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**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****18 CFR Part 40**

[Docket Nos. RM19-16-000 and RM19-17-000; Order No. 873]

**Electric Reliability Organization Proposal To Retire Requirements in Reliability Standards Under the NERC Standards Efficiency Review****AGENCY:** Federal Energy Regulatory Commission, Department of Energy.**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) approves the retirement of 18 Reliability Standard requirements identified by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization. The Commission also remands proposed Reliability Standard FAC-008-4 for further consideration by NERC. The Commission takes no action at this time on the proposed retirement of 56 MOD A Reliability Standard requirements.

**DATES:** This rule is effective December 14, 2020.**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

1. Pursuant to section 215(d)(2) of the Federal Power Act (FPA),<sup>1</sup> the Commission approves 18 of the 76 Reliability Standard requirements requested for retirement by the North American Electric Reliability Corporation (NERC).<sup>2</sup> For the reasons discussed below, we determine that the retirement of the 18 Reliability Standard requirements through the retirement of four Reliability Standards and the modification of five Reliability

Standards is just, reasonable, not unduly discriminatory or preferential, and in the public interest.<sup>3</sup> The Commission also approves the associated violation risk factors, violation severity levels, implementation plan, and effective dates proposed by NERC.

2. As set forth in the petitions, we conclude that the 18 Reliability Standard requirements: (1) Provide little or no reliability benefit; (2) are administrative in nature or relate expressly to commercial or business practices; or (3) are redundant with other Reliability Standards. These justifications are consistent with the Commission-approved rationale for retiring Reliability Standard requirements articulated in prior proceedings.<sup>4</sup>

3. The approved retirements will enhance the efficiency of the Reliability Standards program by reducing duplicative or otherwise unnecessary regulatory burdens.

4. In the Notice of Proposed Rulemaking (NOPR), the Commission also proposed to approve the retirement of 56 requirements constituting the so-called MOD A Reliability Standards.<sup>5</sup> The NOPR indicated that, if approved, the Commission intends to coordinate the effective dates for the retirement of the MOD A Reliability Standards with successor North American Energy Standards Board (NAESB) business

<sup>3</sup> The four Reliability Standards being eliminated in their entirety are Reliability Standards FAC-013-2 (Assessment of Transfer Capability for the Near-term Transmission Planning Horizon), INT-004-3.1 (Dynamic Transfers), INT-010-2.1 (Interchange Initiation and Modification for Reliability), MOD-020-0 (Providing Interruptible Demands and Direct Control Load Management Data to System Operations and Reliability Coordinators). The five modified Reliability Standards approved herein are Reliability Standards INT-006-5 (Evaluation of Interchange Transactions), INT-009-3 (Implementation of Interchange) and PRC-004-6 (Protection System Misoperation Identification and Correction), IRO-002-7 (Reliability Coordination—Monitoring and Analysis), TOP-001-5 (Transmission Operations).

<sup>4</sup> *North American Electric Reliability Corp.*, 138 FERC ¶ 61,193, at P 81 (March 2012 Order), *order on reh'g and clarification*, 139 FERC ¶ 61,168 (2012); *Electric Reliability Organization Proposal to Retire Requirements in Reliability Standards*, Order No. 788, 145 FERC ¶ 61,147, at P 1 (2013) (stating that the proposed retirements “meet the benchmarks set forth in the Commission’s March 15, 2012 Order”).

<sup>5</sup> *Electric Reliability Organization Proposal to Retire Requirements in Reliability Standards Under the NERC Standards Efficiency Review*, 170 FERC ¶ 61,032 (2020) (NOPR). The MOD A Reliability Standards proposed for retirement are MOD-001-1a (Available Transmission System Capability), MOD-004-1 (Capacity Benefit Margin), MOD-008-1 (Transmission Reliability Margin Calculation Methodology), MOD-028-2 (Area Interchange Methodology), MOD-029-2a (Rated System Path Methodology), and MOD-030-3 (Flowgate Methodology).

practice standards.<sup>6</sup> On March 30, 2020, NAESB submitted Version 003.3 of the Standards for Business Practices and Communication Protocols for Public Utilities that, inter alia, include Modeling business practices. On July 16, 2020, the Commission issued a NOPR in Docket Nos. RM05-5-029 and RM05-5-030 proposing to amend its regulations to incorporate by reference, with certain enumerated exceptions, NAESB’s Version 003.3 Business Practices.<sup>7</sup> Comments on the NAESB NOPR are due on November 3, 2020.<sup>8</sup> In light of these developments, this final rule does not address the retirement of the MOD A Reliability Standards. The Commission will determine the appropriate action regarding the proposed retirement of the MOD A Reliability Standards at a later time.

5. While the Commission approves the 18 retirements, pursuant to FPA section 215(d)(4), we remand proposed Reliability Standard FAC-008-4.<sup>9</sup> As discussed below, we are satisfied with NERC’s justification for retiring Reliability Standard FAC-008-3, Requirement R7. However, for the reasons discussed below, we are not persuaded that it is appropriate to retire Reliability Standard FAC-008-3, Requirement R8. Because the Commission, pursuant to FPA section 215(d)(4), must remand to NERC for further consideration a proposed modification to a Reliability Standard that the Commission disapproves in whole or in part, we remand proposed Reliability Standard FAC-008-4 to address our concerns with the retirement of Requirement R8.

**I. Background****A. Section 215 of the FPA**

6. Section 215 of the FPA requires the Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Once approved, the Reliability Standards may be enforced in the United States by the ERO subject to Commission oversight, or by the Commission independently.<sup>10</sup> Pursuant to the requirements of FPA section 215, the Commission established

<sup>6</sup> NOPR, 170 FERC ¶ 61,032, at P 21, n.35.<sup>7</sup> *Standards for Business Practices and Communication Protocols for Public Utilities*, Notice of Proposed Rulemaking, Order No. 676, 85 FR 10571, 172 FERC ¶ 61,047 (2020).<sup>8</sup> *Standards for Business Practices and Communication Protocols for Public Utilities*, 85 FR 55201 (September 4, 2020).<sup>9</sup> 16 U.S.C. 824o(d)(4).<sup>10</sup> 16 U.S.C. 824o(e)(3).<sup>1</sup> 16 U.S.C. 824o(d)(2).<sup>2</sup> NERC withdrew the originally requested retirement of Reliability Standard VAR-001-6, Requirement R2 on May 14, 2020.

a process to select and certify an ERO<sup>11</sup> and, subsequently, certified NERC as the ERO.<sup>12</sup>

### B. Prior Retirements of Reliability Standard Requirements

7. In the March 2012 Order, the Commission observed that NERC's compliance program could be made more efficient by removing existing requirements deemed unnecessary for reliability.<sup>13</sup> The Commission stated that if NERC believes certain Reliability Standards or requirements should be revised or removed, "we invite NERC to make specific proposals to the Commission identifying the Standards or requirements and setting forth in detail the technical basis for its belief."<sup>14</sup> Further, the Commission encouraged NERC "to propose appropriate mechanisms to identify and remove from the Commission-approved Reliability Standards unnecessary or redundant requirements."<sup>15</sup>

8. In response, in February 2013, NERC proposed to retire 34 requirements within 19 Reliability Standards based on the justification that the requirements "are redundant or otherwise unnecessary" and that "violations of these requirements . . . pose a lesser risk to the reliability of the Bulk-Power System."<sup>16</sup> NERC explained that the proposed retirements were based upon three major criteria: (1) Whether a proposed retirement would create a reliability gap; (2) whether the requirement in question is administrative; involves data collection, retention, documentation, periodic updates or reporting; is a commercial or business practice; or is redundant; and (3) consideration of responses to seven questions regarding the proposed retirement, including whether the requirement was part of a "find, fix and track" filing, the requirement's violation risk factor level, and whether the requirement is part of on-going standards development project.<sup>17</sup>

9. On November 21, 2013, the Commission approved the retirements that NERC proposed, and determined

that the retirements "meet the benchmarks" set forth in the March 2012 Order that "requirements proposed for retirement either: (1) Provide little protection for Bulk-Power System reliability; or (2) are redundant with other aspects of the Reliability Standards."<sup>18</sup>

### C. NERC Standards Efficiency Review Project and Petitions

#### 1. NERC Standards Efficiency Review Project

10. NERC states that the proposed retirements are the product of its Standards Efficiency Review (SER) Project. NERC explains that the SER Project began in 2017 "to achieve [NERC's] long-term strategic goal of establishing risk-based controls to minimize [Bulk-Power System] reliability risk while also driving operational efficiencies and effectiveness."<sup>19</sup> NERC states that in Phase 1 of the SER Project, teams of industry experts conducted a risk-based analysis of non-CIP Reliability Standards.<sup>20</sup> The purpose of this review, according to NERC, was "to identify Reliability Standard requirements that provide little or no benefit to reliability and should be retired."<sup>21</sup> NERC maintains that, unlike the periodic reviews<sup>22</sup> of Reliability Standards performed by NERC pursuant to the NERC Rules of Procedure, the SER Project involved "exploring the relationships between the different Reliability Standards in a deeper way than would be feasible during a targeted periodic review . . . [and] allowed NERC to identify requirements that are not necessary for reliability or that are redundant to other requirements."<sup>23</sup>

<sup>18</sup> *Electric Reliability Organization Proposal to Retire Requirements in Reliability Standards*, Order No. 788, 145 FERC ¶ 61,147 (2013).

<sup>19</sup> Docket No. RM19-16-000 Petition at 3; Docket No. RM19-17-000 Petition at 4.

<sup>20</sup> NERC states that Phase 2 of the SER Project will "consider recommendations for Reliability Standard revisions that would further improve the efficiency of the body of NERC Reliability Standards, such as through consolidation of Reliability Standard requirements . . . [and will] consider recommendations for standards-based improvements that would further reduce inefficiencies and promote effectiveness." Docket No. RM19-16-000 Petition at 6-7; Docket No. RM19-17-000 Petition at 7.

<sup>21</sup> Docket No. RM19-16-000 Petition at 5; Docket No. RM19-17-000 Petition at 6.

<sup>22</sup> The NERC Rules of Procedure require a periodic review of each Reliability Standard; and they provide for a five-year cyclical review of Reliability Standards approved by the American National Standards Institute (ANSI) and 10-year cyclical review for Reliability Standards not approved by ANSI. See NERC Rules of Procedure, Section 317 and Appendix 3A (Standards Process Manual), section 13.0.

<sup>23</sup> Docket No. RM19-16-000 Petition at 5; Docket No. RM19-17-000 Petition at 6.

11. NERC contends that the SER Project "was conducted in an open and transparent manner, with broad industry participation."<sup>24</sup> NERC states that it initiated the standards development process to consider the retirement recommendations generated by the SER Project.

#### 2. IRO, TOP and VAR Petition (Docket No. RM19-16-000)

12. On June 7, 2019, in Docket No. RM19-16-000, NERC submitted for Commission approval new versions of three Reliability Standards: IRO-002-7 (Reliability Coordination—Monitoring and Analysis), TOP-001-5 (Transmission Operations), and VAR-001-6 (Voltage and Reactive Control).<sup>25</sup> NERC explains that approval of the new versions would result in the retirement of four requirements from the currently-effective versions of the Reliability Standards.<sup>26</sup> NERC proposes to retire three of the existing requirements in Reliability Standards IRO-002 and TOP-001 that require the reliability coordinator, transmission operator, and balancing authority to have data exchange capabilities with entities having data needed to perform operational planning analyses and to develop operating plans for next-day operations. NERC contends that these requirements are redundant and not necessary "because the performance required by these requirements is inherent to the performance of other Reliability Standard requirements."<sup>27</sup>

13. In particular, NERC maintains that the data exchange capability requirement in Reliability Standard IRO-002-5, Requirement R1 is covered by Reliability Standard IRO-008-2, Requirement R1, which obligates the reliability coordinator to perform operational planning analyses to assess whether the planned operations for the next-day will exceed System Operating Limits and Interconnection Reliability Operating Limits within its Wide Area. NERC asserts that "to perform the required operational planning analyses, the Reliability Coordinator must have the data it deems necessary from those entities that possess it."<sup>28</sup>

<sup>24</sup> Docket No. RM19-16-000 Petition at 5-6; Docket No. RM19-17-000 Petition at 7.

<sup>25</sup> On May 14, 2020, NERC withdrew its request to retire Reliability Standard VAR-001-6, Requirement R2.

<sup>26</sup> The revised versions of the IRO and TOP Reliability Standards are not attached to this final rule. The complete text of the Reliability Standards is available on the Commission's eLibrary document retrieval system in Docket No. RM19-16-000 and is posted on the ERO's website, <http://www.nerc.com>.

<sup>27</sup> Docket No. RM19-16-000 Petition at 7.

<sup>28</sup> *Id.* at 14-15.

<sup>11</sup> *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, 114 FERC ¶ 61,104, *order on reh'g*, Order No. 672-A, 114 FERC ¶ 61,328 (2006).

<sup>12</sup> *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa Inc. v. FERC*, 564 F.3d 1342 (DC Cir. 2009).

<sup>13</sup> March 2012 Order, 138 FERC ¶ 61,193 at P 81.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> NERC, Petition, Docket No. RM13-8-000, at 2 (filed Feb. 28, 2013).

<sup>17</sup> *Id.* at 4.

14. Additionally, regarding data exchange, NERC cites Reliability Standard IRO-010-2 (Reliability Coordinator Data Specification and Collection) and its stated purpose of preventing instability, uncontrolled separation, or cascading outages “by ensuring the Reliability Coordinator has the data it needs to monitor and assess the operation of its Reliability Coordinator Area.”<sup>29</sup> NERC states that under Reliability Standard IRO-010-2, Requirements R1, R2 and R3, the reliability coordinator must specify the data necessary for it to perform its operational planning analyses and provide the specifications to the entities from which it needs data who then must comply with the data request using a mutually agreeable format and security protocols.

15. NERC states that the performance of Reliability Standard IRO-010-2, Requirements R1, R2 and R3 is premised on the existence of data exchange capabilities, “regardless of whether a separate requirement expressly requires the Reliability Coordinator to have data exchange capabilities in place.”<sup>30</sup> NERC therefore asserts that Reliability Standard IRO-002-5, Requirement R1 provides no additional reliability benefit and “is therefore unnecessary and redundant and should be retired.”<sup>31</sup>

16. NERC also proposes to retire Reliability Standards TOP-001-4, Requirements R19 and R22. NERC explains that Requirements R19 and R22 of Reliability Standard TOP-001-4 require transmission operators and balancing authorities respectively to have data exchange capabilities with entities from which they need data to perform operational planning analyses (transmission operators) and next-day Operating Plans (balancing authorities). NERC notes, however, that Reliability Standard TOP-002-4, Requirement R1 requires a transmission operator to perform an operational planning analyses to determine whether next-day operations within its area will exceed System Operating Limits. NERC also states that TOP-002-4, Requirement R4 requires each balancing authority to have a next-day Operating Plan addressing expected generation resource commitment and dispatch, Interchange scheduling and related matters. NERC asserts that to satisfy these requirements, “each Transmission Operator and Balancing Authority must

have the data it deems necessary from those entities that possess it.”<sup>32</sup>

17. NERC also points to Reliability Standard TOP-003-3 (Operational Reliability Data) whose purpose is “to ensure that the Transmission Operator and Balancing Authority have data needed to fulfill their operational and planning responsibilities.” NERC contends that the requirements in Reliability Standard TOP-003-3 largely mirror the requirements in Reliability Standard IRO-010-2 discussed above, and thus, as with Reliability Standard IRO-010-2, transmission operators and balancing authorities must have data exchange capabilities with its reporting entities to satisfy the requirements of Reliability TOP-003-3. For these reasons, NERC contends that Reliability Standards TOP-001-4, Requirements R19 and R22 are unnecessary and redundant and should be retired.

18. NERC requests that the Commission approve the implementation plan, attached to NERC’s petition as Exhibit B, and the associated violation risk factors and violation severity levels described in Exhibit D. The implementation plan provides that proposed Reliability Standards IRO-002-7 and TOP-001-5 would become effective on the first day of the first calendar quarter that is three months after regulatory approval. The currently effective versions of the Reliability Standards would be retired immediately prior to the effective date of the revised Reliability Standards. NERC explains that the requested timeline accounts for the time entities will need to update their systems and related documentation.

### 3. FAC, INT, MOD and PRC Petition (Docket No. RM19-17-000)

19. On June 7, 2019, in Docket No. RM19-17-000, NERC submitted for Commission approval the proposed retirement of 10 currently-effective FAC, INT, MOD and PRC Reliability Standards in their entirety without replacement.<sup>33</sup> Additionally, NERC proposed modifications to four Reliability Standards reflecting the

retirement of certain requirements from the currently-effective versions: FAC-008-4 (Facility Ratings), INT-006-5 (Evaluation of Interchange Transactions), INT-009-3 (Implementation of Interchange) and PRC-004-6 (Protection System Misoperation Identification and Correction).<sup>34</sup> NERC asserts that its proposals would not adversely impact reliability, but rather they “would benefit reliability by allowing entities to focus their resources on those Reliability Standard requirements that promote the reliable operation and planning of the BPS [Bulk-Power System] and avoid unnecessary regulatory burden.”<sup>35</sup>

20. Regarding the full FAC, INT, MOD and PRC Reliability Standards proposed for retirement, NERC contends that they are not necessary and that removing them would not adversely affect reliability. NERC states that retirement of the ten full Reliability Standards is justified because they are primarily administrative in nature or largely related to commercial or business practices, and therefore no longer serve a reliability purpose.<sup>36</sup> For example, NERC states that the transfer capability assessment required under Reliability Standard FAC-013-2 “serves only a market function” and “is not an indicator of [bulk electric system] reliability.”<sup>37</sup> In supporting its conclusion that Reliability Standard INT-010-2.1 primarily relates to commercial and business practices, NERC notes that in 2013 the NERC Independent Experts Review Panel recommended retiring the previous version of the Reliability Standard “due to overlap with the NAESB Electronic Tagging Functional Specification.”<sup>38</sup>

21. Similarly, regarding the MOD Reliability Standards, NERC states that “[Available Transfer Capability] and [Available Flowgate Methodology], as well as e-Tags, are commercially-focused elements facilitating interchange and balancing of interchange,” and that system operators maintain reliability by monitoring Real-time flows based on System Operating Limits and Interconnection Reliability Operating Limits.<sup>39</sup> In particular, NERC

<sup>29</sup> *Id.* at 16.

<sup>30</sup> Reliability Standards FAC-013-2 (Assessment of Transfer Capability for the Near-term Transmission Planning Horizon), INT-004-3.1 (Dynamic Transfers), INT-010-2.1 (Interchange Initiation and Modification for Reliability), MOD-001-1a (Available Transmission System Capability), MOD-004-1 (Capacity Benefit Margin), MOD-008-1 (Transmission Reliability Margin Calculation Methodology), MOD-020-0 (Providing Interruptible Demands and Direct Control Load Management Data to System Operations and Reliability Coordinators), MOD-028-2 (Area Interchange Methodology), MOD-029-2a (Rated System Path Methodology), and MOD-030-3 (Flowgate Methodology).

<sup>34</sup> The revised versions of the FAC, INT and PRC Reliability Standards are not attached to this final rule. The complete text of the Reliability Standards is available on the Commission’s eLibrary document retrieval system in Docket No. RM19-17-000 and is posted on the ERO’s website, <http://www.nerc.com>.

<sup>35</sup> Docket No. RM19-17-000 Petition at 7.

<sup>36</sup> Docket No. RM19-17-000 Petition at 13-24.

<sup>37</sup> *Id.* at 13.

<sup>38</sup> *Id.* at 16-19.

<sup>39</sup> *Id.* at 21.

<sup>29</sup> *Id.* at 15.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

explains that information on Interruptible Demands and Direct Control Load Management required under Reliability Standard MOD-020-0 is not useful for transmission operators and reliability coordinators, “who must plan and operate the [Bulk-Power System] within System Operating Limits and Interconnection Reliability Operating Limits under the TOP and IRO Reliability Standards.”<sup>40</sup>

22. Regarding NERC’s proposed modified Reliability Standards, NERC states that the data provision obligations of currently effective Reliability Standard FAC-008-3, Requirements R7 and R8 are redundant with Reliability Standards MOD-032-1, IRO-010-2 and TOP-003-3. NERC asserts that Requirements R3.1, R4 and R5 of currently-effective Reliability Standard INT-006-4 “provide little, if any, benefit or protection to the reliability operation of the [Bulk-Power System]”<sup>41</sup> and that the substance of Requirements R4 and R5 in particular relate to commercial or business practices and are better addressed through the balancing authority’s e-Tag Authority Service.<sup>42</sup> Also, NERC states that Requirement R1 of currently-effective Reliability Standard INT-009-2.1 is being revised to remove the reference to Reliability Standard INT-010, which is also proposed for retirement, and Requirement R2 is redundant with Reliability Standard BAL-005-1, Requirement R7.<sup>43</sup> Finally, NERC states that it has determined that rather than the “specific, recurring and inflexible timeframe” set forth in Requirement R4 of currently-effective Reliability Standard PRC-004-5 for identifying the cause of a protection system misoperation, “it would be more effective to have entities investigate the causes of misoperations according to their own internal control policies and procedures.”<sup>44</sup>

23. NERC requests that the Commission approve the implementation plan, attached to NERC’s petition as Exhibit B, and the associated violation risk factors and violation severity levels, attached to NERC’s petition as Exhibit D, which are generally unchanged from the currently effective versions. For the Reliability Standards retired in their entirety, NERC proposes an effective date that is immediately upon regulatory approval of the retirement. NERC also seeks to retire the currently effective Reliability

Standards FAC-008-3, INT-006-4, INT-009-2.1, and PRC-004-5(i) immediately prior to the effective date of their new versions.

#### D. Notice of Proposed Rulemaking

24. On January 23, 2020, the Commission issued a NOPR proposing to approve the retirement of 74 of the 77 Reliability Standard requirements requested by NERC. However, while proposing to approve the majority of Reliability Standard requirement retirements NERC proposed, the Commission expressed concern with NERC’s justification for retirement of Reliability Standard FAC-008-3, Requirement R7 and R8 because those requirements did not appear to be entirely redundant of other existing Reliability Standards. Accordingly, the Commission sought more information from NERC regarding how other existing Reliability Standards render Reliability Standard FAC-008-3, Requirements R7 and R8 redundant, and how retiring those requirements would not create a reliability gap.

25. In response to the NOPR, the Commission received comments from NERC, Trade Associations (*i.e.*, American Public Power Association, Edison Electric Institute, Large Public Power Council, National Rural Electric Cooperative Association, Transmission Access Policy Study Group), Bonneville Power Administration, Western Area Power Administration, and Jonathan Appelbaum. We address below the issues raised in the NOPR and comments.

## II. Discussion

### A. Approved Retirement of 18 Reliability Standard Requirements

26. Pursuant to section 215(d)(2) of the FPA, the Commission approves NERC’s request to retire 18 Reliability Standard requirements as just, reasonable, not unduly discriminatory or preferential, and in the public interest. NERC’s petitions provide an adequate basis to conclude that the requirements proposed for retirement: (1) Provide little or no reliability benefit; (2) are administrative in nature or relate expressly to commercial or business practices; or (3) are redundant with other Reliability Standards. NERC’s justifications for retiring the 18 requirements are consistent with the retirement guidelines set forth by the Commission in Order No. 788 and with the determination that “requirements proposed for retirement can be removed from the Reliability Standards with little effect on reliability and an increase in

efficiency of the ERO compliance program.”<sup>45</sup>

27. While the Commission approves the retirement of the 18 Reliability Standard requirements, pursuant to FPA section 215(d)(4), we remand proposed Reliability Standard FAC-008-4. As discussed below, we are satisfied with the justification for retiring Reliability Standard FAC-008-3, Requirement R7 contained in NERC’s comments. However, for the reasons discussed below, we are not persuaded that it is appropriate to retire Reliability Standard FAC-008-3, Requirement R8. Because the Commission, pursuant to FPA section 215(d)(4), must remand to NERC for further consideration a proposed modification to a Reliability Standard that the Commission disapproves in whole or in part, we remand proposed Reliability Standard FAC-008-4 to address our concerns with the retirement of Requirement R8.

### B. Reliability Standard FAC-008-3, Requirements R7 and R8

#### 1. NERC Petition

28. Reliability Standard FAC-008-3, Requirements R7 and R8 require generator owners and transmission owners, respectively, to provide facility ratings and related information to requesting reliability coordinators, planning coordinators, transmission planners, transmission owners and transmission operators. NERC contends that requirements in Reliability Standards MOD-032-1, IRO-010-2, and TOP-003-3 render the data provision obligations of Requirements R7 and R8 in Reliability Standard FAC-008-3 redundant and, therefore, unnecessary for reliability.<sup>46</sup>

29. To support its redundancy claim, NERC explains that Reliability Standard MOD-032-1 requires generator owners and transmission owners to provide information on power capabilities and facility ratings (Requirement R2) to enable planning coordinators and transmission planners to “jointly develop steady-state, dynamics, and short circuit modeling data requirements and reporting procedures for the Planning Coordinator’s planning area” (Requirement R1). NERC further explains that Reliability Standard IRO-010-2 requires reliability coordinators to maintain “a documented specification for the data necessary to perform its Operational Planning Analyses, Real-time monitoring, and Real-time Assessments. This data necessarily includes Facility Ratings as

<sup>40</sup> *Id.* at 23.

<sup>41</sup> *Id.* at 29.

<sup>42</sup> *Id.* at 29–31.

<sup>43</sup> *Id.* at 31–32.

<sup>44</sup> *Id.* at 34.

<sup>45</sup> Order No. 788, 145 FERC ¶ 61,147 at P 1.

<sup>46</sup> Docket No. RM19-17-000 Petition at 15.

inputs to System Operating Limit monitoring.”<sup>47</sup> NERC notes that under Requirement R3 of IRO-010-2, the transmission owner and generator owner must provide such data. Finally, NERC points out that Reliability Standard TOP-003-3 requires the transmission operator to maintain data specifications (Requirement R1) and the transmission owner and generation owner to provide the requested data (Requirement R5). Relying on this framework of data specification and provision, NERC concludes that Reliability Standard FAC-008-3, Requirements R7 and R8 “are now redundant to other more robust Reliability Standards and are no longer needed for reliability.”<sup>48</sup>

## 2. NOPR

30. While agreeing with NERC that Reliability Standards MOD-032-1, IRO-010-2 and TOP-003-3 provide a basis for retiring certain elements of Reliability Standard FAC-008-3, Requirements R7 and R8, the Commission stated that NERC’s petition “does not address other elements of Requirements R7 and R8 that do not appear to be redundant.”<sup>49</sup> The NOPR explained that Reliability Standard FAC-008-3, Requirements R7 and R8 require generation owners and transmission owners to provide facility ratings to several functional entity types, including transmission owners. The Commission observed that the three Reliability Standards NERC claims to render Requirements R7 and R8 redundant require generator owners and transmission owners to provide facility ratings to other functional entities, including reliability coordinators, planning coordinators, transmission planners, and transmission operators, they do not require the provision of facility ratings to transmission owners. The Commission expressed concern that eliminating the mandatory exchange of facility-related information with transmission owners could “impact reliability since these requirements ensure that all transmission owners have accurate facility-related information in the models that they use to plan and operate the bulk electric system.”<sup>50</sup>

31. The Commission also noted that Reliability Standards MOD-032-1, IRO-

010-2, and TOP-003-3 do not address sub-requirement R8.1.2 of Reliability Standard FAC-008-3, relating to the identity of the next most limiting equipment of a requested facility. Further, the Commission observed that the Reliability Standards NERC claims are redundant also do not account for sub-requirement R8.2, which requires the identification and thermal rating of the existing next most limiting equipment of facilities with a thermal rating that limits the use of that facility by causing either an Interconnection Reliability Operating Limit, a limitation of Total Transfer Capability, an impediment to generator deliverability, or an impediment to service to a major load center as specified in FAC-008-3 (Requirement R8.2).<sup>51</sup>

32. Therefore, the Commission stated that Reliability Standard FAC-008-3, Requirements R7 and R8 do not appear to be entirely redundant of the Reliability Standards cited by NERC and, if retired, could create reliability gaps. The Commission sought clarification from NERC because the petition does not address these non-redundant elements of Requirements R7 and R8.

## 3. Comments

33. NERC, Trade Associations and Appelbaum support the retirement of Reliability Standard FAC-008-3, Requirements R7 and R8, maintaining that transmission owners do not need facility ratings and related information to perform their responsibilities.<sup>52</sup> In their view, transmission owners play a more limited role than the planning and operation function of the other applicable entities in Reliability Standard FAC-008-3. NERC notes that the NERC Glossary describes transmission owner as an “entity that owns and maintains transmission facilities” and that a transmission owner is “not the functional entity directly responsible for complying with Reliability Standards for planning and operating the Bulk Power System.”<sup>53</sup> Additionally, Appelbaum notes that “in many cases” transmission owner and

generation owner interconnection agreements exist and contain provisions governing how facilities are operated and maintained, including the methodology and responsibility for rating facilities.<sup>54</sup> By contrast Bonneville commented, without elaboration, that it agrees that Reliability Standards FAC-008, Requirements R7 and R8 should be retained.<sup>55</sup>

34. NERC and Trade Associations assert that entities with the responsibility to plan and operate the Bulk-Power System (*i.e.*, transmission operators and transmission planners) obtain the information they need under Reliability Standards MOD-032-1 and TOP-003-3, and thus they do not require Reliability Standard FAC-008-3, Requirements R7 and R8.<sup>56</sup> Trade Associations state that “from a grid reliability perspective, it is the responsible Transmission Planner and Transmission Operator that need the facility ratings because they are accountable for the reliable planning and operation of the bulk electric system, not the Transmission Owner.”<sup>57</sup> Further, Trade Associations note that the Commission previously approved the retirement of Reliability Standard FAC-008-3, Requirement R4, which had similar obligations to Requirements R7 and R8, based on the Commission’s conclusion that the requirement to make available such facility ratings information was an administrative task that provides little protection for bulk electric system reliability.<sup>58</sup>

35. In response to the Commission’s concerns regarding Reliability Standard FAC-008-3, sub-requirements 8.1.2 and 8.2, NERC and Trade Associations assert that the “catch-all” provision in Reliability Standard MOD-032-1, Attachment 1 Data Reporting Requirements, requires transmission owners and generation owners to provide “other information requested by the planning coordinator or transmission provider necessary for modeling purposes,” which includes data described in sub-requirements 8.1.2 and 8.2.<sup>59</sup> Further, NERC and Trade

<sup>51</sup> This requirement was developed in response to a directive in Order No. 693. *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 118 FERC ¶ 61,218, at P 756, *order on reh’g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007); *see also* NERC, Petition, Docket No. RD11-10-000, at 11-13, 20-21 (filed Jun. 15, 2011).

<sup>52</sup> As discussed below, Appelbaum supports retaining sub-requirement R8.2.

<sup>53</sup> NERC Comments at 8 (citing NERC Glossary of Terms Used in NERC Reliability Standards).

<sup>54</sup> Appelbaum Comments at 3.

<sup>55</sup> Bonneville Comments at 2.

<sup>56</sup> NERC Comments at 8; Trade Association Comments at 6.

<sup>57</sup> Trade Association Comments at 7.

<sup>58</sup> *Id.* (citing Order No. 788, 145 FERC ¶ 61,147 at P 19).

<sup>59</sup> NERC Comments at 8-9; Trade Association Comments at 9.

<sup>47</sup> *Id.* at 28.

<sup>48</sup> *Id.*

<sup>49</sup> NOPR, 170 FERC ¶ 61,032 at P 31.

<sup>50</sup> *Id.*

Associations assert that reliability coordinators and transmission system operators obtain this information under the data specification requirements in Reliability Standards IRO-010-2 and TOP-003-3.<sup>60</sup> NERC concludes that “[n]ow that these broader data specification standards are in place, NERC has identified no reliability need to maintain additional requirements expressly requiring the provision of this data in the FAC-008 standards.”<sup>61</sup>

36. Appelbaum contends that sub-requirement 8.2 should be retained, however, because it “support[s] reliable operations under very limited circumstances and very limited locations, yet it is important enough to retain.”<sup>62</sup> He explains that sub-requirement 8.2 focuses on specific circumstances, wherein having knowledge of the increase in facility rating based on the next most limiting equipment improves system operations, and therefore reliability, and “adds resilience to the operation of the Bulk Power System.”<sup>63</sup>

#### 4. Commission Determination

37. Pursuant to FPA section 215(d)(4), we remand proposed Reliability Standard FAC-008-4. As discussed below, we are satisfied with NERC’s justification for retiring Reliability Standard FAC-008-3, Requirement R7. However, for the reasons discussed below, we are not persuaded that it is appropriate to retire Reliability Standard FAC-008-3, Requirement R8. Because the Commission, pursuant to FPA section 215(d)(4), must remand to NERC for further consideration a proposed modification to a Reliability Standard that the Commission disapproves in whole or in part, we remand proposed Reliability Standard FAC-008-4 to address our concerns with the retirement of Requirement R8.

38. Regarding Reliability Standard FAC-008-3, Requirement R7, we are persuaded that retiring Requirement R7

will not result in a reliability gap because Requirement R7 is redundant or otherwise provides little or no reliability benefit. We agree with NERC that, unlike transmission operators and transmission planners that need and will continue to receive facility ratings information under other Reliability Standards, transmission owners do not need to exchange facility ratings because they have a more limited functional role that does not involve planning and operating the Bulk-Power System. Only Bonneville, a registered transmission owner, supported retaining Requirement R7, and no transmission owner submitted comments indicating that it needed the facility ratings information required under Requirement R7.<sup>64</sup> Moreover, the Commission did not direct the inclusion of transmission owners in Requirement R7. Reliability Standard FAC-008-3, Requirement R7 was formerly designated Reliability Standard FAC-009-1, Requirement R2. The Commission approved Reliability Standard FAC-009-1, Requirement R2 in Order No. 693 and did so without requiring the sharing of facility ratings information with transmission owners.<sup>65</sup>

39. While we determine that the retirement of Requirement R7 is appropriate, we are not convinced that the retirement of sub-requirements R8.1.2 and 8.2 will not result in a reliability gap. By retiring sub-requirements R8.1.2 and 8.2, transmission owners will no longer be required to communicate ratings information for solely owned limiting and next most limiting equipment present on jointly-owned facilities. Without ratings information on limiting and next most limiting equipment, transmission owners could lack the necessary information to correctly calculate the ratings for their jointly-owned facilities. The Commission recognized the importance of this type of information exchange in Order No. 693 by directing NERC to require the sharing of information regarding the

most limiting and next most limiting equipment when requested.<sup>66</sup>

40. The transmission owner’s obligation under Reliability Standard FAC-008-3, Requirement R3 is also impacted by the proposed retirement of Requirement R8. Reliability Standard FAC-008-3, Requirement R3 requires transmission owners to have a documented facility ratings methodology for solely and jointly owned facilities that, pursuant to Requirement R3.3, includes a “statement that a Facility Rating shall respect the most limiting applicable Equipment Rating of the individual equipment that comprises that Facility.” In order to rate equipment accurately to avoid mis-ratings of jointly-owned transmission lines, the transmission owner needs information about the co-owner’s most limiting equipment on shared facilities. Therefore, under these circumstances, we conclude that Requirement R8 is needed to ensure that limiting and next limiting equipment is identified and communicated.

#### III. Information Collection Statement

41. The information collection requirements contained in this final rule are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.<sup>67</sup> OMB’s regulations require approval of certain information collection requirements imposed by agency rules.<sup>68</sup> Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

42. The Commission estimates that the final rule, which would retire 18 requirements of Reliability Standards without adding any new obligations on registered entities, would result in a total reduction in burden for industry of 42,907.44 hours. The Commission based the burden reduction estimates on staff experience, knowledge, and expertise.

<sup>60</sup> NERC Comments at 9; Trade Associations Comments at 8–9 (“Reliability Standard TOP-003-3 (Operational Reliability Data) Requirements R3 and R5 require the provision of such information through data specifications that are issued by Transmission Operators.”)

<sup>61</sup> NERC Comments at 9.

<sup>62</sup> Appelbaum Comments at 7 (referring to load pockets that contain critical infrastructure, dense populations, or have large financial impacts).

<sup>63</sup> *Id.* at 6–7.

<sup>64</sup> While Bonneville submitted comments supporting the retention of Requirement R7, Bonneville did not elaborate on its position.

<sup>65</sup> Order No. 693, 118 FERC ¶ 61,218 at PP 772–774. NERC subsequently added transmission owners as recipients, without elaboration, when NERC revised Reliability Standard FAC-008 and retired Reliability Standard FAC-009.

<sup>66</sup> Order No. 693, 118 FERC ¶ 61,218 at PP 755–762.

<sup>67</sup> 44 U.S.C. 3507(d).

<sup>68</sup> 5 CFR 1320.

REDUCTIONS DUE TO FINAL RULE IN DOCKET NOS. RM19-16 & RM19-17

Reliability standard & requirement	Type <sup>69</sup> and number of entity (1)	Number of annual responses per entity (2)	Total number of responses (1) * (2) = (3)	Average number of burden hours per response (4)	Total burden hours (3) * (4) = (5)
<b>FERC-725A</b>					
FAC-013-2 .....	RC (12) .....	8.33	100	26.67	2,667
INT-006-4 R3.1, R4, R5, R5.1, R5.2, R5.3, R5.4, R5.5 .....	BA/TSP (169) .....	1	169	56.3	9,514.7
INT-004-3.1 .....	BA (97) .....	1	97	56.3	5,461.1
INT-010-2.1 .....	BA(97) .....	1	97	56.3	5,461.1
INT-009-2.1 R2 .....	BA (97) .....	1	97	56.3	5,461.1
MOD-020-0 .....	TP/RP/DP/BA (767) ....	1	767	14.4	11,044.8
Sub-Total for FERC-725A .....	1,239 .....		1,327		39,609.8
<b>FERC-725A(1C)</b>					
TOP-001-4 R19 & R22 .....	BA/TO/GO/DP (1,704) .....	.25	426	0.8	340.8
Sub-Total for FERC-725A(1C) .....	1,704 .....		426		340.8
<b>FERC-725G1</b>					
PRC-004-5(i) R4 .....	TO/GO/DP (1,607) .....	.41	659	4.36	2,873.24
Sub-Total for FERC-725G1 .....	1,607 .....		659		2,873.24
<b>FERC-725Z</b>					
IRO-002-6 R1 .....	RC (12) .....	1.17	14	5.97	83.6
Sub-Total for FERC-725Z .....	12 .....		14		83.6
Total Reductions Due to Final Rule in RM19-16 & RM19-17.			2,426		42,907.44

*Titles:* FERC-725A, Mandatory Reliability Standards for the Bulk Power System; FERC-725A(1C), Mandatory Reliability Standards for Bulk-Power System; Reliability Standard TOP-001-4; FERC-725G1, Mandatory Reliability Standards for the Bulk-Power System; Reliability Standard PRC-004-5(i); FERC-725Z, Mandatory Reliability Standards; IRO Reliability Standards.

*Action:* Reductions to Existing Collections of Information FERC-725A, FERC-725A(1C), and FERC-725Z; and Elimination of Collections of Information, and FERC-725G1.

*OMB Control Nos:* 1902-0244 (FERC-725A); 1902-0298 (FERC-725A(1C)); 1902-0284 (FERC-725G1); and 1902-0276 (FERC-725Z).

<sup>69</sup> RC=Reliability Coordinator; BA=Balancing Authority; TSP=Transmission Service Provider; TO=Transmission Owner; GO=Generator Owner; DP=Distribution Provider; TP=Transmission Provider; and RP=Resource Planner. Our estimates are based on the NERC Compliance Registry of July 17, 2020, which indicates there are 974 entities registered as GOs, 321 entities registered as TOs, 97 entities registered as BAs, 72 entities registered as TSPs, 198 entities registered as TPs, 312 entities registered as DPs, 160 entities registered as RPs, and 12 entities registered as RCs within the United States.

*Respondents:* Business or other for profit, and not for profit institutions.

*Frequency of Responses:* On occasion (and proposed for deletion).

43. *Necessity of the Information:* This proceeding approves the retirement of four Reliability Standards in their entirety and five revised Reliability Standards, reflecting a total of 18 retired requirements identified by NERC. The approved retirements either: (1) Provide little or no reliability benefit; (2) are administrative in nature or relate expressly to commercial or business practices; or (3) are redundant with other Reliability Standards.

44. *Internal review:* The Commission has reviewed NERC's proposal and determined that its action is necessary to implement section 215 of the FPA. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden reduction estimates associated with the information requirements approved for retirement.

45. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office

of the Executive Director, 888 First Street NE, Washington, DC 20426 [Attention: Ellen Brown, email: [DataClearance@ferc.gov](mailto:DataClearance@ferc.gov), phone: (202) 502-8663, fax: (202) 273-0873].

46. Comments concerning the information collections and requirements approved for retirement in this final rule and the associated burden estimates, should be sent to the Commission in this docket and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at the following email address: [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Please refer to the appropriate OMB Control Number(s) and Docket Nos. RM19-16-000 and RM19-17-000 in your submission.

**IV. Regulatory Flexibility Act Certification**

47. The Regulatory Flexibility Act of 1980 (RFA) <sup>70</sup> generally requires a description and analysis of rulemakings that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration’s Office of Size Standards develops the numerical definition of a small business.<sup>71</sup> The Small Business Administration has established size standards, for the types of affected entities (noted in the table above), that range from a maximum of 250–1,000 employees for an entity and its affiliates to be considered small.

48. The Commission estimates the total industry reduction in burden for all entities (large and small) to be 42,907.44 hours (or approximately 18 hours (rounded) per response). The Commission believes that this will reduce burden and cost for all affected entities.

49. Based on the information above, the Commission certifies that the reductions will not have a significant impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis is required.

**V. Environmental Analysis**

50. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>72</sup> The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.<sup>73</sup> The actions approved here fall within this categorical exclusion in the Commission’s regulations.

**VI. Document Availability**

51. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission’s Home Page (<http://www.ferc.gov>) and in the Commission’s Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

52. From the Commission’s Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading.

To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

53. User assistance is available for eLibrary and the Commission’s website during normal business hours from the Commission’s Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

**VII. Effective Date and Congressional Notification**

54. This final rule is effective December 14, 2020. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a “major rule” as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule is being submitted to the Senate, House, and Government Accountability Office.

By direction of the Commission.

Issued: September 17, 2020.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

**Note:** the following Appendix will not appear in the *Code of Federal Regulations*.

**Appendix Commenters**

Abbreviation	Commenter
NERC .....	North American Electric Reliability Corporation.
Trade Associations .....	American Public Power Association, Edison Electric Institute, Large Public Power Council, National Rural Electric Cooperative Association, Transmission Policy Study Group.
Bonneville .....	Bonneville Power Administration.
WAPA .....	Western Area Power Administration.
Appelbaum .....	Jonathan Appelbaum.

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BILLING CODE 6717–01–P

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**29 CFR Parts 1601 and 1626**

**RIN 3046–AB07**

**Procedural Regulations Under Title VII, ADA, and GINA; Procedures—Age Discrimination in Employment Act**

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final rule.

**SUMMARY:** The Equal Employment Opportunity Commission (EEOC or Commission) is amending its procedural regulations to explicitly provide for digital transmissions of documents, to clarify the process for deferral to state and local agencies, to update no cause determination procedures, and to correct typographical and textual errors.

**DATES:** This final rule is effective on November 16, 2020.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Oram, Assistant Legal Counsel, (202) 663–4681 (voice) or

[kathleen.oram@eoc.gov](mailto:kathleen.oram@eoc.gov); Erin Norris, Senior Attorney, Office of Legal Counsel, (980) 296–1286 or [erin.norris@eoc.gov](mailto:erin.norris@eoc.gov).

**SUPPLEMENTARY INFORMATION:** On February 22, 2019 (84 FR 5624), the Equal Employment Opportunity Commission (EEOC) published a notice of proposed rulemaking (NPRM) in the **Federal Register** seeking public comment on proposed revisions to the EEOC’s procedural regulations for charges of employment discrimination. The revisions are intended to serve several purposes: First, they recognize

<sup>70</sup> 5 U.S.C. 601–612.  
<sup>71</sup> 13 CFR 121.101.

<sup>72</sup> *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486,

52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30.783 (1987).  
<sup>73</sup> 18 CFR 380.4(a)(2)(ii).