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Issued in Renton, Washington, on February 27, 2009.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket Nos. RM08-7-000 and RM08-7-001; Order No. 713-A]

Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards

Issued March 19, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: Pursuant to section 215 of the Federal Power Act (FPA), the Federal Energy Regulatory Commission (Commission) approves Reliability Standard IRO-006-4, submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC). The Reliability Standard addresses transmission loading relief requirements, which provide a mechanism to manage and, if necessary, curtail interchange transactions. In addition, pursuant to section 215(d)(5) of the FPA, the Commission directs NERC to develop modifications to Reliability Standard IRO-006-4 to address specific Commission concerns.

DATES: Effective Date: This rule will become effective April 23, 2009.

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1. Pursuant to section 215 of the Federal Power Act (FPA)<sup>1</sup> the Commission approves Reliability Standard IRO-006-4, submitted to the Commission for approval by the North American Electric Reliability

Corporation (NERC). The Reliability Standard addresses transmission loading relief requirements, which provide a mechanism to manage and, if necessary, curtail interchange transactions. In addition, pursuant to section 215(d)(5) of the FPA, the Commission directs NERC to develop

modifications to Reliability Standard IRO-006-4 to address specific concerns identified by the Commission.

I. Background

A. Procedural Background

2. On December 21, 2007, NERC, the Commission-certified electric reliability

<sup>1</sup> 16 U.S.C. 824o (2006).

organization (ERO), submitted for Commission approval modifications to Reliability Standard IRO-006-4 (Reliability Coordination—Transmission Loading Relief), known as the transmission loading relief or “TLR” procedure.<sup>2</sup>

3. On April 21, 2008, as supplemented on May 16, 2008, the Commission issued a Notice of Proposed Rulemaking (NOPR) that proposed to approve three NERC filings, including Reliability Standard IRO-006-4.<sup>3</sup> In response, nine interested persons filed comments, six of which address the TLR procedure at issue here.<sup>4</sup> (The Commission consolidated three ERO submissions in the RM08-7-000 rulemaking proceeding. This Supplemental Final Rule only addresses the ERO’s December 21, 2007 filing pertaining to the TLR Reliability Standard. The Commission addressed the other two ERO filings in Order No. 713, *i.e.*, the Final Rule in this proceeding.)

4. On July 21, 2008, the Commission issued a Final Rule in this proceeding, which approved five Reliability Standards and approved NERC’s interpretation of other Reliability Standards.<sup>5</sup> The Commission, however, did not make a determination in the Final Rule regarding Reliability Standard IRO-006-4 and, instead, directed NERC to submit a filing explaining one aspect of the TLR procedure.

5. On September 11, 2008, NERC submitted a filing as directed in the Final Rule. Notice of NERC’s September 11, 2008 filing was published in the **Federal Register**, 73 FR 75,429. Three interested persons submitted comments.<sup>6</sup>

<sup>2</sup> Reliability Standard IRO-006-4 is not codified in the Commission’s regulations and is not attached to this Supplemental Final Rule. It is, however, available on the Commission’s eLibrary document retrieval system in Docket No. RM08-7-000 and also is available on the ERO’s Web site, <http://www.nerc.com>.

<sup>3</sup> *Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards*, Notice of Proposed Rulemaking, 73 FR 22856 (Apr. 28, 2008), FERC Stats. & Regs. ¶ 32,632, at P 48 (2008) (NOPR), Supplemental Notice of Proposed Rulemaking, 73 FR 30326 (May 27, 2008), FERC Stats. & Regs. ¶ 32,635 (2008) (Supplemental NOPR).

<sup>4</sup> Appendix A identifies the NOPR commenters.

<sup>5</sup> *Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards*, Order No. 713, 73 FR 43613 (July 28, 2008), 124 FERC ¶ 61,071 (2008) (Order No. 713 or Final Rule).

<sup>6</sup> Appendix B identifies the commenters on NERC’s September 11, 2008 filing. In addition, NERC filed reply comments.

## B. Reliability Standard IRO-006-4

6. Reliability Standard IRO-006-4 applies to balancing authorities, reliability coordinators, and transmission operators. Reliability Standard IRO-006-4 modifies Reliability Standard IRO-006-3, which the Commission approved in Order No. 693.<sup>7</sup> In its December 2007 filing, NERC explained that it modified the TLR procedure to “extract” commercial requirements and business practices.<sup>8</sup> Further, the modified Reliability Standard includes changes directed by the Commission in Order No. 693 related to the appropriateness of using the TLR procedure to mitigate a violation of an interconnection reliability operating limit (IROL).<sup>9</sup>

7. Reliability Standard IRO-006-4 contains five requirements. Requirement R1 obligates a reliability coordinator experiencing a potential or actual system operating limit (SOL) or IROL violation within its reliability coordinator area to select one or more procedures to mitigate potential or actual transmission overloads. The requirement also identifies the regional TLR procedures in WECC and ERCOT. Requirement R1 includes a warning that the TLR procedure alone is an inappropriate and ineffective tool to mitigate an actual IROL violation and provides alternatives.

8. Requirement R2 mandates that the reliability coordinator only use local TLR or congestion management procedures to which the transmission operator experiencing the potential or actual SOL or IROL is a party.

9. Requirement R3 establishes that a reliability coordinator with a TLR obligation from an interconnection-wide procedure follow the curtailments as directed by the interconnection-wide procedure. It also requires that a reliability coordinator desiring to use a local procedure as a substitute for curtailments as directed by the interconnection-wide procedure must obtain prior approval from the ERO.

<sup>7</sup> *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh’g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

<sup>8</sup> The commercial requirements were transferred to a North American Energy Standards Board (NAESB) business practices document. The Commission approved the NAESB TLR standard, WEQ-008, to coincide with the effective date of Reliability Standard IRO-006-4. *See Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-C, 73 FR 43848 (July 29, 2008), FERC Stats. & Regs. ¶ 31,274, at P 7 n.11, P 9, P 80 (2008); *see also* Order No. 713, 124 FERC ¶ 61,071 at P 8.

<sup>9</sup> An IROL is a system operating limit that, if violated, could lead to instability, uncontrolled separation, or cascading outages that adversely impact the reliability of the Bulk-Power System.

10. Requirement R4 mandates that each reliability coordinator comply with interconnection-wide procedures, once they are implemented, to curtail transactions that cross interconnection boundaries. Requirement R5 directs balancing authorities and reliability coordinators to comply with applicable interchange-related Reliability Standards during the implementation of TLR procedures.

## II. Discussion

### A. Approval of Reliability Standard IRO-006-4

11. In the NOPR, the Commission proposed to approve IRO-006-4 as just, reasonable, not unduly discriminatory or preferential, and in the public interest.<sup>10</sup>

12. NERC and IESO support approval of the Reliability Standard. Lafayette and LEPA state that they support the Commission’s effort to reduce the use of TLRs; they support adoption of the Reliability Standards as proposed by the Commission.

13. Pursuant to section 215(d) of the FPA, the Commission approves Reliability Standard IRO-006-4 as mandatory and enforceable. The ERO’s proposal implements the Commission’s directives in Order No. 693 to include a warning that the TLR procedure is an inappropriate and ineffective tool to mitigate actual IROL violations and identify available alternatives to mitigate an IROL violation.<sup>11</sup> Further, as discussed below, the Commission believes that the separation of business practices from the Reliability Standards will not compromise Bulk-Power System reliability. Accordingly, the Commission approves IRO-006-4 as just, reasonable, not unduly discriminatory or preferential, and in the public interest, as discussed below.

14. As a separate matter, pursuant to section 215(d)(5) of the FPA, the Commission directs the ERO to develop, pursuant to its Reliability Standards development procedure, modifications to IRO-006-4 to address the Commission’s specific concerns, as discussed below. Further, the Commission approves the proposed violation risk factors and violation severity levels and directs the ERO to submit a filing within 60 days of the effective date of this Supplemental Final Rule revising specified violation risk factors and violation severity levels.

<sup>10</sup> NOPR, FERC Stats. & Regs. ¶ 32,632 at P 47.

<sup>11</sup> Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 577.

## 1. Transfer of Business-Related Requirements to NAESB

15. The Commission, in the NOPR, sought comments on whether the removal and transfer to NAESB of the business-related issues formerly contained in Reliability Standard IRO-006-3 could compromise Bulk-Power System reliability.<sup>12</sup>

### a. Comments

16. NERC states that it has coordinated with NAESB and believes there is no compromise in reliability as a result of the removal and transfer to NAESB of the business-related issues formerly contained in the earlier standard, IRO-006-3. NERC notes that there are minor differences in terminology and language between the NERC and NAESB documents. It states that, although these differences may be confusing to industry, they do not affect the ability to successfully implement the standards as written. Further, NERC indicates that it is working with NAESB to develop more in-depth coordination procedures to ensure that language is consistent.

### b. Commission Determination

17. Based on the ERO's explanation, we are persuaded that the separation of business practices from the Reliability Standards will not compromise Bulk-Power System reliability. However, we are concerned with respect to the ERO's acknowledgement that there are differences in terminology and language used between the ERO Reliability Standard and the NAESB standard that pertain to TLR procedures. The ERO indicates that it is currently working with NAESB to develop more in-depth coordination procedures to ensure that language is consistent. Thus, we expect that the ERO, working with NAESB, will resolve the inconsistencies in terminology between the Reliability Standard and NAESB standard regarding TLR procedures as their agendas permit; we do not find a need to direct changes at this time.

## 2. Improvements to the TLR Procedure

### a. Comments

18. Several commenters raise concerns regarding needed improvements to the TLR procedure. Lafayette and LEPA comment that they have often "suffered" from the curtailment of firm transmission service pursuant to the TLR procedure and support efforts to reduce its use. NRG comments that the excessive use of TLRs is reducing system reliability in

some non-organized markets and that the Commission should require NERC to modify its TLR rules to limit the excessive use of TLRs. NRG states that the Interchange Distribution Calculator (IDC) is critical to the TLR process,<sup>13</sup> since reliability coordinators rely on the curtailments specified by the IDC. NRG identifies two significant problems with the IDC that IRO-006-4 does not address: (1) The generation and load data relied on by the IDC is static, with no requirement that it be regularly updated or accurately reflect real-time conditions; and (2) the IDC methodology does not curtail certain schedules or determine native network load obligations accurately in some cases, leading to a discriminatory assignment of reliability obligations. NRG urges the Commission to direct NERC to modify the IDC to base its curtailment decisions on accurate native load information and to base them consistently on local load and generation amounts.

19. Further, NRG states that there is a gap in the proposed TLR procedures that allows certain non-firm transactions to escape curtailment prior to the issuance of a Level 5 TLR (*i.e.*, curtailment of firm transactions and firm native load). NRG reiterates its concerns in its comments on NERC's September 11, 2008 filing in this proceeding.

20. ISO/RTO Council suggests that the Commission clarify that, although TLR should not be ruled out as a congestion management tool, NERC should address the use of more sophisticated tools to respond to the impacts that loop flow and the lack of transparency in non-RTO regions can have on congestion management at the "seams."

### b. Commission Determination

21. The above comments on suggested improvements to the TLR procedure are beyond the scope of this proceeding, which pertains to the separation of business practices from the ERO's TLR procedure and implementation of the Commission's directives set forth in Order No. 693.<sup>14</sup> We note, however, that the ERO indicated in its December 21, 2007 filing that it has a three-phase plan to improve the TLR procedures, and the third phase will consist of "a complete

<sup>13</sup> The IDC is a mechanism used by the reliability coordinators in the Eastern Interconnection to calculate the distribution of interchange transactions over specific flowgates. It includes a database of all interchange transactions and a matrix of the distribution factors for the Eastern Interconnection.

<sup>14</sup> NERC's comments in reply to NRG, as well as Constellation's and, in their joint supplemental pleading, Lafayette and LEPA's comments relating to the TLR procedure are likewise beyond the scope of this proceeding.

redrafting to incorporate enhancement and changes beyond the separation of reliability and business practice issues."<sup>15</sup> Therefore, the phase three proceeding would provide a proper forum for commenters to raise their concerns. The Commission believes that NRG and other commenters raise valid issues and urges the commenters to raise—and expects the ERO to consider—these matters in an appropriate proceeding. We also note that NERC states it is currently updating the IDC to more accurately determine the impacts of native load and network service.<sup>16</sup>

### B. Requirement R1

22. Requirement R1 of IRO-006-4 provides, in part:

R1. A Reliability Coordinator experiencing a potential or actual SOL or IROL violation within its Reliability Coordinator Area shall, with its authority and at its discretion, select one or more procedures to provide transmission loading relief. These procedures can be a "local" (regional, interregional, or sub-regional) transmission loading relief procedure or one of the following Interconnection-wide procedures:

R1.1 The Interconnection-wide Transmission Loading Relief (TLR) procedure for use in the Eastern Interconnection is provided in Attachment 1-IRO-006-4. The TLR procedure alone is an inappropriate and ineffective tool to mitigate an IROL violation due to the time required to implement the procedure. Other acceptable and more effective procedures to mitigate actual IROL violations include: Reconfiguration, redispatch, or load shedding.

Below, we address three concerns regarding Requirement R1: (1) Use of the TLR procedure in conjunction with other procedures to mitigate an IROL violation; (2) use of the TLR procedure to mitigate an actual IROL violation is a violation of the Reliability Standard; and (3) use of demand-side management as an effective procedure to mitigate IROL violations.

## 1. Use of TLR Procedure in Conjunction With Other Procedures To Mitigate an IROL Violation

### a. Final Rule Discussion

23. In the Final Rule, the Commission did not approve or remand IRO-006-4 but rather directed the ERO to submit a filing addressing the Commission's concerns regarding Requirements R1 and R1.1 of the Reliability Standard.<sup>17</sup> Specifically, the Final Rule explained

<sup>15</sup> NERC December 21, 2007 Filing at 7. Moreover, pursuant to the ERO's Rules of Procedure, a commenter can submit a Standard Authorization Request to the ERO to propose revisions to a Reliability Standard.

<sup>16</sup> See NERC September 11, 2008 Response at 10.

<sup>17</sup> Order No. 713, 124 FERC ¶ 61,071 at P 46-50.

<sup>12</sup> NOPR, FERC Stats. & Regs. ¶ 32,632 at P 49.

that, consistent with the *Final Blackout Report*,<sup>18</sup> Order No. 693 directed NERC to develop a modification to the TLR procedure that the Commission accepted in IRO-006-3 that “(1) includes a clear warning that the TLR procedure is an inappropriate and ineffective tool to mitigate actual IROL violations and (2) identifies in a Requirement the available alternatives to mitigate an IROL violation other than use of the TLR procedure.”<sup>19</sup>

24. In its December 2007 filing, NERC stated that it modified the Reliability Standard in response to the Order No. 693 directive. In particular, the ERO modified Requirement R1.1 of IRO-006-4 to provide that “[t]he TLR procedure [for the Eastern Interconnection] *alone* is an inappropriate and ineffective tool to mitigate an IROL violation due to the time required to implement the procedure.” (Emphasis added.)

25. In Order No. 713, the Commission queried whether the language of Requirements R1 and R1.1 are adequate to satisfy the concern of the *Final Blackout Report* and Order No. 693 that the TLR procedure not be used in response to an actual IROL violation. The Commission explained:

An entity is not prevented from using the TLR procedure to avoid a potential IROL violation before a violation occurs. If, while a TLR procedure is in progress, an IROL violation occurs, it is not necessary for the entity to terminate the TLR procedure. However, the Commission believes that it is inappropriate and ineffective to rely on the TLR procedure, even in conjunction with another tool, to address an *actual* IROL violation.<sup>[20]</sup>

Accordingly, the Commission directed the ERO to explain Requirements R1 and R1.1 of IRO-006-4 in light of this concern.

#### b. NERC Responsive Filing

26. NERC responds that the most immediate reliability goal is the mitigation of the IROL violation. NERC states that there are four acceptable options to respond to an IROL violation: inter-area redispatch, intra-area redispatch, reconfiguration of the transmission system, and voluntary or involuntary reductions in load.

<sup>18</sup> See U.S.-Canada Power System Outage Task Force, *Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations*, at 163 (April 2004) (*Final Blackout Report*), available at <http://www.ferc.gov/industries/electric/indus-act/blackout.asp>. Recommendation 31 of the report provides that NERC should “[c]larify that the [TLR] process should not be used in situations involving an actual violation of an Operation Security Limit.”

<sup>19</sup> See Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 577, 964.

<sup>20</sup> Order No. 713, 124 FERC ¶ 61,071 at P 49.

According to NERC, Requirement R1.1 of IRO-006-4 identifies these options as “reconfiguration, redispatch, or load shedding.”

27. Further, NERC believes that taking concurrent action, i.e., using TLR in conjunction with one of the above operation actions, “can result in positive outcomes.”<sup>21</sup> NERC agrees with the Commission that the use of TLR prior to an actual IROL violation is an acceptable practice. NERC also agrees that a TLR should not be terminated following the occurrence of an IROL violation if the TLR procedure was already in progress. However, NERC points out that it is impossible to decouple the TLR actions of the previous hour from those of the current hour. According to NERC, the progressive nature of TLR requires constant management to ensure that reliability and open access are maintained. NERC maintains that the Commission should endorse a situation where, on a continuing basis, a TLR can be reissued for a constrained facility in order to assist in providing relief, in addition to the more immediate operator actions taken to alleviate the actual overload. NERC disagrees that all interchange transactions should be frozen at current levels while any new transactions are held, because this could result in aggravation of the IROL violation from an increase in native load and/or parallel flows. For similar reasons, NERC also believes it is inappropriate to let the curtailments issued for the current hour expire and not reissue the TLR, because this practice also could aggravate the IROL violation, as the single-hour established curtailments would expire and transactions would be reloaded.

28. NERC avers that the intent of the Commission’s directive is that, should an entity experience an actual IROL violation, that entity should not invoke the TLR process with the belief that the IROL violation will be mitigated by the TLR within an acceptable timeframe. NERC contends, however, that any standard that would require a reliability coordinator to explicitly *not* use TLR as one of the tools it has in responding to an actual IROL violation could compromise reliability, open access, or both. NERC states that it is appropriate for an entity to use the TLR process in response to an actual IROL, provided such use is a complementary action to other operator actions employed to mitigate the IROL violation more expeditiously and, as such, invoking TLR is not the only action taken.

<sup>21</sup> NERC September 11, 2008 Response at 4.

29. NERC provides examples of use of TLR in conjunction with other acceptable options to provide a more rapid and effective return from emergency conditions. For example, NERC states that if an entity redispatches generation and invokes a TLR at the same time in response to an actual IROL violation, that entity may utilize the generation to respond immediately to mitigate the violation and bring the flow below the IROL, then reduce the generation once the TLR is able to effectively and more equitably address the issue.

#### c. Comments on NERC Responsive Filing

30. Southern agrees with NERC’s explanation regarding the ways in which a reliability coordinator may use the TLR procedure. Southern believes that the TLR procedure, when used in conjunction with reconfiguration, redispatch, or load shedding, is an indispensable means for providing relief for constrained facilities. Southern comments that any revision to Reliability Standard IRO-006-4 should be developed through the Reliability Standards development process.

31. ISO/RTO Council comments that it generally agrees with the sequencing of TLR procedures as explained by NERC. While ISO/RTO Council supports limiting the wide-scale use of TLR as a congestion management tool, it believes that the Commission’s interpretation may draw too fine a line in “hard wiring” a particular sequence of the use of TLRs. It agrees with NERC that “it is impossible to decouple the actions of the previous hour from those of the current hour,” and urges the Commission to avoid placing artificial barriers in the sequencing of the use of the TLR procedure.

#### d. Commission Determination

32. The Commission is satisfied with the ERO’s response. We agree with the ERO that acceptable immediate actions to mitigate an IROL violation may include one or more of the following: inter-area redispatch, intra-area redispatch of generation, reconfiguration of the transmission system, and voluntary or involuntary load reductions. When an IROL violation occurs, the reliability coordinator should use the above tools appropriate to the circumstance and duration of the actual IROL violation for mitigation.

33. We understand from its explanation that the ERO agrees that use of the TLR procedure is not one of the acceptable immediate actions to mitigate an IROL violation. Rather, use

of the TLR procedure is complementary with, and may be used in conjunction with, the identified tools to mitigate an IROL violation, provided that the action to implement the TLR procedure does not interfere with or delay an entity taking the immediate action required to mitigate the IROL violation.<sup>22</sup> The Commission understands this is the intent of the language in Requirement R1.1 that “[t]he TLR procedure alone is an inappropriate and ineffective tool to mitigate an IROL violation due to the time required to implement the procedure.”

34. The Commission reiterates that the use of a TLR is not required to be terminated following the occurrence of an IROL violation if the TLR procedure was already in progress prior to exceeding the IROL. Thus, if an IROL is exceeded after a TLR procedure is in progress, the reliability coordinator does not need to revoke the TLR. Moreover, in the event that a potential IROL violation progresses to an actual IROL violation near the top of the hour and a TLR is already in progress, it is acceptable for the reliability coordinator to reissue the TLR to prevent reloading or exacerbating interchange schedules, while more immediate actions are taken to relieve the IROL violation.

35. During an actual IROL violation, the primary concern of the reliability coordinator should be to mitigate the violation immediately. Because the TLR procedure may take an extended time to fully implement, it is not acceptable for a reliability coordinator to invoke the TLR process with the belief that the IROL violation will be mitigated by the TLR. Therefore, during an actual IROL violation, a reliability coordinator should initiate more immediate actions to relieve the IROL violation before initiating a TLR and at no point should implementing a TLR divert operator resources or delay implementation of more immediate IROL mitigation actions. In accord with this understanding, we find Requirement R1.1 consistent with the *Final Blackout Report* and Order No. 693.

36. As discussed above, based on the ERO’s response we believe that our understanding of Requirement R1.1 comports with that of the ERO. While IRO–006–4, Requirement R1.1, should be implemented and enforced with the above understanding, we believe that

<sup>22</sup> The ERO states that “it is appropriate for an entity to use the TLR process in response to an actual IROL, provided that it is a complementary action to other operator actions employed to mitigate the IROL violation more expeditiously and, as such, invoking TLR is not the only action taken.” NERC September 11, 2008 Response at 5 (emphasis added).

the term “alone” in the provision could be improved to more precisely convey that it is a violation of Requirement R1.1 to rely on the TLR procedure when an entity is in the process of mitigating an IROL violation and the entity has not taken more immediate and effective means to achieve relief. Accordingly, pursuant to section 215(d)(5) of the FPA, the Commission directs the ERO to develop a modification of Requirement R1.1 with respect to the term “alone,” consistent with this discussion.

## 2. Use of TLR Procedure Alone To Mitigate an IROL Violation

37. In the NOPR, the Commission proposed to approve the Reliability Standard based on the interpretation that using a TLR procedure alone to mitigate an actual IROL violation is a violation of the Reliability Standard.<sup>23</sup>

### a. Comments

38. ISO/RTO Council objects to the Commission’s proposal to approve the proposed Reliability Standard IRO–006–4 based on the interpretation that using a TLR alone to mitigate an IROL violation is a violation of the Reliability Standard. ISO/RTO Council expresses concern that the ERO has procedures for interpreting Reliability Standards and those procedures may be eroded through after-the-fact Commission interpretation without the opportunity for NERC stakeholder review. ISO/RTO Council urges greater deference to following the Commission-approved NERC process for the interpretation of Reliability Standards. Should that process prove too time-consuming, ISO/RTO Council suggests that the Commission revisit the process itself rather than undertaking *de facto* amendments to it by interpreting the Reliability Standard in ways not addressed through the NERC stakeholder process.

### b. Commission Determination

39. This issue raised in the NOPR is somewhat overtaken by the further Commission inquiry in the Final Rule regarding the appropriate tools for mitigating an IROL violation and our discussion immediately above on this issue. As we state above, IRO–006–4, Requirement R1.1, should be “implemented and enforced” based on our understanding in this order of the issue.

40. In any case, we adopt our NOPR proposal and approve Reliability Standard IRO–006–4 with the understanding that using a TLR procedure to mitigate an actual IROL

violation is a violation of the Requirement R1.1 of the Reliability Standard, as discussed above. While ISO/RTO Council raises procedural concerns regarding the Commission’s interpretation, neither ISO/RTO Council nor any other commenter expresses concern regarding the substance of the Commission’s interpretation. Further, the Commission previously has determined—or interpreted—when a violation of a Reliability Standard would occur.<sup>24</sup>

## 3. Use of Demand-Side Management To Mitigate IROL Violations

41. In a joint concurrence to the NOPR, then-Commissioner Wellinghoff and Commissioner Kelly noted that demand-side management is not explicitly included in Requirement R1.1 of IRO–006–4 among the acceptable tools to mitigate an IROL violation. The concurrence noted that nothing in the Reliability Standard precludes the use of demand-side management that can quickly respond to emergencies and discussed available demand-side management technologies currently used that may be deployed as readily, if not faster, than involuntary load shedding. The joint concurrence expressed a preference to expressly include demand-side management among the list of tools to mitigate IROL violations, set forth in Requirement R1.1.

### a. Comments

42. NERC comments that it did not intend the list of tools in Requirement R1.1 for addressing IROL violations to be an exhaustive list; effective demand-side response could also be considered.

43. Alcoa comments that demand-side management should be included in the list of alternatives to the TLR procedure in IRO–006–4. Alcoa claims that its smelters have demonstrated an ability to curb demand to assist in TLR efforts and alleviate IROL violations. In addition, Alcoa claims that in some instances load may be able to respond to IROL violations more quickly and effectively than generation reserves. According to Alcoa, flexible loads served at transmission voltages are most effective for immediate demand response to IROL violations.

44. ISO/RTO Council comments that IRO–006–4 does not preclude reliance on demand-side management that can respond quickly to emergencies. It believes that the Reliability Standards should be resource-neutral in their

<sup>24</sup> *N. Am. Elec. Reliability Corp.*, 119 FERC ¶ 61,321, at P 10 (2007) (“A vegetation-related transmission outage would result in a violation of Requirement R1, R2 or both.”).

<sup>23</sup> NOPR, FERC Stats. & Regs. ¶ 32,632 at P 48.

application. ISO/RTO Council states that, consistent with Order No. 693, so long as a resource can address system conditions, it should be recognized in the Reliability Standards as a tool upon which the system operator can rely. ISO/RTO Council also notes initiatives by NERC and NAESB to develop rules for classifying demand-side management and identifying methods for measurement and verification.

#### b. Commission Determination

45. It is clear from the comments of the ERO, Alcoa, and ISO/RTO Council that the Reliability Standard includes effective demand-side management as a tool to mitigate an IROL violation pursuant to Requirement R1.1 of IRO-006-4. In its September 11, 2008 filing, the ERO states that there are four acceptable options to respond to an IROL violation: inter-area redispatch, intra-area redispatch, reconfiguration of the transmission system, and voluntary or involuntary reductions in load. The ERO further explains that the reference in Requirement R1.1 to "load shedding" refers to voluntary or involuntary reductions in load.<sup>25</sup> Thus, as clarified by NERC, Requirement R1.1 allows the use of effective demand-side management as one tool to mitigate an IROL violation. The Commission will implement and enforce this Reliability Standard as clarified by NERC.

#### C. Violation Risk Factors

46. In the NOPR, the Commission proposed to direct the ERO to modify the violation risk factors assigned to Requirements R1 through R4 by raising them to "high." This proposal was based on the Commission's guidelines for evaluating validity of violation risk factor assignments.<sup>26</sup> In particular, the Commission reasoned that a "high" violation risk factor assignment for Requirements R1 through R4 is consistent with findings of the *Final Blackout Report*.<sup>27</sup>

<sup>25</sup> NERC September 11, 2008 Response at 4.

<sup>26</sup> The guidelines are: (1) Consistency with the conclusions of the Blackout Report; (2) consistency within a Reliability Standard; (3) consistency among Reliability Standards; (4) consistency with NERC's definition of the violation risk factor level; and (5) treatment of requirements that co-mingle more than one obligation. The Commission also explained that this list was not necessarily all-inclusive and that it retains the flexibility to consider additional guidelines in the future. A detailed explanation is provided in *North American Electric Reliability Corp.*, 120 FERC ¶ 61,145, at P 8-13 (2007).

<sup>27</sup> Recommendation 31 states, "Clarify that the transmission loading relief (TLR) process should not be used in situations involving an actual violation or an Operation Security Limit." *Final Blackout Report* at 163.

#### 1. Comments

47. NERC, IESO, and ISO/RTO Council urge the Commission to adopt the violation risk factors proposed by NERC. NERC contends that the Commission's reliance on the violation risk factors for IRO-006-3, Requirements R1 through R4, submitted in 2007 is not appropriate.<sup>28</sup> NERC explains that the violation risk factors submitted in the current proceeding for IRO-006-4 received significant industry review and scrutiny, which was not the case with the 2007 submission.

##### a. Violation Risk Factors for Requirement R1

48. NERC agrees with the Commission that Requirements R1.1 through R1.3 are explanatory text and that a violation risk factor need not be assigned to each subsection. However, NERC, ISO/RTO Council, and IESO disagree with the Commission's proposal to direct the ERO to raise the violation risk factor from "medium" to "high."

49. Specifically, NERC and ISO/RTO Council disagree with the Commission's statement that a "high" violation risk factor assignment is consistent with the findings of the *Final Blackout Report*. According to NERC, the main thrust of Recommendation 31 in the *Final Blackout Report* (regarding the use of TLR in response to actual violations) has been addressed in Requirement R1.1 of the Reliability Standard and does not warrant a "high" violation risk factor designation. ISO/RTO Council contends that the *Final Blackout Report* does not identify and rank the associated risk of not implementing each recommendation. ISO/RTO Council claims that the *Final Blackout Report* Recommendation 31 simply focuses on reliability coordinators using tools other than TLRs for a real-time emergency.

50. Further, NERC contends that IRO-006-4, Requirement R1 and its sub-requirements are procedural in nature, because they focus on how relief is achieved rather than on whether relief is achieved. NERC recognizes that "the result of an ineffective application of this requirement could impact the electrical state of the grid."<sup>29</sup> However, NERC posits that IRO-005-1, Requirement R5 is the principal source of the reliability coordinator's obligation to relieve actual or potential IROL

<sup>28</sup> See NOPR, FERC Stats. & Regs. ¶ 32,632 at P 51 (noting that the corresponding requirements in the earlier Commission-approved version of the Reliability Standard were assigned a "high" violation risk factor).

<sup>29</sup> NERC Comments at 19. Unless otherwise indicated, citations to parties' comments refer to comments filed after the NOPR, prior to the Final Rule.

violations. For these reasons, NERC believes Requirement R1 merits a "medium" violation risk factor.

51. IESO agrees with NERC's assessment that Requirement R1 is administrative in nature. IESO states that Requirement R1 provides the initiating reliability coordinator options from which to choose to relieve transmission constraints, and it becomes a reliability requirement only when a reliability coordinator chooses an interconnection-wide procedure as one of the means to relieve transmission constraints. IESO explains that if a reliability coordinator chooses other control actions but not an interconnection-wide TLR procedure to prevent or mitigate an IROL violation, this Reliability Standard will not apply, and the reliability coordinator will not be subject to the requirements in the standard. Further, IESO contends that if a reliability coordinator chooses to apply an interconnection-wide procedure and the requirements stipulated therein are not complied with, there is a potential risk on the control and operation of the system, because non-compliance with the TLR procedure may affect other actions that are also being applied to prevent or mitigate an IROL violation.

52. IESO and ISO/RTO Council disagree with the Commission's statement that, if the reliability coordinator chooses an unapproved and ineffective procedure for relief or fails to choose a procedure entirely, potential or actual IROL violations will not be mitigated as intended by the reliability coordinator.<sup>30</sup> According to IESO and ISO/RTO Council, with or without the interconnection-wide relief procedure, reliability coordinators and transmission operators are required by other Reliability Standards such as TOP-002, TOP-004, and IRO-005 to apply local control actions and procedures to prevent and mitigate SOL and IROL violations.

53. ISO/RTO Council also favors a "medium" violation risk factor assignment for Requirement R1, stating that interconnection-wide procedures are only one tool in the toolbox to restore system integrity.

##### b. Violation Risk Factors for Requirement R2

54. NERC does not believe that a reliability coordinator could successfully implement a local procedure to which the particular transmission operator is not a party. In any event, NERC does not believe that

<sup>30</sup> See NOPR, FERC Stats. & Regs. ¶ 32,632 at P 52.

the implementation of such a procedure would in itself create a “high” reliability risk. NERC states that if the reliability coordinator were able to achieve the relief, then it would be considered as having the lesser infraction of using the wrong tools to achieve the correct results. Further, it states that if such a procedure did not provide the required relief, the reliability coordinator would be in violation of IRO-005-1, Requirement R5. NERC claims this requirement is focused on “how” the relief is provided, not “whether” the relief is provided. In addition, NERC states that the use of a local procedure is implemented at the discretion of the reliability coordinator and is not obligatory. Accordingly, NERC believes that a violation risk factor of “lower” is appropriate.

55. IESO argues the intent of Requirement R2 is to ensure that a reliability coordinator who initiates actions to relieve transmission constraints in a transmission operator’s area applies the actions that are either totally local to the transmission operator’s area or which have been developed by the transmission operator jointly with other transmission operators. IESO states that choosing which procedures to relieve transmission constraints is an administrative requirement since the reliability coordinator, having the authority to ensure wide area reliability, may apply any procedures that it deems necessary to relieve transmission constraints. IESO contends that in the event the reliability coordinator applies a relief procedure to which the constrained transmission operator is not a party, it should not be a presumption that prevention or mitigation of an IROL violation will not be achieved since the reliability coordinator is obligated to ensure operating reliability through compliance with IRO-005-1. For these reasons, IESO believes that Requirement R2 is administrative and deserves a “lower” violation risk factor.

56. IESO disagrees with the Commission assessment that “[v]iolation risk factors should not be assigned differently for requirements in separate Reliability Standards based on compliance with another Reliability Standard,” on the basis that “[t]wo requirements either achieve separate reliability goals and, therefore, violation of them represents independent risks, or two requirements share the same reliability goal.”<sup>31</sup> IESO states that, while the IRO-005-1 requirements and the TLR requirements share the same

reliability goal, the latter is in fact subordinate to the former. Thus, IESO maintains that there should not be two simultaneous “high” risk penalties assessed for a reliability coordinator for failing to comply with the TLR procedure of Requirements R1 or R2 and for failing to prevent or mitigate an IROL violation as required in IRO-005-1.

#### c. Violation Risk Factors for Requirement R3

57. NERC maintains that Requirement R3 is focused on the procedural aspects of the Reliability Standard, i.e., how the relief is provided rather than whether the relief was provided. NERC argues that if the entity is able to achieve the relief through other means that were not pre-approved, then it would have committed an administration violation of using the wrong tools to achieve the correct results. According to NERC, if such a procedure did not provide the required relief, the reliability coordinator would be in violation of IRO-005-1, Requirement R5. For reasons similar to those provided for Requirement R2, IESO agrees with NERC that Requirement R3 is administrative and deserves a “lower” violation risk factor.

#### d. Violation Risk Factors for Requirement R4

58. NERC claims that a violation of Requirement R4 is “a specific kind of violation of the INT family of Reliability Standards that is being caused by a reliability coordinator’s inaction, resulting in an imbalance in one or both of the interconnections involved.”<sup>32</sup> NERC comments that Requirement R4 complements the INT group of Reliability Standards in the same fashion as Requirement R5, which the Commission supported with a violation risk factor of “medium.” IESO concurs with NERC’s assignment of a “medium” violation risk factor to Requirement R4. IESO reasons that complying with the provisions of the interconnection-wide procedure of the initiating reliability coordinator is no more stringent than complying with the request for relief based on the TLR procedure within the same interconnection, the latter being the requirement in R1.

#### 2. Commission Determination on Violation Risk Factors

59. For the reasons stated in the NOPR and as discussed below, the Commission directs the ERO to modify the violation risk factors of

Requirements R1 through R4 of IRO-006-4 to “high.”

60. The Commission disagrees with NERC and others and finds that it is appropriate to use the *Final Blackout Report* as a basis for setting violation risk factors of the proposed Reliability Standard at “high” for several reasons. The *Final Blackout Report* is the result of the U.S.-Canada Task Force’s investigation of the August 14, 2003 blackout where the Task Force identified contributing factors and causes that put the Bulk-Power System at risk for that event. Specifically, the *Final Blackout Report* identified an attempt to use the TLR process to address transmission power flows without recognizing that the imposition of a TLR procedure would not solve the problem as one contributing cause for the initiation of the blackout of August 2003. Based on its findings, the Task Force developed recommendations to reduce the possibility of future outages and to reduce the scope of future blackouts that may nonetheless occur.<sup>33</sup> Thus, the Task Force developed Recommendation No. 31 to prevent the initiation of a TLR procedure during an actual violation of an SOL.<sup>34</sup> Since the *Final Blackout Report* was developed to document the August 14, 2003 blackout’s contributing factors and causes, which include specific violations of then voluntary reliability policies, guidelines, and standards, the Commission believes it is appropriate to use the findings of the *Final Blackout Report* as one of the guidelines for the determination of a requirement’s violation risk factor. Specifically, the Commission believes the findings of the *Final Blackout Report* are particularly relevant in the determination of violation risk factors of then-voluntary reliability policies, guidelines, and standards identified as causes and factors of the August 14, 2003 blackout that the ERO proposes as mandatory Reliability Standards, such as IRO-006-4. The Commission also disagrees for the same reasons with commenters that argue the *Final Blackout Report* does not identify and rank the associated risk of not implementing each recommendation.

61. While we agree that Requirement R.1.1 discourages the use of a TLR to mitigate a real-time IROL violation, Requirement R1.1, is merely explanatory text. It is Requirement R1 that establishes that the reliability coordinator shall choose one or more of the procedures, listed as sub-requirements, to provide the appropriate

<sup>31</sup> IESO Comments at 8 (quoting NOPR, FERC Stats. & Regs. ¶ 32,632 at P 53).

<sup>32</sup> NERC Comments at 21–22.

<sup>33</sup> *Final Blackout Report* at 20.

<sup>34</sup> *Id.* at 163.

transmission relief. The selection of a procedure to provide relief to address a potential or actual SOL or IROL violation is directly relevant to *Final Blackout Report* Recommendation No. 31. If an inappropriate procedure is selected in an attempt to mitigate an IROL, the Bulk-Power System is vulnerable to cascading outages, as was the case on August 14, 2003.

62. The Commission is not persuaded by NERC's argument relative to "using the wrong tools to achieve the correct results" in the assignment of a requirement's violation risk factor. Contrary to this argument, the Commission has recognized that there may be some Reliability Standards where the means, or the "how," is inextricably linked to the effectiveness of the Reliability Standard.<sup>35</sup> We find that this is the case here. The Commission has explained that the inclusion of implementation practices within requirements of such a standard is to reduce uncertainty and further objectives that foster reliability which, if violated, would pose increased reliability risk to the Bulk-Power System.<sup>36</sup>

63. Similarly, NERC's argument that, if the reliability coordinator were able to achieve the relief desired without complying with Requirement R1, it would be considered as having the lesser infraction of using the wrong tools to achieve the correct results is also flawed. The purpose of the violation risk factor is to accurately portray the risk a violation poses to the Bulk-Power System,<sup>37</sup> notwithstanding a violator's avoidance of reliability problems in a particular case by using an unreliable operation. This Commission determination is relevant to arguments that a "high" violation risk factor is not appropriate because the subject requirement overlaps other requirements, duplicates other requirements, or could be implemented by alternative means. The Commission has previously determined that NERC should address those issues through the Reliability Standard development process.<sup>38</sup>

64. The Commission also disagrees with the characterization of Requirements R1, R2, and R3 as procedural choices without reliability-

related consequences. For example, failure to implement Requirement R1, *i.e.*, failure to select one or more procedures to provide transmission relief, is not just a procedural or administrative choice; it is a decision that has the potential to place the Bulk-Power System at risk of cascading outages. Although commenters argue that a violation of Requirement R2 is essentially administrative in nature and that the prevention or mitigation of the potential or actual SOL or IROL may be achieved through compliance with another Reliability Standard, which would justify a "lower" violation risk factor, the Commission disagrees. Requirements R1 through R4 require that a reliability coordinator choose and follow the appropriate procedure to provide relief. If the reliability coordinator chooses an unapproved and/or ineffective procedure for relief or fails to choose a procedure entirely, potential or actual IROL violations will not be mitigated as intended by the reliability coordinator. Therefore, the Commission finds that violation of Requirements R1 through R4 present a high reliability risk to Bulk-Power System. Assigning a "high" violation risk factor to Requirements R1 through R4 is consistent with the *Final Blackout Report*.

65. A violation risk factor represents the reliability risk a violation of that requirement presents to the Bulk-Power System. Violation risk factors should not be assigned differently for requirements in separate Reliability Standards based on compliance with another standard. This assessed reliability risk is independent and not contingent upon compliance with other requirements of Reliability Standards. While the Commission recognizes the complementary nature of proposed Reliability Standard IRO-006-4, Requirement R1 and Reliability Standard IRO-005-1, Requirement R5, the fact that requirements may share the same reliability objective as another requirement does not justify lowering one or more of the requirements' violation risk factors. In fact, the Commission expects the assignment of violation risk factors corresponding to requirements that address similar reliability goals in different Reliability Standards to be treated comparably.<sup>39</sup> The Commission notes that Reliability Standard IRO-005-1, Requirement R5, is assigned a "high" violation risk factor.

66. Further, the argument that a "lower" violation risk factor assigned to

Requirement R1 is appropriate since Requirement R1 is administrative in nature (because it provides the initiating reliability coordinator with options to choose among available procedures and only becomes a reliability requirement when a reliability coordinator chooses an interconnection-wide procedure) is flawed. First, the fact that a requirement provides "options" does not automatically make that requirement administrative. It is the potential reliability risks the failure to take options mandated by the requirement presents to the Bulk-Power System that determines that requirement's violation risk factor. Second, requirements become mandatory and enforceable reliability requirements only after Commission approval and not after any action, or inaction, by an applicable entity.

67. For the same reasons explained above, the Commission disagrees with comments that Requirement R3 focuses on procedural aspects of the Reliability Standard founded on the arguments that the requirement related to "how" the relief is provided rather than "whether" the relief was provided, where the "wrong tools" were used to achieve the "correct results." Even if an entity, having violated a Reliability Standard, achieves correct results, the entity's success should be attributed to a matter of chance and may be more risky than the operation set forth in the Reliability Standard.

68. IESO's comment that there should not be two simultaneous "high" risk penalties assessed to a reliability coordinator who fails to comply with the TLR procedure of Requirements R1 and R2 is outside the scope of this proceeding. The determination of monetary penalties for a violation of a requirement is a compliance issue, which is best addressed in the context of a compliance proceeding.<sup>40</sup>

69. We do not agree that a violation of Requirement R4 is a specific type of violation of the INT Reliability Standards as NERC and IESO suggest. Requirement R4 requires a reliability coordinator to comply with interconnection-wide curtailment procedures whereas Requirement R5 requires reliability coordinators and balancing authorities to adhere to INT standards that largely specify interchange scheduling procedures. Failure to implement curtailment procedures poses a higher reliability risk, since it may place the Bulk-Power

<sup>35</sup> *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 260; *see also id.*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

<sup>36</sup> *N. Am. Elec. Reliability Corp.*, 121 FERC ¶ 61,179, at P 15 (2007).

<sup>37</sup> *Id.* P 16.

<sup>38</sup> *Id.* P 39.

<sup>39</sup> *N. Am. Elec. Reliability Corp.*, 119 FERC ¶ 61,145, at P 25 (2007).

<sup>40</sup> We note that section 3.10 of NERC's Sanction Guidelines addresses multiple violations related to a single act or common incidence of noncompliance.

System at risk of cascading outages, than failure to implement scheduling procedures; therefore, it should receive a “high” violation risk factor.

### 3. Commission Determination on Violation Severity Levels

70. The ERO’s December 21, 2007 filing included proposed violation severity levels corresponding to the requirements of IRO–006–4. Violation severity levels, which the ERO or the Regional Entity will apply to establish an initial base penalty range when assessing a penalty for the violation of a Reliability Standard, constitutes a post-violation measurement of the degree to which a requirement was violated.<sup>41</sup> The Commission accepts the violation severity levels proposed by the ERO that correspond to the Requirements of Reliability Standard IRO–006–4.

71. Further, in the Violation Severity Levels Order, the Commission directed the ERO to submit a compliance filing certifying that it has reviewed each of the violation severity level assignments for consistency with certain guidelines set forth in that order.<sup>42</sup> The Commission also directed that the ERO either validate the existing violation severity level designations or propose revisions to specific approved violation severity level assignments where the ERO determines that such assignments do not meet the specified guidelines. Consistent with the Violation Severity Levels Order, the Commission now directs the ERO to review the violation severity levels for IRO–006–4. The ERO must include in the compliance filing required by Ordering Paragraph (E) of the Violation Severity Levels Order a certification that it has reviewed each violation severity level assignment corresponding to the requirements of IRO–006–4 for consistency with certain guidelines (specifically, guidelines 2b, 3, and 4), validating the assignments that meet the guidelines and proposing revisions to those that fail to meet the guidelines.

72. Accordingly, with respect to the violation risk factors and severity levels, we approve IRO–006–4 as mandatory and enforceable. In addition, we direct the ERO submit a compliance filing within 60 days that revises violation risk factors to “high” for Requirements R1 through R4. The Commission approves the proposed violation severity levels and requires the ERO to

submit a compliance filing, as discussed above.

### III. Information Collection Statement

73. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.<sup>43</sup> The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.<sup>44</sup> As stated above, the Commission previously approved, in Order No. 693, Reliability Standard IRO–006, which is the subject of this supplemental final rule. In the NOPR, the Commission explained that the modifications to the Reliability Standard are minor; therefore, they do not add to or increase entities’ reporting burden. Thus, in the NOPR, the Commission stated that the modified Reliability Standard does not materially affect the burden estimates relating to the earlier version of Reliability Standard IRO–006 presented in Order No. 693.<sup>45</sup>

74. In response to the NOPR, the Commission received no comments concerning its estimate for the burden and costs and therefore uses the same estimate here.

*Title:* Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards.

*Action:* Proposed Collection.

*OMB Control No.:* 1902–0244.

*Respondents:* Businesses or other for-profit institutions; not-for-profit institutions.

*Frequency of Responses:* On Occasion.

*Necessity of the Information:* This Supplemental Final Rule approves one modified Reliability Standard that pertains to transmission loading relief procedures. The Supplemental Final Rule finds the Reliability Standard just, reasonable, not unduly discriminatory or preferential, and in the public interest.

75. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, 888 First Street, NE., Washington, DC 20426, Tel: (202) 502–

8415, Fax: (202) 273–0873, e-mail: [michael.miller@ferc.gov](mailto:michael.miller@ferc.gov), or by contacting: Office of Information and Regulatory Affairs, Attn: Desk Officer for the Federal Energy Regulatory Commission (Re: OMB Control No. 1902–0244), Washington, DC 20503, Tel: (202) 395–4650, Fax: (202) 395–7285, e-mail:

[oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

### IV. Environmental Analysis

76. 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>46</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>47</sup> The actions proposed herein fall within this categorical exclusion in the Commission’s regulations.

### V. Regulatory Flexibility Act

77. The Regulatory Flexibility Act of 1980 (RFA)<sup>48</sup> generally requires a description and analysis of final rules 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 proposed 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. (See 13 CFR 121.201.) For electric utilities, a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours. The RFA is not implicated by this Final Rule because the minor modifications and interpretations discussed herein will not have a significant economic impact on a substantial number of small entities.

### VI. Document Availability

78. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to

<sup>41</sup> See *N. Am. Elec. Reliability Corp.*, 123 FERC ¶ 61,284, at P 3 (Violation Severity Levels Order), order on reh’g, 125 FERC ¶ 61,212 (2008) (extending compliance date).

<sup>42</sup> See *Violation Severity Level Order*, 123 FERC ¶ 61,284 at P 41 and Ordering Paragraph (E).

<sup>43</sup> 5 CFR 1320.11.

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

<sup>45</sup> See Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1905–07. The NOPR, FERC Stats. & Regs. ¶ 32,632 at P 76–78, provided a detailed explanation why each modification has a negligible, if any, effect on the reporting burden.

<sup>46</sup> *Regulations Implementing the National Environmental Policy Act*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

<sup>47</sup> 18 CFR 380.4(a)(2)(ii).

<sup>48</sup> 5 U.S.C. 601–12.

view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

79. From FERC'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.

80. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or e-mail at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

#### VII. Effective Date and Congressional Notification

81. The Supplemental Final Rule is effective April 23, 2009. 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.

#### List of Subjects in 18 CFR Part 40

Electric power, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

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

#### Appendix A—NOPR Commenters <sup>49</sup>

Alcoa Inc. (Alcoa)\*  
Constellation Energy Commodities Group, Inc. (Constellation)\*  
Independent Electricity System Operator of Ontario (IESO)\*  
ISO/RTO Council\*  
ITC Transmission; Michigan Electric Transmission Company, LLC; and ITC Midwest LLC  
Lafayette Utilities and the Louisiana Energy and Power Authority (Lafayette and LEPA)\*  
North American Electric Reliability Corp. (NERC)\*  
NRG Companies (NRG)\*  
Southern Company Services, Inc. (Southern)

<sup>49</sup> An asterisk (\*) indicates that the commenter addressed Reliability Standard IRO-006-4.

#### Appendix B—Comments in Response to NERC's September 11, 2008 Filing <sup>50</sup>

ISO/RTO Council  
NRG  
Southern

[FR Doc. E9-6416 Filed 3-23-09; 8:45 am]

BILLING CODE 6717-01-P

#### DEPARTMENT OF THE INTERIOR

#### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 938

[PA-152-FOR; Docket ID: OSM-2008-0019]

#### Pennsylvania Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; required amendment.

**SUMMARY:** We are reinstating a requirement for the Pennsylvania regulatory program (the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The requirement deals with documentation for the bonding provisions of the Pennsylvania program.

**DATES:** *Effective Date:* March 24, 2009.

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Chief, Pittsburgh Field Division, Telephone: (717) 782-4036, e-mail: [grieger@osmre.gov](mailto:grieger@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Pennsylvania Program
- II. The Modified Required Amendment
- III. OSM's Decision
- IV. Procedural Determinations

#### I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information

<sup>50</sup> M-S-R Public Power Agency filed a motion to intervene without comments.

on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval in the July 30, 1982, **Federal Register** notice (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15 and 938.16.

#### *Pennsylvania's Bonding Program*

From 1982 until 2001, Pennsylvania's bonding program for surface coal mines, coal refuse reprocessing operations and coal preparation plants, was funded under an Alternative Bonding System (ABS), which included a central pool of money (Surface Mining Conservation and Reclamation Fund) used for reclamation, to supplement site-specific bonds posted by operators for each mine site. This pool was funded by a per-acre reclamation fee paid by operators of permitted sites.

In 1991, our oversight activities determined that Pennsylvania's ABS contained unfunded reclamation liabilities for backfilling, grading, and revegetation and we determined that the ABS was financially incapable of abating or treating pollution discharges from bond forfeiture sites under its purview. As a result, on May 31, 1991, we imposed the required amendment codified at 30 CFR 938.16(h), 56 FR 24687. That amendment required Pennsylvania to demonstrate that the revenues generated by its collection of the reclamation fee would assure that its Surface Mining Conservation and Reclamation Fund (Fund) could be operated in a manner that would meet the ABS requirements contained in 30 CFR 800.11(e). After a decade of trying to address the problems with the ABS, the Pennsylvania Department of Environmental Protection (PADEP) terminated the ABS in 2001 and began converting active surface coal mining permits to a Conventional Bonding System (CBS) or "full-cost" bonding program. This CBS requires a permittee to post a site specific bond in an amount sufficient to cover the estimated costs to complete reclamation in the event of bond forfeiture.

OSM published a final rule on October 7, 2003, removing the required amendment at 30 CFR 938.16(h) on the basis that the conversion from an ABS to a CBS rendered the requirement to comply with 30 CFR 800.11(e) moot. Subsequent to these OSM actions, a lawsuit was filed in the U.S. District Court for the Middle District Court of Pennsylvania, *Pennsylvania Federation of Sportsmen's Clubs Inc. (PFSC) et. al. v. Norton No. 1:03-CV-2220*. The Plaintiffs claimed, in relevant part, that