

September 20, 2012

**VIA ELECTRONIC FILING**

Ms. Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, D.C. 20426

**Re: Errata to Reply Comments of the North American Electric Reliability Corporation in Response to Notice of Proposed Rulemaking, *North American Electric Reliability Corporation*, FERC Docket Nos. RM12-6-000 and RM12-7-000**

Dear Ms. Bose:

On September 19, 2012, NERC filed Reply Comments in Response to the Notice of Proposed Rulemaking on the Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure.

It has come to NERC's attention that on the cover page of the filing, the phrase "PRIVILEGED AND CONFIDENTIAL DRAFT – DUE SEPTEMBER 19" appears in the upper right header. This is in error, and NERC wishes to correct the record. Please note that this document contains no confidential information. A corrected copy of this filing is attached.

Accordingly, NERC respectfully requests that the Commission take note of this errata filing, and issue an order consistent with NERC's filings submitted in this proceeding.

Respectfully submitted,

/s/ Stacey Tyrewala

Stacey Tyrewala

*Attorney for North American Electric Reliability  
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cc: Official service lists in Docket Nos. RM12-6-000 and RM12-7-000

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**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

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

**REPLY COMMENTS OF THE  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING**

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September 19, 2012

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**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>Revisions to Electric Reliability</b>	)	<b>Docket Nos. RM12-6-000</b>
<b>Organization Definition of Bulk Electric System</b>	)	<b>RM12-7-000</b>
<b>And Rules of Procedure</b>	)	

**REPLY COMMENTS OF THE  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING**

The North American Electric Reliability Corporation (“NERC”)<sup>1</sup> hereby provides these reply comments in response to the comments submitted on September 4, 2012 on the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) June 22, 2012, Notice of Proposed Rulemaking (“NOPR”)<sup>2</sup> regarding revisions to the Electric Reliability Organization (“ERO”) Definition of Bulk Electric System (“BES Definition”) and Rules of Procedure.

**I. BACKGROUND**

In the NOPR, the Commission proposed to approve a modification to the currently-effective definition of “bulk electric system.”<sup>3</sup> The proposed modification to the definition removes language allowing for regional discretion in the currently-effective bulk electric system definition. The proposed revised definition also establishes a bright-line threshold so that the

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<sup>1</sup> The Federal Energy Regulatory Commission certified NERC as the electric reliability organization (“ERO”) in its order issued on July 20, 2006 in Docket No. RR06-1-000. *North American Electric Reliability Corporation*, 116 FERC ¶ 61,062 (2006).

<sup>2</sup> *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, 139 FERC ¶ 61,247 (June 22, 2012) (“NOPR”).

<sup>3</sup> NERC proposes the following “core” definition of bulk electric system:

Unless modified by the [inclusion and exclusion] lists shown below, all Transmission Elements operated at 100 kV or higher and Real Power and Reactive Power resources connected at 100 kV or higher. This does not include facilities used in the local distribution of electric energy.

“bulk electric system” will include facilities operated at 100 kV or higher, if they are Transmission Elements, or connected at 100 kV or higher, if they are Real Power or Reactive Power resources.<sup>4</sup> The new proposed definition contains specific inclusions and exclusions to provide clarity in the definition that the facilities described in certain configurations are included in or excluded from the BES Definition. Comments on the NOPR were due on September 4, 2012, and NERC and a significant number of entities submitted comments. Pursuant to Rule 212, NERC respectfully offers these reply comments in order to clarify several issues raised by other commenters.

## **II. COMMENTS**

NERC offers comments on the following: (1) the extent of the Commission’s jurisdiction in connection with the scope of the BES Definition, (2) the exceptions process as set forth in the Rules of Procedure, and (3) the scope of Phase 2 of the BES Definition.<sup>5</sup> In addition, several entities offer revised language to the BES Definition for consideration by the Commission.<sup>6</sup> As the Commission has noted in prior instances, such comments should have been submitted during the standard development process and the Commission should reject such comments.<sup>7</sup>

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<sup>4</sup> Unless otherwise designated, all capitalized terms shall have the meaning set forth in the Glossary of Terms Used in NERC Reliability Standards, available here: [http://www.nerc.com/files/Glossary\\_of\\_Terms.pdf](http://www.nerc.com/files/Glossary_of_Terms.pdf).

<sup>5</sup> In response to the request for clarification by Alameda Municipal Power regarding the ability of parties to seek exceptions for proposed facilities, NERC notes that Section 1.1 provides that an entity planning the connection of a new Element for which it believes an Exception would be appropriate may request an Exception prior to commercial operation of the Element. *See Comments of Alameda Municipal Power* at 17 (“AMP seeks clarification that parties may seek exceptions for proposed facilities, and not just for existing facilities. Allowing exceptions to be sought for proposed facilities would provide an opportunity for entities to make reasoned decisions about planned system improvements.”).

<sup>6</sup> *See e.g., Comments of the PSEG Companies* at 2.

<sup>7</sup> *See Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672 at P 334, FERC Stats. & Regs. ¶ 31,204, *order on reh’g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006) (“we caution that we will not be sympathetic to arguments by interested parties that choose, for whatever reason, not to participate in the ERO’s Reliability Standard development process if it is conducted in good faith in accordance with the procedures approved by the Commission.”).

### **A. The BES Definition Accurately Reflects the Extent of the Commission’s Jurisdiction**

With respect to comments submitted regarding the extent of the Commission’s jurisdiction under Section 215 of the Federal Power Act (“FPA”),<sup>8</sup> NERC notes that the exemption of local distribution facilities in the BES Definition and the exclusion of radial systems as described in Exclusion E1, appropriately reflect the Commission’s jurisdiction under Section 215.<sup>9</sup> As the Commission acknowledged in Order No. 743, Congress has specifically exempted facilities used in the local distribution of energy from the definition of Bulk-Power System, and such facilities accordingly cannot be included as part of the BES as defined by NERC.<sup>10</sup>

The sole fact that industrial generators are intrastate facilities that only serve load does not mean that they are excluded from the Commission’s jurisdiction under Section 215. Section 215 applies to both interstate and intrastate facilities -- whether or not Section 215 applies to industrial generators depends on whether they are users, owners or operators of the bulk-power system and the current criteria for that determination are set forth in NERC’s Compliance

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<sup>8</sup> Several commenters state that because industrial generators are intrastate facilities that only serve the owner’s load, they are excluded from the jurisdiction of the Commission. *See Comments of Barrick Goldstrike Mines Inc.*, at 13 (“Accordingly, these intrastate industrial generators are not now subject to FERC jurisdiction and NERC’s reliability rules must therefore stay within the limits imposed by the statutory text set forth by Congress.”); *Comments of the Industrial Users of Utah* at 3-4 (“Because these industrial generators are intrastate facilities that serve only the owner’s load, they are excluded from the jurisdiction of FERC and NERC. “).

<sup>9</sup> FPA Section 215(b)(1), titled “Jurisdiction and Applicability,” describes the Commission’s reliability jurisdiction as follows:

The Commission shall have jurisdiction . . . over . . . all users, owners and operators of the bulk-power system, including but not limited to the entities described in section 201(f), for purposes of approving reliability standards established under this section and enforcing compliance with [FPA section 215]. All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.

16 U.S.C. § 824o(b)(1).

<sup>10</sup> *See* Order No. 743, 133 FERC ¶ 61,150 at P 37 (2010); *see also* Order No. 743-A, 134 FERC ¶ 61,210 at P 58 (“[W]e reiterate that facilities used for local distribution are excluded from the Bulk-Power System definition under *section 215*, and thus are excluded from the bulk electric system.”)(2011).

Registry. NERC respectfully submits that the BES Definition appropriately reflects the exemption of facilities used in local distribution and accurately reflects the Commission’s jurisdiction.

**B. The Exceptions Process is Sufficiently Robust and Transparent**

**1. The Limitation on the Right to File an Exception Request is Appropriate**

Section 1.1 of Appendix 5C to the NERC Rules of Procedure details who is entitled to file an Exception Request. The exceptions process is based on the NERC Compliance Registry and the NERC Functional Model. The right to file an Exception Request is not limited to the Owner of the Element that is the subject of the Exception Request. Rather, the Regional Entity or a Registered Entity performing reliability functions that would have the Element within its Scope of Responsibility may submit an Exception Request with respect to the Element.

The Owner of the Element to which the Exception Request applies or, with respect to an Element owned by another Registered Entity, any Regional Entity, Planning Authority (“PA”), Reliability Coordinator (“RC”), Transmission Operator (“TOP”), Transmission Planner (“TP”) or Balancing Authority (“BA”) that has (or will have upon inclusion of the Elements in the BES) the Elements covered by an Exception Request within its Scope of Responsibility may submit an Exception Request for the Element as provided in this Exception Procedure

Several commenters have raised concerns regarding the role of state commissions<sup>11</sup> and Regional Transmission Organizations/Independent System Operators (“RTOs/ISOs”) within the

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<sup>11</sup> See *Comments of the New York State Public Service Commission* at 7 (“the NOPR does not include any meaningful opportunities for the participation of states in the exception process for excluding facilities that are not necessary for the reliable operation of the interconnected transmission network. Because the states are appropriate entities that should be working with local Transmission Owners and/or regional reliability councils to identify local distribution facilities, the Commission should expressly provide for state involvement in any such process.”); *Comments of the National Association of Regulatory Utility Commissioners* at 7 (“the Commission should direct NERC to amend the Rules of Procedure to ensure the relevant State regulatory authorities receive the same notice and access to information as Planning authorities and other entities and should have the same right to provide comment and input to the Regional Entity as is provided to other stakeholders.”).

exceptions process.<sup>12</sup> NERC submits that the limitation on the right to file an Exception Request to the above-listed entities is appropriate. This procedure reflects an effective and efficient way to bring to bear the information required to process Exception Requests. RTOs and ISOs have the ability to file an Exception Request where they are acting in their capacity as Planning Authorities, Reliability Coordinators, Transmission Operators, Transmission Planners or Balancing Authorities. The exceptions process is technical and is based on engineering expertise, and these are the necessary parties with the required information. State commissions have other means and methods at their disposal for working with entities to identify candidates for an Exception Request. For these reasons, the limitation on the right to file an Exception Request is appropriate and administratively efficient.

## **2. Notice Regarding Exception Requests is Sufficient**

Commenters have stated that state regulatory authorities should receive notice and access to information regarding Exception Requests.<sup>13</sup> Attachment 9 of NERC's Petition, (The Development Process and Basis for the RoP Team Recommended Provisions- How Stakeholder Comments were Considered and Addressed), includes a discussion (at p. 6-7) regarding the role of state regulators within the exceptions process.

The Team specifically provided that (1) detailed notice of any request would be provided to every Registered Entity with reliability oversight obligation for the Element subject to the Request and (2) general information about the request will be publicly posted. The RoP team believes that it has achieved sufficient balance between the protection of CEII and other confidential information and the need to have a process as transparent as possible to ensure consistency. The RoP Team believes that third parties (including state regulatory agencies) will have adequate opportunity to provide comments regarding the request without formally participating in the process

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<sup>12</sup> See e.g., *Comments of the Midwest Independent Transmission System Operator, Inc.* at 9-13.

<sup>13</sup> See *infra.* at n.11.

This process provides as much transparency as possible, while maintaining protection and confidentiality of information. As noted above, NERC maintains that it is unnecessary for there to be an explicit role for specific third parties within the exceptions process and asserts that the notice provided with respect to Exception Requests is sufficient.

### **3. The Requirements for Submitting an Exception Request Must be Consistent**

The Midwest Independent Transmission System Operator, Inc. suggests that the Commission should “lower the requirements for RTOs when filing exception requests for exclusion and/or inclusion of facilities within their scope of responsibility.”<sup>14</sup> NERC disagrees. This concept is inconsistent with the need to provide a consistent and clear basis for determining the outcome of exception requests. The Rules of Procedure require the submitting entity to include a common set of data and information with each exception request (the “Detailed Information to Support an Exception Request”). The Detailed Information is intended to ensure that a consistent baseline of technical information is provided to the Regional Entity and NERC with all exception requests, in addition to the specific information and arguments submitted by the submitting entity in support of its exception request. For these reasons, NERC asserts that it is appropriate that the information required for an exception request is the same, regardless of the identity of the submitter.

#### **C. Phase 2 of the BES Definition**

A number of comments submitted in response to the BES NOPR raise issues that are currently being addressed by Phase 2 of the BES Definition.<sup>15</sup> Project 2010-17, Definition of

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<sup>14</sup> *Comments of the Midwest Independent Transmission System Operator, Inc.* at 12.

<sup>15</sup> *See e.g., Comments of Consumers Energy Company* at 3 (“the scope of Inclusion I4 is unclear”); *Comments of Barrick Goldstrike Mines, Inc.* at 5 (“It is unclear what ‘not . . . non-retail generation’ means.”); *Comments of the Dow Chemical Company* at 1 (“the requirement that power may only flow into, and not out of, a local network should be clarified to apply only to power that originates outside of, and flows through, a local network.”); *Comments of the New England States Committee on Electricity* at 3 (“NERC’s proposal provides no technical

Bulk Electric System was divided into phases in order to meet the Commission’s directives in Order Nos. 743 and 743-A, while also addressing the concerns raised by stakeholders in the standard development process. As outlined in the Phase 2 Standards Authorization Request (“SAR”),<sup>16</sup> Phase 2 of the BES Definition will include an analysis of the following issues which were identified during the development of Phase 1:

- Development of a technical justification to set the appropriate threshold for Real and Reactive Power Resources necessary for the reliable operation of the BES;
- Determination of whether there is a need for the BES Definition to encompass a contiguous BES;
- Determination of whether there is a technical justification to revise the current 100 kV bright-line voltage level;
- Determination of whether there is a technical justification to support allowing power flow out of the local network under certain conditions and if so, what the maximum allowable flow and duration should be.

In addition, Phase 2 will provide clarity to the following:

- The relationship between the BES Definition and the ERO Statement of Compliance Registry Criteria established in Order No. 693;
- The use of the term “non-retail generation;”
- The language for Inclusion I4 on dispersed power resources;
- The appropriate points of demarcation between Transmission, Generation and Distribution.

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justification for relying on the bright-line approach.”); *Comments of the New York State Public Service Commission* at 3 (“The NOPR lacks a technical justification for a 100 kV bright-line definition.”); *Comments of Southern Company Services, Inc.* at 5 (“further consideration should be given as to whether inclusion I2 should be made more consistent with the Registry Criteria.”).

<sup>16</sup> See [http://www.nerc.com/filez/standards/Project2010-17\\_BES.html](http://www.nerc.com/filez/standards/Project2010-17_BES.html); see also, [http://www.nerc.com/docs/standards/sar/BES\\_Definition\\_Fact\\_Sheet\\_20110920\\_final.pdf](http://www.nerc.com/docs/standards/sar/BES_Definition_Fact_Sheet_20110920_final.pdf).

Phase 2 may also include other improvements to the BES Definition. NERC encourages commenters to participate in the standard development process and respectfully requests that the Commission continue to allow these issues to be addressed in Phase 2 of the BES Definition.

### **III. CONCLUSION**

For the reasons stated above, NERC respectfully requests that the Commission accept these comments for consideration.

Respectfully submitted,

*/s/ Stacey Tyrewala*

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**Dated: September 19, 2012**

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 19th day of September, 2012.

*/s/ Stacey Tyrewala*  
Stacey Tyrewala  
*Attorney for North American Electric  
Reliability Corporation*