

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Revision to Electric Reliability  
Organization Definition of Bulk  
Electric System

Docket No. RM09-18-000

**REQUEST FOR CLARIFICATION OR, IN THE  
ALTERNATIVE, REHEARING OF THE  
TRANSMISSION ACCESS POLICY STUDY GROUP**

On November 18, 2010, the Commission issued Order No. 743, directing that the North American Electric Reliability Corporation (“NERC”), the Commission-certified Electric Reliability Organization (“ERO”), revise its definition of the Bulk Electric System (“BES”).<sup>1</sup> The Final Rule is a significant improvement over the March 18, 2010 Notice of Proposed Rulemaking in this docket.<sup>2</sup> In particular, the Transmission Access Policy Study Group (“TAPS”) applauds the Commission’s decision to leave the definition of the BES and the design of an exemption process to NERC.

TAPS also strongly supports the Final Rule’s determination (P 55) not to disturb the current exclusion of radials to load from the BES definition. TAPS is concerned, however, that other statements in the Final Rule might be misread to suggest that NERC should, for the first time, include radials to load in the BES definition, subject to the exemption process. Pursuant to Federal Power Act (“FPA”) Section 313, 16 U.S.C. § 825*l*, and 18 C.F.R. § 385.713, therefore, TAPS asks the Commission to clarify the

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<sup>1</sup> Revision to Electric Reliability Organization Definition of Bulk Electric System, Order No. 743, 75 Fed. Reg. 72,910 (Nov. 26, 2010), 133 FERC ¶ 61,150 (2010) (“Final Rule” or “BES Final Rule”).

<sup>2</sup> Revision to Electric Reliability Organization Definition of Bulk Electric System, 75 Fed. Reg. 14,097 (proposed Mar. 24, 2010), FERC Stats. & Regs. ¶ 32,654 (2010) (“NOPR”).

continued exclusion of radials to load from the BES definition, or in the alternative to grant rehearing of its Final Rule regarding the treatment of radials to load.

## **I. SPECIFICATION OF ERRORS**

1. The Commission erred to the extent that it directed NERC to require radials to load to go through an exemption process rather than permitting such facilities to remain excluded from the definition of the BES, as such facilities currently are.

## **II. STATEMENT OF ISSUES**

1. Whether the Commission should clarify the inconsistency in the terminology used in the Final Rule to make clear that radials to load may continue to be excluded from the BES definition, or, in the alternative, whether the Commission should rehear the Final Rule to the extent that it directed NERC to subject radials to load to an exemption process rather than permitting such facilities to remain excluded from the definition of the BES, as such facilities currently are. FPA § 215(d)(2), 16 U.S.C. § 824o(d)(2); FPA § 313, 16 U.S.C. § 825l; 5 U.S.C. § 706(2); Technical Conference on Reliability Monitoring, Enforcement and Compliance Issues, Docket No. AD11-1-000 (Nov. 18, 2010).

## **III. REQUEST FOR CLARIFICATION OR, IN THE ALTERNATIVE, REHEARING**

The current BES definition generally excludes radials to load:<sup>3</sup>

As defined by the Regional Reliability Organization, the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. *Radial transmission facilities serving only load with one transmission source are generally not included in this definition.*

The BES Final Rule (like the NOPR) is for the most part clear that the Commission does not intend to change the current BES definition's exclusion of radials to load (*e.g.*, P 55):

As we stated in the NOPR, we do not seek to modify the second part of the definition through this Final Rule, which

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<sup>3</sup> NERC, Glossary of Terms Used in Reliability Standards 2 (definition of "Bulk Electric System") (Feb. 12, 2008), [http://www.nerc.com/files/Glossary\\_12Feb08.pdf](http://www.nerc.com/files/Glossary_12Feb08.pdf) (emphasis added).

states that “[r]adial transmission facilities serving only load with one transmission source are generally not included in this definition.”

*See also, e.g., id.*, P 120 (“As previously discussed, radial facilities, as well as facilities used in the local distribution of electric energy as provided in section 215, will continue to be excluded.”).

The Final Rule also, however, introduces confusion on the exclusion of radials to load by suggesting that radials should receive exemptions, the implication being that NERC must include them in the definition of the BES but may grant exemptions. For example, the Final Rule states:

we believe that it would be beneficial for the ERO in maintaining a list of exempted facilities, to consider including a means to track and review facilities that are classified as local distribution to ensure accuracy and consistent application of the definition. Similarly, the ERO could track *exemptions* for radial facilities.

*Id.*, P 119 (emphasis added).

In light of the clear statements in Paragraph 55 and elsewhere that the Commission “do[es] not seek to modify” the general exclusion of “radial transmission facilities serving only load with one transmission source,” TAPS believes that the Commission does not intend to require entities to seek exemptions for their radials to load, but requests that the Commission grant clarification on this point to ensure consistency with Section 215 and its purposes, and to prevent confusion and unnecessary burden.

Exclusion of radials to load from the definition of the BES, rather than inclusion subject to exemption, is consistent with Section 215 and its purposes. Radials to load do not nominally meet the standard for inclusion in the BES, and therefore should not be

subject to case-by-case exemption. The Final Rule makes no attempt to demonstrate (nor can it) that radials to load are among the “facilities necessary to operate the interconnected transmission network” that the Commission (P 72) directed NERC to include with a revised BES definition. *See also* FPA § 215(a)(1) (defining the Bulk-Power System (“BPS”) as including “facilities and control systems necessary for operating an interconnected electric energy transmission network” and excluding “facilities used in the local distribution of electric energy”). Requiring entities owning radials to load to go through a process to demonstrate to NERC and its Regional Entities that they warrant exemption improperly and unnecessarily burdens everyone involved, and distracts from activities that are far more valuable to BPS reliability.

The issue has significant ramifications, especially for TAPS members, who tend to be relatively small entities. Adding radials to load to the BES definition would threaten small entities with registration as a Transmission Owner (“TO”) and Transmission Operator (“TOP”) for the first time, based on the entities’ ownership and operation of the radial lines connecting their systems to the grid. Registration, and particularly registration as a TO/TOP, carries with it significant compliance burdens, which in the case of an entity who owns no transmission other than a radial connecting its load to the system would have no corresponding benefit to reliability. While the Commission likely would expect such entities to be exempted from such unjustified TO/TOP registrations, these entities – who may never have had any previous contact with

NERC and its Regional Entities<sup>4</sup> – would be faced with responding to the threatened registration by going through the exemption process to be developed by NERC. Thus, subjecting radials to load to an inclusion-then-exemption process (rather than continuation of the current exclusion) would needlessly burden such entities, as well as NERC and its Regional Entities, with no benefit to reliability.

In short, reversing the current exclusion of radials from the BES definition would significantly increase the compliance and enforcement costs of the entities that own and operate such facilities and of NERC and the Regional Entities. As virtually all of the participants at the Commission’s November 18, 2010 technical conference on reliability compliance, monitoring, and enforcement agreed, it is essential that enforcement priorities be set. It would be a huge step in the wrong direction to subject to compliance a large new set of facilities and entities that are significantly *less* likely to affect BPS reliability than those that are currently registered, or to spend resources in establishing and administering an exemption process for such facilities.

Excluding radials to load from the BES definition, as TAPS believes the Final Rule intended to permit NERC to do, would maintain the *status quo* with respect to such facilities and the entities that own and operate them. It appropriately minimizes unnecessary costs, while preserving the ability of NERC and its Regional Entities to ensure that facilities that should be included in the BES are included. The Statement of Compliance Registry Criteria already provides NERC and its Regional Entities ample

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<sup>4</sup> For example, under NERC’s Statement of Compliance Registry Criteria, Revision 5.0 (Oct. 16, 2008), [http://www.nerc.com/files/Statement\\_Compliance\\_Registry\\_Criteria-V5-0.pdf](http://www.nerc.com/files/Statement_Compliance_Registry_Criteria-V5-0.pdf) (“Registry Criteria”), a 20 MW municipality connected to the grid through a 115 kV radial generally would not be subject to registration as a Distribution Provider (“DP”) or Load Serving Entity (“LSE”).

authority to register any entity that should be registered, including because its facilities should be considered part of the BES. Section V of the Registry Criteria provides:

If NERC or a Regional Entity encounters an organization that is not listed in the compliance registry, but which should be subject to the reliability standards, NERC or the Regional Entity is obligated and will add that organization to the registry, subject to that organization's right to challenge as provided in Section 500 of NERC's Rules of Procedure and as described in Note 3 below.

Footnote 2 to the Registry Criteria invites suggestions as to needed registration:

The criteria for determining whether an entity will be placed on the registry are set forth in the balance of this document. At any time a person may recommend in writing, with supporting reasons, to the director of compliance that an organization be added to or removed from the compliance registry, pursuant to NERC ROP 501.1.3.5.

NERC and the Regional Entities thus already have the authority to ensure that the entities and facilities that are necessary for reliable BPS operations are subject to compliance with reliability standards.

No need has been shown to burden NERC and its Regional Entities with further tracking of radials to load excluded from the BES definition. Thus, the Commission should also clarify that the Final Rule does not intend to suggest (P 119) that NERC consider establishing a mechanism to report and track the radials *to load* that continue to be *excluded* from the BES, but only that NERC should consider tracking exemptions of other radials. Tracking *exemptions* of facilities that are included in the BES definition, but that nevertheless do not merit inclusion in the BES, is appropriate to achieve the consistency that the Final Rule is seeking, and that TAPS supports.

TAPS therefore requests clarification that the Commission is not directing NERC to change the current exclusion of radials to load from the definition of the Bulk Electric System. Facilities that fall outside the exclusion as set out in the definition – *i.e.*, those that are not “[r]adial transmission facilities serving only load with one transmission source,” but still do not warrant inclusion in the BES – would of course be subject to the exemption process, and it may be appropriate for NERC to track such exemptions.

If the Commission does not grant the requested clarification, TAPS in the alternative requests rehearing of the Final Rule’s decision, departing from the March 18 NOPR,<sup>5</sup> to require NERC to include radials to load over 100 kV in the BES, thus subjecting the owners and operators of such lines to the threat of registration as TO/TOPs, subject to an exemption process that has not yet been developed. For the reasons explained above, such treatment is inconsistent with FPA Section 215(a)(1) and will undermine, rather than serve, the purposes of Section 215. FPA §§ 215(a)(1), (d)(2), 16 U.S.C. §§ 824o(a)(1), (d)(2); FPA § 313, 16 U.S.C. § 825l; 5 U.S.C. § 706(2).

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<sup>5</sup> *See, e.g.*, NOPR, P 19, “the Commission does not propose to change the ERO’s statement that “[r]adial transmission facilities serving only load with one transmission source are generally not included in this definition.”

## CONCLUSION

For the reasons set forth above, the Commission should clarify that NERC is not required to include radials serving only load in its definition of the BES. If the Commission does not grant such clarification, it should grant rehearing of the Final Rule as set forth above.

Respectfully submitted,

*/s/ Cynthia S. Bogorad*

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