

I. BACKGROUND

On December 20, 2012, in Order No. 773,² the Commission issued a Final Rule approving modifications to the currently-effective definition of BES developed by NERC. In Order No. 773-A, the Commission issued an order on rehearing and clarification. In the orders, the Commission directed NERC to: (1) modify the exclusions for radial systems (Exclusion E1) and local networks (Exclusion E3) so that they do not apply to tie-lines, *i.e.* generator interconnection facilities, for BES generators; and (2) modify the local network exclusion to remove the 100 kV minimum operating voltage to allow systems that include one or more looped configurations connected below 100 kV to be eligible for the local network exclusion.³

On May 23, 2013, NERC requested that the Commission grant an extension of time of the effective date of the definition of BES from July 1, 2013 to July 1, 2014. The following parties submitted comments in support of NERC's Motion: The City of Alameda, California doing business as Alameda Municipal Power; Alcoa Inc. and Alcoa Power Generating Inc.; the City of Anaheim, California; Consumers Energy Company; Dow Chemical Company; the Edison Electric Institute and Electric Power Supply Association; the Electricity Consumers Resource Council; Exelon Corporation; and the National Association of Regulatory Utility Commissioners.

APPA-TAPS filed in partial support of NERC's Motion and "request[s] that NERC clarify that it will accept Rules of Procedure Exclusion Exception and Inclusion Exception requests now that will become effective and enforceable as of July 1, 2013."⁴ PacifiCorp supports NERC's Motion "to the extent the stay is limited to issues raised by the modifications

² *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, Order No. 773, 141 FERC ¶ 61,236 (2012), *order on reh'g*, Order No. 773-A, 143 FERC ¶ 61,053 (2013).

³ Order No. 773 at PP 155, 164.

⁴ Comments of APPA-TAPS at 4.

directed by the Commission in Order No. 773-A regarding Exclusions E1 and E3.”⁵ PacifiCorp requests that the Commission permit the remainder of the approved definition of BES to remain in effect starting July 1, 2013.

The Western Publicly-Owned Utility Group request that the Commission: “(1) reject NERC’s request for a year-long delay in the effective date of the BES Definition;⁶ (2) direct NERC to develop interim relief to address the limited and specific problems identified in NERC’s motion; (3) provide a clear statement that the Commission will not seek to enforce reliability standards on facilities affected by the changes to Exclusions E1 and E3 until the ambiguities created by the changes to these Exclusions required by Orders No. 773 and 773-A are resolved; (4) otherwise allow the BES Definition to go into effect as scheduled on July 1, 2013; and (5) allow the Rules of Procedure changes approved by the Commission in Orders No. 773 and 773-A to go into effect as scheduled.”⁷ Mason County Public Utility District No. 3, Benton Rural Electric Association, and Tillamook People’s Utility District filed in support of the Western Publicly-Owned Utility Group’s Answer.

II. COMMENTS

As explained below, the NERC Rules of Procedure and the BES Exceptions Process are intrinsically and inextricably tied to the BES Definition. Further, consistent with Section 215 of

⁵ Comments of PacifiCorp at 1.

⁶ The Western-Publicly Owned Utility Group (at 11) states that NERC’s decision to file the Motion for Extension violates the NERC standard development process “because the 24-month implementation period was specifically voted upon and supported by the balloting bodies.” The implementation plan remains unaffected by NERC’s Motion for Extension. The effective date of a Commission order is not subject to balloting or the NERC standard development process.

⁷ Comments of the Western Publicly-Owned Utility Group at 13. The Western Publicly-Owned Utility Group objects (at 6) to the currently effective BES Definition and its implementation, stating: “WECC has generally treated the existing BES definition as a *de facto* 100-kV bright-line threshold, resulting in significant over-registration and over-regulation across the West.” The Western Publicly-Owned Utility Group has an existing and available remedy via the appeals process set forth in the currently-effective NERC Rules of Procedure.

the Federal Power Act, the BES Definition can only be modified via the NERC Reliability Standards development process.

A. The BES Definition and the NERC Rules of Procedure Should Not be Implemented Separately

The Exception Process is used to add Elements to, and remove Elements from, the BES Definition and adds transparency and uniformity to the determination of what constitutes the BES. As the Commission has acknowledged, the Exceptions process is integral to the BES Definition and was required by the Commission to complement the BES Definition.⁸ As NERC explained in its Petition for Approval of Revisions to Adopt the Exception Procedure, the Exception process is “not intended to be used to resolve ambiguous situations.”⁹ Rather, as the Commission noted, “the exception process is only available **after** an initial determination has been made regarding whether an element is part of or not part of the bulk electric system through application of the definition to the Element.”¹⁰

The Exception Process can only be used **after** the BES Definition is applied, and as explained below, the BES Definition can only be modified through the NERC Reliability Standards development process. The BES Definition is being modified through the NERC Reliability Standards development process to address the Commission’s directed changes in Order Nos. 773 and 773-A. The Exception Process should not be implemented in contravention

⁸ Order No. 743 at P 111 (“We continue to believe that an exemption process is appropriate and is complementary to our directive, discussed earlier, that the ERO develop a revised definition of the term bulk electric system that addresses the concerns resulting from the current discretion of Regional Entities to develop alternative regional definitions of the term.”).

⁹ Petition of the North American Electric Reliability Corporation for Approval of Revisions to its Rules of Procedure to Adopt a Bulk Electric System Exception Procedure (January 25, 2012)(“NERC ROP Petition”) at p. 10-11. NERC requested that the Commission approve the proposed ROP revisions with the same effective date as the proposed effective date of the revised BES Definition. *See* NERC ROP Petition at 50.

¹⁰ Order No. 773 at P 26 citing the BES NOPR at P 38 (emphasis added).

of those Commission-directed changes.¹¹ Indeed, the very purpose of NERC's Motion is to afford time to address the Commission's directives and provide regulatory certainty to the industry on the Definition's application and implementation. The Selected Commenters seek to complicate an already complicated process and the Commission should not entertain such a proposal.¹²

B. The Commission Directives Will be Implemented in Phase 2 of the BES Definition Project

Section 215 of the Federal Power Act ensures that any modifications to a Reliability Standard, including the BES Definition, must be developed through the Reliability Standards development process.¹³ The scope of Phase 2 of the BES Definition is not limited to addressing only the Commission directives from Order No. 773 and 773-A, therefore the change to the BES Definition may impact more than Exclusion E1 and E3.¹⁴ Indeed, the proposed BES phase 2 draft Definition currently posted for comment contains changes to Inclusion I1, Inclusion I2, Inclusion I4, Inclusion I5, Exclusion E1, Exclusion E3, and Exclusion E4.¹⁵ Additionally, the BES Definition standard drafting team has the ability to evaluate an equivalent alternative approach that addresses the Commission's underlying concern or goal "as efficiently and

¹¹ Note, NERC is prepared to implement the Commission-approved version of the BES Definition together with Exceptions Process on July 1, 2013, if NERC's Motion is not granted by June 30, 2013.

¹² The BES Definition is incorporated into Appendix 2 of the Rules of Procedure and therefore the request of Selected Commenters to implement the BES Exception process on July 1, 2013 while extending the effective date of the BES Definition until July 1, 2014, cannot be implemented as requested. The comments of APPA-TAPS (at 1) in support of the extended July 1, 2014 effective date but seeking "clarification that the revisions to the NERC Rules of Procedure submitted in conjunction with the revised definition will be permitted to take effect on July 1, 2013" ignore the practical realities of the BES Definition. If the Motion for an Extension of the effective date is granted, the currently-effective BES Definition would remain in effect—which does not contain the Exception process.

¹³ APPA acknowledged this fact in its Request for Rehearing at 3 citing Order No. 693. *See also* Order No. 743 at P 131.

¹⁴ *See*

http://www.nerc.com/pa/Stand/Project%20201017%20Proposed%20Definition%20of%20Bulk%20Electri/bes_phase2_first_posting_roadmap_20130524_redline_llh_edd.pdf.

¹⁵ *Id.*

effectively as the Commission’s proposal.”¹⁶ Therefore, until the BES Definition has been revised through NERC’s Reliability Standards development process and approved by the Commission, it is unclear what revisions will be contained in the final BES Definition. For these reasons, the request for a limited stay to “issues raised by the modifications directed by the Commission in Order No. 773-A regarding Exclusions E1 and E3”¹⁷ should be rejected.

Further, the direct implementation of a Commission directive into a Reliability Standard or Definition by NERC would usurp the Reliability Standards development process. As the Commission stated in Order No. 693:

Consistent with section 215 of the FPA and our regulations, **any modification to a Reliability Standard, including a modification that addresses a Commission directive, must be developed and fully vetted through NERC’s Reliability Standard development process.** The Commission’s directives are not intended to usurp or supplant the Reliability Standard development procedure. Further, this allows the ERO to take into consideration the international nature of Reliability Standards and incorporate any modifications requested by our counterparts in Canada and Mexico. Until the Commission approves NERC’s proposed modification to a Reliability Standard, the preexisting Reliability Standard will remain in effect.¹⁸

Further, the Commission directed, in Order No. 743,¹⁹ that the BES Definition be developed through the NERC Reliability Standards development process:

For the reasons discussed more fully below, the Commission finds that the current definition of bulk electric system is insufficient to ensure that all facilities necessary for operating an interconnected electric energy transmission network are included under the “bulk electric system” rubric. Therefore, pursuant to section 215(d)(5) of the FPA, the Commission directs the ERO to modify, through the Standards Development Process, the definition of “bulk electric system” to address the Commission’s technical and policy concerns described more fully herein.²⁰

¹⁶ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693 at P 186, FERC Stats. & Regs. ¶ 31,242, *order on reh’g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

¹⁷ Comments of PacifiCorp at 1.

¹⁸ Order No. 693 at P 187.

¹⁹ *Revision to Electric Reliability Organization Definition of Bulk Electric System*, Order No. 743 at P 30, 133 FERC ¶ 61,150 (2010).

²⁰ *Id.* at P 30.

Accordingly, the modifications directed by the Commission must be, and are being, implemented through the NERC Reliability Standards development process. Any other action would supplant the regulatory model of NERC and be inconsistent with Section 215 of the Federal Power Act.

NERC is committed to working with industry through the Reliability Standards development process to comply with the Commission's directives and expects to file such a petition by no later than December 31, 2013, based on the current standard development schedule. An extension of the effective date of the BES Definition until July 1, 2014, will allow NERC and the Regional Entities additional time to provide clarity and guidance to affected entities. As recognized by the majority of comments submitted, if granted, NERC's Motion for Extension will provide needed regulatory certainty.

III. CONCLUSION

NERC respectfully requests that the Commission consider these comments, grant the May 23, 2013 Motion to extend the effective date of the Definition of BES from July 1, 2013 to July 1, 2014 as requested and issue an order prior to June 30, 2013 to extend the effective date.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 4th day of June, 2013.

/s/ Stacey Tyrewala
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