

## FERC Directs NERC to Define the Bulk Electric System and Eliminate Regional Differences

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On November 18, 2010, the Federal Energy Regulatory Commission (FERC) issued Order No. 743 (Final Rule) directing the North American Electric Reliability Corporation (NERC) to revise the definition of the term “bulk electric system” (BES) which determines the facilities subject to mandatory reliability standards. FERC also ordered NERC to create a process with uniform criteria to exempt from compliance facilities that are not necessary for operating the grid and develop a transition process for affected entities that will be required to register and comply with mandatory reliability standards for the first time.

In the Final Rule, FERC provided a proposed definition of BES and explained its concerns with inconsistency and regional variation. NERC is not required to adopt FERC’s proposed definition; however, NERC must propose some uniform definition of the BES, an exemption process, and a transition plan for approval by FERC. The Final Rule directs NERC to use the Reliability Standards Development Process, in which stakeholders may participate, to define BES and create the exemption process. In its filing, NERC must show that its proposal is at least as effective as FERC’s proposed definition and any variation must not result in a reduction in reliability.

The revised BES definition and proposed exemption and transition processes are to be filed within twelve months after the Final Rule becomes effective, which is 60 days after the Final Rule is published in the Federal Register.

### DEFINITION OF BULK ELECTRIC SYSTEM

The Final Rule directs NERC to adopt a uniform definition of BES that will apply to all regions. The Final Rule also rebukes the use of material impact methodologies for identifying BES facilities and expressly rejects the approach currently used in the Northeast Power Coordinating Council (NPCC) region. FERC finds there are no grounds to support material impact assessments as accurate, consistent, or comprehensive. The proposed definition of the BES that NERC will file for approval by FERC will be assessed on the basis of whether it effectively addresses FERC’s concerns.

The Final Rule proposes that the BES be defined to include all generation, transmission, and interconnection facilities operated at 100 kilovolts (kV) and above, except radial facilities that serve only load with one transmission source. The Final Rule also suggests that NERC develop an “add-in” process to include as part of



the BES “critical” facilities operated at less than 100kV that are deemed necessary for operating the interconnected transmission network.

FERC proposes a bright-line 100kV threshold for BES facilities, finding that the majority of facilities operated at 100kV and above in the United States operate in parallel with other high voltage and extra high voltage facilities, interconnect significant amounts of generation sources, or operate as part of a defined flow gate. According to FERC, these factors make such facilities necessary for the reliable operation of the interconnected transmission network. The Final Rule directs NERC not to have categorical exemptions from its proposed BES definition; rather, any exemptions must be individually considered through a FERC-approved process, described below.

The Final Rule does not reconcile the proposed bright-line criteria with Section 215 of the Federal Power Act (FPA), which states that NERC has no authority to develop or enforce compliance with reliability standards for facilities used in local distribution.

### PROCESS TO EXEMPT AND ADD BES FACILITIES

The Final Rule directs NERC to propose an exemption process and criteria for excluding facilities that meet the BES definition but that NERC determines are not necessary for operating the interconnected transmission network. NERC should also consider creating a parallel “add-in” process for including as part of the BES definition “critical” facilities operated at less than 100kV that the regions determine are necessary for operating the interconnected transmission network.

The Final Rule identifies certain concerns that should be addressed in an acceptable exemption process. The exemption process must include clear, objective, transparent, and uniformly applicable criteria for exemption of facilities that are not necessary for operating the grid. The decisions on specific facility exemptions may be delegated to the Regional Entities provided that the process is clear and capable of being applied consistently, objectively and uniformly across the regions. However, NERC must oversee the process to ensure an objective and uniform application of the exemptions.

FERC determined that it will not review each exemption granted by NERC, but will maintain the authority to conduct audits to determine the appropriateness of a particular exemption. To facilitate this process, NERC is directed to maintain a list of exempted facilities that can be made available to FERC upon request.

### TRANSITION PLAN

The Final Rule directs NERC to submit a transition plan that allows a reasonable period of time for affected entities that are subject to the Reliability Standards for the first time to achieve compliance. The Final Rule states that the transition period may not exceed 18 months from the time FERC approves the revised definition and exemption process, unless FERC approves a longer transition period based on a specific justification. According to the Final Rule, NPCC is expected to be the only region significantly affected by the proposed



change in the definition of the BES. However, the impact of the changes will not be fully known until NERC creates a new BES definition through the Standards Development Process.

## IMPLICATIONS

Many transmission lines in the NPCC region rated at 115 kV and 138 kV and certain generating facilities in NPCC that have been excluded from reliability standards under NPCC's material impact methodology (known as the Document A-10 classification) will be reclassified as BES facilities after the new NERC definition is approved by FERC. The change in the definition of the BES may also have ramifications outside of NPCC if additional facilities are classified as part of the BES.

FERC's proposed bright line 100kV threshold, if adopted by NERC, will raise the jurisdictional question of whether FERC is effectively redefining "facilities used in local distribution" to mean only distribution facilities that operate below 100kV or are specifically exempted from the BES definition by NERC. Potentially affected generators, transmission owners and operators, and distribution providers now have an opportunity to participate in the NERC Standards Development Process to create a BES definition, exemption process, and transition plan.

In addition, entities with high-voltage facilities used in local distribution systems that intend to object to the inclusion of such facilities in any NERC definition of the BES, or to NERC record-keeping requirements or audits, should consider seeking rehearing of the Final Rule.

## FOR ADDITIONAL INFORMATION

Van Ness Feldman counsels generators, electric utilities, power marketers, and Regional Entities on compliance issues regarding mandatory reliability standards and has assisted clients in disputes regarding NERC registration. For assistance or additional information, please contact Andrew Art, Gary Bachman, or any other member of Van Ness Feldman's Electric Practice at (202) 298-1800 in Washington, D.C. or (206) 623-9372 in Seattle, WA.

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