

143 FERC ¶ 61,231
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure Docket Nos. RM12-6-000
RM12-7-000

ORDER GRANTING EXTENSION OF TIME

(Issued June 13, 2013)

1. On May 23, 2013, the North American Electric Reliability Corporation (NERC) filed a motion for an extension of time, from July 1, 2013 to July 1, 2014, of the effective date of the definition of “bulk electric system” in the above-referenced proceeding.¹ NERC’s motion also asked for a shortened response period and that the Commission act on the motion on an expedited basis.

Background

2. On December 20, 2012, the Commission issued Order No. 773, a Final Rule approving NERC’s modifications to the definition of “bulk electric system” and the Rules of Procedure exception process to be effective July 1, 2013. The Commission also directed NERC to (1) implement the exclusions for radial systems (exclusion E1) and local networks (exclusion E3) so that they do not apply to generator interconnection facilities for bulk electric system generators identified in inclusion I2; and (2) modify the local network exclusion to remove the 100 kV minimum operating voltage to allow systems that include one or more looped configurations connected below 100 kV to be eligible for the local network exclusion.² On April 18, 2013, in Order No. 773-A the Commission largely affirmed its findings in Order No. 773. However, the Commission determined that, rather than direct NERC to implement exclusions E1 and E3 so that they do not apply to generator interconnection facilities, NERC must modify the exclusions to

¹ *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, Order No. 773, 141 FERC ¶ 61,236 (2012); *order on reh’g*, Order No. 773-A, 143 FERC ¶ 61,053 (2013), *requests for clarification pending*.

² Order No. 773, 141 FERC ¶ 61,236 at PP 155, 164-169.

ensure that generator interconnection facilities at or above 100 kV connected to bulk electric system generators identified in inclusion I2 are not excluded from the bulk electric system.³

NERC Motion

3. In its motion, NERC states that it is on schedule to implement the definition as of July 1, 2013, but by virtue of the Commission directing changes in Order Nos. 773 and 773-A, without an extension of time, there would be a period of time during which the existing definition without the Commission-directed modifications would be in effect. NERC states that if this were to occur, under the current Commission-approved definition, as of July 1, 2013, an entity could exclude certain elements, such as generator interconnection facilities, that would later not be excluded by virtue of implementing the Commission's Order No. 773 directives. Similarly, NERC states that because the definition will not be modified to remove the 100 kV threshold in exclusion E3 by July 1, 2013, certain registered entities will not be eligible for that exclusion when the new definition of the bulk electric system is scheduled to go into effect. NERC states that this will require affected entities that wish to remove elements from the bulk electric system to submit an exception request which will not be required once the changes that were directed by the Commission are made effective. NERC requests a one year extension of the effective date of the revised bulk electric definition to resolve the "uncertainties" that would result from implementation of the approved definition while NERC develops modifications to the definition that address the Order Nos. 773 and 773-A directives.

4. NERC states that the Commission's directives are being addressed in Phase 2 of the bulk electric system project.⁴ NERC states that it "is committed to working with industry through the standard development process to comply with the Commission's [Order Nos. 773 and 773-A] directives and expects to file such a petition by no later than December 31, 2013, based on the current standard development schedule."

Notice of Filing, Interventions, and Comments

5. On May 24, 2013, the Commission issued a notice shortening the response period for NERC's motion to May 31, 2013. The following entities filed answers and comments in support of NERC's motion: The City of Alameda, California, Alcoa Inc. and Alcoa

³ Order No. 773-A, 143 FERC ¶ 61,053 at P 50.

⁴ NERC Motion at 3. NERC separated the development of the revised definition into two phases. Phase 1 culminated in the language of the proposed modified definition that is the primary subject of Order Nos. 773 and 773-A. Phase 2, which is ongoing, intends to focus on other industry concerns raised during Phase 1. Order No. 773, 141 FERC ¶ 61,236 at P 52 n.46.

Power Generating Inc., Consumers Energy Company (Consumers), Dow Chemical Company, Edison Electric Institute and Electric Power Supply Association (EEI-EPSA), Electricity Consumers Resource Council (ELCON), Exelon Corporation (Exelon), and National Association of Regulatory Utility Commissioners. The City of Anaheim, California, American Public Power Association and Transmission Access Policy Study Group (APPA-TAPS), PacifiCorp, and Public Utility District No. 1 of Snohomish County, Washington, Public Utility District No. 1 of Cowlitz County, Washington, Eugene Water & Electric Board, Central Lincoln People Utility District (collectively, Western Publicly-Owned Utility Group), Benton Rural Electric Association, Mason County Public Utility District No. 3 and Tillamook People's Utility District all partially support or partially oppose NERC's motion. On June 4, 2013, NERC filed comments in response to APPA-TAPS and the Western Publicly-Owned Utility Group. On June 5, 2013, the Western Publicly-Owned Utility Group filed a reply to NERC's June 4 response.

6. EEI-EPSA, Consumers and Exelon support NERC's motion, stating that the predicament described by NERC leaves registered entities in a "troublesome bind." These entities explain that, without the extension, registered entities must either file for exceptions between July 1, 2013 and the effective date of changes caused by implementation of Phase 2 or be subject to Reliability Standards for facilities that should not be part of the bulk electric system, all of which will involve a significant expenditure of time and effort. EEI-ESPA request that the Commission grant NERC's motion, and also set a filing deadline for the Phase 2 project. ELCON states that absent an extension of the effective date, entities would be required to consider whether to make exception requests or other filings based on the current definition of bulk electric system. ELCON adds that the extension should not restrict the opportunity for entities to make any appropriate filings to address local distribution determinations.

7. APPA-TAPS and PacifiCorp agree with NERC's request to allow time for NERC to address the Commission's directives. However, they also contend that the remainder of the definition is sufficiently clear and the definition can be applied now, on a case by case basis, through the NERC exception process, to exclude elements that have no significant impact on the bulk electric system. PacifiCorp states that implementing the parts of the definition unaffected by the Commission's exclusion E1 and E3 directives on July 1, 2013 will permit registered entities to implement the definition including all exclusions on a good faith basis and submit a self-determination to exclude elements that will be unaffected by the exclusions E1 and E3. APPA-TAPS also request that "NERC clarify that it will accept Rules of Procedure Exclusion Exception and Inclusion Exception requests now that will become effective and enforceable as of July 1, 2013."⁵

⁵ APPA-TAPS Comments at 3.

8. Western Publicly-Owned Utility Group supports “targeted relief” to allow time to address the concerns stemming from the directives to revise exclusions E1 and E3, but urges the Commission to allow the new definition otherwise to go into effect as scheduled on July 1, 2013.⁶ Western Publicly-Owned Utility Group requests that the Commission “direct NERC to adopt specific interim measures to address the implementation issues created by the changes ordered to [e]xclusions E1 and E3 and should make clear that it will not take any enforcement action with respect to facilities affected by the changes until the ambiguities created by the changes are resolved, but otherwise should allow the [bulk electric system definition] to become effective on July 1, 2013....”⁷ Western Publicly-Owned Utility Group also requests that the Commission direct NERC to allow the Rules of Procedure changes approved by the Commission in Order Nos. 773 and 773-A to go into effect on July 1, 2013.

9. In addition, Western Publicly-Owned Utility Group is concerned that the one-year delay NERC requested could, in the end, be much longer because the proposal for a one-year delay is premised on the assumption that the Phase 2 project is completed and approved by the Commission so that changes resulting from Phase 2 are implemented at the same time as the Phase 1 definition. Western Publicly-Owned Utility Group states that assumption requires NERC to meet aggressive time deadlines, and that there will be consensus among industry voting segments on the proposed Phase 2 changes. Further, Western Publicly-Owned Utility Group expresses concern about the process used by NERC in arriving at the conclusion that it should seek a one-year delay in the effective date because there was little or no input from many entities directly affected by NERC’s decision to seek a delay.

10. In response, NERC asserts that the Rules of Procedure and the bulk electric system exception process are intrinsically and inextricably tied to the bulk electric system definition. NERC states that the exception process can only be used after the definition is applied. NERC adds that the purpose of its motion is to afford time to address the Commission’s directives and provide regulatory certainty to the industry on the definition’s application and implementation. NERC also argues that the commenters’ suggestion to implement part of the definition is “inconsistent with the regulatory model of NERC as it presupposes the outcome of the NERC Reliability Standards development process.”⁸ NERC states that the standard drafting team can develop an equally effective

⁶ Benton REA, Mason County PUD and Tillamook People’s Utility District support the Western Publicly-Owned Utility Group comments. On June 6, 2013 Parkland Light & Water Company filed a letter in support of the Western Publicly-Owned Utility Group comments.

⁷ Western Publicly-Owned Utility Group Answer at 4.

⁸ NERC Reply Comments at 1.

and efficient alternative that addresses the Commission's underlying concern. Therefore, according to NERC, until the definition has been revised through NERC's standards development process and approved by the Commission, it is unknown what revisions will be contained in the final definition.

11. In its reply to NERC's reply comments, Western Publicly-Owned Utility Group reiterates that a full year delay is not justified and there is no reason to delay the effective date for the facilities that are not affected by the changes stemming from the Commission's directives.

Discussion

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest and an answer to an answer unless otherwise ordered by the decisional authority. We will accept NERC's and Western Publicly-Owned Utility Group's answers because they have assisted us in our decisionmaking.

13. Pursuant to 18 C.F.R. § 39.5(d)(2012), the Commission grants NERC's request for extension of time. Thus, the effective date for the revised definition of bulk electric system as approved in Order Nos. 773 and 773-A is extended to July 1, 2014.⁹ As explained below, the extension of time also applies to implementation of the exception process and local distribution determinations. The Commission finds that more time is warranted so that registered entities, NERC and Regional Entities do not have to determine whether an element is eligible for inclusion or exclusion while NERC responds to the Commission's Order Nos. 773 and 773-A directives only possibly to have to re-evaluate the status of those same elements after NERC revises the definition in response to the directives.

14. We are not persuaded by the arguments for allowing part of the definition to go into effect while the parts affected by the Order Nos. 773 and 773-A directives are delayed for a year. Western Publicly-Owned Utility Group's argument for implementing exclusions E1 and E3 on only certain facilities (i.e., everything except for generator interconnection facilities and some lower voltage facilities) would further increase the

⁹ The Commission's regulations provide that an approved Reliability Standard or a modification to a Reliability Standard shall take effect "as approved by the Commission." 18 C.F.R. § 39.5(d)(2012). *See also Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204, at PP 379-381, *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

complexity of applying the definition.¹⁰ In addition, as NERC points out, it has the discretion to develop an equally effective and efficient alternative to the Commission's directives. Without the extension, whether a particular element is included or excluded from the bulk electric system could change more than once while NERC determines how to comply with the Commission's directives. Further, we are not persuaded by Western Publicly-Owned Utility Group's targeted implementation proposal based on the assumption that entities that are registered today can be removed from the NERC Compliance Registry by application of the new definition. The principal goal of revising the definition was to eliminate regional discretion and create uniformity across the nation, which should not materially change what is considered part of the bulk electric system today.¹¹

15. Likewise, we are not persuaded to allow the exception process to go into effect on a different date from the definition. NERC requested in its Rules of Procedure petition that "the Commission approve Appendix 5C and the other proposed [Rules of Procedure] revisions with the same effective date as the proposed effective date of the revised [bulk electric system definition]."¹² We agree with NERC that the exception process is available only after an entity applies the definition and determines that the element is part of, or not part of, the bulk electric system. A partial implementation, as some commenters propose, would unnecessarily complicate implementation of the definition and the exception process. Similarly, with regard to ELCON's statement that the extension should not restrict the opportunity for entities to make any appropriate filings to address local distribution determinations, as we stated in Order No. 773, an entity may file a local distribution determination after it applies the definition.¹³ Because an entity can only request a local distribution determination from the Commission after it has applied the definition, entities could not make such a filing as suggested by ELCON until

¹⁰ We reject Western Publicly-Owned Utility Group's argument that NERC's petition was improper because NERC did not develop its extension request through the NERC standards development process. Western Publicly-Owned Utility Group does not cite to NERC's Rules of Procedure or any other source to indicate that NERC is obligated to invoke the standards development process in order to submit a motion for extension with the Commission.

¹¹ Order No. 773, 141 FERC ¶ 61,236 at P 8.

¹² Petition of the North American Electric Reliability Corporation for Approval of Revisions to its Rules of Procedure to Adopt a Bulk Electric System Exception Procedure, Docket No. RM12-7-000 (January 25, 2012) at 6. Order No. 773, 141 FERC ¶ 61,236 at PP 31, 304.

¹³ Order No. 773, 141 FERC ¶ 61,236 at P 70.

the definition is fully implemented. For these reasons, before a local distribution determination can be filed with the Commission, an entity must first apply the definition of bulk electric system.

16. While NERC states that it is addressing the Commission directives in Phase 2 and that it expects to file a petition complying with the Order Nos. 773 and 773-A directives by December 31, 2013, we are mindful of Western Publicly-Owned Utility Group's concern that the one year delay assumes NERC's internal deadlines can be met and that there will be consensus among industry voting segments on the proposed changes to the definition in response to the directives as well as the other Phase 2 changes. To be clear, the one year extension we grant today is for the purpose of allowing time to develop changes to comply with the Commission's directives regarding exclusions E1 and E3. While NERC is addressing the directives as part of its Phase 2 process, we have not required NERC to work on or file the Order Nos. 773 and 773-A directives and other Phase 2 changes together. In other words, while NERC is free to proceed with Phase 2 as it wishes, the Commission expects NERC to file the changes to comply with the Order Nos. 773 and 773-A directives in sufficient time to allow the Commission to process NERC's proposal in response to the directives well in advance of the July 1, 2014 effective date. Therefore, NERC should submit a filing that includes proposed modifications to comply with the directives pertaining to exclusions E1 and E3 as soon as possible prior to December 31, 2013. Any delay in the submission of a filing that addresses the responsive modifications could impede the Commission's ability to act on the directives prior to July 1, 2014. The Commission does not anticipate granting any further extensions of the effective date beyond July 1, 2014.

The Commission orders:

The Commission hereby grants NERC's motion to extend the effective date of the definition of the bulk electric system and the Rules of Procedure exception process from July 1, 2013 to July 1, 2014.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.