

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability Standards for the Bulk-Power System)	Docket Nos. RM08-19-000,
)	RM08-19-001,
)	RM09-5-000,
)	and RM06-16-005
)	

**COMMENTS AND REQUEST FOR TECHNICAL CONFERENCE OF THE
ELECTRIC POWER SUPPLY ASSOCIATION**

The Electric Power Supply Association (“EPSA”)¹ is pleased to submit these comments and request for technical conference in response to the Federal Energy Regulatory Commission’s (“FERC” or the “Commission”) Notice of Proposed Rulemaking (“NOPR”) issued March 19, 2009, in the above-referenced proceeding, *Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability Standards for the Bulk-Power System.*² EPSA supports the Commission’s proposed rule to retire certain existing Modeling, Data, and Analysis (“MOD”) Reliability Standards and replace them with the proposed MOD NOPR standards along with the directed modifications.

EPSA strongly supports the Commission’s effort to establish methodologies for the consistent and transparent calculation of available transfer capability and available

¹ EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities that seek to bring the benefits of competition to all power customers. The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

² 126 FERC ¶ 61,249 (2009) (“MOD NOPR”).

flowgate capability to improve reliability in wholesale electricity markets. EPSA and competitive suppliers have been engaged in the collaborative North American Electric Reliability Corporation (“NERC”) and North American Energy Standards Board (“NAESB”) work to develop the standards proposed in this rulemaking as well as NAESB-proposed business practices in the concurrent *Standards for Business Practices and Communication Protocols for Public Utilities* NOPR issued in Docket No. RM05-5-013.³ EPSA is also submitting comments on the Business Practices NOPR and recommends that the Commission concurrently consider EPSA’s comments on the MOD NOPR and the Business Practices NOPR. FERC’s assessment of the two NOPRs will require not only careful consideration and distinguishing of the required responsibilities for each of the proposed standards, but also consideration of the potential impact on competition. EPSA has long held that reliability is intertwined with, and not easily separated from, electric market considerations. EPSA and its members continue to be committed to finding practical ways to improve competitive markets as well as contemporaneously improving reliability standards.

I. EXECUTIVE SUMMARY

EPSA supports and applauds the Commission’s efforts to meld the reliability goals of Order No. 693 and the non-discriminatory access goals of Order No. 890. Fair access to transmission can be best achieved through transparent processes that give all market participants the opportunity to compete on an equal footing. The Commission is right to require that all transmission service providers must provide full access to the MOD Standard implementation documents to achieve the Commission’s transparency requirements of Order No. 890. However, EPSA has concerns about how the

³ 126 FERC ¶ 61,248 (2009) (“Business Practices NOPR”).

rulemaking will be implemented and how it will impact transmission providers' Open Access Transmission Tariffs (OATT). Further there are concerns about the discretion that transmission providers are able to retain. Therefore, some changes are needed in the final rule.

EPSA is concerned about the implementation timing for the MOD NOPR. Transmission providers have long known the rule is coming and the NOPR does little to explain why NERC is provided an extended compliance schedule. Moreover, the proposed rule offers minimal, but necessary support to fulfill its the goals of Order No. 890. Therefore, the Commission needs to move up the unsupported implementation schedule requested by NERC.

During implementation, the Order No. 890 open access transmission policies set out in the implementation documents will require the expertise of both NERC and FERC staff. Hence, EPSA asserts that Commission staff needs to be engaged as subject matter experts in the audit process to provide guidance on Order No. 890 and market impact issues. Not only does FERC staff need to provide NERC with additional audit guidance, but the Commission also must conduct its own audit to ensure the NOPR successfully meets the Commission's Order No. 890 goals. Additionally, the Commission should convene a technical conference to more clearly outline the goals of the NERC and FERC audits and specify both MOD document and OATT requirements.

EPSA is also concerned that the discretion to discriminate will still exist for transmission providers when implementing the standard. In the final rule the Commission needs to require that NERC and regional entities' implementation procedures are in compliance with the Commissions open access rules. EPSA further

believes that the Commission needs to have a process in place to resolve issues that will arise between the reliability and open access policies and a process for customers to bring complaints to the Commission. Finally, ongoing monitoring and enforcing compliance beyond the initial implementation called for in the NOPR needs to be addressed in the final rule.

II. BACKGROUND AND INTRODUCTION

Competitive suppliers actively support NERC and have participated in the relevant dockets and initiatives of both FERC and NERC to facilitate the successful evolution of the Electric Reliability Organization (“ERO”) contemplated by Congress when it enacted the Energy Policy Act of 2005.⁴ In the evolutionary process of solidifying the ERO, competitive power suppliers join all other industry stakeholders in recognizing the importance of maintaining the reliability of the bulk power system (“BPS”). In fact, the contributions that market mechanisms make to system reliability, and the need to preserve the positive link between reliability and markets, is a significant dimension of the new standards development process. Accordingly, EPSA welcomes the role the Commission has assumed within the reliability management model in agreement with the responsibilities entrusted by Congress in Section 215(d)(2) of the Federal Power Act (“FPA”):

[t]he Commission may approve, by rule or order, a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.⁵

⁴ Energy Policy Act of 2005, Pub. L. No. 109-58, Title XII, Subtitle A, 119 Stat. 594, 941 (2005) (codified at 16 U.S.C. § 824o (2006)).

⁵ 16 U.S.C. § 824o(d)(2) (2006).

In the instant proceeding, the Commission is properly providing the necessary reliability goals, although additional measures are required to fulfill the market goals of Order No. 890 and eliminate the potential for discrimination.

EPSA commends the Commission for recognizing the connection between the MOD group of reliability standards⁶ and the initiative to reform Order No. 890 to address existing opportunities to discriminate against competitive power suppliers in open and fair access to the transmission system. In addition, the Commission has recognized MOD standards importance to interconnection and planning. As the Commission concluded:

that the lack of industry-wide standards for the consistent calculation of available transfer capability poses a threat to the reliable operation of the Bulk-Power System, particularly with respect to the inability of one transmission service provider to know with certainty its neighbors' system conditions affecting its own available transfer capability.⁷

In Order No. 890 and Order No. 693 the Commission has articulated serious concerns regarding the lack of clarity, transparency and uniformity in the critical calculations pertaining to one of the most fundamental aspects of the wholesale bulk power transmission system from both a reliability and commercial perspective. These concerns underscore the importance of implementing FERC's specific directives to improve the MOD group of reliability standards in the provision of non-discriminatory transmission service.

III. DISCUSSION

EPSA is supportive of the Commission's MOD NOPR and especially applauds the Commission's finding that the implementation documents need to be available to a

⁶ The Commission notes that the MOD group contains 23 standards grouped into four distinct categories. MOD NOPR at P 8.

⁷ *Id.* at P 9.

broader group of market participants than was proposed by NERC. As the Commission found:

[t]herefore, to ensure sufficient transparency, the Commission proposed to direct the ERO, pursuant to section 215(d)(5) of the FPA and section 35.19(f) of our regulations, to modify the proposed Reliability Standards to make the available transfer capability, capacity benefit margin, and transmission reliability margin implementation documents available to all customers eligible for transmission service consistent with relevant NAESB standards.⁸

The implementation documents need to be sufficiently transparent to all market participants, not just those providing transmission service or responsible for coordinating reliability, but also for market participants providing energy to customers and ancillary services for grid support. The instantaneous provision of wholesale electric energy and the need to efficiently dispatch supply resources requires significant coordination with grid operations. Adequate coordination cannot be achieved without sufficient transparency. Suppliers need sufficient information regarding transfer capability to best inform their access to the transmission system. Suppliers not only need to be able to replicate the flow calculations of providers so that they can ensure economic use of their generating assets, but also need sufficient information to make efficient choices that will render better prices for consumers and ensure reliable grid operation.

EPISA is encouraged by the Commission's recognition that the full breadth of entities engaged in providing transmission service need to implement and comply with the MOD Reliability Standards. Competitive suppliers need transparency about how all transmission providers are implementing the calculation of the flows on their systems.

As the Commission established in the MOD NOPR:

⁸ *Id.* at P 105.

[t]hese documents will describe how the transmission provider will implement the Reliability Standards and, therefore, should be disclosed by all transmission service providers, not only those who are also public utilities.⁹

Importantly, it is only through disclosure and full transparency by all transmission service providers that competitive suppliers can understand the flows between different transmission providers and their affiliated generation.¹⁰ Absent such disclosure and full transparency, discrimination can still occur. If there is transparency on one side of an interface, but no transparent information from an adjoining transmission provider, the lack of transparent information on the adjoining transmission provider's system can serve as a mask for either of the two transmission service providers to discriminate. Therefore, EPSA appreciates and supports that all transmission service providers must provide full access to the implementation documents to achieve the requirements of Order No. 890.

IV. AREAS OF CONCERN

While competitive suppliers are supportive of the MOD NOPR, there are some areas of concern that need to be addressed in the final rule. EPSA is concerned about the implementation timing for the MOD NOPR, how the MOD NOPR will be implemented, and the discretion that still will exist for transmission providers when implementing the standard.

A. Implementation Timing

NERC proposes an effective date of the proposed standards of the first day of the first quarter one calendar year after the issuance of the Commission order

⁹ *Id.* at P 104.

¹⁰ Such access should include access to models and data necessary to enable eligible customers "to replicate and verify the results of the Transmission Service Provider's calculations of available transfer capability or available flowgate capacity." See *id.* at P 94.

approving the standards. The Commission proposes an audit process that NERC is to complete no later than 180 days after the effective date of the Commission-approved reliability standards.¹¹ As proposed, it could be between twelve and fifteen months before the proposed standards go into effect and between eighteen and twenty-one months before the audits are submitted to the Commission by NERC. The Commission should re-evaluate the deferred implementation requested by NERC in light of the goals of Order No. 890.

As the Commission notes in the MOD NOPR the journey to non-discriminatory transmission access began in 1996 with Order No. 888 and continues with the issuance of Order No. 890 in 2007.¹² The continuation of this journey is now shared with NERC. Order No. 890 issued on February 16, 2007; it has taken NERC over two years to develop its proposed reliability standards.¹³ When the issue date of Order No. 890 is considered together with the implementation date of the proposed standards, it will be well in excess of three and one-half years since Order No. 890 was issued. When the timing of the audit process is added, the expected implementation period stretches beyond four years. The Commission must re-evaluate both the time line for implementation and the time line for audit.

According to NERC, the deferred implementation date is necessary because MOD-001-1 must first be implemented by all entities in all jurisdictions. NERC provides no support for why it will take a full year from Commission approval. Transmission providers have long known that Order No. 890's Available Transfer Capability reform

¹¹ *Id.* at P 84.

¹² *Id.* at PP 4, 9.

¹³ The first of the three filings addressed by the MOD NOPR was filed on August 29, 2008, while the last was filed on March 6, 2009.

was coming. The deliberations of NERC have been ongoing and many transmission providers have been engaged in the process. Certainly much of what is suggested in the MOD NOPR could be accomplished during the MOD NOPR's development, if not before. It is hard to believe that the documentation process and accompanying needed software changes will require the significant amount of time being requested under the current proposal. The MOD NOPR itself does little to explain why NERC has been accommodated the year plus schedule or to provide support for the timing associated with the MOD standards and their implementation.

Turning to the Commission-proposed audit process, EPSA supports the audit process in the MOD NOPR in light of the discretion provided for in the proposed MOD Reliability Standards. While EPSA supports the need for the audit process, EPSA is concerned with the timing and scope of the audits. As proposed, the audit of each Transmission Service Provider's implementation documents is to be completed within 180 days of the implementation date of the proposed standards.¹⁴ The MOD NOPR does not explain why it is necessary to defer completion of the audit process until 180 days after the implementation date of the proposed standards. The registered entities that will be subject to the proposed requirements have no reason not to already be developing the implementation documents based on the standards as proposed. As a result, the registered entities should be well along the way in completing the necessary implementation documents by the time the Commission issues the final rule subject only to making conforming changes based on the final rule. Accordingly, the Commission should consider accelerating the audit process.

¹⁴ See MOD NOPR at P 84.

The road to implementation of the Commission's directives in Order No. 890 has already been a long one. As proposed by NERC, the process will draw on stalling full implementation of Order No. 890 for a significant additional amount of time. Absent compelling reasons, which have not been identified by NERC or otherwise included in the MOD NOPR, the Commission should reject NERC's unsupported request of an implementation date that defers providing transparency and non-discriminatory transmission service, cornerstones of the Commission's open access transmission service policies. The Commission must strike a balance that accommodates actual implementation issues and not defer any longer the benefits of Order No. 890.

B. Implementation Concerns

EPSA concurs that NERC is an acceptable resource to use for assistance in meeting the Commission's policies for reliability and fostering competitive wholesale markets. Enlisting NERC to perform audits of implementation documents developed by transmission providers in connection with the proposed standards is appropriate. However, the Commission's goals of non-discriminatory transmission access cannot be solely deferred to NERC and, through NERC delegation, the regional reliability entities. The Commission must have its own role in the audit process to ensure that the goals of the OATT are sufficiently met.

NERC and the regional reliability entities have evolving but still nascent reliability responsibilities.. The Commission has acknowledged the significant responsibilities before NERC and the regional reliability entities. NERC also acknowledges the significant challenges it faces with putting new standards in place, enforcing standards, and staying abreast of new challenges, such as implementing non-discriminatory

access rules. Therefore competitive suppliers are concerned that if both the reliability goals of Order No. 693 and the non-discriminatory access goals of Order No. 890 become the responsibility of NERC and the regional reliability entities, the achievement of each will be diffused.

While EPSA does not oppose use of NERC and the regional reliability entities under the Commission's Section 215 authority to ensure reliability, competitive suppliers recognize that without greater Commission responsibility in implementing the MOD Reliability Standards, the non-discriminatory transmission access goals of Order No. 890 may be lost. Former Commission Chairman Joseph T. Kelliher, addressing audit guidance, recognized the complexity of the NERC audit process and FERC engagement:

[t]he reliability enforcement scheme established by the Energy Policy Act of 2005 is complicated, involving not just FERC, but also NERC and eight regional entities.¹⁵

Thus, the complicated process will require diligent Commission engagement and oversight so that the Commission directives are not left to the interpretation of the regional entities.

To ensure that the Commission's open access transmission policies of Order No. 890 are captured in the implementation documents, knowledge and skill sets with respect to those policies are critical to the audit process. While NERC and the regional reliability entities have engineering-based grid operation knowledge and skills, EPSA is concerned that NERC and the regional reliability entities may not have sufficient requisite knowledge and skills to make the evaluation the Commission intends with the

¹⁵ Statement of Chairman Joseph T. Kelliher on Audit Guidance, Item E-1 under AD09-3 (January 15, 2009).

required audits. NERC and the regional reliability regions will need to acquire additional market-related knowledge and skills. The Commission has not explained how it expects NERC and the regional reliability entities to get up to speed on the goals of Order No. 890 and adequately discern discrimination in the MOD implementation documents. Accordingly, the confidence the Commission appears to place in NERC and the regional reliability entities to conduct the audit process in the same manner that the Commission itself would appear to be misplaced.

Previously, the Commission expressed similar concerns when it recognized that auditors have technical expertise on grid operation but may only be coming up to speed on the auditing function.¹⁶ Without sufficient training, not only in auditing, but market functions, transmission services, and ATC calculations, the NERC audits may do little to further the non-discriminatory access goals of Order No. 890. The Commission therefore needs to provide the ERO with very specific guidance prior to sending it out to audit the MOD standards.

NERC's own statements re-enforce that NERC may not be appropriate for the role the Commission has proposed. As the Commission recognizes in the MOD-NOPR,

NERC states that the focus of the proposed Reliability Standard is to address only the reliability aspects of the available transfer capability and available flowgate capability and not to address the commercial aspects of available transfer capability....¹⁷

While NERC may be well suited to reliability aspects, it clearly contends that its role does not extend beyond that scope.

¹⁶ See Guidance Order on Compliance Audits Conducted by the Electric Reliability Organization and Regional Entities in *Compliance with Mandatory Reliability Standards*, 126 FERC ¶ 61,038 (2009).

¹⁷ MOD NOPR at P 17.

EPSA proposes that Commission staff should also perform an audit of the ATC protocols and provide guidance on Order No. 890 and markets. Absent such involvement, NERC and regional reliability entity staff will be left without guidance to carry out critical Order No. 890 implementation requirements. The approach EPSA suggests would provide the needed Commission involvement in the audit process, thus ensuring that both the goals of Order No. 693 and Order No. 890 goals are met. EPSA recognizes that this recommendation is not without potential jurisdictional questions in that the goals for the reliability audit cannot envelope discrimination and market concerns. However, we also assert that a reliability audit cannot be a substitute for an audit of transmission access practices and measures. Consequently, EPSA recommends the Commission convene a technical conference to clarify the audit scope, responsibilities and jurisdictional questions.

C. Transmission Service Provider Discretion

As the Commission recognizes in the MOD NOPR with respect to the Transmission Service Providers' development of their implementation documents for MOD-028-1, MOD-029-1, and MOD-030-2, these proposed MOD Reliability Standards "place no limits on the parameters that each transmission service provider can use."¹⁸ The areas in which transmission service providers may exercise discretion are significant and can have a direct impact on the availability and provision of non-discriminatory transmission service. In light of this discretion, parameters must be developed.

¹⁸ *Id.* at P 92.

As the Commission recognizes, NERC has left open many implementation issues to the transmission service provider developing and documenting its own rules and procedures. For example, although the Commission specifically directed “public utilities, working through NERC and NAESB, to develop an approach for accounting for counterflows, in the relevant ATC standards and business practices,”¹⁹ the proposed standards do not achieve this objective.²⁰ The same is true of the treatment of reservations with the same point of receipt, but multiple points of delivery.²¹ As the Commission correctly points out, transmission service providers are provided “with substantial discretion when implementing various aspects of its available transfer capability methodology.”²² More importantly, the Commission recognizes that:

this discretion could be used by a transmission service provider to include criteria that allow for discrimination in the provision of transmission service through inconsistent calculation of available transfer capability.²³

In response to the reservation of discretion, the Commission, among other things, proposes that NERC conduct a review of the additional parameters and assumptions included by each transmission service provider in its implementation documentation.²⁴ This process may lead to modifications of MOD-001-1 to address any lack of transparency.²⁵ The Commission, however, seeks comment on:

[w]hether additional requirements should be directed in this proceeding to ensure that the discretion provided under the available transfer capability implementation documents cannot be used to unduly discriminate in the provision of transmission service.²⁶

¹⁹ Order No. 890 at P 293.

²⁰ See MOD NOPR at P 91.

²¹ See *id.* at P 92.

²² *Id.* at P 93.

²³ *Id.*

²⁴ See *id.* at P 94.

²⁵ See *id.*

²⁶ *Id.*

Additional requirements are warranted.

One of the difficulties with the fill-in-the-blank approach proposed by NERC is that transmission service providers will be free to modify their implementation procedures over time without subsequent Commission review unless the procedures become the subject of a reliability investigation or a complaint. In the context of a reliability investigation, the NERC three-year audit cycle may result in discriminatory practices going unchecked for years. And as discussed above, unless NERC or the regional reliability entity looks beyond pure reliability requirements to the non-discriminatory open access transmission service policies of the Commission, discriminatory procedures can remain in place and unchecked. As a result, additional requirements are warranted with respect to the exercise of discretion.

First, the Commission must make it clear in the final rule that the Commission will require the registered entity's implementation procedures to be in compliance with the Commission's Order No. 890 non-discriminatory open access transmission service policies. Second, if a conflict is identified between a reliability concern and the Order No. 890 policies, a process must be developed to bring the issue to the Commission's attention for resolution. Third, the Commission must provide a mechanism through which the Commission itself can monitor and enforce such compliance beyond the initial implementation of the procedures. Finally, the Commission must make it clear that eligible transmission customers can seek relief directly from the Commission if a transmission service provider is violating the Commission's open access transmission service policies notwithstanding the existence of a reliability standard. Absent such additional measures, EPSCA fears that the MOD Reliability Standards, which NERC

states address reliability and not commercial issues, will be adopted by Transmission Service Providers as the lowest common denominator for meeting the requirements of Order No. 890 non-discriminatory open access transmission service requirements.

V. CONCLUSION

For the reasons specified above, EPSA respectfully requests that the Commission incorporate EPSA's recommendations into a final rule i

Respectfully submitted,



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Dated: May 26, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., May 26, 2009.

A handwritten signature in cursive script that reads "Nancy Bagot".

Nancy Bagot, VP of Reg. Policy