150 FERC ¶ 61,213
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

North American Electric Reliability Corporation Docket No. RR15-4-000

ORDER ON ELECTRIC RELIABILITY ORGANIZATION RISK BASED REGISTRATION INITIATIVE AND REQUIRING COMPLIANCE FILING

(Issued March 19, 2015)

1. On December 11, 2014, the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), submitted a petition for approval of proposed revisions to the NERC Rules of Procedure that would implement NERC's Risk-Based Registration (RBR) initiative. According to NERC, the initiative is intended to ensure that entities are subject to an appropriate set of applicable Reliability Standards by using a consistent approach to risk assessment and registration. Major reforms to the registration process proposed by NERC include the elimination of the purchasing-selling entity, interchange authority, and load-serving entity functional registration categories; modifications to the thresholds for registering entities as distribution providers; and procedural improvements to the registration process. NERC states that the ERO compliance program and stakeholders will benefit from the proposed revisions as they appropriately focus resources on entities with the greater potential impact on reliability.

2. As discussed below, pursuant to section 215(f) of the Federal Power Act (FPA),[1] the Commission approves in part, and denies in part, NERC's RBR petition. The Commission finds reasonable NERC's overall goal of ensuring entities are registered and made subject to the Reliability Standards based on the risk they pose to reliability. Many of the proposed revisions clearly promote this goal and are adequately justified. However, as discussed below, the Commission finds that NERC has not adequately justified the proposed elimination of the load-serving entity function from the registry process. Accordingly, the Commission denies, without prejudice, this aspect of the

[1] 16 U.S.C. § 824o(f) (2012).

NERC proposal and directs NERC to submit a compliance filing within 60 days of the date of the issuance of this order to address the Commission's concerns regarding the proposed elimination of the load-serving entity function. In addition, while the Commission approves NERC's proposed revisions related to the registration of distribution providers, we direct 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, as discussed herein. The Commission also directs one further modification to NERC's proposed revisions to the Rules of Procedure, and directs NERC to submit a one-year compliance filing discussing the implementation of the RBR program.

I. Background

A. Regulatory Background

3. Section 215(f) of the FPA provides that the "Electric Reliability Organization shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose," and that the proposed rule or rule change "shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just, reasonable, and not unduly discriminatory or preferential, and is in the public interest and satisfies the requirements of [FPA section 215] (c)."[2] Section 39.10(a) of the Commission's regulations provides that the ERO must file for Commission approval any proposed ERO rule or rule change.[3]

4. On July 20, 2006, the Commission issued an order certifying NERC as the ERO under section 215 of the Federal Power Act (FPA).[4] In that order, the Commission, among other things, generally accepted a comprehensive set of documents defining the structure, governance, and operational procedures of the ERO, including the Rules of Procedure, which includes the NERC registration process.[5]

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[2] *Id.*

[3] 18 C.F.R. § 39.10(a) (2014).

[4] *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062 (2006) (*Certification Order*), *order on compliance*, 118 FERC ¶ 61,030, *order on compliance*, 118 FERC ¶ 61,190, *order on reh'g*, 119 FERC ¶ 61,046 (2007), *rev. denied sub nom. Alcoa, Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

[5] *See* NERC Rules of Procedure, Section 500 (Organization Registration and Certification), App. 5A (Organization Registration and Organization Certification Manual), and App. 5B (Statement of Compliance Registry Criteria).

B. NERC Registration Process

5. The starting point for monitoring and enforcing compliance with Commission-approved Reliability Standards is NERC's processes for identifying and registering owners, operators, and users of the Bulk-Power System that are responsible for performing reliability-related functions in accordance with the approved Reliability Standards.

6. NERC's Statement of Compliance Registry Criteria (Registry Criteria) articulates a three-step process for determining whether Bulk-Power System users, owners and operators must be registered in one or more functional categories for compliance with mandatory Reliability Standards. Section I provides that an entity that uses, owns or operates elements of the bulk electric system pursuant to NERC's definition is a candidate for registration. Section II of the Registry Criteria categorizes registration candidates under fifteen functional entity categories. Section III provides threshold criteria for excluding entities identified as candidates for registration under Sections I and II. NERC and the Regional Entities identify candidate entities, which are then registered and included on the NERC Compliance Registry.[6] Organizations listed in the NERC Compliance Registry are responsible for knowing the contents of, and complying with, Reliability Standards applicable to their reliability functions.

II. NERC Petition: Risk-Based Registration Initiative

7. On December 11, 2014, NERC submitted a petition requesting the Commission's approval of its proposed revisions to the NERC Rules of Procedure to implement the RBR initiative. According to NERC, this initiative will ensure that "the right entities are subject to the right set of applicable Reliability Standards by using a consistent approach to risk assessment and registration."[7] NERC explains that it is transforming its approaches to compliance and enforcement to be forward-looking with a focus on high reliability risk areas. NERC states that, with a shift toward risk-based approaches, NERC is introducing "quantitative measures of reliability performance and the proposed revisions are a result of NERC's commitment to taking a risk-based approach to reliability and to incorporating lessons-learned through continuously improving and

[6] *See* NERC Rules of Procedure, section 501, which describes the scope of the registration program and explains that the Compliance Registry "shall set forth the identity and functions performed for each organization responsible for meeting Requirements …. of Reliability Standards."

[7] NERC Petition at 2.

adapting operations."[8] NERC states that the revised definition of "bulk electric system" has served as a model for the RBR initiative and is the basis for several proposed revisions. NERC explains that the proposed revisions are also consistent with the underlying goal of the definition of "bulk electric system," which is to provide transparency and consistency in the identification of elements and facilities that make up the bulk electric system.[9]

8. Specifically, NERC proposes the following reforms:

> 1. Modifications to the Registry Criteria, including (a) the removal of purchasing-selling entities, interchange authorities, and load-serving entities as functional registration categories, (b) modifications to the threshold for registering entities as distribution providers, and (c) alignment of five functional registration categories to the definition of bulk electric system;
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> 2. The risk-based application of sub-set lists of Reliability Standards (including underfrequency load shedding-only distribution providers);
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> 3. Procedural revisions to the registration process; and
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> 4. Revisions to the Rules of Procedure to implement the risk-based registration initiative.

Regarding the proposed elimination of the purchasing-selling entity, interchange authority, and load-serving entity categories, NERC explains that the activities of these types of entities are commercial in nature, and their removal from the Compliance Registry poses little, if any, risk to the reliability of the Bulk-Power System. In particular, NERC notes that these three categories of entities do not own or operate bulk electric system equipment.[10] Further, NERC explains that "[h]istorical enforcement data

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[8] *Id*. at 3.

[9] *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, Order No. 773, 141 FERC ¶ 61,236 (2012); *order on reh'g*, Order No. 773-A, 143 FERC ¶ 61,053 (2013), *order on reh'g and clarification*, 144 FERC ¶ 61,174 (2013), *appeal pending sub nom. People of the State of New York and the Pub. Serv. Comm'n of New York v. FERC*, No. 13-2316 (2d. Cir. filed June 12, 2013).

[10] *See* NERC Petition at 20-32 (providing rationale for the proposed elimination of the purchasing-selling entity, interchange authority, and load-serving entity categories).

(continued ...)

has confirmed that these entities have not caused or exacerbated events or system disturbances that jeopardized reliability of the grid, and nearly all violations posed a minimal actual risk to reliability and the vast majority posed a minimal potential risk."[11]

9. NERC also proposes revisions to five other functional registration categories - transmission owners, transmission operators, generator owners, generator operators, and distribution providers - to align with the definition of bulk electric system. In addition, NERC proposes to revise the Registry Criteria for distribution providers by increasing the MW registry threshold from 25 MW to 75 MW. According to NERC, the 75 MW threshold aligns with the 75 MVA threshold for certain generating resources as set forth in the definition of bulk electric system.

10. Further, NERC proposes changes to the Rules of Procedure that explicitly allow NERC to establish a sub-set list of Reliability Standards applicable to particular entities, as warranted. NERC explains that this provision is then applied to certain distribution providers that do not meet any other distribution provider registration criteria, but own, control, or operate underfrequency load shedding protection systems designed for the protection of the bulk electric system.[12]

11. NERC sums up the impacts of the proposed registration changes as follows:

> Fundamentally, the proposed revisions … will reduce the regulatory burden of approximately 700 organizations, and allow such organizations to focus on issues that impact reliability. Of the 1,603 unique organizations listed on the NERC Compliance Registry, registered for 4,311 reliability functions, only about 700 organizations are expected to be impacted by the proposed deactivations and deregistration. Approximately 200 organizations would be deregistered from the NERC Compliance Registry and approximately 500 organizations would be impacted by the proposed deactivations. For example, as a result of the proposed changes, approximately 14 organizations now on the NERC Compliance Registry as Load-Serving Entities are expected to be deregistered, 197 organizations now on the NERC Compliance Registry as Purchasing-Selling Entities are expected to

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In addition, NERC's Petition includes a Technical Report: Risk-Based Registration: Technical and Risk Considerations, that provides additional technical justification for the proposed registry modifications. *See id*. Exh. C.

[11] NERC Petition at 4.

[12] *Id*. at 5, 40.

> be deregistered and no organizations now on the NERC Compliance Registry as Interchange Authorities would be deregistered.[13]

NERC also proposes the following procedural changes to its registration process: (1) the establishment of a materiality test for registration, which delineates the procedures and criteria for evaluating whether an entity has a material impact on reliability; and (2) a process to review registration, deactivation and deregistration decisions, as well as requests for sub-set lists of Reliability Standards. According to NERC, collectively, these proposed procedural improvements provide additional clarity and transparency to the registration requirements, roles, and responsibilities. To implement the proposed risk-based registration initiative, NERC proposes revisions to the following sections of the NERC Rules of Procedure - Section 302: Essential Attributes for Technically Excellent Reliability Standards; Section 501: Scope of the Organization Registration and Organization Certification Programs; Appendix 2: Definitions Used in the Rules of Procedure; Appendix 3D: Registered Ballot Body Criteria; Appendix 5A: Organization Registration and Certification Manual; and Appendix 5B: Statement of Compliance Registry Criteria. Finally, NERC states that it will submit an informational filing within one year of Commission action "to ensure that there are no unintended consequences to reliability" as a result of the RBR proposal.

III. Notice of Filing and Responsive Pleadings

12. Notice of NERC's filing was published in the *Federal Register*, 79 Fed. Reg. 77,467 (2014) with interventions and protests due on or before January 12, 2015. Edison Electric Institute, Snohomish County Public Utility District No. 1, and Wisconsin Electric Power Company filed timely motions to intervene. The California Municipal Utilities Association (CMUA), Canadian Electricity Association (CEA), Electric Power Supply Association (EPSA), and Golden Spread Electric Cooperative, Inc. (Golden Spread) filed motions to intervene and comments. American Public Power Association, National Rural Electric Cooperative Association and Transmission Access Policy Study Group (collectively, Trade Associations) jointly filed a motion to intervene and comments. The PSEG Companies[14] and the Electricity Consumers Resource Council (ELCON) filed

[13] *Id*. at 6 (footnote omitted). NERC explains that the term "deactivation" refers to removal of an entity from the NERC Compliance Registry for a specific functional category. If all functional categories have been deactivated for a given entity, such entity would be "deregistered" and removed from the NERC Compliance Registry. *Id*. at 18.

[14] The PSEG Companies are: Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC.

comments. The Cogeneration Association of California and the Energy Producers and Users Coalition (QF Parties) also filed a motion to intervene and protest.

13. Commenters, including Trade Associations, ELCON, EPSA, Golden Spread, CEA and CMUA, support NERC's proposal. Commenters see NERC's filing as an important step toward a more risk-informed approach that promotes focus on high reliability risk areas and fair treatment of entities. Commenters also contend that the proposed removal and modification of functions are technically justified. Trade Associations support the proposal as it aligns registration with the bulk electric system definition, achieves the right registration outcomes, and avoids unnecessary confusion. Golden Spread supports the Trade Associations' comments. ELCON states that the RBR initiative will yield numerous benefits including the ability of NERC to exercise discretion to exclude entities that are not material to reliability. While PSEG Companies and QF Parties comment that they support the goals of the RBR proposal, they also raise implementation concerns and request certain additional revisions to NERC's proposal.

14. On January 26, 2015, NERC filed a motion for leave to answer and an answer to the comments of PSEG Companies. Trade Associations filed a joint response to PSEG Companies and QF Parties.

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[15] the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. The Commission may waive this rule when the answer provides information that assists the Commission in its decision-making process. We accept NERC's and Trade Associations' comments because they assisted in our decision-making process.

B. Commission Determination

16. Pursuant to section 215(f) of the FPA, we approve in part, and deny in part, NERC's RBR petition. In general, we believe that NERC's alignment of the registration process with the risks to the interconnected transmission network posed by different types

[15] 18 C.F.R. § 385.214 (2014).

of entities is an improvement. We agree with NERC's overall goal of ensuring that entities are registered and made subject to the Reliability Standards based on risk entities pose to the bulk electric system. We find 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. These benefits translate into time and resources saved, which help ensure that the costs of reliability are proportionate to the benefits. We also agree 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.

17. Therefore, we approve the following changes to the Rules of Procedure to implement RBR, as described in NERC's filing, as just, reasonable, not unduly discriminatory and in the public interest and that also satisfy the requirements of FPA section 215(c): (1) modifications to the functional entity categories, including (a) the removal of purchasing-selling entities and interchange authorities as functional registration categories, and (b) modifications to the threshold for registering entities as distribution providers; (2) the risk-based application of sub-set lists of Reliability Standards to underfrequency load shedding-only distribution providers); (3) the procedural revisions to the registration process; and (4) the proposed revisions to the Rules of Procedure, and directing one further Rule modification, discussed below.

18. However, as discussed below, the Commission finds that NERC has not provided adequate justification for eliminating the load-serving entity function. Accordingly, we deny, without prejudice, this aspect of NERCs proposal, and we direct NERC to submit a compliance filing within 60 days that addresses our concerns with the load-serving entity proposal, discussed below. In addition, while we approve the risk-based application of sub-set lists of Reliability Standards (including underfrequency load shedding-only distribution providers), we direct NERC to include Reliability Standard PRC-005 as applicable to those entities.

19. Further, consistent with NERC's commitment, we direct NERC to submit a compliance filing twelve months from the date of issuance of this order that discusses RBR implementation.[16] In addition to addressing potential "unintended consequences to reliability as a result of the instant proposal," NERC should also address: (1) the benefits achieved by RBR implementation; (2) any specific costs associated with ERO and Regional Entity implementation of the program; (3) information and statistics regarding review panel decisions, including but not limited to the types of functional entities seeking application of sub-set lists and Reliability Standards most frequently removed

[16] *See* NERC Petition at 8, 56.

from compliance by sub-set lists; and (4) any other relevant information that would assist the Commission in understanding RBR implementation.

20. Below the Commission discusses: (1) elimination of purchasing-selling entity and interchange authority functional categories; (2) revision of the distribution provider threshold for registration; (3) elimination of the load serving entity function; (4) underfrequency load shedding-only distribution providers; and (5) procedural changes to the registration process.

1. Elimination of Purchasing-Selling Entity and Interchange Authority Functional Categories

NERC Proposal

21. NERC currently registers purchasing-selling entities, defined by NERC as "[t]he entity that purchases, or sells, and takes title to, energy, capacity, and Interconnected Operations Services. Purchasing-selling entities may be affiliated or unaffiliated merchants and may or may not own generating Facilities."[17] NERC proposes to eliminate the purchasing-selling entity function from the Compliance Registry. According to NERC's analysis, eliminating the purchasing-selling entity function would have little to no effect on reliability.[18] NERC regards the purchasing-selling entity function as market-driven rather than a reliability-driven function.

22. NERC defines an interchange authority as "[t]he responsible entity that authorizes implementation of valid and balanced Interchange Schedules between Balancing Authority Areas, and ensures communication of Interchange information for reliability assessment purposes."[19] NERC proposes to remove interchange authorities as functional entities, explaining that the activities of the interchange authority are commercial in nature and, thus, the removal will have little if any impact on reliability of the bulk electric system.[20] Further, NERC states that no entities will be deregistered under this

[17] NERC Registry Criteria at 6.

[18] *See* NERC Petition at 20-24 (discussing impact on reliability from eliminating purchasing-selling entity category).

[19] NERC Registry Criteria at 6.

[20] *See* NERC Petition at 25-28 (discussing impact on reliability from eliminating interchange authority category).

proposal given that all currently registered interchange authorities are also registered as either a balancing authority or reliability coordinator.

Comments

23. Commenters support removal of the purchasing-selling entity function and the interchange authority function. Trade Associations, EPSA, CMUA and CEA support removal of the purchasing-selling entity function because its commercial contracting function does not impact reliability requirements. PSEG Companies comments that, while it "may ultimately agree" to deactivating these functions, PSEG Companies believes that "deactivat[ing] functions and then changing impacted Reliability Standards is the wrong sequence."[21] PSEG Companies maintains that revisions should first be vetted with stakeholders through the reliability standards development process and that, once a function is removed from applicability to all standards, the function can be removed from the Compliance Registry. PSEG Companies states that this approach would allow better coordination with the North American Energy Standards Board (NAESB) on commercial matters, noting that NAESB commercial standards "often tie their applicability directly to the functions utilized by the NERC Reliability Standards."[22]

Answers

24. In response to PSEG Companies, NERC explains that "only those entities that are registered for a given function and included in the NERC Compliance Registry are responsible for, and may be held accountable to, the requirements of a Reliability Standard. Therefore, as a result of the deactivation of … registration functions, any Reliability Standard that identifies the deleted functions as applicable entities will be moot as to those entities."[23] NERC further explains that, after Commission approval of the deactivation, any necessary changes to the NERC Glossary of Terms Used in Reliability Standards (NERC Glossary) and corresponding Reliability Standards will be considered through the standard development process. NERC notes that it has initiated a project to align NERC Glossary terms with definitions used in the Rules of Procedure. Trade Associations add that PSEG Companies' proposed approach would create "needless hurdles" to implement the registration reforms, which NERC appropriately addresses through changes to NERC Rules including the Registry Criteria.

[21] PSEG Companies Comment at 4. PSEG Companies indicates that this concern applies to the elimination of the load-serving entity function as well.

[22] *Id*. at 6.

[23] NERC Answer at 6.

Commission Determination

25. We approve NERC's proposed removal of the purchasing-selling entity function. We agree with NERC that the purchasing-selling entity function is primarily market-driven and has minimal reliability impacts. Thus, we are persuaded by NERC's analysis of reliability impact that eliminating the purchasing-selling entity function would have "little to no effect" on the reliability of the Bulk-Power System.[24]

26. For similar reasons, we approve NERC's proposed removal of the interchange authority as a functional entity. As explained by NERC, the interchange authority performs a commercial function, essentially quality control activity in verifying and communicating interchange schedules.[25] We are further persuaded by NERC's explanation that no entities now registered as interchange authorities will be deregistered given that all currently registered interchange authorities are also registered as either a balancing authority or reliability coordinator, and will remain subject to the applicable Reliability Standards.

27. We disagree with the PSEG Companies' argument that a modification to the registration functions must first go through the standard development process to be considered for deactivation. As explained by NERC and Trade Associations, the registration process is developed and maintained pursuant to the NERC Rules of Procedure. NERC's petition pertains to proposed revisions to the NERC Rules, such as the Registry Criteria. NERC has provided opportunity for stakeholder input when drafting the proposed RBR revisions, consistent with procedures for NERC Rule changes.[26] We understand that the RBR changes will *de facto* result in Reliability Standards that currently apply to purchasing-selling entities and interchange authorities applying to a "null set" of these entities. However, we find no procedural error or harm to bulk electric system reliability by NERC's chosen approach, provided that NERC adequately justifies the proposed elimination of the functional categories in the immediate proceeding. We do agree that NERC must coordinate with NAESB to ensure a proper "hand off" of commercial-related provisions, and address this in more detail later in the order.

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[24] *Id*. at 20.

[25] *Id*. at 25-26.

[26] *See* NERC Petition at 7.

2. Revision of Distribution Provider Threshold

NERC Proposal

28. Currently, the Registry Criteria threshold for registering distribution providers is "distribution provider system serving > 25 MW of peak [l]oad that is directly connected to the Bulk-Power System." NERC proposes to raise the peak load threshold for distribution providers from 25 MW to 75 MW and to reflect that an entity's system also must be "directly connected to the BES [bulk electric system]." According to NERC, distribution providers serving below 75 MW will remain eligible for registration if they own or operate protection systems, such as under voltage load shedding, special protection systems, remedial action schemes, or other transmission protection systems. NERC states that it conducted a survey of planning coordinators to assess the impact of modifying the criteria for distribution providers and reliability coordinators conducted an analysis to determine the consequences of the proposed changes.[27] According to NERC, all survey respondents stated that no gaps in reliability would be created by raising the distribution provider threshold to 75 MW. Further, the thresholds provide for registration of an entity as a distribution provider – regardless of peak load - if the entity owns, controls or operates certain facilities that are part of a protection system program (such as under voltage load shedding and remedial action schemes) designed for protection of the bulk electric system.[28]

Comments

29. Commenters, including Trade Associations, CMUA and ELCON support NERC's proposal to increase the threshold for entities that must register as distribution providers to 75 MW of peak load served. Trade Associations assert that the proposed revisions to the registration thresholds are reasonable and will not result in any material risk to reliability. Trade Associations add that except in very unusual cases, it is not necessary, from a risk-based perspective, to impose requirements on entities with peak loads below 75 MW. Further, Trade Associations agree with the analysis provided in NERC's Technical Report, which shows that distribution providers with peak loads under 75 MW serve a very small proportion of U.S. load.[29] Trade Associations provide their own

[27] *See* NERC Petition at 36, Exh. C (Technical Report) at 13-19 and 22.

[28] *See* NERC Petition, Exh. A (proposed NERC Rules of Procedure), Registry Criteria, section III.a.2. Likewise, distribution providers responsible for providing services related to Nuclear Plant Interface Requirements remain subject to registration.

[29] Trade Associations Comments at 5-6, and 12.

analysis, which they explain indicates that "increasing the threshold ... could remove more than 100 entities from full [distribution provider] registration (amounting to some 25% of the registered [distribution providers], while removing only 0.7% of the load served by NERC-registered [distribution providers]."[30] CMUA also supports the NERC proposal, asserting that the proposed 75 MW peak load threshold for distribution providers is conservative and the system could tolerate a higher threshold without adverse impacts to reliability.

Commission Determination

30. We approve the proposed revisions to the distribution provider registration threshold. We are persuaded by NERC that increasing the Registry Criteria threshold for distribution providers from 25 to 75 MW peak load will not pose a significant risk to the reliability of the Bulk-Power System.[31] We find that NERC's selection of 75 MW peak load threshold for distribution providers as a first step in determining materiality, aligning with the 75 MVA threshold for certain generating resources in the bulk electric system definition, is reasonable. In addition, we are persuaded by the finding in NERC's Technical Report, as well as Trade Association comments, that including on the Compliance Registry distribution providers with peak loads under 75 MW that serve a very small proportion of load and have no other specific materiality to bulk electric system reliability may not be needed to accomplish the reliability objectives of the applicable Reliability Standards. Moreover, as discussed above, a distribution provider is subject to registration regardless of peak load if the entity owns, controls or operates certain facilities that are part of a protection system program (such as under voltage load shedding and remedial action schemes) designed for protection of the bulk electric system.

31. While there are potentially some situations in which it would be appropriate for bulk electric system reliability to register a distribution provider with a peak load in the 25 to 75 MW range, we expect that those cases will be addressed through NERC's "material impact" process.[32] NERC also has appropriate safeguards in place, notably a

[30] *Id*. at 5. Attachment A graphically illustrates the cumulative impact, as well as percentage of impacted summer peak load by NERC region.

[31] NERC recognizes, and we agree, that certain entities with a 25 to 75 peak load range may have a specific materiality to reliability. NERC's petition includes revisions to the Registry Criteria that set forth a "materiality test" to assess individual impacts. *See* NERC Petition at 45, and discussion *infra*.

[32] NERC Petition at 45-46; and discussed in this order, *infra*.

quality control step in the registration process to notify relevant entities to ensure deactivation of a distribution provider will not cause reliability gaps or issues.[33] For these reasons, we approve NERC's revisions to the Registry Criteria pertaining to registration thresholds for distribution providers.

3. Elimination of the Load-Serving Entity Function

NERC Proposal

32. The currently-effective Registry Criteria defines a load-serving entity as an entity that "[s]ecures energy and Transmission Service (and related Interconnected Operations Services) to serve the electrical demand and energy requirements of its end-use customers."[34] Load-serving entities, among other things, submit load profiles and characteristics, plans, and forecasts as needed to the balancing authorities, purchasing-selling entities, planning coordinator, resource planners, and transmission planners and provide generation commitments and dispatch schedules to the balancing authority.[35]

33. In its petition, NERC proposes to eliminate the load-serving entity function from the NERC compliance registry. NERC states that load-serving entities' role of securing energy and transmission service is primarily a commercial contracting function. NERC explains that the load-serving entities' responsibilities that impact reliability are duplicative of those performed by other reliability functions. For example, NERC observes that certain Reliability Standards, such as FAC-002-1, PRC-010-1 and PRC-022-1, apply to both load-serving entities and distribution providers. Likewise, distribution providers and transmission owners, which are subject to the current load-shedding Reliability Standards, typically carry out load shedding because load-serving entities do not typically own or operate any equipment.[36] NERC states that load-serving entities also are subject to requirements that are duplicative of the functions performed by

[33] *See* NERC Petition at 19.

[34] NERC Rules of Procedure, App. 5B (Registry Criteria) at 6.

[35] NERC Functional Model (Version 5) at 55. *See also* Reliability Standards MOD-016-1.1, MOD-017-0.1, MOD-018-0, MOD-021-1, and MOD-031-1 (Demand and Energy Data) which will replace MOD-16 through 19 and 21 in 2016. *See Demand and Energy Data Reliability Standard*, Order No. 804, 80 Fed. Reg. 9596 (Feb. 24, 2015), 150 FERC ¶ 61,109 (2015).

[36] NERC Petition at 31.

resource planners and balancing authorities.[37] Moreover, according to NERC, while the load-serving entity's role is commercial, the Reliability Standards that apply to load-serving entities "relate almost exclusively to equipment and physical operations," indicating a "disconnect" between the requirements currently assigned to load-serving entities and their role of contracting to secure energy and transmission services.[38]

34. NERC also provides an analysis of the Reliability Standards that currently apply to load-serving entities. In particular, NERC identifies 31 Reliability Standards that currently apply to load-serving entities. According to NERC, several reliability standards under development would remove the load-serving entity as an applicable entity.[39] NERC anticipates that upon completion of these projects, only nine Reliability Standards would remain applicable to load-serving entities.[40] With regard to the nine remaining Reliability Standards, NERC states that other entities carry out activities assigned to load-serving entities.[41]

35. NERC explains that elimination of the load-serving entity function would result in "deactivating" 452 of the 466 currently-registered load-serving entities, i.e., these entities would remain on the Compliance Registry as responsible for other functions.[42] NERC provides an analysis, including a requirement-by-requirement mapping document, to demonstrate that load-serving entities that remain registered under other functional categories will continue to perform load-serving entity-related activities. Fourteen remaining load-serving entities would be "deregistered" because they are not registered for any other function. For these remaining entities, NERC indicates that load-serving entity functions will continue to be performed pursuant to tariffs, interconnection agreements, or similar provisions.[43]

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[37] *Id*. at 28.

[38] *Id*. at 31.

[39] *See* NERC Petition at 28-31.

[40] BAL-005-0.2b; FAC-002-1; INT-011-1; MOD-004-1; MOD-020-0; MOD-031-1; MOD-032-1, NUC-001-2.1; and TOP-002-2.1b.

[41] NERC Petition at 31 and Exh. C (Technical Report), App. A (LSE Mapping Document).

[42] *See* NERC Petition at 6, Exh. C (Technical Report) at App. C (Proposed Deactivations).

[43] NERC Petition at 31.

Comments

36. Trade Associations, ELCON and Golden Spread support NERC's removal of the load-serving entity function. Trade Associations add that NERC's Technical Report demonstrates, with respect to each standard and requirement applicable to load-serving entities, that no material risk to bulk electric system reliability results from the proposed elimination of load-serving entity as a function requiring registration and the deactivation of load-serving entities. Trade Associations highlight and provide additional context with respect to certain reliability standards affected by NERC's proposed elimination of the load-serving entity function.

Commission Determination

37. While NERC provides a considerable amount of information and analysis regarding the proposed elimination of the load-serving entity function, we nonetheless find that NERC's analysis is incomplete. As explained in more detail below, eliminating the load-serving entity function does not remove the need to provide information required for reliable operation of the bulk electric system.[44] Upon elimination of the load-serving entity as a registered function, it is unclear whether and how some entities will continue to provide information or who will assume their obligations. It appears that some of the load-serving entities will be required to continue to provide the information through their responsibilities as other registered functions. However, NERC has not adequately explained which entities will continue to provide this information. Because of the gaps in NERC's analysis, discussed below, we are unable to satisfactorily conclude on the current record in this proceeding that the elimination of the load-serving entity function will have no material impact on the reliability of the Bulk-Power System. Accordingly, we deny, without prejudice the proposed elimination of the load-serving entity function, and we direct NERC to submit a compliance filing within 60 days of the date of issuance of this order to address our concerns, discussed below.

38. We are concerned that NERC has not adequately explained how certain load-serving entity reliability tasks will be performed going forward. According to NERC, of the 466 currently registered load-serving entities, 452 entities would be deactivated as load-serving entities but remain registered as distribution providers or other functional entities. Fourteen remaining load-serving entities would be deregistered as they are not registered for any other function. According to NERC, six of the 14 entities are in the TRE region, and "TRE has determined that the removal of these six entities…would not

[44] *See supra* P 32.

pose a reliability gap since these six entities have market participation agreements that can be enforced as market rules." For the remaining eight entities, NERC provides a general assessment that load-serving entity functions will continue to be performed by the de-registered entities, or others, pursuant to tariffs, interconnection agreements, or similar provisions.[45] We find this general explanation to be inadequate. NERC does not provide any specific information regarding the alternative sources of authority, such as responsibilities of entities that will remain on the Compliance Registry to cover the load-serving entity reliability tasks, tariff provisions or other agreements, which NERC represents will ensure the continuation of load-serving entity activities.

39. Moreover, we are concerned whether the gap is more extensive. In particular, the record in the proceeding indicates that the revision of the distribution provider threshold from 25 MW to 75 MW peak load will likely result in the deactivation of more than 100 entities that are currently registered as distribution providers.[46] NERC's technical analysis in support of the proposed elimination of the load-serving entity relies, in part, on distribution providers taking responsibility for compliance with many Reliability Standards currently assigned to load-serving entities.[47] The deactivation of more than 100 distribution providers will likely increase the number of deregistered load-serving entities. NERC's analysis, however, does not address how the deactivation of distribution providers impacts its estimate regarding the number of load-serving entities that would be deregistered and how continuity of responsibility under Reliability Standards will be ensured. As discussed above, we find inadequate NERC's general explanation that deregistered entities will continue to perform load-serving entity-related activities based on tariffs and agreements.

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[45] NERC Petition at 31.

[46] Trade Associations indicate that the proposed 75 MW peak load threshold "could significantly reduce the compliance burden for more than 100 small registered entities (some 25% of the registered [distribution providers])." Trade Associations Comments at 12. *See also* Trade Associations Comments, Att. A (estimating 113 distribution providers have a peak load between 25 and 75 MW, representing 0.7 percent of the total load served).

[47] *See* NERC Petition at 30-31 ("NERC has acknowledged that Distribution Providers should be responsible for compliance with many of the Reliability Standards assigned to Load-Serving Entities"). *See also id*. at 29 ("CIP Version 5 Standards have removed the Load-Serving Entity as an applicable function and substituted the Distribution Provider function").

40. Our finding above that increasing the Registry Criteria threshold for distribution providers from 25 to 75 MW peak load (and that have no other identified, specific materiality to reliability) will not pose a significant risk to the reliability of the Bulk-Power System does not change our concerns here regarding load-serving entities. Although the record indicates that the affected distribution providers represent approximately 0.7 percent share of total load served, it is unknown whether there are higher concentrations within individual balancing authority areas. Further, NERC does not adequately address whether, going forward, all balancing authorities and planners will have the ability to reasonably estimate demand and energy forecast data for areas where the load-serving entity is deregistered. In areas of significant load-growth, the cumulative effect of deregistered entities not having to provide accurate load data projections as required by certain MOD Reliability Standards could have an increasing effect on reliability over time as load increases, e.g., as a result of demand and energy forecast data omitted or not accurately depicted in power system models and assessments.[48]

41. Accordingly, we deny NERC's proposal to remove the load-serving entity function and direct NERC to submit a compliance filing that addresses the gap in its analysis of the proposed elimination of the load-serving entity function, as discussed above. In particular, NERC should provide an adjusted estimate on the number of load-serving entities that would be deregistered. NERC should provide additional information regarding the peak load of such entities on an individual and balancing authority basis.[49] Further, for the load-serving entities for which NERC anticipates deregistration, NERC must provide specific information regarding the alternative sources of authority which will ensure the continuation of load-serving entity reliability activities by either the

[48] *See, e.g.*, Reliability Standards MOD-016-1.1 (Actual and Forecast Demands, Net Energy for Load, Controllable DSM); MOD-017-0.1 (Aggregated Actual and Forecast Demands and Net Energy for Load); MOD-018-0 (Reports of Actual and Forecast Demand Data); MOD-019-0.1 (Reporting of Interruptible Demands and Direct Control Load Management); MOD-021-1 (Accounting Methodology for Effects of DSM in Forecasts). Further, Commission-approved MOD-031-1 (Demand and Energy Data) is effective as of July 1, 2016, at which time MOD-016 through 019 and 021 will retire.

[49] We realize that NERC's analysis is based on anticipated conditions and should not be viewed as pre-judging the application of the proposed compliance registry revisions to a specific entity. Further, NERC need not identify (and may mask) entity names in providing details regarding peak load and other relevant data, provided that the data is presented in a useful, understandable manner. In any case, NERC should clearly group data according to balancing authority areas.

deregistered entity or another registered entity. For example, NERC should identify specific tariff provisions and the load-serving entity reliability tasks to which they relate. Likewise, NERC should identify relevant provisions of agreements, market rules or other documents and the load-serving entity reliability tasks to which they relate. If this analysis indicates that gaps remain, NERC should propose alternative means to address identified gaps, such as modifications to specific Reliability Standards or perhaps developing a compliance registry subset similar to the UFLS-only distribution provider category proposed by NERC in its petition.

42. The Commission has two further concerns regarding the proposed elimination of the load-serving entity function. First, NERC should address in the compliance filing its coordination with NAESB to ensure the timely transfer of commercial-related practices affected by the proposed elimination of the load-serving entity function. For example, NERC points out that the RBR proposal would effectively retire Reliability Standard INT-011-1, which applies only to load-serving entities, requiring a load-serving entity "that uses Point to Point Transmission Service for intra-Balancing Authority Area transfers shall submit a Request for Interchange …." While we are persuaded by NERC that this provision is commercial in nature and has minimal reliability implications, we are not persuaded by NERC that such transactions are currently fully covered by NAESB standards that pertain to "e-tagging."[50] Rather, NAESB is currently working to expand e-tagging requirements to include intra-balancing authority transfers.[51] While we provide this one example, NERC should fully address in the compliance filing its coordination with NAESB to address the transition of commercial-related obligations necessitated by the proposed retirement of the load-serving entity function.

43. Second, NERC explains that the impact of removing the load-serving entity function is lessened because NERC has removed – or is in the process of removing – the load-serving entity function from a number of Reliability Standards.[52] NERC anticipates that current standard development projects would propose to remove the load-serving entity as an applicable entity from Reliability Standards EOP-011-1, PRC-010-1, PRC-022-2, as well as multiple TOP and IRO standards. When and if NERC submits one or more petitions for revised Reliability Standards that propose to remove the load-serving entity as an applicable entity, NERC must provide an adequate explanation of how the previous load-serving entities obligations will continue. In particular, an explanation that

[50] NERC Petition at 32. *See also id*. Ex. C (Technical Report) at 10.

[51] *See, e.g.*, Trade Associations Comments, App. B at 3, 4.

[52] *See* NERC Petition at 30.

the removal of the load-serving entity function is consistent with the RBR initiative would be inadequate, if not circular, in light of NERC's rationale in the immediate docket that the impact from eliminating the load-serving entity function is lessened by the removal of the function from Reliability Standards.[53] NERC is responsible to explain in the context of a particular modified Reliability Standard whether removal of the load-serving entity would result in a reliability gap and, if so, how the gap is addressed.

4. Underfrequency Load Shedding-only Distribution Providers

NERC Proposal

44. NERC states that it analyzed the effects from the potential loss of the underfrequency load shedding capability from distribution providers that are less than 75 MW peak load and have no other specific materiality to reliability, but participate in a required underfrequency load shedding program. Such entities are proposed to be subject to registration as a "underfrequency load shedding-only distribution provider."[54] NERC states that a underfrequency load shedding-only distribution provider is a distribution provider that is the responsible entity that owns, controls, or operates underfrequency load shedding protection systems needed to implement a required underfrequency load shedding program designed for the protection of the bulk electric system, but that does not meet any of the other criteria for registration as a distribution provider.[55]

45. NERC states that it surveyed 74 planning coordinators in the United States, representing approximately 800,000 MW of peak load, and received responses from 64 planning coordinators, representing 680,000 MW or 85 percent of U.S. peak load. NERC submits that this sample size is representative of the total population and that planning coordinators representing 472,000 MW of load have underfrequency load shedding programs in which distribution providers under 75 MW participate. According to NERC, the distribution providers located in these planning coordinator areas represent

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[53] *Id*. The TOP/IRO standard drafting team (Project 2014-03) "removed the Load-Serving Entity as an applicable entity following the recent Board of Trustees (Board) action on removing Load-Serving Entity as a functional entity." *See* Consideration of Comments on Project 2014-03 Revisions to TOP and IRO Standards, at 1. *See*: http://www.nerc.com/pa/Stand/Prjct201403RvsnstoTOPandIROStndrds/2014_03_third_posting_comment_report_20141122_response_qr.pdf.

[54] NERC Petition at 40, Exhibit C at 2.

[55] *Id*. at 41 n. 56.

approximately 3,500 MW of load nationwide. NERC explains that assessing the risk in this manner is appropriate because underfrequency load shedding operates on an area basis, and so failure of a few relays does not pose a significant risk. Based on the respondents' data submittals, NERC believes that the reported information regarding small distribution providers' contributions to underfrequency load shedding programs is representative of the NERC-wide distribution, and major concentrations do not exist in the unreported data that significantly exceed those reported on a regional basis or planning coordinator basis.

46. NERC proposes to limit the application of Reliability Standards to underfrequency load shedding-only distribution providers solely with Reliability Standard PRC-006.[56] NERC explains that it based its proposal on its finding that underfrequency load shedding programs in the United States can withstand up to 25 percent of the relays of the small entities failing to operate due to maintenance not being performed in accordance with Reliability Standard PRC-005, without significant negative effects. NERC explains that it excluded Reliability Standard PRC-005 which pertains to protection system maintenance and testing, because, due to technological advances, the majority of modern relays being deployed to the industry today are self-maintaining and self-checking.[57] According to NERC, the possible reliability benefits of continuing to enforce compliance with Reliability Standard PRC-005's 12-year testing requirements by small underfrequency load shedding-only distribution providers is diminished by the risk associated with performing inspection and maintenance.

47. NERC states that it can "apply sub-sets of Reliability Standards through an exercise of its discretion as part of the registration process, to determine whether a particular Reliability Standard or requirement shall apply to an entity."[58] NERC also developed a process for applying for a sub-set of Reliability Standards to underfrequency load shedding-only distribution providers, whereby an entity would be required to apply to the appropriate Regional Entity, and the Regional Entity would issue a decision as to whether underfrequency load shedding-only distribution provider treatment is appropriate. NERC explains that it conducts subsequent reviews and that there is an appeals process to a NERC-led review panel and to the NERC Board Compliance Committee.

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[56] *Id*. at 40.

[57] *Id*. at 41 and Exhibit C Technical Report at 18, 20-21.

[58] NERC Petition at 38-39 (citing *Generator Requirements at the Transmission Interface*, Order No. 785, 144 FERC ¶ 61,221 at PP 52-53 (2013)).

Comments

48. The PSEG Companies do not object to creating a limited set of Reliability Standards applicable to certain distribution providers. However, the PSEG Companies recommend that references to "underfrequency load shedding-only distribution providers" should be removed because this new term is not defined in the NERC Glossary; and the Registry Criteria should not include a list of Reliability Standards applicable to underfrequency load shedding-only distribution providers. Instead, PSEG Companies maintain that a more appropriate vehicle through which to address this issue is to require distribution providers registered solely because they own, control, or operate underfrequency load shedding protection system needed to implement a required underfrequency load shedding program to apply to the panel to limit themselves to a sub-set of Reliability Standards.

Answers

49. NERC explains that there is no requirement for terms used in the Registry Criteria to mirror those in the NERC Glossary. NERC states that any changes that need to be made to the NERC Glossary as a result of the Commission's approval of the NERC petition will go through the standard development process. In addition, NERC explains that entities that qualify as underfrequency load shedding-only distribution providers are a sub-category of a distribution provider and until a Reliability Standard is submitted limiting its applicability to certain functional entities or characteristics, the Commission recognized the registration process is "the preferred method of determining the applicability of Reliability Standards on an entity-by-entity basis."[59]

50. NERC commits to continue to evaluate sub-set lists of Reliability Standards for appropriate entities as it has done for underfrequency load shedding-only distribution providers. However, NERC does not intend to retain all sub-set lists in the NERC Rules of Procedure, rather they will be denoted in the NERC Compliance Registry as to applicable entities. While the Registry Criteria include an initial list for underfrequency load shedding-only distribution providers, NERC explains that any changes to that initial list will be reflected in the entity's NERC Compliance Registry listing. This recognizes the ability for future applicable Reliability Standards to be addressed through the

[59] NERC Answer at 8 n. 28 (citing *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. and Regs. ¶ 31,242 at P 98, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007); Order No. 773, 141 FERC ¶ 61,236, at P 52 (2012); Order No. 785, 144 FERC ¶ 61,221 (2013)).

Reliability Standard Development Process. Further, regarding the PSEG Companies' assertion that every distribution provider must first proceed through the NERC-led panel to be granted the already determined initial underfrequency load shedding-only distribution provider sub-set list, NERC contends that this introduces a significant unjustified administrative burden.

51. Trade Associations answer that the PSEG Companies improperly seek to transform the NERC Glossary into a "straitjacket barring NERC from efficient registration practices."[60] Trade Associations argue that the PSEG Companies provides no basis for imposing an underfrequency load shedding-only distribution provider implementation process, and assert that such a process is not a good use of resources with regard to very small distribution providers.

Commission Determination

52. We approve NERC's proposal regarding underfrequency load shedding-only distribution providers. We find that limiting the scope of the standards applicable to particular registered entities is consistent with the Commission's recognition for NERC to determine the scope of the standards applicable to particular registered entities on a case-by-case basis.[61]

53. NERC states that, pursuant to its proposal, underfrequency load shedding-only distribution providers will be responsible to comply with a subset of Reliability Standards that include a single standard, PRC-006 (and regional versions of PRC-006). The Commission believes that an additional Reliability Standard, PRC-005, pertaining to protection system maintenance, should continue to apply to underfrequency load shedding-only distribution providers. We are not persuaded by NERC's rationale, set forth above, for determining that PRC-005 should no longer apply.

54. Currently, Reliability Standard PRC-005 applies to a "Distribution Provider that owns a transmission Protection System." Regarding NERC's explanation that it excluded Reliability Standard PRC-005 because the most modern relays are self-maintaining and self-checking, NERC's risk assessment does not provide boundary thresholds for the appropriate amount of risk to the system due to failure as opposed to the once in 12 year "risk associated with the mere act of opening up a relay for inspection and

[60] Trade Associations Answer at 5.

[61] *See, e.g.*, Order No. 773, 141 FERC ¶ 61,236 at P 52.

maintenance."[62] NERC's proposal to register distribution providers with less than 75 MW peak load as underfrequency load shedding-only distribution provider underscores that the underfrequency load shedding relays are important to reliability. Thus, it is important to maintain underfrequency load shedding relays to operate as designed. NERC states that the risk to the bulk electric system associated with failures of underfrequency load shedding systems for these small entities due to maintenance is low, NERC therefore recognizes there is a risk of actually performing maintenance and testing of relays. On this basis, NERC concludes that the benefit of compliance is diminished by the risk associated with performing inspection and maintenance. However, NERC has not demonstrated that the risk posed by maintenance efforts generally outweighs the risk posed by not performing maintenance, or that the subset of devices at issue here warrants a different balance of these risks than other devices covered by Reliability Standard PRC-005. Further, NERC reports that distribution providers have a history of non-compliance with Reliability Standard PRC-005 suggesting a need to maintain mandatory maintenance and testing requirements.[63] Requiring underfrequency load shedding-only distribution providers to continue to comply with Reliability Standard PRC-005 should not constitute an undue compliance burden because most relays currently in use are microprocessor based and, thus, require maintenance only once in 12 years.

55. While Trade Associations support NERC's omission of Reliability Standard PRC-005, the Commission believes that, if distribution providers that own underfrequency load shedding relays for small loads are important enough to register, as NERC proposes, then these relays are also important enough to maintain and test just like other relays covered under Reliability Standard PRC-005. Therefore, the Commission directs NERC to include Reliability Standard PRC-005 as applicable to underfrequency load shedding-only distribution providers.

56. The PSEG Companies suggests that all references to "underfrequency load shedding-only distribution provider" should be removed because this term is not defined in the NERC Glossary. As NERC explains, there is no requirement for terms used in the Registry Criteria to mirror those in the NERC Glossary; the registration process is developed and maintained pursuant to the NERC Rules of Procedure. NERC indicates that it will make any necessary changes to the NERC Glossary and notes that it has initiated a project to align NERC Glossary terms with definitions used in the Rules of

[62] NERC Petition at 41.

[63] NERC indicates that all eight violations processed since 2007 for entities that may potentially be deactivated for the distribution provider function were of Reliability Standard PRC-005. NERC Petition, Exh. C, Technical Report at 15.

Procedure. Therefore, we will not direct NERC to adopt the PSEG Companies' suggestion as we find NERC's explanations and commitments reasonable.

5. Procedural Changes to the Registration Process

57. NERC proposes procedural changes to its registration process including: (1) the establishment of a materiality test for registration (including a non-exhaustive list of factors), which delineates the procedures and criteria for evaluating whether an entity has a material impact on reliability; (2) a process to review registration, deactivation and deregistration decisions, as well as requests for sub-set lists of Reliability Standards.[64] According to NERC, these proposed procedural improvements provide additional clarity and transparency to the registration requirements, roles, and responsibilities.

a. Materiality Test

NERC Petition

58. At the end of the Registry Criteria, NERC provides "notes" that state that the specified criteria "are general criteria only." A Regional Entity thus may register an entity that does not meet the specified criteria if the Regional Entity "believes and can reasonably demonstrate that the organization is a bulk power system owner, or operates, or uses bulk power system assets, and is material to the reliability of the bulk power system."[65] Further, the Registry Criteria provide that a class of entities, each of which would be individually excluded, may nevertheless be registered based on their aggregate impact on Bulk-Power System reliability.

59. NERC proposes to add a new materiality test to the notes, which is comprised of four "non-exclusive" factors for consideration regarding an entity's material impact on the reliability of the bulk electric system. According to NERC, these factors recognize NERC's existing authority to limit the compliance obligations of a given entity to sub-sets of Reliability Standards which may specify the applicable Requirements/sub-Requirements.

[64] NERC Petition at 45-49.

[65] NERC Registry Criteria, Notes to Criteria, note 1 (footnote excluded).

Comments

60. ELCON supports the materiality test for registration to mitigate the risk of unnecessary and inappropriate registration of retail, load-only manufacturing plants, especially for those entities that otherwise do not meet the exclusion criteria of the bulk electric system definition. Trade Associations support the materiality test. Trade Associations explain that a materiality impact determination already exists for registration-related activities and that the non-exclusive factors add transparency and reduce regulatory uncertainty in the registration process. On the other hand, the PSEG Companies and the QF Parties argue that the materiality test should be clarified. PSEG Companies argues that the factors are incomplete or summarize topics addressed in Reliability Standards. PSEG Companies further contends that NERC should either eliminate the list of the four non-exclusive factors or consider alternative language provided by the PSEG Companies. Similarly, the QF Parties state that the criteria are ambiguous because they appear to cover both generators and transmission entities. QF Parties contend that the criteria should be clarified to identify which generators are affected and which other generators will be assessed for an impact so that the criteria can be practically applied.

Answers

61. NERC responds that the materiality test articulates a non-exclusive list of factors whose application would vary depending on facts and circumstances of a given matter, taking into account risk-based considerations in reaching a decision. Trade Associations add that the non-exclusive factors are intended to provide guidance to registered entities and Regional Entities as to the types of factors to be considered by the NERC-led multi-regional panel in assessing material impact on a case-by-case basis.

Commission Determination

62. We approve this aspect of NERC's RBR petition. Currently, the Registry Criteria contains a determination of material impact in the "notes" to the criteria, and NERC's proposal to add non-exclusive factors is intended to provide guidance and clarity to those determinations. The Commission approves the revisions as guidance for registered entities and Regional Entities regarding the types of factors to be considered by the NERC-led multi-regional panel in assessing material impact on a case-by-case basis.[66]

[66] NERC's proposed guidance is similar to NERC's form entitled "Detailed Information to Support an Exception Request" that entities use to support requests for exception from the "bulk electric system" definition. In that case, the form was intended to provide the needed flexibility to allow Regional Entities to make a recommendation of

(continued ...)

We believe that the non-exclusive set of factors will provide useful guidance for making a materiality determination. In addition, the Commission is persuaded by NERC's explanation that risk-based registration contemplates that application of the materiality test factors would vary depending on facts and circumstances. The analysis also takes into account risk-based considerations in reaching a decision on materiality. We agree with NERC that the factors are relevant to assessing an entity's materiality to reliability but not determinative of an entity's materiality. Additional factors may be relevant based on specific facts and circumstances. This approach is similar to the bulk electric system definition exception process where after application of the bright-line criteria, exceptions can be justified.[67]

b. Review Process for Registration Decisions

NERC Petition

63. NERC proposes to establish a NERC-led, centralized review panel to evaluate requests for (1) deactivation of, or decisions not to register, an entity; (2) requests to add an entity that does not meet (i.e., falls below) the Registry Criteria; (3) disputes regarding the application of the Registration Criteria; and (4) requests for a sub-set list of applicable Reliability Standards. NERC explains that the panel will help maintain consistency and oversight in registration among NERC and the Regional Entities. The NERC-led review panel would be comprised of a standing pool of individuals with relevant expertise from NERC and each of the Regional Entities. Once the review panel makes a decision, the decision would be posted publicly on the NERC website.

Comments

64. Trade Associations agree with the development of a NERC-led multi-regional panel, stating that this enhancement should drive consistency in processes and outcomes across the ERO enterprise.

65. PSEG Companies argues that the NERC-led panel which NERC states "may also include a review of individual and aggregate system-wide risks…," should be required to review aggregate system-wide risks, rather than having the option as is currently drafted. According to PSEG Companies, if the panel makes a decision that a registered entity

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whether or not an element is necessary for the reliable operation of the interconnected transmission network. *See* Order No. 773, 141 FERC ¶ 61,236 at PP 298-301.

[67] NERC Petition, Exh. C Technical Report at 17.

need not comply with several otherwise-applicable Reliability Standards because the exception would not have a material impact on reliability, other registered entities may apply for the same treatment because their circumstances are similar. PSEG Companies contends that if the panel considers the aggregate impact of all similarly situated entities together, it may arrive at a different decision. Therefore, PSEG Companies recommends that NERC require the panel to identify similarly situated entities after receiving a request by an applicant for a registration or standards applicability decision. In addition, PSEG Companies notes that the NERC-led panel may approve deactivation of an entity or approve an entity for a sub-set list of applicable Reliability Standards by application of the materiality test. However, PSEG Companies expresses concern that an entity may be reactivated for the function for which it was deactivated, or have its approved sub-set list of applicable Reliability Standards withdrawn or expanded, without application of the materiality test.

Answers

66. NERC responds that the panel will analyze individual and aggregate issues as warranted by soliciting input from host or neighboring entities. According to NERC, the panel will identify the factors considered in the decisions, which will be posted publicly on the NERC website. With regard to reactivation, NERC explains that reactivation of any entity occurs when there is a change in circumstances or where a new risk to reliability is identified after an entity has been deactivated. NERC explains that the materiality test is applicable to reactivation as well.

Commission Determination

67. The Commission approves the review process for registration decisions. We find that the panel will help maintain consistency and oversight in registration among NERC and the Regional Entities and that NERC's explanations and clarifications regarding the process in response to commenters are reasonable and add clarity to the process. The NERC-led review panel will issue a decision that will be made publicly available and will identify all factors that were applied and considered for that matter, providing appropriate transparency.

68. However, we conclude that the NERC-led panel must consider both individual and aggregate system-wide risks when reviewing a registry matter. We agree with PSEG Companies that consideration of the aggregate risk of a possible entity deregistration, including the possible cumulative effect of multiple deregistrations, is fundamental to ensuring that panel decisions do not lead to increased risk to the reliability of the bulk electric system. We are not persuaded by NERC's explanation, i.e., the panel will analyze individual and aggregate issues as warranted by soliciting input from host or neighboring entities. NERC's suggestion appears both *ad hoc* in approach and limited in scope. Accordingly, to ensure that review panels perform a consistent and thorough

review of both individual *and* aggregate system-wide risks when reviewing a registry matter, we direct NERC to modify proposed Section III.D.9, Appendix 5A of the NERC Rules of Procedure to substitute "shall" for "may," to state that "[t]he NERC-led review panel *shall* also include a review of individual and aggregate system-wide risks…" We direct NERC to address this modification in the compliance filing that NERC must file 60 days after the date of issuance of this order. We anticipate that in many circumstances consideration of aggregate risks will be straightforward.

69. Finally, we note that proposed Sections III.D.11 and 13 of Appendix 5A provides that review panel decisions will be posted on the NERC website and that the NERC Board of Trustees Compliance Committee (BOTCC) will resolve any appeals of registry matters as set forth in Section V of Appendix 5A. While the BOTCC review process anticipates a possible appeal to the Commission, it does not provide an opportunity for Commission review without such appeal. Accordingly, to provide the Commission with an opportunity for review where no appeal occurs, NERC must provide notice to the Commission when a review panel decision is posted. Similar to the process for review of "find, fix and track" compliance posting as well as "compliance exception" postings,[68] the Commission will review such matters and determine within 60 days of receiving notice from NERC whether any formal Commission review is warranted. If the Commission takes no action within 60 days, the Commission will consider the matter closed. We anticipate that Commission review of panel decisions would be a rare occurrence. However, we believe that this opportunity for Commission review provides an important "backstop" to ensure that individual registry matters processed under RBR are decided in a consistent matter with an overall view of providing for the reliability of the bulk electric system.

The Commission orders:

(A) The Commission hereby approves in part, and denies in part, NERC's RBR petition, as set forth in the body of this order.

(B) NERC is hereby directed to make a compliance filing, as discussed in the body of this order, within 60 days of the date of the issuance of this order.

(C) NERC is hereby directed to submit an informational filing, as discussed in the body of this order, within 12 months of the date of the issuance of this order.

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[68] *See, e.g.*, *North American Electric Reliability Corp.*, 150 FERC ¶ 61,108 at P 47 (2015).

(D) NERC is hereby direct to provide the Commission with notice of review panel discussions, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.