

139 FERC ¶ 61,055
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinohoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

City of Holland, Michigan Board of Public Works

Docket No. RC11-5-000

ORDER DENYING APPEAL OF
ELECTRIC RELIABILITY ORGANIZATION
COMPLIANCE REGISTRY DETERMINATION

(Issued April 19, 2012)

1. In this order, the Commission denies the appeal of the City of Holland, Michigan Board of Public Works (Holland) of a registry decision by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization. In doing so we agree with NERC that Holland is properly included in the NERC Compliance Registry as a transmission owner (TO) and transmission operator (TOP), based on our findings that Holland is not entitled to an exemption from the definition of bulk electric system as a radial facility, and that Holland has not otherwise demonstrated that its system is not material to the reliability of the interconnected transmission system.

I. Background

A. Regulatory Background

2. In July 2006, the Commission issued an order certifying NERC as the Electric Reliability Organization (ERO) pursuant to section 215 of the Federal Power Act (FPA).¹ Subsequently, in April 2007, the Commission approved delegation agreements between NERC and eight Regional Entities, including a delegation agreement between NERC and ReliabilityFirst Corporation (RFC). Pursuant to that agreement, NERC delegated to RFC

¹ *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006), *aff'd sub nom., Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009); 16 U.S.C. § 824o (2006).

certain authority and responsibilities for oversight and enforcement of Reliability Standards for the region in which Holland's system is located.²

3. In Order No. 693, the Commission approved 83 Reliability Standards, which became effective on June 18, 2007.³ Further, in Order No. 693, the Commission approved NERC's compliance registry process, including NERC's Statement of Compliance Registry Criteria (Registry Criteria), which describes how NERC and the Regional Entities will identify the entities that should be registered for compliance with mandatory Reliability Standards.⁴ While that process allows a Regional Entity to register an entity over its objection, NERC's Rules of Procedure provide a mechanism for such an entity to seek NERC review of the Regional Entity's registration decision and, ultimately, to appeal to the Commission if NERC upholds the Regional Entity's decision.⁵

B. NERC Registry Criteria

4. NERC currently defines the bulk electric system as follows:

As defined by the Regional Reliability Organization, 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 this definition.⁶

² *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060, *order on reh'g*, 120 FERC ¶ 61,260 (2007).

³ *Mandatory Reliability Standards for the Bulk Power System*, Order No. 693, 72 Fed. Reg. 16,416 (April 4, 2007), FERC Stats. & Regs. ¶ 31,242 (2007), *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

⁴ Order No. 693 at PP 92-95. The Commission has approved subsequent amendments to the Registry Criteria. *See, e.g., North American Electric Reliability Corp.*, 122 FERC ¶ 61,101 (2008).

⁵ Rules of Procedure of the North American Electric Reliability Corporation, Rule 501.1.3.4.

⁶ NERC Registry Criteria, section I. In Order No. 743, the Commission directed NERC to develop revisions to this bulk electric system definition. *See Revision to Electric Reliability Organization Definition of Bulk Electric System*, Order No. 743, 75 Fed. Reg. 72,910 (Nov. 26, 2010), 133 FERC ¶ 61,150 (2010); *order on reh'g*, Order No. 743-A, 134 FERC ¶ 61,210 (2011). NERC has since filed proposed revisions to the bulk electric system definition for Commission approval, along with procedures for obtaining an exclusion from that definition. *See* Docket Nos. RM12-6-000 and RM12-7-000. The revised definition and procedures are under review.

5. Section I of NERC's Registry Criteria provides that an entity that uses, owns or operates elements of the bulk electric system pursuant to NERC's definition above are candidates for registration. Section II of the Registry Criteria categorizes registration candidates under various functional entity types including transmission owner and transmission operator. Section II defines transmission owner as "the entity that owns and maintains transmission facilities," and transmission operator as "the entity responsible for the reliability of its local transmission system and operates or directs the operations of the transmission facilities."

6. Section III of NERC's Registry Criteria identifies certain thresholds for registering entities that satisfy the criteria of sections I and II. Section III(d) provides that a transmission owner or transmission operator should be registered if it meets any of the following criteria:

1. An entity that owns/operates an integrated transmission element associated with the bulk power system 100 kV and above, or lower voltage as defined by the Regional Entity necessary to provide for the reliable operation of the interconnected transmission grid; or

2. An entity that owns/operates a transmission element below 100 kV associated with a facility that is included on a critical facilities list that is defined by the Regional Entity.⁷

7. NERC's Registry Criteria also provide that the specified criteria "are general criteria only." A Regional Entity thus may register an entity that does not meet the specified criteria if the Regional Entity "believes and can reasonably demonstrate that the organization is a bulk power system owner, or operates, or uses bulk power system assets, and is material to the reliability of the bulk power system."⁸ Further, NERC's Registry Criteria provide that a class of entities, each of which would be individually excluded, may nevertheless be registered based on their aggregate impact on Bulk-Power System reliability.

II. Appeal of NERC Registry Decisions

A. Overview of Holland's System

8. Holland states that it operates a municipal system that serves approximately 27,000 retail customers. Holland notes that its system includes 24 miles of 138 kV lines, as well as seven generating units that range in size from 11.5 to 83 MW (nameplate). Holland asserts that it is interconnected to the bulk electric system through a "single interconnection point," at Michigan Electric Transmission Company's (METC) Black River substation.⁹ However,

⁷ NERC Registry Criteria, section III(d).

⁸ NERC Registry Criteria, Notes to Criteria, note 1 (footnote excluded).

⁹ *Id.* at 4-5.

Holland's connection at Black River involves two separate 138 kV lines, one running from Black River to Holland's Waverly substation and one running from Black River to Holland's Quincy substation.¹⁰ The Black River-Waverly line and the Black River-Quincy line are interconnected via Holland's 24 miles of 138 kV lines to form a loop.¹¹ The two buses connecting the two Holland lines at Black River are connected by a breaker that is closed in normal operations and under most contingencies.¹²

9. Holland asserts that it does not provide transmission service to any wholesale or retail open access customers, and that the only power that flows on its system is power used to serve Holland's own internal load.¹³ In addition to its internal generating capacity of 226 MW,¹⁴ Holland purchases power from the Michigan Public Power Agency, resulting in a normal bias of 46 MW of net flow into Holland.¹⁵ Holland does not sell power into the market and does not transmit power across its system. According to Holland, the configuration of its connection and relaying scheme at Black River prevent flow through Holland as if it were an element of the Bulk-Power System.¹⁶

B. Procedural History and NERC's Registry Decision

10. RFC unilaterally registered Holland as a TO and a TOP effective August 24, 2010, following notice to Holland of RFC's intent to do so.¹⁷ On September 20, 2010, Holland filed an appeal of RFC's registration decision with NERC, explaining that Holland's facilities should be excluded from registration as radial facilities, or as facilities having no material impact on the reliability of the bulk electric system. On October 22, 2010, RFC submitted its

¹⁰ *See id.* at 27, 28, 29 The METC Black River substation is a 138 kV substation with ties to six 138 kV lines – the two Holland lines noted above as well as four lines owned and operated by METC. *See* Ex. HOL-10 (Holland Appeal to NERC) at 23.

¹¹ *See* Ex. HOL-10 at 23.

¹² *See id.*

¹³ Holland Appeal at 5.

¹⁴ *See* Ex. HOL-16 (NERC Registry Decision) at 2 (citing to <http://www.hollandbpw.com/electric/Pages/BaseLoadGeneration.aspx>).

¹⁵ Holland Appeal at 30. Holland owns a 10 MW portion of Consumers Energy's Campbell power plant and a 35 MW portion of Detroit Edison's Belle River power plant, and uses its interconnection to the METC transmission network to deliver energy from these units. *See* Ex. HOL-16 at 2.

¹⁶ Holland Appeal at 25.

¹⁷ *See generally, id.* at 6.

Assessment to NERC providing the basis for its decision to register Holland as a TO and TOP, noting, *inter alia*, that Holland's system is not a radial system but is instead an integrated looped system connected through two breakers at Black River. Holland submitted a response to RFC's Assessment on November 3, 2010.¹⁸

11. On August 12, 2011, the NERC Board of Trustees Compliance Committee issued a written decision (NERC Registry Decision) denying Holland's appeal of RFC's registration determination. In applying the registry criteria to Holland's facilities, NERC rejected Holland's characterization of its system as radial in nature. NERC found that the configuration of Holland's interconnection (as depicted in Holland's materials) showed that bi-directional flows could occur on Holland's system despite its relaying scheme.¹⁹ Because NERC concluded that the Holland facilities were not radial (and were acknowledged to be above 100 kV), NERC found that Holland met the criteria for registration as a TO and TOP.

12. NERC also rejected Holland's claims that its facilities had no material impact on the bulk electric system. NERC found that the independent study prepared by Black and Veatch on behalf of Holland, which examined the impact on METC of three different fault scenarios on Holland's system, was "inconclusive and did not sufficiently demonstrate that a loss of the Transmission Loop will not adversely impact the BES."²⁰ NERC also concurred with RFC's criticism that the Black and Veatch study "provides no justification for the election of any of the three test scenarios and provides insufficient data demonstrating the results of the tests."²¹ NERC noted that two of Holland's internal generating units are listed as key synchronizing points on the METC system, a point which NERC asserted was not refuted.²² NERC also pointed out that a fault on one of Holland's 138 kV lines could require relay coordination with METC. Finally, NERC found that Holland's "condition as net load" did not, by itself, demonstrate a lack of materiality, and instead found that Holland's loss of internal generation could impact METC's system through significant draws of power.

¹⁸ *Id.* at 8. .

¹⁹ Ex. HOL-16 at 12. NERC pointed out the contrasting response needed to deal with a fault on one of Holland's interconnecting lines in a radial system versus Holland's looped system. NERC noted that with a true radial configuration, a fault on Holland's Black River-Waverly line or Black River-Quincy line would be isolated by operation of METC's breaker at Black River. With Holland's actual, looped system configuration, Holland's own breaker (at the Waverly or Quincy substations) would also operate to break flow to the fault from the opposite side of the Black River bus (carried through Holland's loop of 138 kV lines from the other side of the bus). *Id.*

²⁰ *Id.* at 13.

²¹ *Id.* at 14.

²² *Id.*

C. Holland's Appeal to the Commission

13. Holland appealed NERC's Registry Decision to the Commission on September 2, 2011. Holland asserts that its facilities qualify as local distribution facilities and are therefore exempt from inclusion as part of the Bulk-Power System under FPA section 215.²³ Holland argues that the burden is on NERC to show that Holland's facilities meet the statutory requirements of FPA section 215, but that NERC did nothing more than look to the 100 kV threshold adopted in its Registration Criteria and definition of bulk electric system in determining that Holland should be treated as transmission rather than local distribution.

14. Holland asserts that a functional test must instead be used to determine whether facilities qualify as local distribution facilities. Holland states that it does not transmit power across its system, and that it functions as local distribution based on the following factors: (1) Holland's system was designed to meet its own needs in serving its load; (2) Holland operated for years as an independent stand-alone utility; (3) Holland has no third party transmission or retail wheeling customers; (4) there are no viable wholesale commercial paths through Holland's facilities; and (5) METC does not consider Holland's system critical to METC's transmission system.²⁴

15. Holland also asserts that its facilities do not meet the statutory definition of Bulk-Power System because they are not necessary to reliably operate the interconnected transmission system.²⁵ Holland points to the factors discussed in Order No. 743 for determining whether lower-voltage facilities are necessary to reliably operate the interconnected system,²⁶ arguing that each of the noted factors weighs against a finding that Holland's system is necessary for the reliable operation of the transmission network. Specifically, Holland asserts that its 138 kV

²³ "Bulk-power system" is defined in FPA section 215(a) as follows:

(1) The term bulk-power system means --

(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof);

...

The term does not include facilities used in the local distribution of electric energy.

16 U.S.C. § 824o(a)(1) (emphasis added).

²⁴ Holland Appeal at 14.

²⁵ *Id.* at 16.

²⁶ *Id.* (citing to Order No. 743, 133 FERC ¶ 61,150 at P 37 and 38 (2010)).

facilities do not operate in parallel with other high voltage and EHV facilities, do not connect significant amounts of generation, and do not operate as part of a defined flow gate.²⁷

16. Holland also cites to the independent system study performed by Black & Veatch Corporation, designed to analyze whether an event on Holland's system could result in a "significant or cascading event" on the bulk electric system (and submitted to NERC as part of Holland's appeal of RFC's registration decision).²⁸ The study examines three fault scenarios on Holland's system, including one scenario which also assumed opening of the Waverly-Black River line with all Holland generation off line. Based on the system study findings that none of the fault scenarios resulted in "any unacceptable voltages or flows on the bulk electric system," Holland argues that the study shows that the Holland system has no material impact on the bulk electric system.

17. Holland also objects to RFC's and NERC's characterization of two of Holland's generating units as key synchronizing points for METC's System Restoration Plan.²⁹ Holland asserts that those units are only listed as part of that plan as indications of where Holland must synchronize with METC's system in order *for Holland* to import generation into its system. Holland further states that METC does not use the Holland points to synchronize with any other system, and that Holland's generating units are not critical to METC's System Restoration Plan.³⁰

18. In the alternative, Holland maintains that it is entitled to an exemption from registration as a radial facility under NERC's definition of bulk electric system. Holland states that it is connected to METC at only one point (the Black River substation), and that power does not flow back onto METC's system under normal or contingency conditions. Holland takes issue with NERC's findings in the Registry Decision that the system is "integrated" rather than radial because there are two breakers at the point of interconnection and because there is a possibility of bi-directional flows, and instead asserts that the more appropriate question is whether power can or does flow from the bulk electric system (METC's system), onto Holland's system, and then back onto the METC system. Holland maintains that there is "effectively no chance" under normal or contingency conditions that such through-flows would occur given Holland's relay protection schemes and the low impedance path onto Holland's system at the Black River substation.³¹

²⁷ *Id.* at 16, 19.

²⁸ *Id.* at 17.

²⁹ *Id.* at 19.

³⁰ *Id.* at 22.

³¹ *Id.* at 27.

19. Holland also asserts that NERC's Registry Decision is arbitrary and capricious and is not the product of reasoned decision-making, because NERC failed to rebut or affirmatively address the following material facts: (1) Holland has a single point of interconnection; (2) Holland has no control over its interconnection with METC; (3) Holland's facilities are used for local distribution; (4) Holland's load appears as net load; and (5) Holland provides no blackstart or other ancillary services to METC.³²

20. Holland maintains that no "gap" in reliability coverage will occur if Holland is not registered as a TO or TOP, and provides examples of several Reliability Standards that provide no reliability benefit if applied to Holland, including certain modeling and operating standards, personnel training standards, and cyber security standards.³³ Finally, Holland argues that it was denied due process, because NERC and RFC's registration process did not provide for (or otherwise allow consideration of) exemptions for local distribution, and because neither entity adequately demonstrated or otherwise provided guidance as to why Holland's facilities are considered sufficiently material to be included as part of the bulk electric system.³⁴

D. Interventions and Comments

21. Notice of Holland's appeal was published in the *Federal Register* on September 13, 2011, 76 Fed. Reg. 56,428 (2011), with interventions and protests due on or before October 3, 2011. Timely motions to intervene, without comment, were filed by RFC, the Transmission Access Policy Study Group, American Municipal Power, Inc., METC, and Consumers Energy Company. Timely motions to intervene, with comments, were filed by NERC, the City of Redding (Redding), the Public Utility District No. 1 of Snohomish County, Washington (Snohomish), and American Public Power Association (APPA).

22. On November 17, 2011, and November 18, 2011, respectively, Snohomish and Holland each filed a Motion for Leave to Answer and Answer to NERC's comments.

23. Other than NERC, none of the parties filed comments in support of the Registry Decision. The other intervenors who provided comments refrained from taking a substantive position as to Holland's registration status and instead expressed more general concerns about the process and standards used by NERC in determining registry status.

24. On November 17, 2011, Holland filed a request that the Commission direct NERC or RFC to submit the METC System Restoration Plan on which they relied in making their registry determination concerning Holland. On December 2, 2011, NERC submitted two versions of METC's System Restoration Plan (a current version and the 2008 version),

³² *Id.* at 27-30.

³³ *Id.* at 31-33.

³⁴ *Id.* at 33-38.

both submitted as privileged documents. Holland filed a Response to NERC's submission on December 15, 2011, objecting to NERC's submission of the documents as privileged materials and arguing that METC's refusal to provide the System Restoration Plan to Holland demonstrates that Holland is not a critical part of METC's plan. METC filed a Response to Holland's Response on December 21, 2011, taking no position on the registration question, but indicating that it had shared both versions of its System Restoration Plan with Holland and that it had no objection to Holland having access to the filed versions once a Protective Order had been put in place and a non-disclosure agreement signed.³⁵

1. NERC Comments

25. NERC asks the Commission to affirm its Registry Decision, asserting that its decision is based on an appropriate application of its Registry Criteria and that it is otherwise consistent with FPA section 215 and relevant Commission precedent. NERC asserts that the current BES definition, including the existing 100 kV threshold for transmission facilities, is determinative as to Holland's status as a TO/TOP.³⁶ In response to Holland's arguments under FPA section 215, NERC argues that the registration process has been approved by the Commission and is not at issue in this case. NERC notes that Holland has transmission lines and other facilities that exceed the 100 kV threshold for registration, and therefore Holland has the burden of establishing that its facilities are not material to the reliability of the Bulk-Power System.³⁷

26. NERC maintains that it gave due consideration to Holland's position, and that its Registry Decision provides clear references to the facts and evidence on which NERC relied.³⁸ NERC further notes that it was appropriate and permissible for it to rely on information that was publicly available on Holland's website, and that Holland has not disputed the information.³⁹

27. NERC explains that Holland's facilities do not qualify as local distribution facilities, which it characterizes as elements that carry electric energy in one direction only, from a single source point to load centers.⁴⁰ NERC argues that Holland's facilities do not qualify as local distribution, as they are not radial in nature, are not operated in a sectionalized state, and are otherwise capable of experiencing bi-directional flows. NERC explains that whenever one of

³⁵ See METC Response to Response of the City of Holland Michigan at 3 (Dec. 21, 2011).

³⁶ See NERC Comments at 4-7.

³⁷ *Id.* at 8.

³⁸ *Id.* at 9.

³⁹ *Id.*

⁴⁰ *Id.* at 10-11.

the breakers to the lines connected to the Black River substation opens, flow on Holland's system will automatically reverse where necessary to continue service to its load. NERC describes this reversible flow as "the key reliability benefit to Holland of having a loop at all."⁴¹

28. NERC counters Holland's claim that no reliability gap will occur if it is not registered as a TO or TOP.⁴² NERC notes that a fault on one of Holland's lines could require relay coordination between Holland and METC, and that the loss of Holland's internal generation would produce an increased draw from the Bulk-Power System that could be "significant" to METC and the rest of the Bulk-Power System. Finally, NERC notes that Holland owns and operates seven generating units which are part of the Bulk-Power System, although the Michigan Public Power Authority is the designated generator owner and operator.

2. Other Commenters

29. APPA does not take a substantive position as to whether Holland should be registered as a TO or TOP, but instead asks that the Commission "give close attention" to the due process issues raised by Holland.⁴³ APPA expresses its concern that RFC failed to respond to Holland's request for guidance as to how to demonstrate that facilities are not material to the reliability of the bulk electric system, or that facilities can qualify for an exemption as radial in nature or as local distribution. APPA also expresses concern that RFC rejected Holland's studies out of hand, without a hearing or technical conference. Finally, APPA raises the concern that NERC failed to make clear the evidence that would have been required to challenge RFC's findings or to provide fair procedures for consideration of Holland's arguments.

30. Similarly, Redding objects in principle to NERC's and the Regional Entities practice of "forcibly" registering entities without having a formal exemption process for entities that serve a distribution purpose and have no material impact on the Bulk-Power System. Redding asserts NERC lacks jurisdiction to exert authority over facilities used in local distribution, and that NERC's current appeals process for forcibly registered entities does not include the due process protections required by EP Act 2005.

31. Snohomish requests that the Commission hold Holland's appeal in abeyance pending completion of the revisions to NERC's definition of bulk electric system, or at a minimum make clear that any finding will not be regarded as precedent for other cases. Snohomish comments that while it does not take a position on whether Holland's system qualifies as a local distribution system, an owner and operator of facilities used solely for local distribution cannot be required to register as a TO or TOP under FPA section 215, regardless of the 100 kV

⁴¹ *Id.* at 11.

⁴² *Id.* at 13-14.

⁴³ APPA Comments at 1.

threshold incorporated in the definition of bulk electric system. Snohomish argues that such a determination will ultimately rest on how the facilities are used, and not solely on voltage.

32. In response to NERC's comment, Holland reiterates in its Answer that NERC is statutorily barred from requiring registration of facilities that are used in local distribution. In addition, Holland responds to NERC's characterization of distribution facilities as precluding bi-directional flow, arguing if NERC's approach is adopted, there would be no exemption for *any* networked distribution system or for any distribution system that includes internal generation. Holland also objects to Snohomish's request to defer ruling on Holland's appeal, noting that such a deferral would constitute a further denial of its due process rights.

33. Snohomish also filed an Answer to NERC's Comments, objecting to NERC's elevation of its registry criteria as the sole criteria for assessing whether facilities are properly registered, and to NERC's apparent position that networked facilities are not, by definition, local distribution, i.e., that distribution must be operated as an open "loop" or sectionalized to qualify for an exemption.

III. Discussion

A. Procedural Matters

34. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁴⁴ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

35. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to an answer or protest unless otherwise ordered by the decisional authority. However, the Commission will permit answers where it will not delay the proceeding and where it will assist the Commission in its decision-making process.⁴⁵ We will accept the Answers of both Holland and Snohomish, as they have assisted us in our decision-making.

36. We deny Holland's request to order the submission of the METC System Restoration Plans on which NERC relied in its Registry Decision. We do not rely on that plan, or the role of Holland's generation in that plan, in rendering our decision, and note that NERC's Registry Decision is adequately supported regardless of its consideration of the plan. Moreover, METC has indicated, and Holland has not refuted, that METC has provided the same versions of the plan to Holland as are now filed in this proceeding.⁴⁶

⁴⁴ 18 C.F.R. § 385.214 (2011).

⁴⁵ See, e.g., *Maine Public Service Co.*, 132 FERC ¶ 61,061 (2010).

⁴⁶ Because we are ruling on the merits of Holland's Appeal, Snohomish's request to defer a ruling in this case, pending the outcome of the proceeding considering NERC's proposed revisions to its definition of bulk electric system, is moot. We note, however, that

B. Commission Determination

37. The Commission denies Holland's appeal of the NERC Registry Decision and affirms that Holland is properly registered as a TO and TOP. We find that Holland's 138 kV facilities function as transmission and, therefore, are properly included as part of the Bulk-Power System subject to FPA section 215 jurisdiction. We further find that Holland is not entitled to an exemption as a radial facility under NERC's definition of bulk electric system, and that it has not met its burden of showing that its system does not have a material impact on the rest of the Bulk-Power System.

1. Local Distribution Exemption

38. As we have acknowledged in Order No. 743, Congress has specifically exempted facilities used in the local distribution of energy from the definition of Bulk-Power System, and such facilities accordingly cannot be included as part of the bulk electric system as defined by NERC.⁴⁷ Further, while we have endorsed the use of a 100 kV threshold as an "initial proxy for determining which facilities are local distribution, and which are transmission," we have acknowledged the necessity of identifying and excluding any local distribution that is improperly included as part of the bulk electric system using that threshold, in order to remain within the jurisdictional bounds of FPA section 215.⁴⁸

39. We have not adopted or endorsed a specific methodology for differentiating between local distribution and transmission under FPA section 215, but in Order No. 693 we described the essential distinction between transmission and distribution functions, as follows:

The transmission component of the Bulk-Power System is understood to provide for the movement of power in bulk to points of distribution for allocation to retail electricity customers. Essentially, transmission lines and other parts of the transmission system . . . serve to transmit electricity in bulk from generation sources to concentrated areas of retail customers, while the

our decision is limited to the facts and circumstances of this case and does not pre-judge the outcome of the pending proceedings in Docket Nos. RM12-6-000 and RM12-7-000 (revisions to NERC's BES definition); nor are we pre-judging whether Holland's registry status might change under NERC's proposed revisions, if adopted.

⁴⁷ See Order No. 743, 133 FERC ¶ 61,150 at P 37; see also Order No. 743-A, 134 FERC ¶ 61,210 at P 58 ("[W]e reiterate that facilities used for local distribution are excluded from the Bulk-Power System definition under *section 215*, and thus are excluded from the bulk electric system.")

⁴⁸ Order No. 743-A, 134 FERC ¶ 61,210 at P 67.

distribution system moves the electricity to where these retail customers consume it at a home or business.⁴⁹

We note that Holland's 138 kV facilities function as transmission facilities under this general concept, i.e., they are used to transport power at higher-voltages, from Holland's own generation or imported across the METC ties (at the same voltage levels that the power is transmitted by METC), to distribution substations where that power is *then* stepped down for distribution to Holland's retail load.⁵⁰

40. The non-radial nature of Holland's facilities also supports our conclusion that Holland's facilities function as transmission. Holland's system is not configured and does not function as a radial line. Holland's system is not serving load from a single transmission source. Instead, Holland's 138 kV lines are used to transport generation from both the METC interconnection and from generation on Holland's own system to distribution substations where the power is then stepped down to serve retail load.

41. Moreover, the Holland system can experience bi-directional flows, as NERC found in its Registry Decision, unlike a typical radial line. In certain circumstances the usual flows on Holland's system may reverse in such a way that power flows *across the METC breaker* at Black River. The configuration of Holland's interconnection, depicted in Holland's one-line diagram,⁵¹ indicates that when certain segments of Holland's 138 kV loop are taken out of service for maintenance, the power can flow out of Holland's system onto one bus at METC's Black River substation, across the bus-tie breaker, onto the other bus at METC's Black River substation and back on to Holland's system to supply Holland load on the other side of the breaker.

42. Finally, while we do not here find that facilities of 138 kV can never function as local distribution, we note that the elevated voltage level of Holland's facilities is an additional factor supporting a finding that the facilities serve a transmission function. We further note that Holland's case is distinguishable from that of systems in the Western region, where distribution lines are designed with comparatively high voltage levels due to the large distances that must be traversed in serving retail load. By contrast, Holland's 138 kV loop delivers power from Holland-owned generation facilities to Holland's 138 kV substations, where the voltage is reduced to distribution voltage levels before being distributed to Holland's retail customers.⁵²

⁴⁹ Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 23, n.20.

⁵⁰ See Ex. HOL-10 at 23.

⁵¹ *Id.*

⁵² According to Holland's website, it has 600 miles of distribution lines operated at levels between 120 V and 12.5 kV. See http://www.hollandbpw.com/electric/Pages/Electric_Distribution.aspx.

2. Radial Exemption

43. As noted above, NERC has included an exemption for radial facilities from its definition of bulk electric system: “Radial transmission facilities serving only load with one transmission source are generally not included in this definition.”⁵³

44. We find that NERC has adequately supported its finding that Holland’s facilities are not entitled to an exemption as radial facilities. First, the facilities are not radial in nature, and can and will experience bi-directional flow under certain conditions. Holland’s connection at Black River involves two separate 138 kV lines, one running from Black River to Holland’s Waverly substation and one running from Black River to Holland’s Quincy substation⁵⁴ The Black River-Waverly line and the Black River-Quincy line are interconnected via Holland’s 24 miles of 138 kV lines to form a loop.⁵⁵ The two buses connecting the two Holland lines at Black River are connected by a breaker that is closed in normal operations and under most contingencies.⁵⁶ As NERC noted, when an outage of one of the buses at Black River causes the Black River bus tie breaker to open, Holland’s breaker connected to the dead bus will also open, and flow on Holland’s system will automatically reverse to continue service to Holland’s loads along its loop.⁵⁷

45. In addition, as noted above, Holland’s system does not “serve only load from one transmission source,” but instead carries bulk power, from both generation on its own system and imports delivered by METC, to distribution substations where that power is subsequently stepped down for delivery to retail customers. Because Holland’s system is neither a radial facility but a loop subject to bi-directional flows, and because Holland is not serving only load from one transmission source, it does not qualify for an exemption from registration as a radial facility under NERC’s definition.

⁵³ NERC Registry Criteria, section I.

⁵⁴ See Holland Appeal at 27, 28, 29. The METC Black River substation is a 138 kV substation with ties to six 138 kV lines – the two Holland lines noted above as well as four lines owned and operated by METC. See Ex. HOL-10 at 23.

⁵⁵ See Ex. HOL-10 at 23.

⁵⁶ See *id.*

⁵⁷ In its Registry Decision, NERC found that Holland’s system configuration requires that Holland’s own breaker (at the Waverly or Quincy substations) operate to break flow to the fault from the opposite side of the Black River bus (carried through Holland’s loop of 138 kV lines from the other side of the bus). Moreover, even if the METC breaker on the other side of the 138 kV bus at Black River were open or opened as part of the METC protection system action in connection with a fault, Holland would still need to open its own breaker to stop flow to the fault from its generating units at 48th St./Industrial Substation or DeYoung Generating Plant. As a result, NERC concluded that Holland’s facilities are not radial. Ex. HOL-16 at 12.

3. Importance to the Bulk-Power System and Regulatory Gap

46. Because Holland's facilities exceed the 100 kV threshold as set forth in NERC's Registry Criteria, they are assumed to be material to the Bulk Power System.⁵⁸ We find that Holland has not provided a sufficient demonstration of its lack of impact on the rest of the bulk electric system to overcome that assumption, and agree with NERC that reliability could suffer if Holland is not required to comply with the mandatory Reliability Standards applicable to TOs and TOPs.

47. While Holland cites to a study that it asserts demonstrates a lack of material impact on the Bulk-Power System when faults on its own system occur, RFC and NERC found the study to be inadequate in a number of respects. As NERC noted, the study "provides no justification for the election of any of the three test scenarios and provides insufficient data demonstrating the results of the test."⁵⁹ Moreover, NERC noted that there was "no indication as to what generators and buses were monitored during the three test scenarios for frequency, angle, and voltage stability."⁶⁰ We agree that the findings in the Black and Veatch study are insufficient to overcome the assumption that Holland's 138 kV facilities, which are non-radial and have not been shown to be used solely for local distribution, can have a material impact on the Bulk-Power System.

48. Holland's 138 kV lines transmit a substantial amount of generation and, as NERC found in its Registry Decision, the loss of internal generation on Holland's system could produce an increased draw from METC that could be significant.⁶¹ In addition, while Holland may have limited control over the Black River substation interconnection, it does have control over the equipment at its own end of the tie-lines, including the 138 kV circuit breakers and associated protective relays at the Quincy St. and Waverly Rd. Substations. Operation of the equipment

⁵⁸ See *Solid Waste Authority*, 122 FERC ¶ 61,141 at P 13 (2008) (because NERC demonstrated that a generator satisfied the registry thresholds, it was unnecessary to demonstrate that the generator is material to Bulk-Power System reliability); see also Order No. 743-A, 134 FERC ¶ 61,210 at P 37 ("The suggested 100 kV threshold would maintain the current assumption, under NERC's current definition, that non-radial 100 kV transmission facilities (not local distribution) are part of the bulk electric system unless exempted through the process NERC develops.")

⁵⁹ Ex. HOL-16 at 14.

⁶⁰ *Id.* Moreover, we have indicated that a determination of whether facilities are subject to FPA section 215 should not focus solely on consequences of unreliable operation of the facilities in question.

⁶¹ While Holland does not appear to have provided an indication of its total generating capacity as part of the record, the Registry Decision indicates that Holland's total generating capacity is 226 MW, based on information provided on Holland's website. See Ex. HOL-16 at 2 (citing to <http://www.hollandbpw.com/electric/Pages/BaseLoadGeneration.aspx>).

on both ends of the lines must be coordinated whenever the lines are being switched into and out of service.

49. Additionally, a fault on one of Holland's 138 kV lines would require coordination of the protection systems on both ends of the lines. Thus, we agree with the NERC decision that compliance with Reliability Standards governing protection system maintenance, testing, coordination, and corrective action in the event of misoperations is necessary to ensure reliability of the Bulk-Power System under these circumstances.⁶²

50. Holland must also coordinate with METC in providing data necessary for system modeling and planning purposes. Contrary to Holland's assertions,⁶³ we find that METC/ITC does make use of Holland's steady-state and dynamic data for modeling and simulations required under MOD-010, and data on generation as required under MOD-012. Evidence in the record shows that METC includes "a model of Holland's system of generation substations, distribution substations, and 138 kV line[]" in METC's system planning models, rather than net load, based on METC's assessment that the use of Holland's dynamic sources provides a more accurate model.⁶⁴ While this is just one example, it illustrates the importance of Holland's compliance with the Reliability Standards that govern modeling data and analysis, including MOD-010 and MOD-012.

51. Based on the foregoing, the Commission denies Holland's appeal. However, as NERC recognized in its Registry Decision, there is nothing in its decision, the Registry Criteria, or the NERC Rules of Procedure that prevent Holland from working with NERC and the RFC to demonstrate that it should not be subject to certain of the TO and TOP requirements and Reliability Standards, based on technical or physical limitations of its facilities.⁶⁵

4. Sufficiency of Findings and Process

52. We also find that NERC's Registry Decision provides adequate support for its ruling, and that it affirmatively and adequately responded to the facts that Holland characterizes as material. NERC addressed Holland's claim that it has a single point of interconnection, and disagreed, finding that Holland is connected through two separate lines at two separate buses. NERC acknowledged that Holland has no control over its interconnection with METC at Black River, but found that fact unpersuasive given NERC's concerns about the impact on METC's system from misoperations or lack of coordination on facilities Holland *does* control. NERC also recognized that Holland's load can appear as net load,⁶⁶ and that Holland does not provide

⁶² Ex. HOL-16 at 14.

⁶³ See Holland Appeal at p. 31.

⁶⁴ *Id.*, Ex. HOL-14 at 9.

⁶⁵ See Ex. HOL-16 at 15.

⁶⁶ *Id.* at 3.

any blackstart or other ancillary services to METC,⁶⁷ but found those facts to be unpersuasive when considering Holland's materiality to the Bulk-Power System.⁶⁸ On the question of whether Holland's facilities qualify as local distribution, we find no denial of due process for NERC to rely on its Registry Criteria to make an initial determination that Holland's facilities qualify as transmission, and note that Holland's statutory arguments regarding the local distribution exemption have been fully preserved and considered as part of our review.

53. We find that Holland was not otherwise denied due process in seeking redress from RFC's initial registration decision. In addition to Holland's appeal, Holland was afforded the opportunity to submit additional information in support of its appeal, as well as a response to RFC's Assessment and Brief in Opposition to Holland's Appeal. In addition, NERC requested additional information from Holland and those responses, along with the rest of the information submitted by both parties, were considered by the NERC Board of Trustees Compliance Committee in rendering its decision.⁶⁹

The Commission orders:

The Commission hereby denies Holland's appeal of NERC's Registry Decision, as discussed in the body of this order.

By the Commission. Commissioner LaFleur is dissenting with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁶⁷ *Id.* at 6.

⁶⁸ *Id.* at 14.

⁶⁹ *Id.* at 5-6. We further note that NERC's reliance on publicly available materials, from Holland's website, is not improper. *See, e.g., Public Utility District No. 1 of Chelan County*, 98 FERC ¶ 61,279 at 62,205 (2002) (basing the Commission's ruling regarding the impact of certain turbine structures on fisheries, in part, on publicly available information).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

City of Holland, Michigan Board of Public Works

Docket No. RC11-5-000

(Issued April 19, 2012)

LaFLEUR, Commissioner, *dissenting*:

Section 215 of the Federal Power Act specifically excludes local distribution facilities from the Commission's reliability jurisdiction.¹ The City of Holland (Holland) alleges that its facilities are local distribution facilities and are therefore exempt from Commission jurisdiction and NERC regulation.²

The Commission has encountered arguments like Holland's before. Following Order No. 743,³ parties urged the Commission to clarify that the local distribution facilities excluded from the Commission's jurisdiction under section 215(a)(1) are the same local distribution facilities excluded from the Commission's jurisdiction under section 201(b).⁴ These parties argued that both sections exclude the same facilities because Congress used the same language in both sections without qualification or distinction.⁵ In Order No. 743-A, the Commission denied their request as premature, preferring instead to allow NERC to develop a process for differentiating between transmission and local distribution as part of its redefinition of the bulk electric system. The Commission stated that it would then evaluate NERC's process for consistency with the statute.⁶

Like the arguments made in the Order 743 proceeding, Holland's argument in this case

¹ 16 U.S.C. § 824o(a)(1) (excluding "facilities used in the local distribution of electric energy" from the definition of the Bulk Power System); 16 U.S.C. § 824o(b)(1) (limiting the Commission's reliability jurisdiction to the Bulk Power System).

² *Id.* § 824o(i)(1)(limiting NERC's authority to develop and enforce Reliability Standards to the Bulk Power System).

³ *Revision to Electric Reliability Organization Definition of Bulk Electric System*, Order No. 743, 75 Fed. Reg. 72,910 (Nov. 26, 2010), 133 FERC ¶ 61,150 (2010); *order on reh'g*, Order No. 743-A, 134 FERC ¶ 61,210 (2011).

⁴ 16 U.S.C. § 824(b)(1) (excluding "facilities used in local distribution" from the Commission's jurisdiction under Part II of the Federal Power Act).

⁵ Order No. 743-A, 134 FERC ¶ 61,210 at P 66.

⁶ *Id.* P 72.

raises fundamental questions about the limits of the Commission's authority. As the Public Utility District No. 1 of Snohomish (Snohomish) points out in its request for abeyance, these questions remain unanswered.⁷ If we believe that Congress intended to create two different classes of local distribution facilities identified by two different tests, then we have the burden of demonstrating that this is a reasonable interpretation of the statute. The Commission must adhere to the limits of its jurisdiction.

I believe that in Order No. 743-A the Commission correctly deferred consideration of these threshold questions until it reviews NERC's process for distinguishing between transmission and local distribution facilities. Therefore, I cannot agree with the majority that we should reach the question here of whether Holland's facilities are transmission. It is premature for the Commission to act in this case until the Commission resolves the threshold questions about its jurisdiction.

Therefore, I would hold Holland's appeal in abeyance pending the Commission's review of NERC's process for differentiating between transmission and local distribution.

Accordingly, I respectfully dissent.

Cheryl A. LaFleur
Commissioner

⁷ Order, P 31.