

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Commission Information

Collection Activities

(FERC-725);)
Comment Request;) Docket No. IC18-19-000
Extension)
September 21, 2018

**COMMENTS OF
UTILITY SERVICES, INC.
IN RESPONSE TO
NOTICE OF INFORMATION COLLECTION
AND REQUEST FOR COMMENTS**

Utility Services, Inc. (“Utility Services”) appreciates the opportunity to file comments on the currently approved information collection, FERC-725, Certification of Electric Reliability Organization; Procedures for Electric Reliability Standards (“FERC-725”). In the *Notice of Information Collection and Request for Comments*, dated September 21, 2018, the Federal Energy Regulatory Commission (“Commission”) invited comments on “ways to enhance the quality, utility and clarity of the information collection.”¹ Utility Services provides comments on the “Reliability Compliance” information collection element, defined as:

“Reliability Standards are mandatory and enforceable upon approval by the Commission. In addition to the specific information collection requirements contained in each standard (cleared under other information collections), there are general compliance, monitoring and enforcement information collection requirements imposed on applicable entities. Audits, spot checks, self-certifications, exception data submittals, violation reporting, and mitigation plan confirmation are included in this area.”²

¹ *Notice of Information Collection and Request for Comments*, Docket No. IC18-19-000 on September 21, 2018.

² Ibid.

Utility Services is an organization that provides regulatory compliance and support services within North American Electric Reliability Corporation (“NERC”) and its Regions. As a member of NERC, Northeast Power Coordinating Council, Inc., Reliability First, Midwest Reliability Organization, and Western Electricity Coordinating Council, Utility Services has participated in NERC and Regional efforts including entity registration, standards development, reporting, and notification since 2007. Utility Services’ customer base predominantly consists of entities registered with NERC as transmission owners, generation owners and operators, and distribution providers, though Utility Services has also supported transmission operators, reliability coordinators, and balancing authorities. Utility Services advises its customers on evolving risks to electric reliability and appreciates the day-to-day compliance obligations for all of NERC’s registered entities. Additionally, Utility Services staff members serve on the NERC Planning and Operating Committees, as well as NERC and regional working groups and several Standard Drafting Teams. Utility Services has a unique vantage point on the “Reliability Compliance” information collection element of FERC-725, given that Utility Services’ customer base is registered in every region and across functional registration categories.

To enhance the quality, utility and clarity of the information collection, Utility Services respectfully requests that the Commission reduce, to the extent “practicable” and “appropriate,” “the burden on persons who shall provide information to or for the agency” by clarifying compliance requirements.³ Recently, information collection requests from NERC and its Regions during audits, spot checks, self-certifications, and Inherent Risk Assessment questionnaires have left registered entities uncertain about “the way such information is to be used” and “whether

³ 44 U.S.C. § 3506(c)(3)(C)(ii).

responses to the collection of information are voluntary, required to obtain a benefit, or mandatory.”⁴

For example, information collection requests pertaining to internal controls during audits, spot checks, and self-certifications are too often made without informing a registered entity whether its responses to information collection are voluntary, required to obtain a benefit, or mandatory. While a *voluntary* Internal Controls Evaluation (“ICE”), as approved by the Commission in February 2015, may “decrease the depth and breadth of a particular area of review if the registered entity demonstrates effective internal controls,” the Commission did not discuss nor approve of *mandatory* internal controls questions in the context of Compliance and Enforcement.⁵ In fact, the NERC Rules of Procedure make only one mention of mandatory evaluation of internal controls – NERC evaluating the internal controls of Regional Entities.⁶

If *mandatory* information collection pertaining to internal controls is not permissible during Compliance and Enforcement, Utility Services requests that the Commission issue such a clarification to ensure that the practice, gaining in frequency, ceases. On the other hand, if information collection pertaining to internal controls is permissible during Compliance and Enforcement, Utility Services requests that the Commission clarify whether responses are voluntary, required to obtain a benefit, or mandatory. If responses to internal controls questions may potentially reduce compliance burden, as was approved by the Commission on a *voluntary* basis for ICE, the Commission should clarify that responses to internal controls questions – in

⁴ 44 U.S.C. § 3506(c)(1)(B)(iii)(II) & (IV).

⁵ *Order on Electric Reliability Organization Reliability Assurance Initiative and Requiring Compliance Filing*, 150 FERC ¶ 61,108 at P 5.

⁶ See Rules of Procedure Appendix 4A: “Within thirty (30) business days of the last day of on-site fieldwork, NERC shall provide the Regional Entity with a draft report which shall include a review of the scope, methodology, and evaluation of internal controls.” In the context of Compliance & Enforcement of registered entities, Rules of Procedure Section 401.3 explains that information requests are “necessary to monitor compliance with the Reliability Standards,” but makes no mention of registered entities’ internal controls.

any context – are required to obtain a benefit, namely the reduction of compliance burden. If responding to internal controls questions does provide a benefit, Utility Services requests that the Commission oversee NERC and its Regions’ allocation of the benefit in a consistent manner that the Commission deems appropriate.

Another example of uncertainty pertains to Inherent Risk Assessment questionnaires. Registered entities for whom Utility Services provides support have received questions from Regional Entities without disclosure of the way the information is being used, or whether responses to the collection of information are voluntary, required to obtain a benefit, or mandatory. During questionnaires, multiple registered entities, which were previously designated as low impact (for critical infrastructure protection standards) and whom Utility Services supports, have each received questions seemingly directed towards medium and high impact registered entities. If NERC and its Regions are seeking to gain greater visibility to evaluate future risks to the Bulk Electric System through information collection, the information collection request should clearly indicate (1) the way the information will be used (i.e. which Commission-approved Standards support the inquiry) and (2) whether responses to the collection of information are voluntary, required to obtain a benefit, or mandatory. Clarification from the Commission regarding reporting requirements would prove practicable, appropriate, and invaluable, especially for smaller entities.

Widespread uncertainty over information collection runs counter to the Paperwork Reduction Act of 1995’s purposes of ensuring “the greatest possible public benefit from and maximize the utility of information... collected... by or for the Federal Government” and

improving “the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society.”⁷

Utility Services respectfully requests clarification on the compliance requirements of FERC-725 as pertaining to information collection during audits, spot checks, self-certifications, and Inherent Risk Assessment questionnaires.

Respectfully submitted,

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⁷ 44 U.S.C. § 3501(2) & (4).