

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****18 CFR Part 40****[Docket No. RM10–10–000]****Planning Resource Adequacy Assessment Reliability Standard**

Issued October 21, 2010.

**AGENCY:** Federal Energy Regulatory Commission, DOE.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Under section 215(d)(2) of the Federal Power Act (FPA), the Federal Energy Regulatory Commission proposes to approve a regional Reliability Standard, BAL–502–RFC–02, Planning Resource Adequacy Analysis, Assessment and Documentation, developed by ReliabilityFirst Corporation (RFC) and submitted to the Commission by the North American Electric Reliability Corporation (NERC). The proposed regional Reliability Standard requires planning coordinators within the RFC geographical footprint to analyze, assess and document resource adequacy for load in the RFC footprint annually, to utilize a “one day in ten year” loss of load criterion, and to document and post load and resource capability in each area or transmission-constrained sub-area identified.

**DATES:** Comments are due December 27, 2010.

**ADDRESSES:** You may submit comments, identified by docket number and in accordance with the requirements posted on the Commission’s Web site, <http://www.ferc.gov>. Comments may be submitted by any of the following methods:

- *Electronic Submission:* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format, and not in a scanned format, at <http://www.ferc.gov/docs-filing/efiling.asp>.

- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. These requirements can be found on the Commission’s Web site, *see, e.g.*, the “Quick Reference Guide for Paper Submissions,” available at <http://www.ferc.gov/docs-filing/efiling.asp>, or via phone from FERC Online Support at 202–502–6652 or toll-free at 1–866–208–3676.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****Notice of Proposed Rulemaking**

1. Under section 215(d)(2) of the Federal Power Act (FPA), the Federal Energy Regulatory Commission proposes to approve a regional Reliability Standard BAL–502–RFC–02 (Planning Resource Adequacy Analysis, Assessment and Documentation), developed by ReliabilityFirst Corporation (RFC) and submitted to the Commission by the North American Electric Reliability Corporation (NERC). The proposed regional Reliability Standard requires planning coordinators within the RFC geographical footprint to analyze, assess and document resource adequacy for load in the RFC footprint annually, to utilize a “one day in ten year” loss of load criterion, and to document and post load and resource capability in each area or transmission-constrained sub-area identified.

**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 the ERO, subject to Commission oversight, or by the Commission independently.<sup>1</sup> In July 2006, the Commission certified NERC as the ERO.<sup>2</sup>

3. Reliability Standards that the ERO proposes to the Commission may include Reliability Standards that are developed by a Regional Entity.<sup>3</sup> A Regional Entity is an entity that has been approved by the Commission to enforce Reliability Standards under delegated authority from the ERO.<sup>4</sup> In

<sup>1</sup> See 16 U.S.C. 824o(e)(3).

<sup>2</sup> *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062 (ERO Certification Order), *order on reh’g and compliance*, 117 FERC ¶ 61,126 (2006), *aff’d sub nom. Alcoa, Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

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

<sup>4</sup> *Id.* at 824o(a)(7) and (e)(4).

Order No. 672, the Commission urged uniformity of Reliability Standards, but recognized a potential need for regional differences.<sup>5</sup> Accordingly, the Commission stated 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>6</sup>

4. Consistent with section 215 of the FPA, the Commission will approve proposed regional Reliability Standard BAL–502–RFC–02 if the Commission finds it is just, reasonable, not unduly discriminatory or preferential, and in the public interest.

*B. ReliabilityFirst*

5. On April 19, 2007, the Commission approved delegation agreements between NERC and eight Regional Entities.<sup>7</sup> 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 RFC as a Regional Entity and accepted RFC’s Standards Development Manual which sets forth the process for RFC’s development of regional Reliability Standards.<sup>8</sup> The RFC region is a less than interconnection-wide region that covers all or portions of 14 states and the District of Columbia.

**II. RFC Regional Reliability Standard BAL–502–RFC–02**

6. On December 14, 2009, NERC submitted for Commission approval, in accordance with section 215(d)(1) of the

<sup>5</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 290; *order on reh’g*, Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

<sup>6</sup> Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 291.

<sup>7</sup> *See North American Electric Reliability Corp.*, 119 FERC ¶ 61,060, at P 316–350 (Delegation Agreement Order), *order on reh’g*, 120 FERC ¶ 61,260 (2007).

<sup>8</sup> *Id.* P 339 (clarifying that the RFC Standards Development Manual embodies “rules” which are subject to NERC approval and, if approved by NERC, Commission approval).

FPA,<sup>9</sup> regional Reliability Standard BAL-502-RFC-02 and four associated new definitions.<sup>10</sup> The stated purpose of regional Reliability Standard BAL-502-RFC-02 is to establish common criteria, based on “one day in ten year” loss of load expectation principles, for the analysis, assessment and documentation of resource adequacy in the RFC region.<sup>11</sup> NERC states that the proposed regional Reliability Standard establishes requirements for planning coordinators in the RFC region regarding resource adequacy assessment, which subject matter is not currently addressed in NERC’s continent-wide Reliability Standards.<sup>12</sup>

7. Proposed regional Reliability Standard BAL-502-RFC-02 contains two Requirements, which are applicable to each planning coordinator within the RFC footprint.<sup>13</sup> Requirement R1 requires each planning coordinator to perform and document an annual resource adequacy analysis.<sup>14</sup> The seven Sub-requirements define the criteria to be used for the resource adequacy analysis. Sub-requirement R1.1 sets forth the “one day in ten year” criteria to be used to calculate the planning reserve margin. Sub-requirement R1.2 specifies the planning years to be studied. Sub-requirement R1.3 defines system characteristics to be included in the analysis. Sub-requirements R1.4 and R1.5 require the consideration of resource availability and transmission outage plans. Sub-requirements R1.6 and R1.7 require documentation that capacity resources and load were properly accounted for in the analysis. Requirement R2 requires each planning coordinator to annually document the projected load and resource capability for each area and transmission

constrained sub-area identified in the analysis. Sub-requirements R2.1 through R2.3 set forth the specific documentation requirements. Each of the main Requirements (R1 and R2) are assigned a violation risk factor (VRF) and violation severity level (VSL). However, RFC did not assign VRFs or VSLs to the Sub-requirements.

8. NERC also proposes to add the following four new definitions, which would be applicable in the RFC region only:

**Resource Adequacy:** The ability of supply-side and demand-side resources to meet the aggregate electrical demand (including losses).

**Net Internal Demand:** Total of all end-use customer demand and electric system losses within specified metered boundaries, less Direct Control Load Management and Interruptible Demand.

**Peak Period:** A period consisting of two (2) or more calendar months but less than seven (7) calendar months, which includes the period during which the responsible entity’s annual peak demand is expected to occur.

**Year One:** The planning year that begins with the upcoming annual Peak Period.

NERC states that these four terms do not presently appear in the NERC Glossary of Terms Used in Reliability Standards (Glossary) and they do not conflict with existing terms.<sup>15</sup>

9. NERC states that on February 24, 2009, RFC submitted the proposed Reliability Standard to NERC for evaluation and approval. On April 17, 2009, NERC provided RFC its evaluation of BAL-502-RFC-02 which highlighted several concerns regarding the proposed standard. NERC’s concerns included: (1) Missing time horizons, (2) effective date not meeting NERC’s template language, (3) complex sub-requirements, (4) the addition of new defined terms, (5) the assignment of VRFs and VSLs only to the Reliability Standard’s two main Requirements and not the sub-requirements, and (6) technical clarity. On June 8, 2009, RFC submitted a response to NERC addressing NERC’s concerns.

10. NERC concludes that the proposed RFC regional Reliability Standard addresses matters not currently covered in a continent-wide NERC Reliability Standard and thus meets the Commission’s criteria for consideration of a regional Reliability Standard. NERC asserts that the proposed regional Reliability Standard satisfies all of the criteria set forth in Order No. 672 that the Commission applies to determine whether a proposed Reliability Standard is just, reasonable, not unduly

discriminatory or preferential and in the public interest.<sup>16</sup> As such, NERC requests approval of proposed regional Reliability Standard BAL-502-RFC-02 and the related definitions.

### III. Discussion

11. As discussed below, the Commission proposes to approve BAL-502-RFC-02. The proposed regional Reliability Standard will improve the reliable operation of the Bulk-Power System by ensuring use in the RFC region of a common criterion, the “one day in ten year” principle, to assess resource adequacy during the planning horizon. The Commission also proposes to accept the four related definitions for inclusion in NERC’s Glossary for use with RFC’s regional Reliability Standards.<sup>17</sup> The Commission further proposes to defer discussion on the proposed VRFs and VSLs for the regional Reliability Standard.

12. Proposed regional Reliability Standard BAL-502-RFC-02 is “more stringent” in that NERC’s continent-wide standards currently do not address assessment of Resource Adequacy in the planning horizon. The Commission notes the current continent-wide Reliability Standard TOP-002-2a, Requirement R7 requires Balancing Authorities to plan to meet capacity and energy reserve requirements, including the deliverability/capability for any single contingency.<sup>18</sup> Reliability Standard TOP-002-2 ensures that resources and operational plans are in place to enable system operators to maintain the Bulk-Power System in a reliable state.<sup>19</sup> Thus Reliability Standard TOP-002-2 is a continent-wide Reliability Standard that addresses requirements for reserves during the operations timeframe whereas proposed regional Reliability Standard BAL-502-RFC-02 addresses the assessment of resource adequacy (or planning reserves) during the planning timeframe. If NERC develops a continent-wide Reliability Standard that addresses assessment of resource adequacy in the planning horizon and such Reliability Standard is approved by the Commission, RFC should

<sup>9</sup> 16 U.S.C. 824o.

<sup>10</sup> NERC Petition for Approval of Proposed RFC Regional Reliability Standard BAL-502-RFC-02, Docket No. RM10-10-000 (Dec. 14, 2009) (Petition).

<sup>11</sup> NERC Petition at 7.

<sup>12</sup> *Id.* at 7. NERC notes that it has a pending continent-wide project, Project 2009-05, Resource Adequacy Assessments, that is intended to address resource adequacy assessments. This NERC project has a targeted completion date of third quarter 2011.

<sup>13</sup> According to the RFC April 16, 2010 organization registration (*available at* <http://rfirst.org/Compliance/Registration.aspx>), there are four registered planning coordinators in the RFC region, each of which is a RFC member. See RFC’s January 11, 2010 list of member companies by sector, *available at* <http://rfirst.org/MiscForms/AboutUs/Membership.aspx>. The four registered planning coordinators are American Transmission Co., LLC; International Transmission Company (ITC Transmission); Midwest Independent Transmission System Operator, Inc. (Midwest ISO); and PJM Interconnection, LLC (PJM).

<sup>14</sup> NERC notes that the proposed Reliability Standard does not require the building or acquisition of new generating capacity. See NERC Petition at 9.

<sup>15</sup> The NERC Glossary (updated Apr. 20, 2010) is *available at* [http://www.nerc.com/docs/standards/rs/Glossary\\_of\\_Terms\\_2010April20.pdf](http://www.nerc.com/docs/standards/rs/Glossary_of_Terms_2010April20.pdf).

<sup>16</sup> Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 323-337.

<sup>17</sup> NERC’s Glossary lists each term that has been defined for use in one or more of NERC’s continent-wide or regional Reliability Standards.

<sup>18</sup> Reliability Standard TOP-002-2a, Requirement R7.

<sup>19</sup> *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 1590, order on reh’g, Order No. 693-A, 120 FERC ¶ 61,053 (2007). See also the Notice of Proposed Rulemaking, Docket No. RM06-16-000, FERC Stats. & Regs., Proposed Regulations 2004-2007, ¶ 32,608 (2006) (Order No. 693 NOPR).

reevaluate the continuing need for regional Reliability Standard BAL-502-RFC-02.

#### A. Order No. 672 Criteria

13. Order No. 672 provides that a Reliability Standard must be designed to achieve a specified reliability goal and must contain a technically sound means to achieve this goal.<sup>20</sup> Likewise, the Reliability Standard should be based on actual data and lessons learned from actual operations.<sup>21</sup> According to NERC and RFC, proposed regional Reliability Standard BAL-502-RFC-02 is clear and unambiguous regarding what is required and who is required to comply (planning coordinator). NERC and RFC also state that BAL-502-RFC-02 has clear and objective measures for compliance and achieves a reliability goal (namely, providing a common framework for resource adequacy analysis, assessment, and documentation) effectively and efficiently. Based on the Commission's understanding of the proposed regional Reliability Standard, explained below, the Commission believes that BAL-502-RFC-02 satisfies the Order No. 672 criteria.

#### B. RFC's Proposed Resource Adequacy Reliability Standard Requirements

14. Proposed regional Reliability Standard BAL-502-RFC-02 requires planning coordinators to perform an annual Resource Adequacy analysis and calculate a planning reserve margin that meets the "one day in ten year" criterion. The analysis must be "performed or verified separately" for (i) Year One, (ii) for one year falling in the second through fifth years, and (iii) at least one year in the sixth through tenth years.<sup>22</sup> The regional Reliability Standard further requires the planning coordinators to calculate the planning reserve margin by assessing each of the integrated peak hours for each day within the year being analyzed to determine the probability that generation and demand-side resources cannot meet the demand during that hour for that day (which would result in a loss of load).<sup>23</sup> The calculated planning reserve margin is to be expressed as a percentage of the median forecast peak demand (not including direct control load management and interruptible demand). Regional Reliability Standard BAL-502-RFC-02 states that this median forecast is

expected to have a 50 percent probability that the projected load is too high and 50 percent probability that the projected load is too low.<sup>24</sup> In order to determine the appropriate load forecast, the planning coordinators must consider multiple factors including: (i) Variability in the load forecast such as weather and regional economic forecasts, (ii) load diversity, (iii) seasonal load variations, (iv) firm load and (v) interruptible load including contractual arrangements concerning curtailable and/or interruptible demand.<sup>25</sup> In addition, the planning coordinator must document that all load in its area is accounted for in the analysis.<sup>26</sup>

15. Further, the planning coordinator must determine the probability of resources that will be online and available, determine the distribution of the peak load for each day, and include impacts of known transmission limitations.<sup>27</sup> To determine the probability of available resources the planning coordinator must consider multiple factors. Such factors include: (i) The historic resource performance, (ii) seasonal resource ratings, (iii) firm capacity purchases from and sales to entities outside of the planning coordinator area, (iv) resource planned outage schedules, (v) deratings and retirements, (vi) assumptions of intermittent and energy limited resources (such as wind and cogeneration), (vii) criteria for including planned resource additions, (viii) availability and delivery of fuel, (ix) common mode outages that affect resource availability, (x) environmental and regulatory restrictions of resources, (xi) available demand response programs, (xii) sensitivity to resource outage rates, (xiii) extreme weather/drought condition impacts on resource availability, (xiv) assumptions for emergency operation procedures in order to make reserves available, and (xv) uncommitted resources within the planning coordinator area.<sup>28</sup> Also, the planning coordinator must document that all capacity resources in the planning coordinator area are appropriately accounted for in the analysis.<sup>29</sup>

16. The planning coordinator is also required to consider the impacts of transmission limitations that could prevent the delivery of generation to the

load including criteria for including planned transmission facilities in the study as well as transmission maintenance outage schedules.<sup>30</sup> Proposed regional Reliability Standard BAL-502-RFC-02, Requirement R1.3.4 requires planning coordinators to include in their assessment of transmission limits assistance from other interconnected systems including multi-area assessment considering transmission limitations into the study area.

17. Overall, the Commission believes that factors to be considered in the resource adequacy analysis as set forth in Requirement R1 and, as discussed above, are a technically sound means to set up the analysis for the probability of not having enough resources in order to meet demand and avoid loss of load. However, the Commission questions or seeks clarity on three details of the resource adequacy analysis: (i) The loss of load calculation, (ii) use of capacity benefit margin; and (iii) meaning of common mode outages.

18. Requirement R1.1 states that the assessment shall calculate a planning reserve margin that will result in the sum of probabilities for loss of load for each planning year equal to 0.1, or comparable to "one day in ten years" when available capacity will not meet the load. With respect to the loss of load calculation, proposed regional Reliability Standard BAL-502-RFC-02 specifically identifies two circumstances that will not count in the loss of load calculation: (1) Utilization of direct control load management<sup>31</sup> and (2) curtailment of interruptible load.<sup>32</sup> Notwithstanding these two exceptions to the loss of load calculation, the Commission seeks comment on how other actions that could be taken by a system operator, such as voltage reduction or other, non-voluntary, types of load reduction plans, would be modeled and documented in this analysis.

19. With respect to the capacity benefit margin, the Commission notes that the requirements do not explicitly state whether planning coordinators may rely upon capacity benefit

<sup>30</sup> See *id.* at Requirements R1.3.3, R1.3.3.1, R1.3.3.2 and R1.5.

<sup>31</sup> NERC defines direct control load management (DCLM) as "Demand-Side Management that is under the direct control of the system operator. DCLM may control the electric supply to individual appliances or equipment on customer premises. DCLM as defined here does not include Interruptible Demand."

<sup>32</sup> NERC defines Interruptible Load as "Demand that the end-use customer makes available to its Load-Serving Entity via contract or agreements for curtailment."

<sup>20</sup> Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 324.

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

<sup>22</sup> See proposed Reliability Standard BAL-502-RFC-02, Requirement R1.2.

<sup>23</sup> See *id.* at Requirement R1.1.

<sup>24</sup> See *id.* at Requirement R1.1.2 n.2.

<sup>25</sup> See *id.* at Requirement R1.3.1.

<sup>26</sup> See *id.* at Requirements R1.7.

<sup>27</sup> See *id.* at Requirements R1.3.1, R1.3.2, and R1.3.3.

<sup>28</sup> See *id.* at Requirements R1.3.2 and R1.4.

<sup>29</sup> See *id.* at Requirement R1.6.

margin<sup>33</sup> to satisfy BAL-502-RFC-02's Requirements. During the standard development posting period, RFC received comments regarding potential conflicts or lack of coordination between BAL-502-RFC-02 and MOD-004-1—Capacity Benefit Margin.<sup>34</sup> The Commission does not believe the proposed regional Reliability Standard is in conflict with the continent-wide Reliability Standard, but does note there could be some confusion regarding whether capacity benefit margin could or could not be used in order to meet the Requirements of BAL-502-RFC-02.<sup>35</sup> Accordingly, we seek comment on whether capacity benefit margin may be used to satisfy BAL-502-RFC-02's Requirements.

20. With respect to Requirement R1.4, which requires the resource adequacy analysis to consider resource availability characteristics including "common mode outages that affect resource availability," the Commission seeks comment on whether planning coordinators, when evaluating "common mode outages that affect resource availability" will consider only outages within the generation facility, or if the analysis will also include outages of transmission facilities that would have an impact on resource or generator availability.

### C. Missing Time Horizons

21. NERC's Petition notes its concern that the proposed regional Reliability Standard BAL-502-RFC-02 does not identify time horizons for each Requirement. Time horizons are used as a factor in determining the size of a sanction. If an entity violates a Requirement and there is no time to mitigate the violation because the Requirement takes place in real-time, then the sanction associated with the

<sup>33</sup> The NERC Glossary defines capacity benefit margin (CBM) as "the amount of firm transmission transfer capability preserved by the transmission provider for Load-Serving Entities (LSE), whose loads are located on that Transmission Service Provider's system, to enable access by the LSEs to generation from interconnected systems to meet generation reliability requirements. Preservation of CBM for an LSE allows that entity to reduce its installed generating capacity below that which may otherwise have been necessary without interconnections to meet its generation reliability requirements. The transmission transfer capability preserved as CBM is intended to be used by the LSE only in times of emergency generation deficiencies."

<sup>34</sup> See NERC Petition, Exhibit C, comments from ITC Transmission.

<sup>35</sup> Reliability Standard MOD-004-1 addresses capacity benefit margin, or a capacity preserved for firm transmission transfer capability. Conversely, the Requirements in proposed Reliability Standard BAL-502-RFC-02 address an analysis regarding the capability of generation to serve the projected load. While capacity benefit margin could be a method of meeting the requirements of BAL-502-RFC-02, the two standards do not contradict each other.

violation is higher than it would be for violation of a Requirement that could be mitigated over a longer period of time.<sup>36</sup> According to NERC's template for Reliability Standards, each main Requirement in a Reliability Standard should be assigned one of the following time horizons: (1) Long-Term Planning (a planning horizon of one year or longer), (2) Operations Planning (operating and resource plans from day-ahead up to and including seasonal), (3) Same-day Operations (routine actions required within the timeframe of a day, but not real-time), (4) Real-time Operations (actions required within one hour or less to preserve the reliability of the bulk electric system), and (5) Operations Assessment (follow-up evaluations and reporting of real time operations).

22. According to NERC, time horizons are used for compliance assessments as described in NERC's Sanctions Guidelines.<sup>37</sup> Time horizons are used when determining the severity of a violation risk factor and for determining the penalty for a violation. RFC states that it did not include time horizons because its *Reliability Standards Development Procedure* (RSDP) does not include time horizons in its template for Reliability Standards. The RFC RSDP sets forth the required elements of a Standard and includes a Reliability Standard template. RFC's RSDP does not include "time horizons" as a required element.<sup>38</sup> Thus, RFC states that including time horizons in BAL-502-RFC-02 would have been a deviation from its Commission-approved Standards template. RFC also notes that "the standard focuses on 'planning oriented' subject matter for one year and beyond," and, as such, the "appropriate time horizons are relatively straight forward."<sup>39</sup>

23. The Commission agrees with NERC that it is important to identify the time horizons for each Reliability Standard. However, time horizons are not critical to our determination of whether to approve this proposed Reliability Standard. As the Commission has previously stated, the "most critical element of a Reliability Standard is the Requirements."<sup>40</sup>

<sup>36</sup> See NERC's "Time Horizons" document, available on NERC's Web site at [http://www.nerc.com/files/Time\\_Horizons.pdf](http://www.nerc.com/files/Time_Horizons.pdf).

<sup>37</sup> NERC Petition at 22.

<sup>38</sup> RFC Reliability Standards Development Procedure, at 3 (May 22, 2008) available at <http://www.rfirst.org/Documents/Standards/Reliability%20Standards%20Developmental%20Procedure.pdf>.

<sup>39</sup> NERC Petition at 24.

<sup>40</sup> Order No. 693 NOPR, FERC Stats. & Regs., Proposed Regulations 2004-2007, ¶ 32,608 at p. 105.

Moreover, the Commission notes that with respect to proposed regional Reliability Standard BAL-502-RFC-02, the time horizon "Long-Term Planning" can be gleaned from the context of the standard for the purpose of determining the severity of a violation risk factor, or for determining the penalty for a violation. However, the Commission notes that RFC currently is in the process of modifying its RSDP such that it will be required to use the most current version of the approved NERC Reliability Standard template when developing a RFC regional Reliability Standard.<sup>41</sup> NERC's "Template Guide for New Standards," "Template Quality Review of Standards," and "Time Horizons" documents all call for the inclusion of time horizons in new Reliability Standards.<sup>42</sup> Thus RFC's proposed change to its RSDP would require RFC to tag each new Reliability Standard Requirement with a time horizon. We believe that the identification of the appropriate time horizon for each Requirement is useful and improves clarity and consistency in compliance assessments. Because RFC appears to be moving toward requiring the assignment of time horizons as part of its standard drafting process, as well as the benefits of assigning time horizons, the Commission proposes to direct RFC to add time horizons to the two main Requirements when RFC reviews regional Reliability Standard BAL-502-RFC-02 in its scheduled five-year review.

### D. Proposed Effective Date

24. Proposed regional Reliability Standard BAL-502-RFC-02's stated effective date is "upon RFC Board approval," which occurred on December 4, 2008. NERC raises the concern that "[t]he effective date should follow the latest language found in the [NERC] standards template to meet the needs of the compliance program."<sup>43</sup> NERC's "standards template" provides that the effective date should be "the first day of the first quarter after regulatory approval."<sup>44</sup> RFC responded that the proposed RFC Board approval effective date set forth in BAL-502-RFC-02 is appropriate because of the regional nature of the Standard and because the

<sup>41</sup> RFC project SDP-501-RFC-03 was posted for 15-day category ballot the "Draft 2 Standards Development Procedure" on Sept. 1, 2010 and can be found on RFC's Web site at <http://rsvp.rfirst.org/SDP501RFC03/default.aspx>.

<sup>42</sup> The "Template Guide for New Standards," "Template Quality Review of Standards," and "Time Horizons" documents can all be found on the NERC Web site at <http://www.nerc.com/commondocs.php?cd=2>.

<sup>43</sup> NERC Petition at 22.

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

Requirements under BAL-502-RFC-02 are already being implemented. Specifically, RFC noted that upon RFC Board approval, BAL-502-RFC-02 became effective and enforceable with respect to RFC members under their "Terms of Membership" contained in RFC's bylaws.<sup>45</sup> Because BAL-502-RFC-02 only applies to planning coordinators within RFC's region, all of which are RFC members, BAL-502-RFC-02's Requirements are currently effective. As such, no additional implementation time is required.<sup>46</sup> RFC acknowledges that upon Commission approval, the Reliability Standard will be mandatory and enforceable, and that non-compliance will be subject to financial penalties.

25. We propose to find that with respect to proposed Reliability Standard BAL-502-RFC-02, no additional implementation time is required as the four registered planning coordinators in the RFC region, as RFC members, are already operating under the Standard.<sup>47</sup> There are no other planning coordinators to whom the requirements will apply after Commission approval. While we note that reliability standards are generally implemented prospectively, in this case the real impact of Commission approval is to make BAL-502-RFC-02 prospectively enforceable through civil penalties. Accordingly, the Commission proposes that Reliability Standard BAL-502-RFC-02 will become mandatory and enforceable on the effective date of the Commission's final rule approving the Reliability Standard.

#### E. Provision of Data

26. Proposed Reliability Standard BAL-502-RFC-02 requires planning coordinators to perform a resource adequacy analysis and assessment. Gathering data is a necessary component of doing so. The Commission is concerned that proposed Reliability Standard BAL-502-RFC-02 does not require other entities (load-

servicing entities, balancing authorities, transmission operators, resource planners, or transmission planners) to provide the planning coordinators subject to BAL-502-RFC-02 the necessary data for the resource adequacy analysis. In short, the Commission is concerned that planning coordinators will be subject to a mandatory and enforceable Reliability Standard without the necessary tools to fulfill the Standard's Requirements. The Commission recognizes that this concern is somewhat alleviated by the fact that, within the RFC, many of the planning coordinators are also the entities that would have the needed data,<sup>48</sup> or may obtain some of the needed data as a result of some continent-wide Reliability Standards' Requirements.<sup>49</sup> The Commission invites comment on whether the planning coordinators have encountered problems with collecting necessary data in order to complete the resource adequacy assessment that is the subject of BAL-502-RFC-02.

#### F. Regional Definitions

27. Proposed regional Reliability Standard BAL-502-RFC-02 includes four new definitions that apply only to the RFC region: Resource Adequacy, Net Internal Demand, Peak Period, and Year One. NERC plans to publish the definitions in a distinct section of the NERC Glossary noting their limited applicability to entities within RFC.

<sup>48</sup> The four planning coordinators currently registered in RFC are also registered as other functional entities. American Transmission Co., LLC and ITC Transmission are both registered as transmission owners, transmission operators and transmission planners. Midwest ISO is registered as a balancing authority, interchange authority, reliability coordinator and transmission service provider. PJM is registered as balancing authority, interchange authority, reliability coordinator, resource planner, transmission operator, transmission planner, and transmission service provider.

<sup>49</sup> For example, it appears that the following continent-wide Reliability Standards allow planning coordinators to obtain data needed to conduct the resource adequacy analysis and assessment: (i) MOD-001, Requirement R9 (requires transmission service providers to provide data regarding available transfer capability or available flowgate capability calculations to the planning coordinator upon request); (ii) MOD-004, Requirement R9 (requires transmission service providers and transmission planners to provide data used for determining or allocating CBM to the planning coordinator upon request); (iii) MOD-008, Requirement R3 (requires transmission operators to provide the TRM implementation document to the planning coordinator upon request); (iv) PRC-023, Requirements R2 and R3 (gives planning coordinators access to facility ratings and the identification of facilities critical to reliability); and (v) TPL-001, TPL-002, TPL-003 and TPL-004 (gives planning coordinators access to data related to the determination of whether the transmission system is planned to meet firm demand under certain conditions).

28. The Commission proposes to accept the four new defined terms to be applicable only in the RFC region. However, the Commission cautions NERC and the Regional Entities to be aware of "a potential re-proliferation of regional terminology, and consequently, the need to prevent possible inconsistent use of terminology among regions."<sup>50</sup>

29. For example, the Commission notes that RFC's proposed term "Resource Adequacy" is used in NERC's continent-wide Reliability Standard MOD-004-1<sup>51</sup> as well as in NERC's definitions of "Generation Capability Import Requirement"<sup>52</sup> and "Resource Planner"<sup>53</sup> as set forth in NERC's Glossary. While RFC's definition of "Resource Adequacy" does not appear to conflict with the use of this term within the continent-wide Reliability Standard MOD-004-1 or in NERC's Glossary, the addition of "Resource Adequacy" as a defined regional term highlights the need for NERC to remain vigilant regarding re-proliferation of regional terminology. This is particularly relevant with respect to terms like "Resource Adequacy" where other Regional Entities may have differing definitions of resource adequacy and differing understandings of how those definitions apply to the continent-wide Reliability Standard MOD-004-1 and NERC's defined terms "generation capability import requirement" and "resource planner." Accordingly, the Commission urges NERC and the Regional Entities to be vigilant to assure that any proposed regional definition is consistent with both NERC definitions and the approved terms used in other regions.

<sup>50</sup> *Western Electricity Coordinating Council Regional Reliability Standard Regarding Automatic Time Error Correction*, Order No. 723, 127 FERC ¶ 61,176, at P 39 (2009) (Final Rule).

<sup>51</sup> Reliability Standard MOD-004-1—Capacity Benefit Margin, Requirements R4.1, R5.1 and R6.1 each include a bullet stating: "Reserve margin or resource adequacy requirements established by other entities, such as municipalities, state commissions, regional transmission organizations, independent system operators, Regional Reliability Organizations, or regional entities." (Emphasis added).

<sup>52</sup> "Generation Capability Import Requirement" is defined in the Glossary as: "The amount of generation capability from external sources identified by a Load-Serving Entity (LSE) or Resource Planner (RP) to meet its generation reliability or resource adequacy requirements as an alternative to internal resources."

<sup>53</sup> "Resource Planner" is defined as: "The entity that develops a long-term (generally one year and beyond) plan for the resource adequacy of specific loads (customer demand and energy requirements) within a Planning Authority Area."

<sup>45</sup> Pursuant to RFC's bylaws, RFC members are subject to a regional Reliability Standard once the Standard is approved by the RFC Board. Although a Board-approved Standard is enforceable under the RFC bylaws as a term of membership, a member would not be subject to potential financial penalties. See NERC Petition at 25.

<sup>46</sup> *Id.*

<sup>47</sup> The Commission notes that under the current NERC compliance registry entities register as "planning authorities," not "planning coordinators." NERC defines "planning coordinator" in its Glossary by simply referencing "See Planning Authority." The Commission understands that for reliability purposes planning authorities and planning coordinators are interchangeable. Thus any entity registered with NERC as a planning authority is subject to any Reliability Standard that applies to planning coordinators.

### G. Technical Recommendation (Resources Beyond RFC Footprint)

30. With respect to proposed BAL-502-RFC-02, NERC raises the concern of “how entities within RFC that have load and resources outside the RFC footprint account for these resources in their [resource adequacy] analysis.”<sup>54</sup> Specifically, NERC asked RFC to clarify if planning coordinators within the RFC footprint are expected to only include RFC load and resources in the analysis. RFC responded to NERC’s technical recommendation stating:

The intent is to cover all load within the RFC footprint. Planning Coordinators may include load outside the RFC footprint as deemed appropriate. Even if a Planning Coordinator has load outside of the ReliabilityFirst footprint, as long as it operates as a single area, the adequacy of that Planning Coordinator area will indicate adequacy of the part of the area within the ReliabilityFirst footprint. From a converse perspective, if the Planning Coordinator operates as a single area, that area must be assessed as a whole or the assessment will be inadequate for the area within the RFC footprint. (If transmission constraints exist, the Planning Coordinator’s constrained areas would have to be addressed separately in any event.)<sup>55</sup>

The Commission generally agrees with the response provided by RFC. However, as discussed in detail below, the Commission expects that a planning coordinator may benefit from a common process for including resources and loads outside of the RFC footprint in its resource adequacy analysis.

31. As RFC noted in its response to NERC on this issue that in order to perform a valid assessment, it may be necessary to represent a portion of areas outside of the RFC footprint in order to determine the impact those areas may have on the footprint being analyzed. RFC has incorporated into the proposed regional Reliability Standard a high level of detail necessary to perform a valid assessment. Similarly, the Commission notes how NERC’s continent-wide transmission planning Reliability Standards<sup>56</sup> require a valid assessment, and explicitly state in the Standard what is expected to be completed in order to have a valid

assessment. One important aspect of a valid assessment is that it should include an appropriate model of areas outside of the area being analyzed in order for the analysis to accurately represent what could be expected during actual operation.<sup>57</sup>

Otherwise, the resource adequacy analysis could be skewed by showing adequacy within the RFC footprint while leaving out an inadequate area outside of the RFC footprint. To avoid this potential issue, the Commission expects that a RFC planning coordinator would have a common process or procedure that addresses the planning reserves assessments, which could include either (i) a methodology to determine whether or how the planning coordinator would include resources and loads outside of the RFC footprint in its resource adequacy analysis or (ii) models which the resource adequacy assessment should utilize that would already include the appropriate modeling of external areas. The Commission seeks comments on any concerns or suggestions to address load and resources outside of the RFC footprint during a planning assessment and also seeks comments on how entities currently perform this task or other similar planning tasks where load and resources occur outside of boundaries required by the assessment.

### H. Planning Gap Identification

32. Proposed regional Reliability Standard BAL-502-RFC-02 includes two main Requirements: (1) To annually perform and document resource adequacy analysis (R1); and (2) to annually document the projected load and resource capability for each area identified in the resource adequacy analysis (R2). BAL-502-RFC-02 does not include a Requirement to document any gap between the planning reserve margin calculated in R1.1 (the amount of planning reserve needed to ensure a “one day in ten year” criterion) and the actual planning reserve determined in the resource adequacy analysis.

33. The Commission believes that it would be useful for planning coordinators to identify and document a deficiency in planning reserves. Identification of a planning gap could help ensure that entities are aware of potential risks regarding the capability to balance resources and demand in a

planning timeframe. Acknowledging potential risk to the Bulk-Power System during the planning timeframe would allow affected entities time to develop a solution before the identified deficiency in planning reserves leads to adverse reliability impacts. For example, NERC’s continent-wide transmission planning Reliability Standards<sup>58</sup> include Requirements for entities to develop a corrective action plan when system simulations indicate an inability of the systems to respond as prescribed in the Standards. Accordingly, the Commission proposes to direct RFC, when reviewing BAL-502-RFC-02 during its scheduled five-year review, to consider modifying BAL-502-RFC-02 to include a Requirement to identify any gap between the needed amount of planning reserves defined in Requirement R1.1 and the planning reserves determined from the resource adequacy analysis. This would be a documentation Requirement only and would not require entities to install additional generation or transmission capacity.

### I. Violation Risk Factors/Violation Security Levels

34. To determine a base penalty amount for a violation of a Requirement within a Reliability Standard, NERC, or in this case RFC as the developer of proposed Reliability Standard BAL-502-RFC-02, must first determine an initial range for the base penalty amount. To do so, RFC is to assign a VRF to each Requirement and sub-Requirement of a Reliability Standard that relates to the expected or potential impact of a violation of the Requirement on the reliability of the Bulk-Power System. The Commission has established guidelines for evaluating the validity of each VRF assignment.<sup>59</sup>

35. The Reliability Standard developer also is to assign each Requirement and sub-Requirement one of four VSLs—low, moderate, high, and severe—as measurements for the degree to which the Requirement was violated in a specific circumstance. On June 19, 2008, the Commission issued an order

<sup>54</sup> NERC Petition at 24.

<sup>55</sup> NERC Petition at Exhibit C, NERC’s April 17, 2009 Quality Assurance Review Summary at 4.

<sup>56</sup> Transmission Planning Reliability Standards TPL-001 Requirement R1, TPL-002 Requirement R1, TPL-003 Requirement R1, and TPL-004 Requirement R1 all require a valid assessment stating: “The Planning Authority and Transmission Planner shall each demonstrate through a valid assessment. \* \* \*” Further, the sub-requirements under Requirement R1 of each of the above-identified transmission planning Reliability Standards detail what is expected in order to have a valid assessment.

<sup>57</sup> Requirement R1.3.5 of Reliability Standards TPL-001 through TPL-003 and Requirement 1.3.4 of Reliability Standard TPL-004 state that in order to have a valid assessment, the simulation shall “have all projected firm transfers modeled.” This is one example of how areas outside of the area being analyzed must be appropriately modeled in order to simulate the impact on the area being analyzed.

<sup>58</sup> See Reliability Standards TPL-001-0, Requirements R2 and R3; TPL-002-0, Requirements R2 and R3; TPL-003-0, Requirements R2 and R3; and TPL-004-0, Requirements R2 and R3.

<sup>59</sup> See *North American Electric Reliability Corp.*, 119 FERC ¶ 61,145, order on reh’g, 120 FERC ¶ 61,145, at P 8-13 (2007) (Violation Risk Factor Rehearing Order). The guidelines are: (1) Consistency with the conclusions of the Blackout Report; (2) consistency within a Reliability Standard; (3) consistency among Reliability Standards; (4) consistency with NERC’s definition of the violation risk factor level; and (5) treatment of requirements that co-mingle more than one obligation.

establishing four guidelines for the development of VSLs.<sup>60</sup>

36. With respect to proposed Reliability Standard BAL-502-RFC-02, RFC assigned VRFs only to the two main Requirements and did not propose VRFs for any of the sub-Requirements.<sup>61</sup> Requirement R1 of BAL-502-RFC-02 is assigned a “medium” VRF and Requirement R2 is assigned a “lower” VRF. Similarly, RFC assigned VSLs only to the main Requirements, R1 and R2, of proposed BAL-502-RFC-02, and not to any of the sub-Requirements. NERC notes that RFC’s assignment of both VRFs and VSLs only to the main Requirements is consistent with NERC’s August 10, 2009 Informational Filing Regarding the Assignment of VRFs and VSLs.<sup>62</sup>

37. On May 5, 2010, NERC incorporated by reference into Docket No. RR08-4-005,<sup>63</sup> its August 10, 2009 information filing in which NERC proposes assigning VRFs and VSLs only to the main Requirements in each Reliability Standard, and not to the sub-Requirements. Because the VRFs and VSLs for both Requirements R1 and R2 of proposed Reliability Standard BAL-502-RFC-02 are affected by the NERC’s pending petition, we propose to defer discussion on the proposed VRFs and VSLs assigned to BAL-502-RFC-02 until after we act on NERC’s petition in Docket No. RR08-4-005.

#### J. Summary

38. In summary, proposed regional Reliability Standard BAL-502-RFC-02 appears to be just, reasonable, not unduly discriminatory or preferential, and in the public interest. Accordingly, the Commission proposes to approve regional Reliability Standard BAL-502-RFC-02 as mandatory and enforceable and to accept the four related defined terms as terms applicable to the RFC region only. In addition, the Commission proposes to defer discussion on the proposed VRFs and VSLs, as described above. The Commission invites comments on these proposals.

#### IV. Information Collection Statement

39. The Office of Management and Budget (OMB) regulations require

approval of certain information collection requirements imposed by agency rules.<sup>64</sup> 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. The Paperwork Reduction Act (PRA)<sup>65</sup> requires each federal agency to seek and obtain OMB approval before undertaking a collection of information directed to ten or more persons or contained in a rule of general applicability.<sup>66</sup>

40. The Commission is submitting these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of the PRA. Comments are solicited on the Commission’s need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent’s burden, including the use of automated information techniques.

41. This Notice of Proposed Rulemaking (NPR) proposes to approve one new regional Reliability Standard, BAL-502-RFC-02, that was developed by RFC, a Regional Entity, and submitted by NERC as the ERO. The proposed regional Reliability Standard requires planning coordinators within the RFC geographical footprint to analyze, assess and document resource adequacy, annually, and to document and post projected load and resource capability in each area and transmission-constrained sub-area identified in the resource adequacy assessment. The proposed regional Reliability Standard, which applies to approximately four planning coordinators located in the eastern portion of the U.S., does not require planning coordinators to file information with the Commission. It does require planning coordinators to develop, document, publicly post, and

retain certain information, subject to compliance monitoring by RFC. However, the Commission does not believe that approval of the RFC regional Reliability Standard will result in a substantive increase in reporting burdens because it implements the current practices in RFC. As RFC has represented, the affected RFC-member planning coordinators have been subject to these requirements since August 2009 and would continue to be subject to them even if the Commission did not approve BAL-502-RFC-02 as a regional Reliability Standard. Thus, the Commission finds that the requirement to develop, document, and maintain information in the regional Reliability Standard is a current and ongoing requirement for RFC members and, therefore, the Commission’s proposed action in this Notice of Proposed Rulemaking would not impose any additional burden on RFC-member planning coordinators. The Commission therefore concludes that this proposed rule will not substantively increase the reporting burden nor impose any additional information collection requirements. The proposed regional Reliability Standard is a new standard and was not included in the original standards submitted for review and approval by OMB. In addition, Commission approval of proposed regional Reliability Standard BAL-502-RFC-02 makes the standard mandatory and enforceable. Therefore, the Commission will submit this proposed rule to OMB for review and approval of the reporting requirements and propose a *de minimis* burden to reflect the prior implementation by RFC as part of its region’s standard practices.

42. The Commission does not foresee any impact on the reporting burden for small businesses.

43. Based on currently available information and the fact that the burden is an existing part of the business process for registered planning coordinators in the RFC region, the Commission estimates that the increased Public Reporting Burden is *de minimis* as follows:

<sup>60</sup> *North American Electric Reliability Corp.*, 123 FERC ¶ 61,284, at P 20–35 (Violation Severity Level Order), *order on reh’g and compliance*, 125 FERC ¶ 61,212 (2008). The guidelines provide that VSL assignments should: (1) Not lower the current level of compliance; (2) ensure uniformity and consistency in the determination of penalties; (3) be consistent with the corresponding requirement; and (4) be based on a single violation.

<sup>61</sup> 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 VRFs and VSLs 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.” As directed, on March 5, 2010, NERC submitted a comprehensive approach that is currently pending with the Commission in Docket No. RR08-4-005.

<sup>62</sup> NERC Petition at 24.

<sup>63</sup> Docket No. RR08-4-005 comprises NERC’s March 5, 2010 Violation Severity Level Compliance Filing submitted in response to Order No. 722. See Order No. 722, 126 FERC ¶ 61,255 at P 45.

<sup>64</sup> 5 CFR 1320.8.

<sup>65</sup> 44 U.S.C. 3501–3520.

<sup>66</sup> OMB’s regulations at 5 CFR 1320.3(c)(4)(i) require that “Any recordkeeping, reporting, or disclosure requirement contained in a rule of general applicability is deemed to involve ten or more persons.”



Proposed data collection FERC-725-H	Number of respondents	Number of responses	Hours per respondent	Total annual hours
Registered planning coordinators <sup>67</sup> in the RFC region .....	4	1	10	40
Total .....	.....	.....	.....	40

*Information Collection Costs:* The Commission seeks comments on the costs to comply with these requirements.

- *Total annual costs* = \$2,651.41 ((40 hours/2080 hours/year) × \$137,874/year).

- *Title:* (proposed) FERC-725-H, Regional Reliability Standard BAL-502-RFC-02 (Planning Resource Adequacy Analysis, Assessment and Documentation).

- *Action:* Proposed Collection of Information.

- *OMB Control No:* To Be Determined.

- *Respondents:* Registered planning coordinators in the RFC region.

- *Frequency of Responses:* On Occasion.

- *Necessity of the Information:* The proposed Regional Reliability Standard requires planning coordinators to document and maintain, for two years, their resource adequacy analyses and the projected load and resource capability subject to review by the Commission, NERC, and RFC to ensure compliance with the Reliability Standard.

- *Internal Review:* The Commission has reviewed the proposed regional Reliability Standard BAL-502-RFC-02 and believes it to be just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

44. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, Phone: (202) 502-8663, fax: (202) 273-0873, e-mail: [DataClearance@ferc.gov](mailto:DataClearance@ferc.gov)]. Comments on the requirements of this order may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by e-mail to

<sup>67</sup> At this time, there are only four registered planning coordinators in the RFC region.

OMB at [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Please reference FERC-725H and the docket number of this proposed rulemaking in your submission.

## V. Environmental Analysis

45. 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>68</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>69</sup> The actions proposed herein fall within this categorical exclusion.

## VI. Regulatory Flexibility Act Certification

46. The Regulatory Flexibility Act of 1980 (RFA)<sup>70</sup> generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The entities to which the requirements of this Rule would apply; i.e., planning coordinators within the RFC region, do not fall within the definition of small entities.<sup>71</sup> Moreover, the proposed regional Reliability Standards reflect a continuation of existing resource planning assessment requirements for these planning coordinators and are “new” only with respect to the fact that once approved by the Commission, they would be subject to enforcement by either NERC or the Commission. Based on the foregoing, the Commission certifies that this Rule will not have a significant impact on a substantial number of small entities.

<sup>68</sup> *Regulations Implementing the National Environmental Policy Act of 1969*, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

<sup>69</sup> 18 CFR 380.4(a)(2)(ii).

<sup>70</sup> 5 U.S.C. 601-612.

<sup>71</sup> The RFA definition of “small entity” refers to the definition provided in the Small Business Act (SBA), which defines a “small business concern” as a business that is independently owned and operated and that is not dominant in its field of operation. See 15 U.S.C. 632. According to the SBA, a small electric utility is defined as one that has a total electric output of less than four million MWh in the preceding year.

Accordingly, no regulatory flexibility analysis is required.

## VII. Comment Procedures

47. The Commission invites interested persons to submit comments on the matters and issues proposed in this NOPR to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due December 27, 2010. Comments must refer to Docket No. RM10-10-000, and must include the commenter’s name, the organization they represent, if applicable, and their address in their comments.

48. The Commission encourages comments to be filed electronically via the eFiling link on the Commission’s Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

49. Commenters that are not able to file comments electronically must send an original copy of their comments to:<sup>72</sup> Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

50. All comments will be placed in the Commission’s public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

## VIII. Document Availability

51. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through 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.

<sup>72</sup> The number of copies to be filed is set forth in the Commission’s “Quick Reference Guide for Paper Submissions” (as updated), available at <http://www.ferc.gov/docs-filing/efiling.asp>.



52. 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.

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

By direction of the Commission.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2010-27132 Filed 10-26-10; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 284

[Docket No. RM11-1-000]

#### Capacity Transfers on Intrastate Natural Gas Pipelines

October 21, 2010.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of inquiry.

**SUMMARY:** The Federal Energy Regulatory Commission is seeking comments on whether and how holders of firm capacity on intrastate natural gas pipelines providing interstate transportation and storage services under section 311 of the Natural Gas Policy Act of 1978 and Hinshaw pipelines providing such services pursuant to blanket certificates issued under § 284.224 of the Commission's regulations should be permitted to allow others to make use of their firm interstate capacity.

**DATES:** Comments are due December 27, 2010.

**FOR FURTHER INFORMATION CONTACT:** James Sarikas (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6831, [James.Sarikas@ferc.gov](mailto:James.Sarikas@ferc.gov); Anna Fernandez (Legal Information), Office of the General Counsel, Federal Energy

Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6682, [Anna.Fernandez@ferc.gov](mailto:Anna.Fernandez@ferc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Notice of Inquiry

1. Recently, the Commission issued an order finding that the Commission's policy prohibiting buy/sell transactions applies to interstate open-access transportation services provided by (1) intrastate natural gas pipelines pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA)<sup>1</sup> and (2) Hinshaw pipelines<sup>2</sup> pursuant to blanket certificates issued under section 284.224 of the Commission's regulations.<sup>3</sup> In this Notice of Inquiry (NOI), the Commission is seeking comments on whether and how holders of firm interstate capacity on section 311 and Hinshaw pipelines should be permitted to allow others to make use of their firm interstate capacity, including to what extent buy/sell transactions should be permitted.<sup>4</sup>

##### I. Current Commission Policy

2. NGPA section 311 authorizes the Commission to allow intrastate natural gas pipelines to transport natural gas "on behalf of" interstate pipelines or local distribution companies served by interstate pipelines "under such terms and conditions as the Commission may prescribe."<sup>5</sup> NGPA section 601(a)(2) exempts transportation service authorized under NGPA section 311 from the Commission's NGA jurisdiction. Congress adopted these provisions in order to eliminate the regulatory barriers between the intrastate and interstate markets and to promote the entry of intrastate pipelines into the interstate market. Such entry eliminates the need for duplication of facilities between interstate and

intrastate pipelines.<sup>6</sup> Subpart C of the Commission's Part 284 open access regulations (18 CFR § 284.121-126) implements the provisions of NGPA section 311 concerning transportation by intrastate pipelines.<sup>7</sup>

3. Shortly after the adoption of the NGPA, the Commission authorized Hinshaw pipelines to apply for NGA section 7 certificates, authorizing them to transport natural gas in interstate commerce in the same manner as intrastate pipelines may do under NGPA section 311.<sup>8</sup> Specifically, section 284.224 of the Commission's regulations provides for the issuance of blanket certificates to Hinshaw pipelines to provide open access transportation service "to the same extent that, and in the same manner" as intrastate pipelines are authorized to perform such service by subpart C.

4. The Part 284, subpart C, regulations require that intrastate pipelines performing interstate service under NGPA section 311 must do so on an open-access basis.<sup>9</sup> However, consistent with the NGPA's goal of encouraging intrastate pipelines to provide interstate service, the Commission has not imposed on intrastate pipelines all of the Part 284 requirements imposed on interstate pipelines. For example, when the Commission first adopted the Part 284 open access regulations in Order No. 436, the Commission exempted intrastate pipelines from the requirement that they offer open access service on a firm basis.<sup>10</sup> The Commission found that requiring intrastate pipelines to offer firm service to out-of-state shippers could discourage them from providing any interstate service, because such a requirement could progressively turn the intrastate pipeline into an interstate pipeline against its will and against the will of the responsible state authorities. For the same reasons, when the Commission adopted Order No. 636<sup>11</sup> restructuring

<sup>1</sup> 15 U.S.C. 3371(a)(2).

<sup>2</sup> Section 1(c) of the Natural Gas Act (NGA) exempts from the Commission's NGA jurisdiction those pipelines which transport gas in interstate commerce if (1) They receive natural gas at or within the boundary of a state, (2) all the gas is consumed within that state and (3) the pipeline is regulated by a state Commission. This exemption is referred to as the Hinshaw exemption after the Congressman who introduced the bill amending the NGA to include section 1(c). See *ANR Pipeline Co. v. Federal Energy Regulatory Comm'n*, 71 F.3d 897, 898 (1995) (ANR) (briefly summarizing the history of the Hinshaw exemption).

<sup>3</sup> *Arizona Public Service Co. and Sequent Energy Management, L.P.*, 132 FERC ¶ 61,064 (2010) (APS/Sequent).

<sup>4</sup> This NOI relates to firm capacity on section 311 and Hinshaw pipelines used for interstate service subject to our jurisdiction under the NGPA or NGA and does not extend to non-jurisdictional capacity used for purely intrastate service.

<sup>5</sup> 15 U.S.C. 3371(c).

<sup>6</sup> *EPGT Texas Pipeline*, 99 FERC ¶ 61,295, at 62,252 (2002) (EPGT).

<sup>7</sup> 18 CFR 284.121-126 (2010).

<sup>8</sup> *Certain Transportation, Sales, and Assignments by Pipeline Companies not Subject to Commission Jurisdiction Under Section 1(c) of the Natural Gas Act*, Order No. 63, FERC Stats. & Regs. ¶ 30,118, at 30,824-25 (1980).

<sup>9</sup> 18 CFR 284.7(b), 284.9(b) and 284.122 (2010).

<sup>10</sup> *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 436, FERC Stats. & Regs. ¶ 30,665, at 31,502 (1985).

<sup>11</sup> See *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulation of Natural Gas Pipeline After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939, order on reh'g, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, order on reh'g, Order No. 636-B, 61 FERC ¶ 61,272 (1992), order on reh'g, 62 FERC ¶ 61,007 (1993), aff'd in part and remanded in part sub nom.