.

**Commission Conclusion**

25. The Final Rule requires the ERO to provide to the Commission two types of periodic reliability reports. First, the ERO must conduct reliability assessments and report its findings to the Commission regarding the overall state of the Reliable Operation of the Bulk-Power System. Second, the ERO must conduct assessments of the adequacy of the Bulk-Power System and report its findings to the Commission, the Secretary of Energy, each Regional Entity and each Regional Advisory Body.

26. Section 39.11(b) provides the Commission discretion to require that the ERO submit an adequacy assessment report more frequently than annually. We appreciate MRO's concern about over-taxing the resources of the ERO and Regional Entities with multiple or frequent reporting requirements. The Commission sees no need, however, to limit its discretion in this area at this time. The Commission will balance the need for timely information regarding system reliability and adequacy with the burden on the ERO's resources whenever we consider having the ERO provide reports more frequently than annually.

27. With respect to the concerns about the scope and content of the reliability and

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adequacy assessments prepared by the ERO, the Commission expects each assessment to be comprehensive in order for the Commission, the ERO, and the Regional Entities to fulfill their respective oversight responsibilities. As will be established in later proceedings, we would expect that such assessments could include, for example, operating and planning reports, reports of ongoing activities such as readiness audits, seasonal reliability assessments, as well as relevant recommendations. In addition, the Commission may determine that reliability and adequacy assessments should include appropriate metrics, if applicable, to assist the Commission in monitoring actual reliability performance and plans.

28. We agree with PG&E's recommendation that the Commission require the ERO to obtain information on resource adequacy and make related recommendations where entities are found to have inadequate resources. Resource adequacy is a fundamental aspect of reliability. The ERO is in a unique position to obtain and analyze information regarding resource adequacy across all regions of the Bulk-Power System in interconnected North America. Although section 215(a)(3) of the FPA provides that the term Reliability Standard does not include any requirement to enlarge Bulk-Power System facilities or to construct new transmission capacity or generation capacity, it does not preclude the ERO from obtaining information relating to resource adequacy for the purposes of making its required reports on the adequacy of the Bulk-Power System pursuant to section 215(g) of the FPA. Accordingly, section 39.11(b) of the Final Rule sets forth a separate requirement that the ERO conduct assessments of the adequacy of the Bulk-Power System in North America and report its findings to the Commission and

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others. Further, the ERO may obtain pertinent information on resource adequacy from any relevant user, owner or operator of the Bulk-Power System.

29. We agree with commenters on the need for notice and public availability of reliability and adequacy assessments. Accordingly, reliability and adequacy assessments reports filed at the Commission will be made public unless the Commission deems it necessary and lawful not to do so or unless the ERO requests confidential treatment pursuant to our rules and regulations.