

via e-mail to nerc.registration@nerc.net

**COMMENTS OF TRANSMISSION ACCESS POLICY STUDY GROUP ON POSTING
OF DISTRIBUTION PROVIDER REFERENCE DOCUMENT FOR “DIRECTLY
CONNECTED” DETERMINATIONS DATED JANUARY 3, 2018**

TAPS appreciates the opportunity to comment on NERC staff’s Distribution Provider Reference Document for “directly connected” determinations, dated January 3, 2018. We describe below our procedural and substantive concerns with the document.

Development of the reference document and opportunity for stakeholder input

We understand that NERC and Regional Entity staff spent several years developing the reference document. While we appreciate that staff is now informally accepting comments, stakeholders should have been informed of this effort years ago and their input solicited much sooner; a document interpreting the BES definition and Statement of Compliance Registry Criteria, which was evidently the subject of considerable debate among NERC and Regional staff, should not be presented to the industry as essentially a *fait accompli*. We strongly encourage staff to send out a stakeholder email soliciting comments (as opposed to relying solely on the statement on the webinar that comments would be accepted), and to be open to going back to the drawing board based on industry comments. To ensure transparency, all comments received should be posted on the NERC Registration page. NERC staff should also publicize its planned next steps, including how, and by whom, the document will be finalized and approved.

Background

In light of some of the discussion in the guidance document (at 1-2) and on NERC’s March 22, 2018 webinar, we think it’s worth laying out some of the background relevant to the guidance document. In 2013, FERC granted the registration appeal of the South Louisiana Electric Cooperative Association, finding that NERC had not adequately demonstrated that SLECA was “directly connected” to the BPS, and thus SLECA was not properly registered as a DP or LSE. Later that year, FERC denied NERC’s request for rehearing of that order, affirming its “use of the bulk *electric* system definition in the July 18 Order, including the exclusion of ‘[r]adial transmission facilities serving only load with one transmission source,’ in determining that SLECA is not ‘directly connected’ to the Bulk *Power* System as that term is used in NERC’s Registry Criteria.”¹ Based in part on FERC’s explicit treatment of BPS and BES as equivalent for purposes of DP registration determinations, NERC then, as part of the 2014 RBR initiative, revised the DP registration criteria to refer to direct connection to the BES, rather than the BPS. The justification given by NERC staff for the guidance document—that the BPS is significantly broader than the BES, and that the RBR revision was thus a major change that necessitated NERC guidance—is erroneous. Indeed, the change from “BPS” to “BES” was so clearly a

¹ *S. La. Elec. Coop. Ass’n*, 145 FERC ¶ 61,232, P 34 (2013) (“*SLECA rehearing order*”) (emphasis added).

housekeeping matter that it was barely mentioned by NERC, commenters, or FERC in the RBR docket.

Substantive comments

TAPS supports NERC’s effort to develop guidance to ensure that the *SLECA* precedent is consistently applied. Our concern is with staff’s decision to go beyond that, by declaring that there must be a registered DP for every system with a peak load of more than 75 MW, regardless of whether the system is directly connected to the BES. During the webinar, NERC staff stated that in the *SLECA* case, if *SLECA* had a peak load over 75 MW, LaGen would be registered as the DP for that system under this guidance. There is no indication in *SLECA*, however, that the Commission believed that LaGen should or even could be registered in *SLECA*’s place, despite the concern expressed in NERC’s request for rehearing that deregistering *SLECA* and similarly-situated entities could result in a reliability gap.² Nor are we aware of any contemplation in the RBR initiative—which, again, took place after *SLECA* was decided—that a host TO should be registered where a distribution provider is not subject to registration because of its lack of direct connection to the BES. If anyone had thought that there was an unacceptable risk to reliability, the (transparent, exhaustive) RBR process would have been the appropriate venue to debate the issue.

Indeed, while NERC staff emphasized that the Registry Criteria state that the DP “[p]rovides and operates the ‘wires’ between the transmission system and the end-use customer. For those end-use customers who are served at transmission voltages, the Transmission Owner also serves as the Distribution Provider,” LaGen (to use the *SLECA* situation as an example) does not “provide and operate the wires” between the BES and the end-use customer; it provides and operates the wires between the BES and *SLECA*. It is *SLECA* that owns and operates the wires that connect to its end-use customers. If NERC believes that entities in LaGen’s shoes must be registered as DPs to protect reliability, NERC must revise the Statement of Compliance Registry Criteria.

We suspect that in most cases, the facilities where the BES becomes non-BES are covered by an entity that is registered as a DP and/or TO (with responsibilities largely including the responsibilities of DPs). Since NERC staff stated a similar belief on the webinar, it is not clear why there is any need for the guidance to go beyond clarifying “directly connected.”

Conclusion

TAPS appreciates the opportunity to submit these comments. We urge NERC staff to formally solicit comments on the guidance document; to post all comments submitted on the NERC website; to post its planned next steps; and to revise the guidance document to make it consistent with FERC precedent and the NERC Rules of Procedure.

² *SLECA rehearing order* P 28.