

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Revision to Electric Reliability
Organization Definition of Bulk Electric
System

Docket No. RM09-18-000

Comments of the Electricity Consumers Resource Council (ELCON)

The Electricity Consumers Resource Council (ELCON) appreciates the opportunity to submit comments to the Commission on its notice of proposed rulemaking (NOPR) to require the North American Electric Reliability Corp. (NERC) to revise its definition of “Bulk Electric System” (BES) for purposes of its Reliability Standards. Specifically, the NOPR would revise the definition to include all electric transmission facilities with a rating of 100 kV or above and eliminate the currently-allowed discretion of a Regional Entity (RE) to define BES within its footprint without NERC or Commission oversight. The Commission proposes that a RE must seek and obtain NERC and FERC approval before it exempts a transmission facility rated at 100 kV or above from compliance with mandatory Reliability Standards. In addition, the Commission proposes to allow REs to develop transition plans that allow a reasonable period of time for affected entities within that region to achieve compliance with respect to facilities that are subject to mandatory Reliability Standards for the first time.

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 throughout the United States. The definition of “Bulk Electric System” and more generally the scope of NERC’s Reliability Standards are important to ELCON’s many members that have interconnection facilities.

Summary of ELCON’s Comments

The problem that this NOPR attempts to address appears to be that one RE—the Northeast Power Coordinating Council (NPCC)—has a more relaxed definition of BES and has exempted fairly sizeable transmission facilities from compliance with Reliability Standards. However, as drafted the NOPR is not sufficiently clear, as there is no proposed regulatory language and therefore the intent has to be inferred from the language in the NOPR Preamble. As described below, the NOPR could be interpreted to be proposing criteria for registration exemption that are different from currently practiced and less flexible. FERC should clarify that the NOPR is not intended to inappropriately expand coverage to loads served by radial facilities. The NOPR also does not adequately address procedural aspects of the proposed revisions.

ELCON Comments and Recommendations

A. Clarification that the Current Exclusion of Radial Lines Is Preserved

The scope of the NOPR is unclear, in part because there is no proposed regulatory language and because the proposed change from the current NERC definition of BES, though potentially of critical importance, is subtle.

NERC currently defines BES as:

The electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in the definition.¹

Throughout the NOPR Preamble, significantly including the “Summary,” the NOPR is described in absolute terms as directing “the Electric Reliability Organization (ERO) to revise its definition of the term ‘bulk electric system’ to include all electric transmission facilities with a rating of 100 kV or above.” The NOPR also states that an RE must seek NERC approval before it “exempts any transmission facility rated at 100 kV or above from compliance with mandatory Reliability Standards” [Emphasis added]. Buried in a reference in text of the Preamble and later in a footnote, the NOPR states that the Commission intends to preserve the existing provision in the BES definition that “[r]adial transmission facilities serving only load with one transmission source are generally not included in this definition.”²

¹ NERC’s Glossary of Terms Used in Reliability Standards (May 2, 2007) at 2.

² NOPR at p. 13 and p. 19 n.40.

This provision is critically important to ELCON members and has been the subject of extensive consideration and careful review, including in the context of Commission decisions. It warrants far more than the offhand treatment in the NOPR. There should be no doubt whatsoever that the exclusion continues to have full force and that, for example, NERC will not have to separately review and approve exclusion of radial facilities that are rated at 100kV and above. Such lines generally do not have potential to materially impact reliability of the bulk power system.

Accordingly, the summary and text of the final rule consistently should specify that the revision requiring NERC review and approval of RE determinations applies to facilities rated at 100 kV and higher that do not qualify for the radial line exclusion. FERC also should adopt regulatory language spelling out the full definition of BES on that basis, including the language addressing radial lines.

B. Clarification of Procedural Aspects for Implementation of the New Definition of BES

In several interrelated respects, the NOPR does not adequately describe the applicable procedures. In particular, because of the significant implications of registered status – the need to immediately be in compliance with applicable Reliability Standards and the applicability of penalties for any non-compliance – facilities should not be considered subject to registration until after full completion of the review process and a transition period. Clarification to that effect is needed in the final rule.

First, the NOPR provides that “[a] Regional Entity may develop a transition plan that allows a reasonable period of time for affected entities within that region to achieve compliance with respect to facilities that are subject to mandatory Reliability Standards for the first time.” However, the NOPR is silent on the status of the facility during the transition. The Commission should clarify that the facility is not subject to the obligations of registered status until the notification and any review process, followed by the transition period, is completed.

Second, the NOPR proposes that NERC must submit to the Commission “for review on a facility-by-facility basis any ERO-approved exception to the proposed threshold that all transmission facilities at 100 kV or above, except for radial transmission facilities serving only load, are subject to compliance with mandatory Reliability Standards.” And any such submission must include “adequate supporting information explaining why it is appropriate to exempt a specific transmission facility that otherwise satisfy the proposed 100 kV threshold.” Finally, “only after Commission approval would the proposed exclusion take effect.”

So as to avoid unduly burdening loads with behind-the-meter generation, the Commission should establish time limits on the review periods before both NERC and FERC. During the pendency of such reviews, the determination of the RE, which will be most familiar with the factual circumstances relevant to the entity at issue, to grant an exception should remain in effect.

As the NOPR notes, WECC has established a BES Definition Task Force that is currently re-evaluating WECC’s 100 kV threshold. This Task Force has previously

considered options that include retaining WECC's current 100 kV threshold, adopting a 200 kV threshold, or adopting a "classification by voltage" definition. More recently, in December 2009, the Task Force posted a proposal to retain the 100 kV threshold, but also allow for the exclusion of facilities with a rating above 100 kV based on a "material impact" assessment. ELCON supports the development of a material impact test in which the burden of proof of "materiality" is on NERC or the applicable RE.

Third, the NOPR states that REs may continue to identify "critical" facilities, rated at less than the 100 kV, that are subject to mandatory Reliability Standards, without application to NERC and the Commission.³ There is no set procedure to allow "users, owners and operators" to get an alternative determination that such facilities are not critical and should not be included in the definition of the BES. Again, FERC should establish a process (including an appeal process) with time limits for review, and registration status should not become effective until the completion of such review.

Conclusion

In summary, ELCON urges FERC to implement regulatory language clarifying that the general exclusion for radial lines remains effective and to resolve the open procedural points as discussed in these comments.

³ The NERC Glossary defines "Critical Assets" as "[f]acilities, systems, and equipment which, if destroyed, degraded, or otherwise rendered unavailable, would affect the reliability or operability of the Bulk Electric System."

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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.: May 10, 2010

/s/ W. RICHARD BIDSTRUP
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