

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Revisions to Electric Reliability  
Organization Definition of Bulk Electric  
System and Rules of Procedure

Docket Nos. RM12-6-000 and RM12-7-000

**COMMENTS OF THE  
ELECTRICITY CONSUMERS RESOURCE COUNCIL  
(ELCON)**

The Electricity Consumers Resource Council (ELCON) appreciates the opportunity to comment on the Commission's June 22, 2012 *Notice of Proposed Rulemaking* (NOPR) to approve a modification to the currently-effective definition of "bulk electric system" developed by the North American Electric Reliability Corporation (NERC), as well as: (i) NERC's contemporaneously filed revisions to its *Rules of Procedure*, which would establish an exception procedure for adding specific elements to, or removing specific elements from, the scope of the definition of "bulk electric system" on a case-by-case basis; (ii) NERC's proposed form entitled "Detailed Information to Support an Exception Request" that entities would use to support requests for exception from the "bulk electric system" definition; and (iii) NERC's proposed implementation plan for the revised "bulk electric system" definition.

ELCON is the national association representing large industrial consumers of electricity. ELCON member companies produce a wide range of products from virtually every segment of the manufacturing community. ELCON members operate hundreds of major facilities and are consumers of electricity in the footprints of all organized markets and other regions throughout the United States. ELCON staff participated on NERC's Standards Drafting Team that was established to lead the response to FERC Orders 743 and 743-A, directing NERC to revise the definition of

“bulk electric system,” and in particular respond to concerns that the existing definition was overly subjective and gave regional entities discretion to redefine the scope of the term, leading to inconsistent application of the NERC reliability standards.

### ELCON COMMENTS

ELCON broadly supports NERC’s proposals and the NOPR’s proposed approval of them. NERC’s proposals are the result of an in-depth, consensus driven process that called upon expertise from many different sectors to address difficult technical and policy issues. ELCON supports FERC’s overall assessments, as stated in the NOPR, that NERC’s proposals “offer additional clarity . . . which provide[s] granularity with regard to common types of facilities and facility configurations,” “should produce consistency in identifying bulk electric system elements across the reliability regions,” and “add transparency and uniformity to the process.” (NOPR ¶¶3, 4).

In particular, ELCON strongly supports the design of the revised definition of “bulk electric system” -- a core definition with five inclusions and four exclusions -- and the general parameters of the exception process, as proposed to be codified in the NERC *Rules of Procedure*. This approach appropriately balances the desirability of bright line standards with the need to assess on a case-specific basis particular configurations that do not affect the reliability of the bulk power system.

With specific reference to the proposed exclusions, ELCON applauds in particular FERC’s proposal to approve without qualification or specifically-requested comment Exclusion E2 (“Behind-the-Meter Generation”) and Exclusion E4 (“Reactive Power Devices Owned and Operated by the Retail Customer”). Such configurations are commonly employed by industrial users of electricity, and they do not affect in any significant way the bulk power system. ELCON also supports Exclusions E1 (“Radial Systems”) and E3 (“Local Networks”), and as discussed below, does not believe that the issues underlying the NOPR’s request for comment on particular aspects of Exclusions E1 and E3 raise valid concerns about their appropriateness.

However, a significant gap in NERC's proposals is the absence of a definition of "local distribution" that is outside the scope of, and outside of the proposed core definition of, the bulk electric system. The proposal's general concept - that utility or customer-owned assets are deemed, by default, facilities used for local distribution if they are not otherwise classified part of the bulk electric system - is a reasonable first step but without further definition does not give sufficient clarity and could lead to inappropriate inclusion of certain facilities within the scope of the bulk electric system. Although a final rule approving NERC's proposals should not be deferred or delayed, ELCON urges FERC to establish a special process for resolving this important issue.

#### **I. CORE DEFINITION OF "BULK ELECTRIC SYSTEM"**

NERC proposes the following "core" definition of bulk electric system:

Unless modified by the [inclusion and exclusion] lists shown below, all Transmission Elements operated at 100 kV or higher and Real Power and Reactive Power resources connected at 100 kV or higher. This does not include facilities used in the local distribution of electric energy.

NERC states that the core definition in combination, with the specific inclusions and exclusions, provides a detailed set of criteria that can be applied on a uniform, consistent basis across all regions, eliminates ambiguity, and eliminates the potential for discretion and subjectivity in determining what facilities are part of or not part of the bulk electric system. The Commission seeks comment on whether the revised definition adequately eliminates subjectivity and regional variation. (NOPR ¶56.)

ELCON agrees that NERC's proposals, when viewed as an overall package encompassing three key components -- the core definition, the general inclusions and exclusions, and the exception process - represent a reasonable approach that will minimize subjectivity and regional variation. It remains to be seen whether it will eliminate all issues of ambiguity, but in view of the complex nature of the grid and its many elements, such outcome may be unachievable. In particular, the inclusions and exclusions will always likely be subject to some interpretation - especially pertaining to the facilities at the interface between the BES and non-BES elements such as facilities for

local distribution. On the whole, however, NERC has proposed a reasonable solution to a difficult challenge.

## **II. LOCAL DISTRIBUTION**

The Commission seeks comment from NERC and the public regarding how the proposed definition is responsive to the Commission's directives in Order Nos. 743 and 743-A. Specifically, the Commission seeks comment on how NERC's proposal adequately differentiates between local distribution and transmission facilities in an objective, consistent, and transparent manner. (NOPR ¶60.)

In ELCON's view, this is a critical issue. NERC's proposals properly excluded, expressly, facilities for the local distribution of electric energy from the core definition of "bulk electric system." Further, the local network exclusion, Exclusion E3, while intended to capture for exclusion certain high voltage non-radial facilities being used for the local distribution of energy by transmission dependent utilities, may not sufficiently address the configurations of customer-owned, private networks. The assumption underlying the core definition of bulk electric system and Exclusion E3 is that utility or customer-owned assets are deemed, by default, facilities used for local distribution if they are not otherwise classified part of the bulk electric system, and that the exception process would suffice to further refine such delineations.

However, ELCON believes that the exclusionary language in the core definition of "bulk electric system" and Exclusion E3 are only a partial solution to the Commission's directive in Order Nos. 743 and 743-A with respect to local distribution. The absence of an authoritative definition of "local distribution" is a central gap in NERC's proposals, as otherwise customer-owned assets that are clearly used for the local distribution to Load might be deemed part of the bulk electric system. Industrial consumers are concerned that any piece of equipment they own or operate that is rated 100-kV or above will be designated as a component of the bulk electric system, irrespective of whether such elements are material for the reliable operation of the interconnected bulk power system. Not enough attention is given by NERC and the

Regional Entities to the unique characteristics of industrial facilities as Loads, and the fact that there are many elements owned and/or operated by the customer, or the customer's transmission operator, that are used for local distribution. Current indications are that, without further clarification or guidance, the exception process will not be useful as a stop gap measure to ensure case-by-case exclusion of facilities that are local distribution.<sup>1</sup>

This issue should not detract from approval of NERC's proposals, as called for in the NOPR, and we urge the Commission to not remand the issue back to the BES drafting team. Instead, ELCON recommends that the Commission address this issue by supporting a special, independent process to develop a suitable definition of local distribution to prima facie exclude certain facilities from the scope of the definition of bulk electric system. In particular, the Commission should establish a joint working group with the National Association of Regulatory Utility Commissioners (NARUC) to draft a proposed definition. The joint FERC/NARUC working group should adopt a consensus-driven process with the following key components:

- facilitation by NERC;
- use of the ANSI-accredited standards development process;
- inclusion in the working group of representatives of Load and subject matter experts on federal-state jurisdiction, retail ratemaking, the planning and design of local distribution, and interconnection agreements applicable to large Loads with or without behind-the-meter generation; and
- approval of a final definition of local distribution by Commission order and by resolution of the NARUC Board of Directors.

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<sup>1</sup> It has been the experience of large industrial customers since the drafting of the revised BES definition that Regional Entities have begun warning many of these customers that they are at risk of registration as a result of the new definition. We are aware of not one instance of the opposite – that any currently registered industrial facility will likely be deregistered.

### **III. INCLUSIONS AND EXCLUSIONS FROM THE DEFINITION OF BULK ELECTRIC SYSTEM**

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ELCON generally supports the overarching objective of NERC's core definition of "bulk electric system" and its proposed Inclusions and Exclusions -- to avoid flooding NERC and the regional entities with a myriad of elements that would fall under the revised definition of "bulk electric system" but that are not properly included and would have to be processed for exclusion under the exception process. That would be a huge waste of resources. In developing its five Inclusions and four Exclusions, NERC has recognized that there are certain cases where transformers with secondary windings less than 100 kV may be used to transfer power but believe that these facilities are not common. Conversely, there are elements that may be of higher voltage but as a general rule are not material for the reliable operation of the interconnected bulk power system. The specified Inclusions and Exclusions, combined with the exceptions process, which is an essential and integral component of NERC's proposals, represents a sound approach for administering these issues.

In the NOPR, FERC asks for comment on a number of largely technical issues about the NERC's proposed Inclusions and about Exclusions E1 and E3. ELCON understands that NERC's comments to this docket will be addressing these issues and explaining that that, notwithstanding FERC's questions, the proposed Inclusions and exclusions are important and have an adequate basis. Accordingly, ELCON does not address those issues here. More generally, however, ELCON reiterates its support for FERC's proposal to approve without qualification or additional comment Exclusions E2 and Exclusion E4. Such configurations are commonly employed by industrial users of electricity, and they do not affect in any significant way the reliability of the interconnected bulk power system. ELCON also supports Exclusions E1 and E3, and believes that NERC will appropriately respond to FERC's questions regarding these exclusions.

In this regard, ELCON wishes to highlight the response to the NOPR's request for comment about the applicability of exclusion E1 to the configuration set out in

Figure 1 of the NOPR. (NOPR ¶79.) As depicted in Figure 1, both of these radial systems would be subject to exclusion E1 because they each only serve load. Accordingly, all facilities from each single point of interconnection to the bulk electric system in Figure 1 (including the portion of the radial facilities that are operated at 230 kV) are outside of the scope of the bulk electric system. This is of critical importance to ELCON members. Radial systems serving only load and emanating from a single point of connection of 100 kV or higher pose no reliability risk to the interconnected transmission network when the radial system is lost due to a failure or fault condition.

#### **IV. EXCEPTION PROCESS**

NERC's response to Orders 743 and 743-A has expressly included an exception process whereby the "exceptions rather than the rule" can be evaluated for possible inclusion in the BES. FERC seeks comment "on how the relevant entities will conduct the review and seek inclusion" of "sub-100 kV facilities, as well as other facilities, that are necessary to operate the interconnected transmission network," and further whether NERC or FERC should have a role in initiating the designation of facilities. (NOPR ¶¶108, 110, 111, 112.)

In ELCON's view, the implication of the NOPR's requests for comment on these interrelated issues – that NERC's proposals might not adequately provide for inclusion of sub-100kV facilities – is misplaced. The exception process establishes a mechanism through which the regional entities, planning authorities or other relevant entities can demonstrate a particular facility is necessary for the reliable operation of the interconnected transmission network and should be classified as an element of the bulk electric system. The core definition of "bulk electric system" is too blunt of an instrument to do this and therefore NERC has proposed a separate exceptions process to provide for reasoned, technical analysis. Accordingly, the exception process includes detailed technical information and process requirements for handling such exception requests. The resolution of the issues raised by exception requests is a matter of the technical expertise of NERC and regional staffs and their ability to accurately assess

elements that are material for the reliable operation of the interconnected bulk power system. The NOPR's suggestion (NOPR ¶109) that the Regional Entities, planning authorities, reliability coordinators, transmission operators, balancing authorities and owners of system elements would not take cognizance of findings of FERC or NERC related to any sub-100 kV elements that actually have a material impact on system reliability is unsupported and would call into question the efficacy of the entire construct established by FERC to address reliability issues. The regional entities, for example, have full access to NERC's technical expertise as outlined in the NOPR (NOPR ¶111), including "disturbance assessments, . . . compliance monitoring and . . . seasonal assessments" and is obligated to act on such information.

ELCON supports NERC's proposed "Detailed Information Form" and FERC's proposed approval of it in the NOPR. ELCON agrees that it is "more feasible to develop a common set of data and information that could be used by the Regional Entities and NERC to evaluate exception requests" than to develop the detailed criteria and that the information specified in the form is relevant and appropriate for exception requests.

## **V. IMPLEMENTATION PLAN**

ELCON supports NERC's proposed implementation plan, which provides that (i) the revised definition "should be effective on the first day of the second calendar quarter after receiving applicable regulatory approval, or, in those jurisdictions where no regulatory approval is required, the revised [bulk electric system definition] should go into effect on the first day of the second calendar quarter after its adoption by the NERC Board" and (ii) compliance obligations for all elements newly-identified to be included in the bulk electric system based on the revised definition should begin twenty-four months after the applicable effective date of the revised definition. This gives sufficient time to accommodate planning for and changes resulting from the new definition, including any exception requests and compliance obligations, without causing undue delay.



## **VI. RULES OF PROCEDURE**

In Docket No. RM12-7-000, NERC filed proposed revisions to its *Rules of Procedure* for the purpose of adopting a procedure for entities to obtain an exception from the definition of bulk electric system. NERC states that the proposed exception process, which is a mechanism to add elements to, and remove elements from, the bulk electric system, addresses the concerns raised in Order No. 743 with respect to the current processes for determining what facilities are part of the bulk electric system and what facilities are not. NERC also states that the exception process “provides for decisions to approve or disapprove exception requests to be made by NERC, rather than by the Regional Entities, thereby eliminating the potential for inconsistency and subjectivity that the Commission was concerned [about, which] was created by having decisions as to what facilities are included in or excluded from the BES made at the Regional Entity level.” NERC has also proposed to modify its *Rules of Procedure* to add a procedure for an entity to challenge the NERC decision on an exception request.

As discussed above, ELCON supports the exception process as it would be implemented in NERC’s proposed changes to its *Rules of Procedure*. ELCON agrees with NERC that the exception process establishes procedures that (1) balance the need for effective and efficient administration with due process and clarity of expectations; (2) promote consistency in determinations and eliminates regional discretion by having all decisions on Exception Requests made at NERC; (3) provide for involvement of persons with applicable technical expertise in making decisions on exception requests; and (4) should alleviate concerns about a “one-size-fits-all” approach.

Although the NOPR proposes to approve these revisions to the NERC *Rules of Procedure*, FERC seeks comment on whether NERC should modify the exception process to require Regional Entities to submit all proposed determinations to a technical review panel regardless of the recommendation and receive the panel’s opinion on each request. (NOPR ¶114) The proposed exception process provides that “[t]he Regional Entity shall not recommend Disapproval of the Exception Request in whole or in part

without first submitting the Exception Request for review to a Technical Review Panel and receiving its opinion...” In other words, a technical review panel is required to provide an opinion only where the Regional Entity recommends disapproval of an exception request. ELCON supports NERC’s proposal as a reasonable approach that will avoid the burden, inefficiency and delay inherent in unnecessary referrals to a technical review panel. The proposed exception process already calls for submission of in depth technical information through the Detailed Information Form, initial review by the Regional Entity, and subsequent review and final decision by NERC. Considerable technical expertise will be available to both the Regional Entity and to NERC as they assess exception requests. The additional layer of technical review panel consideration is needed only where the Regional Entity as an initial matter disagrees with an applicant’s position as set out in an exception request.

## **VII. LIST OF FACILITIES GRANTED EXCEPTIONS**

NERC states that the proposed exception process does not include provisions for NERC to maintain a list of facilities that have received exceptions, as requested in Order No. 743, as this is an internal administrative matter for NERC to implement that does not need to be embedded in the *Rules of Procedure*. NERC states it will develop a specific internal plan and procedures for maintaining a list of facilities for which exceptions have been granted and notes that Regional Entities will maintain lists of elements within their regions for which exceptions have been granted, in order to monitor compliance with the requirement to submit periodic certifications pursuant to section 11.3 of Appendix 5C. In the NOPR, FERC proposes that NERC make an informational filing within 90 days of the effective date of a final rule, detailing its plans to maintain a list and how it will make this information available to the Commission, Regional Entities, and potentially to other interested persons. (NOPR ¶123) FERC also seeks comment on whether NERC’s proposal should be modified to include an obligation for the registered entity to inform NERC or the Regional Entity of the entity’s

self-determination through application of the definition and specific exclusions E1 through E4 that an element is no longer part of the bulk electric system. (NOPR ¶124)

ELCON believes that NERC should be authorized to proceed with its plans for developing specific internal plan and procedures for maintaining a list of facilities for which exceptions have been granted, particularly since that Regional Entities already are required maintain lists of elements within their regions for which exceptions have been granted. Self-determinations, however, are an entirely different matter. In essence this would require documentation of all elements of the grid that are outside of the scope of bulk electric system, an exercise that would be utterly infeasible.

### CONCLUSION

ELCON broadly supports NERC's proposals and their proposed approval by the NOPR. Going forward, focus should be on defining the concept of "local distribution" to recognize that that there are many elements owned and/or operated by the customer or the customer's Transmission Operator that are used for local distribution and are not material for the reliable operation of the interconnected bulk power system.

## NOTICES AND COMMUNICATIONS

Notices and communications with regard to these proceedings should be addressed to:

John P. Hughes  
Vice President, Technical Affairs  
ELECTRICITY CONSUMERS RESOURCE  
COUNCIL  
1111 Nineteenth Street, NW, Suite 700  
Washington, DC 20036  
Email: [jhughes@elcon.org](mailto:jhughes@elcon.org)  
Phone: (202) 682-1390

W. Richard Bidstrup  
CLEARY GOTTLIEB STEEN &  
HAMILTON LLP  
2000 Pennsylvania Avenue, NW, Suite 900  
Washington, DC 20006  
Email: [rbidstrup@cgsh.com](mailto:rbidstrup@cgsh.com)  
Phone: (202) 974-1500

Respectfully submitted,

/s/ W. RICHARD BIDSTRUP

W. Richard Bidstrup  
CLEARY GOTTLIEB STEEN & HAMILTON LLP  
2000 Pennsylvania Avenue, N.W., Suite 900  
Washington D.C. 20006  
*Counsel for ELCON*

Dated: September 4, 2012

**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 of this proceeding.

Dated at Washington, D.C.:            September 4, 2012

/s/ W. RICHARD BIDSTRUP  
W. Richard Bidstrup