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Group
Electric Market Policy
Connie Lowe
However, this paragraph, if retained, needs to address status of Element during the Exception Request evaluation process. In other words, the paragraph needs to state whether an Element will be included or excluded during this stage of the process. (See also Dominion's comments to question 9 below.)
No
As a general matter, the process should be kept confidential. The only other entity who should be allowed access to related information is the owner of the Element where the Submitting Entity is not the owner. This appears to be implicitly addressed in section 4, but do not see explicit requirement that Submitting Entity provide information to the owner.
Yes
Dominion believes that the only group, besides the owner, who should be permitted to request access, is the owner's respective TOP with respect to Elements within its operating area.
Yes
Dominion believes that the Regional Entity, Planning Coordinator, Reliability Coordinator, Transmission Operator and Balancing Authority should be informed of each Exception Request in its area and should be allowed to participate, if desired, in the evaluation.
Yes
Dominion filed comments with the Project 2010-17 SDT stating its belief that the core BES definition should include any non-radial Element or Facility operated at 100 Kv or higher and should exclude any radial Element or Facility (regardless of operating voltage) as well as non-radial Element or Facility

operated below 100 kV. Dominion would prefer that the core definition also include defined criteria that are applied to an Element or Facility to determine whether or not material impact on the bulk power system is identified. An Element or Facility should be included where material impact is identified. Likewise, an Element or Facility should be excluded where a material impact to the bulk power system is not identified. Dominion believes an Element that meets the criteria in the 1st paragraph should be deemed to be part of the BES pending the process and that others are deemed not part of the BES until the Exception Request has been approved or disapproved and, if filed, any appeal of such decision.

The SDT should include more explicit language to address where an Exception Request is filed by an entity other than the owner of an Element. Each section should be modified to explicitly include language that requires the owner be provided with information concerning such request, specifically, its rights and involvement during each stage of the exception process, up to and including appeal. Dominion would also like to point out that it assisted in the preparation of the Edison Electric Institute's comments and therefore agrees with the comments raised by EEI.

Individual

Joe Petaski

Manitoba Hydro

No

The draft exception procedure is not a suitable method for a Registered Entity to use to determine if an element is part of the BES. A burden of proof should not apply if an entity is not trying to establish that a given element should be included or excluded from the BES definition. As well, it is unlikely that the Registered Entity would have access to all of the information required by the draft procedure to apply for a determination if the Registered Entity is unsure of the status of the element. Given how resource intensive and lengthy the proposed exception process is, we are also concerned that Regional Entities and NERC would be overwhelmed by determination requests and that this process may be used to delay compliance with the BES definition. NERC should develop a separate expedited process that aids Registered Entities in determining the status of an element based on the BES Definition.

Yes

If a Registered Entity is using the exception process to exclude an element from the BES, the Registered Entity is claiming that the element is not integral to the reliable operation of the BES so there is no reason that the information should not be made available to other Registered Entities. Registered Entities should have access to all exception requests for exclusions, since Manitoba Hydro believes that third parties should be given the opportunity to intervene and appeal these requests if they impact the reliability of their systems. NERC should also notify the industry of any precedent setting rulings on BES elements to ensure that industry has an opportunity to review and determine the applicability of such rulings to similarly situated elements owned by others. If a Registered Entity is using the exception process to include an element in the BES, then the information should be kept confidential as the Registered Entity is claiming that the element is integral to the reliable operation of the BES.

Yes

If a registered entity is using the exception process to exclude an element from the BES, the registered entity is claiming that the element is not imperative to the reliable operation of the BES so the Part A information except for item #11 should be publicly posted. If a registered entity is using the exception process to include an element in the BES, then the Part A information should be kept confidential as the registered entity is claiming that the element is integral to the reliable operation of the BES.

Yes

Third parties should be allowed to submit exception requests for the inclusion of elements for owners who are on the Compliance Registry if the third party has a responsibility for the reliability of the region where the element is located. Third parties should not be allowed to submit exclusions requests, as a non-owner would have no vested interest in excluding an element from the BES definition.

Yes

A process should be developed to allow Entity B to intervene in the proceeding and appeal the ruling made by NERC on the exception request. If Entity A and B are in different regions, both Regional Entities should submit a recommendation on the exception request to the NERC panel making the final decision on the status of the element.

Yes

The time period the Submitting Entity has to submit the missing information that the 'Regional Entity believes is readily available' should be specified rather than requiring that such information be submitted within 'a reasonable period of time'.

The NERC review is defined sufficiently but the process is not streamlined. The most streamlined approach is to develop a standalone, 100kV bright-line definition that contains inclusions and exclusions. The exception procedure is a lengthy and resource intensive process that will maintain regional discrepancies in the application of the BES definition.

-Following the proposed 24 month implementation period, the bright-line BES definition should apply to an element until ruled otherwise through the exception process. If the entity is unsure on the status of an element, as stated in Manitoba Hydro's response to Question 1, an expedited process should be developed to assist the entity in applying the BES definition.

The exception procedure is a complicated and resource intensive process. To be most effective, the BES definition should be a stand-alone 100kV bright line with any exception criteria being specified within the definition. Additionally: -FERC Order 743 directed the revision of the Bulk Electric System (BES) definition to improve clarity, to reduce ambiguity, and to establish consistency across all Regions. The proposed impact based exception procedure undermines all three of these targets. -The Technical Exceptions eliminate the 100kV 'bright-line' definition and introduce regional differences, both of which are contradictory to the goals of the BES revision project. -As currently written, there is no opportunity for the industry to review studies prepared by an entity requesting an exception and there may be assumptions made in these studies that are not reasonable. -The commitment for NERC to review and continuously monitor BES exceptions made through this process would be extremely onerous and resource intensive with little benefit to reliability. -To obtain industry consensus on the precise limits to determine if an element has sufficient impact on the BES to be included in the BES is not a reasonable or attainable endeavor. Manitoba Hydro also has the following specific comments: Section 1.2 -In the second sentence, the reference to "or other Applicable Government Entity in Canada or Mexico" should be deleted. Canadian legislation does not require that NERC Rules of Procedure be approved by Canadian government entities. This is only a requirement of U.S. legislation. Also, the term "Applicable Government Entity" is not a defined term under proposed Section 2.0 of the Procedure. -The fourth sentence of this section should be deleted as only Canadian and Mexican legislation can dictate whether and to what extent their jurisdictions can override/deviate from NERC Rules of Procedure, including this exception process, which bind NERC members. A statement in the NERC Rules of Procedure cannot bind or authorize Canadian/Mexican governmental authorities. For the same reasons, Footnote 2 should be deleted. -The fifth sentence should also include a reference to governing legislation and contracts, not just MOUs. Also, since the BES definition impacts the scope of adoption of standards and not compliance or enforcement per se, the reference should be to legislation, contracts and MOUs regarding the adoption of reliability standards. Reliability is governed by all of these instruments in Canada. Section 1.3 -This section requires clarification. It is not clear what the difference is between complying with the NERC procedure and "working with" the Regional Entity, NERC and Applicable Government Authorities to comply with the Procedure, as stated in this section. MH suggests that the wording be changed in this section to reflect that, except to the extent disallowed by governing legislation, contract or MOU, Canadian and Mexican entities will comply with the procedure for obtaining exceptions. Section 5.1.1 -There are no provisions explaining exactly how a request that impacts more than one Regional Entity is to be coordinated and whether a joint decision is issued or, if not a joint decision, what happens if two or more Regional Entities disagree. -There are no provisions in Section 5.0 requiring NERC or the Regional Entity to provide notice of the request to interconnected entities that may be impacted. Third parties that may be impacted should have a right to be notified and submit any objections, as well as a right of appeal under Section 9.0. Section 9.7 -The phrase "or the Applicable Canadian Governmental Authority" should be deleted as Canadian government authorities do not approve NERC Rules of Procedure and only Canadian legislation can allow an appeal from a NERC decision and prescribe an appeal period.

Individual

Eric Lee Christensen
for Snohomish County PUD
Yes
<p>While we agree that an entity should be able to obtain guidance from NERC and the REs as to whether a particular Element or Facility is part of the BES, we are concerned that the process proposed by the Rules of Procedure Drafting Team (“RoP Team”) is overly burdensome and cumbersome. The RoP Team proposes that an entity can obtain guidance only by going through the same process as an entity seeking an Exception where the BES definition clearly requires inclusion or exclusion of a particular Element or facility. The process will be time-consuming: based on the timelines included in the RoP Team draft, we estimate it would take nine months to a year for the process to reach a final result, even if there are no delays associated with incomplete filings, appeals, and the like. The process will also be burdensome, requiring the entity seeking guidance to, for example, perform TPL studies. We suggest that the ROP Team include a mechanism in the Exceptions Procedures that will allow an entity with doubts about how a particular Element or facility fits within the BES definition to obtain guidance quickly and efficiently. First, the ROP Team should propose a mechanism by which an entity can obtain informal guidance from the staff of NERC or the RROs through, for example, telephone contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition. Second, the ROP Team should provide for a more formalized mechanism to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance. For example, the IRS provides Private Letter Rulings, in which an entity with doubts about its tax status can submit a letter to the IRS explaining its situation and the IRS will then issue a letter setting forth how that situation will be handled under the tax laws. As long as the entity has accurately set forth the facts and its situation does not change, the letter ruling is generally considered binding both upon the entity seeking the ruling and upon the IRS. Similarly, FERC offers a “No-Action Letter” process, in which FERC-regulated entities can seek guidance on whether FERC’s enforcement staff would take enforcement action if the entity engaged in a particular course of conduct. See Interpretive Order Modifying the No-Action Letter Process and Reviewing Other Mechanisms For Obtaining Guidance, 123 FERC ¶ 61,157 (2008). On this score, we note the FERC has declined to extend the No-Action Letter process to NERC standards but has left the door open for NERC and the REs to adopt similar processes. Id. at P 9. In short, we urge the ROP Team to provide a mechanism by which entities can obtain firm guidance in order to quickly and efficiently resolve doubts about whether particular Elements or facilities are included in the BES definition. We believe the ROP Team’s May 9 draft does not provide a mechanism that is either quick or efficient.</p>
Yes
<p>Snohomish County PUD is troubled by the secrecy that currently surrounds the NERC enforcement process. Under the CMEP, the enforcement process is conducted as a confidential matter between the regulated entity and the NERC and RE staff. Only when an enforcement matter reaches FERC for approval is any light shed on the process and, even then, most matters are publicly described only in summary fashion. By conducting the process in secret, the industry loses the value of guidance that would otherwise be provided by publicly-available orders in which NERC and the RROs would explain what enforcement action they are taking and why. The industry also loses an effective mechanism to ensure that enforcement matters are handled consistently by NERC and among the various REs. Snohomish believes it would be a grave mistake for the RoP Team to replicate the confidential enforcement process in the BES Exceptions process and therefore urges the RoP Team to make the Exceptions process as public as possible, limiting access to information only in cases where necessary to protect national security or critical infrastructure information. A public process will be of substantial benefit to both the reliability agencies and the industry because it will allow the development of detailed records and decisions, from which the industry can obtain detailed guidance about how the BES Definition and the Exceptions process will be applied in specific situations. Ultimately, such public processes will make the Exceptions procedures function more efficiently because once the RRO and NERC have made a decision on a detailed record that is publicly available, similarly situated entities will be able to rely on that decision rather than being compelled to go through the entire Exceptions process. On the other hand, a process in which only the REs, NERC, FERC, and Canadian authorities have access to information about how similarly-situated utilities have been treated is fundamentally unfair to regulated entities, who have no opportunity to examine such information and to determine whether such precedent can be fairly applied to them. We note that the WECC Bulk Electric System</p>

Definition Task Force developed a process for hearing appeals involving technical issues arising from the BES definition. WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). The appeals process developed by the WECC Task Force is open and all documents are publicly available unless specific information must be treated as confidential under FERC rules or other laws. We suggest that the RoP Team follow the WECC Task Force's lead on this issue.

Yes

With the exception of item number 11 under Section 4.3.1 ("Identification and location(s) of Element(s) for which the Exception is being requested"), the information that would be required under Part A of the application is generally available public information and there is no good reason to treat it as confidential. The information under item number 11 may need to be treated as confidential under FERC's Critical Energy Infrastructure Information regulations and under the other national security regulations referenced in the RoP Team draft, but if the information is not required to be treated as confidential under those regulations, the Exceptions process should not treat it as confidential.

Yes

Snohomish agrees that one or more entities should be able to submit an Exception Request and that a single Exceptions process could cover multiple facilities or Elements. Snohomish anticipates that the Exception Request process in many cases will involve a system or large facility rather than particular Elements, and the process should be designed to easily accommodate such requests. For example, assuming the current definitions are adopted, it is easy to anticipate that an entity operating a Local Distribution Network ("LDN") that does not qualify for exemption from the BES under Exclusion E3 of the Standard Drafting Team's April 28 proposal might nonetheless seek an Exception on the grounds that the LDN does not materially impact the interconnect bulk transmission system. For example, a LDN that interconnects generation with more than 75 MVA of capacity would be classified as BES because it does not meet the requirements for Exemption E3 of the April 28 proposal. The entity seeking such an Exception should be able to file a single application rather than having to file multiple requests for each Element involved, so long as the Elements for which the entity seeks an Exception are adequately spelled out. In this regard, we are concerned that the language requiring "all such Elements" to be "separately identified" could prove extremely burdensome. If the entity owning the LDN sought an Exception, the requirement that every Element be listed in the Exception application, if applied literally, could prove extremely burdensome because the LDN consists of thousands, or perhaps tens of thousands of individual Elements. The NERC Glossary of Terms defines "Element" broadly to include "[a]ny electrical device with terminals that may be connected to other electrical devices such as a generator, transformer, circuit breaker, bus section, or transmission line." In the case of Exception sought for an LDN or other grouping of facilities, the entity applying for the Exception therefore could be required to list thousands of circuit breakers, sectionalizers, transformers, and other equipment contained within the LDN. Such a requirement would be extremely burdensome for the entity seeking the Exception and would provide little useful information to the regulators who would be required to rule on the Exception Request. Rather than requiring the entity to submit a full list of all Elements that would be excluded if the Exception Request is granted, we recommend that the Exception Request simply identify the points of demarcation between the BES and non-BES Elements that would result if the Request is granted, along with a one-line diagram of the remaining facilities or Elements that would be excluded. In most cases, we anticipate that the point of demarcation would be at some point in the transformer station where power delivered in bulk on regional transmission lines is stepped down to lower voltages for delivery on the local distribution system. We therefore recommend that Item 11 in Section 4.3.1 of the May 9 draft be deleted and replaced with the following: "11. Identification of the proposed point of demarcation between BES and non-BES elements, including the location and characteristics of any Elements associated with the point of demarcation, along with a one-line diagram of any other affected Elements or facilities."

Yes

We recognize that, in certain cases, the bright-line thresholds contained in the BES Definition may result in the exclusion of Elements that should be part of the BES because those Elements function as part of the bulk transmission system and their failure could result in cascading outages, separation events, or bulk system instability. We also agree that the RoP Team has identified the appropriate list of entities (REs, Planning Coordinators, Reliability Coordinators, and Balancing Area Authorities) that should be empowered to seek inclusion of Elements that are improperly excluded. That being said, we

anticipate that the BES Definition as currently drafted should work to include elements necessary for operation of the interconnected transmission system in nearly every case, and use of the Exceptions Process to seek inclusion of facilities improperly excluded by the BES Definition should be extremely rare. Although we agree that the RoP Team has correctly concluded that certain entities may seek to have one or more Elements included in the BES if those Element(s) are improperly excluded by operation of the BES Definition, we urge the RoP Team to include certain procedural protections for the owner/operator of the Elements sought to be brought into the BES through an inclusion process. First, we suggest that the RE or other entity seeking to include an Element first be required to contact the owner/operator of that Element, explaining the basis for its conclusion that the Element has a material effect on the reliability of the bulk interconnected system and therefore should be included in the BES. In this way, the owner/operator will receive notice of any attempt to include its Element(s) in the BES and, because the owner/operator will have extensive knowledge about the operation of its own system, it will have the information that might demonstrate to the satisfaction of the entity seeking inclusion that inclusion is not required, or else may be convinced to voluntarily register the Element(s) as part of the BES. If this initial process does not resolve the issue, the entity could then seek action from the relevant RE to require the owner/operator to register the Element(s) as BES, and the appropriate process for resolving any dispute could then be followed.

Yes

As explained in our response to Question 2, Snohomish believes the Exceptions process should be public, with information concerning Exception Requests broadly available unless limited by specific requirements related to Critical Energy Infrastructure Information or national security. For similar reasons, Snohomish believes that the Exceptions process will benefit from broad participation by all entities that are affected by, or potentially affected by, an Exceptions decision. Accordingly, we urge the RoP Team to allow for participation in the Exceptions process by all entities who are affected or potentially affected by an Exception Request. The rules should, in addition, allow for participation by state public utility commissions, industry trade groups, and others who either broadly represent the public interest or who broadly represent segments of the industry that could be affected by the Exceptions process. We do not believe the RoP Team needs to concern itself with placing restrictions on who may participate in an Exceptions process since entities are unlikely to invest the time, effort, and manpower necessary to participate unless they have an important interest that could be affected by the process. We are particularly concerned that an entity operating an Element that is downstream from an Element owned by another Entity should be allowed to participate in any process where the BES status of the upstream Element is at issue. The downstream owner/operator has a clear interest in the status of the upstream element, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct interests in an Exception process.

Yes

Snohomish supports the RoP Team's general approach, in which the RE can return an Exception Request to the entity making the request if insufficient information is provided. We would not support the approach, however, in the absence of a process such as that provided in Section 7.0, which allows the requesting Entity to challenge the RE's conclusion that inadequate information was presented. In addition, we believe several refinements are necessary to make the specific proposal put forward by the RoP Team on May 9 acceptable. Initially, because Section 5.1.3 simply addresses the question whether the entity filing an Exception Request has provided adequate information, the RE should be able to make that determination quickly, and the sixty-day period provided for in Section 5.1.3 is more than adequate to make such a determination. We therefore suggest that the phrase "will typically" in Section 5.1.3(a) be struck and replaced with the word "shall." Thus, the RE would have a hard deadline of sixty days in which to determine if the Exception Request is supported by adequate evidence and to notify the Requesting Entity if it is not. There is every reason to expect that the RE should be able to complete such an initial screening process within sixty days. In this connection, we note that we also found the references to the completion of the substantive phase of the Exceptions Process in Section 5.1.3(b) to be confusing. While we certainly agree that the RE should be required to complete its substantive review of the Exceptions Request within six months, we suggest that this deadline be spelled out at the end of Section 5.1.4. That is a more logical location for the six-month deadline because Section 5.1.4 specifies that the substantive phase of the Exceptions Process begins

when the RE determines the application is complete. It makes sense to include the provision specifying when the substantive phase must end in the same place. We note that, in extraordinary circumstances, such as a temporary staff shortage, an RE may not be able to meet the sixty-day deadline for its initial review or the six-month deadline for its substantive review, but that delays in these deadlines should occur only in extraordinary circumstances. We also note that we found the placement of language applying to both initial review and substantive review Section 5.1.3(b) to be confusing, because Section 5.1.3(a) deals only with the initial review for information adequacy. We therefore recommend that Section 5.1.3(b) be deleted and that it be replaced with a new Section 5.1.7, which would read as follows: "5.1.7 If the Regional Entity determines that extraordinary circumstances prevent compliance with the sixty-day deadline specified in Section 5.1.3 or the six-month deadline specified in Section 5.1.4, the Regional Entity, based on consultation with NERC, shall establish an alternative time period, which shall: (i) be publicly posted on the Regional Entity's website; (ii) shall provide for completion of the initial review provided in Section 5.1.3 and the substantive review provided in Section 5.1.4 in a period no longer than is justified by the extraordinary circumstances, and, (iii) be withdrawn as soon as the extraordinary circumstances no longer exist." [notes: (a) deletion of Section 5.1.3(b) would result in Section 5.1.3(a) being redesignated as Section 5.1.3, which is reflected in the draft language proposed here; (b) the cross-reference to Section 5.1.4 assumes that the six-month deadline now contained in Section 5.1.3(b) is moved to 5.1.4 as recommended above]. This language should ensure that the RoP Team's proposed sixty-day deadline for initial reviews and the proposed six-month deadline for substantive reviews will be met in all but extraordinary circumstances. The requirement that the RE consult with NERC and publish its findings should discourage use of extended deadlines unless genuinely required by the RE. At the same time, it will allow the RE to extend deadlines when necessary to address specific contingencies such as staff shortages, and to extend deadlines across the board so that the burden of delay caused extended deadlines is shared equally by all applicants. In order to assure that the RE is processing Exception requests in a timely fashion, we also suggest that the ROP Team add a requirement that each RE maintain an auditable workplan that tracks each Exception request that has been filed, the disposition of each request, the length of time from filing until disposition, and estimated times for completion of pending Exception requests. The RE would be required to provide information on the status of Exceptions to any interested entity, including NERC and the entities with an interest in any Exception process. We are also concerned that the May 9 draft lacks sufficient clarity about what information the RE can demand be filed with the Exception Request. Section 4.2(iii) of the May 9 draft provides that the RE can require a Submitting Entity to file "all or a portion of the additional Part B Required Information," and the definition of "Part B Required Information" does not provide any greater specificity. This potentially creates a problem because, depending on the grounds for the Exception Request, the Exception Request may be justified without filing all the information contemplated in Part B. For example, the May 10 "Technical Principles for Demonstrating BES Exceptions" proposes two alternative technical justifications for obtaining an Exception from the BES Definition. On the one hand, a Submitting Entity might claim that that its system is radial in character and therefore should be exempted under the first test proposed in the Technical Principles. In the alternative, the Submitting Entity might claim an exemption based on technical studies demonstrating that Elements or facilities are not necessary for the operation of the interconnected bulk transmission network. The evidence supporting these alternative technical justifications for exemption are very different and the RE should not be allowed to reject an Exception Request if it contains all the information necessary to justify exemption on one ground, even if no information related to the alternative technical justification is provided. Finally we are concerned with language in proposed Section 4.3.2 that would require technical information supporting an Exception Request to "be comprehensive, as opposed to summary information." While we agree in principle that the Submitting Entity must provide, for example, the documentation supporting any studies it provides, rather than just a summary of the study results, we are concerned that the word "comprehensive" may go too far. We therefore propose that the RoP Team replace the sentence "The information provided should be comprehensive. . . and should include any supporting documents, as required by the [technical criteria document]" with the following: "The submitting entity should provide all information reasonably necessary for the RE to evaluate the technical merit of its Exception claim, as further set forth in the [technical criteria document]." We anticipate that the technical criteria document would provide additional specificity about the data needed to evaluate the technical data submitted with the Exception Request.

No

While we recognize that NERC must ultimately approve any Exception Request granted by an RE, we are concerned that the procedure proposed by the RoP Team is unnecessarily complicated and time-consuming. As proposed, the May 9 draft would require: (1) a team of NERC technical staff to evaluate the Recommendation submitted to NERC over a period of 90 to 100 days (Section 8.0) after submission; (2) any appeal to be filed with the NERC Board of Trustees ("BOT") (Section 9.1) within 21 days; (3) the BOT to appoint a panel to decide the appeal, with the decision to be issued within ninety days (Section 9.3); (4) the panel decision to be appealed to the BOT Compliance Committee within 14 days, with a decision to issue within 45 days (Section 9.5); and, (5) the decision of the Compliance Committee to then be appealed to the FERC or the applicable Canadian authority. We see no good reason for such a cumbersome procedure once a Recommendation has been submitted to NERC. Instead, the NERC process should consist of a single step, where NERC's final decision is made by committee of experts appointed by the BOT and delegated full authority by NERC to make binding decisions. Such a panel could, of course, be supported by technical experts from NERC's staff. This approach, if implemented, will significantly streamline NERC's review of Recommendations submitted by the REs and allow a final decision to be reached in a substantially shorter time than the process proposed by the RoP Team. We are also concerned that the appeal process does not clearly define the standard for review of the RE's Recommendation. We urge the RoP Team to make clear that the technical and factual findings should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. This standard will encourage regional uniformity, take advantage of regional expertise, and discourage the filing of unnecessary appeals. Further, to the extent the RoP Team retains a structure in which there is a separate review by NERC technical personnel followed by a review at the BOT level, the technical team should be allowed to disapprove a Recommendation only on technical or factual grounds. Only the BOT (or its appropriate designee) should be entitled to disapprove an RE Recommendation on grounds that the Recommendation is based on an improper interpretation of the applicable rules. This is because the NERC technical team possesses no particular expertise in legal or interpretive issues, and the BOT should be charged with making such interpretive conclusions so that uniformity of interpretation is ensured. In addition, the Exception process should make clear that, if a Recommendation is disapproved by NERC, it should be remanded to the RE for appropriate resolution, which could include, for example, additional fact-finding or additional deliberation. Finally, in this connection, we urge the RoP Team to give careful consideration to the technical dispute resolution process developed by the WECC Bulk Electric System Definition Task Force. See WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). That process allows disputes about technical issues to be resolved expeditiously at the RE level by panels with local expertise. We believe this is the proper approach to resolving technical disputes, which in many cases are strongly influenced by local grid conditions, regional base cases, and the like.

Snohomish is concerned that the process proposed by the RoP Team will be lengthy and, without some specific procedural relief, registered entities will be saddled with needless compliance burdens during the process of obtaining a Recommendation from an RE and then obtaining approval of that Recommendation from NERC and FERC. In Snohomish's case, because we were inappropriately required to register for certain functions (TO, TOp) that assume Snohomish owns BES facilities, our ratepayers have borne several hundred thousand dollars in compliance costs that were unnecessary and do little or nothing to protect the interconnected bulk grid from cascading outages and other reliability events. Because the process proposed by the RoP Team is likely to take at least a year to reach final conclusion, and could take considerably longer, we are concerned that Snohomish and similarly-situated entities would continue to bear needless expense during this interim period. We therefore urge the RoP Team to add language making clear that once the RE issues a Recommendation, the affected entities can rely on that Recommendation and will not suffer adverse regulatory consequences even if the Recommendation is subsequently disapproved by NERC or FERC and ultimately reversed on remand to the RE. Specifically, we recommend that the following language be added at the end of Section 5 as a new Sections 5.2.4 and 5.2.5: "5.2.4 Upon issuance of a Recommendation by the RE in accordance with this Section 5.2, the Recommendation shall be binding upon the RE and the Submitting Entity. If the Recommendation is for Elements or facilities to be excluded from the BES, the Owner or Operator of the affected Elements or facilities shall not be subject to any penalties or other enforcement actions that are predicated on the classification of those Elements or groups of Elements as BES and the Owner or Operator may immediately seek de-registration under the NERC Statement of Compliance Registry from those functions that require

ownership or operation of BES Elements. If the Recommendation is for Elements or facilities to be included in the BES, the owner or operator of those Elements or facilities shall, if necessary, revise its registrations under the NERC Statement of Compliance Registry to reflect its ownership or operation of BES Facilities and shall comply with all appropriate Reliability Standards, subject to the transition period specified in the BES Definition. 5.2.5 If the Recommendation is disapproved on appeal by NERC or FERC and reversed or revised on remand by the RE, the Owner, Operator and RE shall take appropriate action to revise the Owner/Operator's registration and to achieve compliance with any required Reliability Standards, but no penalties shall be assessed against any entity for the period after a Recommendation was issued under Section 5.2.4 but before that Recommendation was reversed or revised if the result of the Recommendation was to exempt the entity from compliance with the Reliability Standard under which enforcement action is taken." This language will ensure that regulated entities can act upon the RE's Recommendation without penalty, but recognizes that the Recommendation could be reversed or revised after appeal. If such a reversal occurs, the regulated entity would be subject to appropriate enforcement action going forward from the date the reversal or revision of the Recommendation becomes effective, but not for the period between the issuance of the Recommendation and the effective date of the reversal or revision.

Snohomish has several additional comments and concerns about the May 9 Draft BES Exception Procedure, which we set forth here. General Concerns 1. Approval Process. Snohomish views the Exception process as a critical element of the overall effort to develop a workable definition of the BES. This is because the BES Standards Drafting Team has proposed a brightline approach that uses specific thresholds to define which facilities are included in the BES and which are excluded. As a general matter, the SDT's approach is sensible, but in certain cases it is bound to sweep in facilities that must be excluded, such as local distribution facilities, or to exclude facilities that are critical to operation of the interconnected bulk grid and therefore should be included. Accordingly, Snohomish believes that the entire BES definition, including the Exception process and related Technical Principles, is critical to developing a workable definition that complies with the requirements of Section 215 of the FPA. All aspects of the definition therefore should be vetted through the NERC Standards Development Process, including the full comment periods and ballot approval requirements provided for in that process. While we do not doubt the practical necessity of the division of labor that has been arrived at between the Standards Drafting Team and the Rules of Procedure Team, we are concerned that those elements of the BES definition that have been assigned to the Rules of Procedure team may be subject to approval in a process that provides considerably less due process and industry input than the Standards Development Process. Compare NERC Rules of Procedure § 1400 (providing for changes to Rules of Procedure upon approval of the NERC board and FERC) with NERC Standards Process Manual (Sept. 3, 2010) (providing for, e.g., posting of SDT proposals for comment, successive balloting, and super-majority approval requirements). Accordingly, regardless of which Team has taken responsibility for a particular element of the definition, we urge that all elements be vetted through the Standards Development Process. This will improve the content of the definition by bringing to bear industry expertise on all aspects of the definition and will thereby assure greater industry acceptance of the definition. Further, we believe that the failure to vet all material elements of the BES definition through the Standards Development Process would constitute a violation of FERC's direction that the revised BES definition be developed through the Standards Development Process. See Order No. 743-A, 134 FERC ¶ 61,210 at P 4 (2011) ("Order No. 743 directed the ERO to revised the definition of "bulk electric system" through the NERC Standards Development Process" (emph. added)). 2. Inclusion vs. Exclusion: While we recognize that the process for seeking exclusion of facilities improperly classified as BES is in most respects the same as the process for seeking inclusion of facilities improperly classified as non-BES, there are certain crucial distinctions between the two processes. In particular, as the RoP Team has properly concluded, the burden of proof and the class of entities who would seek an Exception is different in each process. We therefore believe it would add clarity to make a distinction between an "Exception Process," in which an owner or operator of an Element is seeking to have it excluded from the BES, and an "Inclusion Process," in which a Regional Entity, Balancing Authority, Reliability Coordinator, or Planning Coordinator seeks to have an Element classified as BES which it believes has been improperly excluded by the BES Definition. Specific Concerns Snohomish here notes a number of specific concerns with and suggestions for improvement to the May 9 Draft BES Exception Procedure. For convenience of reference, these are presented in the order they appear in that Draft rather than in order of priority of concern. 1. Purpose (Section 1): We find the first paragraph of Section 1 somewhat confusing. We suggest that the paragraph be replaced with the following: "The BES

Definition uses specific terms and thresholds that, in the majority of cases, should appropriately identify Elements and groups of Elements that are necessary to the reliable operation of the interconnected bulk transmission system and are therefore appropriately classified as BES. Conversely, the BES Definition should, in the majority of cases, exclude facilities used in local distribution and other facilities that do not significantly affect the reliable operation of the interconnected bulk grid. In certain cases, however, it is anticipated that the BES Definition will classify certain facilities as BES that should properly be excluded, and that it will classify certain facilities as non-BES that properly should be included. This Exception Procedure is intended to provide a mechanism that will allow facilities that are improperly classified as BES under the BES Definition to be excluded and to allow facilities improperly excluded under the BES Definition to be included based upon specific technical criteria." 2. Definitions (Section 2): The proposed definition of "Approval of Exception Request" specifies that the "determination" is to be made by "NERC." For the reasons stated in our response to Question 9, Snohomish is concerned that the waiting for NERC to approve the Exception Request entails a long delay that dilutes the value of the Exception process. Accordingly, we urge the definition to be rewritten to read "The determination by NERC or its designee that an Exception Request meets the criteria to receive an Exception." The definition of "Disapproval of Exception Request" should be changed to include the same "or its designee" language. The terms "BES" and "BES Definition" are somewhat confusing in that it is unclear why the two terms are different or need to be defined differently. In any event, it is advisable to state that "BES" means "The Bulk Electric System as defined in the NERC Glossary of Terms Used in Reliability Standards" because that is where the BES definition will ultimately reside. The definition of "Owner" recognizes that an operator of a facility may be different than the owner in some circumstances and may have an interest in seeking an Exception independent of the owner. We suggest that it may make the Procedures more consistent with common usage to refer to "Owner or Operator" in the text of the Procedures, as opposed to the approach in the May 9 draft, which is to refer to "Owner" in the text of the Procedures and then define "Owner" to include both the owner and operator of an Element. 3. Confidential Information (Section 4.2(iii), 4.4): As explained in our answer to Question 2, Snohomish believes the Exception Procedure should be open and transparent so that any entity with an interest in a particular Exception Request is allowed to participate in the process. We are concerned that the restrictions on access to information in Section 4.2 may limit the ability of interested parties to participate because they lack access to key information. The RoP Team must, of course, restrict access to information implicating national security, but such information should rarely be involved in the Exception process. Unless there is a specific need to protect information, the information should be available without restriction to interested parties. If there is a need to protect the information, the restrictions should be tailored to the sensitivity of the information. For example, FERC has developed regulations for information that is not national security information, but nonetheless could be sensitive from a security standpoint, which FERC classifies as Critical Energy Infrastructure Information ("CEII"). FERC's CEII regulations provide a model that may be useful for the RoP Team in establishing guidelines for access to sensitive information. 18 C.F.R. § 113. Under these regulations, the owners and operators of a facility and federal regulators may obtain access to CEII filed with FERC. Others may obtain access if they file a statement setting forth the need for access to the CEII. Here, the RoP Team might use a similar process, making clear that interested parties have access to CEII as long as they take precautions to ensure that the information does not become public. In this regard, we note that the category of persons eligible to review CEII is much broader than the category of persons who have been granted a security clearance and therefore can access, for example, National Security Information. We therefore urge the RoP Team to exercise care in defining the term "Eligible Reviewer" to ensure that the differing qualifications required to view different categories of information are clear and do not unduly interfere with access to information. We are also concerned that Section 4.2(iii) would restrict access to "Confidential Information," and "Confidential Information" has not been defined in the May 9 draft. Again, we emphasize that access to information should be restricted only when there is a legitimate need to restrict access, and we urge the RoP Team to keep this principle in mind when drafting a definition of "Confidential Information." Finally, because information may ultimately be filed with FERC as part of an appeals process, we recommend that the RoP Team bear in mind the requirements of FERC's CEII regulations and tailor the Procedures to ensure that the CEII regulations are complied with. One way to address this concern would be to add explicit language to the definition of "Protected FOIA Information" making clear that CEII is one category of information that is generally exempt from disclosure under FOIA. 4. Substantive Review (Section 5.2) We have several concerns with the specifics of the

substantive review process proposed by the RoP Team in Section 5.2. These are: a) Required Information: We are concerned that the language in Section 5.2.1 allowing the RE to request additional information is unnecessarily open-ended (the RE “may request additional information from the Submitting Entity or Owner”). We suggest that the RoP Team add some qualifiers to this language. We suggest two alternatives. First, the language could be rewritten to provide that the RE “may request additional information from the Submitting Entity or Owner if reasonably necessary for the Regional Entity to substantively evaluate the Exception Request.” Second, assuming that the Technical Principles document lays out information requirements in detail, the language could be rewritten to provide that the RE “may request additional information from the Submitting Entity or Owner if required under the [Technical Requirements document].” b) Deadline for completion of Substantive Review. As set forth in our answer to Question 7, we believe the RE should be required to complete its substantive review and offer its Recommendation within six months of the submission of a complete Exceptions Request. We recognize that extraordinary circumstances may sometimes prevent the RE from meeting this deadline. Accordingly, we recommend that the six-month deadline specified in Section 5.2.2 be subject to the same provision allowing for extension of deadlines in extraordinary circumstances as we recommended in our response to Question 7. For the same reason, we are concerned that the language in Section 5.2.2, which states that the RE “may” extend the deadline in a particular case simply by providing notice to the Submitting Entity allows too much discretion to the RE to unreasonably delay completion of its substantive review. We therefore recommend that the word “may” be replaced with the phrase “may with the assent of the Submitting Entity.” This would allow the RE and the Submitting Entity to agree on a delay to, for example, refine modeling or improve the information base in a situation where unusual complexities prevent completion of substantive review within the six-month deadline. But we emphasize that delay beyond six months should be the exception rather than the rule. c) Supplementation of Information (Section 6): The provision states that supplementary information may be provided “at any time prior to the Regional Entity issuing its Recommendation,” which by implication would prohibit the submission of supplementary information if the Recommendation has issued and is subject to appeal. We believe there may be circumstances in which important information becomes available during the appeal stage. For example, the relevant Planning Coordinator might issue a revised Base Case that substantially alters the outcome of the studies relied upon by the Submitting Entity and the RE during the Recommendation phase. Accordingly, we recommend that the first sentence of Section 6 be rewritten to read: “A Submitting Entity or Owner may, at any time during the pendency of an Exception Request or an Appeal of a Recommendation, submit supplemental information for the purpose of providing additional or revised Required Information.” The remaining language in Section 6 would be retained, which would require the entity submitting the supplemental information to provide a written explanation of the contents of the supplementary information and to demonstrate why it is relevant to the pending decision. Finally, we emphasize that, in the event supplemental information is submitted under Section 6, the entity whose interests might be prejudiced by such supplemental information should be allowed to submit a written response to the submission. Thus, if an RE submitted supplemental information tending to show that a particular Element has a material impact on the operation of the bulk interconnected system, the owner or operator of that Element should have the right to submit a written statement explaining why the information should not change the result sought by that owner or operator. d) Materiality of Changes to System Conditions (Section 10.2): We recognize that if the information relied upon by an RE in granting an Exception changes significantly, the Exception may no longer be justified where the new information demonstrates that the excepted Element has a material impact on the reliable operation of the interconnected bulk grid. We are concerned, however, that the draft language in Section 10.2, which would require a Registered Entity to report “any change of condition which would affect the Part A or Part B Required Information” is overly broad. Depending on the sensitivity of the analyses relied upon for the Part B information, routine changes in the load or facilities served by a particular Element could change how that Element interacts with BES elements. Hence, we suggest that Section 10.2 be rewritten as follows: “Registered Entities shall notify the appropriate Regional Entity within ninety days of any material change of condition which would substantially affect the Part A or Part B Required Information regarding an Element(s) to which an Exception applies.” Further clarity could be achieved by adding a definition of “Material Change,” which we suggest would read: “Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage

impact of a fault on the Element." e) BES Definition Flow Chart: While we support the idea of providing a process flow chart to help clarify how the Exception Process will work, we are concerned that flow chart provided by the Standards Drafting Team may not accurately reflect the intentions of the SDT and the RoP Team. For example, we believe neither Team intended, for example, a 5 MW solar plant interconnected to a 115-kV line to be included in the BES definition. However, following such an Element through the flow chart appears to produce the opposite result. Since the Element is interconnected at 115-kV, it would be considered under the "yes" branch of the chart. But since the Element meets neither one of the Inclusion criteria nor one of the Exclusion criteria, it winds up at the "No" branch at the bottom center of the chart, which results in it being assigned to the "Included in BES By Application of the BES Definition" box. We believe this is the opposite of what the Teams intended for such an Element.

Group

Northeast Power Coordinating Council

Guy Zito

No

Paragraph 3 which reads: "An entity unable to determine the status of an Element by application of the BES Definition also may submit an Exception Request under this Exception Procedure to obtain a determination of whether the Element is or is not within the BES." should be deleted. The determination of the status of an Element is outside the scope of this document. The exclusion and inclusion criteria should be clear without any ambiguity to allow an entity to be able to definitively determine the classification of an element, thereby eliminating the need for an entity to submit an exception request for an element to determine its classification.

No

Entities other than the RE, NERC, FERC, State or Canadian Provincial authorities should not be allowed access to exception related detailed information filed by an entity. The Reliability Coordinator and Balancing Authority should, however, have access to such information as they play a key reliability role. Parties other than those listed above should only be allowed to review the request after a decision is rendered by NERC and then only by request, except to the extent that the Part A information is made public.

Yes

The information in Part A of Section 4 is only appropriate for a public posting but not for comment, since it describes general information about the element for which a submitting entity is requesting an exception. The information in Part B should be kept confidential.

Yes

Suggest that the scope of the Elements that can be contained in a single Request should be based on:
1. Elements owned by the same entity. 2. Having similar electrical configurations and technical justifications for exception. 3. Information provided for each element along with a single line diagram to confirm configurations and electrical characteristics. Multiple entities should only join a single request for elements with joint ownership and/or common interconnections. In addition, Facility owners and Reliability Coordinators or Regional Entities should also be allowed to file for a joint application. The scope of elements should not be overly limited, as this may require unnecessary exception applications for elements having similar characteristics.

Yes

Third parties limited to applicable Regional Entities, Planning Coordinators, Reliability Coordinators, or Balancing Authorities may submit an Exception Request for an element in their respective areas for reliability purposes, specifically in the case of inclusions.

No

(Refer to the comments to Question 4) Third parties (Entity B) not connected to the element should only be allowed to raise their concerns or endorsements to an application through the relevant Reliability Coordinator, Regional Entity or regulatory authority but not be allowed to intervene or file an exception. The only entities that should be allowed to raise concerns should be limited to the connected GO, TO or a distribution utility along with Reliability Coordinator, Regional Entity or regulatory authority. As such it should not matter if Entity A and Entity B are in the same regions. This should make the process more efficient. What is the criteria for intervention that should be allowed--i.e. demonstrative criteria that an intervening party must submit? If two entities are in

different regions, then the Regional Entity of that particular element in consultation with other regions should conduct an evaluation to decide whether or not the element under consideration should be a part of the BES. Any one of the Regional Entities (or jointly) can submit its recommendation to NERC for approval or disapproval. Following the submission of a recommendation to NERC, a submitting Entity or owner can still submit a comment in support of or in opposition to the recommendations. [Refer to Section 8 of the "Draft BES exception procedure"]

Yes

Yes

Language is required to acknowledge approval or disapproval of the relevant Federal, State or Provincial regulator.

The status of an element should remain the same before the request is submitted and should only change after a final decision has been rendered by the ERO or relevant regulatory authority.

The RoP Drafting Team is to be commended for having put forward an exception procedure that has creatively put forward a process to allow regulatory differences in North America while promoting fundamental principles of consistency to ensure the reliability of the interconnected transmission network. However, there are inherent differences between the regions that cannot be addressed in a single document, and a mention should be made of those regional differences. The RoP team should develop a template for the technical assessment report that shall be used by all entities filing for an exception. Such a template will make the evaluation process more efficient.

Group

Arizona Public Service Company

Janet Smith

Language should be included to establish a period of time during which the Responsible Entity would not be in violation, and would not be subject to sanctions or penalties for violations, of a Requirement that is the subject of an Exception. This period should generally cover the period of time that the request for an Exception is subject to substantive review by the Regional Entity or appeal. The Exception Process should also include language to address the handling of submissions for "new" elements that includes a "grace period" to allow for the submission up through and including the appeals process, without subjecting a Registered Entity to a potential compliance issue.

AZPS appreciates the opportunity to submit comments for consideration to the Drafting Team. It is important that during the evolution of this drafting process, a clear set of conditions or criteria evolve in order that a Responsible Entity's compliance requirements are well understood, supported by a solid foundation of clear rules. Additionally, a recourse avenue, such as a right of appeal, should also be included to allow a Registered Entity to appeal a decision by a Regional Entity regarding the rejection or denial of an exception request. AZPS believes the Exception Process must include an appeal process to provide a fair and equitable regulatory environment.

Group

New York Power Authority

Randy D. Crissman

No

"An entity unable to determine the status of an Element by application of the BES Definition also may submit an Exception Request under this Exception Procedure to obtain a determination of whether the Element is or is not within the BES." should be deleted. The determination of the status of an Element is outside the scope of this document.

No
Entities other than the RE, NERC, FERC, State or Canadian Provincial authorities should not be allowed access to exception related detailed information filed by an entity. The Reliability Coordinator and Balancing Authority should, however, have access to such information as they play a key reliability role. Parties other than those listed above should only be allowed to review the request after a decision is rendered by NERC and then only by request, except to the extent that the Part A information is made public.
Yes
None.
No
Suggest that the scope of the Elements that can be contained in a single Request should be based on: 1. Elements owned by the same entity. 2. Having similar electrical configurations and technical justifications for exception. 3. Information provided for each element along with a single line diagram to confirm configurations and electrical characteristics. Multiple entities should only join a single request for elements with joint ownership and/or common interconnections.
Yes
Third parties limited to applicable Regional Entities, Planning Coordinators, Reliability Coordinators, or Balancing Authorities may submit an Exception Request for an element in their respective areas for reliability purposes, specifically in the case of inclusions.
No
Third parties (Entity B) not connected to the element should only be allowed to raise their concerns or endorsements to an application through the relevant Reliability Coordinator, Regional Entity or regulatory authority but not be allowed to intervene or file an exception. The only entities that should be allowed to raise concerns should be limited to the connected GO, TO or a distribution utility along with Reliability Coordinator, Regional Entity or regulatory authority. As such it should not matter if Entity A and Entity B are in the same regions. This should make the process more efficient. If two entities are in different regions, then the Regional Entity of that particular element in consultation with other regions should conduct an evaluation to decide whether or not the element under consideration should be a part of the BES. Any one of the Regional Entities (or jointly) can submit its recommendation to NERC for approval or disapproval. Following the submission of a recommendation to NERC, a submitting Entity or owner can still submit a comment in support of or in opposition to the recommendations.
Yes
Yes
The status of an element should remain the same before the request is submitted and should only change after a final decision has been rendered by the ERO or relevant regulatory authority.
The RoP team should develop a template for the technical assessment report that can be used by all entities filing for an exception to provide feedback on the process. Such a template will make the evaluation process more efficient.
Group
SERC Planning Standards Subcommittee
Charles W. Long
Yes
No
The RE, NERC, FERC, and Canadian Provincial Authorities are the appropriate entities.
Yes
No
No limit on scope is needed.

No
A request for exclusion should be limited to the facility owner, but a request for inclusion should be open to an RE, PC, RC, or BA that are responsible for the reliability of the facility.
Yes
The reliability impacts on the parties should be the main consideration.
Yes
Yes
The status should be the same as before the request was submitted, no change before the request is approved.
The comments expressed herein represent a consensus of the views of the above-named members of the SERC EC Planning Standards Subcommittee only and should not be construed as the position of SERC Reliability Corporation, its board, or its officers.
Individual
Kevin Conway
Intellibind
Yes
Yes
Yes the interconnected Transmission Operator and Host BA should have access to this information and be involved in this process.
No
This information should not necessarily be posted for public posting for the general public. This will invite comments other than BES reliability related. Activist agencies may try and use the information to further a political agenda, clouding the BES exclusion/inclusion process. I have seen where this happened in one case making the request very difficult to properly assess. Information should only include the identification of the entity, and the facilities being asked to be removed or included in the BES definition.
Yes
The scope of the elements would depend on the scope of the request. Elements should be related, such as in a path, or at the same overall facility. If the elements all converge to a single BES point, like a wind farm, everything to the point of interconnection can be grouped. I do not see where a simple formula can be specified.
Yes
Yes, but this must require that entity being party to the request for exemption. Any third party entity should be able to request inclusion. I add this to prevent an entity from not registering despite the studies done by an interconnected TOP or Host BA.
Yes
The factors should be based on the power flow studies as submitted by all parties. An entity that has an interest in not being registered may not include data that would cause them to be included. On the other side, a third party may have specific economic reasons to include another party. If there is no consensus, then both parties should supply data per their perspective and the Region or NERC should make the determination based on the data.
No
Especially for small entities, the Region should first contact the entity directly to discuss the missing information prior to rejection. Companies who are not familiar with the process would unnecessarily be forced into a circular process of rejection until they get it right. The goal would be to assist the entity in the process not burden them with administrative procedures. Since the process, as written, does not allow this communication there is a likelihood that common sense would not prevail on correcting the errors or properly completing the request.
No

NERC should not be limited to requiring the entity representatives to travel to the offices. Conference calls or Web conferencing should be allowed. In no case should NERC Staff only to discuss with one entity. Any questions or interviews on the requested exception should require all parties to participate to ensure that the idea of back door processes are eliminated. The entity should have the opportunity to hear what the Region may have to say and be able to defend itself.

Pending a request, the entity is obligated to meet NERC Standards.

Yes, thank you for this opportunity to comment. First off exceptions should be based on facility ratings not the bright line nameplate. I have personal experience working with a facility that is rated at below 20 MWs, but has a nameplate that is 26MWs. I have another example of an entity that had the interconnected TOP terminate additional lines in their substation/switchyard. This termination now results in the entity not being a radial load, not from actions that the entity took, but due to the interconnection of the yard with multiple lines. The entity should be able to ask for an exception because it is radial to the transmission system. How will the exception process be applied for entities like these? Most importantly, the largest burden of cost for asking for an exception will be born by the small companies who have little access to data, engineering staff, information, and resources. Because of this, the process should be made friendlier to these companies. Many small companies, BES operation is a secondary operation, not a primary one. They operate on shoestring budgets, and will find the process as outlined as very expensive and burdensome. They also have very little understanding of NERC and Regional process. The Region should be enabling to these folks, not act as an obstacle. Interconnected TOPs should also be required to assist and participate with the process when requested by small entities such as small generators.

Individual

David Proebstel

Clallam County PUD

Yes

While we agree that an entity should be able to obtain guidance from NERC and the REs as to whether a particular Element or Facility is part of the BES, we are concerned that the process proposed by the Rules of Procedure Drafting Team ("RoP Team") is overly burdensome and cumbersome. The RoP Team proposes that an entity can obtain guidance only by going through the same process as an entity seeking an Exception where the BES definition clearly requires inclusion or exclusion of a particular Element or facility. The process will be time-consuming: based on the timelines included in the RoP Team draft, we estimate it would take nine months to a year for the process to reach a final result, even if there are no delays associated with incomplete filings, appeals, and the like. The process will also be burdensome, requiring the entity seeking guidance to, for example, perform TPL studies. We suggest that the ROP Team include a mechanism in the Exceptions Procedures that will allow an entity with doubts about how a particular Element or facility fits within the BES definition to obtain guidance quickly and efficiently. First, the ROP Team should propose a mechanism by which an entity can obtain informal guidance from the staff of NERC or the RROs through, for example, telephone contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition. Second, the ROP Team should provide for a more formalized mechanism to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance. For example, the IRS provides Private Letter Rulings, in which an entity with doubts about its tax status can submit a letter to the IRS explaining its situation and the IRS will then issue a letter setting forth how that situation will be handled under the tax laws. As long as the entity has accurately set forth the facts and its situation does not change, the letter ruling is generally considered binding both upon the entity seeking the ruling and upon the IRS. Similarly, FERC offers a "No-Action Letter" process, in which FERC-regulated entities can seek guidance on whether FERC's enforcement staff would take enforcement action if the entity engaged in a particular course of conduct. See Interpretive Order Modifying the No-Action Letter Process and Reviewing Other Mechanisms For Obtaining Guidance, 123 FERC ¶ 61,157 (2008). On this score, we note the FERC has declined to extend the No-Action Letter process to NERC standards but has left the door open for NERC and the REs to adopt similar processes. Id. at P 9. In short, we urge the ROP Team to provide a mechanism by which entities can obtain firm guidance in order to quickly and efficiently resolve doubts about whether particular Elements or facilities are included in the BES definition. We believe the ROP Team's May 9 draft does not provide a mechanism that is either quick or efficient.

Yes

Clallam County PUD is troubled by the secrecy that currently surrounds the NERC enforcement process. Under the CMEP, the enforcement process is conducted as a confidential matter between the regulated entity and the NERC and RRO staff. Only when an enforcement matter reaches FERC for approval is any light shed on the process and, even then, most matters are publicly described only in summary fashion. By conducting the process in secret, the industry loses the value of guidance that would otherwise be provided by publicly-available orders in which NERC and the RROs would explain what enforcement action they are taking and why. The industry also loses an effective mechanism to ensure that enforcement matters are handled consistently by NERC and among the various REs. Clallam believes it would be a grave mistake for the RoP Team to replicate the confidential enforcement process in the BES Exceptions process and therefore urges the RoP Team to make the Exceptions process as public as possible, limiting access to information only in cases where necessary to protect national security or critical infrastructure information. A public process will be of substantial benefit to both the reliability agencies and the industry because it will allow the development of detailed records and decisions, from which the industry can obtain detailed guidance about how the BES Definition and the Exceptions process will be applied in specific situations. Ultimately, such public processes will make the Exceptions procedures function more efficiently because once the RRO and NERC have made a decision on a detailed record that is publicly available, similarly situated entities will be able to rely on that decision rather than being compelled to go through the entire Exceptions process. On the other hand, a process in which only the REs, NERC, FERC, and Canadian authorities have access to information about how similarly-situated utilities have been treated is fundamentally unfair to regulated entities, who have no opportunity to examine such information and to determine whether such precedent can be fairly applied to them. We note that the WECC Bulk Electric System Definition Task Force developed a process to hearing appeals involving technical issues arising from the BES definition. WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). The appeals process developed by the WECC Task Force is open and all documents are publicly available unless specific information must be treated as confidential under FERC rules or other laws. We suggest that the RoP Team follow the WECC Task Force's lead on this issue.

Yes

With the exception of item number 11 under Section 4.3.1 ("Identification and location(s) of Element(s) for which the Exception is being requested"), the information that would be required under Part A of the application is generally available public information and there is no good reason to treat it as confidential. The information under item number 11 may need to be treated as confidential under FERC's Critical Energy Infrastructure Information regulations and under the other national security regulations referenced in the RoP Team draft, but if the information is not required to be treated as confidential under those regulations, the Exceptions process should not treat it as confidential.

Clallam agrees that one or more entities should be able to submit an Exception Request and that a single Exceptions process could cover multiple facilities or Elements. Clallam anticipates that the Exception Request process in many cases will involve a system or large facility rather than particular Elements, and the process should be designed to easily accommodate such requests. For example, assuming the current definitions are adopted, it is easy to anticipate that an entity operating a Local Distribution Network ("LDN") that does not qualify for exemption from the BES under Exclusion E3 of the Standard Drafting Team's April 28 proposal might nonetheless seek an Exception on the grounds that the LDN does not materially impact the interconnect bulk transmission system. For example, a LDN that interconnects generation with more than 75 MVA of capacity would be classified as BES because it does not meet the requirements for Exemption E3 of the April 28 proposal. The entity seeking such an Exception should be able to file a single application rather than having to file multiple requests for each Element involved, so long as the Elements for which the entity seeks an Exception are adequately spelled out. In this regard, we are concerned that the language requiring "all such Elements" to be "separately identified" could prove extremely burdensome. If the entity owning the LDN sought an Exception, the requirement that every Element be listed in the Exception application, if applied literally, could prove extremely burdensome because the LDN consists of thousands, or perhaps tens of thousands of individual Elements. The NERC Glossary of Terms defines "Element" broadly to include "[a]ny electrical device with terminals that may be connected to other electrical devices such as a generator, transformer, circuit breaker, bus section, or transmission line." In the

case of Exception sought for an LDN or other grouping of facilities, the entity applying for the Exception therefore could be required to list thousands of circuit breakers, sectionalizers, transformers, and other equipment contained within the LDN. Such a requirement would be extremely burdensome for the entity seeking the Exception and would provide little useful information to the regulators who would be required to rule on the Exception Request. Rather than requiring the entity to submit a full list of all Elements that would be excluded if the Exception Request is granted, we recommend that the Exception Request simply identify the points of demarcation between the BES and non-BES Elements that would result if the Request is granted, along with a one-line diagram of the remaining facilities or Elements that would be excluded. In most cases, we anticipate that the point of demarcation would be at some point in the transformer station where power delivered in bulk on regional transmission lines is stepped down to lower voltages for delivery on the local distribution system. We therefore recommend that Item 11 in Section 4.3.1 of the May 9 draft be deleted and replaced with the following: "11. Identification of the proposed point of demarcation between BES and non-BES elements, including the location and characteristics of any Elements associated with the point of demarcation, along with a one-line diagram of any other affected Elements or facilities."

Yes

We recognize that, in certain cases, the bright-line thresholds contained in the BES Definition may result in the exclusion of Elements that should be part of the BES because those Elements function as part of the bulk transmission system and their failure could result in cascading outages, separation events, or bulk system instability. We also agree that the RoP Team has identified the appropriate list of entities (REs, Planning Coordinators, Reliability Coordinators, and Balancing Area Authorities) that should be empowered to seek inclusion of Elements that are improperly excluded. That being said, we anticipate that the BES Definition as currently drafted should work to include elements necessary for operation of the interconnected transmission system in nearly every case, and use of the Exceptions Process to seek inclusion of facilities improperly excluded by the BES Definition should be extremely rare. Although we agree that the RoP Team has correctly concluded that certain entities may seek to have one or more Elements included in the BES if those Element(s) are improperly excluded by operation of the BES Definition, we urge the RoP Team to include certain procedural protections for the owner/operator of the Elements sought to be brought into the BES through an inclusion process. First, we suggest that the RE or other entity seeking to include an Element first be required to contact the owner/operator of that Element, explaining the basis for its conclusion that the Element has a material effect on the reliability of the bulk interconnected system and therefore should be included in the BES. In this way, the owner/operator will receive notice of any attempt to include its Element(s) in the BES and, because the owner/operator will have extensive knowledge about the operation of its own system, will have the information that might demonstrate to the satisfaction of the entity seeking inclusion that inclusion is not required, or else may be convinced to voluntarily register the Element(s) as part of the BES. If this initial process does not resolve the issue, the entity could then seek action from the relevant RE to require the owner/operator to register the Element(s) as BES, and the appropriate process for resolving any dispute could then be followed.

Yes

As explained in our answer to Question 2, Clallam believes the Exceptions process should be public, with information concerning Exception Requests broadly available unless limited by specific requirements related to Critical Energy Infrastructure Information or national security. For similar reasons, Clallam believes that the Exceptions process will benefit from broad participation by all entities that are affected by, or potentially affected by, an Exceptions decision. Accordingly, we urge the RoP Team to allow for participation in the Exceptions process by all entities that are affected or potentially affected by an Exception Request. The rules should, in addition, allow for participation by state public utility commissions, industry trade groups, and others who either broadly represent the public interest or who broadly represent segments of the industry that could be affected by the Exceptions process. We do not believe the RoP Team needs to concern itself with placing restrictions on who may participate in an Exceptions process since entities are unlikely to invest the time, effort, and manpower necessary to participate unless they have an important interest that could be affected by the process. We are particularly concerned that an entity operating an Element that is downstream from an Element owned by another Entity should be allowed to participate in any process where the BES status of the upstream Element is at issue. The downstream owner/operator has a clear interest in the status of the upstream element, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream

element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct interests in an Exception process.

Yes

Clallam supports the RoP Team's general approach, in which the RE can return an Exception Request to the entity making the request if insufficient information is provided. We would not support the approach, however, in the absence of a process such as that provided in Section 7.0, which allows the requesting Entity to challenge the RE's conclusion that inadequate information was presented. In addition, we believe several refinements are necessary to make the specific proposal put forward by the RoP Team on May 9 acceptable. Initially, because Section 5.1.3 simply addresses the question whether the entity filing an Exception Request has provided adequate information, the RE should be able to make that determination quickly, and the sixty-day period provided for in Section 5.1.3 is more than adequate to make such a determination. We therefore suggest that the phrase "will typically" in Section 5.1.3(a) be struck and replaced with the word "shall." Thus, the RE would have a hard deadline of sixty days in which to determine if the Exception Request is supported by adequate evidence and to notify the Requesting Entity if it is not. There is every reason to expect that the RE should be able to complete such an initial screening process within sixty days. In this connection, we note that we also found the references to the completion of the substantive phase of the Exceptions Process in Section 5.1.3(b) to be confusing. While we certainly agree that the RE should be required to complete its substantive review of the Exceptions Request within six months, we suggest that this deadline be spelled out at the end of Section 5.1.4. That is a more logical location for the six-month deadline because Section 5.1.4 specifies that the substantive phase of the Exceptions Process begins when the RE determines the application is complete. It makes sense to include the provision specifying when the substantive phase must end in the same place. We note that, in extraordinary circumstances, such as a temporary staff shortage, an RE may not be able to meet the sixty-day deadline for its initial review or the six-month deadline for its substantive review, but that delays in these deadlines should occur only in extraordinary circumstances. We also note that we found the placement of language applying to both initial review and substantive review Section 5.1.3(b) to be confusing, because Section 5.1.3(a) deals only with the initial review for information adequacy. We therefore recommend that Section 5.1.3(b) be deleted and that it be replaced with a new Section 5.1.7, which would read as follows: 5.1.7 If the Regional Entity determines that extraordinary circumstances prevent compliance with the sixty-day deadline specified in Section 5.1.3 or the six-month deadline specified in Section 5.1.4, the Regional Entity, based on consultation with NERC, shall establish an alternative time period, which shall: (i) be publicly posted on the Regional Entity's website; (ii) shall provide for completion of the initial review provided in Section 5.1.3 and the substantive review provided in Section 5.1.4 in a period no longer than is justified by the extraordinary circumstances, and, (iii) be withdrawn as soon as the extraordinary circumstances no longer exist. [notes: (a) deletion of Section 5.1.3(b) would result in Section 5.1.3(a) being redesignated as Section 5.1.3, which is reflected in the draft language proposed here; (b) the cross-reference to Section 5.1.4 assumes that the six-month deadline now contained in Section 5.1.3(b) is moved to 5.1.4 as recommended above]. This language should ensure that the RoP Team's proposed sixty-day deadline for initial reviews and the proposed six-month deadline for substantive reviews will be met in all but extraordinary circumstances. The requirement that the RE consult with NERC and publish its findings should discourage use of extended deadlines unless genuinely required by the RE. At the same time, it will allow the RE to extend deadlines when necessary to address specific contingencies such as staff shortages, and to extend deadlines across the board so that the burden of extended deadlines is shared equally by all applicants. In order to assure that the RE is processing Exception requests in a timely fashion, we also suggest that the ROP Team add a requirement that each RE maintain an auditable workplan that tracks each Exception request that has been filed, the disposition of each request, the length of time from filing until disposition, and estimated times for completion of pending Exception requests. The RE would be required to provide information on the status of Exceptions to any interested entity, including NERC and the entities with an interest in any Exception process. We are also concerned that the May 9 draft lacks sufficient clarity about what information the RE can demand be filed with the Exception Request. Section 4.2(iii) of the May 9 draft provides that the RE can require a Submitting Entity to file "all or a portion of the additional Part B Required Information," and the definition of "Part B Required Information" does not provide any greater specificity. This potentially creates a problem because, depending on the grounds for the Exception Request, the Exception Request may be justified without filing all the information

contemplated in Part B. For example, the May 10 "Technical Principles for Demonstrating BES Exceptions" proposes two alternative technical justifications for obtaining an Exception from the BES Definition. On the one hand, a Submitting Entity might claim that that its system is radial in character and therefore should be exempted under the first test proposed in the Technical Principles. In the alternative, the Submitting Entity might claim an exemption based on technical studies demonstrating that Elements or facilities are not necessary for the operation of the interconnected bulk transmission network. The evidence supporting these alternative technical justifications for exemption are very different and the RE should not be allowed to reject an Exception Request if it contains all the information necessary to justify exemption on one ground, even if no information related to the alternative technical justification is provided. Finally we are concerned with language in proposed Section 4.3.2 that would require technical information supporting an Exception Request to "be comprehensive, as opposed to summary information." While we agree in principle that the Submitting Entity must provide, for example, the documentation supporting any studies it provides, rather than just a summary of the study results, we are concerned that the word "comprehensive" may go too far. We therefore propose that the RoP Team replace the sentence "The information provided should be comprehensive. . .and should include any supporting documents, as required by the [technical criteria document]" with the following: The submitting entity should provide all information reasonably necessary for the RE to evaluate the technical merit of its Exception claim, as further set forth in the [technical criteria document]. We anticipate that the technical criteria document would provide additional specificity about the data needed to evaluate the technical data submitted with the Exception Request.

No

While we recognize that NERC must ultimately approve any Exception Request granted by an RE, we are concerned that the procedure proposed by the RoP Team is unnecessarily complicated and time-consuming. As proposed, the May 9 draft would require: (1) a team of NERC technical staff to evaluate the Recommendation submitted to NERC over a period of 90 to 100 days (Section 8.0) after submission; (2) any appeal to be filed with the NERC Board of Trustees ("BOT") (Section 9.1) within 21 days; (3) the BOT to appoint a panel to decide the appeal, with the decision to be issued within ninety days (Section 9.3); (4) the panel decision to be appealed to the BOT Compliance Committee within 14 days, with a decision to issue within 45 days (Section 9.5); and, (5) the decision of the Compliance Committee to then be appealed to the FERC or the applicable Canadian authority. We see no good reason for such a cumbersome procedure once a Recommendation has been submitted to NERC. Instead, the NERC process should consist of a single step, where NERC's final decision is made by committee of experts appointed by the BOT and delegated full authority by NERC to make binding decisions. Such a panel could, of course, be supported by technical experts from NERC's staff. This approach, if implemented, will significantly streamline NERC's review of Recommendations submitted by the REs and allow a final decision to be reached in a substantially shorter time than the process proposed by the RoP Team. We are also concerned that the appeal process does not clearly define the standard for review of the RE's Recommendation. We urge the RoP Team to make clear that the technical and factual findings should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. This standard will encourage regional uniformity, take advantage of regional expertise, and discourage the filing of unnecessary appeals. Further, to the extent the RoP Team retains a structure in which there is a separate review by NERC technical personnel followed by a review at the BOT level, the technical team should be allowed to disapprove a Recommendation only on technical or factual grounds. Only the BOT (or its appropriate designee) should be entitled to disapprove an RE Recommendation on grounds that the Recommendation is based on an improper interpretation of the applicable interpretation. This is because the NERC technical team possesses no particular expertise in legal or interpretive issues, and the BOT should be charged with making such interpretive conclusions so that uniformity of interpretation is ensured. In addition, the Exception process should make clear that, if a Recommendation is disapproved by NERC, it should be remanded to the RE for appropriate resolution, which could include, for example, additional fact-finding or additional deliberation. Finally, in this connection, we urge the RoP Team to give careful consideration to the technical dispute resolution process developed by the WECC Bulk Electric System Definition Task Force. See WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). That process allows disputes about technical issues to be resolved expeditiously at the RE level by panels with local expertise. We believe this is the proper approach to resolving technical disputes, which in many cases are strongly

influenced by local grid conditions, regional base cases, and the like.

Clallam is concerned that the process proposed by the RoP Team will be lengthy and, without some specific procedural relief, registered entities will be burdened with needless compliance burdens during the process of obtaining a Recommendation from an RE and then obtaining approval of that Recommendation from NERC and FERC. In Clallam's case, because we were inappropriately required to register for certain functions (TO, TOp) that assume Clallam owns BES facilities, our ratepayers have borne several hundred thousand dollars in compliance costs that were unnecessary and do little or nothing to protect the interconnected bulk grid from cascading outages and other reliability events. Because the process proposed by the RoP Team is likely to take at least a year to reach final conclusion, and could take considerably longer, we are concerned that Clallam and similarly-situated entities would continue to bear needless expense during this interim period. We therefore urge the RoP Team to add language making clear that once the RE issues a Recommendation, the affected entities can rely on that Recommendation and will not suffer adverse regulatory consequences even if the Recommendation is subsequently disapproved by NERC or FERC and ultimately reversed on remand to the RE. Specifically, we recommend that the following language be added at the end of Section 5 as a new Sections 5.2.4 and 5.2.5: 5.2.4 Upon issuance of a Recommendation by the RE in accordance with this Section 5.2, the Recommendation shall be binding upon the RE and the Submitting Entity. If the Recommendation is for Elements or facilities to be excluded from the BES, the Owner or Operator of the affected Elements or facilities shall not be subject to any penalties or other enforcement actions that are predicated on the classification of those Elements or groups of Elements as BES and the Owner or Operator may immediately seek de-registration under the NERC Statement of Compliance Registry from those functions that require ownership or operation of BES Elements. If the Recommendation is for Elements or facilities to be included in the BES, the owner or operator of those Elements or facilities shall, if necessary, revise its registrations under the NERC Statement of Compliance Registry to reflect its ownership or operation of BES Facilities and shall comply with all appropriate Reliability Standards, subject to the transition period specified in the BES Definition. 5.2.5 If the Recommendation is disapproved on appeal by NERC or FERC and reversed or revised on remand by the RE, the Owner, Operator and RE shall take appropriate action to revise the Owner/Operator's registration and to achieve compliance with any required Reliability Standards, but no penalties shall be assessed against any entity for the period after a Recommendation was issued under Section 5.2.4 but before that Recommendation was reversed or revised if the result of the Recommendation was to exempt the entity from compliance with the Reliability Standard under which enforcement action is taken. This language will ensure that regulated entities can act upon the RE's Recommendation without penalty, but recognizes that the Recommendation could be reversed or revised after appeal. If such a reversal occurs, the regulated entity would be subject to appropriate enforcement action going forward from the date the reversal or revision of the Recommendation becomes effective, but not for the period between the issuance of the Recommendation and the effective date of the reversal or revision.

Clallam has several additional comments and concerns about the May 9 Draft BES Exception Procedure, which we set forth here. General Concerns Approval Process. Clallam views the Exception process as a critical element of the overall effort to develop a workable definition of the BES. This is because the BES Standards Drafting Team has proposed a brightline approach that uses specific thresholds to define which facilities are included in the BES and which are excluded. As a general matter, the SDT's approach is sensible, but in certain cases it is bound to sweep in facilities that must be excluded, such as local distribution facilities, or to exclude facilities that are critical to operation of the interconnected bulk grid and therefore should be included. Accordingly, Clallam believes that the entire BES definition, including the Exception process and related Technical Principles, is critical to developing a workable definition that complies with the requirements of Section 215 of the FPA. All aspects of the definition therefore should be vetted through the NERC Standards Development Process, including the full comment periods and ballot approval requirements provided for in that process. While we do not doubt the practical necessity of the division of labor that has been arrived at between the Standards Drafting Team and the Rules of Procedure Team, we are concerned that those elements of the BES definition that have been assigned to the Rules of Procedure team may be subject to approval in a process that provides considerably less due process and industry input than the Standards Development Process. Compare NERC Rules of Procedure § 1400 (providing for changes to Rules of Procedure upon approval of the NERC board and FERC) with NERC Standards Process Manual (Sept. 3, 2010) (providing for, e.g., posting of SDT proposals for comment, successive balloting, and super-majority approval requirements). Accordingly, regardless of which

Team has taken responsibility for a particular element of the definition, we urge that all elements be vetted through the Standards Development Process. This will improve the content of the definition by bringing to bear industry expertise on all aspects of the definition and will thereby assure greater industry acceptance of the definition. Further, we believe that the failure to vet all material elements of the BES definition through the Standards Development Process would constitute a violation of FERC's direction that the revised BES definition be developed through the Standards Development Process. See Order No. 743-A, 134 FERC ¶ 61,210 at P 4 (2011) ("Order No. 743 directed the ERO to revise the definition of "bulk electric system" through the NERC Standards Development Process" (emph. added)).

Inclusion vs. Exclusion: While we recognize that the process for seeking exclusion of facilities improperly classified as BES is in most respects the same as the process for seeking inclusion of facilities improperly classified as non-BES, there are certain crucial distinctions between the two processes. In particular, as the RoP Team has properly concluded, the burden of proof and the class of entities who would seek an Exception is different in each process. We therefore believe it would add clarity to make a distinction between an "Exception Process," in which an owner or operator of an Element is seeking to have it excluded from the BES, and an "Inclusion Process," in which a Regional Entity, Balancing Authority, Reliability Coordinator, or Planning Coordinator seeks to have an Element classified as BES which it believes has been improperly excluded by the BES Definition. Specific Concerns Clallam here notes a number of specific concerns with and suggestions for improvement to the May 9 Draft BES Exception Procedure. For convenience of reference, these are presented in the order they appear in that Draft rather than in order of priority of concern.

Purpose (Section 1): We find the first paragraph of Section 1 somewhat confusing. We suggest that the paragraph be replaced with the following: The BES Definition uses specific terms and thresholds that, in the majority of cases, should appropriately identify Elements and groups of Elements that are necessary to the reliable operation of the interconnected bulk transmission system and are therefore appropriately classified as BES. Conversely, the BES Definition should, in the majority of cases, exclude facilities used in local distribution and other facilities that do not significantly affect the reliable operation of the interconnected bulk grid. In certain cases, however, it is anticipated that the BES Definition will classify certain facilities as BES that should properly be excluded, and that it will classify certain facilities as non-BES that properly should be included. This Exception Procedure is intended to provide a mechanism that will allow facilities that are improperly classified as BES under the BES Definition to be excluded and to allow facilities improperly excluded under the BES Definition to be included based upon specific technical criteria.

Definitions (Section 2): The proposed definition of "Approval of Exception Request" specifies that the "determination" is to be made by "NERC." For the reasons stated in our response to Question 9, Clallam is concerned that the waiting for NERC to approve the Exception Request entails a long delay that dilutes the value of the Exception process. Accordingly, we urge the definition to be rewritten to read "The determination by NERC or its designee that an Exception Request meets the criteria to receive an Exception." The definition of "Disapproval of Exception Request" should be changed to include the same language. The terms "BES" and "BES Definition" are somewhat confusing in that it is unclear why the two terms are different or need to be defined differently. In any event, it is advisable to state that "BES" means "The Bulk Electric System as defined in the NERC Glossary of Terms Used in Reliability Standards" because that is where the BES definition will ultimately reside. The definition of "Owner" recognizes that an operator of a facility may be different than the owner in some circumstances and may have an interest in seeking an Exception independent of the owner. We suggest that it may make the Procedures more consistent with common usage to refer to "Owner or Operator" in the text of the Procedures, as opposed to the approach in the May 9 draft, which is to refer to "Owner" in the text of the Procedures and then define "Owner" to include both the owner and operator of an Element.

Confidential Information (Section 4.2(iii), 4.4): As explained in our answer to Question 2, Clallam believes the Exception Procedure should be open and transparent so that any entity with an interest in a particular Exception Request is allowed to participate in the process. We are concerned that the restrictions on access to information in Section 4.2 may limit the ability of interested parties to participate because they lack access to key information. The RoP Team must, of course, restrict access to information implicating national security, but such information should rarely be involved in the Exception process. Unless there is a specific need to protect information, the information should be available without restriction to interested parties. If there is a need to protect the information, the restrictions should be tailored to the sensitivity of the information. For example, FERC has developed regulations for information that is not national security information, but nonetheless could be sensitive from a security standpoint, which FERC classifies as Critical Energy Infrastructure Information ("CEII"). FERC's CEII regulations provide

a model that may be useful for the RoP Team in establishing guidelines for access to sensitive information. 18 C.F.R. § 113. Under these regulations, the owners and operators of a facility and federal regulators may obtain access to CEII filed with FERC. Others may obtain access if they file a statement setting forth the need for access to the CEII. Here, the RoP Team might use a similar process, making clear that interested parties have access to CEII as long as they take precautions to ensure that the information does not become public. In this regard, we note that the category of persons eligible to review CEII is much broader than the category of persons who have been granted a security clearance and therefore can access, for example, National Security Information. We therefore urge the RoP Team to exercise care in defining the term “Eligible Reviewer” to ensure that the differing qualifications required to view different categories of information are clear and do not unduly interfere with access to information. We are also concerned that Section 4.2(iii) would restrict access to “Confidential Information,” and “Confidential Information” has not been defined in the May 9 draft. Again, we emphasize that access to information should be restricted only when there is a legitimate need to restrict access, and we urge the RoP Team to keep this principle in mind when drafting a definition of “Confidential Information.” Finally, because information may ultimately be filed with FERC as part of an appeals process, we recommend that the RoP Team bear in mind the requirements of FERC’s CEII regulations and tailor the Procedures to ensure that the CEII regulations are complied with. One way to address this concern would be to add explicit language to the definition of “Protected FOIA Information” making clear that CEII is one category of information that is generally exempt from disclosure under FOIA.

Substantive Review (Section 5.2) We have several concerns with the specifics of the substantive review process proposed by the RoP Team in Section 5.2. These are:

Required Information: We are concerned that the language in Section 5.2.1 allowing the RE to request additional information is unnecessarily open-ended (the RE “may request additional information from the Submitting Entity or Owner”). We suggest that the RoP Team add some qualifiers to this language. We suggest two alternatives. First, the language could be rewritten to provide that the RE “may request additional information from the Submitting Entity or Owner if reasonably necessary for the Regional Entity to substantively evaluate the Exception Request.” Second, assuming that the Technical Principles document lays out information requirements in detail, the language could be rewritten to provide that the RE “may request additional information from the Submitting Entity or Owner if required under the [Technical Requirements document].”

Deadline for completion of Substantive Review. As set forth in our answer to Question 7, we believe the RE should be required to complete its substantive review and offer its Recommendation within six months of the submission of a complete Exceptions Request. We recognize that extraordinary circumstances may sometimes prevent the RE from meeting this deadline. Accordingly, we recommend that the six-month deadline specified in Section 5.2.2 be subject to the same provision allowing for extension of deadlines in extraordinary circumstances as we recommended in our answer to Question 7. For the same reason, we are concerned that the language in Section 5.2.2, which states that the RE “may” extend the deadline in a particular case simply by providing notice to the Submitting Entity allows too much discretion to the RE to unreasonably delay completion of its substantive review. We therefore recommend that the word “may” be replaced with the phrase “may with the assent of the Submitting Entity.” This would allow the RE and the Submitting Entity to agree on a delay to, for example, refine modeling or improve the information base in a situation where unusual complexities prevent completion of substantive review within the six-month deadline. But we emphasize that delay beyond six months should be the exception rather than the rule.

Supplementation of Information (Section 6): The provision states that supplementary information may be provided “at any time prior to the Regional Entity issuing its Recommendation,” which by implication would prohibit the submission of supplementary information if the Recommendation has issued and is subject to appeal. We believe there may be circumstances in which important information becomes available during the appeal stage. For example, the relevant Planning Coordinator might issue a revised Base Case that substantially alters the outcome of the studies relied upon by the Submitting Entity and the RE during the Recommendation phase. Accordingly, we recommend that the first sentence of Section 6 be rewritten to read: A Submitting Entity or Owner may, at any time during the pendency of an Exception Request or an Appeal of a Recommendation, submit supplemental information for the purpose of providing additional or revised Required Information. The remaining language in Section 6 would be retained, which would require the entity submitting the supplemental information to provide a written explanation of the contents of the supplementary information and to demonstrate why it is relevant to the pending decision. Finally, we emphasize that, in the event supplemental information is submitted under Section 6, the entity whose interests might be prejudiced by such supplemental

information should be allowed to submit a written response to the submission. Thus, if an RE submitted supplemental information tending to show that a particular Element has a material impact on the operation of the bulk interconnected system, the owner or operator of that Element should have the right to submit a written statement explaining why the information should not change the result sought by that owner or operator. Materiality of Changes to System Conditions (Section 10.2): We recognize that if the information relied upon by an RE in granting an Exception changes significantly, the Exception may no longer be justified where the new information demonstrates that the excepted Element has a material impact on the reliable operation of the interconnected bulk grid. We are concerned, however, that the draft language in Section 10.2, which would require a Registered Entity to report "any change of condition which would affect the Part A or Part B Required Information" is overly broad. Depending on the sensitivity of the analyses relied upon for the Part B information, routine changes in the load or facilities served by a particular Element could change how that Element interacts with BES elements. Hence, we suggest that Section 10.2 be rewritten as follows: Registered Entities shall notify the appropriate Regional Entity within ninety days of any material change of condition which would substantially affect the Part A or Part B Required Information regarding an Element(s) to which an Exception applies. Further clarity could be achieved by adding a definition of "Material Change," which we suggest would read: Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage impact of a fault on the Element. BES Definition Flow Chart: We are concerned that flow chart provided by the Standards Drafting Team may not accurately reflect the intentions of the SDT and the RoP Team. For example, we believe neither Team intended, for example, a 5 MW solar plant interconnected to a 115-kV line to be included in the BES definition. However, following such an Element through the flow chart appears to produce the opposite result. Since the Element is interconnected at 115-kV, it would be considered under the "yes" branch of the chart. But since the Element meets neither one of the Inclusion criteria nor one of the Exclusion criteria, it winds up at the "No" branch at the bottom center of the chart, which results in it being assigned to the "Included in BES By Application of the BES Definition" box. We believe this is the opposite of what the Teams intended for such an Element.

Group

SPP Reliability Standards Review Group

Robert Rhodes

Yes

No

The information should be treated as CEII information.

No

Item 10, the type of Element and Item 11, the identification and location of the Element in question should be redacted. We also suggest that Part B not be posted.

Yes

While we would like to limit 3rd party intervention to only exclusions, we note that this could lead to comparability issues by doing so. That said, the only other choices are to allow or disallow 3rd party interventions totally. To promote the reliability of the BES, we support allowing 3rd party intervention. Why was the Balancing Authority included in this list and the Transmission Operator omitted?

Yes

We may not be interpreting the question correctly or misreading the procedure but we think all bases are covered in 5.1.5.

Yes

Do not treat it as part of the BES.

Section 10.3 requires a 24-month re-certification which only calls for submitting Part A information.

Why go through this 'paperwork' re-certification when Section 10.2 requires notification should substantial changes occur to either Part A or Part B data? The re-certification seems to be a lot of work without accomplishing much. The process of initially going through the BES definition and determining which elements are part of or not part of the BES still appears to be up to the interpretation of the entity making the determination. One entity, in good faith, may exclude certain facilities and another entity, also acting in good faith, may not exclude the same type of facilities. Additionally, will there be a reasonableness check or review on the initial determination that an entity makes regarding what is and is not included in the BES. We have a very sophisticated process to cover exceptions after the fact but no one checking to make sure we're starting with an accurate list.

Individual

Scott Bos

Muscatine Power and Water

Yes

We agree with this method of determining BES elements. This does not appear too onerous on the Regional Entities if they are provided the appropriate information.

No

MP&W firmly believes this information should be limited for public viewing. It may be advisable to establish a method or process for requesting data by others, however, on a very limited basis.

No

Part A information should not be made public. A formal process should be established to request the information for Part A and this should be on a limited and justified basis.

Yes

It may be appropriate and more efficient for submission of multiple elements in a single request. MP&W agrees with this method.

Yes

Some but not all third parties should be able to request an exception for other owners, however, this should be limited to those owners that are on the Compliance Registry.

No

The decision for Exclusion should left to the Regional Entities to determine if the exception is appropriate or this will create an administrative nightmare in trying to satisfy all parties that may be opposed to an exception.

Yes

If an Exception Request is incomplete, the Submitting Entity should be allowed to provide additional information or correct the error. The Submitting Entity should have the opportunity to resubmit a corrected package as long as it provides the necessary information. The time period for submitting additional information to correct or update the Exception Request should be designated; not just submitted in a reasonable period of time. This is vague and can lead to confusion. What exactly is a reasonable period of time?

Yes

The element should be maintained and treated the same as was done prior to the new definition of the BES. Once the final decision is made on that element, there should be an implementation period allowed for the element to be in full compliance with the Exception Request.

Records retention is not addressed for the Submitting Entity. Records retention for the Submitting Entity should be three years.

Group

Corporate Compliance

Silvia Parada Mitchell

Yes

If there is confusion or uncertainty regarding the application of the BES definition to a particular Element, it would appear in all parties' interest to have a process to resolve the status of the Element.

Yes

To the extent the information is not confidential, yes it should be publicly available, so all interested parties could review the Exception Request to determine if the Exception Request has any impact on them, or if they may be in a similar situation.

Yes

If any of the information is confidential, the party should mark it as such, and that specific information should not be posted. There does not appear, however, to be any need to redact the information requested in Part A as confidential, but parties may have a different views on what is or what is not confidential. Thus, during the filing process, a party should request confidential treatment, as appropriate and consistent with the NERC Rules of Procedure Section 1500.

Yes

The only third party that should be authorized to submit an Exception Request is a Reliability Coordinator (RC). The RC has overall operational oversight responsibilities that cover all Registered Entities, and if the RC, for example, believes it is necessary to include an Element in the BES for reliability reasons, the RC should have the right to file an Exception Request; however, the parties affected by the RC request should also be given the opportunity to comment and potentially oppose the RC's request. Conversely, a Regional Entity should not be able to make an Exception Request. It is not their role to request the inclusion of an Element that the BES definition otherwise excludes. To allow a Regional Entity to make such a request would appear to defeat the FERC's interest in reducing or eliminating regional differences, based on Regional Entity-specific viewpoints. Also, if a Regional Entity was allowed to seek an Exception Request, it would seem to conflict with Section 3.2, whereby the Regional Entity is the initial reviewer of an Exception Request. The Regional Entity should not be judging its own Exception Requests. Thus, only a RC should be authorized to submit a third-party Exception Request.

Yes

All interested parties should be provided an opportunity to submit comments.

Yes

An appeal to NERC and FERC should always be an option. The appeal to NERC should be time bound, so the party and Regional Entity have some idea of when NERC is required to act on the appeal.

Yes

During the pendency of an Exception Request, any related compliance and enforcement action should be stayed.

Group

Western Electricity Coordinating Council

Michelle Mizumori

Yes

Ideally the definition would be clear enough that this would never happen, but it is a good "just in case" concept to include.

No

As noted, some data may be confidential and the RE, NERC, FERC, or Canadian provincial authorities should not be able to share this data. The data's owner can decide whether to share it. If data is shared, it must also be noted that each case is different and, while entities may be able to learn from the experience of others, differences in configuration, operation, and location may vary the outcome.

No

No. WECC does not share contact information, and does not believe that it should be made public for this type of effort either. As for location of elements, there may be CEII or other security concerns with sharing the location of elements publicly, especially for inclusions.

The purpose of this question is not clear. If a single Request is meant to be a single study for multiple elements, this may not be appropriate because elements in different locations on the system will have different effects. If a single Request is administratively a single submission with multiple studies, this may be acceptable.

Yes
WECC agrees in concept, but needs clarification of what "applicable" means. Is this restricted to the Regional Entity, Planning Coordinator (Planning Authority), Reliability Coordinator, or Balancing Authority in which the element lies, or can it be an adjacent as well? What happens if the element crosses the border of these types of entities? Notification of the owner should also be included as part of the process.
Yes
As the Regional Entity makes a recommendation and NERC makes a final determination, it is important to have all of the facts. At a minimum, the Regional Entity, Planning Coordinator, Reliability Coordinator, and Balancing Authority should be allowed to intervene and provide additional information. However, it may be appropriate to limit other types of third-party entities that can intervene. In order to facilitate this type of intervention, a notification to neighboring or affected entities may need to be considered.
Yes
Yes
It would be appropriate for the element to remain in the pre-Request status.
WECC has several additional comments: • The use of the word "oversight" (Page 5) should be clarified in terms of the relationship between the Regional Entity and NERC. • It is unclear in Part A why the Submitting Entity must show that the Owner disagreed with the application. • It is unclear how an Eligible Reviewer is determined and what happens if the Regional Entity or NERC is not an Eligible Reviewer. • Section 10.4 refers to the "BES list" but it is unclear who maintains this list and what all it involves. WECC recommends that the list contain the Inclusions and Exclusions to the BES definition. • WECC recommends that the expertise of the Regional Entity be considered when NERC reviews the Recommendation of the Regional Entity. In other similar contexts, FERC provides for deference to Regional Entities formed on an interconnection-wide basis. • The intended role of the exception procedure with respect to NERC members outside of the United States is unclear in the draft document. WECC recommends NERC clarify the role of the exception procedure and NERC's authority with respect to that intended role outside of the United States, as this may vary between provinces and with respect to Mexico. • NERC needs to confirm the use of the appropriate terms as defined in the Definitions section. For example, the Definition section includes "Lead Submitting Entity" but the text uses "Lead Entity" and the Definition section uses "Rejection of Exception Request" but the text uses "Rejection." Furthermore, NERC may want to consider general words other than "Owner" and "Recommendation" as defined terms, as these may be used to reference other types of owners and recommendations throughout the Rules of Procedure. Definitions should also be coordinated with the work of the GO/TO Ad Hoc Task Group and their new definitions.
Individual
Maggy Powell
Constellation Energy
Yes
No
Information submitted in support of an entities' exception filing and/or requested by the Regional Entity (or NERC) as part of the determination process will likely be sensitive and confidential due to security and commercial considerations. Such information should maintain its confidentiality and should not be made publicly accessible. Accordingly, the Rules of Procedure proposal should clarify how such confidential information will be protected and managed through the exception request process. Nonetheless, we recommend that determinations on exception requests be shared with the Industry at large. Exception decisions and the associated reasoning behind the decision are important to encourage consistent application of the exception criteria and will offer guidance to entities in their assessments under the BES definition. However, if these decisions are made public, the aforementioned confidential information and documentation evaluated in coming to the decision should remain protected and not made available to the public.

No
Under the proposal, Part A would include the identification and location of elements for which the exception is being requested. Divulging such specific information to the public may create a security risk for the requesting entity. Serious consideration needs to be given to the sensitivity of the submitted data and the potential security risks of making such information public. Such risks need to be weighed against potential benefits of sharing the information.
Yes
We agree with this proposal. It is in NERC and the Industry's interest to create a streamlined process. However, the process must remain focused on assets in question, and not prompt the development of comprehensive lists or categorizations of the types of elements that fall within or outside the definition of the BES. With regard to scope of the elements that can be contained in a single request, each request should be evaluated on a case by case basis to determine whether all the elements or entities set forth in a request have sufficient commonalities justifying a single request.
No
No entity should be able to submit an exception request on behalf of another entity. Allowing a third party to submit an exception request raises confidentiality concerns. In particular, Part A and B of an exception request includes the submission of confidential information that a third party would not have access to. This calls into question whether a third party would ever be able to submit an exception request application with the necessary information needed to consider the application complete and ready for substantive review under Section 5.1.5 of the proposal. All necessary evidence regarding an exception will ultimately be in the Owners possession, and an Owner is under no obligation to provide such information to a third party filer. Therefore, only Owners should be allowed to file for exceptions on their own behalf.
Yes
Third party interventions should be permitted in order to ensure that all relevant arguments/insights are considered when making a determination on an exception request. The third party, however, should have some standing (e.g. direct impact) in order to participate in a particular exception proceeding. A third party in a different region should not be permitted to participate.
No
No
Generally speaking, the current draft of the proposal is not very clear. A diagram or other depiction to illustrate the process including the time frames would be helpful in understanding the intended process. It would also help identify areas in need of further refinement or that may conflict. Of note, the time frames are inconsistent and open ended. Entities should be allowed sufficient time to develop and file documentation, and Regional Entities and NERC should respond in a timely manner. While a process to request extensions is important, resolution of exception requests should be concluded in a reasonable amount of time.
The compliance obligations for elements deemed BES are very significant. Therefore, elements that have the potential of being deemed non-BES should remain non-BES until the determination is otherwise settled.
This initial proposal is densely worded and at times confusing. Greater refinement and clarity is needed in general. Specifically, attention is needed to clarify what the respective roles of the Regional Entity and the Owner are if a Regional Entity requests an exception on behalf of an Owner (should this be allowed). How does the Owner maintain standing in the process? Similarly, the same questions apply should a PC, RC or BA submit an exception request contrary to an Owner's plans? In addition, Section 10 raises questions. Language in Section 10.1 indicates that periodic reviews will be performed "to verify continuing justification for the Exception." What will the review encompass and how often will this occur? More detail is needed to understand the proposal. Likewise, Section 10.4 states that NERC and FERC shall be notified of necessary changes to the BES list consistent with the notification provisions. The lack of clear understanding of what constitutes a "BES list" and who is responsible for such a list raises concern that this process will add significant burden beyond the task assigned in FERC Orders 743 and 743a.
Individual
Michelle R DAntuono

Occidental Energy Ventures Corp. (answers include various Oxy affiliates)
Yes
No
The Submitting Entity should specify what it considers confidential information and that information should not be publically available.
No
The Submitting Entity should specify what it considers confidential information and that information should not be publically available. Most of the "A" information is obviously general in nature, but until the final application information is known, entities need to be able to determine confidentiality.
No
If the owner is not in the Compliance Registry, other parties should not be allowed to file Exceptions Requests for Elements. This could open up the process to all kinds of spurious requests (e.g., registering demand response as some commenters on the BES Definition have suggested). With some obvious exceptions, most entities that should be in the Registry are in the Registry now. If any entities are not now registered and these changes are trying to force their registry, that is not the purpose for the change in the BES Definition and most certainly not the intent of FERC Order 743. Most likely, only the Reliability Coordinator should be allowed to submit an Exception Request for an Element owned by another Registered Entity, i.e., the RC should know what is operationally necessary for reliability.
No
The phrases "To the extent feasible" and "readily" in the last sentence of 5.1.5(a) are too subjective. Suggest deleting them. Also, the RE should always contact the Submitting Entity to inform them of any incomplete aspects of the application and give them a period to correct deficiencies. Section 5.1.5(a) needs to reflect this communication between the Regional Entity and the Submitting Entity during the process.
No
Both Section 8 and Section 5.2.3 lack specificity concerning reasons for Rejection. The RE or NERC panel, as applicable, needs to be charged with showing exactly what items in the Technical Principles were lacking or incomplete and a technical explanation of why these deficiencies would result in a less than acceptable Adequate Level of Reliability for the BES. Finally, the composition of the NERC review panel should contain at least one peer expert from the industry.
The Element should be excluded from the BES until completion of the entire process. Also, see Comment #10.
The entire timeline for this procedure is "fuzzy." It would be helpful if the ROP Team would put the possibilities of delays in this process in a GANT chart or something comparable that would give a clear picture of the best and worst possible timelines. If an entity that is not presently registered has to go through this process, the entity will not be able to assess what the outcome will be and will be forced to assume non-compliance because the entity will have to be compliant on the day that they receive a notice of rejection for the Exemption. The proposed Implementation Plan allows for 24 months after FERC approval, but the timelines presented in the proposed ROP are so vague and with some much discretion to the Regional Entities (RE) for delay that it would most likely be impossible for an entity that is not currently registered to avoid the effort of becoming compliant prior to knowing whether it was necessary. To note: Section 5.1.3 (b) seems almost undecipherable as far as a timeline; Section 5.1.5 (a) allows infinite delay because it allows the RE to not communicate effectively with the Submitting Entity; Section 5.2.2 allows the RE to extend the substantive review with no specific time limit; Section 6.0 allows the RE to extend the time limit for either a substantive review or a screening review indefinitely if the Exception Request is supplemented; Section 7.0 allows 45 days for NERC to remand it back to the RE (who at NERC decides this?); Section 8.0 allows NERC 75 days after a 30 day comment period; and then there is an appeal process. Given that the REs have a large number of applications to deal with, it would seem appropriate to give the Submitting Entity some time after rejection of the application to become compliant.

Group
Tri-State Generation and Transmission Association
Mark Conner
Yes
No
This procedure does not need to be public.
No
None of the data should be posted.
Yes
Similar types of elements, e.g., similar transformer configurations.
Yes
Transmission Owners ought to be included so that they can apply for exclusions for Distribution Providers or Load Serving Entities, if needed.
Yes
Yes
Yes
The status of the element should be based on the definition of the BES as it would apply to the element if an exception is being requested. If an entity has requested a determination because the status is uncertain, then the element status should be non-BES. The RE should be barred from issuing Notices of Alleged Violation during the pendency of the Request process.
Tri-State does not support the procedure as written because it fails to address the compliance status of elements and the associated rights, responsibilities and roles of the functional entities during the pendency of the Request process. Exception requests are submitted to and ruled on by the REs. It is possible and, in our opinion, likely that adjacent REs will rule differently on requests for an element spanning the REs. Granting the REs jurisdiction over Exception Requests is counter to the language in Order 743.
Individual
Ed Davis
Entergy Services
Yes
No
Reliability Entities such as Reliability Coordinators, Regional Entities, and NERC are the only entities that should have access to the information.
Yes
No limit on scope is needed.
No
A request for exclusion should be limited to the facility owner, but a request for inclusion should be open to an RE, PC, RC, or BA that are responsible for the reliability of the facility.
Yes
The reliability impacts on the parties should be the main consideration.
Yes
Yes

The status should be the same as before the request was submitted, no change before the request is approved.

Individual

Russ Schneider

Flathead Electric Cooperative, Inc

Yes

agree that an entity should be able to obtain guidance from NERC and the REs as to whether a particular Element or Facility is part of the BES, we are concerned that the process proposed by the Rules of Procedure Drafting Team ("RoP Team") is overly burdensome and cumbersome. The RoP Team proposes that an entity can obtain guidance only by going through the same process as an entity seeking an Exception where the BES definition clearly requires inclusion or exclusion of a particular Element or facility. The process will be time-consuming: based on the timelines included in the RoP Team draft, we estimate it would take nine months to a year for the process to reach a final result, even if there are no delays associated with incomplete filings, appeals, and the like. The process will also be burdensome, requiring the entity seeking guidance to, for example, perform TPL studies. We suggest that the ROP Team include a mechanism in the Exceptions Procedures that will allow an entity with doubts about how a particular Element or facility fits within the BES definition to obtain guidance quickly and efficiently. First, the ROP Team should propose a mechanism by which an entity can obtain informal guidance from the staff of NERC or the RROs through, for example, telephone contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition. Second, the ROP Team should provide for a more formalized mechanism to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance. For example, the IRS provides Private Letter Rulings, in which an entity with doubts about its tax status can submit a letter to the IRS explaining its situation and the IRS will then issue a letter setting forth how that situation will be handled under the tax laws. As long as the entity has accurately set forth the facts and its situation does not change, the letter ruling is generally considered binding both upon the entity seeking the ruling and upon the IRS. Similarly, FERC offers a "No-Action Letter" process, in which FERC-regulated entities can seek guidance on whether FERC's enforcement staff would take enforcement action if the entity engaged in a particular course of conduct. See Interpretive Order Modifying the No-Action Letter Process and Reviewing Other Mechanisms For Obtaining Guidance, 123 FERC ¶ 61,157 (2008). On this score, we note the FERC has declined to extend the No-Action Letter process to NERC standards but has left the door open for NERC and the REs to adopt similar processes. Id. at P 9. we urge the ROP Team to provide a mechanism by which entities can obtain firm guidance in order to quickly and efficiently resolve doubts about whether particular Elements or facilities are included in the BES definition. We believe the ROP Team's May 9 draft does not provide a mechanism that is either quick or efficient.

Yes

We are troubled by the secrecy that currently surrounds the NERC enforcement process. Under the CMEP, the enforcement process is conducted as a confidential matter between the regulated entity and the NERC and RRO staff. Only when an enforcement matter reaches FERC for approval is any light shed on the process and, even then, most matters are publicly described only in summary fashion. By conducting the process in secret, the industry loses the value of guidance that would otherwise be provided by publicly-available orders in which NERC and the RROs would explain what enforcement action they are taking and why. The industry also loses an effective mechanism to ensure that enforcement matters are handled consistently by NERC and among the various REs. it would be a grave mistake for the RoP Team to replicate the confidential enforcement process in the BES Exceptions process and therefore urges the RoP Team to make the Exceptions process as public as possible, limiting access to information only in cases where necessary to protect national security or critical infrastructure information. A public process will be of substantial benefit to both the reliability agencies and the industry because it will allow the development of detailed records and decisions, from which the industry can obtain detailed guidance about how the BES Definition and the Exceptions process will be applied in specific situations. Ultimately, such public processes will make the Exceptions procedures function more efficiently because once the RRO and NERC have made a decision on a detailed record that is publicly available, similarly situated entities will be able to rely on that decision rather than being compelled to go through the entire Exceptions process. On the other

hand, a process in which only the REs, NERC, FERC, and Canadian authorities have access to information about how similarly-situated utilities have been treated is fundamentally unfair to regulated entities, who have no opportunity to examine such information and to determine whether such precedent can be fairly applied to them. We note that the WECC Bulk Electric System Definition Task Force developed a process to hearing appeals involving technical issues arising from the BES definition. WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). The appeals process developed by the WECC Task Force is open and all documents are publicly available unless specific information must be treated as confidential under FERC rules or other laws. We suggest that the RoP Team follow the WECC Task Force's lead on this issue.

Yes

With the exception of item number 11 under Section 4.3.1 ("Identification and location(s) of Element(s) for which the Exception is being requested"), the information that would be required under Part A of the application is generally available public information and there is no good reason to treat it as confidential. The information under item number 11 may need to be treated as confidential under FERC's Critical Energy Infrastructure Information regulations and under the other national security regulations referenced in the RoP Team draft, but if the information is not required to be treated as confidential under those regulations, the Exceptions process should not treat it as confidential.

agree that one or more entities should be able to submit an Exception Request and that a single Exceptions process could cover multiple facilities or Elements. anticipate that the Exception Request process in many cases will involve a system or large facility rather than particular Elements, and the process should be designed to easily accommodate such requests. For example, assuming the current definitions are adopted, it is easy to anticipate that an entity operating a Local Distribution Network ("LDN") that does not qualify for exemption from the BES under Exclusion E3 of the Standard Drafting Team's April 28 proposal might nonetheless seek an Exception on the grounds that the LDN does not materially impact the interconnect bulk transmission system. For example, a LDN that interconnects generation with more than 75 MVA of capacity would be classified as BES because it does not meet the requirements for Exemption E3 of the April 28 proposal. The entity seeking such an Exception should be able to file a single application rather than having to file multiple requests for each Element involved, so long as the Elements for which the entity seeks an Exception are adequately spelled out. In this regard, we are concerned that the language requiring "all such Elements" to be "separately identified" could prove extremely burdensome. If the entity owning the LDN sought an Exception, the requirement that every Element be listed in the Exception application, if applied literally, could prove extremely burdensome because the LDN consists of thousands, or perhaps tens of thousands of individual Elements. The NERC Glossary of Terms defines "Element" broadly to include "[a]ny electrical device with terminals that may be connected to other electrical devices such as a generator, transformer, circuit breaker, bus section, or transmission line." In the case of Exception sought for an LDN or other grouping of facilities, the entity applying for the Exception therefore could be required to list thousands of circuit breakers, sectionalizers, transformers, and other equipment contained within the LDN. Such a requirement would be extremely burdensome for the entity seeking the Exception and would provide little useful information to the regulators who would be required to rule on the Exception Request. Rather than requiring the entity to submit a full list of all Elements that would be excluded if the Exception Request is granted, we recommend that the Exception Request simply identify the points of demarcation between the BES and non-BES Elements that would result if the Request is granted, along with a one-line diagram of the remaining facilities or Elements that would be excluded. In most cases, we anticipate that the point of demarcation would be at some point in the transformer station where power delivered in bulk on regional transmission lines is stepped down to lower voltages for delivery on the local distribution system. We therefore recommend that Item 11 in Section 4.3.1 of the May 9 draft be deleted and replaced with the following: "11. Identification of the proposed point of demarcation between BES and non-BES elements, including the location and characteristics of any Elements associated with the point of demarcation, along with a one-line diagram of any other affected Elements or facilities."

Yes

We recognize that, in certain cases, the bright-line thresholds contained in the BES Definition may result in the exclusion of Elements that should be part of the BES because those Elements function as part of the bulk transmission system and their failure could result in cascading outages, separation

events, or bulk system instability. We also agree that the RoP Team has identified the appropriate list of entities (REs, Planning Coordinators, Reliability Coordinators, and Balancing Area Authorities) that should be empowered to seek inclusion of Elements that are improperly excluded. That being said, we anticipate that the BES Definition as currently drafted should work to include elements necessary for operation of the interconnected transmission system in nearly every case, and use of the Exceptions Process to seek inclusion of facilities improperly excluded by the BES Definition should be extremely rare. Although we agree that the RoP Team has correctly concluded that certain entities may seek to have one or more Elements included in the BES if those Element(s) are improperly excluded by operation of the BES Definition, we urge the RoP Team to include certain procedural protections for the owner/operator of the Elements sought to be brought into the BES through an inclusion process. First, we suggest that the RE or other entity seeking to include an Element first be required to contact the owner/operator of that Element, explaining the basis for its conclusion that the Element has a material effect on the reliability of the bulk interconnected system and therefore should be included in the BES. In this way, the owner/operator will receive notice of any attempt to include its Element(s) in the BES and, because the owner/operator will have extensive knowledge about the operation of its own system, will have the information that might demonstrate to the satisfaction of the entity seeking inclusion that inclusion is not required, or else may be convinced to voluntarily register the Element(s) as part of the BES. If this initial process does not resolve the issue, the entity could then seek action from the relevant RE to require the owner/operator to register the Element(s) as BES, and the appropriate process for resolving any dispute could then be followed.

Yes

believe the Exceptions process should be public, with information concerning Exception Requests broadly available unless limited by specific requirements related to Critical Energy Infrastructure Information or national security.

Yes

supports the RoP Team's general approach, in which the RE can return an Exception Request to the entity making the request if insufficient information is provided. We would not support the approach, however, in the absence of a process such as that provided in Section 7.0 , which allows the requesting Entity to challenge the RE's conclusion that inadequate information was presented. In addition, we believe several refinements are necessary to make the specific proposal put forward by the RoP Team on May 9 acceptable. Initially, because Section 5.1.3 simply addresses the question whether the entity filing an Exception Request has provided adequate information, the RE should be able to make that determination quickly, and the sixty-day period provided for in Section 5.1.3 is more than adequate to make such a determination. We therefore suggest that the phrase "will typically" in Section 5.1.3(a) be struck and replaced with the word "shall." Thus, the RE would have a hard deadline of sixty days in which to determine if the Exception Request is supported by adequate evidence and to notify the Requesting Entity if it is not. There is every reason to expect that the RE should be able to complete such an initial screening process within sixty days. In this connection, we note that we also found the references to the completion of the substantive phase of the Exceptions Process in Section 5.1.3(b) to be confusing. While we certainly agree that the RE should be required to complete its substantive review of the Exceptions Request within six months, we suggest that this deadline be spelled out at the end of Section 5.1.4. That is a more logical location for the six-month deadline because Section 5.1.4 specifies that the substantive phase of the Exceptions Process begins when the RE determines the application is complete. It makes sense to include the provision specifying when the substantive phase must end in the same place. We note that, in extraordinary circumstances, such as a temporary staff shortage, an RE may not be able to meet the sixty-day deadline for its initial review or the six-month deadline for its substantive review, but that delays in these deadlines should occur only in extraordinary circumstances. We also note that we found the placement of language applying to both initial review and substantive review Section 5.1.3(b) to be confusing, because Section 5.1.3(a) deals only with the initial review for information adequacy. We therefore recommend that Section 5.1.3(b) be deleted and that it be replaced with a new Section 5.1.7, which would read as follows: 5.1.7 If the Regional Entity determines that extraordinary circumstances prevent compliance with the sixty-day deadline specified in Section 5.1.3 or the six-month deadline specified in Section 5.1.4, the Regional Entity, based on consultation with NERC, shall establish an alternative time period, which shall: (i) be publicly posted on the Regional Entity's website; (ii) shall provide for completion of the initial review provided in Section 5.1.3 and the substantive review provided in Section 5.1.4 in a period no longer than is justified by the

extraordinary circumstances, and, (iii) be withdrawn as soon as the extraordinary circumstances no longer exist. [notes: (a) deletion of Section 5.1.3(b) would result in Section 5.1.3(a) being redesignated as Section 5.1.3, which is reflected in the draft language proposed here; (b) the cross-reference to Section 5.1.4 assumes that the six-month deadline now contained in Section 5.1.3(b) is moved to 5.1.4 as recommended above]. This language should ensure that the RoP Team's proposed sixty-day deadline for initial reviews and the proposed six-month deadline for substantive reviews will be met in all but extraordinary circumstances. The requirement that the RE consult with NERC and publish its findings should discourage use of extended deadlines unless genuinely required by the RE. At the same time, it will allow the RE to extend deadlines when necessary to address specific contingencies such as staff shortages, and to extend deadlines across the board so that the burden of extended deadlines is shared equally by all applicants. In order to assure that the RE is processing Exception requests in a timely fashion, we also suggest that the ROP Team add a requirement that each RE maintain an auditable workplan that tracks each Exception request that has been filed, the disposition of each request, the length of time from filing until disposition, and estimated times for completion of pending Exception requests. The RE would be required to provide information on the status of Exceptions to any interested entity, including NERC and the entities with an interest in any Exception process. We are also concerned that the May 9 draft lacks sufficient clarity about what information the RE can demand be filed with the Exception Request. Section 4.2(iii) of the May 9 draft provides that the RE can require a Submitting Entity to file "all or a portion of the additional Part B Required Information," and the definition of "Part B Required Information" does not provide any greater specificity. This potentially creates a problem because, depending on the grounds for the Exception Request, the Exception Request may be justified without filing all the information contemplated in Part B. For example, the May 10 "Technical Principles for Demonstrating BES Exceptions" proposes two alternative technical justifications for obtaining an Exception from the BES Definition. On the one hand, a Submitting Entity might claim that its system is radial in character and therefore should be exempted under the first test proposed in the Technical Principles. In the alternative, the Submitting Entity might claim an exemption based on technical studies demonstrating that Elements or facilities are not necessary for the operation of the interconnected bulk transmission network. The evidence supporting these alternative technical justifications for exemption are very different and the RE should not be allowed to reject an Exception Request if it contains all the information necessary to justify exemption on one ground, even if no information related to the alternative technical justification is provided. Finally we are concerned with language in proposed Section 4.3.2 that would require technical information supporting an Exception Request to "be comprehensive, as opposed to summary information." While we agree in principle that the Submitting Entity must provide, for example, the documentation supporting any studies it provides, rather than just a summary of the study results, we are concerned that the word "comprehensive" may go too far. We therefore propose that the RoP Team replace the sentence "The information provided should be comprehensive. . .and should include any supporting documents, as required by the [technical criteria document]" with the following: The submitting entity should provide all information reasonably necessary for the RE to evaluate the technical merit of its Exception claim, as further set forth in the [technical criteria document]. We anticipate that the technical criteria document would provide additional specificity about the data needed to evaluate the technical data submitted with the Exception Request.

No

While we recognize that NERC must ultimately approve any Exception Request granted by an RE, we are concerned that the procedure proposed by the RoP Team is unnecessarily complicated and time-consuming. As proposed, the May 9 draft would require: (1) a team of NERC technical staff to evaluate the Recommendation submitted to NERC over a period of 90 to 100 days (Section 8.0) after submission; (2) any appeal to be filed with the NERC Board of Trustees ("BOT") (Section 9.1) within 21 days; (3) the BOT to appoint a panel to decide the appeal, with the decision to be issued within ninety days (Section 9.3); (4) the panel decision to be appealed to the BOT Compliance Committee within 14 days, with a decision to issue within 45 days (Section 9.5); and, (5) the decision of the Compliance Committee to then be appealed to the FERC or the applicable Canadian authority. We see no good reason for such a cumbersome procedure once a Recommendation has been submitted to NERC. Instead, the NERC process should consist of a single step, where NERC's final decision is made by committee of experts appointed by the BOT and delegated full authority by NERC to make binding decisions. Such a panel could, of course, be supported by technical experts from NERC's staff. This approach, if implemented, will significantly streamline NERC's review of Recommendations submitted

by the REs and allow a final decision to be reached in a substantially shorter time than the process proposed by the RoP Team. We are also concerned that the appeal process does not clearly define the standard for review of the RE's Recommendation. We urge the RoP Team to make clear that the technical and factual findings should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. This standard will encourage regional uniformity, take advantage of regional expertise, and discourage the filing of unnecessary appeals. Further, to the extent the RoP Team retains a structure in which there is a separate review by NERC technical personnel followed by a review at the BOT level, the technical team should be allowed to disapprove a Recommendation only on technical or factual grounds. Only the BOT (or its appropriate designee) should be entitled to disapprove an RE Recommendation on grounds that the Recommendation is based on an improper interpretation of the applicable interpretation. This is because the NERC technical team possesses no particular expertise in legal or interpretive issues, and the BOT should be charged with making such interpretive conclusions so that uniformity of interpretation is ensured. In addition, the Exception process should make clear that, if a Recommendation is disapproved by NERC, it should be remanded to the RE for appropriate resolution, which could include, for example, additional fact-finding or additional deliberation. Finally, in this connection, we urge the RoP Team to give careful consideration to the technical dispute resolution process developed by the WECC Bulk Electric System Definition Task Force. See WECC Bulk Electric System Definition Task Force, Proposal 6, App. D (available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>). That process allows disputes about technical issues to be resolved expeditiously at the RE level by panels with local expertise. We believe this is the proper approach to resolving technical disputes, which in many cases are strongly influenced by local grid conditions, regional base cases, and the like.

concerned that the process proposed by the RoP Team will be lengthy and, without some specific procedural relief, registered entities will be burdened with needless compliance burdens during the process of obtaining a Recommendation from an RE and then obtaining approval of that Recommendation from NERC and FERC. In the case of an inappropriately registered entity, their ratepayers have borne several hundred thousand dollars in compliance costs that were unnecessary and do little or nothing to protect the interconnected bulk grid from cascading outages and other reliability events. Because the process proposed by the RoP Team is likely to take at least a year to reach final conclusion, and could take considerably longer, we are concerned that similarly-situated entities would continue to bear needless expense during this interim period. We therefore urge the RoP Team to add language making clear that once the RE issues a Recommendation, the affected entities can rely on that Recommendation and will not suffer adverse regulatory consequences even if the Recommendation is subsequently disapproved by NERC or FERC and ultimately reversed on remand to the RE. Specifically, we recommend that the following language be added at the end of Section 5 as new Sections 5.2.4 and 5.2.5: 5.2.4 Upon issuance of a Recommendation by the RE in accordance with this Section 5.2, the Recommendation shall be binding upon the RE and the Submitting Entity. If the Recommendation is for Elements or facilities to be excluded from the BES, the Owner or Operator of the affected Elements or facilities shall not be subject to any penalties or other enforcement actions that are predicated on the classification of those Elements or groups of Elements as BES and the Owner or Operator may immediately seek de-registration under the NERC Statement of Compliance Registry from those functions that require ownership or operation of BES Elements. If the Recommendation is for Elements or facilities to be included in the BES, the owner or operator of those Elements or facilities shall, if necessary, revise its registrations under the NERC Statement of Compliance Registry to reflect its ownership or operation of BES Facilities and shall comply with all appropriate Reliability Standards, subject to the transition period specified in the BES Definition. 5.2.5 If the Recommendation is disapproved on appeal by NERC or FERC and reversed or revised on remand by the RE, the Owner, Operator and RE shall take appropriate action to revise the Owner/Operator's registration and to achieve compliance with any required Reliability Standards, but no penalties shall be assessed against any entity for the period after a Recommendation was issued under Section 5.2.4 but before that Recommendation was reversed or revised if the result of the Recommendation was to exempt the entity from compliance with the Reliability Standard under which enforcement action is taken. This language will ensure that regulated entities can act upon the RE's Recommendation without penalty, but recognizes that the Recommendation could be reversed or revised after appeal. If such a reversal occurs, the regulated entity would be subject to appropriate enforcement action going forward from the date the reversal or revision of the Recommendation becomes effective, but not for the period between the issuance of the Recommendation and the

effective date of the reversal or revision.
Our primary concern is that proving BES vs. non-BES will be too time-consuming and expensive under the exception process and that due process should be balanced against timeliness.
Individual
Curtis Klashinsky
FortisBC
No
We do not agree that this procedure should be used to file for an exception by an entity that was unable to determine the status of an Element by application of the BES Definition. We suggest that confirmation or clarifications should be provided by the Regional Entity to make this process effective and efficient without any administrative burden of exception process. Accordingly, the following paragraph should be deleted. An entity unable to determine the status of an Element by application of the BES Definition also may submit an Exception Request under this Exception Procedure to obtain a determination of whether the Element is or is not within the BES.
No
See above (answer to question 1). We do not believe that entities other than the RE, NERC, FERC, State or Canadian Provincial authorities be allowed access to exception related detailed information filed by an entity. However, Reliability Coordinator should have access to such information as they play a key reliability role.
Yes
We suggest that the information in Part A of Section 4 is only appropriate for a public posting, since it solely illustrates the status of the element for which a submitting entity is requesting an exception. Information in Part B should be kept confidential.
We suggest that the scope of the Elements that can be contained in a single Request should be based on a) Elements owned by the same entity b) Have similar electrical configuration and technical justification for exception and c) information provided for each element along with single line diagram to confirm configuration and electrical characteristics Multiple entities should only join a single request for elements with joint ownership and/or common interconnections. In addition, facility owner and reliability coordinator or regional entity should also be allowed to file for a joint application. Finally, we suggest the scope of elements not to be overly limited, as this may require unnecessary exception applications for elements of similar characteristics.
Yes
We agree that third parties limited to applicable Regional Entity, Planning Coordinator, Reliability Coordinator, or Balancing Authority may submit an Exception Request for an element in their respective area.
No
(See comments for Q4) We believe and suggest that Third parties (Entity B) not connected to the element should only be allowed to raise their concerns or endorsements to an application through the relevant reliability coordinator, regional entity or regulatory authority but not be allowed to intervene or file an exception. The only entities that should be allowed to raise concerns should be limited to the connected GO, TO or a distribution utility along with reliability coordinator, regional entity or regulatory authority . As such it should not matter if Entity A and Entity B are in the same regions and consequently this should make the process much more efficient. If two entities are in different regions, then we suggest that the relevant regional entity of that particular element in consultation with other regions should conduct an evaluation to decide whether or not the element under consideration should be a part of BES. Any one of the regional entity (or jointly) can submit its recommendation to NERC for approval or disapproval. Following the submission of a recommendation to NERC, a submitting entity or owner can still submit a comment in support of or in opposition to the recommendations. (refer to section 8 of the "Draft BES exception procedure"]
Yes
We agree with most of the provisions provided in Section 5.1.5, but would like to suggest that in terms of a rejected exception request, regional entities should clearly identify the missing requirements.
Yes

We suggest that some language is also required to acknowledge approval or disapproval that may be granted by the relevant Federal, State or Provincial regulator.

We suggest that the status of an element should remain the same before the request is submitted and should only change after a final decision has been rendered by the ERO or relevant regulatory authority.

We commend RoP to have put forward an exception procedure that has creatively put forward a process to allow regulatory differences in North America while promoting fundamental principles of consistency to ensure the reliability of the interconnected transmission network. Finally, we would like to suggest to the RoP team to undertake and develop a template for the technical assessment report that shall be used by all entities filing for an exception. Such a template will make the evaluation process efficient.

Individual

Diane Barney

New York State Department of Public Service

The ROP is overly bureaucratic. The process should be streamlined to designating the regional entity as the decision maker – not just making a recommendation. The decision would become final 90 days after filing with NERC unless: 1) there is an appeal to NERC; or 2) upon NERC review within that 90 days, NERC challenges the decision on substantive, application specific grounds. The requirement to self-certify every 2 years in section 10.3 is excessively burdensome; if required at all, 10 years would be a more realistic time frame.

Group

NERC Staff

David Taylor

Yes

No

The fact that an application has been made (Part A of the Exception Request) should be made visible to the public. Part B of the Exception Request will be handled in accordance with Section 1500 — Confidential Information of the NERC Rules of Procedure. Any potentially impacted third party seeking access to the Part B information shall be permitted access to the exception request materials if the request for access conforms to Rule 1503 — Requests for Information of the Rules of Procedure.

Yes

Our understanding of section 4.1 is that where an entity seeks Exception for multiple, similar elements, separate Exception Requests are required, but these Exception Requests may be included in one submission. This appears to be a potential point of confusion that may be addressed by providing additional clarification in section 4.1 on the differences between requests and submissions. Contiguous elements that collectively perform a common function, such as linear transmission of power, should be grouped on one request form (not element by element on separate forms). Noncontiguous elements should be on separate request forms. Exception Requests for multiple, similar elements may be submitted in one submission when the Exception Requests have a common basis; however, each Exception Request should have its own supporting information in Part B.

Yes

The entities referenced in the procedure are appropriate. These third parties should be permitted to submit requests, but only after informing and coordinating with the "owning" parties. Joint applications (owning and third party) should be encouraged.
Third parties should be allowed to intervene, but should be required to provide a statement of how they may be impacted by an exception decision. Electrical proximity and potential interaction of protection systems should be considered as bases for intervention.
There should be a 3 month time limit to cure, or the process must be restarted.
Yes
During a pending Exception Request, the status of an element should remain unchanged (i.e., an element subject to a request for exclusion should remain part of the BES and an element subject to a request for inclusion should remain not part of the BES). When application of the definition of BES is not conclusive, the element should be considered part of the BES until a final determination has been made.
Individual
Richard Malloy
Idaho Falls Power
Yes
Our concern lies with the period during the BES exemption process concerning the element. For example, should an entity register for the applicable functions e.g. Transmission Owner, awaiting the final determination of a local distribution network request? It is our belief that an entity should not be held to any applicable standards regarding an element until a final determination is made and should be so stated.
Yes
Our opinion is that the process should be open and made public. This will aid in the dissemination of information to the industry about the BES definition process.
Yes
No comments
No comments
Yes
We agree with the caveat that the third party demonstrate agreement from the owner of the element for which the exclusion is submitted.
Yes
The distinction is whether or not the element is material to reliability. An issue such as this may have to be sorted out through technical analysis. Entity "A" should not be compelled to incur reliability costs simply because entity "B" believes the element is BES> There should be some technical basis for the decided outcome.
Yes
In instances where an entity believes their request is adequate but has been rejected should be allowed a process to resolve the dispute. The WECC definition task force had developed such a process. We would like to see the Rules of Procedure team provide a process along that defined by the WECC task force.
No
Our concern is the timeliness of the process.
We believe the element in questin should remain in the same status until a final determination is made. An entity should not be required to register for functions that may not be necessary. Likewise, if an entity is already treating an element as a BES asset, then pending final determinaiton, the element is BES.
No comments
Individual
Robert Ganley

Long Island Power Authority
Yes
No
In addition to RE, NERC, FERC, or Canadian Provincial authorities the list of elements to be excluded/included should only be made available to registered Transmission Owners and Reliability Coordinators.
No
Item 11 Identification and location of Elements, removal of this information also makes the rest of the information meaningless, hence our response to Question 2.
Joint ownership of elements
Yes
Reliability Coordinator
Yes
The lowest common regulating entity should be allowed to intervene. For example, if two TO's have different views the Reliability Coordinator should be allowed to intervene.
Yes
Element status should remain at its existing level -prior to bright line definition until resolution of the request process
Individual
Thad Ness
American Electric Power
Yes
AEP agrees that an exception process is needed to address those situations where further clarification is needed on whether or not an element or elements should be considered included in, or excluded from, the BES.
No
All information provided as part of an exception request should be considered confidential, and should not be made public in any way. Any information that AEP would wish to share, could be shared through existing Transmission and Generation forums and their associated confidentiality agreements.
No
Generic information on the excluded element, element type, and their application could be posted publically, however AEP believes that all other information about these elements such as asset owners, locations, etc. should be redacted.
Examples of grouped exception requests might include (but not be limited to) the following: a) by same or similar element type, b) by location or radial path(s) or c) application (ex: connection type).
Yes
AEP agrees that there might be situations where it would be reasonable for third parties to be allowed to make exception requests, however specific recommendations on third party exception requests cannot be provided until additional progress is made on both the BES definition and the technical principles of the exception process itself.
The default status of an element during the pendency of the Request process should be the "requested status". For example, elements requested to be excluded from the BES should be considered as such until a formal decision is made as a result of an exception request and any appeal which might also be made.

AEP appreciates the work that the drafting teams have done within the various deliverables related to the BES definition, technical principles for demonstrating BES exceptions, and the BES definition exception process. AEP acknowledges the benefits of agreeing to a BES definition and exception process, and appreciates the drafting teams' requests for industry involvement. Though no comments have been requested regarding the flow charts provided as supporting materials, AEP would like to express some of its concern with them. Page one, which illustrates the flow associated with the BES definition, does not apply the decision making process in a way one might expect given the draft previously provided for the BES definition. Though there are a number of potential problems within the structure of the flowchart, AEP offers one specific example at this time: transmission elements greater than 100kv which meet neither the inclusion nor the exclusion criteria still become "included in BES by application of the BES definition". For reasons such as this, we believe the BES definition process flow needs to be discussed as part of comments requested regarding the BES definition itself, rather than providing it as a supporting document as part of a request for comments regarding the BES definition exception process. Due to the interrelated nature of the deliverables currently out for review regarding the BES definition and exception processes, it is difficult if not impossible, to comment "in isolation" on any individual facet of the project (as illustrated by the previous comment made regarding the drafts for the BES definition and process flow). For example, there needs to be a defined relationship between an approved definition of BES, the technical principles for demonstrating BES exception, and the exception process itself. When closely related projects such as these are done simultaneously, no individual deliverable can rely on the completed work of another. As a result, we risk having conflicting decision making across these projects. As a result, AEP is not in the position to make further comments at this time beyond those recently and concurrently made regarding the BES definition and technical principles for demonstrating BES exceptions. We suggest that further work on these efforts, when appropriate, become more consolidated and that care be taken to not undertake concurrent efforts before sufficient progress has been made on important aspects of the project. AEP appreciates the drafting teams' requests for industry input, and looks forward to its future involvement after additional progress has been made on these issues.

Group

Tennessee Valley Authority

Richard Dearman

Yes

No

The RE, NERC, FERC, and Canadian Provincial Authorities are the appropriate entities.

Yes

No limit on scope is needed.

No

A request for exclusion should be limited to the facility owner, but a request for inclusion should be open to an RE, PC, RC, or BA that are responsible for the reliability of the facility.

Yes

The reliability impacts on the parties should be the main consideration.

Yes

Yes

The status should be the same as before the request was submitted, no change before the request is approved.

Individual

David Thorne

Pepco Holdings Inc

No

Only the asset owner should be allowed to submit a request for an exemption.
Yes
The information involved in a submittal is confidential and should be non public. However, those entities (RC, TOP, BA, TP) with direct BES reliability interest in the outcome should be notified and allowed to comment.
No
Item #11 Specific Identification and location of Elements in the request should be confidential and non public. As in comments on Question 2, those entities that have a direct interest in the outcome need to be notified.
Concern that the proposal requires a complete inventory of all elements associated with a facility. That may be unnecessary and burdensome if the situation/configuration can be adequately addressed/defined by a facility definition.
No
Only the owner(s) of the element(s) should be permitted to submit a request for exception.
Yes
Those entities that are directly impacted by the outcome should be notified and allowed to provide comments or input into the decision process.
Yes
No
The section does not describe the criteria that NERC apply in its review
The status should be as filed by the requester.
General concern that the Procedure is long and complicated; and that we may be repeating the same issues as with the TFE Procedure. Suggest that other methods of explaining or showing the process in a simplified manner be considered. A combination of process maps, forms or other type of document to provide for a "cook book" approach to help simplify understanding of the process.
Individual
Paul Titus
Northern Wasco County PUD
Yes
However, it is not clear how this provision provides any protection or value to affected entities. The Exceptions process does not require entities to be certain of their circumstances. It is more important for the Exceptions Procedures to assist an entity with doubts about how a particular Element or facility fits within the BES definition to obtain guidance quickly and efficiently. First, the ROP Team should propose mechanisms by which an entity can obtain informal guidance from the staff of NERC or the RROs. Examples may be "help line" contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition and an actively managed FAQ system. Second, the ROP Team should provide for more formalized mechanisms to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance.
Yes
We are troubled by the secrecy that currently surrounds the NERC enforcement process (CMEP). Open, public, processes will be of substantial benefit to both the reliability agencies and the industry because this will allow the development of detailed records and decisions, from which the industry can obtain detailed guidance about how the BES Definition and the Exceptions process will be applied in specific situations. In essence public and open processes will serve to build a case law equivalent for the BES determinations. We note that the WECC Bulk Electric System Definition Task Force (BESDTF) developed a process for hearing appeals involving technical issues arising from the BES definition. We urge the RoP to explicitly provide for such a process. The BESDTF Proposal 6, App. D is available at: http://www.wecc.biz/Standards/Development/BES/default.aspx .
Yes
None
No
We are concerned that the language requiring "all such Elements" to be "separately identified" could,

if applied literally, prove extremely burdensome. Rather than requiring the entity to submit a full list of all Elements that would be excluded if the Exception Request is granted, we recommend that the Exception Request simply identify the points of demarcation between the BES and non-BES Elements that would result if the Request is granted, along with a one-line diagram of the remaining facilities or Elements that would be excluded.

Yes

Comments: Although we agree that the RoP Team has correctly concluded that certain entities may seek to have one or more Elements included in the BES if those Element(s) are improperly excluded by operation of the BES Definition, we urge the RoP Team to include certain procedural protections for the owner/operator of the Elements sought to be brought into the BES through an inclusion process. First, we suggest that the RE or other entity seeking to include an Element first be required to contact the owner/operator of that Element, explaining the basis for its conclusion that the Element has a material effect on the reliability of the bulk interconnected system and therefore should be included in the BES. In this way, the owner/operator will receive notice of any attempt to include its Element(s) in the BES and, because the owner/operator will have extensive knowledge about the operation of its own system, will have the information that might demonstrate to the satisfaction of the entity seeking inclusion that inclusion is not required, or else may be convinced to voluntarily register the Element(s) as part of the BES. If this initial process does not resolve the issue, the entity could then seek action from the relevant RE to require the owner/operator to register the Element(s) as BES, and the appropriate process for resolving any dispute could then be followed.

Yes

Consistent with our response to Question 2, we believe the Exceptions process should be public, with information concerning Exception Requests broadly available unless limited by specific requirements related to Critical Energy Infrastructure Information or national security. Exceptions process will benefit from broad participation by all entities that are affected by, or potentially affected by, an Exceptions decision. Accordingly, we urge the RoP Team to provide for participation in the Exceptions process by all entities who are affected or potentially affected by an Exception Request. We note that the downstream owner/operator has a clear interest in the status of the upstream elements, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct interests in an Exception process.

Yes

In general, we support the RoP Team's proposal, in which the RE can return an Exception Request to the submitting entity if insufficient information is provided. However, we anticipate circumstances where submitting entities genuinely believe their request, rejected as insufficient, is adequate. We again note that the WECC Bulk Electric System Definition Task Force (BESDTF) developed a process for resolving factual disputes arising from the BES determination activities. We again urge the RoP to explicitly provide for such a process. The BESDTF Proposal 6, App. D is available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>.

No

While we recognize that NERC must ultimately approve any Exception Request granted by an RE, we are concerned that the procedure proposed by the RoP Team is unnecessarily complicated and time-consuming. We believe the NERC process should consist of a single step, where NERC's final decision is made by committee of experts appointed by the BOT and delegated full authority by NERC to make binding decisions. Such a panel could, of course, be supported by technical experts from NERC's staff. We are also concerned that the appeal process does not clearly define the standard for review of the RE's Recommendation. We urge the RoP Team to make clear that the technical and factual findings should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. In such case, the Exception should be remanded to the RE with instructions for correction and re-determination. Such a process will serve to correct given Exceptions determinations and also facilitate improved future determinations.

We believe that the general perception of the SDT and RoP is that the BES policies and procedures they are developing will have largely the effect of bringing additional electric elements under standards requirements. For many entities in the west this is not the case. In our case, we believe the new BES policies and procedures will relieve us of requirements to which we must now inappropriately

comply. We patiently endured and were represented in WECC BES definition processes for approximately two years. The BESDTF proposal (see previous references) would have given us appropriate relief. The initiation of the SDT and RoP processes has led to a curtailment of the WECC BES effort. We must now endure another lengthy process while we must continue to inappropriately and unfairly comply with standards. Without some specific procedural relief, registered entities such as ours will be burdened with needless compliance burdens during the process of obtaining a Recommendation from an RE and then obtaining approval of that Recommendation from NERC and FERC. We note that entities with exactly the same electrical circumstances as ours, but are not inappropriately registered and inappropriately subject to standards, will not be similarly burdened. The RoP process should clearly speak to and resolve this inequity. We therefore urge the RoP Team to add language making clear that once the RE issues a Recommendation, the affected entities can rely on that Recommendation and will not suffer adverse regulatory consequences even if the Recommendation is subsequently disapproved by NERC or FERC and ultimately reversed on remand to the RE.

Section 3: The Criteria for Exclusions and Inclusions is being developed through the NERC standards setting process. Thus this section should reference the criteria rather than incorporating specific language into the RoP process document. This will protect the stability of the criteria and allow for future modifications of the criteria through standards setting while not having the requirement to re-open consideration of the process. We note that such a reference could provide for an "Interconnection Wide Standard" as provided by the enabling law. Section 5: In order to facilitate that the RE is processing Exception requests in a timely fashion, we also suggest that the ROP Team add a requirement that each RE maintain an auditable work plan that tracks each Exception request that has been filed, the disposition of each request, the length of time from filing until disposition, and estimated times for completion of pending Exception requests. Under the work plan the RE would be required to provide information on the status of Exceptions to any interested entity, including NERC and the entities with an interest in any Exception process. The RE would also provide affected entities with notices of any changes in the status or timelines relating to their Exception requests.

Individual

Jo Elg

United Electric Co-op Inc

Yes

However, it is not clear how this provision provides any protection or value to affected entities. The Exceptions process does not require entities to be certain of their circumstances. It is more important for the Exceptions Procedures to assist an entity with doubts about how a particular Element or facility fits within the BES definition to obtain guidance quickly and efficiently. First, the ROP Team should propose mechanisms by which an entity can obtain informal guidance from the staff of NERC or the RROs. Examples may be "help line" contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition and an actively managed FAQ system. Second, the ROP Team should provide for more formalized mechanisms to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance.

Yes

We are troubled by the secrecy that currently surrounds the NERC enforcement process (CMER). Open, public, processes will be of substantial benefit to both the reliability agencies and the industry because this will allow the development of detailed records and decisions, from which the industry can obtain detailed guidance about how the BES Definition and the Exceptions process will be applied in specific situations. In essence public and open processes will serve to build a case law equivalent for the BES determinations. We note that the WECC Bulk Electric System Definition Task Force (BESDTF) developed a process for hearing appeals involving technical issues arising from the BES definition. We urge the RoP to explicitly provide for such a process. The BESDTF Proposal 6, App. D is available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>.

Yes

None.

We are concerned that the language requiring "all such Elements" to be "separately identified" could, if applied literally, prove extremely burdensome. Rather than requiring the entity to submit a full list of all Elements that would be excluded if the Exception Request is granted, we recommend that the Exception Request simply identify the points of demarcation between the BES and non-BES Elements

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Yes

Consistent with our response to Question 2, we believe the Exceptions process should be public, with information concerning Exception Requests broadly available unless limited by specific requirements related to Critical Energy Infrastructure Information or national security. Exceptions process will benefit from broad participation by all entities that are affected by, or potentially affected by, an Exceptions decision. Accordingly, we urge the RoP Team to provide for participation in the Exceptions process by all entities who are affected or potentially affected by an Exception Request. We note that the downstream owner/operator has a clear interest in the status of the upstream elements, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct interests in an Exception process.

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While we recognize that NERC must ultimately approve any Exception Request granted by an RE, we are concerned that the procedure proposed by the RoP Team is unnecessarily complicated and time-consuming. We believe the NERC process should consist of a single step, where NERC's final decision is made by committee of experts appointed by the BOT and delegated full authority by NERC to make binding decisions. Such a panel could, of course, be supported by technical experts from NERC's staff. We are also concerned that the appeal process does not clearly define the standard for review of the RE's Recommendation. We urge the RoP Team to make clear that the technical and factual findings should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. In such case, the Exception should be remanded to the RE with instructions for correction and re-determination. Such a process will serve to correct given Exceptions determinations and also facilitate improved future determinations.

We believe that the general perception of the SDT and RoP is that the BES policies and procedures they are developing will have largely the effect of bringing additional electric elements under standards requirements. For many entities in the west this is not the case. In our case, we believe the new BES policies and procedures will relieve us of requirements to which we must now inappropriately comply. We patiently endured and were represented in WECC BES definition processes for approximately two years. The BESDTF proposal (see previous references) would have given us appropriate relief. The initiation of the SDT and RoP processes has led to a curtailment of the WECC

BES effort. We must now endure another lengthy process while we must continue to inappropriately and unfairly comply with standards. Without some specific procedural relief, registered entities such as ours will be burdened with needless compliance burdens during the process of obtaining a Recommendation from an RE and then obtaining approval of that Recommendation from NERC and FERC. We note that entities with exactly the same electrical circumstances as ours, but are not inappropriately registered and inappropriately subject to standards, will not be similarly burdened. The RoP process should clearly speak to and resolve this inequity. We therefore urge the RoP Team to add language making clear that once the RE issues a Recommendation, the affected entities can rely on that Recommendation and will not suffer adverse regulatory consequences even if the Recommendation is subsequently disapproved by NERC or FERC and ultimately reversed on remand to the RE.

Section 3: The Criteria for Exclusions and Inclusions is being developed through the NERC standards setting process. Thus this section should reference the criteria rather than incorporating specific language into the RoP process document. This will protect the stability of the criteria and allow for future modifications of the criteria through standards setting while not having the requirement to re-open consideration of the process. We note that such a reference could provide for an "Interconnection Wide Standard" as provided by the enabling law. Section 5: In order to facilitate that the RE is processing Exception requests in a timely fashion, we also suggest that the ROP Team add a requirement that each RE maintain an auditable work plan that tracks each Exception request that has been filed, the disposition of each request, the length of time from filing until disposition, and estimated times for completion of pending Exception requests. Under the work plan the RE would be required to provide information on the status of Exceptions to any interested entity, including NERC and the entities with an interest in any Exception process. The RE would also provide affected entities with notices of any changes in the status or timelines relating to their Exception requests.

Group

Imperial Irrigation District

Sammy Alcaraz

Yes

No

Access to an entity's exception related information from entities other than the RE, NERC, FERC, or Canadian Provincial authorities should be controlled. Perhaps it should be authorized by the entity before the entity's exception related information is released.

No

Items #7, #8 and #11 are not appropriate for public posting.

Yes

No limit on scope but the elements should be common to the multiple entities or within a Critical Path.

No

Only if the requested exception is applicable to any Identified Critical Paths

Yes

If entity B is affected there should be an arbitration process to follow thru the RE

Yes

Yes

The element should maintain its BES status it had before and during the request process until approved or disapproved by NERC.

No

Group

Electricity Consumers Resource Council (ELCON)

John P. Hughes

Yes

Yes there needs to be a less onerous preliminary screening process for interpreting and applying the designation criteria for Inclusion or Exclusion from the BES definition. One format might be an on-line service based on "Part A Required Information" in Section 4.3.

Yes

It is essential that provisions are allowed and enforced that respect the confidentiality of submitted materials. The RoP provisions for protecting confidential information appear to be acceptable. However, access to that information should be restricted to "need to know" personnel such as the RE, NERC, FERC and Canadian Provincial authorities. It is not clear from the question why any other entities would need access to the information.

No

The type(s) and location(s) of Element(s) for which Exceptions are requested may need to be confidential at the discretion of the Submitting Entity.

No

A Submitting Entity (or an affiliate of such an entity) must not be a competitor of the owner of an Element for which an Exception is sought.

Yes

The RE or ERO that is evaluating the Exception Request should be allowed to identify impacted third parties as part of its substantive review.

No

The phrases "To the extent feasible" and "readily" in 5.1.5(a) are too subjective. We recommend deleting them. Also, the RE should always contact the Submitting Entity to inform them of an incomplete application and give them a reasonable period to correct deficiencies.

No

Both Section 8 and Section 5.2.3 lack specificity concerning reasons for Rejection. The RE or NERC panel, as applicable, needs to be charged with showing exactly what items in the Technical Principles were lacking or incomplete and a technical explanation of why these deficiencies would result in a less than acceptable Adequate Level of Reliability for the BES.

In all cases the Element should be deemed excluded from the BES until completion of the substantive review and any subsequent appeal of the decision. We support the two year transition period proposed in the draft Implementation Plan for the BES Definition, but it is not yet clear how binding the transition period of the BES will be on changes to entity registration under the Statement of Compliance Registry Criteria.

Hundreds of potential Submitting Entities or Owners may not know that NERC and the BES exist. Each RE and NERC should host "help desks" to help these entities understand the legal and technical obligations such entities may face. A "help desk" should include on-line resources and phone numbers (and email addresses) of trained personnel who can respond to requests for information.

Individual

Jerome Murray

Oregon Public Utility Commission Staff

>>> The ROP application and decision process is too onerous. It is strongly recommended that the regional entity be made the decision maker, not NERC. If the decision is contested, an appeal could then be made to NERC. >>> A 10-year self-certification cycle is recommended for the time frame

specified in the section 10.3. A two-year self-certify cycle is terribly burdensome and potentially problematic (e.g. Elements being pulled in and out of the BES inadvertently).
Individual
Anthony Schacher
Salem Electric
Yes
However, it is not clear how this provision provides any protection or value to affected entities. The Exceptions process does not require entities to be certain of their circumstances. It is more important for the Exceptions Procedures to assist an entity with doubts about how a particular Element or facility fits within the BES definition to obtain guidance quickly and efficiently. First, the ROP Team should propose mechanisms by which an entity can obtain informal guidance from the staff of NERC or the RROs. Examples may be "help line" contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition and an actively managed FAQ system. Second, the ROP Team should provide for more formalized mechanisms to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance.
Yes
We are troubled by the secrecy that currently surrounds the NERC enforcement process (CMEP). Open, public, processes will be of substantial benefit to both the reliability agencies and the industry because this will allow the development of detailed records and decisions, from which the industry can obtain detailed guidance about how the BES Definition and the Exceptions process will be applied in specific situations. In essence public and open processes will serve to build a case law equivalent for the BES determinations. We note that the WECC Bulk Electric System Definition Task Force (BESDTF) developed a process for hearing appeals involving technical issues arising from the BES definition. We urge the RoP to explicitly provide for such a process. The BESDTF Proposal 6, App. D is available at: http://www.wecc.biz/Standards/Development/BES/default.aspx .
Yes
None
We are concerned that the language requiring "all such Elements" to be "separately identified" could, if applied literally, prove extremely burdensome. Rather than requiring the entity to submit a full list of all Elements that would be excluded if the Exception Request is granted, we recommend that the Exception Request simply identify the points of demarcation between the BES and non-BES Elements that would result if the Request is granted, along with a one-line diagram of the remaining facilities or Elements that would be excluded.
Yes
Although we agree that the RoP Team has correctly concluded that certain entities may seek to have one or more Elements included in the BES if those Element(s) are improperly excluded by operation of the BES Definition, we urge the RoP Team to include certain procedural protections for the owner/operator of the Elements sought to be brought into the BES through an inclusion process. First, we suggest that the RE or other entity seeking to include an Element first be required to contact the owner/operator of that Element, explaining the basis for its conclusion that the Element has a material effect on the reliability of the bulk interconnected system and therefore should be included in the BES. In this way, the owner/operator will receive notice of any attempt to include its Element(s) in the BES and, because the owner/operator will have extensive knowledge about the operation of its own system, will have the information that might demonstrate to the satisfaction of the entity seeking inclusion that inclusion is not required, or else may be convinced to voluntarily register the Element(s) as part of the BES. If this initial process does not resolve the issue, the entity could then seek action from the relevant RE to require the owner/operator to register the Element(s) as BES, and the appropriate process for resolving any dispute could then be followed.
Yes
Consistent with our response to Question 2, we believe the Exceptions process should be public, with information concerning Exception Requests broadly available unless limited by specific requirements related to Critical Energy Infrastructure Information or national security. Exceptions process will benefit from broad participation by all entities that are affected by, or potentially affected by, an Exceptions decision. Accordingly, we urge the RoP Team to provide for participation in the Exceptions process by all entities who are affected or potentially affected by an Exception Request. We note that

the downstream owner/operator has a clear interest in the status of the upstream elements, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct interests in an Exception process.

Yes

In general, we support the RoP Team's proposal, in which the RE can return an Exception Request to the submitting entity if insufficient information is provided. However, we anticipate circumstances where submitting entities genuinely believe their request, rejected as insufficient, is adequate. We again note that the WECC Bulk Electric System Definition Task Force (BESDTF) developed a process for resolving factual disputes arising from the BES determination activities. We again urge the RoP to explicitly provide for such a process. The BESDTF Proposal 6, App. D is available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>.

No

While we recognize that NERC must ultimately approve any Exception Request granted by an RE, we are concerned that the procedure proposed by the RoP Team is unnecessarily complicated and time-consuming. We believe the NERC process should consist of a single step, where NERC's final decision is made by committee of experts appointed by the BOT and delegated full authority by NERC to make binding decisions. Such a panel could, of course, be supported by technical experts from NERC's staff. We are also concerned that the appeal process does not clearly define the standard for review of the RE's Recommendation. We urge the RoP Team to make clear that the technical and factual findings should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. In such case, the Exception should be remanded to the RE with instructions for correction and re-determination. Such a process will serve to correct given Exceptions determinations and also facilitate improved future determinations.

We believe that the general perception of the SDT and RoP is that the BES policies and procedures they are developing will have largely the effect of bringing additional electric elements under standards requirements. For many entities in the west this is not the case. In our case, we believe the new BES policies and procedures will relieve us of requirements to which we must now inappropriately comply. We patiently endured and were represented in WECC BES definition processes for approximately two years. The BESDTF proposal (see previous references) would have given us appropriate relief. The initiation of the SDT and RoP processes has led to a curtailment of the WECC BES effort. We must now endure another lengthy process while we must continue to inappropriately and unfairly comply with standards. Without some specific procedural relief, registered entities such as ours will be burdened with needless compliance burdens during the process of obtaining a Recommendation from an RE and then obtaining approval of that Recommendation from NERC and FERC. We note that entities with exactly the same electrical circumstances as ours, but are not inappropriately registered and inappropriately subject to standards, will not be similarly burdened. The RoP process should clearly speak to and resolve this inequity. We therefore urge the RoP Team to add language making clear that once the RE issues a Recommendation, the affected entities can rely on that Recommendation and will not suffer adverse regulatory consequences even if the Recommendation is subsequently disapproved by NERC or FERC and ultimately reversed on remand to the RE.

Section 3: The Criteria for Exclusions and Inclusions is being developed through the NERC standards setting process. Thus this section should reference the criteria rather than incorporating specific language into the RoP process document. This will protect the stability of the criteria and allow for future modifications of the criteria through standards setting while not having the requirement to re-open consideration of the process. We note that such a reference could provide for an "Interconnection Wide Standard" as provided by the enabling law. Section 5: In order to facilitate that the RE is processing Exception requests in a timely fashion, we also suggest that the ROP Team add a requirement that each RE maintain an auditable work plan that tracks each Exception request that has been filed, the disposition of each request, the length of time from filing until disposition, and estimated times for completion of pending Exception requests. Under the work plan the RE would be required to provide information on the status of Exceptions to any interested entity, including NERC and the entities with an interest in any Exception process. The RE would also provide affected entities with notices of any changes in the status or timelines relating to their Exception requests.

Individual

David Burke
Orange and Rockland Utilities, Inc.
Yes
No
Other (third party) Registered Entities should not be allowed to access such information. However, RCs (BAs, PCs) should have access to such information since this is a reliability related issue. With the access to this information, RCs, BAs, or PCs could support/reject the exception request based on reliability reasons.
Yes
We agree that Part A information is appropriate for public posting on a region or NERC Website. However, Part B could be sensitive data, therefore, Part B should be kept confidential.
Agree to a single Exception Request submission for all similar elements on the same basis. Such elements should have similar function and configuration.
Yes
Similar to question #2, REs and RCs (BAs, PCs) may submit an Exception Request for an element in addition to the owner.
No
Third parties should NOT be allowed to intervene. In this case, Entity B should only be allowed to raise concerns to its appropriate RE/RC/BA/PC.
Yes
Yes
We suggest that the status of an element should remain the same before the request is approved regardless to be BES or not to be BES.
Group
Florida Municipal Power Agency
Frank Gaffney
Yes
FMPA supports the Transmission Access Policy Study Group (TAPS) comments
No
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Individual
Si Truc PHAN
Hydro-Quebec TransEnergie

No
We do not agree that this procedure should be used to file for an exception by an entity that was unable to determine the status of an Element by application of the BES Definition. We suggest that confirmation or clarifications should be provided by the Regional Entity to make this process effective and efficient without any administrative burden of exception process. Accordingly, the following paragraph should be deleted An entity unable to determine the status of an Element by application of the BES Definition also may submit an Exception Request under this Exception Procedure to obtain a determination of whether the Element is or is not within the BES.
Yes
The Reliability Coordinator should be allowed to access to the exception related information. In the province of Québec, the Reliability Coordinator is responsible to register entities based on the generation, transmission or distribution elements they own and/or operate.
No
Items 10 and 11 may refer to CEII classified information and then shall not be posted on a public Website.
Yes
Similar elements (buses, lines, transformers...) that will be supported by the same technical principles may be submitted in a single request. For an element excluded ,is the exclusion will apply to all elements connected to the non-BES side of this element? It may be a way to reduce the burden of the exclusion process for LDN, for example.
Yes
As the Reliability Coordinator is responsible to monitor real-time operations and ensure reliable operations, it must have the ability to request an exception for elements under its supervision. See also answer #2.
Yes
For the case outlined in the question, RC and RE should be parties to the Exception Request in order to ensure that the Exception could be made without impacting reliable opetations in all involved jurisdictions.
No
Hydro-Quebec TransEnergie would like to suggest that in terms of a rejected exception request, regional entities should clearly identify the missing requirements Should its requested be rejected by the RE an entity must have the right to file an appeal with NERC and/or Applicable Governmental Entity.
Yes
The element should be considered non-BES to avoid any potential violation of a Reliability Standard as long as its status has not be determined. The decision for inclusion of a BES element should contain a compliance timeline to allow the entity to make proper investment in order to ensure compliance (TPL standards, monitoring, etc.)
Sections 1.2 do not actually apply to Canadian situation. However, section 1.3 correctly address the Canadian mattersand shoul remain. HQT believe that it would be appropriate that section 1.2 apply only to NERC and FERC and that section 1.3 apply to Canadian and Mexican Governmental authorities.
Group
LG&E and KU Energy
Brent Ingebrigtson
No
Only other entities registered as part of the Functional Model should be allowed access to this information. Allowing these entities access will ensure the fairness of the process. Limiting access for non-registered entities ensures that the information will not be used in a deleterious manner.

Yes
While third parties should be allowed to intervene, there should be some threshold that would need to be met. For instance, the third party should have to show that there is a reasonable expectation that the exclusion would cause adverse affects upon the third party or its ability to reliably meet its own demands. If the third party met this threshold, then it would be allowed to intervene. Only then would it be allowed to present evidence as to why an element should not be granted an exception. If Entity B is in a different region, then the showing would have to be made to Entity A's region.
During the pendency of the process, the element should be considered excluded from the BES. If the element is granted an exception, then the period for which the exception would apply would be from the day the Part A and Part B were filed. This would shield entities from mistakes made by the Regional Entities. If the element is not granted an exception, then the element would then be considered part of the BES for that whole period. This would provide entities with incentive to comply with Reliability Standards during the Request process.
In Section 7.0, if NERC determines that all the necessary information has been submitted, "NERC shall direct the Regional Entity to reconsider its rejection and to proceed to a substantive review of the Exception Request in accordance with Section 5.2." Instead of saying "reconsider," should this say "reverse"? "Reconsider" implies that the Regional Entity will have discretion in the outcome after NERC's determination, but the last part of the sentence makes it seem otherwise. Section 10.1 states that an Exception will be "subject to periodic review," but does not state the period. Will this be a standard period, case-by-case, or simply up to the reviewer? It would be better if this were clarified. This Appendix to the Rules of Procedure must be approved at the same time as the proposed BES definition. These two approval efforts should be procedurally tied together. Having a new BES definition without the Exception process would not be reasonable. That would be unfair to the industry, as it would require entities to adhere to the new stricter definition of BES without having recourse for the unreasonable inclusion of particular elements.
Group
Hydro One
David Curtis
No
We do not agree that this procedure should be used to file for an exception by an entity that was unable to determine the status of an Element by application of the BES Definition. The determination of the status of an Element is outside the scope of this document. We suggest that confirmation or clarifications on the status of an element should be provided by the Regional Entity to make this process effective and efficient without any administrative burden of exception process. Accordingly, the following paragraph should be deleted: "An entity unable to determine the status of an Element by application of the BES Definition also may submit an Exception Request under this Exception Procedure to obtain a determination of whether the Element is or is not within the BES."
No
We do not believe that entities other than the RE, NERC, FERC, State or Canadian Provincial authorities be allowed access to exception related detailed information filed by an entity. The Reliability Coordinators and Balancing Authority should, however, have access to such information as they play a key reliability role. Parties other than those listed above should not be allowed to review the request until only after a decision is rendered by NERC and then only by request, except to the extent that the Part A information is made public.
Yes
We suggest that the information in Part A of Section 4 is appropriate for a public posting for viewing purposes only, since it solely illustrates the status of the element under the exception request. However, we suggest that the technical contact information in Part A to not be made available for a public viewing. Information in Part B should be kept confidential.
Yes
We suggest that the scope of the Elements that can be contained in a single Request should be based

on: a) Elements owned by the same entity b) Elements that have similar electrical configuration and technical justification for exception; and c) Information provided for each element along with single line diagram to confirm configuration and electrical characteristics Multiple entities should only join a single request for elements with joint ownership and/or common interconnections. In addition, facility owners and reliability coordinators or regional entities should also be allowed to file for a joint application. Finally, we suggest the scope of elements that can be bundled in a single request, should not be overly limited, as this may require unnecessary exception applications for elements of similar characteristics.

Yes

We agree that third parties limited to applicable Regional Entity, Planning Coordinator, Reliability Coordinator, or Balancing Authority may submit an Exception Request for an element in their respective area for reliability purposes, specifically in the case of inclusions.

No

(See comments for Question 4) We believe and suggest that Third parties (Entity B) not connected to the element should only be allowed to raise their concerns or endorsements to an application through the relevant Reliability Coordinator, Regional Entity or regulatory authority but not be allowed to intervene or file an exception. The only entities that should be allowed to raise concerns should be limited to the connected GO, TO or a distribution utility along with Reliability Coordinator, Regional Entity or regulatory authority. As such it should not matter if Entity A and Entity B are in the same regions and thus this should make the process much more efficient. If two entities are in different regions, then we suggest that the relevant Regional Entity of that particular element in consultation with other regions should conduct an evaluation to decide whether or not the element under consideration should be a part of BES. Any one of the Regional Entities (or jointly) can submit its recommendation to NERC for approval or disapproval. Following the submission of a recommendation to NERC, a submitting Entity or owner can still submit a comment in support of or in opposition to the recommendations. [Refer to section 8 of the "Draft BES exception procedure"]

Yes

We agree with most of the provisions provided in Section 5.1.5, but would like to suggest that in terms of a rejected exception request, regional entities should clearly identify the missing requirements.

Yes

We suggest that additional language be incorporated in section 8.0 to acknowledge approval or disapproval of an exception request that may be granted by the relevant Federal, State or Provincial regulator.

We suggest that the status of an element should remain the same before the request is submitted and should only change after a final decision has been rendered by the ERO or relevant regulatory authority.

We commend RoP for having put forward an exception procedure that is sufficiently flexible to accommodate regulatory differences in North America while promoting fundamental principles of consistency to ensure the reliability of the interconnected transmission network. However, there are inherent differences between the regions that cannot be addressed in a single document, and a mention should be made of those regional differences. Finally, we would like to suggest to the RoP team should develop a template for the technical assessment report that shall be used by all entities filing for an exception. Such a template will make the evaluation process efficient.

Individual

John Pearson

ISO New England

Yes

The definition of the BES should be clear enough that not being able to determine whether or not the Element is BES is an extremely rare occurrence. The existence of this process should not be utilized to leave gaps in the BES definition.

Yes

Planning Coordinators, Reliability Coordinators and Balancing Authorities (PC/RC/BA) that have operating and/or planning authority over the asset-owning entity that is applying for an exception

should be informed of all such requests within their footprint or "Area". Because a core responsibility of NERC and Regional Entities is to improve reliability through a sound compliance, monitoring and enforcement program (CMEP), exempting facilities from the CMEP (and by extension compliance with any Reliability Standards) through BES-exception determinations may directly impact the PC/RC/BA's reliable operation or planning of the BES. Therefore, the NERC Rules of Procedure should mandate that the Regional Entities are notified of the application and provide PC/RC/BAs with an opportunity to provide advisory input to the Regional Entity on its recommendation to NERC regarding whether to grant the requested exception. Of course, establishing an opportunity to provide advisory input is particularly important, because there are many areas of the country where the PC/RC/BA is a different entity than the asset owning entity (which will presumably be the most likely party to seek an exception for a facility).

No

There may be CEII concerns for inclusions in part A.

Yes

Whether or not the NERC Rules of Procedure grant the Planning Coordinator, Reliability Coordinator or Balancing Authority (even if they do not own the Element in question) the authority to submit an Exception Request is less important than the Rules of Procedure providing the PC/RC/BA with advisory input to any Exception Request that is filed with the Regional Entity.

Yes

See Response to Question 2. For Elements located in the footprint of the PC/RC/BA, the Rules of Procedure should require the Regional Entity to provide the relevant PC/RC/BA the opportunity to provide advisory input on the exception request. The Regional Entity should provide public notice of Exception Requests that provide the opportunity for other entities to intervene, provided that they make a showing of potential impact on their operations if the Exception is granted. The Rules of Procedure should not limit the intervention right to those entities that have Elements "adjacent" to the Element in question, because the impact of certain Elements not being planned, maintained or operated in a manner compliant with NERC Standards may impact parties' equipment not immediately adjacent to the Element in question.

Yes

No

The process itself is well described however no technical review criteria is provided to further define the decision process.

The element should remain as included in the BES or excluded from the BES consistent with the original determination until the Request process is completed.

The Flow Chart did not clearly depict the senders and receivers of information in each of the various steps shown. In addition, some of the steps themselves that are contained in the written process are not thoroughly described by the Flow Chart. Throughout the BES Exception Procedure it is suggested that functional model terms be used for the entity involved for example NERC is used in some places and ERO in others.

Individual

Chris de Graffenried

Consolidated Edison Co. of NY, Inc.

Yes

Section 1.1 allows several kinds of NERC Function Model entities to file to determine the status of an Element, including the Owner, or any applicable Regional Entity (RE), Planning Coordinator (PC), Reliability Coordinator (RC) or Balancing Authority (BA). Was it the intent of the Drafting Team to allow Regional Transmission Organizations (RTO's), Independent System Operators (ISO's), and vertically integrated utilities, who may also serve one or more of the listed functions of PC, RC, and/or BA, to file for Exception (either Inclusion or Exclusion) on any applicable Element(s) in their area, under their purview? We recommend that wording be developed stating that a Planning Coordinator (PC), Reliability Coordinator (RC) or Balancing Authority (BA) may file for Exclusion on behalf of and with the approval of the Element owner. We further recommend that only the Regional Entity (RE) be

allowed to file for an Inclusion of an Element within its area.
Yes
Assuming the existence of appropriate non-disclosure and confidentiality agreement, we believe that the Planning Coordinator (PC), Reliability Coordinator (RC) and/or Balancing Authority (BA) should also be granted access to filed Exceptions. The PC, RC and BA have an interest in understanding whether the Elements relied upon to perform reliability-related tasks within their area are to be Included or Excluded from the BES.
No
We are concerned about releasing critical energy infrastructure information (CEII) data to the public. The purpose of a more detailed disclosure is uncertain. The risks appear to outweigh any potential benefits of full public disclosure.
Yes
Two natural groupings of Elements are the group of Elements which form a radial system or a local distribution network (LDN). The submitting entity may also wish to group Elements by the supporting study grouping, e.g., Eastern Long Island - Northern and Southern Fork radial systems.
Yes
We agree that certain third parties (limited to the applicable Regional Entity, Planning Coordinator, Reliability Coordinator, or Balancing Authority) may submit an Exclusion Request for an Element in their respective areas. However, full disclosure of all relevant Exception documents should be provided to the owner when the Exception is filed with NERC. Also see response to Question 1 above.
No
Third parties should only be informed and engaged in the Exception process if such a need is identified by the Regional Entity.
Yes
Following a rejection, a filing entity may seek Exception support from its applicable PC, RC and/or BA. Any added information provided by the PC, RC and/or BA may be used to supplement the entity's filing and together may be judged sufficient for an RE review and recommendation.
No
The NERC review team should be required to issue a Disapproval report citing the specific detailed technical, data or other reasons for Disapproval. This NERC Disapproval should point out in sufficient detail why the NERC disagrees with the recommendations of the RE. Review guidelines, accountability standards and periodic audits of this NERC review process should be established to assure uniformity of reviews and consistency of outcomes. One alternative to NERC Staff review would be a peer review by another RE under a delegation agreement with NERC. For example, WECC could review RFC submittals.
We suggest that the status of an Element should remain the same as it was before the request is submitted and should only change after the exception request is fully processed through FERC approval. The implementation period should include sufficient time for filing of the Exception request and an appeal, as well as for any equipment installations or modifications, and for procedure changes required.
At one time the Rule of Procedure team indicated that it would also develop rules covering regional differences. It is recommended that text covering regional differences be developed by the Drafting Team to address the need for such regional differences and FERC's concerns about regional differences. For example, WECC has sought to use a short circuit test in the West which is not listed in the Technical Principles. We also suggest that the Drafting Team develop a spreadsheet template for Part A and Part B to be used by all entities filing for an Exception. Such a template or templates would help make the RE and NERC evaluation processes more consistent and efficient.
Individual
Michael Jones
National Grid
Yes
Yes

Access to the information filed or submitted by an Entity for the Exception Process should follow the same management of information applicable to the NERC CIP and CEII. Registered entities should continue to have the right as they do now to share information with regulatory agencies or stakeholders as the registered entity deems necessary according to NERC CIP and CEII processes. Overall, National Grid encourages NERC to streamline the exception process.

Yes

The scope of Elements that can be contained in a single Request should be based on: 1a. Elements that are interconnected, or 1b. Elements that are in geographic proximity (not necessarily interconnected), AND 2. Elements that have similar electrical configuration and technical justification for exception. Multiple entities could file an Exception Request jointly for elements that are jointly owned.

Yes

Yes

National Grid endorses a more streamlined exception process, where an Entity would only have to file a short form that briefly describes the elements by their circuit ID, the justification for an exception and a high-level one-line diagram. The Entity that is filing for an exception would have to maintain their records, so that through the existing Audit process, the evidence supporting the exception can be reviewed and verified. NERC's approval of an exception during this initial application process should stand until an Entity is audited and a final audit report is issued. There should also be an implementation period included in the audit report for the entity to come into compliance if the audit report disagrees with the initial exception approval. Absent evidence of fraud or intentional misrepresentation by the entity, there should be no non-compliance assessed for the period from initial exception approval to the final audit report.

During the pendency of the Request process, the status of an element should remain as whatever its current status is prior to the revised BES Definition. So, if an element is BES before the revised BES Definition becomes effective, but an entity has filed an Exception request, the element will remain BES until NERC has made a decision on the request. Similarly, if an element is non-BES before the revised BES Definition becomes effective, and an entity filed an Exception Request, the element remains non-BES during the review. This is critical as to ensure that no entity is unnecessarily encumbered with additional investments and maintenance costs needed to comply with the applicable NERC Standards, if such elements are ultimately excluded.

Individual

Neil Phinney

Georgia System Operations Corporation

Yes

Yes

The only third parties allowed to submit such a request should be Regional Entities, Transmission Operators (rather than Planning Coordinators), Reliability Coordinators and Balancing Authorities.

If the Element would be "out" of the BES by Definition, it should not be included until the Exception process determines it should be – and even then, there should be some time allowed for an entity to come into full compliance with respect to the Element. On the other hand, if the Element would be

"in" the BES by Definition, the Submitting Entity should be given the benefit of the doubt, and it should not be included until the Exception process determines it should be – provided the Request is made in good faith. However, if the Submitting Entity is determined not to have had a good faith basis for the Request and to have merely submitted one to delay its compliance obligations, there could be a finding of non-compliance retroactively.

4.1 First sentence should add "set of" before "connected Elements". Item (i) in the third paragraph should say "conferred". 4.2 All Part B information should be retained by the Submitting Entity for review after the Request has been accepted. 5.1.3 (b) The expected timelines for completion of substantive reviews should not be addressed in this section. 5.1.5 The word "review" should be replaced with "screening" to better distinguish this initial evaluation from the later substantive review. In (i), the word "of" in the parenthetical should be changed to "or". 5.2.2 The phrase "or within an alternative time period as specified in a work plan established under Section 5.1.3(b)" should be removed. The procedure should address a Submitting Entity's withdrawal of a Request. 7.0 Fifth line: "by" should be changed to "through". Either the reference to clear and compelling evidence should be removed here or a standard of proof should be inserted in other sections of the procedure. NERC should direct the Regional Entity to proceed with its substantive review, not to "reconsider its rejection". 8.0 The procedure should simply say the team shall complete its review within 90 days. The procedure should be clearer on exactly what items will comprise the written record at each stage of the process, to clarify what will be reviewed on appeal. 9.2 should be deleted as unnecessary. 9.3 should not require that any panelists on review be NERC employees, but should specify that none can have served on the original panel. 9.5 should specify that copies of the request for review will be served on other parties to the Request process, if any. The Committee should not be able to decline to review a panel decision, but might choose to make the panel's decision its own in lieu of issuing an additional written opinion. At least one of the reviews on appeal in 9.3 and 9.5, if not both, should allow for hearings. 10.2 The Registered Entity and Regional Entity also should evaluate whether the Exception still applies. Section 10 needs to specify when and how NERC can review or reopen an Exception.

Individual

Kirit Shah

Ameren

Yes

Provides consistency and clarity for those situations that are not covered by the definition.

No

Information classified as CEII or identified as CA and/or CCA as defined by the NERC CIP Standards should be kept confidential.

No

We suggest that phone no., fax no. and e-mail addresses should be redacted.

We believe that same owner, similarly situated elements, similar reasons for request should be contained in a single request.

No

WE believe that only the owner or their duly authorized representative should be allowed to submit Exception Requests. These other interested parties should notify the owner if they have opinions or desires regarding an element's inclusion or exclusion that differ from the owner. Otherwise, allowing multiple parties to submit such requests would lead to chaos.

No

We are not aware of such disputes or reliability compromises with the presently defined BES. The proposed BES definition should make the BES border even clearer than today, and is expected to automatically include the vast majority of the elements. We suggest not to create even more procedural overhead by promulgating an intervention process. Our reading of the procedure is that a Submitting Entity must first confer with the owner before requesting an exception for an element that the owner oppositely included or excluded. We recommend that such a Submitting Entity needs to also provide valid reasons as to their interest in making such a request.

Yes

No
We believe that if the Submitting Entity differs from the Owner, both parties should have the opportunity to participate in the NERC review.
We believe that during the pendency the element should have the status deemed or desired by the Owner.
We offer the following suggestions/comments for the BES Team : 1. State that the Inclusions are to be applied sequentially and then the Exclusions are to be applied sequentially. 2. Clarify whether shunt reactors are considered a Reactive Power resource. 3. State that autotransformers with both the common and series winding operated at 100kV or higher are included in I1. 4. We understand I3 to state that the GSUs high side voltage is 100kV or higher – correct? 5. We understand E2 to state that both (i) and (ii) must be met. The burden of proof for (ii) belongs to the retail customer, some of whom may not be registered. 6. Revise E3a to “automatic interrupting device(s)” to be consistent with E1. This provides consistency within the definition and meets the intent of isolating the radial or local distribution network from the BES. 7. Clarify E3b as to whether includes retail behind-the-meter generation. 8. Simplify I3 to state “Multiple generating units located at a single site with aggregate capacity greater than 75 MVA (gross aggregate nameplate rating) operated at 100 kV or above.” 9. Repword all the Inclusions and Exclusions so they are each stand alone, simple and clear. Requirements that are combinations of other sub-requirements are difficult to interpret for both entities and auditors. 10. If a new term like “make-before-break” is used, it should go through the new Glossary definition process, or be explained within the standard. 11. Is the capitalized term “Transmission” in the first sentence intended to mean the NERC Glossary defined term? 12. Was the term “Transmission Elements” in the first sentence intended to include generator tie lines operated at 100 kV or above and connecting the high side of the generator GSU to the connection with the Transmission (NERC Glossary definition) system? If the answer is no, the Inclusion terms should be worded so they are specifically included, rather than stopping at the high side of the GSU. 13. Address the difference between BES and BPS. This is essential as NERC is using BPS term in some of their process descriptions. For example, NERC ERO Event Analysis Process, Phasr 2 Field Test Draft dated May 2, 2011.
Individual
Bill Dearing
Grant County PUD No. 2 (Grant)
However, it is not clear how this provision provides any protection or value to affected entities. The Exceptions process does not require entities to be certain of their circumstances. It is more important for the Exceptions Procedures to assist an entity with doubts about how a particular Element or facility fits within the BES definition to obtain guidance quickly and efficiently. First, the ROP Team should propose mechanisms by which an entity can obtain informal guidance from the staff of NERC or the RROs. Examples may be “help line” contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition and an actively managed FAQ system. Second, the ROP Team should provide for more formalized mechanisms to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance.
Yes
We are troubled by the secrecy that currently surrounds the NERC enforcement process (CMEP). Open, public, processes will be of substantial benefit to both the reliability agencies and the industry because this will allow the development of detailed records and decisions, from which the industry can obtain detailed guidance about how the BES Definition and the Exceptions process will be applied in specific situations. In essence public and open processes will serve to build a case law equivalent for the BES determinations. We note that the WECC Bulk Electric System Definition Task Force (BESDTF) developed a process for hearing appeals involving technical issues arising from the BES definition. We urge the RoP to explicitly provide for such a process. The BESDTF Proposal 6, App. D is available at: http://www.wecc.biz/Standards/Development/BES/default.aspx .
Yes
None
Yes
We are concerned that the language requiring “all such Elements” to be “separately identified” could, if applied literally, prove extremely burdensome. Rather than requiring the entity to submit a full list

of all Elements that would be excluded if the Exception Request is granted, we recommend that the Exception Request simply identify the points of demarcation between the BES and non-BES Elements that would result if the Request is granted, along with a one-line diagram of the remaining facilities or Elements that would be excluded.

Yes

Although we agree that the RoP Team has correctly concluded that certain entities may seek to have one or more Elements included in the BES if those Element(s) are improperly excluded by operation of the BES Definition, we urge the RoP Team to include certain procedural protections for the owner/operator of the Elements sought to be brought into the BES through an inclusion process. First, we suggest that the RE or other entity seeking to include an Element first be required to contact the owner/operator of that Element, explaining the basis for its conclusion that the Element has a material effect on the reliability of the bulk interconnected system and therefore should be included in the BES. In this way, the owner/operator will receive notice of any attempt to include its Element(s) in the BES and, because the owner/operator will have extensive knowledge about the operation of its own system, will have the information that might demonstrate to the satisfaction of the entity seeking inclusion that inclusion is not required, or else may be convinced to voluntarily register the Element(s) as part of the BES. If this initial process does not resolve the issue, the entity could then seek action from the relevant RE to require the owner/operator to register the Element(s) as BES, and the appropriate process for resolving any dispute could then be followed.

Yes

Consistent with our response to Question 2, we believe the Exceptions process should be public, with information concerning Exception Requests broadly available unless limited by specific requirements related to Critical Energy Infrastructure Information or national security. Exceptions process will benefit from broad participation by all entities that are affected by, or potentially affected by, an Exceptions decision. Accordingly, we urge the RoP Team to provide for participation in the Exceptions process by all entities who are affected or potentially affected by an Exception Request. We note that the downstream owner/operator has a clear interest in the status of the upstream elements, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct interests in an Exception

: In general, we support the RoP Team's proposal, in which the RE can return an Exception Request to the submitting entity if insufficient information is provided. However, we anticipate circumstances where submitting entities genuinely believe their request, rejected as insufficient, is adequate. We again note that the WECC Bulk Electric System Definition Task Force (BESDTF) developed a process for resolving factual disputes arising from the BES determination activities. We again urge the RoP to explicitly provide for such a process. The BESDTF Proposal 6, App. D is available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>.

No

While we recognize that NERC must ultimately approve any Exception Request granted by an RE, we are concerned that the procedure proposed by the RoP Team is unnecessarily complicated and time-consuming. We believe the NERC process should consist of a single step, where NERC's final decision is made by committee of experts appointed by the BOT and delegated full authority by NERC to make binding decisions. Such a panel could, of course, be supported by technical experts from NERC's staff. We are also concerned that the appeal process does not clearly define the standard for review of the RE's Recommendation. We urge the RoP Team to make clear that the technical and factual findings should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. In such case, the Exception should be remanded to the RE with instructions for correction and re-determination. Such a process will serve to correct given Exceptions determinations and also facilitate improved future determinations

We believe that the general perception of the SDT and RoP is that the BES policies and procedures they are developing will have largely the effect of bringing additional electric elements under standards requirements. For many entities in the west this is not the case. In our case, we believe the new BES policies and procedures will relieve us of requirements to which we must now inappropriately comply. We patiently endured and were represented in WECC BES definition processes for approximately two years. The BESDTF proposal (see previous references) would have given us

appropriate relief. The initiation of the SDT and RoP processes has led to a curtailment of the WECC BES effort. We must now endure another lengthy process while we must continue to inappropriately and unfairly comply with standards. Without some specific procedural relief, registered entities such as ours will be burdened with needless compliance burdens during the process of obtaining a Recommendation from an RE and then obtaining approval of that Recommendation from NERC and FERC. We note that entities with exactly the same electrical circumstances as ours, but are not inappropriately registered and inappropriately subject to standards, will not be similarly burdened. The RoP process should clearly speak to and resolve this inequity. We therefore urge the RoP Team to add language making clear that once the RE issues a Recommendation, the affected entities can rely on that Recommendation and will not suffer adverse regulatory consequences even if the Recommendation is subsequently disapproved by NERC or FERC and ultimately reversed on remand to the RE.

Section 3: The Criteria for Exclusions and Inclusions is being developed through the NERC standards setting process. Thus this section should reference the criteria rather than incorporating specific language into the RoP process document. This will protect the stability of the criteria and allow for future modifications of the criteria through standards setting while not having the requirement to re-open consideration of the process. We note that such a reference could provide for an "Interconnection Wide Standard" as provided by the enabling law. Section 5: In order to facilitate that the RE is processing Exception requests in a timely fashion, we also suggest that the ROP Team add a requirement that each RE maintain an auditable work plan that tracks each Exception request that has been filed, the disposition of each request, the length of time from filing until disposition, and estimated times for completion of pending Exception requests. Under the work plan the RE would be required to provide information on the status of Exceptions to any interested entity, including NERC and the entities with an interest in any Exception process. The RE would also provide affected entities with notices of any changes in the status or timelines relating to their Exception requests.

Individual

Bill Dearing

Northwest Public Power Association

Yes

However, it is not clear how this provision provides any protection or value to affected entities. The Exceptions process does not require entities to be certain of their circumstances. It is more important for the Exceptions Procedures to assist an entity with doubts about how a particular Element or facility fits within the BES definition to obtain guidance quickly and efficiently. First, the ROP Team should propose mechanisms by which an entity can obtain informal guidance from the staff of NERC or the RROs. Examples may be "help line" contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition and an actively managed FAQ system. Second, the ROP Team should provide for more formalized mechanisms to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance.

Yes

We are troubled by the secrecy that currently surrounds the NERC enforcement process (CMEP). Open, public, processes will be of substantial benefit to both the reliability agencies and the industry because this will allow the development of detailed records and decisions, from which the industry can obtain detailed guidance about how the BES Definition and the Exceptions process will be applied in specific situations. In essence public and open processes will serve to build a case law equivalent for the BES determinations. We note that the WECC Bulk Electric System Definition Task Force (BESDTF) developed a process for hearing appeals involving technical issues arising from the BES definition. We urge the RoP to explicitly provide for such a process. The BESDTF Proposal 6, App. D is available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>.

Yes

None

Yes

We are concerned that the language requiring "all such Elements" to be "separately identified" could, if applied literally, prove extremely burdensome. Rather than requiring the entity to submit a full list of all Elements that would be excluded if the Exception Request is granted, we recommend that the Exception Request simply identify the points of demarcation between the BES and non-BES Elements that would result if the Request is granted, along with a one-line diagram of the remaining facilities or

Elements that would be excluded.
Yes
<p>Although we agree that the RoP Team has correctly concluded that certain entities may seek to have one or more Elements included in the BES if those Element(s) are improperly excluded by operation of the BES Definition, we urge the RoP Team to include certain procedural protections for the owner/operator of the Elements sought to be brought into the BES through an inclusion process. First, we suggest that the RE or other entity seeking to include an Element first be required to contact the owner/operator of that Element, explaining the basis for its conclusion that the Element has a material effect on the reliability of the bulk interconnected system and therefore should be included in the BES. In this way, the owner/operator will receive notice of any attempt to include its Element(s) in the BES and, because the owner/operator will have extensive knowledge about the operation of its own system, will have the information that might demonstrate to the satisfaction of the entity seeking inclusion that inclusion is not required, or else may be convinced to voluntarily register the Element(s) as part of the BES. If this initial process does not resolve the issue, the entity could then seek action from the relevant RE to require the owner/operator to register the Element(s) as BES, and the appropriate process for resolving any dispute could then be followed.</p>
Yes
<p>Consistent with our response to Question 2, we believe the Exceptions process should be public, with information concerning Exception Requests broadly available unless limited by specific requirements related to Critical Energy Infrastructure Information or national security. Exceptions process will benefit from broad participation by all entities that are affected by, or potentially affected by, an Exceptions decision. Accordingly, we urge the RoP Team to provide for participation in the Exceptions process by all entities who are affected or potentially affected by an Exception Request. We note that the downstream owner/operator has a clear interest in the status of the upstream elements, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct interests in an Exception process.</p>
Yes
<p>In general, we support the RoP Team's proposal, in which the RE can return an Exception Request to the submitting entity if insufficient information is provided. However, we anticipate circumstances where submitting entities genuinely believe their request, rejected as insufficient, is adequate. We again note that the WECC Bulk Electric System Definition Task Force (BESDTF) developed a process for resolving factual disputes arising from the BES determination activities. We again urge the RoP to explicitly provide for such a process. The BESDTF Proposal 6, App. D is available at: http://www.wecc.biz/Standards/Development/BES/default.aspx</p>
No
<p>While we recognize that NERC must ultimately approve any Exception Request granted by an RE, we are concerned that the procedure proposed by the RoP Team is unnecessarily complicated and time-consuming. We believe the NERC process should consist of a single step, where NERC's final decision is made by committee of experts appointed by the BOT and delegated full authority by NERC to make binding decisions. Such a panel could, of course, be supported by technical experts from NERC's staff. We are also concerned that the appeal process does not clearly define the standard for review of the RE's Recommendation. We urge the RoP Team to make clear that the technical and factual findings should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. In such case, the Exception should be remanded to the RE with instructions for correction and re-determination. Such a process will serve to correct given Exceptions determinations and also facilitate improved future determinations.</p>
<p>We believe that the general perception of the SDT and RoP is that the BES policies and procedures they are developing will have largely the effect of bringing additional electric elements under standards requirements. For many entities in the west this is not the case. In our case, we believe the new BES policies and procedures will relieve us of requirements to which we must now inappropriately comply. We patiently endured and were represented in WECC BES definition processes for approximately two years. The BESDTF proposal (see previous references) would have given us appropriate relief. The initiation of the SDT and RoP processes has led to a curtailment of the WECC BES effort. We must now endure another lengthy process while we must continue to inappropriately</p>

and unfairly comply with standards. Without some specific procedural relief, registered entities such as ours will be burdened with needless compliance burdens during the process of obtaining a Recommendation from an RE and then obtaining approval of that Recommendation from NERC and FERC. We note that entities with exactly the same electrical circumstances as ours, but are not inappropriately registered and inappropriately subject to standards, will not be similarly burdened. The RoP process should clearly speak to and resolve this inequity. We therefore urge the RoP Team to add language making clear that once the RE issues a Recommendation, the affected entities can rely on that Recommendation and will not suffer adverse regulatory consequences even if the Recommendation is subsequently disapproved by NERC or FERC and ultimately reversed on remand to the RE.

Section 3: The Criteria for Exclusions and Inclusions is being developed through the NERC standards setting process. Thus this section should reference the criteria rather than incorporating specific language into the RoP process document. This will protect the stability of the criteria and allow for future modifications of the criteria through standards setting while not having the requirement to re-open consideration of the process. We note that such a reference could provide for an "Interconnection Wide Standard" as provided by the enabling law. Section 5: In order to facilitate that the RE is processing Exception requests in a timely fashion, we also suggest that the ROP Team add a requirement that each RE maintain an auditable work plan that tracks each Exception request that has been filed, the disposition of each request, the length of time from filing until disposition, and estimated times for completion of pending Exception requests. Under the work plan the RE would be required to provide information on the status of Exceptions to any interested entity, including NERC and the entities with an interest in any Exception process. The RE would also provide affected entities with notices of any changes in the status or timelines relating to their Exception requests.

Group

Transmission Access Policy Study Group

Cynthia S. Bogorad

Yes

An entity that cannot determine the status of its Element by application of the BES Definition should be able to submit an Exception Request to obtain a determination of the Element's status. It is appropriate for such requests to be in a third category, neither "inclusion" exception requests nor "exclusion" exception requests, since the Element's status is by definition uncertain. During the transition period, while an Exception Request is pending for an Element whose BES status is uncertain, the Element's status should remain the same as in the current (i.e. under the original BES definition) status quo. We believe that after the transition period, this type of exception request will for the most part consist of Elements impacted by a system change and newly-constructed Elements. Elements for which an "indeterminate" exception is requested based on a system change should be considered under their prior characterization while the exception request is pending. "Indeterminate" Exception Requests for new Elements should be submitted no later than 90 days after the Element is placed in service; new Elements for which a properly-submitted "indeterminate" Exception Request is pending should be considered non-BES. To encourage the prompt resolution of the status of new Elements, "indeterminate" Exception Requests for new Elements submitted more than 90 days after the Element is placed in service should be treated as exclusion Exception Requests (i.e. the Element should be considered BES while the Exception Request is pending).

No

As a rule, exception-related information should not be publicly released, because the information supporting an exception request will usually contain CEII. However, the information should be made available, subject to appropriate protection, to entities with a reliability-related need for it. Such entities might include the submitting entity's RC, PC, BA, TOP, or neighbors. Exception-related information submitted by an entity regarding an Element owned by another entity should be made available to the owner of the Element. Regional Entity recommendations and NERC decisions on exception requests should be publicly posted. Public posting of decisions will allow a body of precedent to develop, allowing entities to better understand NERC's interpretation of the BES Definition and Technical Criteria. This should result in a more efficient process, as some exception requests that would have been denied are not submitted in the first place, and others are better tailored to answering NERC's questions.

Yes

If Part A information is limited to the name of the requestor, a brief description of the Element in question, and a brief description of why an exception is appropriate, none of which contains any CEII, it can be made public.

A single application should be allowed for a contiguous system, whether there is one requestor or more than one. Similar requests all pertaining to a contiguous system can be efficiently considered together.

No

Consistent with the Organization Registration Procedure in Appendix 5A to the NERC Rules of Procedure, any entity should be permitted to recommend in writing, with supporting documentation, to the Regional Entity(ies) that an Element be included in or excluded from the BES. Copies of any such request should be sent to the affected owner(s) at the time the request is made. Third parties should not, however, be permitted to submit an Exception Request, which would trigger the beginning of the Exception Procedure. TAPS believes that its proposal will allow third parties to bring Elements to the attention of a Regional Entity as the third parties believe necessary, while avoiding the backlog that could result from giving third parties the power to start the Exception Procedure unilaterally. This prohibition on third-party Exception Requests would of course not apply to agents (e.g. joint action agencies and consultants) designated by an owner to handle an exception request on the owner's behalf.

Yes

Entities with a reliability interest in the Exception Request should be permitted to present their arguments. In order to ensure thorough and effective review of Exception Requests, TAPS proposes, rather than allowing intervention, that the Regional Entity substantive review of Exception Requests be performed by the Regions' Planning or Operating Committees. This proposal is described in more detail in response to Question 10.

No

Section 5.1.5 also permits an entity to request NERC reconsideration of the rejection of an Exception Request "in accordance with Section 8.0 of this Appendix." On the assumption that this reference is meant to be to Section 7.0 ("Reconsideration of Rejection of an Exception Request Application Based on Its Completeness"), the process is appropriate as far as it goes. Further recourse to the NERC Board of Trustees Compliance Committee, however, and then to an Applicable Government Authority, should also be available, in the very unlikely event that a Submitting Entity is not satisfied with NERC's decision. We expect that the availability of NERC review will suffice in essentially all circumstances, but the Exception Procedure should allow for further appeals in order to accommodate the possibility that such appeals are needed. TAPS therefore suggests that the first sentence of Section 9.1 be revised to state: "A Submitting Entity or Owner aggrieved by NERC's approval or disapproval of an Exception Request, or by NERC's determination not to direct reconsideration by the Regional Entity of Rejection of an Exception Request, may, within twenty-one (21) calendar days following receipt of NERC's decision, file an appeal with the NERC Board of Trustees by sending a letter to NERC's General Counsel stating the desire to do so, with copies to the other parties to the Exception Request process."

Yes

Decision by a panel of three NERC Reliability Assessment and Performance Analysis personnel is appropriate. Such personnel are in the best position to evaluate the record for and against granting an Exception Request, consistent with continent-wide uniformity. Decisions should be made by a panel rather than an individual in order to support uniformity and prevent outlier decisions. To clarify that NERC is to decide Exception Requests based on its independent judgment, and not rubber-stamp a Regional Entity's recommendation, TAPS recommends that the last two sentences of the first paragraph of Section 8.0 be revised as follows: "The decision shall be in writing, shall be based on the panel's independent consideration of the full record, and shall identify the basis for the decision. If the decision of the team was not unanimous, the writing shall note that fact and include the basis on which the minority disagreed." Finally, we note that the evidence supporting an Exception Request will of course be developed by the entity submitting the request. NERC should examine the entire record, and should not discount studies performed by the Submitting Entity simply because they were performed by that entity (as opposed to, for example, by a Regional Entity).

During the transition to the revised BES Definition, the status of an Element for which an Exception Request is pending should be the same as its status under the current BES definition. Once that

transition is complete, the status quo should be maintained during an Exception Request. TAPS' proposal with respect to requests for determination regarding Elements whose BES status is uncertain is described in TAPS' response to Question 1. An entity who believes that an Exception Request could be needed for a planned new Element should file the Exception Request early on; determining new Elements' BES status before they are placed in service will eliminate the need to consider what their status should be while an Exception Request is pending. In cases where a new Element goes into service before an Exception Request has been decided, however, the status of such an Element should be governed by the application of the BES definition while any Exception Requests are pending. The status of Elements impacted by a system change should also be determined by the application of the BES definition pending a NERC decision on any Exception Requests. TAPS proposes in its response to Question 1 how to determine the status of a new Element or an Element affected by a system change where the application of the BES definition is uncertain, while an Exception Request is pending. Revisions to the second paragraph of Section 1.1, which currently refers to the necessity of obtaining an Exception "before" an Element's status changes, may be appropriate to accommodate both the transition to the new BES definition and Exception Requests for Elements of indeterminate status.

The Exception Procedure refers throughout to Exceptions being requested by "Registered Entities." Currently unregistered entities are very likely to seek exceptions. The Exception Procedure should therefore be revised to simply refer to "entities," "owners," or "Submitting Entities," as appropriate. Section 3.2 states that "The burden to provide a sufficient basis for approval of an Exception Request in accordance with the provisions of this Appendix is on the entity submitting the Exception Request." This provision, while generally appropriate, does not make sense in the context of Exception Requests for Elements of uncertain BES status. In such cases, the burden should be consistent with the status of the Element pending a determination (e.g. if an Element is considered non-BES while the Exception Request is pending, the burden should be on the entity advocating the Element's inclusion in the BES). Section 4.2 states that Exception Requests must be submitted "in a secure electronic form using the Exception Request Form." To avoid disputes about what constitutes "a secure electronic form," the sentence should be revised to state that Exception Requests must be submitted "using the electronic Exception Request Form." Security should be handled by NERC as part of the Form. Section 4.2(iii) states: "The Regional Entity is under no obligation to issue a Recommendation regarding an Exception Request without documentation sufficient to grant such an approval." TAPS recommends that this sentence be deleted. The sentence is unnecessary, because a Regional Entity's obligation to issue a Recommendation regarding an Exception Request does not begin until the Exception Request is complete (Section 5.2.1). Section 4.3.1 states that the Exception Request Form will provide "checklists of responses to be selected by the Submitting Entity and/or limited space for narrative descriptions...." TAPS does not object to the reference to "limited" space so long as it is understood, in drafting the form, that there should be enough space available to say whatever needs to be said, and to say it clearly, bearing in mind that Part A is intended to be a summary document. Section 5.1.3(b) states that if the Regional Entity determines that it cannot complete its initial screenings and substantive reviews on time, "the Regional Entity, based on consultation with NERC, shall establish an alternative time period objective and work plan for completing initial screenings and substantive reviews of Exception Requests during the specified period of time." Decisions on Exception Requests may have very significant effects on the owners of the affected Elements. Delays in issuing such decisions should therefore be taken very seriously. TAPS suggests that, to ensure that delays are minimized and handled as effectively as possible, the quoted language be revised to state "the Regional Entity shall request NERC approval of an alternative time period objective and work plan for completing initial screenings and substantive reviews of Exception Requests during the specified period of time." Similarly, Section 5.2.2 currently allows the Regional Entity to "extend the period for individual Exception Requests by issuing a notice to the Submitting Entity, with a copy to the Owner if different than the Submitting Entity and to NERC, stating the revised date by which the Regional Entity will issue its Recommendation concerning the Exception Request." The sentence should be revised to state that the Regional Entity "may request approval from NERC to extend the period for individual Exception Requests, with a copy of such request to the Submitting Entity." ("[T]o the Owner if different than the Submitting Entity" is deleted because TAPS does not support allowing third parties to file Exception Requests). TAPS recognizes that the large number of Exception Requests that will likely be filed during the transition period will be a burden on Regional Entity resources, and therefore suggests that NERC be authorized to require Regions to hire outside consultants to assist in processing exception requests if needed to allow a Region to stay on schedule. To ensure that

supplementation of an Exception Request does not result in unnecessary or unreasonable delay by a Regional Entity, a sentence should be added to the end of the first paragraph of Section 6.0: "Any extension based on the supplementation of an Exception Request will at most restart the clocks for the deadlines set out in Sections 5.1.3 and 5.2.2 as of the date of the supplement." Allowing unlimited extensions based on the submission of supplemental information would discourage Submitting Entities from supplementing their Exception Requests as needed to provide the Region with an up-to-date record. As in Section 5, NERC should determine whether to grant an extension, and for how long. In addition, immaterial supplements should not result in extensions of time. A standard for determining which supplements warrant allowing the Region an extension of time could be the "material modification" standard applicable to interconnection requests. To ensure that the Regional Entity review of Exception Requests is based on a detailed understanding of the surrounding grid, the Exception Procedure should specify that Regional Entities' substantive review is to be performed by the Region's Planning Committee or Operating Committee. These committees consist of representatives of a broad swath of stakeholders with relevant experience. They are thus the best-positioned bodies at the Regional Entities to conduct a thorough substantive review of Exception Requests and make a recommendation to NERC. Having a stakeholder body conduct the regional review would have the added benefit of mostly, if not entirely, obviating the need for third parties to intervene in Exception Requests. In the alternative, if the substantive review is performed by Regional Entity staff, it should be performed by the staff responsible for conducting the Region's seasonal assessments under the Region's delegation agreement. Section 9.5 provides that "the Board of Trustees Compliance Committee may, in its discretion, decline to review the decision of the panel, in which case the decision of the panel shall be the final NERC decision." TAPS does not support this provision. If the BOTCC agrees with the panel's decision, it should affirm the decision, not simply decline to review it. Finally, Section 10.4 refers to a "BES list." TAPS does not currently take a position on whether a "BES list" is a good idea, but requests that the drafting team make more information available about its proposal for such a list.

Individual

Jianmei Chai

Consumers Energy Company

Yes

Yes

Specifically, Consumers Energy Company (CECo) believes state regulatory agencies should be allowed access to Exception related information.

Yes

Consumers Energy Company agrees that Part A information should be made public. We support by inference that Part B information should remain confidential and not be posted publicly.

No

In addition to the owner, only those with jurisdictional authority, such as the ERO and RRO, should be permitted to register Exception Requests. This is consistent with the current registry process under which third parties are not allowed to request that other entities be registered. A third party may have a business reason for wishing to encumber another entity with regulatory compliance risk and responsibility. In addition, this could create an additional strain on the Exception Request process due to an excessive number of requests from third parties.

Yes

Third parties directly impacted, as well as state regulatory agencies should be allowed to intervene. Frivolous actions by third parties should be restricted.

Yes

Yes

While NERC's draft BES Definition document proposes a 24 month transition period before the new BES Definition takes effect, there is still the possibility that one or more Exception Request(s) will still

be pending by the effective date of the new BES Definition. In such cases, CECO supports the approach suggested by the presenters during the NERC May 19, 2011 Webinar, at which time, one of the presenters indicated that the approach favored was that the status quo be maintained until the final resolution of the Exception Request. While not discussed during the Webinar, CECO believes that the status quo should remain in effect for a period of 18 months after the final resolution of an Exception Request, if the final resolution indicates a change in the status of the facility. That extra period would allow the Owner to take whatever steps are needed to bring the facility into compliance with whatever requirements would apply to the facility under its changed status. Another option for this facility-specific transition period would be to take the approach used in 2007 for NERC Order 693 requirements in general, i.e. that there be relaxed enforcement and penalties for the first 18 months after the facility's new status is finally resolved. It may be good to require that a Submitting Entity pursue its Exception Request in good faith and in a timely manner in order for the status quo to continue while its Exception Request is pending, so that Submitting Entities do not stall and abuse the process in order to delay the effective date of the new BES Definition with regard to some specific equipment.

Process Flow Chart - For the Project 2010-17 comment period that closed on May 27, CECO commented that all "Transmission Elements" should be replaced with "Networked System Elements". Here again, we believe the reference to "Transmission Element." on the top of page one of the flow chart should be changed to "Networked System Elements." Definition of "Exception" (Section 2.9) - The draft definition leaves out one type of Exception. Under Section 1.1, an entity can also seek an Exception if it is not clear whether a facility is or is not part of the BES. CECO proposes that Section 2.9 should be expanded as indicated below: 2.9 Exception: A determination (i) that an Element that falls within the BES Definition should be excluded from the BES, (ii) that an Element that falls outside the BES Definition should be included in the BES, or (iii) whether an Element that does not clearly fall within or outside the BES definition is within or outside of the BES Definition, in any case based on application of the technical criteria in this Appendix. The following comments apply if non-owners are allowed to be submitting entities. Service of Exception Request on Owner of Facility (Section 4.3.3) - In connection with Section 4.3.3 there needs to be a requirement that a Submitting Entity other than the Owner of the Facility serve on the Owner a copy of the Exception Request the same day that the Exception Request is filed with the Regional Entity. In such cases, the Submitting Entity should be required to also submit to the Regional Entity a Proof of Service, certifying that service had been made on the Owner. Owner Access to confidential information in Exception Request (Section 4.4) - Where the Submitting Entity is not the Owner, provision should be made for the Owner to be able to review on a timely basis all information, including any confidential information, submitted by the Submitting Entity.

Group

Texas RE

Tony Shiekhi

No

The procedure should not prescribe in the rules that an entity request exception if they are unable to determine status. Once this procedure is effective an entity will not be precluded from submitting an Exception Request regardless on their certainty of status. All requests will have to be supported with the required information.

No

This procedure and the associated exception criteria should not be treated publically, any different than any other ROP procedure. Access to exception related information should be the same or similar as access to current registration information.

No

This should be a comprehensive application form provided by the regional entities leaving flexibility for regional differences. At a minimum, regional entities may include the information detailed in the draft. There should not be a requirement to have a Part A and Part B. Two parts causes confusion with the entities and are an administrative burden for the regional entities. This process should be handled same as other registration requests by regional entities' registration departments.

Yes

A separate Exception Request shall be submitted for each Element or connected Elements for which the Submitting Entity seeks an Exception. This approach would promote an accurate mapping of the

BES excepted elements.
No
This section needs to be removed. If not, only the owner for an element should be allowed to submit an Exception Request no other third party. Again, keeping this procedure in line with current registration procedures.
No
A separate Exception Request shall be submitted for each Element or connected Elements for which the Submitting Entity seeks an Exception. If the Entity A and B are in different regions, the entities shall state the facts in their request and identify the regions and the elements in question.
Yes
The section needs to be modified. There should not be any initial screening of the exception requests section in this process. The process shall be simplified. The section 5.1 shall be titled " Acceptance or Rejection of an Exception Request" and be a part of REs' registration department process. After RE issues a Recommendation of rejection to NERC, NERC shall be able to make the final decision. Similar to other ROP procedures, if the regional entity is unable to recommend the exception because an entity is unable to "cure" a rejected Exception Request an entity will have an opportunity to appeal to NERC.
No
The NERC review as detailed in Section 8.0 may include too much detail and there is a concern that depending on the number of requests and other issues NERC may require more flexibility than Section 8.0 allows as drafted.
No change in status until exception request is finally approved by NERC.
The exception request procedure is a subset of the registration program. Regional Entity registration departments routinely analyze BES applicability issues, therefore we should leverage the rules and regional procedures that are in place. Texas RE recommends that a brief procedure be included in section 500 (preferably right after 502 Registration Organization). Flexibility should be left to the regions on how they process these request, the application used (using the details provided as a guide) and any associated timing parameters (which is typical for registration matters).
Group
ISO/RTO Standards Review Committee
Albert DiCaprio
No
As written the entities permitted to submit an exception request is too broad. The exception request should be an asset owner(s) decision. Other applicable entities should be limited to the planning/operation entities (PC and, RC) whose boundary includes the element(s). Neighboring PCs and RCs should not be permitted to submit an exception.
Yes
The process should allow for observers that have a reliability interest in the outcome. Specifically, Planning Coordinators, Reliability Coordinators, Transmission Operators and Balancing Authorities (PC/RC/TOP/BA) that have operating and/or planning authority over the asset-owing entity that is applying for an exception should be informed of all such requests within their footprint or "Area". Because a core responsibility of NERC and Regional Entities is to improve reliability through a sound compliance, monitoring and enforcement program (CMEP), exempting facilities from the CMEP (and by extension compliance with any Reliability Standards) through BES-exception determinations may directly impact the PC/RC/BA's reliable operation or planning of the BES. Therefore, the NERC Rules of Procedure should mandate that the Regional Entities provide PC/RC/TOP/BAs with an opportunity to provide advisory input to the Regional Entity on whether to grant the requested exception. Of course, establishing an opportunity to provide advisory input is particularly important, because there are many areas of the country where the PC/RC/TOP/BA is a different entity than the asset owning entity (which will presumably be the most likely party to seek an exception for a facility).
Yes
The multiple elements, whether submitted as part of a single request by one entity or a single request by multiple entities, should be of like kind (transformers, conductors, generators, etc.) such that the

technical justifications for these exceptions logically apply to all elements in the same manner. Failing to meet this proposed principle should be grounds for rejecting the acceptance of such requests.

No

The exception request should be an asset owner(s) decision. Other applicable entities should be limited to the planning/operation entities (PC and, RC) whose boundary includes the element(s). Neighboring PCs, and RCs or BAs should not be permitted to submit an exception.

Yes

For Elements located in the footprint of the PC/RC/TOP/BA, the Rules of Procedure should require the Regional Entity to provide the relevant PC/RC/TOP/BA the opportunity to provide advisory input on the exception request. Intervention should be restricted to parties that are directly and materially impacted by the facility. In general this should be parties in the electrical proximity of the element, but could be parties located in an adjacent area. The regional registration is immaterial.

Yes

Yes

The status of the element should be whatever the owner has requested via the exception process pending the outcome of the process. If the exception process was initiated by the planning/operation entities (PC and RC) whose boundary includes the element(s) the default should be what the asset owner has determined until such time that NERC issues a decision.

The appeal process essentially leaves NERC as the judge and jury and needs to be broadened. As written the panel could consist of three NERC staff with no industry input. Section 9 specifications need to ensure that at least one person who owns/operates like equipment is included on the panel and should explicitly allow for input from observers who are directly and materially impacted by the facility. The industry would be better served with simple high-level bright line definition and an inclusion process that is based on input from the facility owner or any operating/planning function that oversees the facility. Inclusion should also occur if the facility was found to have a material impact from the events analysis process.

Individual

Ben Friederichs

Big Bend Electric Cooperative, Inc.

Yes

However, it is not clear how this provision provides any protection or value to affected entities. The Exceptions process does not require entities to be certain of their circumstances. It is more important for the Exceptions Procedures to assist an entity with doubts about how a particular Element or facility fits within the BES definition to obtain guidance quickly and efficiently. First, the ROP Team should propose mechanisms by which an entity can obtain informal guidance from the staff of NERC or the RROs. Examples may be "help line" contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition and an actively managed FAQ system. Second, the ROP Team should provide for more formalized mechanisms to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance.

Yes

We are troubled by the secrecy that currently surrounds the NERC enforcement process (CMEP). Open, public, processes will be of substantial benefit to both the reliability agencies and the industry because this will allow the development of detailed records and decisions, from which the industry can obtain detailed guidance about how the BES Definition and the Exceptions process will be applied in specific situations. In essence public and open processes will serve to build a case law equivalent for the BES determinations. We note that the WECC Bulk Electric System Definition Task Force (BESDTF) developed a process for hearing appeals involving technical issues arising from the BES definition. We urge the RoP to explicitly provide for such a process. The BESDTF Proposal 6, App. D is available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>.

Yes

We are concerned that the language requiring "all such Elements" to be "separately identified" could,

if applied literally, prove extremely burdensome. Rather than requiring the entity to submit a full list of all Elements that would be excluded if the Exception Request is granted, we recommend that the Exception Request simply identify the points of demarcation between the BES and non-BES Elements that would result if the Request is granted, along with a one-line diagram of the remaining facilities or Elements that would be excluded.

Yes

Although we agree that the RoP Team has correctly concluded that certain entities may seek to have one or more Elements included in the BES if those Element(s) are improperly excluded by operation of the BES Definition, we urge the RoP Team to include certain procedural protections for the owner/operator of the Elements sought to be brought into the BES through an inclusion process. First, we suggest that the RE or other entity seeking to include an Element first be required to contact the owner/operator of that Element, explaining the basis for its conclusion that the Element has a material effect on the reliability of the bulk interconnected system and therefore should be included in the BES. In this way, the owner/operator will receive notice of any attempt to include its Element(s) in the BES and, because the owner/operator will have extensive knowledge about the operation of its own system, will have the information that might demonstrate to the satisfaction of the entity seeking inclusion that inclusion is not required, or else may be convinced to voluntarily register the Element(s) as part of the BES. If this initial process does not resolve the issue, the entity could then seek action from the relevant RE to require the owner/operator to register the Element(s) as BES, and the appropriate process for resolving any dispute could then be followed.

Yes

Consistent with our response to Question 2, we believe the Exceptions process should be public, with information concerning Exception Requests broadly available unless limited by specific requirements related to Critical Energy Infrastructure Information or national security. Exceptions process will benefit from broad participation by all entities that are affected by, or potentially affected by, an Exceptions decision. Accordingly, we urge the RoP Team to provide for participation in the Exceptions process by all entities who are affected or potentially affected by an Exception Request. We note that the downstream owner/operator has a clear interest in the status of the upstream elements, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct interests in an Exception process.

Yes

In general, we support the RoP Team's proposal, in which the RE can return an Exception Request to the submitting entity if insufficient information is provided. However, we anticipate circumstances where submitting entities genuinely believe their request, rejected as insufficient, is adequate. We again note that the WECC Bulk Electric System Definition Task Force (BESDTF) developed a process for resolving factual disputes arising from the BES determination activities. We again urge the RoP to explicitly provide for such a process. The BESDTF Proposal 6, App. D is available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>.

No

While we recognize that NERC must ultimately approve any Exception Request granted by an RE, we are concerned that the procedure proposed by the RoP Team is unnecessarily complicated and time-consuming. We believe the NERC process should consist of a single step, where NERC's final decision is made by committee of experts appointed by the BOT and delegated full authority by NERC to make binding decisions. Such a panel could, of course, be supported by technical experts from NERC's staff. We are also concerned that the appeal process does not clearly define the standard for review of the RE's Recommendation. We urge the RoP Team to make clear that the technical and factual findings should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. In such case, the Exception should be remanded to the RE with instructions for correction and re-determination. Such a process will serve to correct given Exceptions determinations and also facilitate improved future determinations.

We believe that the general perception of the SDT and RoP is that the BES policies and procedures they are developing will have largely the effect of bringing additional electric elements under standards requirements. For many entities in the west this is not the case. In our case, we believe the new BES policies and procedures will relieve us of requirements to which we must now inappropriately

comply. We patiently endured and were represented in WECC BES definition processes for approximately two years. The BESDTF proposal (see previous references) would have given us appropriate relief. The initiation of the SDT and RoP processes has led to a curtailment of the WECC BES effort. We must now endure another lengthy process while we must continue to inappropriately and unfairly comply with standards. Without some specific procedural relief, registered entities such as ours will be burdened with needless compliance burdens during the process of obtaining a Recommendation from an RE and then obtaining approval of that Recommendation from NERC and FERC. We note that entities with exactly the same electrical circumstances as ours, but are not inappropriately registered and inappropriately subject to standards, will not be similarly burdened. The RoP process should clearly speak to and resolve this inequity. We therefore urge the RoP Team to add language making clear that once the RE issues a Recommendation, the affected entities can rely on that Recommendation and will not suffer adverse regulatory consequences even if the Recommendation is subsequently disapproved by NERC or FERC and ultimately reversed on remand to the RE.

Section 3: The Criteria for Exclusions and Inclusions is being developed through the NERC standards setting process. Thus this section should reference the criteria rather than incorporating specific language into the RoP process document. This will protect the stability of the criteria and allow for future modifications of the criteria through standards setting while not having the requirement to re-open consideration of the process. We note that such a reference could provide for an "Interconnection Wide Standard" as provided by the enabling law. Section 5: In order to facilitate that the RE is processing Exception requests in a timely fashion, we also suggest that the ROP Team add a requirement that each RE maintain an auditable work plan that tracks each Exception request that has been filed, the disposition of each request, the length of time from filing until disposition, and estimated times for completion of pending Exception requests. Under the work plan the RE would be required to provide information on the status of Exceptions to any interested entity, including NERC and the entities with an interest in any Exception process. The RE would also provide affected entities with notices of any changes in the status or timelines relating to their Exception requests.

Individual

Andrew Z Puztai

American Transmission Company, LLC

Yes

However, if overused, the Regional Entities may find themselves overwhelmed with these requests. (easy way out for the Registered Entities) The RE also may not have access to all the information needed to justify the exception. This should be a last resort, and not used for any case that the Entity fails to do their due diligence n working through the analysis required. Also, what happens if the Registered Entity disagree with the outcome of the RE? Is there an appeal process for the determinations that are made by the RE?

Yes

However, ATC believes this information should be limited for to neighboring entieis that may be affected. It may be advisable to establish a method or process for requesting data by others, however, on a limited basis. Consideration should also be made for CIP related facilities in the process.

No

ATC believes this information should be on need-to-know basis and Part A information should not be made public unless you are a neighboring or interconnected entity. A formal process should be established to request the information for Part A and this should be on a limited and justified basis.

Yes

ATC agrees that there are likely to be situations where the submission of multiple elements in a single request is appropriate and more efficient.

Yes

Yes, ATC believes third parties should be able to request an exception for other owners, however, this should be limited to those owners that are on the Compliance Registry. Other functional registrations should include Transmission Owners and Transmissions Operators.

No

This should left to the RegionaI Entities to determine if the exception is appropriate or this will create

an administrative nightmare in trying to satisfy all parties that may be opposed to an exception.
Yes
If an Exception Request is incomplete, the Submitting Entity should either be allowed to provide additional information or the Entity would have an opportunity to resubmit a different package as long as it provides the necessary information. ATC questions why the RE would forward the rejection notice to NERC at this early stage without allowing the Submitting Entity to submit the additional information first. And finally, the time period for submitting additional information to correct or update the Exception Request should be designated; not just submitted in a reasonable period of time.
No
ATC believes that NERC requesting interviews in front of a panel should be later in the process. An alternative method may be to request another uninvolved RE to review the Exception Request and see if they would come to the same conclusion.
The element should be maintained and treated the same as was done prior to the new definition of the BES and submitting an Exception Request to the RE. Also, once the final decision is made, there should be an implementation period allowed for the element to be in full compliance with the Exception Request.
1. ATC believes the whole process seems too much like the TFE process and will require an increased amount of resources both by the Entity and the REs. This will burden all parties involved; the Registered Entity, the RE and NERC. 2. Records retention is not addressed for the Submitting Entity. Records retention for the Submitting Entity should be the same six years as required for NERC to retain their records.
Individual
Steve Alexanderson
Central Lincoln
Yes
However, it is not clear how this provision provides any protection or value to affected entities. The Exceptions process does not require entities to be certain of their circumstances. It is more important for the Exceptions Procedures to assist an entity with doubts about how a particular Element or facility fits within the BES definition to obtain guidance quickly and efficiently. First, the ROP Team should propose mechanisms by which an entity can obtain informal guidance from the staff of NERC or the RROs. Examples may be "help line" contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition and an actively managed FAQ system. Second, the ROP Team should provide for more formalized mechanisms to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance.
Yes
We are troubled by the secrecy that currently surrounds the NERC enforcement process (CMEP). Open, public, processes will be of substantial benefit to both the reliability agencies and the industry because this will allow the development of detailed records and decisions, from which the industry can obtain detailed guidance about how the BES Definition and the Exceptions process will be applied in specific situations. In essence public and open processes will serve to build a case law equivalent for the BES determinations. We note that the WECC Bulk Electric System Definition Task Force (BESDTF) developed a process for hearing appeals involving technical issues arising from the BES definition. We urge the RoP to explicitly provide for such a process. The BESDTF Proposal 6, App. D is available at: http://www.wecc.biz/Standards/Development/BES/default.aspx .
Yes
We are concerned that the language requiring "all such Elements" to be "separately identified" could, if applied literally, prove extremely burdensome. The NERC Glossary of Terms defines "Element" broadly to include "[a]ny electrical device with terminals that may be connected to other electrical devices such as a generator, transformer, circuit breaker, bus section, or transmission line." In the case of Exception sought for a Local Distribution Network (LDN) or other grouping of facilities, the entity applying for the Exception therefore could be required to list every circuit breaker, transformer, circuit switcher, switch, bus section, line, and other equipment contained within the LDN. Such a requirement would be extremely burdensome for the entity seeking the Exception and would provide little useful information to the regulators who would be required to rule on the Exception Request.

Rather than requiring the entity to submit a full list of all Elements that would be excluded if the Exception Request is granted, we recommend that the Exception Request simply identify the points of demarcation between the BES and non-BES Elements that would result if the Request is granted, along with a one-line diagram of the remaining facilities or Elements that would be excluded. We therefore recommend that Item 11 in Section 4.3.1 of the May 9 draft be deleted and replaced with the following: "11. Identification of the proposed point of demarcation between BES and non-BES elements, including the location and characteristics of any Elements associated with the point of demarcation, along with a one-line diagram of any other affected Elements or facilities."

Yes

Although we agree that the RoP Team has correctly concluded that certain entities may seek to have one or more Elements included in the BES if those Element(s) are improperly excluded by operation of the BES Definition, we urge the RoP Team to include certain procedural protections for the owner/operator of the Elements sought to be brought into the BES through an inclusion process. First, we suggest that the RE or other entity seeking to include an Element first be required to contact the owner/operator of that Element, explaining the basis for its conclusion that the Element has a material effect on the reliability of the bulk interconnected system and therefore should be included in the BES. In this way, the owner/operator will receive notice of any attempt to include its Element(s) in the BES and, because the owner/operator will have extensive knowledge about the operation of its own system, will have the information that might demonstrate to the satisfaction of the entity seeking inclusion that inclusion is not required, or else may be convinced to voluntarily register the Element(s) as part of the BES. If this initial process does not resolve the issue, the entity could then seek action from the relevant RE to require the owner/operator to register the Element(s) as BES, and the appropriate process for resolving any dispute could then be followed.

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No

While we recognize that NERC must ultimately approve any Exception Request granted by an RE, we are concerned that the procedure proposed by the RoP Team is unnecessarily complicated and time-consuming. We believe the NERC process should consist of a single step, where NERC's final decision is made by committee of experts appointed by the BOT and delegated full authority by NERC to make binding decisions. Such a panel could, of course, be supported by technical experts from NERC's staff. We are also concerned that the appeal process does not clearly define the standard for review of the RE's Recommendation. We urge the RoP Team to make clear that the technical and factual findings should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. In such case, the Exception should be remanded to the RE with instructions for correction and re-determination. Such a process will serve to correct given Exceptions determinations and also facilitate improved future determinations.

We believe that the general perception of the SDT and RoP is that the BES policies and procedures

they are developing will have largely the effect of bringing additional electric elements under standards requirements. For many entities in the west this is not the case. In our case, we believe the new BES policies and procedures will relieve us of requirements to which we must now inappropriately comply. We patiently endured and were represented in WECC BES definition processes for approximately two years. The BESDTF proposal (see previous references) would have given us appropriate relief. The initiation of the SDT and RoP processes has led to a curtailment of the WECC BES effort. We must now endure another lengthy process while we must continue to inappropriately and unfairly comply with standards. Without some specific procedural relief, registered entities such as ours will be burdened with needless compliance burdens during the process of obtaining a Recommendation from an RE and then obtaining approval of that Recommendation from NERC and FERC. We note that entities with exactly the same electrical circumstances as ours, but are not inappropriately registered and inappropriately subject to standards, will not be similarly burdened. The RoP process should clearly speak to and resolve this inequity. We therefore urge the RoP Team to add language making clear that once the RE issues a Recommendation, the affected entities can rely on that Recommendation and will not suffer adverse regulatory consequences even if the Recommendation is subsequently disapproved by NERC or FERC and ultimately reversed on remand to the RE.

Definitions (Section 2): The proposed definition of "Approval of Exception Request" specifies that the "determination" is to be made by "NERC." For the reasons stated in our response to Question 9, Central Lincoln is concerned that the waiting for NERC to approve the Exception Request entails a long delay that dilutes the value of the Exception process. Accordingly, we urge the definition to be rewritten to read "The determination by NERC or its designee that an Exception Request meets the criteria to receive an Exception." The definition of "Disapproval of Exception Request" should be changed to include the same language. The definition of "Owner" recognizes that an operator of a facility may be different than the owner in some circumstances and may have an interest in seeking an Exception independent of the owner. We suggest that it may make the Procedures more consistent with common usage to refer to "Owner or Operator" in the text of the Procedures, as opposed to the approach in the May 9 draft, which is to refer to "Owner" in the text of the Procedures and then define "Owner" to include both the owner and operator of an Element. Section 3: The Criteria for Exclusions and Inclusions is being developed through the NERC standards setting process. Thus this section should reference the criteria rather than incorporating specific language into the RoP process document. This will protect the stability of the criteria and allow for future modifications of the criteria through standards setting while not having the requirement to re-open consideration of the process. We note that such a reference could provide for an "Interconnection Wide Standard" as provided by the enabling law. Section 5: In order to facilitate that the RE is processing Exception requests in a timely fashion, we also suggest that the ROP Team add a requirement that each RE maintain an auditable work plan that tracks each Exception request that has been filed, the disposition of each request, the length of time from filing until disposition, and estimated times for completion of pending Exception requests. Under the work plan the RE would be required to provide information on the status of Exceptions to any interested entity, including NERC and the entities with an interest in any Exception process. The RE would also provide affected entities with notices of any changes in the status or timelines relating to their Exception requests. Supplementation of Information (Section 6): The provision states that supplementary information may be provided "at any time prior to the Regional Entity issuing its Recommendation," which by implication would prohibit the submission of supplementary information if the Recommendation has been issued and is subject to appeal. We believe there may be circumstances in which important information becomes available during the appeal stage. For example, the relevant Planning Coordinator might issue a revised Base Case that substantially alters the outcome of the studies relied upon by the Submitting Entity and the RE during the Recommendation phase. Accordingly, we recommend that the first sentence of Section 6 be rewritten to read: A Submitting Entity or Owner may, at any time during the pendency of an Exception Request or an Appeal of a Recommendation, submit supplemental information for the purpose of providing additional or revised Required Information. Finally, we emphasize that, in the event supplemental information is submitted under Section 6, the entity whose interests might be prejudiced by such supplemental information should be allowed to submit a written response to the submission. Thus, if an RE submitted supplemental information tending to show that a particular Element has a material impact on the operation of the bulk interconnected system, the owner or operator of that Element should have the right to submit a written statement explaining why the information should not change the result sought by that owner or operator. Materiality of Changes to

System Conditions (Section 10.2): We recognize that if the information relied upon by an RE in granting an Exception changes significantly, the Exception may no longer be justified where the new information demonstrates that the excepted Element has a material impact on the reliable operation of the interconnected bulk grid. We are concerned, however, that the draft language in Section 10.2, which would require a Registered Entity to report "any change of condition which would affect the Part A or Part B Required Information" is overly broad. Depending on the sensitivity of the analyses relied upon for the Part B information, routine changes in the load or facilities served by a particular Element could change how that Element interacts with BES elements. Hence, we suggest that Section 10.2 be rewritten as follows: Registered Entities shall notify the appropriate Regional Entity within ninety days of any material change of condition which would substantially affect the Part A or Part B Required Information regarding an Element(s) to which an Exception applies. Further clarity could be achieved by adding a definition of "Material Change," which we suggest would read: Material Change: One or more changes to the electric properties of an Element or group of Elements that could change the BES status of those Elements, such as the addition of new generation resources or transmission sources that substantially increase the short-circuit duty of the Element or substantially increase the voltage impact of a fault on the Element. BES Definition Flow Chart: We are concerned that flow chart provided by the Standards Drafting Team may not accurately reflect the intentions of the SDT and the RoP Team. For example, we believe neither Team intended a 5 MW solar plant interconnected to a 115-kV line to be included in the BES definition. However, following such an Element through the flow chart appears to produce the opposite result. Since the Element is interconnected at 115-kV, it would be considered under the "yes" branch of the chart. But since the Element meets neither one of the Inclusion criteria nor one of the Exclusion criteria, it winds up at the "No" branch at the bottom center of the chart, which results in it being assigned to the "Included in BES By Application of the BES Definition" box. We believe this is the opposite of what the Teams intended for such an Element.

Group

Edison Electric Institute

Mark Gray

Yes

Although we support the concept that an Entity should have the means to obtain a ruling on whether an Element should be appropriately included within the BES, this course of action should be used sparingly and only for conditions by which the current definition does not clearly cover. We also recommend that once a determination has been made, the Industry at large should be notified of this ruling so that entities and Regional Entities can consistently follow (or challenge) the ruling. We believe these added steps will ensure consistency and fairness across all regions.

Yes

EEl is an advocate of openness and feels that all BES Exception data should be made publically available for review, except information that has been specifically classified as Critical Energy Infrastructure Information (CEII) as defined by FERC or has been identified as Critical Cyber Asset Information as defined by the NERC CIP Standards. Information protected under these rules and regulation singularly excluded and protected as required.

Yes

EEl supports open access to Part A information allowing public posting of the information unless specifically identified by the Submitting Entity as protected. Since neither Part A or Part B forms have been provided for review, it is not possible to advise as to which information should be viewed by a narrower audience as suggested.

Yes

We believe that any process or procedure which requires an Entity to identify, catalog and maintain detailed and specific records for each and every element is clearly outside the scope of the FERC Order. Order Nos. 743 and 743-A direct the ERO to develop a definition that provides a "Bright Line" threshold that includes all facilities operated at or above 100kV except defined radial facilities. It did not direct the ERO to create new databases and supporting processes which would necessitate the cataloging of all elements 100kV and above that are exempt from this Threshold. (See Comments provided below – Question 10)

Yes

EEl believes that an Entity along with other entities who may have overlapping systems should be

allowed to submit joint Exception forms whenever the Excluded facility extends between Entities, however, Regional Entities, Planning Coordinators, Reliability Coordinators or Balancing Authorities should not be allowed to submit an Exception for another Entity. Ultimately, all evidence supporting that Exception, along with any compliance violations will fall on the Owner, therefore, only the owners should be allowed to file Exceptions. EEI agrees that third party Owners contained within the Compliance Registry should be allowed to file an Exception. Others should be excluded from the process.

No

An informal mediation process may be useful for situations like that mentioned above helping to minimize conflicts and ensuring regional consistency. However at least initially, EEI believes that the Regional Entities should be solely allowed the flexibility to make all determinations as to the appropriateness of an Exception, otherwise, we fear the system may get needlessly bogged down resulting in long delays for Exception process and subsequent approvals.

Yes

First, we do not believe a clear process has been developed. So to affirm we believe that sufficient access to the process has been accomplished in the procedure is a stretch. However, although very complicated and convoluted, the procedure does seem to provide adequate access and recourse. Specific concerns we have include the following: EEI believes it is unreasonable to allow the Regional Entity 60 days to review an Exception Request but the Entity is only afforded 21 days to put together an appeal to NERC. Similar consideration should be afforded to all involved entities on an equal basis. EEI also believes that notifying the ERO of a rejected Exception submission before allowing the submitting Entity an opportunity to first correct their submission would seem premature and therefore recommends that the process delay such notification until after the submitting Entity has exhausted all avenues of remediation.

No

Some type of process flow map defining the NERC review process, time periods, criteria, etc. should be included. Without some type of defined acceptance or rejection process, it is doubtful a consistent process will be followed. Relative to streamlining the effort, a less burdensome filing process should be developed which does not require entities to submit Exclusion Forms for each and every element. The process should stay true to the original order allowing entities to file Exceptions on a facility level basis. Among our specific concerns include the following: EEI questions the necessity of requiring an Entity to appear before a NERC Panel at the point indicated in the procedure. This process may be better facilitated through some less burdensome methods which achieve the same results without need of travel to NERC facilities by the Regional Entity, submitting Entity and Owner (if different).

EEI believes that all elements should be treated no differently from how they were treated by the Owner prior to the Approval of the new definition of BES, if and only if the Owner makes it known through written notice to the RE and ERO within some defined period (yet to be defined in the Procedure) that it intends to submit an Exception. Once that notice has been made, the submitting Entity and Owner (if different) should be allowed to continue to operate the Element in conformance with how it had previously operated the element or facility. If the Entity determines it does not have grounds to submit an Exception, the element or facility should be treated as part of the BES once the new definition has been approved.

In addition to the above comments, EEI submits the following comments and recommendations for the proposed procedure: General Comments In general, the procedure lacks clear steps by which entities can follow when filing exceptions. The ERO should develop a process document in conjunction with the procedure. This is common practice and generally helps those attempting to follow a procedure a better understand of the entire process. Unfortunately what was submitted for comment was a rehash of earlier procedures (i.e., TFE Procedure) that had questionable process, were overly complicated and made compliance difficult and excessively time consuming. The procedure is excessively long and complicated. It is our belief that the best way to ensure compliance and consistent application of the BES definition, as well as any other NERC Standards for that matter, is to provide uncomplicated, easily understood, and clear processes and procedures. It is our belief that the current group of documents implementing Order Nos. 743 and 743-A, relative to BES, are fraught with compliance risk for entities for which they were written. Although the BES definition provided by the Drafting Committee is fairly clear, much of the supporting documents and specifically the BES Exception Procedure has taken those simple directives and transform them into a process that is very

complicated and we fear will expand workloads within the ERO, Regional Entities and all of the entities who will have to comply with these changes. The industry is already overloaded with an ever increasing compliance burden and unfortunately this is heading in a direction that will make the situation worse. Although we support the Commissions attempts to ensure consistency relative to BES, a process needs to be developed which will provide a clear and helpful map useful to those submitting an exception. It cannot add more needless regulation that does nothing to improve reliability. We believe that efficiencies can only be accomplished by interconnecting a real process with the BES definition and an accompanying procedure (all linked) providing a clear "high level" flow of all steps (including document retention periods) which provide a meaningful picture of all handoff between organizations (i.e., filing entities, Regional Entities, ERO, etc.), as well as all necessary steps, long term requirements such as document retention, forms to be filed and recourse should the exception be disapproved. Additionally process maps would be useful to graphically display the desired process flow and ensure consistent treatment. Ideally, the BES definition/policy should be the framework for a defined process. Once the process is developed, a procedure and accompanying form(s) should provide an easy "cookbook" type method for filing an exception. Failure to achieve this level of regulatory simplicity will ensure industry and regulatory failure which is not in the best interest of FERC, the ERO, Regional Entities or the Industry. The ERO has an opportunity to improve Industry compliance but only if future efforts such as these are made clearer and simpler. It can't be over emphasized that procedures should be simple, clear, instructional, yet sufficiently detailed as to who, what, when and how the task is to be executed. Procedures should not include anything more than the tasks necessary to complete the intended mission. It should not contain appeal procedures, rejection procedures or any other procedures for that matter. It should be focused and clear. Other important procedures such as those listed above should be part of other procedures which can be referenced and reused by this and other procedures. The point is, the current procedures are not meeting Industry needs and are contributing mightily to the current compliance problems. Fostering complexity and bureaucracy with each and every new procedure is hurting the Industry and all efforts to achieve greater reliability will be lost. EEI and its member companies would be more than happy to work with the ERO to assist in the development of an alternative method to the current procedure which might be useful in improving what is currently under development. EEI also respectfully submits the following for consideration as part of our general comments: Position – Elements vs. Facilities EEI believes that considerable confusion has been and continues to be created by the ambiguous usage of the terms "Element" and "Facility". To make this point, it is worth noting the Commission approved definitions for each of these Terms which is as follows: Element - Any electrical device with terminals that may be connected to other electrical devices such as a generator, transformer, circuit breaker, bus section, or transmission line. An element may be comprised of one or more components. Facility - A set of electrical equipment that operates as a single Bulk Electric System Element (e.g., a line, a generator, a shunt compensator, transformer, etc.) The Commission has made it clear that Reliability Standards, which are directly linked to the NERC Glossary of Terms, must be "clear and unambiguous"(see Footnote 1). Unfortunately, the current definitions of both are so close we believe that errors are being made in their interpretations and usage routinely. We also believe that the terms are being interchangeably used, leading to further confusion. We believe the key to understanding both terms can be found in the definition which states that an Element is a single device which can be grouped and considered as one. In contrast, a Facility is a set of electrical equipment which can be grouped and considered as one. The key difference is single vs. set (which imply multiple). So the starting point for Element is one while the starting point for Facility is plural (i.e., set). Both can be consider singular in a group but Element is a group of singular devices while a Facility is a group of sets. We believe this distinction is Key to the Commission directive. To further clarify the point, an element generally refers to the most elemental quantity; logically one or more of the same kind or type but never different in character. In contrast, a facility speaks to a set or grouping of diverse equipment or elements. The distinction between Elements and Facilities is important to the Exception Procedure since the lack of unambiguous clarity in these definitions will lead to inconsistent Exception submittals as well as inconsistent compliance records which will ultimately cloud the intended Bright Line Directive made by the Commission. Furthermore, there is no doubt that the Commission directed the ERO to provide an Exception Process for Facilities not all elements contained within those facilities. Note the following: "The Commission stated that, as a threshold matter, the material impact tests proffered by commenters did not measure whether specific system elements were necessary for operating the system, but, rather, measure the impact of losing the element." (See Footnote 2) It can be no clearer than the above quotation that the

Commission's concerns which lead to their directive to redefine within the NERC's Glossary of Terms "BES" and subsequently develop an Exception process was not to create a large and onerous process of accounting for each and every individual element but to more broadly consider the impact of Facilities (i.e., system elements as a group). To granularly consider each and every element would be to do exactly what the Commission sites as a failure within the NPCC Process. Therefore, maintaining records for each and every element excluded within the BES by the ERO, Regional Entity and Submitting Entity is well beyond what was directed by the Commission, will not address their operational concerns and will create another compliance burden which will further expand the cost of Compliance while doing nothing to improve reliability. In light of the issues described above, EEI recommends that NERC hold true to the Commission's directive, requiring an Exception and Subordinate Accounting Process for Facilities and leave all auditable records (i.e., specifics on elements in support of those Exception filings) to be maintained as already exists within the submitting Entities and their current system databases. Additional Comments specific to sections as indicated below: 2.6/4.2(iii) - Classified National Security Information is a defined term in section 2.6 and section 4.2(iii) refers to submitting such data in a secure manner. However, the procedure makes no provision for security of CEII information. If CEII information is covered as 'Protected FOIA Information' (section 2.21) it should be made clear (the cross references in the document to other laws, rules and regulations create a confusing process). Also, the term 'Confidential Information' is not defined in the procedure. 4.3.2 - It is not clear in the procedure how confidential information(see Footnote 3 below)is to be classified, protected or handled or how the proposed procedures relate to the confidentiality provisions in ROP 1500. Further we believe that it is inappropriate to deflect all responsibility for that protection to the submitting entity. We believe the process developed must include a procedure for identifying, classifying and seeking protection of confidential information The references to "classified data" in this context are confusing. The provision should be re-written to clearly state a process and how that process differs, if at all, from ROP 1500. 5.1.3. (a) Should read as follows: "The Regional Entity shall complete its initial screening of the Exception Request Form and any responsive document filed by an Owner no later than either sixty (60) calendar days after receiving the Exception Request or sixty (60) calendar days after receiving any responsive document from the Owner." Specifically, the use of verbiage such as "typically" for a Regional Entity is inappropriate. Also, RE and Owners should be afforded the same amount of time to complete an initial screening (RE) or filing a response (Owner). 5.2.2 – Six months is too long to allow the Regional Entity to conduct a review of an Exception Request. 5.2.3 – Specific criteria should be included in the procedure by which the Regional Entity will review an Exception request. 7.0 – The "clear and compelling " standard is too high a standard and should be struck from the document. "Clear and convincing" is a very high legal standard that is used only in very specific circumstances. We believe that NERC's review of exceptions should be "de novo" in all cases. NERC can not delegate an 'initial decision' to the Regional Entities and therefore any recommendation of a Regional Entity should not carry any special weight. 9.0 – The period for submitting an Appeal (21 days) is insufficient to allow an entity adequate time to prepare an appeal. The period should be extended to 60 days. 9.7 – The period provided for submitting an appeal to FERC should be extended from 21 to 30 days. Footnotes: 1. See Order No. 672, FERC Stats & Regs. 31,204 at P325 2. Docket No. RM09-18-001, Page 30, P47 3. Confidential Information for purpose of these comments is that information which has been specifically classified as confidential by Section 4.1 of Executive Order No. 12958 (i.e., Classified National Security Information) NRC Safeguards Information and/or Protected FOIA Information

Group

Texas Industrial Energy Consumers (TIEC)

Katie Coleman

TIEC supports allowing entities to initially determine on their own whether the BES definition includes their facilities or not. TIEC would oppose an approach by which all elements are deemed included unless an exception is obtained. Instead, with respect to inclusion, the default should be to allow entities to apply the BES definition to their elements, and then proceed through the exception process only if another entity seeks to have the element included in the BES definition against the owner or operator's interpretation of the BES definition.

Any entity whose facilities would subject to inclusion in the BES definition if a given exception request were granted should be allowed to participate in the exception proceeding.
If an element is not currently included as a part of the BES, but might be included under the new definition, the element should not be considered part of the BES until all exception requests have been finally granted or denied (including appeals). TIEC supports the "Implementation Plan for Project 2010-17: Definition of BES," which provides a 24-month lag in implementation of the new BES definition to allow exception requests to be processed and appealed. However, in the event that an exception request has not been finally granted or denied at the end of this 24-month period, the element still should not be included as a part of the BES until a final decision (including any appeals) has been made. Similarly, after the initial 24-month window expires, an element that is the subject of a new exception request should be deemed excluded until a final decision is made (for example, if an RTO submits an exception to include an element that is currently excluded after the 24-month window, or in the case of a new facility whose status has not yet been determined). Additionally, if an entity's exception request is denied, it should be given a period of time—to be determined on a case specific basis—in which to comply with the BES requirements.
Individual
Laura Lee
Duke Energy
Yes
While the goal should be to make the BES Definition as clear as possible there will probably exist cases in which an entity will need guidance in the application of the BES definition. It will be difficult to anticipate and address all situations that entities may encounter in the development of the BES Definition, so Duke Energy supports the development of a process that can be used for requesting a determination as well as an Exception.
Yes
Disposition of the Exception Request should be made available to all Registered Entities to inform their application of the BES Definition and Exception Process. This could be provided in a manner similar to the summaries of Notices of Penalties, with the name of the submitting entity, the name of the owner (if different from the submitting entity), the specific geographic location and the specific identifying name of the element redacted. Enough information should be contained in the summary to make it useful from a lessons learned perspective.
No
Items 1, 2, 3, 4, 7, 8, and 11 (only with respect to location and proper name assigned to the element, if applicable) should be redacted. Information about transmission system elements can contain confidential and/or Critical Energy Infrastructure Information and should not be made publicly available. Personal employee information should also not be made publicly available.
Yes
In addition to the listed entities the Transmission Planner should be included.
Yes
Only those entities that can demonstrate they would be materially impacted by the decision should be allowed to intervene. For example, if an owner was the submitting entity, the Reliability Coordinator and Planning Coordinator for the area in which the element is located should be permitted to intervene. At a minimum entities allowed to intervene should be those entities that are Regional Entities or are on the NERC Compliance Registry.
Yes
Yes

It should have the status it had prior to the revised BES Definition becoming effective.
A companion process document containing clear steps and timelines should be developed for the entities to use when submitting, intervening in, analyzing and appealing Exception Requests. Duke Energy agrees with EEI's contention that this would be helpful in ensuring compliance with and consistent application of the BES Definition and the Exception Procedure. In order to give all parties ample time to satisfy each step of the process each party should be subject to comparable timeframes for each response. This will help ensure that sufficient rigor is applied to documentation and evaluation while still preserving the timeliness of the disposition.
Group
Alabama Public Service Commission
John Free
Streamlining the review process must consider a proper balance between (1) a rigorous review that affords due process to all participants and (2) an overly procedural, time-consuming, administrative burden. The Alabama Public Service Commission generally agrees with the NERC review as proposed, but wishes to make the following comments. As proposed, the Regional Entity would review Exception Requests and make a Recommendation to NERC for review. In addition, under the proposed process, NERC would make the initial determination on all Exception Request applications, with the benefit of the Regional Entity's recommendation. Because the Regional Entity would already be conducting a review of the application for purposes of its substantive Recommendation, it may create efficiencies to allow the Regional Entity to go ahead and make the determination (rather than a mere Recommendation), subject to appeal or review by NERC. This would alleviate the administrative burden on NERC by limiting its obligation to review Exception Requests to those where the Regional Entity's initial determination is being challenged and for purposes of regional consistency.
"In cases where an Exception Request is pending (i.e., while an element's status as part of the BES is still in question), such element should be given a waiver, or stay, from compliance obligations pending completion of the review process. There are over 130 NERC Reliability Standards that dictate over 1000 requirements. Requiring an entity to make investments to bring an element into compliance with all applicable Reliability Standards only to be ultimately told that such compliance is not necessary would be a wasteful expenditure that is unnecessary and that ultimately, by definition, would not be necessary for the reliable operation of the Bulk Electric System. Implementing a waiver/stay pending review would ensure that ratepayers are not bearing unnecessary costs."
Individual
Heather Hunt
NESCOE
Yes
NESCOE is the Regional State Committee for the New England region. NESCOE is governed by a board of managers appointed by the Governors of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. NESCOE's purpose is to represent the interests of the New England region by advancing policies that will provide electricity at the lowest possible price over the long term, consistent with maintaining reliable service and environmental quality. The proposed revision to the BES definition, being developed concurrently with this Exception Procedure, could have significant impacts on New England's electric grid and ratepayers. NESCOE submitted comments on the proposed BES definition on May 27, 2011 that, in some instances, raised questions and concerns about what elements would be included or excluded under the draft definition. As NESCOE has stated in prior comments, NESCOE members share the interest in continually assessing means to improve system reliability, but are concerned that significant costs could be imposed without providing

meaningful reliability benefits. Given the potential reliability and cost implications of the proposed BES definition, it is critical that entities be afforded an opportunity to submit an Exception Request if there are questions about the status of an element. This will militate against over-inclusion of elements that do not impact the BES and under-inclusion of elements that should be subject to stringent NERC standards. The ability to submit an Exception Request recognizes the need for flexibility in applying the rule (e.g., generating units below the MVA threshold in the BES definition that directly impact the system or, conversely, generating units above the threshold that do not have a material impact on the BES).

Yes

States and third parties should have access to exception related information. This access is critical to ensuring consistency within and across regions by informing affected parties that certain elements may fall inside or outside the BES definition. Access to such information is necessary for state and third party input on the specific Exception Request as well as informing requests from other entities regarding similar elements that should or should not be considered BES. Additionally, NESCOE has previously stated its concern that the proposed BES definition could unintentionally incorporate into the BES local distribution facilities that do not have a direct impact on the reliability of the system, potentially imposing significant costs without providing meaningful reliability benefits. The Commission recognized in Order 743 the need for an exemption process that would make individual determinations regarding which facilities should be considered "local distribution" (i.e., state-exclusive jurisdiction) and which facilities should be considered "transmission" (i.e., federal-exclusive jurisdiction). See Revision to Electric Reliability Organization Definition of Bulk Electric System, Order 743, 133 FERC ¶ 61,150 (2010) at P 37. The potential intersection of local distribution facilities and the BES under the proposed definition raises questions regarding state-federal jurisdiction and local-regional cost recovery. Because of this, the process must afford states a meaningful opportunity to participate. These collective implications of the proposed BES definition and Exception Process require that states, at minimum, are given (i) notice of an Exception Request following the Regional Entity's Acceptance pursuant to Section 5.1.4, (ii) notice of the issuance of a Recommendation pursuant to Section 5.2.3, and (iii) an opportunity to review the exception related information and to submit comments to the Regional Entity during its review and, later, to NERC following issuance of the Regional Entity's Recommendation. NESCOE additionally believes the process should be transparent to ISO/RTOs and supports a more active role of ISO/RTOs and similar entities with oversight over portions of the transmission system. While Section 4.1 allows such entities to submit an Exception Request, the draft BES Exception Procedure does not appear to afford ISO/RTOs a role where they do not submit the Request. At a minimum, the procedure should ensure that ISO/RTOs receive notice and copies of all applications filed and recommendations made to NERC. NESCOE would support substantive involvement of ISO/RTOs (and similar entities charged with reliability of the transmission system) in the review process. ISO/RTOs and such similar entities should, like states, be given notice and an opportunity to comment on an Exception Request.

Yes

NESCOE agrees that the public disclosure of materials must be balanced with the need to preserve the confidentiality of critical energy infrastructure information (CEII) and other information. Section 4.2(iii) provides some discretion to the Submitting Entity in making Part B materials public. NESCOE suggests incorporating a similar provision in Part A to permit a Submitting Entity to redact some information, provided the Submitting Entity provides justification for redacting such information and that there is a mechanism for those with CEII to receive the information upon request and within a defined time period permitting sufficient review prior to comment deadlines.

Yes

NESCOE agrees that ISO/RTOs and similar entities with oversight over portions of the transmission system should be permitted to submit an Exception Request in accordance with the process outlined in Section 4.1. NESCOE further suggests, for the reasons stated in our response to Question 2 above, that the procedure include mechanisms that would facilitate states' ability to obtain review of the status of an element through the Exception Process. As a general matter, state personnel with CEII clearance should have access to the current list of elements classified as BES. A state should also be provided notice and an opportunity to comment, as detailed in our response to Question 2, on an Exception Request concerning elements located within the state's planning region. States would not be in a position to submit an Exception Request because they lack the information required for

submission under Part B of Section 4. However, NESCOE offers the following alternative mechanism to ensure meaningful state participation: (i) To the extent a state has questions regarding the classification of elements, the Exception Procedure should provide states a mechanism to request an explanation from Owners of elements regarding why they consider certain elements to be included or excluded from the BES, with a response required from the Owner within a defined time period. (ii) Upon request from a state, the Regional Entity should be required to undertake a review of the element or elements in question, including the Owner's response to the state, and, if it determines that the Owner's classification is in error, the Regional Entity shall submit to NERC an Exception Request. (iii) States should be afforded an opportunity to file an appeal directly with NERC if the Regional Entity declines to file the Exception Request, or to seek NERC's review of the Regional Entity's classification of the element or elements in question.

Yes

Similar to FERC proceedings, there are a number of third party entities that will be affected by an Exception Request, including states and other Owners within a region or in neighboring regions. It is critical that there be a mechanism for third parties to receive notice of an Exception Request and to intervene.

No

See NESCOE's response in Question 2 above regarding notice and opportunity to comment.

Provided ISO/RTOs (and similar entities with oversight over portions of the transmission system) are given notice of an Exception Request as suggested in NESCOE's response to Question 2 above, NESCOE supports not changing the status of the element during the pendency of the Request. Should the ISO/RTO (or similar entity) identify an operational or reliability issue pending the determination of the element, it can take appropriate action to ensure that system reliability is not compromised.

Section 5.2.3. should require that, in addition to sending NERC copies of the Exception Request Form and other information submitted by the Submitting Entity, the Regional Entity shall send to NERC any comments submitted by third parties.

Individual

RoLynda Shumpert

South Carolina Electric and Gas

Yes

No

The RE, NERC, FERC, and Canadian Provincial Authorities are the appropriate entities.

Yes

No limit on scope is needed.

No

A request for exclusion should be limited to the facility owner, but a request for inclusion should be open to an RE, PC, RC, or BA that are responsible for the reliability of the facility.

Yes

The reliability impacts on the parties should be the main consideration.

Yes

Yes

The status should be the same as before the request was submitted, no change before the request is approved.

Individual

Jack Stamper

Clark Public Utilities

Yes
<p>However, it is not clear how this provision provides any protection or value to affected entities. The Exceptions process does not require entities to be certain of their circumstances. It is more important for the Exceptions Procedures to assist an entity with doubts about how a particular Element or facility fits within the BES definition to obtain guidance quickly and efficiently. First, the ROP Team should propose mechanisms by which an entity can obtain informal guidance from the staff of NERC or the RROs. Examples may be “help line” contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition and an actively managed FAQ system. Second, the ROP Team should provide for more formalized mechanisms to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance.</p>
Yes
<p>We are troubled by the secrecy that currently surrounds the NERC enforcement process (CMEP). Open, public, processes will be of substantial benefit to both the reliability agencies and the industry because this will allow the development of detailed records and decisions, from which the industry can obtain detailed guidance about how the BES Definition and the Exceptions process will be applied in specific situations. In essence public and open processes will serve to build a case law equivalent for the BES determinations. We note that the WECC Bulk Electric System Definition Task Force (BESDTF) developed a process for hearing appeals involving technical issues arising from the BES definition. We urge the ROP to explicitly provide for such a process. The BESDTF Proposal 6, App. D is available at: http://www.wecc.biz/Standards/Development/BES/default.aspx.</p>
Yes
<p>Clark is concerned that the language requiring “all such Elements” to be “separately identified” could, if applied literally, prove extremely burdensome. Rather than requiring the entity to submit a full list of all Elements that would be excluded if the Exception Request is granted, we recommend that the Exception Request simply identify the points of demarcation between the BES and non-BES Elements that would result if the Request is granted, along with a one-line diagram of the remaining facilities or Elements that would be excluded.</p>
Yes
<p>Although Clark agrees that the ROP Team has correctly concluded that certain entities may seek to have one or more Elements included in the BES if those Element(s) are improperly excluded by operation of the BES Definition, Clark urges the ROP Team to include certain procedural protections for the owner/operator of the Elements sought to be brought into the BES through an inclusion process. First, Clark suggests that the RE or other entity seeking to include an Element first be required to contact the owner/operator of that Element, explaining the basis for its conclusion that the Element has a material effect on the reliability of the bulk interconnected system and therefore should be included in the BES. In this way, the owner/operator will receive notice of any attempt to include its Element(s) in the BES and, because the owner/operator will have extensive knowledge about the operation of its own system, will have the information that might demonstrate to the satisfaction of the entity seeking inclusion that inclusion is not required, or else may be convinced to voluntarily register the Element(s) as part of the BES. If this initial process does not resolve the issue, the entity could then seek action from the relevant RE to require the owner/operator to register the Element(s) as BES, and the appropriate process for resolving any dispute could then be followed.</p>
Yes
<p>Consistent with Clark’s response to Question 2, Clark believes the Exceptions process should be public, with information concerning Exception Requests broadly available unless limited by specific requirements related to Critical Energy Infrastructure Information or national security. Exceptions process will benefit from broad participation by all entities that are affected by, or potentially affected by, an Exceptions decision. Accordingly, Clark urges the ROP Team to provide for participation in the Exceptions process by all entities which are affected or potentially affected by an Exception Request. Clark notes that the owners or operators of adjacent facilities have a clear interest in the status of the nearby elements, both because improper exclusion of these Element could affect reliability of adjacent facilities and because improper inclusion of the neighboring element could force improper inclusion of nearby Elements. The ROP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct interests in an Exception process.</p>
Yes

In general, Clark supports the ROP Team's proposal, in which the RE can return an Exception Request to the submitting entity if insufficient information is provided. However, Clark anticipates circumstances where submitting entities genuinely believe their request, rejected as insufficient, is adequate. Clark again notes that the WECC Bulk Electric System Definition Task Force (BESDTF) developed a process for resolving factual disputes arising from the BES determination activities. Clark again urges the ROP to explicitly provide for such a process. The BESDTF Proposal 6, App. D is available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>.

No

While Clark recognizes that NERC must ultimately approve any Exception Request granted by an RE, Clark is concerned that the procedure proposed by the ROP Team is unnecessarily complicated and time-consuming. Clark believes the NERC process should consist of a single step, where NERC's final decision is made by committee of experts appointed by the BOT and delegated full authority by NERC to make binding decisions. Such a panel could, of course, be supported by technical experts from NERC's staff. Clark is also concerned that the appeal process does not clearly define the standard for review of the RE's Recommendation. Clark urges the ROP Team to make it clear that the technical and factual findings should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. In such case, the Exception should be remanded to the RE with instructions for correction and re-determination. Such a process will serve to correct given Exceptions determinations and also facilitate improved future determinations.

Clark believes that the general perception of the SDT and ROP is that the BES policies and procedures they are developing will largely have the effect of bringing additional electric elements under standards requirements. For many entities in the west this is not the case. In Clark's case, Clark believes the new BES policies and procedures will relieve us of requirements to which Clark must now comply. Clark patiently participated in WECC BES definition processes for approximately two years. The BESDTF proposal (see previous references) would have given Clark appropriate relief. The initiation of the SDT and ROP processes has led to a curtailment of the WECC BES effort. Clark must now endure another lengthy process while it continues to comply with standards that may not be appropriate. Without some specific procedural relief, registered entities such as Clark will be burdened with needless compliance requirements during the process of obtaining a Recommendation from an RE and then obtaining approval of that Recommendation from NERC and FERC. Clark therefore urges the ROP Team to add language making it clear that once the RE issues a Recommendation, the affected entities can rely on that Recommendation and will not suffer adverse regulatory consequences even if the Recommendation is subsequently disapproved by NERC or FERC and ultimately reversed on remand to the RE.

Section 3: The Criteria for Exclusions and Inclusions is being developed through the NERC standards setting process. Thus this section should reference the criteria rather than incorporating specific language into the ROP process document. This will protect the stability of the criteria and allow for future modifications of the criteria through standards setting while not having the requirement to re-open consideration of the process. We note that such a reference could provide for an "Interconnection Wide Standard" as provided by the enabling law. Section 5: In order to facilitate that the RE is processing Exception requests in a timely fashion, we also suggest that the ROP Team add a requirement that each RE maintain an auditable work plan that tracks each Exception request that has been filed, the disposition of each request, the length of time from filing until disposition, and estimated times for completion of pending Exception requests. Under the work plan the RE would be required to provide information on the status of Exceptions to any interested entity, including NERC and the entities with an interest in any Exception process. The RE would also provide affected entities with notices of any changes in the status or timelines relating to their Exception requests.

Individual

Michael Falvo

Independent Electricity System Operator

No

We do not agree that an Exception Request should be submitted in cases where an entity is unable to determine whether an Element is within the BES Definition. As such, the inclusion of "Unable to determine status" should be deleted in Section 4.3.1, bullet 9. In cases where confirmation or clarification regarding the application of the BES definition is needed, we suggest clarification be

provided by the Regional Entity through a separate, simplified process developed by each Region. This would make the BES Definition Exception Process more effective and efficient and remove the administrative burden associated with confirmation/clarification issues. Accordingly, the following paragraph should be deleted from Section 1.1: "An entity unable to determine the status of an Element by application of the BES Definition also may submit an Exception Request under this Exception Procedure to obtain a determination of whether the Element is or is not within the BES."

No

In general, we do not believe that entities other than the RE, NERC, FERC, State or Canadian Provincial authorities be allowed access to exception related detailed information filed by an entity since this information may be sensitive and confidential. However, the Reliability Coordinator should have access to such information as they play a key reliability role.

No

Consistent with our response to Q2, we hold the view that Part A information should not be posted on a public website.

We suggest that the scope of the Elements that can be contained in a single Request should be limited to: (a) those that have similar electrical configuration and technical justification for exception; or (b) interconnected Elements and Facilities that collectively provide a specific function e.g. an entire substation, an overhead line or cable and its terminal equipment, a local distribution network (LDN). There should be no need to apply separately for an exception for each of the Elements that make up these "logical" groupings. In these cases, information should be provided for each element along with single line diagram to confirm configuration and electrical characteristics. Multiple entities should only join a single request for elements with joint ownership and/or common interconnections. In addition, facility owners and Reliability Coordinators or Regional Entities should also be allowed to file for a joint application. Finally, as a general comment, we suggest the scope of elements not be overly limited as this may require unnecessary exception applications for elements of similar characteristics.

Yes

We agree that third parties limited to applicable Regional Entity, Planning Coordinator, Reliability Coordinator, or Balancing Authority may submit an Exception Request for an element in their respective area.

No

(See comments for Q4) We believe that third parties should not be allowed to intervene or file an exception. They should only be allowed to raise their concerns or endorsements to an application through the relevant reliability coordinator, regional entity or regulatory authority. Furthermore, the only entities that should be allowed to raise concerns should be limited to the connected GO, TO or a distribution utility along with Reliability Coordinator, Regional Entity or regulatory authority. As such, it should not matter if Entity A and Entity B are in the same regions and consequently this should make the process much more efficient. If two entities are in different regions, then we suggest that the Regional Entity associated with that particular element, in consultation with other relevant Regional Entity, should conduct an evaluation to decide whether or not the element under consideration should be a part of BES. Any one of the Regional Entities (or jointly) can submit its recommendation to NERC for approval or disapproval. Following the submission of a recommendation to NERC, a submitting entity or owner can still submit a comment in support of or in opposition to the recommendations. [refer to section 8 of the "Draft BES exception procedure"]

No

We agree with most of the provisions of Section 5.1.5 but suggest that Regional Entities should clearly identify the missing requirements where a request is rejected as incomplete.

Yes

We suggest that the status of an element should remain the same before the request is submitted and should only change after a final decision has been rendered by the ERO or relevant regulatory authority.

Section 1.2 makes clear the authority of Canadian and Mexican Governmental Entities to adopt the proposed Exception Procedure in its entirety or in part with its own deviations while ensuring there will be no adverse impact on the interconnected transmission system. However, Footnote 2 contradicts this initial statement by seemingly requiring agreement by NERC or the applicable Cross-

Border RE on an alternative process Canadian Entities may choose to follow. Further, it is not clear what is the "application" referred to in the footnote. In paragraph (a), is it anticipated that Canadian Entities would provide justification to NERC or the Cross-Border RE for deviations from the NERC technical principles and process? We do not agree with these provisions as they are inconsistent with the authorities described in Section 1.2. Additionally, paragraph (b) of the footnote is very confusing and its intent is unclear. We propose alternative wording for footnote 2 as follows: 2 Canadian jurisdictions and relevant governmental authorities may also adopt the same or similar technical principles as exception criteria for demonstrating BES exceptions. Where the applicable entities in Canada or Mexico deviate from these technical principles or exception process, the entities must ensure that their BES exception process and technical principles would not result in excluding Elements or paths that: i. transfer bulk power within (intra) or between (inter) two Balancing Authority Areas and are monitored facilities included in an Interconnection Reliability Operating Limit (IROL); and ii. are necessary for the reliable operation of the interconnected transmission system.

Individual

Kevin Koloini

American Municipal Power

No

I feel the administrative burden for processing and requesting exceptions for Elements is not justified at the NERC or regional level nor for the registered entities. With that said, an entity that cannot determine the status of its Element by application of the BES Definition should be able to submit an Exception Request to obtain a determination of the Element's status. It is appropriate for such requests to be in a third category, neither "inclusion" exception requests nor "exclusion" exception requests, since the Element's status is by definition uncertain. During the transition period, while an Exception Request is pending for an Element whose BES status is uncertain, the Element's status should remain the same as in the current (i.e. under the original BES definition) status quo. We believe that after the transition period, this type of exception request will for the most part consist of Elements impacted by a system change and newly-constructed Elements. Elements for which an "indeterminate" exception is requested based on a system change should be considered under their prior characterization while the exception request is pending. "Indeterminate" Exception Requests for new Elements should be submitted no later than 90 days after the Element is placed in service; new Elements for which a properly-submitted "indeterminate" Exception Request is pending should be considered non-BES. To encourage the prompt resolution of the status of new Elements, "indeterminate" Exception Requests for new Elements submitted more than 90 days after the Element is placed in service should be treated as exclusion Exception Requests (i.e. the Element should be considered BES while the Exception Request is pending).

No

As a rule, exception-related information should not be publicly released, because the information supporting an exception request will usually contain CEII. However, the information should be made available, subject to appropriate protection, to entities with a reliability-related need for it. Such entities might include the submitting entity's RC, PC, BA, TOP, or neighbors. Exception-related information submitted by an entity regarding an Element owned by another entity should be made available to the owner of the Element. Regional Entity recommendations and NERC decisions on exception requests should be publicly posted. Public posting of decisions will allow a body of precedent to develop, allowing entities to better understand NERC's interpretation of the BES Definition and Technical Criteria. This should result in a more efficient process, as some exception requests that would have been denied are not submitted in the first place, and others are better tailored to answering NERC's questions.

Yes

If Part A information is limited to the name of the requestor, a brief description of the Element in question, and a brief description of why an exception is appropriate, none of which contains any CEII, it can be made public.

Yes

A single application should be allowed for a contiguous system, whether there is one requestor or more than one. Similar requests all pertaining to a contiguous system can be efficiently considered together.

Yes

Remove RE.
Yes
Entities with a reliability interest in the Exception Request should be permitted to present their arguments.
No
The first sentence of Section 9.1 could be revised to state: "A Submitting Entity or Owner aggrieved by NERC's approval or disapproval of an Exception Request, or by NERC's determination not to direct reconsideration by the Regional Entity of Rejection of an Exception Request, may, within twenty-one (21) calendar days following receipt of NERC's decision, file an appeal with the NERC Board of Trustees by sending a letter to NERC's General Counsel stating the desire to do so, with copies to the other parties to the Exception Request process"
Yes
Consider revising the last two sentences of the first paragraph of Section 8.0 to be as follows: "The decision shall be in writing, shall be based on a panel's independent consideration of the full record, and shall identify the basis for the decision. If the decision of the panel was not unanimous, the writing shall note that fact and include the basis on which the minority disagreed."
In cases where a new Element goes into service before an Exception Request has been decided the status of such an Element should be governed by the application of the BES definition while any Exception Requests are pending. The status of Elements impacted by a system change should also be determined by the application of the BES definition pending a NERC decision on any Exception Requests.
The Exception Procedure refers throughout to Exceptions being requested by "Registered Entities." Currently unregistered entities are very likely to seek exceptions. The Exception Procedure should therefore be revised to simply refer to "entities," "owners," or "Submitting Entities," as appropriate. Section 3.2 states that "The burden to provide a sufficient basis for approval of an Exception Request in accordance with the provisions of this Appendix is on the entity submitting the Exception Request." This provision, while generally appropriate, does not make sense in the context of Exception Requests for Elements of uncertain BES status. In such cases, the burden should be consistent with the status of the Element pending a determination (e.g. if an Element is considered non-BES while the Exception Request is pending, the burden should be on the entity advocating the Element's inclusion in the BES). Section 4.2 states that Exception Requests must be submitted "in a secure electronic form using the Exception Request Form." To avoid disputes about what constitutes "a secure electronic form," the sentence should be revised to state that Exception Requests must be submitted "using the electronic Exception Request Form." Security should be handled by NERC as part of the Form. Section 4.2(iii) states: "The Regional Entity is under no obligation to issue a Recommendation regarding an Exception Request without documentation sufficient to grant such an approval." Please delete this sentence. The sentence seems unnecessary, because a Regional Entity's obligation to issue a Recommendation regarding an Exception Request does not begin until the Exception Request is complete (Section 5.2.1). Section 5.1.3(b) states that if the Regional Entity determines that it cannot complete its initial screenings and substantive reviews on time, "the Regional Entity, based on consultation with NERC, shall establish an alternative time period objective and work plan for completing initial screenings and substantive reviews of Exception Requests during the specified period of time." Decisions on Exception Requests may have very significant effects on the owners of the affected Elements. Delays in issuing such decisions should therefore be taken very seriously. To ensure that delays are minimized and handled as effectively as possible, the quoted language could be revised to state "the Regional Entity shall request NERC approval of an alternative time period objective and work plan for completing initial screenings and substantive reviews of Exception Requests during the specified period of time." Similarly, Section 5.2.2 currently allows the Regional Entity to "extend the period for individual Exception Requests by issuing a notice to the Submitting Entity, with a copy to the Owner if different than the Submitting Entity and to NERC, stating the revised date by which the Regional Entity will issue its Recommendation concerning the Exception Request." The sentence should be revised to state that the Regional Entity "may request approval from NERC to extend the period for individual Exception Requests, with a copy of such request to the Submitting Entity, and to the Owner if different from the Submitting Entity." The large number of Exception Requests that will likely be filed during the transition period will be a burden on Regional Entity resources, and therefore suggests that NERC be authorized to require Regions to hire outside

consultants to assist in processing exception requests if needed to allow a Region to stay on schedule. To ensure that supplementation of an Exception Request does not result in unnecessary or unreasonable delay by a Regional Entity, a sentence should be added to the end of the first paragraph of Section 6.0: "Any extension based on the supplementation of an Exception Request will at most restart the clocks for the deadlines set out in Sections 5.1.3 and 5.2.2 as of the date of the supplement." Allowing unlimited extensions based on the submission of supplemental information would discourage Submitting Entities from supplementing their Exception Requests as needed to provide the Region with an up-to-date record. As in Section 5, NERC should determine whether to grant an extension, and for how long. In addition, immaterial supplements should not result in extensions of time. A standard for determining which supplements warrant allowing the Region an extension of time could be the "material modification" standard applicable to interconnection requests. To ensure that the Regional Entity review of Exception Requests is based on a detailed understanding of the surrounding grid, the Exception Procedure should specify that Regional Entities' substantive review is to be performed by the Region's Planning Committee or Operating Committee. These committees consist of representatives of a broad swath of stakeholders with relevant experience. They are thus the best-positioned bodies at the Regional Entities to conduct a thorough substantive review of Exception Requests and make a recommendation to NERC. Having a stakeholder body conduct the regional review would have the added benefit of mostly, if not entirely, obviating the need for third parties to intervene in Exception Requests. In the alternative, if the substantive review is performed by Regional Entity staff, it should be performed by the staff responsible for conducting the Region's seasonal assessments under the Region's delegation agreement. Section 9.5 provides that "the Board of Trustees Compliance Committee may, in its discretion, decline to review the decision of the panel, in which case the decision of the panel shall be the final NERC decision." If the BOTCC agrees with the panel's decision, it should affirm the decision, not simply decline to review it.

Group

PacifiCorp

Sandra Shaffer

Yes

Yes

PacifiCorp believes that information related to exception requests, in some manner, should be made available to registered entities, provided that sensitive information can be redacted as necessary. Allowing all registered entities access to this information will improve the transparency and consistency of the process and allow potentially affected entities to have sufficient notice as to the prospect of a particular proposed exception.

Yes

: PacifiCorp supports the limited access public posting. The public version of the posting should include the name of the entity, status under the BES Definition of the Elements for which the exception is being requested, and the type of Elements for which the exception is being requested. The remaining information should be redacted.

Elements included as part of a single request should be either (a) be physically integrated into a single system for which similar exclusion treatment is being sought, or (b) be so similarly situated in separate systems as to raise the identical issue of whether their exclusion as a class is appropriate or not. In addition, entities should be allowed to include multiple exception requests in a single submittal for ease of administration and review.

Yes

PacifiCorp believes that if an entity is subject to compliance obligations under the reliability standards for particular BES Elements, the entity should be able to submit an Exception Request associated with those Elements, regardless of ownership. However, PacifiCorp believes that it is critical that a process or procedure be included such that all other entities that have compliance obligations associated with the Elements that are part of an Exception Request are provided with a sufficient opportunity to participate in the Exception Request process as an affected party.

Yes

As mentioned above, PacifiCorp believes that it is critical that a process or procedure be included such

that all other entities that have compliance obligations associated with the Elements that are part of an Exception Request have an adequate opportunity to meaningfully participate in the Exception Request process. In addition, electrically-adjacent entities (or other parties that may be impacted) should similarly be allowed to participate. As a precondition to allowing third parties to intervene in an Exception Request process, PacifiCorp suggests that any intervening entity be required to first demonstrate that the specific Exception Request or a foreseeable outcome of the specific Exception Request poses a potential risk of an actual and meaningful impact or harm to such intervening entity, which would prejudice such intervening entity's interests if it were excluded from the process.

Yes

Yes

During the pendency of the Request process, the status of an element that is the subject of the request should remain the same as if no request has been made. As such, for example, if a requesting entity has submitted an exception for an element that otherwise meets the definition of BES, such element should still be considered part of the BES until the close of the Request process (including the issuance of a determination and any appeals).

Group

MRO's NERC Standards Review Forum

Carol Gerou

Yes

The Regional Entities may find themselves overwhelmed with these requests. (easy way out for the Registered Entities) The Regional Entity also may not have access to all the information needed to justify the exception. This should be a last resort, and not used for any case that the Entity fails to do their due diligence n working through the analysis required. Also, what happens if the Registered Entity disagree with the outcome of the Regional Entity? Is there an appeal process for the determinations that are made by the Regional Entity?

Yes

NSRF believes this information should be limited for public viewing. It may be advisable to establish a method or process for requesting data by others, however, on a limited basis. As a suggestion, RC and neighboring BA, TOP should be notified.

Yes

See response to question 2.

Yes

NSRF agrees that there are likely to be situations where the submission of multiple elements in a single request is appropriate and more efficient.

Yes

Yes, NSRF believes third parties should be able to request an exception for other owners, however, this should be limited to those owners that are on the Compliance Registry. Other functional registrations should include Transmission Owners and Generator Owners.

No

This should be left to the Regional Entities to determine if the exception is appropriate or if this will create an administrative nightmare in trying to satisfy all parties that may be opposed to an exception.

Yes

If an Exception Request is incomplete, the Submitting Entity should either be allowed to provide additional information or the Entity would have an opportunity to resubmit a different package as long as it provides the necessary information. NSRF questions why the Regional Entity would forward the rejection notice to NERC at this early stage without allowing the Submitting Entity to submit the additional information first. And finally, the time period for submitting additional information to correct or update the Exception Request should be specific; not just submitted in a reasonable period of time.

No
NSRF believes that NERC requesting interviews in front of a panel should be later in the process. An alternative method may be to request another uninvolved Regional Entity to review the Exception Request and see if they would come to the same conclusion.
The element should be maintained and treated the same as was done prior to the new definition of the BES and submitting an Exception Request to the Regional Entity. Also, once the final decision is made, there should be an implementation period allowed for the element to be in full compliance with the Exception Request.
1. NSRF believes the whole process seems too much like the TFE process and will require an increased amount of resources both by the Entity and the Regional Entities. This will burden all parties involved; the Registered Entity, the Regional Entity and NERC. 2. Records retention is not addressed for the Submitting Entity. Records retention for the Submitting Entity should be the same six or three years as required for NERC to retain their records. 3. There may be duplicate effort in sections 10.2 and 10.3. Perhaps how these sections interact could be clarified.
Individual
Alice Ireland
Xcel Energy
Yes
No
It is not clear for what reason another entity would need to see exception related information filed by another entity. Until that can be established there is no reason to make that information public.
No
It is not clear for what reason another entity would need to see exception related information filed by another entity. Until that can be established there is no reason to make that information public.
Yes
We do not believe that there should be any functional registration restrictions as to which third party registered entities can make the request.
Yes
We believe that Section 8.0 (Approval or Disapproval) should include an aspect whereby any third party or neighboring entities are interviewed or taken into consideration. Also, section 4.3.1 could be adjusted such that the requesting entity list any 'known' objectors or supporters of the request.
Yes
No
We believe that Section 8.0 (Approval or Disapproval) should include an aspect whereby any third party or neighboring entities are interviewed or taken into consideration.
If the request is for exclusion, the status of that element should be considered as BES until the NERC decision is made; similarly, if the request is for inclusion, the status of that element should be considered non-BES until the NERC decision is made.
While we don't feel that the process or application need to be made public, as responded in question 2 & 3, we do feel that a portion of the results should be available to all stakeholders. Perhaps this could be managed through the secure part of NERC's website so that any stakeholder with a login can view the exceptions that have been approved.
Individual
David Kahly
Kootenai Electric Cooperative
Yes
However, it is not clear how this provision provides any protection or value to affected entities. The Exceptions process does not require entities to be certain of their circumstances. It is more important for the Exceptions Procedures to assist an entity with doubts about how a particular Element or

facility fits within the BES definition to obtain guidance quickly and efficiently. First, the ROP Team should propose mechanisms by which an entity can obtain informal guidance from the staff of NERC or the RROs. Examples may be “help line” contact with staff members who can offer specialized expertise on the scope and operation of the BES Definition and an actively managed FAQ system. Second, the ROP Team should provide for more formalized mechanisms to obtain guidance that would be binding on both the entity requesting the guidance and the entities offering the guidance.

Yes

We are troubled by the secrecy that currently surrounds the NERC enforcement process (CMEP). Open, public, processes will be of substantial benefit to both the reliability agencies and the industry because this will allow the development of detailed records and decisions, from which the industry can obtain detailed guidance about how the BES Definition and the Exceptions process will be applied in specific situations. In essence public and open processes will serve to build a case law equivalent for the BES determinations. We note that the WECC Bulk Electric System Definition Task Force (BESDTF) developed a process for hearing appeals involving technical issues arising from the BES definition. We urge the RoP to explicitly provide for such a process. The BESDTF Proposal 6, App. D is available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>

Yes

Yes

We are concerned that the language requiring “all such Elements” to be “separately identified” could, if applied literally, prove extremely burdensome. Rather than requiring the entity to submit a full list of all Elements that would be excluded if the Exception Request is granted, we recommend that the Exception Request simply identify the points of demarcation between the BES and non-BES Elements that would result if the Request is granted, along with a one-line diagram of the remaining facilities or Elements that would be excluded.

Yes

Although we agree that the RoP Team has correctly concluded that certain entities may seek to have one or more Elements included in the BES if those Element(s) are improperly excluded by operation of the BES Definition, we urge the RoP Team to include certain procedural protections for the owner/operator of the Elements sought to be brought into the BES through an inclusion process. First, we suggest that the RE or other entity seeking to include an Element first be required to contact the owner/operator of that Element, explaining the basis for its conclusion that the Element has a material effect on the reliability of the bulk interconnected system and therefore should be included in the BES. In this way, the owner/operator will receive notice of any attempt to include its Element(s) in the BES and, because the owner/operator will have extensive knowledge about the operation of its own system, will have the information that might demonstrate to the satisfaction of the entity seeking inclusion that inclusion is not required, or else may be convinced to voluntarily register the Element(s) as part of the BES. If this initial process does not resolve the issue, the entity could then seek action from the relevant RE to require the owner/operator to register the Element(s) as BES, and the appropriate process for resolving any dispute could then be followed.

Yes

Consistent with our response to Question 2, we believe the Exceptions process should be public, with information concerning Exception Requests broadly available unless limited by specific requirements related to Critical Energy Infrastructure Information or national security. Exceptions process will benefit from broad participation by all entities that are affected by, or potentially affected by, an Exceptions decision. Accordingly, we urge the RoP Team to provide for participation in the Exceptions process by all entities who are affected or potentially affected by an Exception Request. We note that the downstream owner/operator has a clear interest in the status of the upstream elements, both because improper exclusion of the upstream Element could affect reliability of the downstream Element and because improper inclusion of the upstream element could force improper inclusion of downstream Elements. The RoP Team should strenuously avoid any procedural rule that would limit the participation of entities with such direct interests in an Exception process.

Yes

In general, we support the RoP Team’s proposal, in which the RE can return an Exception Request to the submitting entity if insufficient information is provided. However, we anticipate circumstances where submitting entities genuinely believe their request, rejected as insufficient, is adequate. We

again note that the WECC Bulk Electric System Definition Task Force (BESDTF) developed a process for resolving factual disputes arising from the BES determination activities. We again urge the RoP to explicitly provide for such a process. The BESDTF Proposal 6, App. D is available at: <http://www.wecc.biz/Standards/Development/BES/default.aspx>.

No

While we recognize that NERC must ultimately approve any Exception Request granted by an RE, we are concerned that the procedure proposed by the RoP Team is unnecessarily complicated and time-consuming. We believe the NERC process should consist of a single step, where NERC's final decision is made by committee of experts appointed by the BOT and delegated full authority by NERC to make binding decisions. Such a panel could, of course, be supported by technical experts from NERC's staff. We are also concerned that the appeal process does not clearly define the standard for review of the RE's Recommendation. We urge the RoP Team to make clear that the technical and factual findings should be entitled to deference, and that the Recommendation should be disapproved on technical or factual grounds only if the RE has made a clear error. In such case, the Exception should be remanded to the RE with instructions for correction and re-determination. Such a process will serve to correct given Exceptions determinations and also facilitate improved future determinations.

We believe that the general perception of the SDT and RoP is that the BES policies and procedures they are developing will have largely the effect of bringing additional electric elements under standards requirements. For many entities in the west this is not the case. In our case, we believe the new BES policies and procedures will relieve us of requirements to which we must now inappropriately comply. We patiently endured and were represented in WECC BES definition processes for approximately two years. The BESDTF proposal (see previous references) would have given us appropriate relief. The initiation of the SDT and RoP processes has led to a curtailment of the WECC BES effort. We must now endure another lengthy process while we must continue to inappropriately and unfairly comply with standards. Without some specific procedural relief, registered entities such as ours will be burdened with needless compliance burdens during the process of obtaining a Recommendation from an RE and then obtaining approval of that Recommendation from NERC and FERC. We note that entities with exactly the same electrical circumstances as ours, but are not inappropriately registered and inappropriately subject to standards, will not be similarly burdened. The RoP process should clearly speak to and resolve this inequity. We therefore urge the RoP Team to add language making clear that once the RE issues a Recommendation, the affected entities can rely on that Recommendation and will not suffer adverse regulatory consequences even if the Recommendation is subsequently disapproved by NERC or FERC and ultimately reversed on remand to the RE.

Section 3: The Criteria for Exclusions and Inclusions is being developed through the NERC standards setting process. Thus this section should reference the criteria rather than incorporating specific language into the RoP process document. This will protect the stability of the criteria and allow for future modifications of the criteria through standards setting while not having the requirement to re-open consideration of the process. We note that such a reference could provide for an "Interconnection Wide Standard" as provided by the enabling law. Section 5: In order to facilitate that the RE is processing Exception requests in a timely fashion, we also suggest that the ROP Team add a requirement that each RE maintain an auditable work plan that tracks each Exception request that has been filed, the disposition of each request, the length of time from filing until disposition, and estimated times for completion of pending Exception requests. Under the work plan the RE would be required to provide information on the status of Exceptions to any interested entity, including NERC and the entities with an interest in any Exception process. The RE would also provide affected entities with notices of any changes in the status or timelines relating to their Exception requests.

Individual

Shane Sweet

Harney Electric Cooperative, Inc.

Yes

Yes

I believe the process should be open to other entities within their NERC Region.

Yes
RE
No
Yes
Yes
Innocent until proven guilty
Group
Southern Company
Antonio Grayson
Yes
No
The RE, NERC, FERC, and Canadian Provincial Authorities are the appropriate entities.
Yes
Yes
No limit on scope is needed.
No
A request for exclusion should be limited to the facility owner, but a request for inclusion should also be open to an RE.
No
The reliability impacts on the parties should be the main consideration.
Yes
Yes
Individual
Keith Morisette
Tacoma Power
Yes
Tacoma Power generally agrees with Section 1.1.
No
Tacoma Power supports an open and public process. Tacoma Power as a municipal owned entity is already subject to state freedom of information laws mandating a relatively high level of transparency. Therefore, unless a specific statutory or regulatory exemption to disclosure applies, Tacoma Power may be obligated to disclose exception related information if requested that is in its possession. Tacoma Power suggests that the process be open but that categories or specific items of information that must be submitted but which have national security implications, constitute sensitive critical infrastructure information, or are otherwise identified as sensitive be identified and kept confidential. Therefore, those portions that need to be kept confidential should be kept confidential and the remaining be available to the public. Also, other Registered Entities should not have access to the confidential information.
No

Tacoma Power generally agrees that Part A information is reasonable for public posting, EXCEPT for item #11 under Section 4.3.1. Such item #11 gives too much specific information about system Elements and their physical location that may give rise to security concerns. Instead, the response to item #11 should be identified to be available for confidential treatment such as is provided under FERC's regulations for Critical Energy Infrastructure Information.

Tacoma Power has no comment at this time.

No

Tacoma Power generally agrees with allowing the other entities to initiate the Exception Request. However, such third party shall be one of the listed Registered Entities with NERC and the scope of the Exception Request should be very restrictive and subject to demonstration. As a pre-condition, such third party should be required to contact the owner and fully explain the basis of their position. Only after the third party and owner have failed to resolve the issue, then the third party can proceed with an Exception Request.

Yes

Tacoma Power generally agrees with allowing third party interveners. However, any third party interveners shall be a Registered Entity with NERC and should be subject to a demonstration of significant impact by the Elements within the Exception Request.

Tacoma Power is concerned about the lack of hard deadlines in which the Regional Entity is to complete its initial screening. For example, Section 5.1.3 –should contain a requirement that if the Regional Entity cannot complete its initial screening within 60 days, it must notify the submitting entity or owner that it will need to establish an alternative time period. As worded a submitting entity could end up waiting 6 months before learning the status of the Exception Request. Further, 6 months seems unreasonably long within which to complete an initial review. The Regional Entity should be required to complete its review in 60 days with the ability to extend that up to 6 months under exceptional circumstances.

No

Tacoma Power is concerned with the complexity of the process, the lack of a standard of review, and lack of specifying the qualifications of those engaged in the review. The multistep process with a mandatory appeal to NERC is cumbersome. Tacoma Power recommends a single step process where NERC's final decision is made by a panel or committee of experts appointed by NERC. A review/appeal of that decision at the NERC level could be made available through an optional request for reconsideration process. Further, the appeal process does not define the standard for review of the Regional Entity's recommendation. Finally, we have a concern with Section 9.3, where NERC appoints a panel for review. We suggest that qualifications of the members on this or any panel needs to be specific; the panel members must have the technical qualifications to fully understand the Exception Request, the Elements covered within the Exception Request, and NERC's arguments about the request.

Tacoma Power believes that the status of the subject Elements during the Exception Request process should be dependent on the Elements themselves. We suggest that Elements operated under 200 kV should be excluded from the BES during the Exception Request process. The status of Elements operated at 200 kV and above should remain unchanged until the conclusion of the full process. Further, we recommend that language be added that when the Regional Entity issues a Recommendation, the affected entities may rely on that Recommendation without suffering any adverse regulatory consequences if the Recommendation is subsequently disapproved by NERC or FERC.

Tacoma Power supports the SDT's efforts to create an acceptable BES definition directly linked to an exception process. The following is a few specific problems that exist in the proposed Appendix 5C: Section 3.1 – The introductory paragraph is very confusing and unclear. We suggest replacing the whole paragraph with the following: "An entity may request and obtain an Exception on the grounds that application of the BES Definition's terms, evaluated in the context or environment of the Element or Elements for which the Exception Request is filed, meets one of the following criteria:" Section 4.2 – We find (i) confusing and unclear. We suggest replacing (i) with the following: "Part A of the Exception Request is to identify the Element(s) for which a Submitting Entity is requesting an Exception and the Elements' status under the application of the terms of the BES Definition." Under (ii), a location for review is referenced. Instead, we suggest just stating that the information will be made available to Regional Entity, subject to CIP standards on data control. In addition, we are

concerned about the application of the standards to Elements that change status due to the Exception process. Any Elements that are determined to be newly included in the BES should have a 24-month period before the standards will apply as a BES Elements. Conversely, a determination that removes an Element from the BES should apply as soon as practicable. Lastly, please be aware that the WECC has a task force, the WECC Bulk Electric System Definition Task Force (BESDTF), which has done some notable work on this task. See WECC BESDTF Proposal 6, Appendix C (<http://www.wecc.biz/Standards/Development/BES/default.aspx>). The BES definition is very complex and the BESDTF has already addressed many of the tough issues that have yet to be addressed in this process, such as:

- Local Distribution Network definition for automatic exemption
- Determination of radial facilities
- Demarcation of BES and non-BES Elements
- Alternate dispute resolution process
- Assignment of the burden of proof for the exemption process
- Technical approach for the inclusion/exclusion determination

Thank you for consideration of our comments.

Group

PNGC Power

Rick Paschall

Yes

PNGC and Members Draft comments on the Draft BES Exception Procedure: First, thank you for the opportunity to comment on the draft Procedure for Requesting and Receiving an Exception From the Application of the Definition of the Bulk Electric System. We appreciate the work that NERC has done on this draft procedure and the other related efforts to revise the definition of the BES. In general, the draft Rule of Procedure (ROP) presents a reasonable process for resolving questions of inclusion and exclusion in the BES that the BES definition itself does not clearly resolve. However, we caution that this ROP cannot, and must not, take the place of a consideration of any specific piece of equipment is subject to FERC, the ERO, and Regional Entity jurisdiction in the first instance. Section 215 of the Federal power Act (FPA) sets out clear limits of jurisdiction of FERC, the ERO, and Regional Entities for purposes of developing and enforcing reliability standards. Specifically, Section 215(i) provides that the ERO "shall have authority to develop and enforce compliance with reliability standards for only the Bulk-Power System." 16 U.S.C. § 824o(a)(1) (emphasis added). Section 215(a)(1) of the statute defines the term "Bulk-Power System" or "BPS" as: (A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and (B) electric energy from generation facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy." Id. As we have explained in our comments on the BES definition, that definition should expressly account for these jurisdictional limitations up front. This would allow for the jurisdictional limitation consideration as the very first step in determining whether or not a particular piece of equipment is part of the BES. The ROP, on the other hand, provides a completely separate process for determining inclusion or exclusion from the BES and would come into play only after application of the full BES definition to a particular piece of equipment and determination that the BES definition does not provide a satisfactory answer as to whether that piece of equipment is or is not part of the BES. This is acceptable insofar as it goes, but, because application of the ROP would essentially be the last, or one of the last, steps in the process, the ROP cannot substitute for, in any way, consideration of the jurisdictional limitations of the FPA. Again, we cannot overemphasize enough how important it is to have the jurisdictional consideration be the very first step in the process of determining whether a particular piece of equipment is or is not part of the BES. Again, thank you for the opportunity to comment. We look forward to continuing to work with NERC and stakeholders to develop a BES definition that is both workable and lawful.

Individual
Terry Harbouer
MidAmerican Energy
No
MidAmerican supports the comments provided by the MRO NSRF
No
MidAmerican supports the comments provided by the MRO NSRF
No
MidAmerican supports the comments provided by the MRO NSRF
Yes
Yes
MidAmerican supports the comments provided by the MRO NSRF
No
MidAmerican supports the comments provided by the MRO NSRF
Yes
No
MidAmerican supports the comments provided by the MRO NSRF
Group
Bonneville Power Administration
Denise Koehn
Yes
No
In some situations, the Balancing Authority, Planning Coordinator or other functional entities could be sufficiently affected by an Exemption Request that they would need to have access to exception-related information filed by a Requesting Entity in order to determine the impacts of an Exception.
No
BPA suggests that the Exemption Procedure should require the Requesting Entity to submit a notice to the Balancing Authority or Balancing Authorities that would be affected by the Exemption. Balancing Authorities should be allowed to participate in the process if they elect to do so. Perhaps other functional entities like Planning Authorities or Reliability Coordinators should also be included. BPA support's WECC's comment that there may be security concerns associated with publicly sharing the location of elements.
BPA suggests that, in the interest of process efficiency, a single Exception Request should resolve questions about exceptions for as many similar Elements as possible. The process could clarify that Elements should be technically or geographically "similar" to be contained in a single Request.
Yes
BPA agrees that the RE, PC, RC and BA should be allowed to submit an Exception Request for an element, particularly if it were to be an inclusion. In some instances, it may be appropriate for a TO, TOP, GO, or GOP to submit a request.
Yes
In some situations, the Balancing Authority, Planning Coordinator or other functional entity could be sufficiently affected by an Exemption Request that it would need to intervene in the process to determine the impacts of an Exception. Balancing Authorities, Planning Coordinators and Reliability Coordinators should have a right to participate with comments. The Exemption Process could impose non-disclosure restrictions on participants with respect to sensitive information.
Yes

No

BPA suggests that Section 8 include a conference call, teleconferencing, or webinar option in addition to physical attendance at NERC meetings. Section 8 should also require NERC to send its decision to the Regional Entity, the Submitting Entity, and the Owner if different from the Submitting Entity.

Status could read: Exemption requested.

BPA comments that in order to make the 30 day comment period in Section 5.2.3 meaningful, the Exception Procedure should require the Regional Entity to send copies of the Recommendation to the Submitting Entity and the Owner when applicable, at the same time as the Recommendation is sent to NERC. The Regional Entity should be required to certify to NERC that it sent copies of the Recommendation to the Submitting Entity, the Owner. The Board should also consider requiring notification of the Recommendation to intervening or participating entities. BPA urges that the panel provided for in Section 9.3 should include at least one member from the region in which the facility or facilities at issue are located. BPA suggests that in Section 9.5, the 14 day period for appealing to the NERC Board of Trustees Compliance Committee should begin upon receipt of the panel's decision by the appellant. BPA notes that in Section 10.3, the required termination of an approved Exception 90 days after a certification deadline if the deadline is not met could be considered harsh. BPA suggests that the Board adopt additional language which would allow the Regional Entity to accept late certifications in appropriate circumstances, or to allow corrections to a timely-filed certification to correct insufficient or incorrect information.