



FERC NOPR Seeks Access to Additional Electric Reliability Data

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NERC is the Commission-certified Electric Reliability Organization under Section 215 of the Federal Power Act,¹ which was enacted as part of the Energy Policy Act of 2005 ("EPAAct 2005"). Pursuant to that statute, NERC is charged with developing mandatory and enforceable reliability standards, subject to FERC review and approval. Section 215(d)(5) also gives FERC authority to direct NERC to develop a new or modified reliability standard to address a specific matter.² In addition, Section 215(g) requires NERC to "conduct periodic assessments of the reliability and adequacy of the bulk-power system in North America."

In the NOPR, the Commission is proposing to amend its regulations to require NERC to make available to FERC and FERC staff, "on a nonpublic and ongoing basis," the reliability information it collects from transmission and generation owners and places in three specific databases:

- Transmission Availability Data System (TADS) – includes transmission outage data for bulk electric system AC and DC circuits, transmission-level transformers and bulk electric system AC/DC convertors
- Generating Availability Data System (GADS) – contains generation outage data for most types of generating units with a capacity of 20 megawatts or larger, including event records documenting when, and to what extent, a generating unit could not produce power, and performance records summarizing monthly generation, attempted starts actual starts, and fuels
- Protection System Misoperations Database – contains information on protection system misoperation events, including the equipment involved and the cause of the misoperation.

FERC asserts that access to the information in these databases is necessary to carry out the agency's obligations under Section 215 of the Federal Power Act. In particular, FERC argues that access to the databases is needed to "inform the Commission more quickly, directly and comprehensively about reliability trends or reliability gaps" that might require it to exercise its authority under Section 215(d)(5) to direct NERC to develop a new or modified reliability standard. In addition, FERC contends that access to the information in the databases will help it better understand the periodic reliability assessments conducted by NERC pursuant to Section 215(g).

FERC's proposal is likely to be met with concerns from NERC and industry that it signals an intent on the part of the Commission to more aggressively use its authority under Section 215(d)(5) to direct NERC to develop new or modified reliability standards. Commissioner LaFleur acknowledged this potential concern in a concurring statement, noting that the statutory relationship between NERC and FERC is unique, vesting NERC with primary responsibility for developing reliability standards while giving FERC an oversight role. While FERC has used its section 215(d)(5) authority in the past, industry has raised concerns that more frequent and aggressive use of that authority could upset the careful balance of roles between FERC and NERC that Congress envisioned.

In addition, while FERC does not suggest in the NOPR that it will use its access to the information in these three databases to support actions to enforce compliance with the mandatory reliability standards, there may also be concerns that the Commission will, in fact, do so.

Finally, the proposal could raise confidentiality concerns for transmission and generation owners. In particular, there could be concerns that information retrieved from these databases by FERC or FERC staff will be subject to disclosure under the Freedom of Information Act (FOIA) or other authorities, or that such information could be inadvertently disclosed. The Commission acknowledges these concerns in the NOPR and states that it will "take appropriate steps," under FOIA and its own regulations, when handling such information.

Comments on the NOPR are due 60 days after publication in the Federal Register.

¹ 16 U.S.C. § 824o.

² FERC does not have authority to write reliability standards itself, however.

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