

environment.⁸¹ 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.⁸² The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act Analysis

67. The Regulatory Flexibility Act of 1980 (RFA)⁸³ 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.⁸⁴ 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 interpretations discussed herein will not have a significant economic impact on a substantial number of small entities.

68. In Order No. 693, the Commission adopted policies to minimize the burden on small entities, including approving the ERO compliance registry process to identify those entities responsible for complying with mandatory and enforceable Reliability Standards. The ERO registers only those distribution providers or load serving entities that have a peak load of 25 MW or greater and are directly connected to the bulk electric system or are designated as a responsible entity as part of a required under-frequency load shedding program or a required under-voltage load shedding program. Similarly, for generators, the ERO registers only individual units of 20 MVA or greater that are directly connected to the bulk electric system, generating plants with an aggregate rating of 75 MVA or greater, any

blackstart unit material to a restoration plan, or any generator that is material to the reliability of the Bulk-Power System. Further, the ERO will not register an entity that meets the above criteria if it has transferred responsibility for compliance with mandatory Reliability Standards to a joint action agency or other organization. The Commission estimated that the Reliability Standards approved in Order No. 693 would apply to approximately 682 small entities (excluding entities in Alaska and Hawaii), but also pointed out that the ERO's Compliance Registry Criteria allow for a joint action agency, generation and transmission (G&T) cooperative or similar organization to accept compliance responsibility on behalf of its members. Once these organizations register with the ERO, the number of small entities registered with the ERO will diminish and, thus, significantly reduce the impact on small entities.⁸⁵

69. Finally, as noted above, this Final Rule addresses an interpretation of the BAL-003-0 Reliability Standard, which was already approved in Order No. 693, and, therefore, does not create an additional regulatory impact on small entities.⁸⁶

VI. Document Availability

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

71. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

72. User assistance is available for eLibrary and the Commission'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, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at public.reference.room@ferc.gov.

VII. Effective Date and Congressional Notification

73. These regulations are effective June 29, 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.

[FR Doc. E9-12348 Filed 5-27-09; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM08-12-000; Order No. 723]

Western Electricity Coordinating Council Regional Reliability Standard Regarding Automatic Time Error Correction

Issued May 21, 2009.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Pursuant to section 215 of the Federal Power Act (FPA), the Federal Energy Regulatory Commission (Commission) approves regional Reliability Standard BAL-004-WECC-01 (Automatic Time Error Correction), as submitted by the North American Electric Reliability Corporation. As a separate action, pursuant to section 215(d)(5) of the FPA, the Commission directs the Western Electricity Coordinating Council to develop several modifications to the regional Reliability Standard. The regional Reliability Standard requires balancing authorities within the Western Interconnection to maintain interconnection frequency within a predefined frequency profile and ensure that time error corrections are effectively conducted in a manner that does not adversely affect the reliability of the Interconnection.

⁸¹ *Regulations Implementing the National Environmental Policy Act*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

⁸² 18 CFR 380.4(a)(2)(ii).

⁸³ 5 U.S.C. 601-12.

⁸⁴ See 13 CFR 121.201.

⁸⁵ To be included in the compliance registry, the ERO determines whether a specific small entity has a material impact on the Bulk-Power System. If these small entities should have such an impact then their compliance is justifiable as necessary for Bulk-Power System reliability.

⁸⁶ The Commission remands the interpretation of the VAR-001-1 Reliability Standard.

DATES: *Effective Date:* This rule will become effective June 29, 2009.

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SUPPLEMENTARY INFORMATION:

Order No. 723
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Before Commissioners: Jon Wellinghoff, Chairman; Suedeen G. Kelly, Marc Spitzer, and Philip D. Moeller.

Order No. 723

Final Rule

Issued May 21, 2009

1. Pursuant to section 215 of the Federal Power Act (FPA),¹ the Commission approves regional Reliability Standard BAL-004-WECC-01 (Automatic Time Error Correction), submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC). As a separate action, pursuant to section 215(d)(5) of the FPA, the Commission directs the Western Electricity Coordinating Council (WECC) to develop several modifications to the regional Reliability Standard. The regional Reliability Standard requires balancing authorities within the WECC region to implement an automatic time error correction procedure for the purpose of maintaining Interconnection frequency within a predefined frequency profile and ensuring that time error corrections are effectively conducted in a manner that does not adversely affect reliability.²

2. The Reliability Standard benefits the reliable operation of the Bulk-Power System by creating an operating environment that encourages system operators to balance their generation and interchange with their load and losses, thereby minimizing the difference between the net actual and net scheduled interchanges. This process will result in reducing the number of manual time error corrections required by the Western Interconnection Time Monitor, and minimize accumulated inadvertent interchange energy between Western Interconnection balancing authorities.³ The Commission also accepts three related definitions that are included in the regional Reliability Standard. The Commission further approves the violation risk factors for the regional Reliability Standard, and directs the Electric Reliability Organization (ERO) and WECC to submit revised violation risk factors in a filing within 60 days of the effective date of this Final Rule. The Commission also directs the ERO and WECC to submit violation severity levels for each Requirement and sub-Requirement that has been assigned a violation risk factor within 120 days of the effective date of this Final Rule.

3. As discussed below, the Commission finds that the regional Reliability Standard proposed by WECC satisfies the statutory criteria, and is

more stringent than the applicable continent-wide NERC Reliability Standard.

I. Background

A. Mandatory Reliability Standards

4. Section 215 of the FPA requires a Commission-certified 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 the ERO, subject to Commission oversight, or by the Commission independently.⁴

5. In February 2006, the Commission issued Order No. 672,⁵ implementing section 215 of the FPA. Pursuant to Order No. 672, the Commission certified one organization, NERC, as the ERO.⁶ Reliability Standards that the ERO proposes to the Commission may include Reliability Standards that are proposed to the ERO by a Regional Entity.⁷ When the ERO 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, the ERO

⁴ See FPA 215(e)(3), 16 U.S.C. 824o(e)(3).

⁵ *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 (2006), *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

⁶ See *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006).

⁷ 16 U.S.C. 824o(e)(4).

¹ 16 U.S.C. 824o (2006).

² The proposed regional Reliability Standard will be in effect within the Western Interconnection-wide WECC Regional Entity. In this proceeding, the Commission proposes to take action to make mandatory the regional Reliability Standard as it applies within the U.S. portion of the Western Interconnection.

³ Mismatches between generation and interchange and load and losses result in the Balancing Area operating at frequencies other than 60 Hertz, which causes both time error and inadvertent interchange.

must rebuttably presume that the regional Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.⁸

6. In reviewing the ERO's submission, the Commission will give due weight to the ERO's technical expertise, except concerning the effect of a proposed Reliability Standard on competition.⁹ The Commission will also give due weight to the technical expertise of a Regional Entity organized on an Interconnection-wide basis with respect to a proposed Reliability Standard to be applicable within that Interconnection.¹⁰

7. The Commission may approve a proposed Reliability Standard if the Commission finds it is just, reasonable, not unduly discriminatory or preferential, and in the public interest.¹¹ In addition, the Commission explained in Order No. 672 that "uniformity of Reliability Standards should be the goal and the practice, the rule rather than the exception."¹² Yet, the Commission recognized that "the goal of greater uniformity does not, however, mean that regional differences cannot exist."¹³ The Commission then provided the following guidance:

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 by 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.¹⁴

8. On March 16, 2007, the Commission issued Order No. 693, approving 83 of the 107 Reliability Standards originally proposed by NERC.¹⁵ In addition, pursuant to section 215(d)(5) of the FPA, the Commission directed NERC to develop modifications to 56 of the 83 approved Reliability Standards.¹⁶ Relevant to the immediate

proceeding, the Commission approved continent-wide Reliability Standard BAL-004-0 (Time Error Correction), but noted that WECC's regional approach appears to serve as a more effective means of accomplishing time error corrections.¹⁷

9. On April 19, 2007, the Commission approved delegation agreements between NERC and each of the eight Regional Entities, including WECC.¹⁸ Pursuant to such agreements, the ERO delegated responsibility to the Regional Entities to enforce the mandatory, Commission-approved Reliability Standards. In addition, the Commission approved, as part of each delegation agreement, a Regional Entity process for developing regional Reliability Standards. In the Delegation Agreement Order, the Commission accepted WECC as a Regional Entity organized on an Interconnection-wide basis and accepted WECC's Standards Development Manual, which sets forth the process for development of WECC's Reliability Standards.¹⁹

10. In a June 2007 order, the Commission approved eight regional Reliability Standards that apply in the WECC region.²⁰

B. Procedural Background

11. On July 29, 2008, NERC submitted for Commission approval, in accordance with section 215(d)(1) of the FPA,²¹ regional Reliability Standard BAL-004-WECC-01, which would apply to balancing authorities within the Western Interconnection. NERC stated that the primary purpose of the regional Reliability Standard is to reduce the number of time error corrections imposed on the Western Interconnection by requiring balancing authorities that operate synchronously in the Western Interconnection to automatically correct for their contribution to time error. According to NERC, BAL-004-WECC-01 provides the added benefit of a superior approach over the current NERC manual time error correction (BAL-004-0) for assigning costs and providing for the

modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section."

¹⁷ Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 377, 382. The Commission also directed NERC to develop a modification to BAL-004-0 to include Levels of Non-Compliance and additional Measures for Requirement R3.

¹⁸ See *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060, order on reh'g, 120 FERC ¶ 61,260 (2007) (Delegation Agreement Order).

¹⁹ *Id.* P 469-470.

²⁰ *North American Electric Reliability Corp.*, 119 FERC ¶ 61,260 (2007).

²¹ 16 U.S.C. 824o(d)(1) (2006).

equitable payback of inadvertent interchange.²²

12. On November 20, 2008, the Commission issued a Notice of Proposed Rulemaking (NOPR) that proposed to approve BAL-004-WECC-01.²³ In response, four interested persons filed comments: NERC, WECC, Consumers Energy Company (Consumers) and Xcel Energy Services Inc (Xcel).

13. In its July 2008 filing, NERC stated that Automatic Time Error Correction or ATEC has been a regional reliability practice in WECC, effectively reducing manual time error corrections, reducing the number of hours of manual time error correction for the Western Interconnection, and reducing the accumulated inadvertent interchange in the Western Interconnection since 2003. NERC asserted that the proposed WECC regional Reliability Standard is more stringent or covers matters not addressed by NERC's continent-wide Reliability Standards, BAL-004-0 and BAL-006-1 (Inadvertent Interchange).

C. Reliability Standard BAL-004-WECC-01

14. Regional Reliability Standard BAL-004-WECC-01 contains four requirements, summarized as follows:

15. *Requirement R1.* Requires that all balancing authorities must continuously participate in Automatic Time Error Correction through their automatic generation control systems. The sub-requirement (R1.1) limits the payback amount to minimize any operating metric violations, while R1.2 addresses actions for cases when invalidated implementation of the ATEC

²² The NERC glossary defines "interchange" as the energy transfers that cross balancing authority boundaries, and defines "inadvertent interchange" as the difference between the balancing authority's net actual interchange and its net scheduled interchange. Within a synchronous Interconnection, during real-time operations, a balancing authority may engage in "inadvertent interchange" if it experiences an operational problem that prevents its net actual interchange of energy from matching its net scheduled interchange with other balancing authorities within the Interconnection. This discrepancy will indicate what is referred to as a "time error"—*i.e.*, because the Interconnection will operate at a frequency (number of cycles per second) that is different from the Interconnection's scheduled frequency of 60 Hz (60 cycles per second). Time error also serves as a means to measure of how much and which balancing authority within the Interconnection is out of balance. To correct the time error using the Automatic Time Error Correction (ATEC) method, it is necessary for the balancing authority that was out of balance to adjust the Interconnection's frequency so that it equalizes its prior inadvertent energy exchange with the Interconnection.

²³ *Western Electricity Coordinating Council Regional Reliability Standard Regarding Automatic Time Error Correction*, Notice of Proposed Rulemaking, 73 FR 71977 (Nov. 26, 2008), FERC Stats. & Regs. ¶ 32,638 (2008).

⁸ 16 U.S.C. 824o(d)(3); 18 CFR 39.5(b).

⁹ 16 U.S.C. 824o(d)(2).

¹⁰ *Id.*

¹¹ *Id.*

¹² Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 290.

¹³ *Id.* P 291.

¹⁴ *Id.*

¹⁵ *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).

¹⁶ 16 U.S.C. 824o(d)(5). Section 215(d)(5) provides, "The Commission * * * may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a

methodology occurs and requires adjustments.

16. *Requirement R2.* Requires a balancing authority that operates in any automatic generation control operating mode other than ATEC to notify all other balancing authorities of its operating mode. This requirement is necessary to ensure the reliable operations of the Western Interconnection by creating an operating environment that encourages the Balancing Authorities to minimize the difference between the net actual and net scheduled interchanges. To avoid large accumulation of inadvertent interchanges, Requirement R2 limits a balancing authority's use of operating modes other than ATEC to a maximum of 24 hours per calendar quarter.

17. *Requirement R3.* Requires balancing authorities to have the capability to switch between different automatic generation control operating modes as necessary to operate reliably during various system conditions.

18. *Requirement R4.* Requires each balancing authority to calculate and record its hourly "Primary Inadvertent Interchange" when hourly checkout is complete.

19. The WECC regional Reliability Standard also introduces the following three new definitions:

Automatic Time Error Correction: A frequency control automatic action that a Balancing Authority uses to offset its frequency contribution to support the Interconnection's scheduled frequency.

Primary Inadvertent Interchange: The component of area (n) inadvertent interchange caused by the regulating deficiencies of area (n) itself.

Secondary Inadvertent Interchange: The component of area (n) inadvertent interchange caused by the regulating deficiencies of area (i).

20. In its July 2008 filing, NERC asserted that the ATEC procedure provided in the proposed regional Reliability Standard has been effective in mitigating three problems relating to correction of time errors in the Western Interconnection. First, the ATEC procedure has reduced the need for the WECC Time Monitor to conduct manual time error corrections from 216 manual time error corrections in 2003 to 106 manual time error corrections in 2007. Second, since time error is directly related to inadvertent interchange, the ATEC procedure reduces both time error and accumulated inadvertent interchange. Third, according to NERC, the ATEC procedure better identifies the balancing authorities responsible for inadvertent interchange and provides a more equitable and immediate payback of the inadvertent interchange to the

balancing authorities that should receive it (*i.e.*, the balancing authorities that did not cause the inadvertent interchange but supported the interconnection's scheduled frequency) than the current NERC time error correction process in BAL-004-0.

21. NERC also stated that the proposed regional Reliability Standard satisfies the factors provided in Order No. 672 that the Commission considers when determining whether a proposed Reliability Standard is just, reasonable, not unduly discriminatory or preferential and in the public interest.²⁴ According to NERC, BAL-004-WECC-01 is clear and unambiguous regarding what is required and who is required to comply (balancing authorities). NERC also stated that the proposed regional Reliability Standard has clear and objective measures for compliance and achieves a reliability goal (namely, creating an operating environment that encourages system operators to minimize the difference between the net actual and net scheduled interchanges, and to better control frequency) effectively and efficiently.

II. Discussion

22. Pursuant to section 215(d) of the FPA, the Commission approves regional Reliability Standard BAL-004-WECC-01 as mandatory and enforceable.

23. Pursuant to the continent-wide NERC Reliability Standard BAL-004-1, when accumulated time error increases to a predetermined level, the Interconnection's Time Monitor instructs all balancing authorities in the Interconnection to manually change the scheduled Interconnection's frequency until the Interconnection's accumulated time error has been reduced to a set level. However, the requirements of BAL-004-1 do not require each balancing authority to determine what portion of the Interconnection's time error that it alone caused.

24. Under the WECC ATEC methodology, each balancing authority in the Western Interconnection is required to calculate its "primary inadvertent interchange"²⁵ and enter its "primary inadvertent interchange" into its Area Control Error (ACE)²⁶ equation.

²⁴ Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 323-337.

²⁵ The balancing authority causing the frequency error is said to have created "primary time error" and caused "primary inadvertent interchange." The other balancing authorities in the Interconnection responding to correct system frequency are said to have created "secondary time error" and caused "secondary inadvertent interchange."

²⁶ ACE is the instantaneous difference between a Balancing Authority's net actual and scheduled interchange, taking into account the effects of Frequency Bias and correction for meter error

When all balancing authorities input their portion of "primary inadvertent interchange" into their ACE equation, they continuously correct for their own "primary time error" and, in turn, reduce the Western Interconnection's total time error.

25. This process differs from the methodology used in NERC's BAL-004-1, in that ATEC is designed to place the responsibility to correct primary time error on the balancing authority that causes it. Further, the regional Reliability Standard is more stringent and covers matters not addressed by the related continent-wide NERC Reliability Standards BAL-004-0 and BAL-006-1. The regional Reliability Standard provides for automatic correction of time error, using a more refined primary inadvertent interchange term than that included in the continent-wide NERC Reliability Standards for manual correction of time error.²⁷ Accordingly, the Commission finds that the regional Reliability Standard proposed by WECC is more stringent than the continent-wide NERC Reliability Standard, because it provides for continuous capture of inadvertent interchange, and thereby (1) contributes to better operation of balancing authorities by operators, and (2) ensures that discrepancies between a balancing area's net scheduled interchange and its net actual interchange are adjusted more quickly and accurately. Pursuant to section 215(d) of the FPA, the Commission approves BAL-004-WECC-01 as just, reasonable, not unduly discriminatory or preferential and in the public interest.

26. As a separate matter, pursuant to section 215(d)(5) of the FPA, the Commission directs WECC to develop, pursuant to its regional Reliability Standards Development Procedure, modifications to BAL-004-WECC-01 to address the Commission's specific concerns, as discussed below. Further, the Commission approves some of 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 Final Rule revising other specified violation risk factors and another filing within 120 days of the effective date of this Final Rule providing violation severity levels

(NERC glossary of terms used in reliability standards, http://www.nerc.com/docs/standards/rs/Glossary_2009April20.pdf, at 1). More specifically: $ACE = (NI_A - NI_S) - 10\beta_1(F_A - F_S) - T_{OB} + I_{ME}$ (Requirement R1 of Commission Approved Standard BAL-001-0.1a, see http://www.nerc.com/docs/standards/sar/Interpretation_WECC_ATEC_BAL_001and003_BOT-Approved_23Oct07.pdf).

²⁷ NERC filing at 10.

for each Requirement and sub-Requirement that has been assigned a violation risk factor.

A. Requirement R1.2

27. Requirement R1.2 of BAL-004-WECC-01 provides in part, “[l]arge accumulations of primary inadvertent [energy] point to an invalid implementation of ATEC, loose control, metering or accounting errors. A [balancing authority] in such a situation should identify the source of the error(s) and make the corrections.” In the NOPR, the Commission noted that the phrases “large accumulation” and “in such a situation” are not defined and, while likely obvious in many circumstances, leaves to individual interpretation when a “large” amount of primary inadvertent has accumulated.²⁸ The Commission proposed to direct WECC to develop revisions to the provision so that a balancing authority will know with specificity the circumstances that trigger the actions required by Requirement R1.2.

1. Comments

28. WECC acknowledges the Commission’s concern that the undefined phrases “large accumulation” and “in such a situation” in Requirement R1.2 could lead to uncertainty among Balancing Authorities as to when they are required to take action. WECC comments that, while these terms have a general industry understanding within the Western Interconnection, clarifying these terms would remove the potential for controversy over compliance requirements. WECC suggests either defining the terms within the regional Reliability Standard or modifying the standard language to better identify specific parameters that would trigger actions required under this standard.

29. NERC agrees that further clarity of the identified phrases in Requirement R1.2 is appropriate and believes WECC’s proposal in its comments is responsive.

2. Commission Determination

30. As we explained in the NOPR, the Commission is concerned that the phrases “large accumulation” and “in such a situation” as used in Requirement R1.2 leave to individual interpretation when a “large” amount of primary inadvertent has accumulated. The ERO and WECC agree that the provision could benefit from further clarity. Accordingly, the Commission adopts its NOPR proposal and directs WECC to develop revisions to the provision so that a balancing authority

will know with specificity the circumstances that trigger the actions required by Requirement R1.2.

B. Explanation of 24-Hour Exemption Period of Requirement R2

31. Requirement R2 of BAL-004-WECC-01 provides that “[e]ach [balancing authority] while synchronously connected to the Western Interconnection will be allowed to have ATEC out of service for a maximum of 24 hours per calendar quarter, for reasons including maintenance and testing.” In the NOPR, the Commission proposed to direct WECC to develop a modification that clarifies whether the “maximum of 24 hours per calendar quarter” refers to a single occurrence of up to 24 hours in the calendar quarter, or whether several occurrences are permitted as long as they add up to 24 hours or less within a calendar quarter.²⁹

1. Comments

32. WECC comments that it intended the 24-hour per calendar quarter limit to permit an accumulated total of up to 24 hours, whether resulting from one extended occurrence or multiple occurrences. Likewise, NERC understands that WECC intended the provision to permit an accumulated total of up to 24 hours from one or more occurrences.

33. WECC and NERC agree the proposed NOPR modifications will leave the regional Reliability Standard more definite and can be addressed through WECC’s stakeholder process.

2. Commission Determination

34. Consistent with the NOPR, pursuant to section 215(d)(5) of the FPA, the Commission directs WECC to develop a modification to the regional Reliability Standard consistent with WECC’s and NERC’s explanation that the limit set forth in Requirement 2 of “24 hours per calendar quarter” is an accumulated total for the period, resulting from either a singular event or a cumulative time limit from a number of events.

C. New Glossary Definitions

35. As mentioned above, the WECC regional Reliability Standard includes three new definitions: Automatic Time Error Correction, Primary Inadvertent Interchange and Secondary Inadvertent Interchange. In the NOPR, the Commission proposed to approve the three new terms.³⁰

²⁹ NOPR at P 37.

³⁰ NOPR at P 26. While the Commission discussed the proposed definitions in several places

1. Comments

36. Consumers expresses concern regarding the incorporation of three newly defined terms (Automatic Time Error Correction, Primary Inadvertent Interchange and Secondary Inadvertent Interchange) into the NERC glossary. Consumers states that it is appropriate for the three new definitions to apply to WECC regional Reliability Standards. However, according to Consumers, the definitions have not been vetted through NERC’s full development process for their inclusion in the NERC glossary, applicable to NERC Reliability Standards that apply on a continent-wide basis. Specifically, Consumers points out that NERC’s Rules of Procedure provide that all definitions must be approved in accordance with the standards process.³¹ Consumers recommends that the Commission either clearly designate the proposed definitions as being applicable only to WECC regional Reliability Standards or direct NERC to submit the proposed definitions for stakeholder review as part of the NERC Reliability Standards development process.

2. Commission Determination

37. The Commission agrees with Consumers that the three new definitions have not been vetted through the ERO’s full development process for their inclusion in the NERC glossary; and that the three new definitions approved in this Final Rule apply only to WECC regional Reliability Standards. NERC should designate them accordingly. Therefore, to ensure that all approved definitions, NERC and regional, are maintained in a single location, NERC should add or append the three new regional definitions to the NERC Glossary of Terms in such a way as to designate that they apply only in the Western Interconnection.

38. The Commission, however, has a general concern regarding the development of definitions that apply only to regional Reliability Standards. The Commission understands that, prior to NERC’s development of the “Version 0” Reliability Standards, there were multiple regional standards and protocols, with each region having its own definitions of terms. In some instances, the same or similar terms were defined differently within different

in the NOPR, in one instance the Commission stated that it proposed to “accept three related definitions for inclusion in the NERC Reliability Standards Glossary (NERC glossary).” *Id.* P 2. In other instances, the Commission simply stated that it proposed to approve the definitions. *Id.* P 26, 34.

³¹ Consumers Comments at 4, citing NERC Rules of Procedure, section 300 and Appendix 3A (NERC Reliability Standards Development Procedure) at 8.

²⁸ NOPR at P 36.

regions. The Version 0 process included developing the NERC glossary, which eliminated many inconsistencies in terminology across regions and created a single source for defining terms used in Reliability Standards.

39. We are concerned about a potential re-proliferation of regional terminology, and consequently, the need to prevent possible inconsistent use of terminology among regions. While NERC has only submitted WECC regional Reliability Standards to the Commission at this time, other regions are in the process of developing regional standards. Similar to our policy set forth in Order No. 672 that favors the development of uniform Reliability Standards,³² the Commission believes NERC, as a rule, should develop definitions that apply uniformly across the different interconnections. As a general goal, NERC should work to minimize the use of regional definitions and terminology and, assure that proposed regional definitions and terminology are as well defined as, do not conflict and are not redundant with nor redefine, NERC glossary definitions. We therefore direct NERC to develop in its Rules of Procedure, a methodology for organizing and managing regional definitions and terminology consistent with the principles discussed above.

40. Further, NERC should be vigilant to assure that a regional definition is consistent with both NERC definitions and the approved terms used in other regions. The Commission considers an inconsistency or conflict in terms to be reasonable grounds to remand a regional definition and, if appropriate, the regional Reliability Standard that employs that definition.

D. Consistency With NERC Reliability Standards

1. Comments

41. Xcel comments that, while it generally supports the adoption of BAL-004-WECC-01, it is concerned that the regional Reliability Standard creates a potential conflict with two NERC Reliability Standards, BAL-001-0a (Real Power Balancing Control Performance) and BAL-002-0 (Disturbance Control Performance). Xcel requests that the Commission establish priority for compliance in the event that WECC regional Reliability Standards conflict with those of NERC. Xcel's concern involves the difference in the

ACE equation between the regional and the NERC Reliability Standards and the compliance elements regarding this equation.

42. Xcel states that BAL-001-0a requires that ACE be kept within specific parameters, while BAL-004-WECC-01 requires a measurement of ACE that is outside those parameters to be maintained at all times. According to Xcel, BAL-004-WECC-01 requires ATEC operation at all times except up to 24 hours per calendar quarter, but is not clear if this period covers times when complying with BAL-001-0a requires non-compliance with BAL-004-WECC-01. Xcel notes that Requirement R3 of BAL-004-WECC-01 requires the ACE used for NERC reports to be the same as the ACE used in the current AGC operating mode. According to Xcel, this requires the use of the ACE_{ATEC} set forth in BAL-004-WECC-01 rather than the BAL-001-0a ACE equation in most situations.

43. Xcel claims that BAL-004-WECC-01 may also conflict with BAL-002-0 Requirement R4.2, which requires that the balancing authority restore ACE to specified parameters within a defined timeframe. Xcel posits that in most situations it will be impossible for an entity attempting to recover from a disturbance to operate at an ACE calculated in accordance with the NERC standard and ACE_{ATEC} simultaneously. According to Xcel, the use of the BAL-004-WECC-01, Requirement R2 exception, allowing ATEC to be out of service for 24 hours per calendar quarter, should be acceptable for alleviating this circumstance. Xcel contends that, where the 24-hour maximum is exceeded for the purpose of ACE complying with BAL-002-0, the balancing authority should be given express authority to deviate from the requirements of BAL-004-WECC-01.

2. Commission Determination

44. We are not persuaded by Xcel's comments on this matter. We believe that our approval, in Order No. 713,³³ of an ERO interpretation addresses Xcel's concern. Specifically, WECC requested that the ERO provide a formal interpretation whether the use of WECC's automatic time error correction factor that is applied to the net interchange portion of the ACE equation violates Requirement R1 of NERC Reliability Standard BAL-001-0a. In

response, the ERO interpreted BAL-001-0 Requirement R1 as follows:

- The [WECC automatic time error correction or WATEC] procedural documents ask Balancing Authorities to maintain raw ACE for [control performance standard or CPS1³⁴] reporting and to control via WATEC-adjusted ACE.

- As long as Balancing Authorities use raw (unadjusted for WATEC) ACE for CPS reporting purposes, the use of WATEC for control is not in violation of BAL-001 Requirement 1.³⁵

45. The Commission-approved interpretation makes clear that a balancing authority is in compliance with BAL-001-1a provided that it uses the equation identified in R1 for reporting CPS1 and achieves the performance required by CPS1. The balancing authority's ability to use the ACE calculation also to assist in time error correction and inadvertent interchange payback is not precluded.

46. Further, the Commission is not persuaded by Xcel's claims that BAL-004-WECC-01 may also conflict with BAL-002-0, Requirement R4.2, which requires that the balancing authority restore ACE to specified parameters within a defined timeframe. Requirements R2 and R3 of Standard BAL-004-WECC-0 direct that ATEC will be the primary operating mode used by all balancing authorities in the WECC region. However, balancing authorities may modify their ACE operating mode to account for various operating situations, including the need to respond to meeting the Disturbance Recovery Criterion within the Disturbance Recovery Period in Requirement R4.2 of BAL-002-0.³⁶

47. Nor does the Commission agree with Xcel's concern about the 24-hour per quarter ATEC operating mode exception period. Giving due consideration to the Western Interconnection's participants, the Commission finds that a 24-hour per quarter ATEC operating mode exception period encourages the Western Interconnection's balancing authorities to maintain a high standard of operations to support the reliability of the Western Interconnection.

³⁴ The Control Performance Standard (CPS) is defined in the NERC Glossary as "[t]he reliability standard that sets the limits of a Balancing Authority's Area Control Error over a specified time period."

³⁵ Order No. 713, 124 FERC ¶ 61,071 at P 17.

³⁶ R4.2 provides that "[t]he default Disturbance Recovery Period is 15 minutes after the start of a Reportable Disturbance," but further states that "[t]his period may be adjusted to better suit the needs of an Interconnection based on analysis approved by the NERC Operating Committee."

³² Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 290 ("The Commission believes that uniformity of Reliability Standards should be the goal and the practice, the rule rather than the exception. Greater uniformity will encourage best practices, thereby enhancing reliability and benefiting consumers and the economy").

³³ *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, 124 FERC ¶ 61,071 (July 21, 2008).

48. Consequently, the Commission is not persuaded by Xcel's comments. As discussed above, the ERO and the Commission have previously addressed the issue raised by Xcel, and the Commission does not believe that remand or further clarification is warranted.

E. Violation Risk Factors

49. In the NOPR, the Commission proposed to direct that the violation risk factors assigned to BAL-004-WECC-01, Requirements R1, R2, R3, and R4 be modified from "lower" to "medium."³⁷ The Commission explained that the participation in an interconnection's time error correction is critical and can directly affect the state of the Bulk-Power System.³⁸ Further, the Commission explained that the assignment of a "medium" violation risk factor to the Requirements of the WECC regional Reliability Standard would make it consistent with the assignment of "medium" violation risk factors to NERC Reliability Standard BAL-004-0.

1. Comments

50. WECC comments that, while it is unlikely that a violation of the regional Reliability Standard would lead to Bulk-Power System instability, it acknowledges that ATEC is not administrative in nature and could affect the electrical status of the Bulk-Power System making a 'Medium' VRF more appropriate. Thus, WECC comments that "it does not disagree" with the Commission's proposal to change the violation risk factors from low to medium. NERC also agrees that the Commission's proposal would promote consistency.

2. Commission Determination

51. We adopt our NOPR proposal and direct that the violation risk factors assigned to BAL-004-WECC-01, Requirements R1, R2, R3, and R4 be modified from "lower" to "medium." The ERO and WECC must submit a filing within 60 days of the effective date of this Final Rule that includes the directed modifications.

F. Violation Severity Levels

52. The ERO's July 2008 filing of the WECC regional Reliability Standard included proposed violation severity levels that apply generally to all violations of the Requirements of BAL-004-WECC-01 and not to any one specific Requirement. In the NOPR, the Commission proposed to direct the

submission of new violation severity levels for each Requirement and sub-Requirement that has been assigned a violation risk factor.³⁹

1. Comments

53. WECC comments that the Commission's and NERC's guidance on the development of violation severity levels has evolved since the drafting of the violation severity levels for BAL-004-WECC-1. WECC indicates that it will develop violation severity levels for each Requirement and sub-Requirement of the regional Reliability Standard, and requests that the Commission allow sufficient time to address the issue through the WECC stakeholder process.

2. Commission Determination

54. The Commission adopts its NOPR proposal and directs the ERO and WECC to submit violation severity levels for each Requirement and sub-Requirement that has been assigned a violation risk factor. To allow adequate time for the development of the violation severity levels, the ERO and WECC must submit a filing within 120 days of the effective date of this Final Rule that includes the directed violation severity levels.

III. Information Collection Statement

55. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by agency rules.⁴⁰ The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.⁴¹ Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of an agency 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.

56. This Final Rule approves and requires modifications of one regional Reliability Standard that was submitted by NERC as the ERO. Section 215 of the FPA authorizes the ERO to submit Reliability Standards to provide for the reliable operation of the Bulk-Power

System. Pursuant to the statute, the ERO must submit each Reliability Standard that it proposes to be made effective to the Commission for approval.⁴²

57. The regional Reliability Standard, which applies to approximately 35 balancing authorities in the U.S. portion of the Western Interconnection, does not require balancing authorities to file information with the Commission. It does require balancing authorities to develop and maintain certain information for a specified period of time, subject to inspection by WECC. However, the Commission does not believe that approval of the WECC regional Reliability Standard will result in an increase in reporting burdens as compared to current practices in WECC. As NERC indicates, since 2003, WECC has used the automatic time error correction practice set forth in BAL-004-WECC-01. Thus, the Commission finds that the requirement to develop and maintain information in the regional Reliability Standard mirrors customary and usual business practice in the area in which the Standard will apply and, therefore, imposes a minimal burden on applicable balancing authorities and eliminates any possible confusion between current industry practice and the standard. The Commission also finds that the modifications to the current Reliability Standard effected by this Final Rule will not increase the reporting burden nor impose any additional information collection requirements.

58. In response to the NOPR, the Commission received no comments concerning its determination with respect to the burden and costs and therefore uses the same affirmation here.

Title: Western Electricity Coordinating Council Regional Reliability Standard Regarding Automatic Time Error Correction.

Action: Final Rule.

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 Final Rule approves and requires modification to one regional Reliability Standard that pertains to automatic time error correction in the Western Interconnection. The Final Rule finds the Reliability Standard to be just, reasonable, not unduly discriminatory or preferential, and in the public interest.

59. Interested persons may obtain information on the reporting requirements by contacting: Federal

³⁷ NOPR at P 44-47.

³⁸ *Id.* P 46.

³⁹ NOPR at P 49. We note that, in *Version Two Facilities Design, Connections and Maintenance Reliability Standards*, Order No. 722, 126 FERC ¶ 61,255 at P 45 (2009), the ERO proposed to develop violation severity levels for Requirements but not sub-Requirements. The Commission denied the proposal as "premature" and, instead, encouraged the ERO to "develop a new and comprehensive approach that would better facilitate the assignment of violation severity levels and violation risk factors."

⁴⁰ 5 CFR 1320.11.

⁴¹ 44 U.S.C. 3507(d).

⁴² See 16 U.S.C. 824(d).

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, 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.

IV. Environmental Analysis

60. 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.⁴³ 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.⁴⁴ The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act

61. The Regulatory Flexibility Act of 1980 (RFA)⁴⁵ 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.

62. As noted above, the regional reliability standard would apply to about 35 balancing areas in the Western Interconnection. The Commission estimates that of these balancing areas, approximately two to four qualify as small entities, because the total electric

output of each of these entities for the preceding twelve months did not exceed four million megawatt hours. Thus, few small entities are impacted by the proposed rule.

63. Based on this understanding, the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

VI. Document Availability

64. 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 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

65. 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.

66. 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, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

VII. Effective Date and Congressional Notification

67. The Reliability Standard approved in this Final Rule is effective June 29, 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.

[FR Doc. E9-12351 Filed 5-27-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9450]

RIN 1545-BE73

Information Reporting for Lump-Sum Timber Sales

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance regarding the information reporting requirements contained in section 6045(e) of the Internal Revenue Code (Code) on sales or exchanges of standing timber for lump-sum (outright) payments. The final regulations amend § 1.6045-4 of the Income Tax Regulations to require real estate reporting persons, as defined in section 6045(e)(2) of the Code, to report lump-sum payments received by sellers (landowners) for sales or exchanges of standing timber. The final regulations do not change the information reporting requirements that currently apply to sales or exchanges of standing timber for pay-as-cut (contingent) payments under section 6050N of the Code.

DATES:

Effective date: These regulations are effective on May 28, 2009.

Applicability date: The amendments to paragraphs (b)(2)(i)(E), (b)(2)(ii) and (c)(2)(i) of § 1.6045-4 shall apply to sales or exchanges of standing timber for lump-sum payments completed after May 28, 2009.

FOR FURTHER INFORMATION CONTACT: Timothy S. Sheppard of the Office of Chief Counsel (Procedure and Administration), at (202) 622-4910.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1085. The collection of information in these final regulations is

⁴³ *Regulations Implementing the National Environmental Policy Act*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

⁴⁴ 18 CFR 380.4(a)(2)(ii).

⁴⁵ 5 U.S.C. 601-12.