

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Facilities Design, Connections and Maintenance) Docket No. RM07-3-001
Reliability Standards)

**REQUEST OF THE ISO/RTO COUNCIL FOR
CLARIFICATION, OR, IN THE ALTERNATIVE, REHEARING**

Pursuant to Section 313 of the Federal Power Act (“FPA”), 16 U.S.C. § 825l, and Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 CFR § 385.713 (2007), the ISO/RTO Council (“IRC”)¹ respectfully submits the following request for clarification, or, in the alternative, rehearing of Order No. 705, *Facilities Design, Connections and Maintenance Reliability Standards*, 121 FERC ¶ 61,296 (2007). The IRC requests that the Commission clarify its adoption of the definition of Interconnection Reliability Operating Limit Tv (“IROL Tv”) in the North American Electric Reliability Corporation (“NERC”) Glossary of Terms Used in Reliability Standards (“NERC Glossary”), in which the Commission stated that it was doing so “with the

¹ The IRC is comprised of the Independent System Operator operating as the Alberta Electric System Operator (“AESO”), the California Independent System Operator Corporation (“CAISO”), Electric Reliability Council of Texas (“ERCOT”), the Independent Electricity System Operator of Ontario (“IESO”), ISO New England Inc. (“ISO-NE”), Midwest Independent Transmission System Operator, Inc. (“MISO”), New York Independent System Operator, Inc. (“NYISO”), PJM Interconnection, L.L.C. (“PJM”) Southwest Power Pool, Inc. (“SPP”) and New Brunswick System Operator (“NBSO”). The IESO, AESO and NBSO are not subject to the Commission’s jurisdiction and their endorsement of this rehearing request does not constitute agreement or acknowledgement that these entities can be subject to the Commission’s jurisdiction. NERC-developed and FERC-approved reliability standards are not applicable in Alberta unless they have been subject to an internal Alberta process, including stakeholder consultation, AESO review and endorsement and approval of the Alberta regulator. The IRC’s mission is to work collaboratively to develop effective processes, tools and standard methods for improving competitive electricity markets across North America. In fulfilling this mission, it is the IRC’s goal to provide a perspective that balances reliability standards with market practices so that each complements the other, thereby resulting in efficient, robust markets that provide competitive and reliable service to customers.

understanding that the only time it is acceptable to violate an IROL is in the limited time after a contingency has occurred and the operators are taking action to eliminate the violation.”²

The IRC interprets the Commission’s Order as consistent with its prior Orders approving NERC Reliability Standards such that operations in excess of a facility’s IROL, even if caused by an event other than a contingency, do not constitute a violation of NERC reliability standards, as long as the system operator takes steps to bring those operations within the IROL as soon as possible, and not longer than 30 minutes after the IROL was exceeded. This is the appropriate reading of the Commission’s Order, because it is consistent with (1) other NERC Standards, (2) the manner in which the IROL Tv is intended to be employed, and (3) the manner in which IROL Tv has been employed by IRC members historically.

If the Commission declines to provide the requested clarification, the IRC respectfully requests rehearing on this issue.

I. Background

A. Reliability Standard IRO-005-1

Reliability Standard IRO-005-1 -- entitled “Reliability Coordination - Current Day Operations” -- requires that a Reliability Coordinator monitor conditions within its Reliability Coordinator Area (“RCA”) on a continuous basis throughout the operating day, and take all steps necessary to ensure that the elements of the Bulk Electric System (“BES”) within its RCA are operated reliably. Among the responsibilities of a Reliability Coordinator under IRO-005-1 is the obligation to monitor the system for instances in which power flows approach or exceed System Operating Limits (“SOLs”) and Interconnection Reliability Operating Limits (“IROLs”), and, in instances in which an SOL or IROL is exceeded, to correct that condition as soon as

² Order No. 705 at P 125. *See also* Order No. 705 at P 128.

possible, and, in all cases, within 30 minutes. Specifically, requirement R3 of IRO-005-1 provides:

As portions of the transmission system approach or exceed SOLs or IROLs, the Reliability Coordinator shall work with its Transmission Operators and Balancing Authorities to evaluate and assess any additional Interchange Schedules that would violate those limits. If a potential or actual IROL violation cannot be avoided through proactive intervention, the Reliability Coordinator shall initiate control actions or emergency procedures to relieve the violation without delay, and no longer than 30 minutes. The Reliability Coordinator shall ensure all resources, including load shedding, are available to address a potential or actual IROL violation.

Similarly, requirement R5 of IRO-005-1 provides:

Each Reliability Coordinator shall identify the cause of any potential or actual SOL or IROL violations. The Reliability Coordinator shall initiate the control action or emergency procedure to relieve the potential or actual IROL violation without delay, and no longer than 30 minutes. The Reliability Coordinator shall be able to utilize all resources, including load shedding, to address an IROL violation.

IRO-005-1 does not contain an absolute prohibition on system operations exceeding SOL or IROL. Rather, it permits SOL or IROL to be exceeded as long as the Reliability Coordinator, working with the relevant Balancing Authorities and Transmission Operators, takes action to bring system operations within the applicable SOL or IROL as soon as possible, and in all cases, within 30 minutes.

B. Order No. 693

In Order No. 693, the Commission approved Reliability Standard IRO-005-1, and noted that:

IRO-005-1 could be interpreted as allowing a system operator to respect IROLs in two possible ways: (1) allowing IROL to be exceeded during normal operations, *i.e.*, prior to a contingency, provided that corrective actions are taken within 30 minutes, or (2) exceeding IROL only after a contingency and subsequently

returning the system to a secure condition as soon as possible, but no longer than 30 minutes.³

To allow the Commission to make a future determination regarding which of the two interpretations is the better one, FERC directed NERC to conduct a survey of IROL practices and operating conditions and experiences. FERC emphasized that “the intent [of the survey] is to learn about the operating experiences and practices of operating entities; specifically, how they operate their systems to respect IROLs in the normal system conditions, *i.e.* prior to a contingency.”⁴ The Commission further emphasized that the survey is intended to help FERC determine which of the two potential interpretations of IRO-005-1 to adopt, stating that the “survey results will facilitate future development and modifications of IROL-related Reliability Standards to better clarify and eliminate potential multiple interpretations of respecting IROLs that may exist in the proposed Reliability Standards.”⁵ As the Commission is aware, this survey is ongoing.

Importantly, the Commission’s discussion of IRO-005-1 in Order No. 693 made clear that system operations that exceed applicable IROLs do not constitute a violation of the FERC-approved reliability standards as long as those operations are brought within the relevant IROL as soon as possible, and, in all cases, within 30 minutes. Indeed, the Commission explained that one of the additional purposes of the NERC study is to “identify the reliability risks and the frequency and number of operating practices involving drifting in and out of IROL.”⁶ The Commission explained that “[t]he term ‘drifting in and out of IROLs’ refers to operating the normal system (*i.e.* prior to a contingency) with frequent occurrences in which IROLs are

³ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242 at n.303.

⁴ Order No. 693 at P 946.

⁵ *Id.*

⁶ *Id.*

exceeded, but each occurrence lasting less than 30 minutes,” and held that “this mode of operation is not considered as a violation of NERC Reliability Standards.”⁷

Thus, Order No. 693 permitted system operations to exceed the applicable IROL as long as those operations were brought back within the necessary limits within 30 minutes. Order No. 693 did not require that the system operations in excess of the applicable IROL must be triggered by a contingency to be permitted by the NERC Reliability Standards.

C. Definition of IROL Tv and Order No. 705

On August 13, 2007, the Commission issued a Notice of Proposed Rulemaking (“NOPR”) in this proceeding in which it proposed to adopt, in addition to three new reliability standards addressing facilities design, a series of definitions proposed by NERC, including a definition for IROL Tv. That definition reads:

The maximum time that an Interconnection Reliability Operating Limit can be violated before the risk to the interconnection or other Reliability Coordinator Area(s) becomes greater than acceptable. Each Interconnection Reliability Operating Limit's T_v shall be less than or equal to 30 minutes.⁸

The NOPR noted that “[i]n Order No. 693, the Commission identified two interpretations of when an entity exceeds an IROL,” and that the “definition of IROL Tv does not distinguish between those two interpretations.”⁹ The NOPR “propose[d] to accept the definition in FAC-014 with the understanding that the only time it is acceptable to violate an IROL is in the limited time after a contingency has occurred and the operators are taking action to eliminate the violation.”¹⁰ The NOPR provided no additional explanation for this apparent departure from the

⁷ *Id.* at n.304.

⁸ *Facilities Design, Connections and Maintenance Reliability Standards*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,622 at P 38 (2007).

⁹ *Id.* at P 43.

¹⁰ *Id.*

holdings in Order No. 693 on the circumstances in which system operations in excess of the applicable IROL will be deemed to be a violation of the NERC Reliability Standards.

In its comments on the NOPR, the IRC asked the Commission to hold that system operations may exceed IROL, even without an associated contingency, under circumstances in which system conditions (such as including unanticipated external interchange schedules and redispatch events) change unexpectedly. The intention behind the IRC's comments was to attempt to clarify that while it was acceptable to exceed an instantaneous IROL value, a violation of the reliability standard would occur only if the exceedance were not remedied as soon as possible or within the IROL Tv. In Order No. 705, the Commission interpreted the IRC's comments as "seek[ing] to expand the definition of IROL Tv to apply to additional circumstances."¹¹ The Commission "approve[d] NERC's proposed definition of IROL Tv based on the Commission's understanding and affirmed by NERC."¹²

II. Specifications of Error and Statement of Issues

Pursuant to Rule 713(c)(1) and (c)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(c)(1), (2) (2006), the IRC respectfully submits the following specifications of error and statement of issues.

1. The Commission should clarify that its determination in Order 705 was not intended to supersede its holding in Order 693 concerning when IROL can be exceeded. The IRC is willing to work through the NERC process on these issues but seeks this clarification so that the Commission's Order concerning the glossary definitions not inadvertently reverse its substantive holding in Order 693 concerning in what circumstances exceeding the IROL will constitute a violation of a reliability standard.
2. If the Commission declines to provide the requested clarification, and otherwise holds that, notwithstanding Order No. 693, system operations may not exceed IROL except after a contingency, the Commission should grant rehearing on the following grounds.

¹¹ Order No. 705 at P 128.

¹² *Id.*

- a. The Commission's interpretation of the "IROL Tv" definition contravenes the restrictions in FPA Section 215(d) on FERC's authority to draft reliability standards, as well as the Commission's interpretation of those restrictions. *See* FPA Section 215(d)(2), 16 U.S.C. § 824o(d)(2); FPA Section 215(d)(4), 16 U.S.C. § 824o(d)(4); FPA Section 215(d)(5), 16 U.S.C. § 824o(d)(5); FPA Section 215(d)(6); 16 U.S.C. § 824o(d)(6); Order No. 693 at P 184.
- b. The Commission's interpretation of the "IROL Tv" definition may adversely affect the economics of transactions in violation of Federal Power Act ("FPA") Section 215(d)(2) and the Commission's implementing regulations. *See* FPA Section 215(d)(2), 16 U.S.C. § 824o(d)(2); *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. ¶ 61,204 at P 29 (2006); Order No. 693 at P 6.
- c. The Commission's interpretation of the "IROL Tv" definition is arbitrary, capricious, and an abuse of discretion because it constitutes an unexplained and unsupported departure from prior precedent, and does not adequately consider the important policy implications of that interpretation. *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Atchison v. Wichita Board of Trade*, 412 U.S. 800, 808 (1973).

III. Request for Clarification

The Commission should clarify that its determination in Order 705 was not intended to supersede its holding in Order 693 concerning when IROL can be exceeded. The IRC is willing to work through the NERC process on these issues but seeks this clarification so that the Commission's Order concerning the glossary definitions not inadvertently reverse its substantive holding in Order 693 concerning in what circumstances exceeding the IROL will constitute a violation of a reliability standard

There is ambiguity in the Commission's ruling regarding the circumstances under which operations may exceed IROL without being deemed to be a violation of NERC reliability standards. The Commission should use this opportunity to clarify that its Order 705 concerning acceptance of a glossary definition was not intended to supersede its holding in Order 693 concerning under what conditions exceeding an IROL would constitute a violation of NERC

reliability standards. The IRC believes that the Commission's holding in Order 693 is sound -- namely, that as long as the system operator takes steps to bring those operations within the IROL as soon as possible, and not longer than 30 minutes after the IROL was exceeded, a reliability violation would not automatically occur. Although the IRC does not believe that the Commission intended to hold that operations may never exceed a facility's IROL unless a contingency has occurred, it is possible to interpret the Commission's holding in Order No. 705 in that way. To construe the Commission's ruling in that manner would not only modify the approach adopted by the Commission in Order No. 693, but would also dramatically change the manner in which the IRC members operate their systems.

An interpretation of Order No. 705 prohibiting any operations in excess of IROL in the absence of a contingency, would require system operators to build in extra operating margins and otherwise reduce the amount of loading on each facility as compared to current operating practices. Generally speaking, system operators cannot prevent the IROL from being exceeded for short periods on at least some occasions. There are simply too many non-contingency events¹³ that are out of the system operators' control -- for instance, weather changes, or higher-than-anticipated ramping of load during morning and evening peaks -- to permit them to always operate within the IROL. The current operating approach recognizes that short-term operations in excess of IROL are acceptable, and do not adversely affect reliability, as long as the system operator acts without delay to bring those operations within IROL as soon as possible, and in all cases within 30 minutes. This approach to system operations would be upended if FERC's ruling were interpreted to mean that the IROL for a facility cannot be exceeded unless a contingency has occurred. Under that interpretation, system operators would have to dispatch their systems

¹³ A contingency is an event involving the loss of a generating or transmission facility, but does not account for other unexpected events (for example, weather changes and interchange schedules implemented by other Balancing Authorities) that can overload the BES. See NERC Glossary, Definition of "Contingency".

much more conservatively in order to ensure that the IROL is *never* exceeded, even if just momentarily, except in the event of a contingency. This approach to system operations would constitute a radical departure from existing system operations and was never intended by the NERC Drafting Team.. Indeed, the existing approach recognizes that specific facilities can be operated reliably at different loading levels and for different periods of time, and thus adequately protects the BES from overloads. Interpreting the Commission's determination to prohibit system flows in excess of IROL in the absence of a contingency would not improve reliability.

At the same time, however, such an interpretation would be highly likely to adversely affect the economics of transactions in both organized and bilateral markets.¹⁴ By building in the extra operating margins necessary to comply with this interpretation of the Commission's rule prohibiting operations in excess of the IROL, transmission providers -- by necessity -- will reduce the amount of transmission capacity available to support market transactions. The result will be an increase in the amount of transmission congestion, and a consequent reduction in the amount of economic transactions in which market participants will be able to engage. The reduction in transmission capacity available for market transactions is also likely to have other adverse effects, including increased costs for generator interconnections, and even possible additional increases in transmission costs (to the extent that additional capacity must be built to account for the increased operating margins). Reflecting the fact that the current operating practices of ISOs and RTOs were never intended to be modified through the filing of this definition, these economic impacts were never discussed during the NERC Standard Development Process.

¹⁴ Affected would be both organized markets operated by ISOs and RTOs approved by the Commission or applicable provincial authorities, and bilateral markets outside of RTOs and ISOs.

The IRC submits that these impacts are unwarranted given that an absolute prohibition on operations in excess of IROL is not necessary to maintain reliable Bulk Electric System (“BES”) operations. The IRC simply seeks assurances that the Commission did not intend this result when it approved the IROL Tv definition on the “the understanding that the only time it is acceptable to violate an IROL is in the limited time after a contingency has occurred and the operators are taking action to eliminate the violation.”¹⁵ Order 693 makes clear that such exceedances would not automatically result in a violation of a standard but the approval of the glossary definition in Order 705 could be argued to reverse that holding. Thus, the IRC requests that the Commission clarify that its Order 705 was not intended to supersede its Order 693 on the issue of whether exceeding an IROL can, in and of itself, represent a standard violation even if the system operator has taken prudent steps to bring operations under control in not more than 30 minutes consistent with the requirements of IROL Tv.

IV. Request for Rehearing

For the reasons stated above, the IRC does not believe that the Commission intended to prohibit system operations in excess of the IROL as long as the system operator takes steps to bring those operations within the IROL as soon as possible, and not longer than 30 minutes after the IROL was exceeded. Nonetheless, if the Commission did intend this interpretation, and declines to grant the clarifications requested above, then the IRC respectfully requests rehearing of the Commission’s ruling on the definition of IROL Tv.

A. The interpretation in Order No. 705 of the “IROL Tv” definition contravenes the requirements of FPA Section 215

1. The interpretation contravenes the restrictions in FPA Section 215(d) on FERC’s authority to draft reliability standards, as well as the Commission’s interpretation of those restrictions

¹⁵ Order No. 705 at P 125.

FPA Section 215(d) grants FERC ultimate authority over the approval of reliability standards, but at the same time imposes restrictions on the Commission's authority to draft standards. Section 215(d)(2) gives FERC the authority to "approve . . . a proposed reliability standard or modification to a reliability standard" if the applicable criteria are satisfied.¹⁶ Section 215(d)(4), in turn, requires that FERC "remand to the Electric Reliability Organization for further consideration a proposed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part."¹⁷ To the extent that FERC determines, on its own motion, that a new standard should be adopted or an existing standard modified, Section 215(d)(5) gives the Commission the authority to "order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter"¹⁸ Finally, to the extent that a FERC-approved reliability standard conflicts with a function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by FERC and applicable to a transmission organization, and FERC determines that the reliability standard should be changed as a result of the conflict, FPA Section 215(d)(6) permits FERC to "order the ERO to develop and file with the Commission a modified reliability standard under paragraph (4) or (5) of this subsection."¹⁹

As these provisions make clear, FERC has ultimate authority over the approval or rejection of proposed reliability standards in the United States, and may direct the ERO to develop reliability standards that address specific issues, but is restricted from actually writing the reliability standards that will be applicable under FPA Section 215. Congress clearly intended that the crafting of the actual reliability standards that are put in place and enforced

¹⁶ 16 U.S.C. § 824o(d)(2).

¹⁷ 16 U.S.C. § 824o(d)(4).

¹⁸ 16 U.S.C. § 824o(d)(5).

¹⁹ 16 U.S.C. § 824o(d)(6).

under FPA Section 215 be performed by the ERO and Regional Entities, with input from the applicable stakeholders. Such an approach ensures that the expertise of the ERO and the interests of the relevant stakeholders can be brought to bear on the crafting of the necessary regulatory language, while also ensuring that the standards development process takes place in a framework that reflects the Commission’s priorities and guidance.

FERC has recognized its unique role in the development of reliability standards, as well as the limitations on its authority to draft standards, in the rulemakings implementing FPA Section 215. In Order No. 693, the Commission stated that it “affirms the four possible courses of action that it will take with regard to each proposed Reliability Standard: (1) approve; (2) approve as mandatory and enforceable; and direct modification pursuant to Section 215(d)(5); (3) request additional information; or (4) remand.”²⁰ FERC concluded further that “[e]ach course of action is justified and has a sound basis in the statute.”²¹ Thus, the Commission’s implementing regulations reflect the oversight authority granted under FPA Section 215, while also restraining the Commission’s ability to engage in the actual drafting of reliability standards.

Because it is at variance with the plain terms of the “IROL Tv” definition, the determination in Order No. 705 that system operations may only exceed the applicable IROL after a contingency, and, by implication, that any other operations that exceed the applicable IROL will constitute a violation of the FERC-approved Reliability Standards, constitutes the drafting of reliability standard language by FERC. As demonstrated above, FERC’s actions are limited to approving, denying, or remanding to NERC the “IROL Tv” definition. For these reasons, the Commission should grant rehearing of its determination that system operations may only exceed the applicable IROL after a contingency.

²⁰ Order No. 693 at P 184.

²¹ *Id.*

2. The interpretation adversely affects economic transactions in violation of FPA Section 215(d)(2) and the Commission’s implementing regulations

Section 215(d)(2) of the FPA allows FERC to “approve . . . a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.”²² That provision goes on to provide that FERC “shall give due weight to the technical expertise of the Electric Reliability Organization with respect to the content of a proposed standard,” but emphasizes that FERC “shall not defer with respect to the effect of a standard on competition.”²³ The regulations that FERC adopted to implement these provisions track the statutory language.²⁴

The language of FPA Section 215(d), particularly its requirement that FERC not defer to the Electric Reliability Organization (“ERO”) regarding the impact of a proposed reliability standard on competition, incorporates into the statutory standard the requirement that a reliability standard not have an unreasonable or undue adverse effect on competition. Put another way, an undue affect on competition can impact whether a reliability standard can be deemed to be “just, reasonable, not unduly discriminatory or preferential, and in the public interest”. The Commission itself has adopted this interpretation of FPA Section 215 in its reliability rulemakings. In Order No. 672, which adopted regulations governing the certification of the ERO and FERC review of proposed reliability standards, the Commission emphasized that a “mandatory Reliability Standard should not reflect the ‘lowest common denominator’ in order to achieve a consensus among participants in the ERO’s Reliability Standard development process,” and that FERC “will carefully review each Reliability Standard submitted and, where appropriate, remand an inadequate Reliability Standard to ensure that it protects reliability, has

²² 16 U.S.C. § 824o(d)(2).

²³ *Id.*

²⁴ *See* 18 C.F.R. § 39.5 (2007).

no undue adverse effect on competition, and can be enforced in a clear and even-handed manner.”²⁵ This ruling was affirmed in Order No. 693, in which the Commission -- outlining the criteria that it will use to evaluate proposed reliability standards -- emphasized that a “Reliability Standard should have no undue negative effect on competition.”²⁶

The interpretation of FERC’s ruling in Order No. 705 that system operations may only exceed the applicable IROL after a contingency, and that any other operations that exceed the applicable IROL will constitute a violation of the FERC-approved Reliability Standards, will result in more conservative operating parameters than exist today – and perhaps particularly so for IRC members. These more conservative operating constraints will result in less transmission capability available to market participants, and therefore higher congestion costs and reduced opportunities to engage in economic transactions. These adverse impacts are not offset by any reliability benefits that will result from the new rule and were never taken into consideration during the standard drafting process. As outlined above, there is no reliability need for a prohibition on operating the system in excess of IROL except after a contingency. As long as the reliability standards require that system operations be brought back within the IROL as soon as possible, and, in all cases, within 30 minutes, such a requirement is consistent with existing practices that maintain system reliability.

For these reasons, the interpretation of FERC’s ruling in Order No. 705 that system operations may only exceed the applicable IROL after a contingency, and that any other operations that exceed the applicable IROL will constitute a violation of the FERC-approved Reliability Standards, contravenes the statutory requirement that a reliability standard not have an undue adverse effect on competition. The Commission should grant rehearing, and hold that

²⁵ Order No. 672 at P 29. (emphasis added)

²⁶ Order No. 693 at P 6.

system operations in which the applicable IROL is exceeded do not constitute a violation of the reliability standards, even in the absence of a contingency, as long as the system operator moves to bring operations within the IROL as soon as possible, and no later than 30 minutes after the IROL was first exceeded.

B. The interpretation of the “IROL Tv” definition constitutes an unexplained and unsupported departure from prior precedent, and does not adequately consider the important policy implications of that interpretation

The Supreme Court has established that an agency decision will be deemed to be:

arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.²⁷

Similarly, an agency decision will be deemed arbitrary and capricious if it departs from prior precedent without sufficient explanation.²⁸

The Commission’s interpretation of the “IROL Tv” definition in Order No. 705 is arbitrary and capricious on several of these grounds. First, in holding that system operations may not exceed IROL except in circumstances where there has been a contingency, the Commission has reversed the approach to that issue adopted in Order No. 693. In Order No. 693, the Commission made clear that system operations in which IROL is exceeded do not constitute a violation of applicable NERC reliability standards, even if there is no contingency, as long as measures are taken to bring operations within the applicable IROL within 30 minutes. Order No. 693 also made clear that the Commission would have NERC conduct a survey of

²⁷ *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

²⁸ See *Atchison v. Wichita Board of Trade*, 412 U.S. 800, 808 (1973) (An agency has a “duty to explain its departure from prior norms”; “[w]hatever the ground for the departure from prior norms, however, it must be clearly set forth so that the reviewing court may understand the basis of the agency's action and so may judge the consistency of that action with the agency's mandate.”).

IROL practices by multiple system operators, and that the Commission would use the results of that survey to determine whether to revise in the future the rules governing IROL violations.

Order No. 705 departs from the measured approach adopted in Order No. 693. It determines that any system operations in which the applicable IROL is exceeded should be deemed to be a violation of NERC reliability standards unless the IROL violation is triggered by a contingency. Order No. 705 does not mention the NERC survey, or otherwise explain its departure from the holdings in Order No. 693. Without referencing the rulings in Order No. 693, or explaining why it has decided not to rely on the study it ordered NERC to conduct in order to gain more information about how best to interpret IROL-related standards (a study under which data is being collected on a monthly basis through August 2008). Order No. 705 effectively changes the approach to system operations that exceed the applicable IROL. In this regard, the Commission's decision is arbitrary and capricious, and therefore does not constitute reasoned decisionmaking.

The holding in Order No. 705 on system operations in excess of applicable IROL also is arbitrary and capricious because it does not address the significant policy implications of that decision. The effect of that decision will be to make RTOs, ISOs, and other system operators liable for IROL violations caused by acts and omissions of other operating entities (such as asset owners or neighboring Balancing Authorities or Transmission Owners) over which the applicable systems operators have no actual control.

Furthermore, the Commission's decision will force system operators to dispatch their systems in an unduly conservative manner which would unnecessarily drive up customer costs and impact competition. Unduly conservative operations mean that system operators -- by necessity -- will make less transmission capability available for use by market participants, in

order to prevent exceedances of IROL except in extreme circumstances. The net effect of this outcome will be increased system constraints, and an adverse impact on economic transactions. This outcome is not warranted in light of the fact that the new requirements do not increase system reliability. Indeed, because the effect of the Commission's interpretation of the "IROL Tv" definition will be to prohibit system operations in excess of IROL rather than to reduce actual IROL-related reliability impacts -- the two are not the same -- that interpretation is not likely to have any tangible reliability benefits.

In ruling on the circumstances under which IROL may be exceeded, the Commission has not addressed these considerations. The failure to justify its decision in light of the important policy implications of that decision and its unannounced departure from Order 693 on this very same subject renders it arbitrary and capricious. The Commission should grant rehearing, and reaffirm its holding in Order 693 by holding that system operations in which the applicable IROL is exceeded do not constitute a violation of the reliability standards, in the absence of a contingency, as long as the system operator brings operations within the IROL as soon as possible, and no later than 30 minutes after the IROL was first exceeded.

IV. Conclusion

For the foregoing reasons, the IRC respectfully requests that the Commission clarify that its Order 705 was not intended to supersede its Order 693. In other words, operations in excess of a facility's IROL, even if caused by an event other than a contingency, does not automatically constitute a violation of NERC reliability standards, as long as the system operator takes steps to bring those operations within the IROL as soon as possible, and not longer than 30 minutes after the IROL was exceeded. In the alternative, the IRC requests that the Commission grant rehearing of Order No. 705, and hold that system operations in which the applicable IROL is exceeded do not constitute a violation of the reliability standards, in the absence of a contingency, as long as the system is brought back within the IROL as soon as possible, and no later than 30 minutes.

Respectfully submitted,

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January 28, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Washington, D.C., this 28th day of January, 2008.

/s/ Brian M. Zimmet

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