135 FERC ¶ 61,166
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

North American Electric Reliability Corporation — Docket Nos. RR08-4-005

Version Two Facilities Design, Connections and Maintenance Reliability Standards — RM08-11-001

ORDER ON COMPLIANCE FILING AND REHEARING

(Issued May 19, 2011)

1. On March 5, 2010, as supplemented on May 5, 2010, and March 21, 2011, the North American Electric Reliability Corporation (NERC) submitted a new approach to the assignment of violation risk factors and violation severity levels, a report (Guideline 1 Report) and a comprehensive review of violation severity level assignments for certain Commission-approved Reliability Standards (collectively, NERC Violation Severity Level Filings) in response to the Commission's June 19, 2008 Violation Severity Level Order.[1] In this order we accept NERC's revised approach to assigning violation risk factors and violation severity levels, and NERC's Guideline 1 Report. We approve NERC's revised violation severity level assignments for the 83 Commission approved Reliability Standards and Reliability Standard NUC-001-2, with the exception of those that are addressed in Docket No. RR08-4-006.[2]

[1] *North American Electric Reliability Corp.*, 123 FERC ¶ 61,284 (Violation Severity Level Order), *order on reh'g*, 125 FERC ¶ 61,212 (2008) (November 20, 2008 Order).

[2] The instant filing includes violation severity level assignments for NUC-001-2. Order No. 716 directed NERC to assess the violation severity level assignments for NUC-001-1 in accordance with the Commission's guidelines and file revised assignments in its Violation Severity Level Order compliance filing. *Mandatory Reliability Standard for Nuclear Plant Interface Coordination*, Order No. 716, 125 FERC ¶ 61,065, at P 189 & n.90 (2008), *order on reh'g*, Order No. 716-A, 126 FERC ¶ 61,122 (2009). In *North American Electric Reliability Corporation*, 130 FERC ¶ 61,051 (2010), the Commission approved NUC-001-2.

2. In Order No. 722 the Commission, *inter alia*, directed NERC to change violation severity level assignments for three Reliability Standards.[3] We grant NERC's April 20, 2009 request for rehearing of this element of Order No. 722.

I. Background

3. In the Violation Severity Level Order, the Commission approved violation severity level assignments for 83 Commission-approved Reliability Standards.[4] The Commission also set out four Commission guidelines for evaluating the assignment of violation severity levels and ordered, inter alia, a number of reports which would assess whether existing assignments of violation severity levels were consistent with these guidelines. The Commission's Violation Severity Level Guidelines are:

> Guideline 1: Violation Severity Level assignments should not have the unintended consequence of lowering the current level of compliance;
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> Guideline 2: Violation Severity Level assignments should ensure uniformity and consistency among all approved Reliability Standards in the determination of penalties;
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> a. Violation Severity Levels for binary requirements should be consistent;
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> b. Violation Severity Levels should not contain ambiguous language;
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> Guideline 3: Violation Severity Level assignments should be consistent with the corresponding requirement; and
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> Guideline 4: Violation Severity Level assignments should be based on a single violation, not on a cumulative number of violations.

4. On March 20, 2009, in Order No. 722, the Commission approved three revised Reliability Standards developed by NERC (FAC-010-2, FAC-011-2, and FAC-014-2), which set requirements for the development and communication of system operating limits of the Bulk-Power System for use in the planning and operation horizons.

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[3] *Version Two Facilities Design, Connections and Maintenance Reliability Standards*, Order No. 722, 126 FERC ¶ 61,255, at P 46 (2009).

[4] Violation Severity Level Order, 123 FERC ¶ 61,284 at P 1.

However, NERC's initial filing of violation severity levels for these Reliability Standards took place prior to the Violation Severity Level Order and, thus, did not conform to the Commission's guidelines. NERC proposed to assign a penalty or sanction for a violation of a sub-requirement based on the violation severity level of the corresponding main requirement. The Commission found this was inconsistent with Commission precedent and with NERC's Sanction Guidelines as the Commission had previously directed NERC to develop violation severity levels for every requirement and sub-requirement.

5. The Commission, in Order No. 722, recognized that the Reliability Standards were, for the most part, a direct translation of the prior voluntary NERC Operating Policies and Planning Standards and that the existing distinction between "main" and "sub" requirements presented difficulties in assigning violation risk factors and violation severity levels. The Commission noted a "varied nature of the relationship between the main requirements and sub-requirements throughout the Reliability Standards [that] has created concern whether a violation of a sub-requirement is also a violation of the requirement itself."[5] The Commission declined to change its policy in the Order No. 722 proceeding, but encouraged NERC "to develop a new and comprehensive approach that would better facilitate the assignment of violation severity levels and violation risk factors."[6] The Commission approved NERC's assigned violation severity levels, but directed NERC to submit violation severity levels for all requirements and sub-requirements at issue in the proceeding, to remove certain unnecessary violation severity levels, to assign certain binary violation severity levels, and to make certain other modifications to comply with the Commission's guidelines. NERC subsequently complied with the Commission directive and the Commission accepted the compliance filings.[7]

6. On April 20, 2009, in Docket No. RM08-11-001, NERC filed a request for clarification or, in the alternative, rehearing of Order No. 722 with respect to certain Commission-directed changes to violation severity levels which, according to NERC, conflict with the Commission's Guidelines.

7. NERC's Violation Severity Level Filings, submitted pursuant to Commission directives in the Violation Severity Level Order and in the November 20, 2008 Order,[8]

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[5] Order No. 722, 126 FERC ¶ 61,255 at P 44.

[6] *Id*. P 45.

[7] *North American Electric Reliability Corp*., 133 FERC ¶ 61,204 (2010).

[8] Violation Severity Level Order, 123 FERC ¶ 61,284 at P 13, 41, 42, and 56; November 20, 2008 Order, 125 FERC ¶ 61,212 at P 30.

contain NERC's Guideline 1 Report, its Guidelines 2b, 3, and 4 review, and its new comprehensive approach to the assignment of violation risk factors and violation severity levels.

8. This order addresses the NERC Violation Severity Level Filings, and NERC's April 20, 2009 rehearing request.

II. Public Notice

9. Notice of NERC's March 5, 2010 filing was published in the *Federal Register*, 75 Fed. Reg. 13,113 (2010), with comments due on or before March 26, 2010. None was filed. Notice of NERC's May 5, 2010 supplemental filing was published in the *Federal Register*, 75 Fed. Reg. 28,795 (2010), with comments due on or before May 20, 2010. No comments were filed. Notice of NERC's March 21, 2011 supplemental filing was published in *Federal Register*, 76 Fed. Reg. 17,642 (2011), with comments due on or before April 5, 2011. No comments were filed.

III. NERC's Violation Severity Level Filings

A. NERC's New Approach to Violation Risk Factor and Violation Severity Level Assignments

10. NERC's May 5, 2010 supplemental filing proposes a revised, comprehensive approach to the assignment of violation risk factors and violation severity levels and seeks a Commission ruling. In its filing, NERC summarizes its revised approach and explains how this approach is consistent with previous Commission statements on violation severity level assignments. NERC states that the assignment of violation severity levels to both binary sub-requirements and the associated main requirement created opportunities for confusion by those expected to comply with the Reliability Standards. NERC contends that such practice was inconsistent with the Commission's criteria for Reliability Standard approval articulated in Order No. 672 that "the possible consequences, including range of possible penalties, for violating a proposed Reliability Standard should be clear and understandable by those who must comply."[9] According to NERC, the revised comprehensive approach ensures consistency in the determination of sanctions, provides clarity for the users, owners, and operators of the Bulk-Power System, and provides increased effectiveness in administration and oversight of the Reliability Standards. In particular, NERC states that application of its revised guidelines

[9] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204, at P 326, *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

eliminates the ambiguity that currently exists when a main requirement and its components are each assigned violation risk factors and individual sets of violation severity levels. According to NERC, the revised approach also reduces industry concerns with what it terms "double jeopardy," i.e., a single action inappropriately resulting in penalties for violation of both the main requirement and the component. NERC believes that the revised guidelines are consistent with Commission guidelines for violations risk factors and violation severity levels, Commission guidance in Order No. 672,[10] and section 215(e)(6) of the Federal Power Act (FPA).[11]

11. NERC states that its revised guidelines address: (1) the structure and formatting of requirements, (2) the assignment of violation risk factors, and (3) the assignment of violation severity levels. With regard to the first, NERC states that its new formatting reflects an updated and improved method to identify the main requirement and its components as a composite set of actions to achieve a singular reliability objective.[12]

12. NERC states that, under its new approach, each main requirement must have an associated violation risk factor and when a main requirement includes components that contribute to a specific reliability outcome or deliverable, the main requirement will be assigned a single violation risk factor that considers the main requirement and its components in their entirety. NERC adds that components of requirements that contribute to the reliability outcome or deliverable of the main requirement, options for complying with a given requirement, and explanatory text are not assigned individual or separate violation risk factors.

13. NERC states that every main requirement will have a set of violation severity levels that includes from one to four possible levels. NERC further states that it will determine whether a requirement has a single violation severity level assignment or a set

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[10] *Id*. P 325-326.

[11] 16 U.S.C. § 824o(e)(6) (2006) ("Any penalty imposed. . . shall bear a reasonable relation to the seriousness of the violation").

[12] NERC states that components of a requirement will be sequentially numbered under the requirement and where components reflect a list of options that may be undertaken to achieve compliance with the main requirement, that list will be bulleted instead of numbered. An example of the new formatting is:

R1 This is the first "main requirement."

1.1 This is the first "component."
1.2 This is the second "component."

of violation severity levels by analyzing the performance required to satisfy a particular requirement. NERC explains that if there are degrees of noncompliance that result in performance that partially meets the reliability objective of the requirement such that the performance or product has some reliability-related value, then the requirement will have multiple violation severity levels that address a range of severity utilizing two or more of the four violation severity level categories. Requirements that are binary, i.e., "pass/fail," will have only one violation severity level – severe. NERC adds that, in some cases, missing a single component of a requirement that has multiple components will result in noncompliant performance that almost fully meets the reliability-related objective of the requirement. However, in other circumstances, missing a single component may result in a product or performance that has only limited reliability value, resulting in a moderate or high violation severity level.

14. NERC further states that because not all Reliability Standards have requirements that address a single, reliability-related performance or outcome, it is necessary to apply a "transitional" methodology to ensure that compliance efforts are consistent with the intent of both the original Reliability Standards and the Sanction Guidelines. NERC states that it will always assign a set of violation severity levels to the main requirement, and where the components contribute to the reliability objective of the main requirement, no violation severity levels will be assigned to the component. NERC adds that in cases where a component does not contribute to the reliability objective of the main requirement but achieves a separate objective, violation severity levels will be assigned directly to the component. NERC explains that, in such circumstances, it will treat the component like a separate requirement. Finally, in situations where there is a requirement with multiple components, and the main requirement and each of its components has been assigned a violation risk factor, but only the main requirement has been assigned a set of violation severity levels, NERC states that the Compliance Enforcement Authority[13] will judge which violation risk factor shall apply, based on the components involved in the given violation.

15. On March 5, 2010, NERC submitted a compliance filing containing its assessment of whether existing violation severity level assignments are consistent with the Commission's Violation Severity Level Guidelines 1, 2b, 3, and 4. NERC submitted proposed revisions to its violation severity levels that were changed pursuant to this review. Violation severity level assignments that are not included in this filing were submitted in Docket No. RR08-4-006.

[13] The Compliance Enforcement Authority is the entity that is responsible for assessing performance or outcomes to determine if an entity is compliant with the associated standard.

B. Guideline 1 Report

16. The Commission's Guideline 1 for evaluating violation severity levels states "Violation Severity Level assignments should not have the unintended consequence of lowering the current level of compliance."[14] The Commission directed NERC to submit a report on compliance data comparing the historical compliance with each Reliability Standard requirement to its assigned violation severity level and to include a description of how it performed the analysis. Where NERC determined that its violation severity level assignments were not consistent with a requirement's historical performance data, it was to submit either revised assignments that accurately reflect the requirement's historical compliance or provide a justification for the current violation severity level assignment.

17. NERC states that it completed the review directed by the Commission and believes that this review fully complies with the Commission's Guideline 1 violation severity level directive. NERC cautions that a number of circumstances have an impact on its comparisons and the resulting conclusions. NERC notes that, among other things, Reliability Standards have changed over time; compliance percentages from 2005 and 2006, where evaluated, were largely based on self-reporting; and data prior to June 2007 was based on voluntary, not mandatory, compliance. Further, while compliance was generally reported "by utility" in 2005 and 2006, it was reported "by event" in subsequent years. NERC describes a number of assumptions it made in order to compare inconsistent data sets across the years 2005 to 2009. NERC also states that it believes the analysis of historical data is a reactive measurement that only indicates a need to "fix" a requirement after its effectiveness has been compromised, and that it is more critical to review requirements and compliance elements prior to implementation to determine if they could lower reliability, using historical approaches as a reference. NERC states that it has expanded the Commission-directed violation severity level analysis to determine if the mandated level of reliability has been raised or lowered due to changes in the criteria employed to evaluate compliance.

18. While NERC proposes modifications for certain violation severity level assignments, NERC states that this does not signal a lower compliance threshold than previously existed and thus, the modifications do not have the effect of decreasing reliability below historic levels.

C. Guidelines 2b, 3, and 4 Review

19. In the Violation Severity Level Order, the Commission stated that some violation severity level assignments contained ambiguous language (Guideline 2b) and, to the

[14] Violation Severity Level Order, 123 FERC ¶ 61,284 at P 19.

extent possible, that ambiguity should be reduced. The Commission also stated that violation severity level assignments should be consistent with the corresponding requirement (Guideline 3), i.e., they should not "redefine or undermine the requirement."[15] The Commission further stated that violation severity levels should be based on a single violation rather than a cumulative number of violations (Guideline 4). The Commission directed NERC to review the violation severity levels with respect to these Guidelines to provide a description of how it performed its review, and either validate the existing violation severity level designations or propose revisions where NERC determines that the assignments do not meet these guidelines.[16]

20. NERC certifies that it reviewed violation severity level assignments for Commission-approved Reliability Standards to determine consistency with Guidelines 2b, 3, and 4. NERC asserts that most of the assignments meet Guidelines 2b, 3, and 4, and proposes revisions to those that do not meet Guidelines 2b, 3, and 4. NERC submits a chart describing for each violation severity level assignment NERC's rationale for concluding that the assignment complies with Guidelines 2b, 3, and 4 or why, in some cases, no violation severity level was assigned, or, in other cases, why the particular guideline is inapplicable. In certain instances, as discussed in section 3 below, NERC explains that the violation severity level has been modified in order to comply with one or more of the Guidelines at issue here.

Commission Determination

21. We accept NERC's new approach for the assignment of violation risk factors and violation severity levels. By assigning violation severity levels and violation risk factors only for a "main" requirement of a Reliability Standard in most instances, the new, comprehensive process is clearer, more efficient, and less burdensome that the current approach. Further, NERC's approach conforms to the Commission's guidance in Order No. 722. In particular, NERC's proposal recognizes that certain requirements have multiple performance objectives and that it may be necessary to apply a "transitional" methodology under which a violation severity level will be assigned to a component and the component will not be incorporated directly into the violation severity level for the main requirement. As NERC indicates in its filing, it will modify these Reliability Standards with its new formatting structure as a part of more substantive changes to reliability standards when such changes come up for review. We believe that such an approach is reasonable and helps to assure that compliance expectations will not be reduced. In addition, NERC's comprehensive approach appears to satisfy industry

[15] *Id.* P 32.

[16] *Id.* P 41.

concerns regarding potential double jeopardy with the current requirements and sub-requirements of Reliability Standards. We note that our acceptance of NERC's new approach does not replace the Commission Guidelines established in the Violation Severity Level Order.

22. We believe that NERC provides evidence of a comprehensive review of existing violation severity level assignments for consistency with the Commission's Guidelines 1, 2b, 3, and 4, as directed in the Violation Severity Level Order. NERC's comprehensive review of violation severity level assignments resulted in the revision of over 400 violation severity level assignments of the 500 it submitted in this filing. Accordingly, we accept NERC's Guideline 1 Report and its review of violation severity levels based on Guidelines 2b, 3, and 4. We approve NERC's revised violation severity level assignments for the 83 Commission approved Standards and Reliability Standard NUC-001-2, with the exception of those that are addressed in Docket No. RR08-4-006.[17]

IV. Rehearing

23. On April 20, 2009, NERC filed a request for clarification or, in the alternative, rehearing of Order No. 722 with respect to the Commission-directed changes to violation severity levels for certain sub-requirements of FAC-010-2, FAC-011-2, and FAC-014-2. These changes, according to NERC, would result in (a) different violation severity levels for the same instance of non-compliance; and (b) the assignment of binary violation severity levels for sub-requirements when the nature of the requirement language lends itself to a non-binary approach. NERC states that two different potential penalties or sanctions for the same violation conflicts with the Commission's Guideline 2.[18]

24. NERC contends that in certain instances the assigned violation severity levels for each main requirement include language that addresses each of the sub-requirements; however, each sub-requirement also is assigned a "severe" violation severity level because the Commission directed that sub-requirements be treated as binary with the consequent assignment of a "severe" violation severity level.[19] In addition, NERC

[17] NERC's filing contains some of the violation severity levels for the original Commission-approved set of 83 Reliability Standards and NUC-001-2.

[18] *See* Violation Severity Level Order, 123 FERC ¶ 61,284, at P 22–23 (2008) ("violation severity level assignments should ensure uniformity and consistency among all approved Reliability Standards in the determination of penalties").

[19] *See id*. P 46.

contends that some of the sub-requirements identified in Order No. 722 were improperly designated as binary when they contain multiple parts and would seem to warrant a non-binary approach.

Commission Determination

25. NERC's request for rehearing was filed prior to NERC's March 5, 2010 compliance filing. Because the Commission accepts NERC's proposed, comprehensive approach above, and approves NERC's revisions based on that approach, we grant rehearing with respect to the violation severity levels in NERC's initial filing for FAC-010, FAC-011, and FAC-014. As initially filed, these requirements, with violation severity levels assigned only to the main requirement, are consistent with NERC's new approach which we have accepted here.

The Commission orders:

(A) NERC's comprehensive approach to the assignment of violation risk factors and violation severity levels as set forth in its May 5, 2010 filing is hereby accepted, as discussed in the body of this order.

(B) NERC's March 5, 2010 compliance filing, as supplemented on May 5, 2010 and March 21, 2011, is hereby accepted, as discussed in the body of this order.

(C) Rehearing of Order No. 722 is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.