

“Intermittent.” The term “intermittent” signifies limited or infrequent use the area. FAA Order 7400.2 requires that an “intermittent” time of designation for special use airspace areas must include either an associated time period or a “by NOTAM” provision. In all cases, an “intermittent” time of designation must not be used for restricted areas without a “by NOTAM” provision.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by changing the time of designation for Restricted area R-6501B, Underhill, VT, from “Intermittent” to “Intermittent by NOTAM 24 hours in advance.” This change brings the time of designation into compliance with FAA Order 7400.2 requirements.

This change adds a NOTAM requirement to the time of designation of R-6501B. The change benefits the flying public by providing advance notice of planned activation periods of the restricted area. Because the amendment does not affect the boundaries, designated altitudes, or activities conducted within the restricted area and provides the public with advance notice of restricted area usage, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this action only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with 311d., FAA Order 1050.1E, Environmental Impacts: Policies and Procedures. This airspace action is an administrative change to the description of the affected restricted area to clarify the time of designation. It does not alter the dimensions, altitudes, or activities conducted within the airspace;

therefore, it is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

### List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

### PART 73—SPECIAL USE AIRSPACE

- 1. The authority citation for part 73 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### § 73.65 [Amended]

- 2. Section 73.65 is amended as follows:

\* \* \* \* \*

#### R-6501B Underhill, VT [Amended]

\* \* \* \* \*

By removing the word “Intermittent” under Time of designation, and inserting the words “Intermittent by NOTAM 24 hours in advance.”

\* \* \* \* \*

Issued in Washington, DC, on November 14, 2012.

**Gary A. Norek,**

*Manager, Airspace Policy and ATC Procedures Group.*

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## DEPARTMENT OF ENERGY

### 18 CFR Part 40

[Docket No. RM12–9–000; Order No. 772]

### Regional Reliability Standard PRC–006–SERC–01; Automatic Underfrequency Load Shedding Requirements

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** Under section 215 of the Federal Power Act, the Federal Energy Regulatory Commission (Commission) approves regional Reliability Standard PRC–006–SERC–01 (Automatic Underfrequency Load Shedding Requirements), submitted to the Commission for approval by the North American Electric Reliability

Corporation (NERC). Regional Reliability Standard PRC–006–SERC–01 is designed to ensure that automatic underfrequency load shedding protection schemes, designed by planning coordinators and implemented by applicable distribution providers and transmission owners in the SERC Reliability Corporation Region, are coordinated to mitigate the consequences of an underfrequency event effectively. The Commission approves the related violation risk factors, with one modification, violation severity levels, implementation plan, and effective date proposed by NERC.

**DATES:** This rule will become effective February 25, 2013.

### FOR FURTHER INFORMATION CONTACT:

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### SUPPLEMENTARY INFORMATION:

#### Final Rule

*Order No. 772*

(Issued December 20, 2012)

1. Under section 215 of the Federal Power Act (FPA), the Commission approves regional Reliability Standard PRC–006–SERC–01 (Automatic Underfrequency Load Shedding Requirements) in the SERC Reliability Corporation (SERC) Region. The Commission also approves the related violation risk factors (VRF), with one modification, violation severity levels (VSL), implementation plan, and effective date proposed by the North American Electric Reliability Corporation (NERC). NERC submitted regional Reliability Standard PRC–006–SERC–01 to the Commission for approval and the new standard is designed to ensure that automatic underfrequency load shedding (UFLS) protection schemes, designed by planning coordinators and implemented by applicable distribution providers and transmission owners in the SERC Region, are coordinated to mitigate the consequences of an underfrequency event effectively.

## I. Background

### A. Mandatory Reliability Standards

2. Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by NERC, subject to Commission oversight, or by the Commission independently.<sup>1</sup>

3. Reliability Standards that NERC proposes to the Commission may include Reliability Standards that are proposed by a Regional Entity to be effective in that region.<sup>2</sup> In Order No. 672, the Commission noted that:

As a general matter, we will accept the following two types of regional differences, provided they are otherwise just, reasonable, not unduly discriminatory or preferential and in the public interest, as required under the statute: (1) a regional difference that is more stringent than the continent-wide Reliability Standard, including a regional difference that addresses matters that the continent-wide Reliability Standard does not; and (2) a regional Reliability Standard that is necessitated by a physical difference in the Bulk-Power System.<sup>3</sup>

When NERC reviews a regional Reliability Standard that would be applicable on an interconnection-wide basis and that has been proposed by a Regional Entity organized on an interconnection-wide basis, NERC must rebuttably presume that the regional Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.<sup>4</sup> In turn, the Commission must give “due weight” to the technical expertise of NERC and of a Regional Entity organized on an interconnection-wide basis.<sup>5</sup>

4. On April 19, 2007, the Commission accepted delegation agreements between NERC and each of the eight Regional Entities.<sup>6</sup> In the order, the Commission accepted SERC as a Regional Entity organized on less than an

interconnection-wide basis. As a Regional Entity, SERC oversees Bulk-Power System reliability within the SERC Region, which covers a geographic area of approximately 560,000 square miles in a sixteen-state area in the southeastern and central United States (all of Missouri, Alabama, Tennessee, North Carolina, South Carolina, Georgia, Mississippi, and portions of Iowa, Illinois, Kentucky, Virginia, Oklahoma, Arkansas, Louisiana, Texas and Florida).

### B. NERC Petition

5. On February 1, 2012, NERC submitted a petition to the Commission seeking approval of regional Reliability Standard PRC-006-SERC-01.<sup>7</sup> NERC stated that regional Reliability Standard PRC-006-SERC-01 is designed to ensure that automatic UFLS protection schemes, designed by planning coordinators and implemented by applicable distribution providers and transmission owners in the SERC Region, are coordinated to mitigate the consequences of an underfrequency event effectively.<sup>8</sup> According to NERC, regional Reliability Standard PRC-006-SERC-01 adds specificity for UFLS schemes in the SERC Region that are not present in the NERC UFLS Reliability Standard PRC-006-1.<sup>9</sup> NERC explained that regional Reliability Standard PRC-006-SERC-01 effectively mitigates, in conjunction with Reliability Standard PRC-006-1, the consequences of an underfrequency event while accommodating differences in system transmission and distribution topology among SERC planning coordinators resulting from historical design criteria, makeup of load demands, and generation resources.<sup>10</sup>

6. In the petition, NERC also proposed violation risk factors and violation severity levels for each Requirement of the regional Reliability Standard, an implementation plan, and an effective date. NERC stated that these proposals were developed and reviewed for consistency with NERC and Commission guidelines. NERC proposed specific implementation plans for each Requirement in the regional Reliability Standard, with the regional Reliability Standard becoming fully effective thirty months after the first day of the first

quarter following regulatory approval. NERC stated that the implementation plan is reasonable, as it balances the need for reliability with the practicability of implementation.

### C. Notice of Proposed Rulemaking

7. On July 19, 2012, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to approve regional Reliability Standard PRC-006-SERC-01 as just, reasonable, not unduly discriminatory or preferential, and in the public interest.<sup>11</sup> The Commission proposed to approve regional Reliability Standard PRC-006-SERC-01 because it is designed to work in conjunction with NERC Reliability Standard PRC-006-1 to mitigate the consequences of an underfrequency event effectively, while accommodating differences in system transmission and distribution topology among SERC planning coordinators due to historical design criteria, makeup of load demands, and generation resources. The NOPR determined that PRC-006-SERC-01 covers topics not covered by the corresponding NERC Reliability Standard PRC-006-1 because it adds specificity for UFLS schemes in the SERC Region.

8. While proposing to approve regional Reliability Standard PRC-006-SERC-01, the NOPR identified a possible inconsistency between, on the one hand, the separate rationale for Requirement R6 of the regional Reliability Standard and, on the other, Order No. 763, which approved NERC Reliability Standard PRC-006-1.<sup>12</sup>

9. Regional Reliability Standard PRC-006-SERC-01, Requirement R6 states:

R6. Each UFLS entity shall implement changes to the UFLS scheme which involve frequency settings, relay time delays, or changes to the percentage of load in the scheme within 18 months of notification by the Planning Coordinator. [Violation Risk Factor: Medium] [Time Horizon: Long-term Planning]

10. The rationale for Requirement R6 included in the NERC petition states:

Rationale for R6:

The SDT believes it is necessary to put a requirement on how quickly changes to the scheme should be made. This requirement specifies that changes must be made within 18 months of notification by the PC [planning coordinator]. The 18-month interval was chosen to give a reasonable amount of time for making changes in the field. All of the SERC region has existing UFLS schemes

<sup>11</sup> *Regional Reliability Standard PRC-006-SERC-01—Automatic Underfrequency Load Shedding Requirements*, Notice of Proposed Rulemaking, 77 Fed. Reg. 43,190 (July 24, 2012), 140 FERC ¶ 61,056 (2012) (NOPR).

<sup>12</sup> *Automatic Underfrequency Load Shedding and Load Shedding Plans Reliability Standards*, Order No. 763, 139 FERC ¶ 61,098 (2012).

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

<sup>2</sup> 16 U.S.C. 824o(e)(4). A Regional Entity is an entity that has been approved by the Commission to enforce Reliability Standards under delegated authority from the ERO. See 16 U.S.C. 824o(a)(7) and (e)(4).

<sup>3</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 291, *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

<sup>4</sup> 16 U.S.C. 824o(d)(3).

<sup>5</sup> *Id.* § 824o(d)(2).

<sup>6</sup> *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060, *order on reh'g*, 120 FERC ¶ 61,260 (2007).

<sup>7</sup> North American Electric Reliability Corp., February 1, 2012 Petition for Approval of Regional Reliability Standard PRC-006-SERC-01 (NERC Petition). Regional Reliability Standard PRC-006-SERC-01 is not codified in the CFR. However, it is available on the Commission's eLibrary document retrieval system in Docket No. RM12-9-000 and is available on the NERC's Web site, [www.nerc.com](http://www.nerc.com).

<sup>8</sup> NERC Petition at 7.

<sup>9</sup> *Id.* at 18.

<sup>10</sup> *Id.* at 18-19.

which, based on periodic simulations, have provided reliable protection for years. Events which result in islanding and an activation of the UFLS schemes are extremely rare. Therefore, the SDT does not believe that changes to an existing UFLS scheme will be needed in less than 18 months. *However, if a PC desires that changes to the UFLS scheme be made faster than that, then the PC may request the implementation to be done sooner than 18 months. The UFLS entity may oblige but will not be required to do so.*<sup>13</sup>

11. The NOPR stated that the rationale for Requirement R6 could result in Requirement R6 being read to allow applicable entities not to adopt a planning coordinator's schedule for implementing corrective actions to UFLS schemes if the schedule is less than 18 months. The NOPR stated that such an interpretation would be inconsistent with Order No. 763, which, in approving PRC-006-1, held that planning coordinators should be responsible for establishing schedules for the completion of corrective actions in response to UFLS events.<sup>14</sup> The NOPR stated that the Commission interprets the language in Requirement R6, that UFLS entities must implement changes "within 18-months," as a "maximum" timeframe to comply with a planning coordinator's schedule to implement changes to UFLS schemes, but the interpretation further recognized that the planning coordinator could establish a schedule requiring the changes to be implemented in less time. The NOPR stated that the inclusion of a maximum timeframe is more stringent than Reliability Standard PRC-006-1, which does not contain a maximum timeframe to implement changes to a UFLS scheme.

12. The NOPR proposed to approve the related violation risk factors, with one modification, violation severity levels, implementation plan, and effective date proposed by NERC. The NOPR proposed to direct NERC to modify the violation risk factor assigned to Requirement R6 from "medium" to "high" to make it consistent with the Commission's VRF guidelines and the violation risk factor for Requirement R9 of NERC Reliability Standard PRC-006-1, since both Requirements address a similar reliability goal.<sup>15</sup>

13. In response to the NOPR, comments were filed by NERC and three interested entities regarding the Commission's interpretation of Requirement R6, aspects of Requirement R2 that were not addressed in the NOPR, and the proposed modification to the violation risk factor associated with Requirement R6.<sup>16</sup>

## II. Discussion

14. Pursuant to FPA section 215(d)(2), we approve regional Reliability Standard PRC-006-SERC-01 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. PRC-006-SERC-01 is designed to work in conjunction with NERC Reliability Standard PRC-006-1 to mitigate the consequences of an underfrequency event effectively while accommodating differences in system transmission and distribution topology among SERC planning coordinators due to historical design criteria, makeup of load demands, and generation resources.<sup>17</sup> As indicated above, PRC-006-SERC-01 addresses topics not covered by the corresponding NERC Reliability Standard PRC-006-1 because it adds specificity for UFLS schemes in the SERC Region. The Commission also approves the related violation risk factors, with one modification, violation severity levels, implementation plan, and effective date proposed by NERC.

15. We address below the three issues raised in the comments to the NOPR.

### A. PRC-006-SERC-01, Requirement R6

16. In the NOPR, the Commission interpreted Requirement R6 as imposing an 18-month maximum schedule for implementing changes to UFLS schemes in the SERC Region but, consistent with NERC Reliability Standard PRC-006-1 and Order No. 763, as allowing planning coordinators to require applicable entities to implement changes in less time.<sup>18</sup> The NOPR stated that the proposed rationale for Requirement R6 was potentially inconsistent with this interpretation and the treatment of NERC Reliability Standard PRC-006-1 in Order No. 763.

## Comments

17. In its initial comments, SERC points to NERC's compliance filing to Order No. 763, in which NERC states that PRC-006-SERC-01 does not replace PRC-006-1 for UFLS entities in the SERC Region and that such entities must comply with both standards. To explain the basis for the 18-month schedule in PRC-006-SERC-01, Requirement R6, SERC states that the drafting team was concerned that, in situations where a UFLS entity is not a planning coordinator, planning coordinators might impose unreasonable schedules on UFLS entities when major UFLS scheme changes are made, not as part of a corrective action plan (i.e., actions taken in response to event assessments made pursuant to PRC-006-1, Requirement R11), but for other reasons (e.g., "for consistency purposes, a change in UFLS scheme philosophy, or for other reasons").<sup>19</sup> SERC states that planning coordinators are allowed to make such changes under PRC-006-1, but Requirement R3 of PRC-006-1 does not require planning coordinators to consider UFLS entity budgeting and procurement limitations when establishing implementation schedules.

18. SERC states that the drafting team felt it was important to provide a practical timeframe for UFLS entities that are not planning coordinators by establishing an upper bound on the timeframe for implementing major changes to an entity's UFLS scheme and to ensure that the UFLS entities that are not planning coordinators have adequate time to budget, procure, and install the necessary equipment.<sup>20</sup>

19. SERC states that it does not oppose the Commission's interpretation of Requirement R6 (i.e., that Requirement R6 does not provide a UFLS entity with the discretion not to follow the schedule set by the planning coordinator when the schedule is less than 18 months). SERC proposes to revise the rationale statement for Requirement R6 to make it consistent with the Commission's interpretation.<sup>21</sup>

20. NERC states that, in its compliance filing to Order No. 763, it explained that UFLS entities in the SERC Region must comply with PRC-

<sup>13</sup> NERC Petition, Exhibit A at 14 (emphasis added).

<sup>14</sup> Order No. 763, 139 FERC ¶ 61,098 at P 48 (citing Reliability Standard PRC-006-1, Requirement R9, "Each UFLS entity shall provide automatic tripping of Load in accordance with the UFLS program design and schedule for application determined by its Planning Coordinator(s) in each Planning Coordinator area in which it owns assets.")

<sup>15</sup> *North American Electric Reliability Corp.*, 119 FERC ¶ 61,145, order on reh'g, 120 FERC ¶ 61,145 (2007).

<sup>16</sup> Comments were received from Dominion Resources Services, Inc. (Dominion), on behalf of Virginia Electric and Power Company d/b/a Dominion Virginia Power, Dominion Energy Kewaunee, Inc., Dominion Nuclear Connecticut, Inc. Dominion Energy Brayton Point, LLC, Dominion Energy Manchester Street, Inc., Elwood Energy, LLC, Kincaid Generation, LLC and Fairless Energy, LLC; Midwest Independent Transmission System Operator, Inc. (MISO); and SERC. Dominion and SERC also filed reply comments.

<sup>17</sup> NERC Petition at 18.

<sup>18</sup> NOPR, 140 FERC ¶ 61,056 at P 16.

<sup>19</sup> SERC Initial Comments at 4.

<sup>20</sup> SERC states that 26 of the 43 UFLS entities in the SERC Region do not serve as their own planning coordinators. SERC Initial Comments at 4.

<sup>21</sup> SERC proposes to revise the rationale to include a statement that "[i]f a PC [planning coordinator] determines there is a need for changing the UFLS scheme faster than 18 months, then the PC may require the implementation to be done sooner as allowed by NERC Reliability Standard PRC-006-1." *Id.* at 6.

006–1 and PRC–006–SERC–01 and that the latter does not replace the former. NERC stated in the compliance filing that “UFLS entities must meet the schedule set by the Planning Coordinator to comply with PRC–006–1, Requirement R9, but the timeframe must not exceed 18 months in the SERC Reliability Corporation Region to comply with PRC–SERC–006–1, Requirement R6.”<sup>22</sup> NERC states that SERC does not oppose NERC’s clarification, above, and further states that it supports SERC’s proposed revision to the rationale statement for Requirement R6.

21. Dominion states in its initial comments that it supports PRC–006–SERC–01 as proposed but is concerned that it may conflict with Order No. 763. Dominion states that NERC’s compliance filing to Order No. 763 adds “an unreasonable burden and complexity in the compliance efforts of affected registered entities.”<sup>23</sup> Specifically, Dominion is concerned that compliance with PRC–006–1 and PRC–006–SERC–01 will create a “new, or at least unrealized, level of complexity imposed upon registered entities.”<sup>24</sup> Dominion states that it “recommends that the Commission approve the SERC regional standard but remand Requirement R6 and direct it be modified to be consistent with the scheduling requirements of Order No. 763 \* \* \* to require each UFLS entity in the SERC region to implement changes to the UFLS scheme within *the lesser of* 18 months of notification by the planning coordinator, or the schedule established by the planning coordinator.”<sup>25</sup>

22. In responsive comments, SERC states that Dominion’s concerns have been adequately addressed. SERC states that the Commission indicated in the NOPR that it will not read Requirement R6 as providing UFLS entities with the discretion not to follow the schedule set by planning coordinators when the schedule is less than 18 months. SERC also states that it proposed, in its initial comments, to revise the rationale for Requirement R6 to make the rationale consistent with this interpretation.

23. In reply to SERC’s responsive comments, Dominion disagrees that its concerns have been adequately addressed. Dominion states that “it is unjust to hold a registered entity responsible for compliance to any requirement within a reliability

standard where such compliance is dependent upon that registered entity having also read, and taken into consideration, all statements issued by FERC, NERC and the Regional Entity in this docket.”<sup>26</sup>

#### Commission Determination

24. The Commission affirms the interpretation of Requirement R6 set forth in the NOPR and accepts NERC and SERC’s proposal to revise the rationale statement for Requirement R6, as set forth in NERC and SERC’s comments. NERC, SERC, and Dominion do not oppose the Commission’s interpretation of Requirement R6.

25. The remaining dispute, therefore, centers on Dominion’s request that Requirement R6 should be revised to eliminate any ambiguity, as opposed to relying on the Commission’s interpretation of Requirement R6 and the proposed revision to the separate rationale for Requirement R6. We reject this request because, as we stated in the NOPR, the ambiguity regarding Requirement R6 was a result of the separate rationale statement for Requirement R6.<sup>27</sup> Absent the problematic language in the rationale, there is no inconsistency created by the text of Requirement R6 itself. As NERC notes, UFLS entities must comply with both PRC–006–1 and PRC–006–SERC–01.<sup>28</sup> A plain reading of Requirement R6 (i.e., that UFLS entities shall implement changes within 18 months of notification by planning coordinators) in conjunction with a reading of PRC–006–1 (i.e., requiring UFLS entities to follow the schedules set by planning coordinators) indicates that, in the SERC Region, there will be an 18-month maximum period for implementing changes to UFLS schemes but planning coordinators may require UFLS entities to complete changes in less time consistent with PRC–006–1. Accordingly, we accept NERC and SERC’s proposal to revise the rationale statement for Requirement R6, consistent with SERC’s proposal, but we will not require the revision to Requirement R6 proposed by Dominion. We direct NERC and SERC to make an informational filing within 30 days of the effective date of this final rule that

provides a schedule for implementing the revision.

#### B. PRC–006–SERC–01, Requirements R2.3, R2.4, R2.5, and R2.6

26. In the NOPR, the Commission noted that Requirement R2 requires each planning coordinator to select or develop an automatic UFLS scheme (percent of load to be shed, frequency set points, and time delays) for implementation by UFLS entities within its area that meets the specified minimum requirements. Without addressing Requirement R2 specifically, the Commission proposed to approve regional Reliability Standard PRC–006–SERC–01 as just, reasonable, not unduly discriminatory or preferential, and in the public interest.

#### Comments

27. MISO states that PRC–006–SERC–01 is overly prescriptive and may not allow planning coordinators the flexibility needed to ensure reliability. MISO states that Requirements R2.3, R2.4, R2.5, and R2.6 specify acceptable ranges and limits for the UFLS design. MISO states that PRC–006–SERC–01 makes no provision to accommodate a planning coordinator’s determination that the best performing design does not fall within the specified set points and ranges in the regional Reliability Standard, which MISO acknowledges reflect historical practice. MISO states that there may be sound technical reasons to deviate from the prescribed set points. MISO also states that these set points could frustrate coordination with systems that deviate from the PRC–006–SERC–01 without regard to the reliability benefits of deviating from historical practice.

28. In responsive comments, SERC states that MISO’s comments are outside the scope of the comments sought in the NOPR. SERC also states that MISO participated in the standard development process for PRC–006–SERC–01 and provided comments similar to those offered here (i.e., that Requirement R2 is too prescriptive and planning coordinators should not be restricted to the acceptable ranges and limits specified in Requirement R2). SERC notes that MISO acknowledged that the set points specified in Requirement R2 reflect historical practice. SERC states that the standard drafting team responded to MISO’s comments by pointing to the 18 different UFLS schemes in the SERC Region and by noting that Requirement R2 was “needed to ensure coordination and consistency among the UFLS

<sup>26</sup> Dominion Reply Comments at 2–3.

<sup>27</sup> NOPR, 140 FERC ¶ 61,056 at P 16 (“[w]e are concerned, however, that the italicized language in the rationale NERC provides for Requirement R6 may be incompatible with Order No. 763”).

<sup>28</sup> See Order No. 672 at P 294 (“A user, owner or operator must follow the Reliability Standards of the ERO and the Regional Entity within which it is located.”)

<sup>22</sup> NERC, Compliance Filing, Docket No. RM11–20–002, at 6–7 (filed Aug. 9, 2012).

<sup>23</sup> Dominion Initial Comments at 3.

<sup>24</sup> *Id.* at 4.

<sup>25</sup> *Id.* at 4–5 (emphasis in original).

schemes in SERC.”<sup>29</sup> SERC states that MISO’s comments were considered and rejected by the standard drafting team and that the Commission should likewise reject them.

#### Commission Determination

29. We reject MISO’s protest that the acceptable ranges and limits for the UFLS design in Requirement R2 are overly prescriptive or do not afford planning coordinators sufficient flexibility. As noted in NERC’s petition and the NOPR, regional Reliability Standard PRC–006–SERC–01 sets minimum automatic UFLS design requirements, which are equivalent to the design requirements in the SERC UFLS program that have been in effect since September 3, 1999.<sup>30</sup> Imposing uniform, minimum requirements on UFLS programs in the SERC Region necessarily limits the flexibility of planning coordinators and UFLS entities. However, based on the record before us, we find that the benefits of requiring minimum standards outweighs any loss in flexibility, particularly when those minimum standards are based on historical practices in SERC. Other than asserting the loss of flexibility, MISO does not question the ranges and limits in Requirement R2, or explain how they are not technically justified. In addition, MISO does not suggest alternate ranges and limits, other than to note that the Midwest Reliability Organization is “investigating the reliability benefits of setting the frequency set point blocks at less than 0.2 Hz apart to create finer system control.”<sup>31</sup> While we reject MISO’s protest, we do not foreclose the possibility that NERC and SERC may wish to revise the ranges and limits in Requirement R2 at some future time based on changed circumstances or with added experience.

#### C. Violation Risk Factors, Violation Severity Levels, Implementation Plan, and Effective Date

30. In the NOPR, the Commission proposed to approve the violation risk factors, with one modification, violation severity levels, implementation plan, and effective date proposed by NERC. The NOPR proposed to direct NERC to modify the violation risk factor assigned to Requirement R6 from “medium” to “high” to make it consistent with the Commission’s VRF guidelines and the violation risk factor for Requirement R9

<sup>29</sup> SERC Reply Comments at 3–4 (citing standard drafting team response).

<sup>30</sup> NOPR, 140 FERC ¶ 61,056 at P7 (citing NERC Petition at 12).

<sup>31</sup> MISO Comments at 2.

<sup>32</sup> 5 CFR 1320.11.

of NERC Reliability Standard PRC–006–1, since both Requirements address a similar reliability goal.

#### Comments

31. NERC and SERC state that they do not oppose the Commission’s proposal to direct modification of the violation risk factor for Requirement R6 from “medium” to “high.”

#### Commission Determination

32. The Commission directs NERC and SERC to modify the violation risk factor for regional Reliability Standard PRC–006–SERC–01, Requirement R6, from “medium” to “high.” NERC and SERC are directed to submit the revised violation risk factor within 30 days of the effective date of this final rule. The Commission approves the remaining violation risk factors, violation severity levels, implementation plan, and effective date proposed by NERC.

#### III. Information Collection Statement

33. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency.<sup>32</sup> Upon approval of a collection(s) 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.

34. The Commission is submitting these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of Paperwork Reduction Act of 1995.<sup>33</sup> The Commission solicited comments on the need for and the purpose of the information contained in regional Reliability Standard PRC–006–SERC–01 and the corresponding burden to implement the regional Reliability Standard. The Commission received comments on specific requirements in the regional Reliability Standard, which we address in this final rule. However, the Commission did not receive any comments on our reporting burden estimates.

35. This final rule approves regional Reliability Standard PRC–006–SERC–01. This is the first time NERC has requested Commission approval of this regional Reliability Standard. NERC

<sup>33</sup> 44 U.S.C. 3507(d)

<sup>34</sup> See 5 CFR 1320.3(b)(2) (“The time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records) will be excluded from the ‘burden’ if the agency

states in its petition that UFLS requirements have been in place at a continent-wide level and within SERC for many years prior to implementation of the Commission-approved Reliability Standards in 2007. Because the UFLS requirements have been in place prior to the development of PRC–006–SERC–01, the regional Reliability Standard is largely associated with requirements that applicable entities are already following.<sup>34</sup> Regional Reliability Standard PRC–006–SERC–01 is designed to ensure that automatic UFLS protection schemes, designed by planning coordinators and implemented by applicable distribution providers and transmission owners in the SERC Region, are coordinated so they may effectively mitigate the consequences of an underfrequency event. The regional Reliability Standard is only applicable to generator owners, planning coordinators, and UFLS entities in the SERC Region. The term “UFLS entities” means all entities that are responsible for the ownership, operation, or control of automatic UFLS equipment as required by the UFLS program established by the planning coordinators. Such entities may include distribution providers and transmission owners. The reporting requirements in regional Reliability Standard PRC–006–SERC–01 only pertain to entities within the SERC Region.

36. *Public Reporting Burden:* Our estimate below regarding the number of respondents is based on the NERC compliance registry as of May 29, 2012. According to the NERC compliance registry, there are 21 planning coordinators and 104 generator owners within the SERC Region. The individual burden estimates are based on the time needed for planning coordinators to incrementally gather data, run studies, and analyze study results to design or update the UFLS programs that are required in the regional Reliability Standard in addition to the requirements of the NERC Reliability Standard PRC–006–1.<sup>35</sup> Additionally, generator owners must provide a detailed set of data and documentation to SERC within 30 days of a request to facilitate post event analysis of frequency disturbances. These burden estimates are consistent with estimates for similar tasks in other Commission-approved Reliability Standards.

demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.”).

<sup>35</sup> The burden estimates for Reliability Standard PRC–006–1 are included in Order No. 763 and are not repeated here.

PRC-006-SERC-01 (Automatic underfrequency load shedding requirements) <sup>36</sup>	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)x(2)x(3)
PCs*: Design and document Automatic UFLS Program .....	21	1	8	168
PCs: Provide Documentation and Data to SERC .....			16	336
GOs*: Provide Documentation and Data to SERC .....	104	1	16	1,664
GOs: Record Retention .....			4	416
Total .....				2,584

\* PC=planning coordinator; GO=generator owner.

*Total Annual Hours for Collection:* (Compliance/Documentation) = 2,584 hours.

*Total Reporting Cost for planning coordinators:* = 504 hours @\$120/hour = \$60,480.

*Total Reporting Cost for generator owners:* = 1,664 hours @\$120/hour = \$199,680.

*Total Record Retention Cost for generator owners:* 416 hours @\$28/hour = \$11,648.

Total Annual Cost (Reporting + Record Retention):<sup>37</sup> = \$60,480 + \$199,680 + \$11,648 = \$271,808.

*Title:* Mandatory Reliability Standards for the SERC Region

*Action:* Proposed Collection FERC-725K.

*OMB Control No.:* 1902-0260.

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

*Frequency of Responses:* On Occasion.

*Necessity of the Information:* This final rule approves the regional Reliability Standard pertaining to automatic underfrequency load shedding. The regional Reliability Standard helps ensure the reliable operation of the Bulk-Power System by arresting declining frequency and assisting recovery of frequency following system events leading to frequency degradation.

*Internal Review:* The Commission has reviewed the regional Reliability Standard and made a determination that its action is necessary to implement section 215 of the FPA. These requirements, if accepted, should conform to the Commission's expectation for UFLS programs as well as procedures within the SERC Region.

<sup>36</sup> Regional Reliability Standard PRC-006-SERC-01 applies to planning coordinators, UFLS entities and generator owners. However, the burden associated with the UFLS entities is not new because it was accounted for under Commission-approved Reliability Standards PRC-006-1.

<sup>37</sup> The hourly reporting cost is based on the cost of an engineer to implement the requirements of the rule. The record retention cost comes from Commission staff research on record retention requirements.

37. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: [DataClearance@ferc.gov](mailto:DataClearance@ferc.gov), phone: (202) 502-8663, fax: (202) 273-0873].

38. For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the Commission and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395-4638, fax: (202) 395-7285]. For security reasons, comments to OMB should be submitted by email to: [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Comments submitted to OMB should include Docket Number RM12-09 and an OMB Control Number 1902-0260.

**IV. Environmental Analysis**

39. 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>38</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>39</sup> The actions proposed here fall within this categorical exclusion in the Commission's regulations.

**V. Regulatory Flexibility Act**

40. The Regulatory Flexibility Act of 1980 (RFA) <sup>40</sup> generally requires a description and analysis of final rules

<sup>38</sup> Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986-1990 ¶ 30,783 (1987).

<sup>39</sup> 18 CFR 380.4(a)(2)(ii).

<sup>40</sup> 5 U.S.C. 601-612.

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 (SBA) Office of Size Standards develops the numerical definition of a small business.<sup>41</sup> The SBA has established a size standard for electric utilities, stating that 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.<sup>42</sup>

41. Regional Reliability Standard PRC-006-SERC-01 establishes consistent and coordinated requirements for the design, implementation, and analysis of automatic UFLS schemes among all applicable entities within the SERC Region. It is applicable to planning coordinators, generator owners and entities that are responsible for the ownership, operation, or control of UFLS equipment. Comparison of the NERC Compliance Registry with data submitted to the Energy Information Administration on Form EIA-861 indicates that perhaps as many as 1 small entity is registered as a planning coordinator and 5 small entities are registered as generator owners in the SERC Region. The Commission estimates that the small planning coordinator to whom the proposed regional Reliability Standard will apply will incur compliance costs of \$2,880 (\$2,880 per planning coordinator) associated with the regional Reliability Standard's requirements. The small generator owners will incur compliance and record keeping costs of \$10,160 (\$2,032 per generator owner). Accordingly, regional Reliability Standard PRC-006-SERC-01 should not impose a significant operating cost

<sup>41</sup> 13 CFR 121.101.

<sup>42</sup> 13 CFR 121.201, Sector 22, Utilities & n.1.

increase or decrease on the affected small entities.

42. Further, NERC explains that the cost for smaller entities to implement regional Reliability Standard PRC-006-SERC-01 was considered during the development process. The continent-wide NERC UFLS Reliability Standard PRC-006-1 requires a planning coordinator to identify which entities will participate in its UFLS scheme, including the number of steps and percent load that UFLS entities will shed. The standard drafting team recognized that UFLS entities with a load of less than 100 MW may have difficulty in implementing more than one UFLS step and in meeting a tight tolerance. Therefore, the standard drafting team included Requirement R5, which states that such small entities shall not be required to have more than one UFLS step, and sets their implementation tolerance to a wider level. Requirement R5 limits additional compliance costs for smaller entities to comply with the regional Reliability Standard.

43. Based on this understanding, the Commission certifies that regional Reliability Standard PRC-006-SERC-01 will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

## VI. Document Availability

44. 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 FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

45. 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.

46. 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 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

47. These regulations are effective February 25, 2013. 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.

By the Commission.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012-31034 Filed 12-24-12; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9606]

RIN 1545-BI13

#### Use of Controlled Corporations To Avoid the Application of Section 304

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations addressing sales of stock between related corporations. The regulations finalize proposed regulations and remove temporary regulations that apply to certain sales of stock that are recharacterized as contributions and redemptions, but that are structured with a principal purpose of redesignating the issuing corporation or the acquiring corporation. The regulations affect persons treated as receiving distributions in redemption of stock as a result of such transactions.

**DATES:** *Effective Date:* These regulations are effective on December 26, 2012.

*Applicability Date:* These regulations apply to acquisitions of stock occurring on or after December 29, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ryan A. Bowen, (202) 622-3860 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

On December 30, 2009, the IRS and the Treasury Department published final and temporary regulations and a notice of proposed rulemaking by cross-reference to temporary regulations in the **Federal Register** (74 FR 69021, TD 9477, 2010-1 CB 385; REG-132232-08, 74 FR 69043) (2009 regulations) under

section 304. A correction to the 2009 regulations was published in the **Federal Register** on February 26, 2010 (75 FR 8796). The 2009 regulations amended the anti-abuse rule of § 1.304-4T, which was published in the **Federal Register** on June 14, 1988 (TD 8209), to address transactions that are subject to section 304 but are structured with a principal purpose of avoiding the application of section 304 to certain corporations. No public hearing on the 2009 regulations was requested or held, and no written comments were received. Accordingly, this Treasury decision adopts the 2009 regulations without change as final regulations and removes the temporary regulations under section 304.

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. Chapter 6) do not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. Chapter 6), it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. These regulations primarily will affect large corporations. Thus, the number of affected small entities will not be substantial. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business.

## Drafting Information

The principal author of the regulations is Ryan A. Bowen of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows: