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NERC Proposes Modified Definition of Bulk Electric System

The North American Electric Reliability Corporation (NERC) has proposed that all transmission facilities operated at 100 kV or higher and all real and reactive power resources connected to the grid at 100 kV or higher be subject to its Reliability Standards. In NERC's January 25, 2012 petition to the Federal Energy Regulatory Commission (FERC) to approve its revised definition of "Bulk Electric System" (BES) – the term used by NERC to identify the electric transmission, generation and related facilities subject to the Reliability Standards – NERC adopted 100 kV as a bright-line threshold for identifying BES facilities, but also included all blackstart resources regardless of size or voltage level. NERC's revised definition would exclude local distribution and radial facilities. Although the 100-kV threshold is the defining element of the revised definition, owners and operators of facilities subject to BES designation will have an opportunity to seek an exception using NERC's BES Exception Procedure proposed in connection with the revised definition of BES.

NERC's revised definition appears to meet FERC's requirement in Order Nos. 743 and 743-A that NERC establish a uniform standard for identifying BES facilities. The additional detail proposed by NERC in the definition, together with the formal Exception Procedure, should help regulated entities identify which facilities are BES facilities and thus subject to the Reliability Standards. Although the revised definition remains subject to FERC approval and interested parties will have an opportunity to submit comments on the proposal (in FERC Docket Nos. RM12-6 and RM12-7), entities with facilities that could for the first time fall within the scope of regulated BES facilities should begin the process of inventorying their facilities and assessing their state of compliance.

Background

On November 18, 2010, FERC directed NERC in Order No. 743 to modify the definition of BES after finding the potential for "gaps" in coverage and identification of facilities subject to the Reliability Standards under the current definition. FERC intended to establish a uniform standard for identifying facilities subject to the Reliability Standards across all regions. FERC affirmed its conclusions in Order No. 743-A, issued on March 17, 2011.

In Order Nos. 743 and 743-A, FERC suggested a "best" approach for modifying the definition of BES: NERC should create a "bright-line" threshold for non-radial transmission facilities operating at 100 kV or higher, and eliminate the discretion afforded to Regional Entities (the regional bodies delegated front-line enforcement authority by NERC) to determine which facilities fall under the definition of BES.

FERC also ordered NERC to develop an exception process for facilities that would otherwise be included in the revised BES definition. FERC instructed NERC to provide clear and uniform criteria for exempting facilities "that are not necessary for operating the grid." FERC suggested that NERC act as the sole decision-maker for exceptions from the BES to ensure "an objective and uniform application" of the criteria.

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Revised BES Definition

NERC's revised definition of BES follows FERC's suggested "best" approach. Consistent with FERC's directive that the revised definition should be managed solely by NERC, the proposed definition eliminates regional discretion. The Regional Entities would still retain a role in administering the definition, through implementation of the exception process.

NERC's revised definition creates a bright-line threshold for the term BES that includes (1) transmission components operated at 100 kV and higher and (2) real or reactive power resources connected at 100 kV or higher. NERC's revised definition expressly excludes local distribution and radial facilities.

The following facilities are expressly **included** within the revised definition of BES:

- Transformers with the primary terminal and at least one secondary terminal operated at 100 kV or higher (absent exception).
- Generating resource(s) with a gross individual nameplate rating greater than 20 MVA or a gross plant/facility aggregate nameplate rating greater than 75 MVA including the generator terminals through the high-side of the step-up transformer(s) connected at a voltage of 100 kV or above.
- Blackstart resources identified in the transmission operator's restoration plan.
- Dispersed power producing resources with aggregate capacity greater than 75 MVA utilizing a system designed primarily for aggregating capacity, connected at a common point at a voltage of 100 kV or above.
- Static or dynamic devices (excluding generators) dedicated to supplying or absorbing reactive power that are connected at 100 kV or higher, or through a dedicated transformer with a high-side voltage of 100 kV or higher, or through a transformer meeting the criteria above.

NERC's revised definition of BES **excludes**:

- Radial systems
- Certain generating units on the customer's side of the retail meter that serve retail load
- Local networks
- Reactive power devices owned and operated by retail customers

Facilities that do not fall into an express exclusion may request an exception through NERC's proposed BES Exception Procedure.

Proposed BES Exception Procedure

In accordance with FERC's directives, NERC also proposed procedures for requesting exceptions from the revised definition of BES. Under NERC's proposed procedures, an entity may request an exception by submitting an "Exception Request" to the Regional Entity in which the facility is located. The Exception Request must include certain "Detailed Information" required by the proposed procedures, such as a one-line diagram, data and studies, and responses to prescribed questions. The Regional Entity would determine whether the requester is eligible and whether it has provided the necessary information for exception. The Regional Entity would then conduct a substantive review of the Exception Request and recommend to NERC whether to approve or disapprove the request.

NERC would appoint a review panel that would recommend to NERC's President whether to approve or disapprove the request. NERC's President would issue a final decision on the Exception Request within 30 days of receiving the panel's decision, subject to appeal to the NERC Board of Trustees Compliance Committee and, if necessary, FERC.

Implementation Plan

NERC also proposed a transition plan to implement the new BES definition. Under the proposed plan, asset owners must apply the revised BES definition, perform a "gap analysis" for newly included facilities (to determine any additional compliance obligations), and develop an implementation plan to bring the facilities into compliance. NERC proposed a 24-month transition period from the effective date of the revised definition, which NERC proposed to be the first day of the second calendar quarter following FERC approval. Thus, depending on when FERC acts on the revised definition, the compliance date for newly included facilities could be as late as January 2015.

Additional NERC Proceedings

In addressing comments on the revised definition, NERC deferred consideration of certain matters to a "Phase 2" of this project. Specifically, NERC will address at a later date the "threshold values" underlying the BES definition, whether to include cranking paths for blackstart resources in the BES definition, and whether the BES should be contiguous.

What This Means for You

NERC's revised BES definition and Exception Procedure closely follow FERC's suggested "best" approach. The objective criteria and additional detail proposed by NERC in the definition, along with the formal Exception Procedure, should help asset owners identify which facilities are BES facilities and thus subject to the Reliability Standards. NERC also has proposed a substantial compliance period – though it is not yet known what impact the Exception Procedure will have on NERC's and the Regional Entities' resources. Ultimately, NERC's revised definition does not eliminate all uncertainty involving the applicability of the Reliability Standards. Entities that may have facilities not previously included under the BES definition but now potentially within its scope would be well-advised to begin undertaking the inventory and gap analysis proposed by NERC in the transition plan.



If you have any questions about this Legal Alert, please feel free to contact the attorneys listed below or the Sutherland attorney with whom you regularly work.

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