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Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure; Final Rule

DEPARTMENT OF ENERGY**Federal Energy Regulatory
Commission****18 CFR Part 40**

[Docket Nos. RM12–6–001 and RM12–7–001; Order No. 773–A]

**Revisions to Electric Reliability
Organization Definition of Bulk Electric
System and Rules of Procedure**

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order on rehearing and clarification.

SUMMARY: The Commission denies rehearing in part, grants rehearing in part and otherwise reaffirms its determinations in Order No. 773. In addition, the Commission clarifies certain provisions of the Final Rule. Order No. 773 approved the modifications to the currently-effective definition of “bulk electric system” developed by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization. Order No. 773 also approved NERC’s revisions to its Rules of Procedure, which create an exception process to add elements to, or remove elements from, the bulk electric system on a case-by-case basis and established a process pursuant to which an entity can seek a determination by the Commission whether facilities are “used in local distribution” as set forth in the Federal Power Act.

DATES: *Effective Date:* This rule will become effective May 17, 2013.

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SUPPLEMENTARY INFORMATION:

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

**Order on Rehearing and Clarification
(Issued April 18, 2013)**

I. Introduction

1. On December 20, 2012, the Commission issued a Final Rule (Order No. 773) approving modifications to the currently-effective definition of “bulk electric system” developed by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO).¹ The Commission found that the modified definition of “bulk electric system” improves upon the currently-effective definition by establishing a bright-line threshold that includes all facilities operated at or above 100 kV and removing language that allows for broad regional discretion. The Commission also found that the revised definition provides improved clarity by identifying specific categories of facilities and configurations as inclusions and exclusions. The Commission also found that NERC’s case-by-case exception process to add elements to, and remove elements from, the definition of the bulk electric system adds transparency and uniformity to the determination of what constitutes the bulk electric system. The Final Rule found that, after notice and comment, the Commission can designate sub-100 kV facilities, or other facilities, as part of the bulk electric system. The Commission also established a process pursuant to which an entity can seek a determination by the Commission whether facilities are “used in local distribution” as set forth in the Federal Power Act (FPA).

2. In this order, the Commission denies in part and grants in part the requests for rehearing and clarification of the Final Rule, as discussed below.

A. Background

1. Order Nos. 743 and 743–A

3. On November 18, 2010, in Order No. 743, the Commission directed that NERC, through NERC’s Reliability Standards Development Process, develop modifications to the currently-effective definition of the term “bulk electric system” to ensure that the definition encompasses all facilities necessary for operating the interconnected transmission network.² The Commission also directed NERC to address the Commission’s technical and

policy concerns. Among the Commission’s concerns were inconsistencies in the application of the definition and a lack of oversight and exclusion of facilities from the bulk electric system required for the operation of the interconnected transmission network. In Order No. 743, the Commission concluded that the best way to address these concerns was to eliminate the Regional Entity discretion to define the bulk electric system without NERC or Commission review, maintain a bright-line threshold that includes all facilities operated at or above 100 kV except defined radial facilities, and adopt an exemption process and criteria for removing from the bulk electric system definition, those facilities that are not necessary for operating the interconnected transmission network. In Order No. 743, the Commission allowed NERC to “propose a different solution that is as effective as, or superior to, the Commission’s proposed approach in addressing the Commission’s technical and other concerns so as to ensure that all necessary facilities are included within the scope of the definition.”³ The Commission directed NERC to file the revised definition of bulk electric system and its process to exempt facilities from inclusion in the bulk electric system within one year of the effective date of the final rule.⁴

4. In Order No. 743–A, the Commission reaffirmed its determinations in Order No. 743. In addition, the Commission clarified that the issue the Commission directed NERC to rectify was the discretion the Regional Entities have under the current definition to define the bulk electric system in their regions without any oversight from the Commission or NERC.⁵ The Commission also clarified that the 100 kV threshold was a “first step or proxy” for determining which facilities should be included in the bulk electric system.⁶

5. The Commission further clarified that the statement in Order No. 743, “determining where the line between ‘transmission’ and ‘local distribution’ lies ... should be part of the exemption process the ERO develops,” was intended to grant discretion to NERC, as the entity with technical expertise, to develop criteria to determine how to differentiate between local distribution and transmission facilities in an objective, consistent, and transparent

¹ *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, Order No. 773, 141 FERC ¶ 61,236 (2012).

² *Revision to Electric Reliability Organization Definition of Bulk Electric System*, Order No. 743, 133 FERC ¶ 61,150, at P 16 (2010), *order on reh’g*, Order No. 743–A, 134 FERC ¶ 61,210 (2011).

³ Order No. 743, 133 FERC ¶ 61,150 at P 16.

⁴ *Id.* P 113.

⁵ Order No. 743–A, 134 FERC ¶ 61,210 at P 11.

⁶ *Id.* PP 40, 67, 102–103.

manner.⁷ The Commission stated that the “Seven Factor Test” adopted in Order No. 888 could be relevant and possibly a logical starting point for determining which facilities are local distribution for reliability purposes.⁸ However, the Commission left it to NERC to determine if and how the Seven Factor Test should be considered in differentiating between local distribution and transmission facilities for purposes of determining whether a facility should be classified as part of the bulk electric system.⁹ Order No. 743–A re-emphasized that local distribution facilities are excluded from the definition of Bulk-Power System and, therefore, must be excluded from the definition of bulk electric system.¹⁰ In Order No. 743–A, the Commission also stated that, “although local distribution facilities are excluded from the definition, it still is necessary to determine which facilities are local distribution, and which are transmission. Whether facilities are used in local distribution will in certain instances raise a question of fact, which the Commission has jurisdiction to determine.”¹¹

2. Order No. 773

6. On January 25, 2012, NERC submitted two petitions pursuant to the directives in Order No. 743: (1) NERC’s proposed revision to the definition of “bulk electric system” which includes provisions to include and exclude facilities from the “core” definition (Docket No. RM12–6–000); and (2) revisions to NERC’s Rules of Procedure to add a procedure (an exception process) to classify or de-classify an element as part of the “bulk electric system” (Docket No. RM12–7–000).¹²

7. 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 exception process, in response to Order Nos. 743 and 743–A. The Commission found that the revised definition of “bulk electric system” establishes a bright-line threshold that includes all facilities operated at or above 100 kV and removed language from the prior definition that allows for broad regional discretion. Further, the Commission found that inclusions and exclusions in the definition that address typical system facilities and configurations such as generation and radial systems provide additional granularity that improves consistency and provides a practical means to determine the status of common system configurations.¹³

8. In the Final Rule, the Commission found that the modified definition is consistent, repeatable and verifiable and will provide clarity that will assist NERC and affected entities in implementing Reliability Standards. The Commission also found that NERC’s proposal satisfies the directives of Order No. 743 to develop modifications to the currently-effective definition of bulk electric system to ensure that the definition encompasses all facilities necessary for operating an interconnected transmission network.

9. The Commission also approved NERC’s case-by-case exception process to add elements to, and remove elements from, the definition of the bulk electric system.¹⁴ In addition, the Final Rule established a process by which an entity can seek a determination by the Commission whether facilities are “used in local distribution” as set forth in the FPA on a case-by-case basis.¹⁵ 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 tie-lines, i.e. generator interconnection facilities, for bulk electric system generators; 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.¹⁶

B. Requests for Rehearing

10. The following entities filed timely requests for rehearing and/or clarification of Order No. 773: NERC, American Public Power Association

(APPA); American Wind Energy Association (AWEA); City of Holland, Michigan Board of Public Works (Holland); Dow Chemical Company (Dow); Electricity Consumers Resource Council (ELCON); National Association of Regulatory Utility Commissioners (NARUC); National Rural Electric Cooperative Association (NRECA); New York State Public Service Commission (NYSPSC); Public Utility District No. 1 of Snohomish County, Washington (Snohomish); Transmission Access Policy Study Group (TAPS); and Utility Services, Inc. (Utility Services).¹⁷

11. Exelon Corporation filed a response to the NERC request for clarification. The ITC Companies filed a motion for leave to answer and answer to the Holland rehearing request, and NERC filed a motion for leave to answer and answer in response to Exelon’s response. Holland filed an answer to the answer of the ITC Companies, and Exelon filed a response to NERC’s answer.

II. Discussion

A. Procedural Matters

12. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 CFR 213(a)(2) (2012), provides that answers are generally not permitted unless requested by the decisional authority. Rule 713(d) of the Commission’s Rules of Practice and Procedure, 18 CFR 713(d) (2012), prohibits answers to requests for rehearing. Accordingly, we will reject the answers filed by the parties in this proceeding.

B. Challenges to Commission Approval of the Revised Bulk Electric System Definition and Use of a 100 kV Bright-Line Threshold

13. NYPSC argues that the Commission’s approval of the 100 kV bright-line threshold was arbitrary, capricious and unsupported by

¹⁷ We find that Utility Services’ rehearing request is deficient because it fails to include a Statement of Issues section separate from its arguments, as required by Rule 713 of the Commission’s Rules of Practice and Procedure. 18 CFR 385.713(c)(2) (2012). Rule 713(c)(2) requires that a rehearing request include a separate section entitled “Statement of Issues” listing each issue presented to the Commission in a separately enumerated paragraph that includes representative Commission and court precedent on which the participant is relying. Under Rule 713, any issue not so listed will be deemed waived. See *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663, FERC Stats. & Regs. ¶ 31,193 (2005), *order on reh’g*, Order No. 663–A, FERC Stats. & Regs. ¶ 31,211 (2006). Accordingly, we dismiss Utility Services’ rehearing request. However, we note that Utility Services’ rehearing request raises issues similar to those addressed in other petitions in this proceeding.

⁷ *Id.* P 68.

⁸ Order No. 743–A, 134 FERC ¶ 61,210 at P 69. See *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,783–84 (1996), *order on reh’g*, Order No. 888–A, FERC Stats. & Regs. ¶ 31,048, *order on reh’g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (DC Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁹ Order No. 743–A, 134 FERC ¶ 61,210 at P 70.

¹⁰ *Id.* PP 25, 58.

¹¹ *Id.* P 67.

¹² The Commission-approved core definition, inclusions and exclusions are included in Attachment A to this order on rehearing.

¹³ Order No. 773, 141 FERC ¶ 61,236 at PP 2, 4, 38–40, 51.

¹⁴ Order No. 773, 141 FERC ¶ 61,236 at PP 251–262.

¹⁵ Order No. 773, 141 FERC ¶ 61,236 at PP 66–73.

¹⁶ Order No. 773, 141 FERC ¶ 61,236 at PP 155, 164–169.

substantial evidence because the record lacks a technical justification for using the 100 kV threshold. NYPSC adds that the Commission failed to demonstrate a sufficient technical justification that the bright-line definition only encompasses facilities needed for the reliable operation of the Bulk-Power System. While NYPSC believes that the Commission's bright-line approach is designed to ensure consistency, NYPSC states the Commission cannot evade the jurisdictional limitations of the FPA to ensure consistency. NYPSC also argues that the Final Rule contains no factual basis for establishing 100 kV as the appropriate place to draw the line and contends that the Commission conceded that not all facilities operated at or above 100 kV are necessary for operating the interconnected transmission network.

14. NARUC and NYPSC also argue that the definition encompasses facilities that are used for local distribution and are not necessary for operating an interconnected transmission network. NYPSC contends that, through studies and functional testing, the New York Independent System Operator, Inc. (NYISO) has developed a list of facilities that have the potential to cause cascading problems on the system as well as facilities that can have an impact on the Bulk-Power System but whose main function is to serve load. NYPSC claims that the Commission ignored this information in establishing a bright-line definition.

15. NARUC argues that a 100 kV bright-line threshold sweeps into the bulk electric system elements that were previously classified as local distribution. According to NARUC, the Final Rule creates the possibility of entities having to engage in a costly analysis to seek an exception for facilities used in local distribution. NARUC states that neither the inclusions and exclusions in the definition, nor the exception process cure the jurisdictional overreach inherent in the bright-line rule set at 100 kV.

16. Further, NYPSC argues that, even though the definition does not include facilities used for local distribution, the Commission "effectively acknowledged that such facilities would be placed under its jurisdiction by establishing an exception process whereby entities may seek to demonstrate that the facilities are not necessary for operating the interconnected transmission network, or are used in local distribution."¹⁸ NYPSC

argues that the Commission should not assume it has jurisdiction over facilities operated at 100 kV and above until an entity demonstrates that the Commission does not have jurisdiction. According to NARUC and NYPSC, the approach adopted in the Final Rule inappropriately shifts the legal and technical burdens on the jurisdictional issue to the entity applying for an exception.¹⁹ NYPSC adds that the Commission improperly dismissed NYPSC's evidence that there is a layer of "area" transmission facilities below the Bulk-Power System and above distribution facilities that move energy within a utility service territory and toward load centers and only a small subset of these "area" facilities assists in maintaining the reliability of the Bulk-Power System.

17. NYPSC contends that the bright-line definition is inconsistent with the FPA's definition of the Bulk-Power System, which, according to NYPSC, recognizes that a functional test is needed to determine whether a facility is necessary for reliable operation. NYPSC claims that the Commission ignored a functional test for defining the Bulk-Power System, such as the one the Northeast Power Coordinating Council, Inc. (NPCC) has historically used to identify facilities having an adverse impact on the Bulk-Power System. NYPSC also argues that the Commission should not require utilities to upgrade facilities to comply with Commission-approved Reliability Standards where a timely request for an exception has been submitted and is still pending. NYPSC contends that compliance and the expenditure of ratepayer funds should not be required until after the Commission has made a final determination on the exception, which will ensure that the costs of compliance are not unnecessarily imposed upon ratepayers, and the Commission does not impermissibly exert jurisdiction.

Commission Determination

18. We deny rehearing and affirm the findings in the Final Rule. As described below, petitioners have previously raised, and the Commission has addressed and rejected, the arguments with respect to the Commission's authority and technical justification for the 100 kV bright-line threshold and the functional test.

19. In Order No. 743, the Commission found sufficient justification for the finding that the current definition

allows broad regional discretion without ERO or Commission oversight, which has resulted in reliability issues and has failed to ensure that all facilities necessary for operation of the interconnected transmission network are covered by the Reliability Standards.²⁰ The Commission found that

many facilities operated at 100 kV and above have a significant effect on the overall functioning of the grid. The majority of 100 kV and above facilities in the United States operate in parallel with other high voltage and extra high voltage facilities, interconnect significant amounts of generation sources and operate as part of a defined flow gate, which illustrates their parallel nature and therefore their necessity to the reliable operation of the interconnected transmission system.²¹

The Commission also explained its concern with the application of the currently-effective definition by illustrating examples of wide-scale cascading outages that NERC or the Commission did not have a chance to mitigate because the facilities were not considered part of the bulk electric system.²² As discussed in Order No. 743, the Commission found that failure of 100–200 kV facilities has caused cascading outages that would have been minimized or prevented if these facilities were operated in compliance with the NERC Reliability Standards.²³

20. The Commission also noted that NERC already applies a general 100 kV threshold, and all regions, with the exception of NPCC, also apply a 100 kV threshold.²⁴ The Commission stated that the best way to address its concerns "is to eliminate the regional discretion in the ERO's current definition, maintain the bright-line threshold that includes all facilities operated at or above 100 kV except defined radial facilities, and establish an exemption process and criteria for excluding facilities the ERO determines are not necessary for operating the interconnected transmission network."²⁵ The Commission did not propose to change the existing threshold in the definition, but rather charged NERC with eliminating "the ambiguity created by the current characterization of that threshold as a general guideline."²⁶ In other words, while the Commission did

²⁰ Order No. 743, 133 FERC ¶ 61,150 at P 72.

²¹ Order No. 773, 141 FERC ¶ 61,236 at P 41 (citing Order No. 743, 133 FERC ¶ 61,150 at P 73).

²² Order No. 743, 133 FERC ¶ 61,150 at PP 72–96.

²³ Order No. 743, 133 FERC ¶ 61,150 at P 87.

²⁴ Order No. 743, 133 FERC ¶ 61,150 at P 56; Order No. 773, 141 FERC ¶ 61,236 at P 42.

²⁵ Order No. 743, 133 FERC ¶ 61,150 at P 30.

²⁶ *Id.* (footnotes omitted).

¹⁸ NYPSC Request for Rehearing and Clarification at 11 (citing Order No. 773, 141 FERC ¶ 61,236 at

P 40). See also NARUC Request for Rehearing at 3–4.

¹⁹ See, e.g., NYPSC Request for Rehearing and Clarification at 11–12.

not mandate the 100 kV threshold, it directed NERC to develop a revised definition that addresses the inconsistency, lack of oversight and exclusion of facilities inherent in the current definition.²⁷

21. We disagree with NYPSC and NARUC that by establishing an exception process the Commission effectively acknowledged that local distribution facilities would be placed under its jurisdiction. As we explained in the Final Rule, the bright-line threshold would be a “first step or proxy” in determining which facilities should be included in the bulk electric system. The Commission also explained that the “definition, coupled with the exception process will ensure that facilities not necessary for the operation of the interconnected transmission network will be properly categorized.”²⁸ Thus, the exception process is not evidence that the “core” definition violates the FPA but instead is a means to ensure the application of the definition complies with the FPA.

22. Further, as we explained in the Final Rule, the determination of whether an element or facility is “used in local distribution,” is a multi-step process that may require a jurisdictional analysis that is more appropriately performed by the Commission.²⁹ The Commission stated:

application of the “core” definition and the four exclusions should serve to exclude most facilities used in local distribution from the bulk electric system. However, there may be certain circumstances that present a factual question as to whether a facility that remains in the bulk electric system after applying the “core” definition and the four exclusions should nonetheless be excluded because it is used in local distribution. In such circumstances, which we expect will be infrequent, an entity must petition the Commission seeking a determination that the facility is used in local distribution. Such petitions should include information that will assist the Commission in making such determination, and notice of the petition must be provided to NERC and relevant Regional Entities.³⁰

In other words, if a facility is classified as part of the bulk electric system by application of the definition but should be excluded because it is a facility used in local distribution, an entity may apply to the Commission for a local distribution determination. Thus, because application of the 100 kV threshold is the first step in the process

of determining whether an element is part of the bulk electric system, we reject the argument that the definition will sweep in all elements above 100 kV in a manner inconsistent with the Commission’s jurisdiction.³¹

23. In sum, we deny rehearing and affirm that approval of the 100 kV bright-line threshold was adequately supported with a technical justification. Petitioners raise arguments that the Commission has previously considered and rejected in this proceeding as well as previous Commission decisions with respect to the reasons for requiring revisions to the definition of bulk electric system. In all these cases, the Commission explained and justified the appropriateness of a 100 kV threshold. Therefore, we reject the requests for rehearing on these issues.

24. We also reject the argument that a functional test is a more appropriate manner to determine which facilities are part of the bulk electric system. In Order No. 743, the Commission concluded that a material impact or functional test excludes facilities “without regard to whether they are necessary to operate the system, and instead seek to determine the impact of the loss of an element.”³² The Commission also concluded that these tests are subjective and result in an inconsistent process that excludes facilities from the bulk electric system.³³ In the NOPR comments in this proceeding, these same issues were raised, and in the Final Rule the Commission again rejected them.³⁴ Further, as discussed in detail in the Final Rule, the Commission found that NERC’s proposal adequately ensures that all facilities necessary for operating an interconnected electric energy transmission network are included under the bulk electric system. In the Final Rule, the Commission also relied on its finding in Order No. 743 that

“[U]niform Reliability Standards, and uniform implementation, should be the goal and the practice, the rule rather than the exception, absent a showing that a regional variation is superior or necessary due to regional differences. Consistency is important as it sets a common bar for transmission planning, operation, and maintenance necessary to achieve reliable operation. . . . [W]e have found several reliability issues with allowing Regional Entities broad discretion without ERO or Commission oversight.”³⁵

25. We also disagree with NYPSC’s claim that the Commission ignored the NYPSC evidence of NYISO studies and functional testing. As NYPSC states, the NYISO data is the result of a functional test.³⁶ While the Commission did not reject all material impact tests, the Commission took issue with particular tests and outlined general problems with the material impact tests used to date because they exclude facilities without regard to whether they are necessary to operate the interconnected transmission network. In addition, as explained above, failure of 100–200 kV facilities has caused cascading outages that would have been minimized or prevented if these facilities were operated in compliance with the NERC Reliability Standards. Further, in the Final Rule the Commission noted that NYPSC cited specific examples of facilities that should be excluded, but found that determinations for treatment for specific facilities were “more appropriate for the exception process” and were beyond the scope of this proceeding.³⁷

26. With regard to NYPSC’s request for clarification about the need to upgrade facilities while an exception request is pending, in Order No. 743–A we agreed with petitioners “that currently unregistered entities that may be required to seek an exemption for facilities under the revised bulk electric system definition will not be required to register and thereafter comply with Reliability Standards until a final decision is made to deny the application for exemption,” stating that “entities should not be required to take costly steps to comply with the Reliability Standards prior to the ERO’s initial determination on an exemption request.”³⁸ NERC’s exception process is consistent with the approach in Order No. 743–A. According to NERC, elements that are newly-included in the bulk electric system due to the revised definition will only become subject to relevant Reliability Standards twenty-four months after the effective date of the revised definition.³⁹ It is NERC’s

(footnote omitted)). Order No. 743 did not reject all material impact assessments but instead took issue with particular tests and outlined general problems with the material impact tests used to determine the extent of the bulk electric system. Order No. 743, 133 FERC ¶ 61,150 at PP 76–78; Order No. 743–A, 134 FERC ¶ 61,210 at PP 44–47. Indeed, the ERO had flexibility to develop alternative approaches, such as a functional test. However, the ERO, in applying its technical expertise, developed a revised definition that retained a 100 kV threshold.

³⁶ NYPSC Request for Rehearing at 10.

³⁷ Order No. 773, 141 FERC ¶ 61,236 at P 43.

³⁸ See Order No. 743–A, 134 FERC ¶ 61,210 at PP 91, 93.

³⁹ NERC Petition at 34.

²⁷ See Order No. 743–A, 134 FERC ¶ 61,210 at P 53.

²⁸ *Id.*

²⁹ Order No. 773, 141 FERC ¶ 61,236 at P 69 (citations omitted).

³⁰ Order No. 773, 141 FERC ¶ 61,236 at P 72 (citations omitted).

³¹ Order No. 773, 141 FERC ¶ 61,236 at P 41.

³² Order No. 743, 133 FERC ¶ 61,150 at P 76.

³³ Order No. 743, 133 FERC ¶ 61,150, at PP 73–86.

³⁴ Order No. 773, 141 FERC ¶ 61,236 at P 41.

³⁵ Order No. 773, 141 FERC ¶ 61,236 at P 39 (citing Order No. 743, 133 FERC ¶ 61,150, at P 82

expectation that during the twenty-four month transition period entities with newly-included elements will file exception requests and the Regional Entities and NERC will make determinations of the exception requests.⁴⁰ This transition period is sufficient to obtain a NERC ruling and avoid any compliance costs.⁴¹ However, if an element that is already deemed part of the bulk electric system and subject to relevant Reliability Standards today is included by application of the revised definition of bulk electric system, but an entity seeks an exclusion exception of the element, the element will remain subject to the relevant Reliability Standards during the pendency of the exception process. Conversely, if an element is excluded from the bulk electric system by application of the revised definition, but a different entity with a reliability oversight obligation seeks to include the element in the exception process, the element will not be subject to Reliability Standards during the exception process.

If NERC determines the element is needed for operation of the interconnected transmission network and thus part of the bulk electric system, the entity can propose an appropriate implementation plan for compliance.⁴²

C. Order No. 773 Directives Regarding the Revised Definition

27. A number of entities request clarification and/or rehearing in connection with the Commission directives in the Final Rule. Specifically, they request clarification and/or rehearing of (1) the Commission decision for treatment of looped configurations connected below 100 kV and the corresponding directive to modify the local network exclusion (exclusion E3) to remove the 100 kV minimum operating voltage; and (2) the directive to implement the exclusions for radial systems (exclusion E1) and local networks (exclusion E3) so that they do not apply to tie-lines (generator interconnection facilities) for bulk

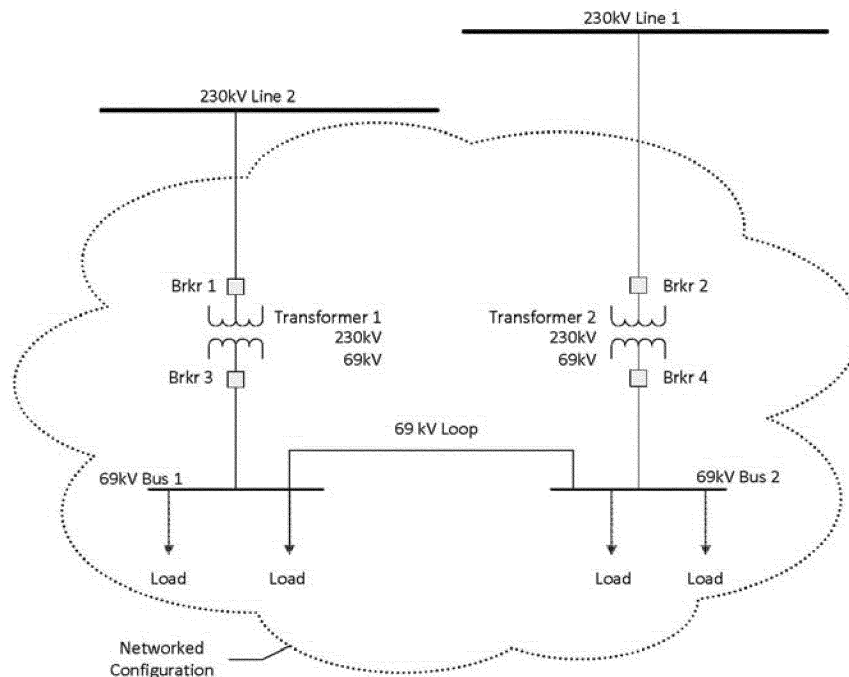
electric system generators identified in inclusion I2 (generating resources).⁴³

1. Looped Configurations Connected below 100 kV and Removing the 100 kV Minimum in Exclusion E3

Order No. 773

28. In the Final Rule, the Commission held that radial systems with elements operating at 100 kV or higher in a configuration that emanate from two or more points of connection cannot be deemed “radial” if the configuration remains contiguous through elements that are operated below 100 kV. The Commission held that such a configuration is a networked configuration and does not qualify for exclusion E1. The Commission included a depiction of this configuration, shown below, in the Final Rule as Figure 3.⁴⁴ However, the Commission also found that the facilities below 100 kV may or may not be necessary for the operation of the interconnected transmission network, and this decision can be made case-by-case in the exception process.

Networked Configuration w/69 kV Loop



⁴⁰ See NERC BES Petition at 36.

⁴¹ See Order No. 743-A, 134 FERC ¶ 61,210 at P 93. See also NERC BES Petition at 36.

⁴² NERC ROP Petition, Att. 1 (“Proposed Appendix 5C to the Rules of Procedure, Procedure for Requesting and Receiving an Exception from the NERC Definition of Bulk Electric System, Section 10.1”) at 16: “In the case of an Element not

included in the BES by application of the BES Definition but for which an Inclusion Exception is approved, the Owner shall submit a proposed implementation plan to the Regional Entity detailing the schedule for complying with any Reliability Standards applicable to the newly included Element. The Regional Entity and Owner shall confer to agree upon such schedule.”

⁴³ The phrase generator tie-line means the same as generator interconnection facility as used in the Notice of Proposed Rulemaking in Docket No. RM12-16-000. *Generator Requirements at the Transmission Interface*, 143 FERC ¶ 61,049 (2013).

⁴⁴ See Order No. 773, 141 FERC ¶ 61,236 at P 150.

Requests for Rehearing

29. APPA, TAPS and ELCON argue that the Commission erred in holding that two radial lines at or above 100 kV connected by a sub-100 kV line are not eligible for exclusion E1.⁴⁵ They argue that the Commission lacks authority to redraft standards, but claim that the Final Rule does so by reinterpreting the exclusion contrary to its language and NERC's interpretation. They claim that finding that exclusion E1 is inapplicable to such a configuration because the configuration is "networked" and not a "radial system" is unreasonable and constitutes an impermissible change to the NERC-filed definition. APPA, TAPS and ELCON state that, if radial systems connected by a sub-100 kV loop had not been intended to be eligible for exclusion E1, then exclusion E3 would have been drafted to allow such configurations to be covered. They contend that the fact that exclusion E1 is intended to encompass radial lines at or above 100 kV that are connected below 100 kV works in tandem with exclusion E3's limitation to facilities 100 kV and above and reinforces the conclusion that the Final Rule's interpretation of exclusion E1 is inconsistent with the language and structure of the definition. They also argue that the ruling on exclusion E1 and the corresponding directive to modify exclusion E3 improperly substituted the Commission's own judgment for NERC's which, they claim, violates the FPA section 215(d)(2) requirement for the Commission to give due weight to the technical expertise of the ERO.

30. APPA, TAPS and ELCON contend that the Final Rule's identification of additional factors that NERC did not consider provides no support for second guessing the technical content of NERC's definition. APPA states that the exception process exists to consider other factors, such as the factors the Commission indicated that may be relevant in particular cases.⁴⁶ According to APPA, TAPS and ELCON, NERC made a determination that loops below 100 kV generally do not impact the grid, but recognized that those that do are more appropriately handled through the exception process. They also argue that the Commission effectively changed the definition without giving NERC the opportunity to find an equally effective or superior solution to the Commission's concern.

31. Further, TAPS and ELCON argue that the Commission should also reverse

its directive to NERC to modify exclusion E3 to remove the 100 kV minimum threshold. They contend that the need to change exclusion E3 arises only if exclusion E1 is changed to foreclose exclusion of radials above 100 kV connected at lower voltages, resulting in the need for consideration of such configurations under exclusion E3. According to TAPS and ELCON, exclusion E3, as written, works well with the rest of the definition when exclusion E1 is construed as NERC intended. TAPS and ELCON state that, if the Commission is concerned that NERC's process is not adequately including radial facilities of 100 kV or more connected by sub-100 kV loops, the Commission should not revise exclusions E1 and E3 but should direct NERC to submit a report that provides information on how entities use this exclusion, similar to the Final Rule directive in connection with exclusion E3's 300 kV voltage ceiling.⁴⁷

32. APPA claims that, by not allowing exclusion E1 to apply to sub-100 kV loops between radial systems in conjunction with deletion of the 100 kV floor in exclusion E3, the Commission directive will create a disincentive for distribution providers from connecting their distribution systems to the bulk electric system at multiple points at voltages greater than 100 kV. APPA also stated that distribution providers will be less likely to construct such distribution networks with built-in redundancy that provide multiple paths to provide continuous, high quality service, because of the concern that these distribution systems will be designated as bulk electric system elements.

33. NERC seeks clarification of the Commission directive to revise exclusion E3. Specifically NERC requests clarification that it should remove the phrase "or above 100 kV but" in the first sentence of exclusion E3 as shown below.

E3—Local networks (LN): A group of contiguous transmission Elements operated at ~~or above 100 kV but~~ less than 300 kV that distribute power to Load rather than transfer bulk power across the interconnected system. LN's emanate from multiple points of connection at 100 kV or higher to improve the level of service to retail customer Load and not to accommodate bulk power transfer across the interconnected system. The LN is characterized by all of the following:⁴⁸

NERC contends that the Commission's approach will entail the evaluation of significantly more facilities in applying exclusion E3 and is administratively

burdensome, NERC requests that the Commission clarify the basis and intent of this directive to allow NERC to implement this directive appropriately.⁴⁹

Commission Determination

34. The Commission denies rehearing and upholds the Final Rule. The Commission disagrees that it failed to give due weight to NERC. As explained below, the Commission considered NERC's rationale, but after giving due weight found it unpersuasive.

35. In the NOPR, the Commission agreed with NERC's proposal that radial systems only serving load and emanating from a single point of connection of 100 kV or higher should be excluded from the bulk electric system. However, we expressed concern "that the exclusion could allow elements operating at 100 kV or higher in a configuration that emanates from two or more points of connection "to be deemed "radial" even though the configuration remains contiguous through elements that are operated below 100 kV."⁵⁰ The Commission also requested comment on the appropriateness of examining elements below 100 kV to determine if the configuration (shown in the figure above) meets exclusion E1, i.e., whether the figure depicts "a system emanating from two points of connection at 230 kV and, therefore, the 230 kV elements above the transformers to the points of connection to the two 230 kV lines would not be eligible for the exclusion E1 notwithstanding the connection below 100 kV."⁵¹ In response to the NOPR, some commenters disagreed with the Commission's characterization that the configuration depicts a loop, claiming that it represents two separate radial systems, while other commenters agreed with the NOPR that the configuration does not meet the definition of a radial system.⁵² The Commission considered NERC's explanations, but in the Final Rule the Commission found that the configuration shown above is a networked configuration through a 69 kV loop and does not qualify for exclusion E1 because the load can be served by either 230 kV line.⁵³

36. The Commission disagrees that this decision is contrary to the language of exclusion E1. Instead, our

⁴⁹ *Id.*

⁵⁰ *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, Notice of Proposed Rulemaking (NOPR), 139 FERC ¶ 61,247 at P 81.

⁵¹ *Id.*

⁵² Order No. 773, 141 FERC ¶ 61,236 at P 154.

⁵³ Order No. 773, 141 FERC ¶ 61,236 at P 155.

⁴⁵ See also Dow Request for Rehearing at 8–10.

⁴⁶ See Order No. 773, 141 FERC ¶ 61,236 at P 155 n.139.

⁴⁷ TAPS and ELCON Request for Rehearing and Clarification at 6 (citing Order No. 773, 141 FERC ¶ 61,236 at P 206).

⁴⁸ NERC Request for Clarification at 4.

interpretation of NERC's wording reasonably construes the ambiguity, if any, in exclusion E1. Even apart from NERC's wording of exclusion E1, it is difficult to envision any reasonable exclusion for radial lines that would cover the facilities in the configuration above. The looped systems have more than one path to the bulk electric system and, therefore, it is reasonable not to consider them "radial" in nature. Exclusion E1 provides a definition of "radial system" as "[a] group of contiguous transmission Elements that emanates from a single point of connection of 100 kV or higher . . ." (emphasis added).⁵⁴ This definition of "radial system" only allows a single point of connection and does not limit operating voltage of the transmission elements connecting two such points to any minimum value. Therefore, "radial systems" as defined in exclusion E1 includes elements that cover the entire range of operating voltages. It strikes us as unreasonable to characterize lines as radial by ignoring connecting facilities below 100 kV. Rather the reasonable approach is to find these lines to be non-radial and then consider whether they should be excluded as a local network or through the exception process. Further, as we noted previously, many facilities operated at 100 kV and above have a significant effect on the overall functioning of the grid. The majority of 100 kV and above facilities in the United States operate in parallel with other high voltage and extra high voltage facilities, interconnect significant amounts of generation sources and operate as part of a defined flow gate, which illustrates their parallel nature and therefore their necessity to the reliable operation of the interconnected transmission system. The Final Rule also noted that NERC emphasized that radial systems cannot have multiple connections at 100 kV or higher.⁵⁵ For these reasons, we believe it is important that these configurations be assessed for exclusion from the bulk electric system under the criteria in exclusion E3, to ensure that any excluded facilities do not contribute to the reliable operation of the interconnected system. Moreover, as noted in the Final Rule, the sub-100 kV elements comprising radial systems and local networks will not be included in the bulk electric system, unless determined otherwise in the exception process.⁵⁶

⁵⁴ Order No. 773, 141 FERC ¶ 61,236 at P 18.

⁵⁵ Order No. 773, 141 FERC ¶ 61,236 at P 42.

⁵⁶ Order No. 773, 141 FERC ¶ 61,236 at P 155. In the Final Rule the Commission states that it expects entities to identify and include sub-100 kV facilities

37. We also deny rehearing on TAPS' and ELCON's argument that the Commission's decision regarding exclusion E1 and the Final Rule directive to change the language in exclusion E3 (removing the 100 kV minimum operating threshold language) will no longer allow exclusions E1 and E3 to work together and will be administratively more burdensome. As we stated in the Final Rule, exclusion E3 as written applies to a local network that is contiguous and above 100 kV. Thus, the exclusion E3 language, as NERC initially proposed, did not apply to a configuration where the facilities in question are contiguous below 100 kV.⁵⁷ Removing the 100 kV minimum operating voltage in exclusion E3 allows networked configurations below 100 kV, that may not otherwise be eligible for exclusion E1, to be eligible for exclusion E3. This modification also makes the "local network" exclusion language consistent with language in exclusion E3 criterion (a), which limits generation on the local network and its underlying elements. As we stated in the Final Rule, the entire range of operating voltage elements must be examined when considering a local network.⁵⁸

38. In the Final Rule, the Commission concluded that removing the 100 kV floor in exclusion E3 will decrease the burden for some entities that would have otherwise been included in the bulk electric system because these entities may now apply exclusion E3. This is because many, if not most, of the configurations in question may still be excluded through application of the modified exclusion E3.

39. We disagree with TAPS's, ELCON's and APPA's contention that the Final Rule's identification of other possible factors to be considered does not support dismissing the technical content of NERC's definition. The Commission did not rely on these other factors as the basis for its decision.⁵⁹ Instead, the Commission found that

necessary for the operation of the interconnected transmission network and found NERC's approach to include such facilities in the bulk electric system to be reasonable. Order No. 773, 141 FERC ¶ 61,236 at P 269. The Commission notes that the joint NERC and Commission staff report on the September 8, 2011, Arizona-Southern California blackout explains why facilities operating below 100 kV should not be ignored simply because the elements are below 100 kV. See Arizona-Southern California Outages on September 8, 2011—Causes and Recommendations at 96 (September 2011 Blackout Report), available at <http://www.ferc.gov/legal/staff-reports/04-27-2012-ferc-nerc-report.pdf>. There, facilities below 100 kV were a significant factor in a major blackout, but their significance was not fully or widely recognized until after the blackout.

⁵⁷ Order No. 773, 141 FERC ¶ 61,236 at P 155.

⁵⁸ *Id.*

⁵⁹ See Order No. 773, 141 FERC ¶ 61,236 at P 155 n.139.

looped systems have more than one path to the bulk electric system. Therefore, the Commission concluded that it is reasonable not to consider them "radial" in nature.⁶⁰

40. With respect to NERC's request for clarification, we agree that removing the phrase "or above 100 kV but" from the definition of local networks in the first sentence of exclusion E3 is an appropriate way to meet the Commission's directive to remove the 100 kV minimum operating voltage in the local network definition. As we explained in the Final Rule, this modification, together with satisfying the criteria outlined in exclusion E3, will appropriately exclude local network configurations that are not necessary to the reliable operation of the interconnected transmission network.⁶¹

41. While APPA claims that the Commission directive to not allow exclusion E1 to apply to sub-100 kV loops will create a disincentive for distribution providers to connect their distribution systems to the bulk electric system, our result derives directly from NERC's own wording of exclusion E1. We cannot avoid the reasonable effect of these words based on an unsupported claim that concerns about jurisdiction will cause distribution providers to forgo the significant reliability benefits of an added connection.

42. We do not agree with NERC that "the Commission's approach will entail the evaluation of significantly more facilities in applying exclusion E3 and is administratively burdensome." Exclusion E3 is one part of the bright-line definition of bulk electric system, and all asset owners must apply the definition as a whole in order to determine whether their elements are part of the bulk electric system. As we stated in the Final Rule, exclusion E3 as proposed by NERC requires the local network to be contiguous and above 100 kV. Thus, the exclusion E3 language, as NERC initially proposed, did not allow for the figure above to be eligible for the local network exclusion because it includes contiguous facilities below 100 kV and could have resulted in more exception process decisions.⁶² However, as we explained, removing the 100 kV minimum operating voltage in the local network definition allows networked configurations comprised of facilities ranging from below 100 kV to multiple connections at 100 kV and above to be candidates for exclusion E3. In other words, removing the language from exclusion E3 will relieve the burden of

⁶⁰ *Id.*

⁶¹ Order No. 773, 141 FERC ¶ 61,236 at P 155.

⁶² Order No. 773, 141 FERC ¶ 61,236 at P 155.

addressing all configurations similar to the looped configuration described above in the exception process by first allowing entities that do not qualify for exclusion E1 to apply exclusion E3. We recognize that certain facilities that might have qualified for exclusion E1 as interpreted by NERC may now seek instead to qualify for exclusion E3 or, if unsuccessful there, may seek relief through the exception process. However, we expect that documenting a valid claim of exclusion E3 will not be particularly burdensome, consisting often of reviewing historic data or relying on information that entities already possess (such as the amount of generation connected to the facilities or whether the facilities contain a Flowgate or transfer path), not necessarily preparing new load flow studies or similar analyses, and retaining such records for possible future review by the Regional Entity. Also, certain entities that will not qualify even for exclusion E3 may seek relief under the exception process. While this possibility exists, we are not persuaded that there will be an inordinate number of such instances, particularly since commenters have not submitted estimates of the number of facilities affected by the entirety of our changes to NERC's proposal.

43. Thus, while we have carefully considered the concerns raised by petitioners, we are not persuaded that the Commission's directives in the Final Rule will result in a significant increase in administrative and compliance burdens. Further, we reiterate that elements that are newly-included in the bulk electric system due to the revised definition will only become subject to relevant Reliability Standards twenty-four months after the effective date of the revised definition.⁶³ It is NERC's expectation that during the twenty-four month transition period entities will file exception requests and the Regional Entities and NERC will make determinations on the exception requests.⁶⁴ We expect that this transition period will be sufficient for those few configurations that may need to seek an exception based on the Commission's determinations regarding exclusions E1 and E3 to obtain a NERC ruling and avoid any compliance costs.⁶⁵ However, if an element that is already deemed part of the bulk electric system and subject to relevant Reliability Standards today is included by application of the revised definition of bulk electric system, but an entity

seeks an exclusion exception of the element, the element will remain subject to the relevant Reliability Standards during the pendency of the exception process. Conversely, if an element is excluded from the bulk electric system by application of the revised definition, but a different entity with a reliability oversight obligation seeks to include the element in the exception process, the element will not be subject to Reliability Standards during the exception process. If NERC determines the element is needed for operation of the interconnected transmission network and thus part of the bulk electric system, the entity can propose an appropriate implementation plan for compliance.⁶⁶

44. Notwithstanding the foregoing, we agree with petitioners that NERC has the flexibility to develop an equally effective and efficient alternative, provided that NERC addresses our concern to ensure elements at or above 100 kV in a looped configuration are not excluded from the bulk electric system under exclusion E1.⁶⁷

2. Generator Interconnection Facilities Connected to Bulk Electric System Generators

Order No. 773

45. In the Final Rule, the Commission directed NERC to implement exclusion E1 (radial systems) and exclusion E3 (local networks) so that they do not apply to generator interconnection facilities for bulk electric system generators identified in inclusion I2. The Commission stated that, if the generator is necessary for the operation of the interconnected transmission network, it is appropriate to have the generator interconnection facility operating at or above 100 kV that delivers the generation to the bulk electric system included as well. The Commission also stated that it is appropriate to have the bulk electric system contiguous, without facilities or elements "stranded" or "cut-off" from

⁶⁶ NERC ROP Petition, Att. 1 ("Proposed Appendix 5C to the Rules of Procedure, Procedure for Requesting and Receiving an Exception from the NERC Definition of Bulk Electric System, Section 10.1") at 16: "In the case of an Element not included in the BES by application of the BES Definition but for which an Inclusion Exception is approved, the Owner shall submit a proposed implementation plan to the Regional Entity detailing the schedule for complying with any Reliability Standards applicable to the newly included Element. The Regional Entity and Owner shall confer to agree upon such schedule."

⁶⁷ See *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 186 *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

the remainder of the bulk electric system.⁶⁸

Requests for Rehearing

46. NERC requests that the Commission clarify the directives to implement exclusions E1 and E3 so that they do not apply to generator interconnection facilities for bulk electric system generators identified in inclusion I2. NERC states that the Commission does not state whether "implementation" applies to Phase 1 or Phase 2 or how the implementation would be effectuated without a change to the definition of bulk electric system.⁶⁹ Specifically, NERC requests that the Commission clarify how these directives should be reconciled with the plain language of the exclusions.

47. NERC opines that the Commission's use of the term "tie-line" is potentially confusing for stakeholders and claims that it could create additional complications with the implementation of the Commission's directive unless the Commission clarifies its use of this term. NERC also requests that the Commission reconcile the directives with the express language of the definition. NERC states that the Commission acknowledged in the Final Rule that exclusion E1 as written does not prevent the radial tie-line operating at or above 100 kV from the high side of the step-up transformer to the bulk electric system from being excluded.

48. Similarly, NRECA requests that the Commission clarify that, when the Commission directed NERC to implement exclusion E1 it was not seeking to directly modify the definition or the exclusions with respect to generator tie-lines, but rather that it was directing that this issue be addressed in the Phase 2 process as required by FPA section 215(d)(4). NRECA states that the tie-line distinction is an important directive that must be evaluated under the Phase 2 process, and implemented only after the Commission rules on the further revision to the definition that is proposed by NERC at the conclusion of the Phase 2 process. NRECA states that NERC should be given an opportunity to address the Commission's concern and present a response for consideration as part of a rule emanating from the Phase 2 process. NRECA adds that such a directive is consistent with the

⁶⁸ Order No. 773, 141 FERC ¶ 61,236 at PP 164-165, 214.

⁶⁹ 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 this Final Rule. 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.

⁶³ NERC Petition at 34.

⁶⁴ See NERC BES Petition at 36.

⁶⁵ See Order No. 743-A, 134 FERC ¶ 61,210 at P 93. See also NERC BES Petition at 36.

Commission's obligation to remand to the ERO any proposed Reliability Standard or a modification to a Reliability Standard that the Commission disapproves in whole or in part.

49. APPA, TAPS and ELCON contend that the Commission's interpretation will prevent radial systems and local networks from qualifying for exclusions E1 and E3, respectively, if they connect to bulk electric system generators identified in inclusion I2 with gross nameplate ratings between 20 MVA and 75 MVA. They also argue that the Commission's directive fails to give due weight to NERC's expertise. APPA, TAPS and ELCON contend that the directive will force many more facilities into the exception process. They also argue that the Commission does not have the authority to direct NERC to implement the definition contrary to its plain meaning. Further, they contend

that the Commission's concern is already being addressed in the Phase 2 process. APPA, TAPS and ELCON state that, if the Commission determines it needs more information to address its concerns with respect to tie-lines for bulk electric system generators identified in inclusion I2, it should direct NERC to submit a report regarding how entities utilize this exclusion.

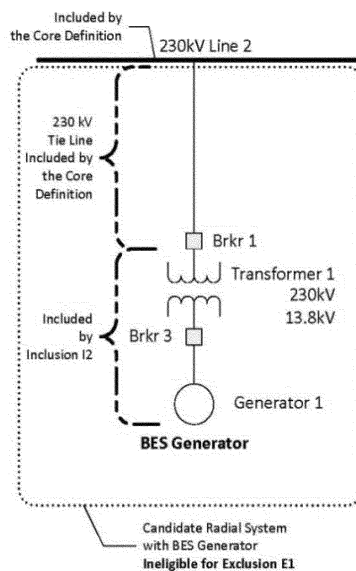
Commission Determination

50. We grant rehearing to the extent that, rather than direct NERC to implement exclusions E1 and E3 as described above, we direct NERC to modify the exclusions pursuant to FPA section 215(d)(5) to 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. We find that the Phase 2 standard development process

is an appropriate means to address the Commission's concern. If NERC chooses to propose a different solution, it must demonstrate that its proposal is equally effective or efficient to ensure that generator interconnection facilities that connect generators included in the bulk electric system to the grid, and that are at or above 100 kV, are included in the bulk electric system and must support any alternate proposal with a technical analysis sufficient for the Commission to make an informed decision.

51. We deny rehearing regarding arguments that the Commission did not give due weight to NERC's technical justification. As an initial matter, the Final Rule focused on a generator interconnection facility that connects the bulk electric system generator to the interconnected transmission network at a voltage of 100 kV or above.⁷⁰ The language was accompanied by the following:

Radial System with BES Generation⁷¹



In the Final Rule, the Commission found that NERC's rationale did not support excluding generator interconnection facilities operated at or above 100 kV connecting bulk electric system generators to the bulk electric system.⁷² NERC based its proposal on the premise that a single point of failure causing the radial systems to separate from the bulk electric system results in a loss of a limited amount of generation

that will not have an adverse impact on reliability. In the Final Rule, however, the Commission noted that there are other reliability concerns that NERC did not address. For example, the Commission noted that "both the radial line emanating from a generator and the portion of the bulk electric system to which it is connected have protective relays that require coordination to prevent the lines from tripping. The

generator needs to coordinate the protective relays with transmission operators, otherwise there may not be adequate information to prevent a fault on the radial line from causing cascading outages on the bulk electric system."⁷³ The Commission also relied on the fact that an "adverse reliability impact . . . is an extreme result that should not occur from the loss of a single tie-line for any sized generator"

⁷⁰ Order No. 773, 141 FERC ¶ 61,236 at P 165.

⁷¹ Order No. 773, the Commission included this diagram identified as "Radial System with BES

Generation." See Order No. 773, 141 FERC ¶ 61,236 at PP 165.

⁷² Order No. 773, 141 FERC ¶ 61,236 at PP 165–168.

⁷³ Order No. 773, 141 FERC ¶ 61,236 at P 166 and n.150 (citing, Reliability Standards, TPL–002–0b and IRO–004–2).

because a single event that results in an adverse reliability impact violates planning and operating criteria in Commission approved Reliability Standards.⁷⁴ The Final Rule also explained that, in general, “it is appropriate to have the bulk electric system contiguous,” without facilities “stranded” or “cut off.”⁷⁵ As shown in the diagram above, inclusion I2 (generator resources) includes the generator and the generator terminals through the high-side of the step-up transformer(s) connected at a voltage of 100 kV or above.⁷⁶ However, NERC’s interpretation of exclusion E1 would have excluded the 230 kV generator interconnection facility from the high side of the step-up transformer to the interconnected transmission network. This would be inconsistent with the Commission’s statement in the Final Rule that, if the generator is necessary for the operation of the interconnected transmission network, it is generally appropriate to include the generator interconnection facility radial tie-line operating at or above 100 kV that delivers the generation to the bulk electric system.⁷⁷

52. We disagree with APPA that the directive to include 100 kV and above generator interconnection facilities connected to bulk electric system generators will result in making the owners of these qualifying 100 kV and above generator interconnection facilities subject to the full range of transmission planner, transmission owner and transmission operator Reliability Standards and requirements. As we state above, in cases of generator interconnection facilities for bulk electric system generators where the generator owner also owns the generator interconnection facility, NERC has determined on a case-by-case basis which entities require registration as transmission owners/operators and identified sub-sets of applicable Reliability Standard requirements for these entities rather than automatically subjecting such generators to the full scope of standards applicable to transmission owners and operators.⁷⁸

⁷⁴ *Id.*

⁷⁵ Order No. 773, 141 FERC ¶ 61,236 at P 165.

⁷⁶ Order No. 773, 141 FERC ¶ 61,236 at P 85. Inclusion I2 states “Generating resource(s) with gross individual nameplate rating greater than 20 MVA or 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.”

⁷⁷ Order No. 773, 141 FERC ¶ 61,236 at P 167.

⁷⁸ In addition, in Docket No. RM12–16–000, NERC has submitted proposed revisions to certain Reliability Standards to assure that generator interconnection facilities are adequately covered

D. Arguments Regarding the Need to Modify the Inclusions and Exclusions

53. In the NOPR, the Commission requested comment on certain aspects of NERC’s petition to better understand the application of the specific inclusions and exclusions. NERC and other entities filed comments that assisted in our understanding of the parameters of the definition. In the Final Rule, in addition to the “core” definition, the Commission adopted many of these explanations and approved without modification most of the specific inclusions and exclusions, finding that they add clarity regarding which elements are part of the bulk electric system as compared to the existing definition.⁷⁹ Several entities request rehearing of the approval of specific inclusions and exclusions that the Commission approved without modification. On rehearing, entities argue that the Commission erred by failing to direct NERC to (1) Eliminate inclusion I4 (dispersed power producing resources); (2) modify or eliminate the generator thresholds in exclusions E1 and E3; and (3) eliminate exclusion E3(b), the criterion that power cannot flow out of a local network in order to be eligible for exclusion from the bulk electric system.

1. Inclusion I4 (Dispersed Power Producing Resources)

Order No. 773

54. Inclusion I4 includes in the bulk electric system dispersed power producing resources with aggregate capacity greater than 75 MVA (gross aggregate nameplate rating). In the Final Rule, the Commission approved inclusion I4 finding that it provides useful granularity in the bulk electric system definition. The Commission also found that the language in inclusion I4 regarding the collector system language is consistent with language in the Registry Criteria, section III.c.2 and agreed that it is appropriate “to expressly cover dispersed power producing resources utilizing a system designed primarily for aggregating capacity.”⁸⁰

Requests for Rehearing

55. AWEA states that the Commission did not base its approval of inclusion I4 on sufficient evidence to show inclusion I4 would result in any material reliability benefit. AWEA contends that neither the Final Rule nor the record

rather than subjecting them to all of the requirements applicable to transmission owners and operators.

⁷⁹ Order No. 773, 141 FERC ¶ 61,236 at P 39.

⁸⁰ Order No. 773, 141 FERC ¶ 61,236 at P 112.

demonstrate that the inclusion of dispersed generation resources would help protect the reliable operation of the interconnected transmission network. AWEA contends that all evidence in the record indicates that dispersed generation resources are unlikely to affect the reliability of the interconnected transmission network. AWEA argues that the Commission’s decision “to modify the definition regardless of the record on dispersed generation resources shows the Commission’s decision was arbitrary and capricious . . . and not the result of reasoned decision-making.”⁸¹

56. AWEA argues that the electrical equipment at the point of interconnection with the bulk electric system is a more appropriate point for delineating between the bulk electric system and non-bulk electric system electrical components because the point of interconnection for a wind project comprised of more than 75 MVA of generation and operating at more than 100 kV is the only part of the wind project that could reasonably affect bulk electric system reliability.

57. AWEA adds that the Commission erred in agreeing with NERC’s suggestion to include individual dispersed generators and their collector systems in approving the modification because this inclusion was not based on evidence supported by the record. According to AWEA, the typical electrical layout of a wind plant will be aggregated onto an electrical string of the collector array that operates at voltages “well below” 100kV, so losing a single electrical string or even multiple electrical strings will typically only result in the loss of a few dozen MWs of generation.⁸² AWEA also states the capacity value contribution that grid operators typically assume for wind projects for meeting peak electricity demand is less than 20% of the nameplate capacity of the wind project. AWEA maintains that such minimal impacts fall well below the 75 MVA threshold that inclusion I4 seeks to establish, as well as any reasonable threshold for determining which electrical components are likely to cause a reliability problem on the bulk electric system. Alternatively, AWEA states that if the Commission does not modify the definition as AWEA proposes it could recognize that all wind turbines installed in the United States are not subject to the modified definition.

⁸¹ AWEA Request for Rehearing and Reconsideration at 3.

⁸² *Id.*

Commission Determination

58. The Commission denies rehearing and confirms its finding that inclusion I4 provides useful granularity in the bulk electric system definition.

59. The Commission's approval of the bulk electric system definition including inclusion I4 is adequately supported by the evidence in the record in this proceeding. In the Final Rule, the Commission agreed with NERC's statement that the purpose of this inclusion is to include variable generation (e.g., wind and solar resources).⁸³ The Commission also agreed with NERC that, while such generation could be considered subsumed in inclusion I2 (because the gross aggregate nameplate rating of the power producing resources must be greater than 75 MVA), it is appropriate for clarity to add this separately-stated inclusion to expressly cover dispersed power producing resources using a system designed primarily for aggregating capacity.⁸⁴

60. The Commission further concluded that, although dispersed power producing resources (wind, solar, etc.) are typically variable suppliers of electrical generation to the interconnected transmission network, certain geographical areas depend on these generation resources for the reliable operation of the interconnected transmission network.⁸⁵ In addition, having considered NERC's rationale for adopting inclusion I4 in its petition and NOPR comments, the Commission concluded that owners and operators of dispersed power producing resources that meet the 75 MVA gross aggregate nameplate rating threshold are, in some cases, already registered and have compliance responsibilities as generator owners and generator operators. The threshold of 75 MVA for plants is well established in the NERC Statement of

Compliance Registry Criteria and consistently applicable to all generating facilities.⁸⁶ Therefore, the Commission denies rehearing that it did not adequately support its approval of inclusion I4.

2. Generator Thresholds in Exclusions E1 and E3

Order No. 773

61. In its petition, NERC explained that conditions "b" and "c" of exclusion E1 allow some generation to be connected to a radial system while still qualifying for the radial systems exclusion (aggregate capacity less than or equal to 75 MVA). Similarly, with respect to exclusion E3, NERC explained that the purpose of local networks is to provide local distribution service, not to provide transfer capacity for the interconnected transmission network, thus some generation within a local network would be appropriate.⁸⁷ NERC stated, that the maximum amount of generation allowed on the radial facility per exclusion E1 conditions "b" and "c" is consistent with the aggregate capacity threshold presently provided in the Registry Criteria for registration as a generator owner or generator operator (75 MVA gross nameplate rating). In the Final Rule, the Commission found NERC's explanations for limiting generation capacity reasonable because the amount of connected generation allowed by conditions "b" and "c" is intended to have limited benefit to the reliability of the interconnected transmission network and pose no reliability risk to the interconnected transmission network.⁸⁸

Requests for Rehearing

62. Holland raises three arguments on rehearing. First, Holland states that the Commission should have revised the generator thresholds in exclusion E1 for radial systems and in exclusion E3 for local networks to ensure that they do not inappropriately include local distribution facilities. Second, Holland argues that the Commission failed to respond to Holland's alternative recommendation that the Commission modify the generation limits in exclusions E1 and E3 by basing the limit on net generation. Third, Holland argues that the Commission erred in its conclusion with respect to the meaning of "emanates from a single point of interconnection" in exclusion E1.

63. Holland states that it supports the exclusion of radial systems from the

bulk electric system but that exclusion E1 will still capture facilities used in local distribution. Holland notes that in its NOPR comments, it recommended that the Commission revise exclusion E1 to remove the generation threshold from exclusion E1(c) but that the Commission failed to consider and respond to Holland's comments. Holland also argues that the Commission erred by (1) failing to state a factual basis upon which the Commission reached its decision not to exclude from the bulk electric system radial systems that also serve load and (2) citing no record evidence to support its rejection of Holland's comments. Holland maintains that the effect of approving exclusions E1 and E3 without the modification it proposed is that only those systems electrically isolated from the bulk electric system or those with no generation above the threshold size will meet the criteria for exclusion E1. Holland contends that the Commission's approval of the exclusion prejudices the outcome of the Seven Factor Test by arbitrarily approving criteria without having the results of any such test, or without having a specific context in which to apply the criteria.

64. Similarly, Holland argues that the Commission erred by failing to remove or alter the generator thresholds from exclusion E3 local networks, and that approving exclusion E3 with the generator thresholds encroaches on facilities used in the local distribution of electric energy. Holland states that the Commission erred by not directing any changes to the connected generation limitation, and that the Commission erroneously relied on the fact that the generation limits were consistent with the NERC Registration Criteria. Holland argues that the Commission finding could make some local distribution facilities that do not meet exclusion E3 subject to Reliability Standards and Commission authority. According to Holland, the Commission must revise exclusion E3 regarding local networks to ensure that the definition does not conflict with the FPA section 215 prohibition against regulating facilities used in the local distribution of electric energy. Holland states that the Commission did not address how local networks with internal generation consumed internally differ from local distribution facilities with lesser amounts of or no generation, or how this interpretation is consistent with the Commission's determination that "local distribution" has a consistent meaning throughout the FPA. Holland also claims that, despite having decided to use the Seven Factor Test for local

⁸³ Order No. 773, 141 FERC ¶ 61,236 at P 115. See also NERC BES Petition, Exhibit D, August 19, 2011 Consideration of Comments, at 416: "Although dispersed power producing resources (wind, solar, etc.) can be intermittent suppliers of electrical generation to the interconnected transmission network, the [standard drafting team] has been made aware of geographical areas that depend on these types of generation resources for the reliable operation of the interconnected transmission network which has prompted the development of Inclusion I4. . . ." See also NERC BES Petition, Exhibit D, "Consideration of Comments on Second Draft of the Definition of the Bulk Electric System" at 160: "The [standard drafting team] disagrees with excluding dispersed power producing sources such as wind and solar from the BES definition. These resources comprise a significant share of the North American resource mix."

⁸⁴ Order No. 773, 141 FERC ¶ 61,236 at P 115.

⁸⁵ Order No. 773, 141 FERC ¶ 61,236 at P 115. See also the ERCOT daily wind integration reports at: <http://www.ercot.com/gridinfo/generation/windintegration/>.

⁸⁶ Order No. 773, 141 FERC ¶ 61,236 at P 112.

⁸⁷ NERC Petition at 22.

⁸⁸ Order No. 773, 141 FERC ¶ 61,236 at PP 158, 164, 201, 207, 209, 211, 216.

distribution determinations, the Commission made factual determinations without any application of the Seven Factor Test.

65. Further, Holland argues that the Commission failed to consider Holland's alternative comments that the Commission modify the generation limit in exclusion E3 by basing the limit on net generation. Holland contends that exclusion E3(a) arbitrarily ignores the development and practice of local networks operated by municipal utilities. Holland maintains that, historically, municipal utilities with internal generation installed to meet the municipality's distribution load sized the generation comparably to the local distribution load. Holland contends that the Commission disregarded that history and assumes that all internal generation, regardless of how remote, connects to and is exported to the bulk electric system. According to Holland, the Commission compounded its error by disregarding Holland's comments stating that local networks should be able to deliver power to the bulk electric system.

66. Holland also contends that the Commission dismissed its comment that the Commission should interpret the phrase "emanates from a single point of interconnection" for radial systems to mean a single electrical point, such as a single bus or normally connected bus work within a substation, without citing any record evidence equating electrical points with physical locations.

Commission Determination

67. The Commission denies rehearing on these issues raised by Holland. Pursuant to section 215(d)(2) of the FPA, the Commission gives due weight to the technical expertise of the ERO with respect to the content of a Reliability Standard or definition.⁸⁹ In this instance, NERC explained that exclusion E1(c) addresses limited amounts of generation that are installed within a radial system and are intended to serve local load within that radial system.⁹⁰ In the NOPR, the Commission requested comment about the delivery or injection of power from the radial systems described in these exclusions. NERC responded that, "because of the limitation of the generation in exclusion E1(c), the power generated on the radial system would be delivered to the embedded load within the radial system and injected into the bulk electric system in very limited quantities . . ." and "subjecting the elements associated with this type of radial system to all the

Reliability Standards has limited benefit to the reliability of the interconnected transmission network."⁹¹ Further, NERC found that "it is more appropriate to identify these elements through the 'the applicability in specific standards where a reliability benefit can be identified.'" ⁹² Holland's arguments were directed to unlimited generation for radial systems and local networks, but the Commission found NERC's explanations for the limitations reasonable and approved this aspect of the exclusion.⁹³ Removing the generator limitation or using net generation in excess of load would also be inconsistent with the bright-line concept and NERC's approach that the definition should be based on physical characteristics and not based on function. Also, the NERC standards drafting team concluded the following regarding generator size thresholds:

[t]he vast array of functional qualities of generation does not lend itself to a 'bright-line' concept of identifying BES Elements. Therefore the SDT has opted for the size threshold designation of generating facilities and allows for use of the Exception Process for further analysis of the facility and potential exclusion from or inclusion to the BES.⁹⁴

68. Holland raised the same argument with respect to the generating limits in exclusion E3. NERC provided ample justification for its selection of generator thresholds. As NERC stated in its "LN Technical Justification" paper in Exhibit G of its petition, including a restriction on generation in a local network "minimizes the contribution and influence the local network may have over the neighboring [e]lements of the [bulk electric system] by limiting both the magnitude and the function of the connected generation. NERC chose the threshold of 75 MVA to provide consistency with the criteria applied in the ERO's [Registry Criteria] regarding the registration for entities owning and operating generation plants in aggregate."⁹⁵ In the Final Rule, the Commission found reasonable NERC's rationale for limiting both the magnitude and the function of a local network by limiting the amount of connected generation and that use of the generator thresholds was consistent with the existing thresholds in the Commission-approved NERC Registry Criteria.⁹⁶ Thus, the Commission

disagrees that it did not provide adequate explanation for rejecting Holland's NOPR arguments on this issue.

69. Holland also argues that the Commission did not consider that exclusion E3 has the possibility of encompassing local distribution facilities. As stated in the Final Rule as well as elsewhere in this order on rehearing, determining whether a facility is part of the bulk electric system is a multi-step process and applying the definition is just one step in that process.⁹⁷ If an entity believes its facility is a local distribution facility but after applying the definition and its exclusions the facility is not excluded, the entity may apply to the Commission to determine whether a facility is used for local distribution. The Commission disagrees, however, that it made factual determinations in the Final Rule without application of the Seven Factor Test, or arbitrarily adopted criteria that prejudge that test. The Commission approved NERC's bright-line approach to the definition, and the definition by itself is not intended to resolve all bulk electric system determinations. An entity's application of the definition as a whole, inclusive of the inclusions and exclusions, is the first step in determining whether the element is part of the bulk electric system and is a separate inquiry from the Commission's use of the factors in the Seven Factor Test in a local distribution determination. Further, as we stated in the Final Rule, the Commission will apply the factors in the Seven Factor Test, plus other factors, as the starting point for making local distribution determinations on a case-by-case basis.⁹⁸ In sum, the Commission's approval of NERC's process establishes a process for determining whether a facility is part of the bulk electric system and is not making specific determination about particular facilities.

70. Further, in the Final Rule, the Commission addressed Holland's argument about the meaning of "emanates from a single point of connection." Specifically, in the Final Rule the Commission dismissed Holland's contention that the phrase can refer to multiple buses. The Commission noted that NERC, in the standard development process, considered the issue and concluded that radial systems "cannot have multiple connections at 100 kV or higher. Networks that have multiple connections at 100 kV or

⁸⁹ 16 U.S.C. 824o(d)(2).

⁹⁰ Order No. 773, 141 FERC ¶ 61,236 at P 159.

⁹¹ NOPR, 139 FERC ¶ 61,247 at P 160.

⁹² *Id.* at P 161 (citing NERC's NOPR Comments at 21–22).

⁹³ Order No. 773, 141 FERC ¶ 61,236 at P 164.

⁹⁴ NERC BES Petition, Exhibit D, August 19, 2011, Consideration of Comments at 439.

⁹⁵ NERC BES Petition, Exhibit G at 3.

⁹⁶ Order No. 773, 141 FERC ¶ 61,236 at P 216.

⁹⁷ Order No. 773, 141 FERC ¶ 61,236 at P 216.

⁹⁸ Order No. 773, 141 FERC ¶ 61,236 at P 71.

higher may qualify under exclusion E3.”⁹⁹

3. Exclusion E3(b) and Power Flows Order No. 773

71. Exclusion E3 criterion (b) specifies that, to qualify for the local network exclusion, power can only flow into the local network and the local network does not transfer energy originating outside the local network for delivery through the local network. In its NOPR comments NERC elaborated by stating that, to be considered for exclusion pursuant to criterion (b), generation produced inside a local network cannot be transported to other markets outside the local network. NERC also stated that criterion (b) applies in both normal and emergency operating conditions. In the Final Rule the Commission found NERC’s explanation reasonable and approved exclusion E3 criterion (b).¹⁰⁰

Requests for Rehearing

72. Holland and Dow state that the Commission erred by not modifying exclusion E3 to allow it to apply even if some power flowed from the local network to the bulk electric system. Holland notes that the Commission’s explanation that, if facilities are capable of supplying power when needed under any normal or emergency operating condition these facilities would forfeit their designation as local networks under exclusion E3, is premised incorrectly “on a presumption that the facilities in question perform a transmission function, rather than a distribution function.”¹⁰¹ Holland states that courts have held that the Commission does not have authority over facilities used in local distribution, not just over those facilities used solely in local distribution. Accordingly, Holland states that simply because the “facilities are capable of being called upon to support the bulk electric system, does not mean that is how those facilities are used in the normal course of business.”¹⁰²

73. Dow states that the Commission’s resolution regarding the requirement that power may only flow into and not out of a local network requires clarification. Dow notes that, in its NOPR comments, it requested that the

Commission clarify that exclusion E3(b) only prohibits energy originating outside the local network from being transferred through the network and into the bulk electric system, and does not prohibit energy generated by resources connected to the local network for delivery into the bulk electric system. Dow states this understanding is consistent with exclusion E3(a) allowing up to 75 MVA of non-retail generation to be attached to a local network. Dow maintains that it would not make sense to permit non-retail generation resources to be attached to local networks if output from such resources could not be delivered into the bulk electric system for purposes of making non-retail sales to downstream buyers. Dow asserts that, while the Commission suggested that the issue be addressed further in Phase 2, the Commission appears to have adopted an interpretation of the local network exclusion that is inconsistent with Dow’s requested clarification. According to Dow, for the local network exclusion to be applicable, the Commission stated that “generation produced inside a local network should not transport power to other markets outside the local network,” but that the Commission indicated it could be addressed further in Phase 2. According to Dow, it is not clear whether and to what extent the Commission intended to resolve this issue in the Final Rule and, if it did, what additional issues would be eligible for further consideration in the Phase 2 process. Dow also requests that the Commission clarify which of Dow’s concerns it can raise in the Phase 2 process.

74. Snohomish agrees with the Commission’s conclusion that the “no outflow” condition in exclusion E3 applies in both normal and emergency circumstances. However, Snohomish notes that, in the Phase 2 process, NERC is examining the types of “emergency” that should be considered in examining the flow conditions in a local network. Snohomish requests that the Commission clarify that the appropriate, technically justified definition of “emergency” should be based upon the technical analysis now being performed as part of Phase 2 and that the Final Rule does not restrict the examination of this question. Snohomish also requests that the Commission clarify that, in Phase 2, NERC is free to develop a technically justified threshold for outflow that would not disqualify a local network under exclusion E3.

75. In addition, while agreeing that historical records of power flow on a local network form an appropriate evidentiary basis for demonstrating that

power only flows into a local network, Snohomish requests that the Commission clarify (1) that entities can establish power flows through more than just historical records and (2) a local network will remain eligible for exclusion if it contains temporary reversals of flows resulting from extreme and unlikely emergency conditions. Otherwise, according to Snohomish, local networks that rely on historical flow data could, if an unusual event happens causing a temporary outflow, suddenly become part of the bulk electric system.

Commission Determination

76. We deny the requests for rehearing of Dow and Holland on the power flow issue. As part of its rationale for developing the local network exclusion, NERC explained that power always flows in the direction from the interconnected transmission network into the local network.¹⁰³ NERC also explained that “[l]ocal networks provide local electrical distribution service and are not planned, designed or operated to benefit or support the balance of the interconnected transmission network.”¹⁰⁴ Further, NERC explained that the reliability of the interconnected transmission network is not impacted by the existence or absence of a local network. Exclusion E3 will satisfy this principle because NERC crafted exclusion E3 to ensure reliability is not adversely impacted by the disconnection of the local network.¹⁰⁵ NERC confirmed that, pursuant to criterion (b), exclusion E3 applies if generation produced inside a local network is not transported to other markets outside the local network. NERC stated that prohibitions on outbound power flow and transportation of power to other markets beyond the local network apply in all conditions, both normal and contingent, and will not exclude facilities which may contribute power flow into the bulk electric system under contingent or unusual circumstances. NERC’s Local Network (LN) Technical Paper further explains these statements:

By restricting the flow direction to be exclusively into the network at its connection points to the BES and precluding the network from providing transmission wheeling service, this exclusion characteristic further ensures that the local network is providing only a distribution service, and is not contributing to, nor is necessary for, the

⁹⁹ Order No. 773, 141 FERC ¶ 61,236 at P 142 (citing NERC BES Petition, Exhibit E, “Complete Development Record of the Proposed Revised Definition of ‘Bulk Electric System,’ Consideration of Comments on Initial Ballot—Definition of BES,” at 259).

¹⁰⁰ Order No. 773, 141 FERC ¶ 61,236 at P 228.

¹⁰¹ Holland Request for Rehearing at 16.

¹⁰² Holland Request for Rehearing at 15–16 (citing *Detroit Edison v. FERC*, 334 F.3d 48, 54 (DC Cir. 2003)).

¹⁰³ NERC BES Petition at 22.

¹⁰⁴ *Id.*

¹⁰⁵ See Order No. 773, 141 FERC ¶ 61,236 at P 189.

reliable operation of the interconnected electric transmission network.¹⁰⁶

77. In approving exclusion E3, the Commission found NERC's explanations for the applicability of exclusion E3(b) to be reasonable.¹⁰⁷ The Commission also agreed with NERC's explanation that, with respect to exclusion E3(b), generation produced inside a local network should not be transported to other markets outside the local network.¹⁰⁸

78. The Commission rejects Holland's contention that the Commission's finding is premised on a presumption that "the facilities in question perform a transmission function."¹⁰⁹ One of NERC's overarching principles in revising the definition was to establish a bright-line definition that will eliminate discretion in application of the revised definition, and the local network exclusion is consistent with that principle.¹¹⁰ If an entity applies the definition and the exclusions to an element and finds that the element is included by application of the definition of the bulk electric system, it may avail itself of the exception process for a determination that the element should be excluded from the bulk electric system or seek a determination from the Commission that the element is used in local distribution.

79. In its request for rehearing, Dow seeks clarification regarding what issues were resolved in the Final Rule and what it may raise in Phase 2. As stated above, NERC developed exclusion E3 with the bright-line concept in mind and its conclusion that power may not be delivered from a local network to the bulk electric system. The Commission approved exclusion E3 with this understanding.¹¹¹ Thus, if power flows out of a local network to the bulk electric system, it is not eligible for the exclusion, no matter the type of generation. However, we recognize that in crafting the revised definition to be responsive to Order No. 743, entities raised additional issues that, due to time constraints in meeting the compliance deadline set in Order No. 743, NERC postponed to Phase 2 in which it is focusing on other industry concerns raised during Phase 1. Thus, if Dow believes that a local network should be allowed to have some non-retail generation that delivers power to the bulk electric system, we believe that this

issue is better suited for vetting through the NERC standard development process, including the Phase 2 process.¹¹²

80. With regard to the Snohomish request for clarification of additional terms in the Phase 2 process, the standard development process allows NERC to develop new or revised Reliability Standards or definitions to address any issues and the Final Rule does not restrict this process. NERC may propose changes to the bulk electric system definition with supporting technical justification for submission to the Commission.

81. Snohomish requests that the Commission clarify that entities can establish power flows through more than just historical records. Snohomish also seeks clarification that a local network will remain eligible for exclusion if it contains temporary reversals of flows resulting from extreme conditions. We clarify that historical records are not the only basis for establishing power flows. However, we deny clarification that temporary reversals of flows should not disqualify a local network from being treated as a local network because, as written and presented to us in this proceeding, exclusion E3(b) does not permit power flows from the local network in any circumstances.¹¹³ Nevertheless, similar to our response to Dow above, Snohomish can raise its concerns through the NERC standards development process in Phase 2.

E. NERC Exception Process and Commission Local Distribution Determinations

Order No. 773

82. In the Final Rule, the Commission approved NERC's exception process to add elements to, and remove elements from, the bulk electric system, on a case-by-case basis.¹¹⁴ However, the Commission determined that the Commission, rather than NERC, will determine on a case-by-case basis whether an element or facility is used in local distribution and will apply the conditions set forth in the Seven Factor Test.¹¹⁵

¹¹² Indeed, this issue is one that the NERC standard drafting team is considering in Phase 2. See the NERC Standard Authorization Request at 3: "[d]etermine if there is a technical justification to support allowing power flow out of the local network under certain conditions. . . ." Available at: http://www.nerc.com/docs/standards/sar/SAR_BES_Definition_Phase_2_final_071012_clean.pdf.

¹¹³ See Order No. 773, 141 FERC ¶ 61,236 at P 228.

¹¹⁴ Order No. 773, 141 FERC ¶ 61,236 at P 251 (citing Order No. 743, 133 FERC ¶ 61,150 at P 16).

¹¹⁵ Order No. 773, 141 FERC ¶ 61,236 at P 252.

Requests for Rehearing

1. Jurisdictional and Due Process Issues

83. A number of entities claim that, or are unsure of whether, the Commission has imposed duplicative processes (the NERC exception process and the Commission process for making local distribution determinations) for determining whether particular facilities are part of the bulk electric system.¹¹⁶ TAPS and ELCON question whether NERC would be bound by prior Commission determinations on local distribution and whether the Commission would reopen NERC determinations, and they request that on rehearing the Commission state that it will make local distribution determinations only in connection with review of NERC exception decisions. TAPS and ELCON state that the Commission should clarify that it will address local distribution issues if raised in connection with review of NERC exception determinations, so a full record can be developed through a single process. Alternatively, TAPS and ELCON request clarification (1) of how the Commission intends the process for making local distribution determinations to interact with the NERC exception process, especially when similar facts are at issue, and (2) that entities are not foreclosed from making all applicable arguments to NERC in the exception process.

84. NRECA states that the Commission's role as primary arbiter of a local distribution decision and its reliance on the Seven Factor Test raises ambiguity and must be clarified. NRECA questions whether the process runs concurrently with the NERC exception process and, if not, which process will be conducted first. NRECA also questions whether "an entity that is currently registered and seeks to remove itself from the registry based on the local distribution distinction, or, conversely, the ERO that desires to include an entity not currently on the registry based on the absence of local distribution facilities, would first have to engage a proceeding before the Commission. . . ." ¹¹⁷ NRECA states that a multi-tiered process will be expensive and unnecessarily time consuming for the Commission, NERC and the affected entities. NRECA further questions what rules and timeframe the Commission will use and whether the Commission considered the greater

¹¹⁶ *E.g.*, NRECA, TAPS, ELCON and NYSPSC.

¹¹⁷ NRECA Motion for Clarification, or in the Alternative, Request for Rehearing at 5–6.

¹⁰⁶ NERC BES Petition, Exhibit G at 3.

¹⁰⁷ Order No. 773, 141 FERC ¶ 61,236 at P 193.

¹⁰⁸ Order No. 773, 141 FERC ¶ 61,236 at P 231.

¹⁰⁹ Holland Request for Rehearing at 15.

¹¹⁰ See, *e.g.*, NERC BES Petition at 15.

¹¹¹ Order No. 773, 141 FERC ¶ 61,236 at PP 201, 205, 218, 228.

expense of running two processes for small entities.

85. Holland argues that applying the definition and exception process unlawfully subjects facilities used in the local distribution of electric energy to NERC authority through the exception process before a determination is made on whether those facilities serve a local distribution function.¹¹⁸ Holland claims that the Final Rule is internally inconsistent because it directs entities to seek an exception from NERC before the Commission will apply the Seven Factor Test to determine whether the facilities are subject to regulation under the FPA. Holland states that the Commission must prohibit NERC from exercising any authority over any facilities while the owners and operators of such facilities petition the Commission for a determination that they are used in the local distribution of electric energy.

86. NYPSC contends that the exception process is an impermissible approach to exercising jurisdiction. NYPSC claims that, although the definition states that it “does not include facilities used in the local distribution of electric energy,” the Commission effectively acknowledged that such facilities would be placed under its jurisdiction by establishing a process whereby entities may seek to demonstrate that the facilities are not necessary for operating the interconnected transmission network, or are used in local distribution.

87. NYPSC and NARUC claim that the Commission failed to provide adequate notice and comment regarding the decision to use the Seven Factor Test and the Commission’s decision to itself make determinations of whether a facility is used in local distribution. They state the Final Rule is the first time the Commission established a process for petitioning for a local distribution determination and argue that the Commission has not substantiated its decision to apply the Seven Factor Test. NARUC states that the Commission should develop a full record to determine what criteria “would be lawfully applied if the Commission were to make case-by-base local distribution determinations under section 215.”¹¹⁹ NYPSC states that the Commission failed to comply with the Administrative Procedure Act (APA) requirement that agencies provide notice of a proposed rule and a

meaningful opportunity for parties to comment.

Commission Determination

88. The Commission denies rehearing on the issues related to the exception process and the Commission making local distribution determinations. The Commission believes that entities misconstrue the function of the NERC exception process and the Commission’s local distribution determinations. Accordingly, we reiterate and expand on those functions below.

89. As explained below, the two processes are separate, not concurrent and will be used for different determinations. In the Final Rule, the Commission found that “NERC’s case-by-case exceptions process is appropriate to determine the technical issue of whether facilities are part of the bulk electric system” and that “the jurisdictional question of whether facilities are used in local distribution should be decided by the Commission.”¹²⁰

90. The Commission also stated that we expect that the “core” definition together with the exclusions “should provide a reasonable means to accurately and consistently determine on a generic basis whether facilities are part of the bulk electric system.”¹²¹ Also, the Commission explained that most local distribution facilities will be excluded by the 100 kV threshold or exclusion E3 without needing to seek a Commission jurisdictional determination. However, if after applying the definition and exclusions, an entity believes its facility is used in local distribution, it must petition the Commission for a determination, and the Commission will apply the factors in the Seven Factor Test, plus other factors, as the starting point for making local distribution determinations.¹²² This inquiry is a distinct process not made in connection with review of NERC exception process decisions. In response to NRECA’s question regarding what process an entity or NERC would use with respect to a local distribution determination, as stated above, the Commission will decide all local distribution determinations.

91. All inquiries that do not involve a question of whether a facility is used in local distribution (i.e., whether the facility is or is not part of the bulk electric system) are to be presented through the NERC exception process. In other words, if an entity believes its facilities are non-local distribution

facilities but nevertheless are incorrectly included by application of the bulk electric system definition and its inclusions and exclusions, it should use the NERC exception process to determine whether the facilities in question should be excluded from the bulk electric system. In response to the questions about appeals to the Commission, as stated in the Final Rule, an entity may appeal a final NERC exceptions process decision to the Commission.¹²³ In response to TAPS and ELCON’s request, we clarify that, in the exception process, entities have the option of making all applicable arguments that a facility should not be included in the bulk electric system.

92. With regard to NRECA’s question about the rules and timeframe the Commission will apply, as the Commission stated in the Final Rule, the Commission will assign local distribution inquiries “RC” dockets and the determinations will be public proceedings subject to notice and comment requirements which will allow NERC and interested parties to provide input on a petition. We decline to establish a specific timeframe within which we will act because such decisions will be based on the specific facts of each case.

93. In response to Holland’s arguments that the Commission improperly included or excluded local distribution facilities in the definition, the Commission notes that, although the bulk electric system definition excludes local distribution facilities, it still may be necessary to factually determine which facilities are used for local distribution or transmission.¹²⁴ The Commission stated in the Final Rule that applying the definition and its exclusions is not necessarily the end of the inquiry, and the Commission ultimately determines whether facilities are used in local distribution and thus excluded from the bulk electric system.¹²⁵ Thus, if an entity believes its facility is a local distribution facility but after applying the bulk electric system definition including inclusions and exclusions the facility is not excluded, the entity may apply to the Commission to determine whether the facility is used for local distribution. Thus, as explained above, the Final Rule contemplates two separate and distinct processes and does not direct entities to seek an exception from NERC before seeking a local distribution determination from the Commission.

¹¹⁸ For example, Holland argues that the limitations on exclusion E1 conditions (b) and (c) will still capture facilities used in local distribution and is tantamount to making a factual determination without any application of the Seven Factor Test.

¹¹⁹ NARUC Request for Rehearing at 7.

¹²⁰ Order No. 773, 141 FERC ¶ 61,236 at P 66.

¹²¹ Order No. 773, 141 FERC ¶ 61,236 at P 67.

¹²² Order No. 773, 141 FERC ¶ 61,236 at P 69.

¹²³ Order No. 773, 141 FERC ¶ 61,236 at P 251.

¹²⁴ Order No. 743–A, 134 FERC ¶ 61,210 at P 67.

¹²⁵ Order No. 773, 141 FERC ¶ 61,236 at P 70.

94. We disagree with Holland's argument that all facilities that NERC reviews through the exception process that the Commission later finds are used in local distribution will have been unlawfully regulated by NERC. NERC, in applying the bulk electric system definition and exception process, established an implementation period for newly identified elements in the bulk electric system before compliance enforcement is initiated. This should provide ample time for the affected entity to request a local distribution determination from the Commission before any compliance obligations are imposed.

95. NYPSC and NARUC take issue with the Commission's decision to apply the factors set forth in the Seven Factor Test when determining whether a facility is used in local distribution. NYPSC and NARUC contend that the Commission deprived them of their due process rights and violated the APA because the Commission stated it will apply the Seven Factor Test without providing entities an opportunity to comment on the Commission's decision.¹²⁶ As explained below, we deny rehearing on this issue.

96. Due process requires certain procedural safeguards, including the requirement that a party affected by government action be given "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action,"¹²⁷ and also "the opportunity to be heard at a meaningful time and in a meaningful manner."¹²⁸ However, circumstances vary and the sufficiency of the procedures supplied must be decided in light of the circumstances of each case.¹²⁹ The Commission assesses due process claims case-by-case based on the totality of the circumstances.¹³⁰ In this case, the Commission expressed its concerns with respect to treatment of local distribution facilities in Order Nos. 743 and 743-A and suggested that the Seven Factor Test could be relevant and a possible starting point for local

distribution determinations.¹³¹ In addition, in the NOPR in this proceeding, the Commission expressed its concern with NERC's approach by requesting additional explanation from NERC on its proposal regarding how the exception process would handle local distribution facilities. These instances gave fair notice of the Commission's concerns and positions on this issue.

97. Under these circumstances, an additional comment period on the local distribution determination is unnecessary. The Commission has wide discretion in selecting its procedures.¹³² The Commission thus rejects NYPSC's claim that the Commission's decision to determine whether facilities are used in local distribution on a case-by-case basis and apply the factors of the Seven Factor Test violated due process.

2. State Involvement in Local Distribution Determinations and the NERC Exception Process; Application of the Seven Factor Test

98. NYPSC, NARUC, NRECA and APPA argue that the Commission did not explain how it will apply the Seven Factor Test or properly acknowledge state involvement in the local distribution process as contemplated by Order No. 888. NYPSC and NARUC request clarification or rehearing on whether, in adopting the Seven Factor Test, the Commission intended to apply the Order No. 888 finding that gives deference to state determinations as to which facilities are transmission and which are local distribution. NYPSC states that the Commission "indicated in Order No. 888 that it would entertain proposals by public utilities, filed under section 205 of the Federal Power Act, containing classifications for transmission and local distribution facilities" but required consultation with state regulatory authorities as a prerequisite to making such filings.¹³³ NRECA maintains the Seven Factor Test should not be determinative in the context of section 215 jurisdiction decisions because the test involves coordination with state regulators and proceedings involving the affected parties and wholesale and retail interests. NARUC and APPA contend that the Commission ignored the circumstances under which a local

distribution test would be employed as described in Order No. 888.¹³⁴ NARUC states that in Order No. 888, the Commission acknowledged that in making case-by-case determinations concerning local distribution, it would "take advantage of state regulatory authorities' knowledge and expertise concerning the facilities of the utilities that they regulate . . . defer[ring] to the recommendations by state regulatory authorities concerning where to draw the jurisdictional line under the Commission's technical test for local distribution facilities."¹³⁵ According to NARUC and APPA, rather than deferring to the state's expertise, as it did when it developed the Seven Factor Test, the Commission is relegating the states to commenter status.

99. APPA, NARUC and NRECA express concern that use of the Seven Factor Test may not translate well into the reliability context. NRECA requests clarification that, because of the differences between FPA sections 201 and 215, the Commission will review significantly more than the Seven Factor Test components and will not apply the Seven Factor Test in the same manner it has in section 201 analyses.¹³⁶ NRECA argues that section 215 states that NERC and the Commission lack reliability jurisdiction over facilities used in local distribution, which is a different inquiry from the one made in rate cases, where the "predominant use" of the facilities may be of significance.¹³⁷ NRECA claims it is also different from the determination made when evaluating the Commission's jurisdiction over a facility for purposes of sections 205 and 206 of the FPA. NRECA states that under those analyses, facilities used for both distribution and transmission are treated as Commission-jurisdictional transmission facilities. NRECA contrasts that with section 215 which states that any use of the facility for distribution removes it from NERC's and the Commission's reliability jurisdiction. APPA, NARUC and NRECA claim that, while some of the seven factors may apply, others seem less appropriate to consider when determining whether facilities are local distribution, and the Commission does not define the other factors it may use nor explain how its criteria will adequately differentiate between local distribution and transmission facilities. Similarly, TAPS and ELCON state that

¹²⁶ The APA requires agencies to give interested parties an opportunity for "the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit. . . ." 5 U.S.C. 554(c)(1) (2006).

¹²⁷ *Jones v. Flowers*, 547 U.S. 220, 226 (2006) (citation and quotation omitted).

¹²⁸ *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (citations and quotation omitted).

¹²⁹ *Id.* 334 ("[D]ue process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.") (citation and quotation omitted).

¹³⁰ See *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) ("[D]ue process is flexible and calls for such procedural protections as the particular situation demands.").

¹³¹ Order No. 743, 133 FERC ¶ 61,150 at PP 37–38, Order No. 743–A, 134 FERC ¶ 61,210 at PP 25, 55, 58, 67–72.

¹³² *Pacific Gas and Electric Co. v. FERC*, 746 F.2d 1383, 1386 (9th Cir. 1984) ("We must allow the [Commission] wide discretion in selecting its own procedures . . . and must defer to the [Commission] interpretation of its own rules, unless the interpretation is plainly erroneous.") (citations omitted).

¹³³ NYPSC Request for Rehearing at 5.

¹³⁴ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,783–84 (1996).

¹³⁵ NARUC Request for Rehearing at 7 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996)).

¹³⁶ NRECA Request for Rehearing at 6.

¹³⁷ NRECA Request for Rehearing at 6.

several of the seven factors are very similar to components of the core definition and exclusions and to items on the “Detailed Information to Support an Exception Request” form. TAPS and ELCON thus contend that NERC’s exception process analysis and the Commission’s local distribution analysis will likely overlap each other.

100. NYPSC, NARUC and APPA state that the NERC exception process does not explicitly provide for state involvement.¹³⁸ NYPSC and NARUC believe that, because the states have a unique interest and jurisdictional role, the exceptions process must allow for direct state participation, including the right to submit comments and contribute to the development of the record prior to any preliminary or final determinations being made.

Commission Determination

101. The Commission denies rehearing on these issues. In the Final Rule, the Commission acted consistent with legal precedent that the question of whether facilities are used in local distribution is a question of fact to be decided by the Commission.¹³⁹ The Final Rule stated that the Commission would apply the factors in the Seven Factor Test, plus other factors as the starting point for making local distribution determinations.¹⁴⁰ The Commission, however, did not adopt Order No. 888 for use in this process.

102. We disagree with arguments questioning the suitability of the factors in the Seven Factor Test for use in the reliability context or that some of the factors seem less appropriate to consider when determining whether facilities are used in local distribution. FPA sections 201(b)(1) and 215 both use the legal term “local distribution.” As we stated in the Final Rule, the determination whether an element or facility is “used in local distribution,” as the phrase is used in the FPA, requires a jurisdictional analysis and use of the factors in the Seven Factor Test, among others, “comports with relevant legal

precedent.”¹⁴¹ Therefore, we are not persuaded that the factors in the Seven Factor Test are an unsuitable means to determine whether a facility is used in local distribution. The question of whether all the factors are relevant in each case is one for the Commission to determine in specific circumstances. With regard to NRECA’s argument that NERC and the Commission lack reliability jurisdiction over dual use facilities, the Commission will address that issue when relevant to a specific case.

103. We are not persuaded by the argument that the Commission needs to define at this time the additional factors it may use or explain how its criteria will adequately differentiate between local distribution and transmission facilities. The Final Rule stated that local distribution determinations are factual in nature and the Commission will make decisions on a case-by-case basis. We anticipate that applicants will take the seven factors into account and, to the extent other factors are relevant, they are free to raise them as part of their inquiry and the Commission will address them at that time. Further, we find that TAPS’ and ELCON’s contention that the similarity between the seven factors, the core definition and the Detailed Information Form will cause significant overlap between NERC’s analysis of an exception request and the Commission’s analysis of a request for a finding that a facility is used in local distribution is premature and speculative.

104. With regard to state involvement in Commission local distribution determinations, the Final Rule only stated the Commission would apply the factors in the Seven Factor Test and did not adopt Order No 888 for use here.¹⁴² The Commission notes that state regulators are not excluded from involvement in a Commission proceeding involving a local distribution determination and will have the opportunity to participate in the local distribution determination process at the Commission. As part of that participation, they may support their position with evidence that a state commission determined that the facilities in question are local distribution facilities.

105. Similarly, with regard to state involvement in the exception process, we deny rehearing. Petitioners essentially repeat their arguments from the NOPR and we are not persuaded that our finding in the Final Rule was

unreasonable. In the Final Rule, the Commission found that the exception process “should be one based on the technical reliability issues of the specific case presented. . . . [A] procedure that encouraged or even invited multi-party filings would unduly complicate the process. . . .”¹⁴³ Nevertheless, to provide transparency and opportunity for participation, NERC’s exception process provides 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,” thereby allowing third parties including state regulators “adequate opportunity to provide comments regarding the request without formally participating in the process.”¹⁴⁴

F. Designation of Bulk Electric System Elements

106. In the Final Rule, the Commission concluded that registered entities must inform the Regional Entity of any self-determination that an element is no longer part of the bulk electric system. We noted that section 501 of NERC’s Rules of Procedure provides that each registered entity must notify its Regional Entity of any matters that affect the registered entities’ responsibilities with respect to Reliability Standards. Section 501 also requires entities to inform the Regional Entity of any self-determination that an element is no longer part of the bulk electric system.¹⁴⁵ We further stated that this requirement does not involve a justification of why the element is being excluded but rather as one that involves nothing more than notification.¹⁴⁶ The Commission also concluded that it has the authority to designate an element as part of the bulk electric system pursuant to our authority set forth in sections 215(a)(1) and (b)(1) of the FPA.

107. Entities request clarification and/or rehearing on three aspects of these determinations: (1) How must a registered entity inform a Regional Entity that it has excluded an element from the bulk electric system; (2) what process a Regional Entity must use to include a facility if it disagrees with a registered entity’s declaration that a specific facility is not part of the bulk

¹³⁸ APPA states that the Commission could consider forming a standing federal-state joint board, pursuant to section 209(a) of the FPA, to address local distribution determinations, given that its changes to exclusions E1 and E3 will substantially increase the need for and frequency of such determinations.

¹³⁹ See, e.g., *California Pacific Electric Company, LLC*, 133 FERC ¶ 61,018, at n.59 (2010) (“The Supreme Court has determined that whether facilities are used in local distribution is a question of fact to be decided by the Commission”) (citing *FPC v. Southern California Edison Co.*, 376 U.S. 205, 210 n.6 (1964)).

¹⁴⁰ Order No. 773, 141 FERC ¶ 61,236 at PP 69, 71.

¹⁴¹ See Order No. 773, 141 FERC ¶ 61,236 at P 69.

¹⁴² Order No. 773, 141 FERC ¶ 61,236 at P 71.

¹⁴³ Order No. 773, 141 FERC ¶ 61,236 at P 257.

¹⁴⁴ Order No. 773, 141 FERC ¶ 61,236 at P 257 citing NERC ROP Petition, Att. 9 (“The Development Process and Basis for the ROP Team’s Recommended Provisions—How Stakeholder Comments were Considered and Addressed”) at 7.

¹⁴⁵ Order No. 773, 141 FERC ¶ 61,236 at P 317.

¹⁴⁶ Order No. 773, 141 FERC ¶ 61,236 at P 318.

electric system; and (3) if the Commission decides on its own to designate an element as part of the bulk electric system, it should consult state regulatory authorities.

1. Regional Entity Role

108. Snohomish requests clarification, or in the alternative rehearing, with respect to several aspects of the process for removing specific elements from the bulk electric system. Snohomish notes that the Commission specifies that a registered entity may remove specific elements from the bulk electric system by simply notifying its Regional Entity, and Snohomish believes that notifying its Regional Entity by a simple written or electronic notification satisfies the notification requirement. Snohomish also states that the Final Rule does not explain what would occur if the Regional Entity disagrees with the registered entity's determination that an element is not part of the bulk electric system. Snohomish requests clarification that, in the absence of bad faith on the part of the registered entity providing a notification that an element is not a bulk electric system element, that element should not be treated as part of the bulk electric system unless and until a contrary determination is made by NERC. Snohomish states that this clarification will help ensure that registered entities clearly understand their reliability compliance obligations at a facility-by-facility level, and that, if they apply the bulk electric system definition in good faith, they will not be subject to retroactive liability if that good faith determination is later successfully challenged by the Regional Entity and overturned by NERC.

109. Snohomish also requests clarification that, in the event that a Regional Entity disagrees with a registered entity's determination that an element is not part of the bulk electric system, the Regional Entity must use the exception process to include the element. Snohomish asserts that this clarification will ensure that there is a well-understood and consistent procedure for inclusion of elements in the bulk electric system. In the alternative, Snohomish states that the Commission should clarify that the existing appeals process in Appendix 5A of the NERC Rules of Procedure, which Snohomish states "provides for appeals only from entity registration decisions and from decisions regarding entity certification," should govern when the Regional Entity disagrees with a registered entity's designation of an

element as not part of the bulk electric system.¹⁴⁷

Commission Determination

110. The Commission agrees with Snohomish that, in the absence of bad faith, if a registered entity applies the bulk electric system definition and determines that an element no longer qualifies as part of the bulk electric system, upon notifying the appropriate Regional Entity that the element is no longer part of the bulk electric system the element should not be treated as part of the bulk electric system unless NERC makes a contrary determination in the exception process. If the Regional Entity disagrees with the classification of the element and believes the element is necessary for reliable operation, the Regional Entity should initiate an exception request to include the element in the bulk electric system. If NERC agrees with the Regional Entity and determines that the element should be included in the bulk electric system, the registered entity should not be subject to retroactive liability for the time period the element was not included in the bulk electric system.

2. Designation of Facilities

111. APPA argues that, if the Commission decides on its own to designate an element as part of the bulk electric system, it should consult state regulatory authorities in this process and not simply relegate them to notice and opportunity for comment.¹⁴⁸ Additionally, APPA states that "a full evidentiary hearing, with opportunities for discovery and cross-examination, as opposed to a paper hearing may be required in such circumstances because of the fact-based nature of these issues, and because the Commission would be making precedent-setting policy determinations that could affect many public utilities and registered entities."¹⁴⁹ APPA requests that, consistent with the Commission's approval of NERC's implementation plan, the Commission clarify that entities subject to Commission-designated bulk electric system facility determinations will be given an appropriate amount of time to become compliant with reliability standards.

Commission Determination

112. We deny rehearing with respect to the APPA's request that the Commission consult state regulatory authorities when the Commission elects

¹⁴⁷ Snohomish Request for Clarification, or in the Alternative, Petition for Rehearing at 5 (footnotes omitted).

¹⁴⁸ APPA Request for Rehearing at 29.

¹⁴⁹ *Id.*

to designate an element as part of the bulk electric system. We are not persuaded by APPA's justification for why the Commission should provide a greater role to state regulators than is already provided to all interested parties through notice and opportunity for comment. As we stated in the Final Rule, we expect that registered entities, Regional Entities, and NERC will proactively identify and include elements in the bulk electric system. However, if no other entity initiates the process to include in the bulk electric system an element necessary for the operation of the interconnected transmission network, the Commission has the authority to do so. If the Commission finds it necessary to initiate this authority, it would make a final determination after providing interested parties notice and opportunity for comment.¹⁵⁰ For the same reasons stated above in connection with a state role in a local distribution determination and the exception process, we are not persuaded by APPA's argument that state regulators need additional process other than that already afforded to all interested parties provided notice and opportunity for comment. Accordingly, we deny APPA's request for rehearing on this matter.

113. In response to APPA's contention that a full evidentiary hearing is necessary when the Commission proposes to designate an element as part of the bulk electric system, the Commission will not require or preclude use of a full evidentiary hearing. The Commission will provide due process as required by the APA which in appropriate instances the Commission can accomplish through a paper hearing.

114. In response to APPA's comments regarding the implementation schedule when the Commission determines an element should be part of the bulk electric system, we agree that an entity will have an appropriate amount of time to become compliant with applicable Reliability Standards.

G. Other Requested Clarifications

1. Meaning of "Non-Retail Generation"

115. Snohomish requests that the Commission provide clarification concerning the meaning of the term "non-retail generation" in exclusion E3. Snohomish requests that the Commission clarify that "non-retail generation" includes both customer-owned, behind-the-meter generation that is not resold on the Bulk-Power

¹⁵⁰ Order No. 773, 141 FERC ¶ 61,236 at P 285.

System to wholesale purchasers and generation that a load-serving utility uses solely to provide power to its own customers and does not sell to other wholesale purchasers. Snohomish maintains that this result is consistent with FPA section 201(b)(1), which excludes generation facilities and facilities used for the intrastate sale of electric energy from the Commission's jurisdiction.

Commission Determination

116. We decline to make the requested clarification. In the Final Rule several entities requested clarification of various terms including the term "non-retail." The Commission found that the phrase was sufficiently clear.¹⁵¹ We reiterate our statement in the Final Rule that entities may pursue further clarification from NERC in an appropriate forum such as NERC's Phase 2 project.

2. Effective Date

117. Snohomish requests that the Commission clarify that the revised definition will become effective for NERC compliance purposes on July 1, 2013, and that the transition period discussed in the Final Rule will extend twenty-four months from that date.

Commission Determination

118. The Commission grants Snohomish's clarification. NERC stated that the revised definition become effective on the first day of the second calendar quarter after receiving applicable regulatory approval, or, in those jurisdictions where no regulatory approval is required, on the first day of the second calendar quarter after its adoption by the NERC Board of Trustees. Order No. 773 was published in the **Federal Register** on January 4, 2013 with the Final Rule becoming effective 60 days thereafter, or March 5, 2013. Thus, the first day of the second calendar quarter after March 5 is July 1, 2013.

H. Requests for Revised Information Collection Burden and Regulatory Flexibility Act Analysis

119. In the Final Rule, the Commission stated that it did not need to reassess the reporting burden estimates and Regulatory Flexibility Act (RFA) certification. NARUC requests that the Commission clarify its RFA analysis in light of its decision to rule on jurisdictional questions and to direct NERC to not permit certain 100 kV and above facilities that are looped with sub-100 kV facilities to qualify for exclusion

E1. NARUC maintains that the Commission modified the definition by changing language contained in exclusions E1 and E3, the net effect of which would be to increase the number of entities that might choose to use the exception process. Therefore, according to NARUC, it is likely that the Commission's actions will impose unjustified regulatory burdens and costs.

120. NRECA also states that the public reporting burden and information collection requirement section of the Final Rule did not discuss additional costs associated with the Commission making local distribution determinations or entities having to apply for an exception as a result of the Commission's interpretation of exclusion E1. NRECA also states that the Commission erred by not modifying the RFA certification that the Final Rule will not have a significant economic impact on a substantial number of small entities. NRECA seeks clarification of the Final Rule because it believes that the jurisdiction determination process and the exclusion E1 directive will affect other small entities that were not identified previously, and the Commission must identify affected entities before it can certify the determination. NRECA states that the RFA requires that all effects of a rule on small entities must be considered, not just initial compliance costs or only the costs associated with small entities that identify, for the first time, facilities that are subject to the bulk electric system definition. NRECA requests that the Commission revisit the impact of the Final Rule on small entities, and thereafter clarify and provide greater detail with respect to its RFA certification.

121. Similarly, APPA states that the Commission's modifications to the definition will substantially increase the public reporting burden, necessitating a new analysis. APPA argues that the Commission's changes to exclusions E1 and E3 would substantially increase the number of required studies and exception requests, which necessarily affect the associated paperwork burden estimates. Yet, according to APPA, the Commission has failed to reassess its burden calculations and adjust its estimates which will result in the imposition of unjustified regulatory burdens and costs.

122. APPA also states that the Commission must reassess its RFA analysis to account for the Commission's changes to exclusions E1 and E3. According to APPA, many of the entities filing these requests might not currently be on the NERC

Compliance Registry or might only be listed as distribution providers or load serving entities. In addition, APPA argues that the Commission estimate of 418 small entities is too low. APPA states that it alone has approximately 330 members on the NERC registry, about 290 of which fall within the definition of a small utility under the relevant Small Business Administration definition.

Commission Determination

123. The Commission grants rehearing in part and denies rehearing in part. The Commission grants rehearing on the need to reassess the burden estimates relative to the Final Rule modifications regarding exclusions E1 and E3. In revising the information cost estimates, the Commission also included additional costs associated with the local distribution determinations. However, because the Commission grants rehearing on implementing exclusions E1 and E3 to instead direct NERC to modify the definition pursuant to FPA section 215(d)(5) in the Phase 2 process, the Commission will address estimates in connection with that change after NERC submits its proposal.

1. Information Collection Statement

124. In the Final Rule, the Commission estimated the reporting burden for entities to apply the revised bulk electric system definition to all elements to determine if those elements are included in the bulk electric system pursuant to the revised definition. The Commission also estimated the burden for entities' use of the exception process as well as the costs for Regional Entities and NERC to process exception requests. In addition, the Commission estimated the public reporting burden for entities to identify new elements under the revised bulk electric system definition.

125. While the Commission is providing revised information collection estimates, we disagree with NARUC and APPA that the Commission's modifications to NERC's proposal will substantially increase the public reporting burden or will impose unjustified regulatory burdens and costs. None of the petitioners provide data to quantify or substantiate their claims. With regard to the alleged increase in case-specific exceptions applications, APPA cites to one large entity that claimed that it would have to file dozens of exception requests to have looped configurations excluded. However, we are not persuaded by APPA and others that the Commission's discussion of exclusion E1 (radial systems) pertaining to sub-100 kV

¹⁵¹ Order No. 773, 141 FERC ¶ 61,236 at P 215.

looped systems with multiple connections at 100 kV and above and the corresponding modification to exclusion E3 will result in a substantial increase in exception applications. Rather, as explained in the Final Rule, as well as this order on rehearing, the Commission directed NERC to develop a modification to exclusion E3 (local networks) that would eliminate the 100 kV “floor” to be eligible for the exclusion. As a result, by design, we anticipate that many entities with sub-100 kV looped configurations that are not eligible for exclusion E1 may avoid submitting an exception request and be eligible for the E3 exclusion as revised by the Final Rule. As explained elsewhere, an entity may apply the E3 exclusion without having to submit an application to NERC for a case-specific ruling.¹⁵²

126. With regard to applications submitted to the Commission for local distribution determinations, we expect the number of local distribution determinations to be small.¹⁵³ Petitioners have not provided information in their rehearing requests that persuade us to change our expectation. Thus, the Commission estimates that there will be

approximately eight local distribution determinations per year.

127. Although we believe that the burden estimates set forth in the Final Rule are generally sound, we nonetheless revise certain aspects to provide more accurate estimates. To account for the Final Rule directive for exclusions E1 and E3, the Commission has increased by five the number of engineering hours needed for “System Review and List Creation” for transmission owners. The Commission increased the number of engineering hours by three for the same review by distribution providers. System Review and List Creation corresponds to step 1 of NERC’s proposed transition plan, which requires each U.S. asset owner to apply the revised bulk electric system definition to all elements to determine if those elements are included in the bulk electric system pursuant to the revised definition.¹⁵⁴ The Commission added these hours to recognize the additional time needed for an entity that has a looped configuration operating below 100 kV with multiple connections at 100 kV and above that is not eligible for exclusion E1 to analyze whether the configuration is eligible for exclusion E3.

128. In addition, the Commission is increasing the estimate of the number of

exception requests in the first two years by approximately ten percent, from 260 per year to 285 requests per year. The original estimate of 260 requests per year considered all requests for exceptions, undifferentiated by whether the applicant’s request is based on exclusions E1 and E3 or any other part of the definition. Here, we estimate an additional 25 exception requests that may be submitted by entities with looped configurations operating below 100 kV that, based on the Final Rule, do not qualify for the E1 radial system exclusion. However, as discussed above, we are not persuaded that a greater increase of exception requests is warranted because the directive that NERC modify the local network E3 exclusion by eliminating the 100 kV floor should allow many, if not most, of the entities that operate systems with a sub-100 kV loop to exclude those 100 kV and above facilities that connect them to the interconnected transmission network (without an exception request) based on the E3 exclusion (noting that the elements operating below 100 kV are already excluded from the bulk electric system by the core definition).

129. The revised estimates are shown as follows:

Requirement	Number and type of entity ¹⁵⁵ (1)	Number of responses per entity (2)	Average number of hours per response (3)	Total burden hours (1)*(2)*(3)
System Review and List Creation.	333 Transmission Owners	1 response	85 (engineer hours)	28,305 Yr 1.
Exception Requests ¹⁵⁶	843 Generator Owners	1 response	16 (engineer hours)	13,488 Yr 1.
	554 Distribution Providers	1 response	27 (engineer hours)	14,958 Yr 1.
	1,730 total Transmission Owners, Generator Owners and Distribution Providers.	285 responses each in Yrs 1 and 2 (total for all entities, i.e., not per entity).	94 (60 engineer hrs, 32 record keeping hrs, 2 legal hrs).	26,790 hrs in Yrs 1 and 2.
Local Distribution Determinations ¹⁵⁷ .	8 entities	20 responses in Yr 3 and ongoing (total for all entities, i.e., not per entity).	94 (60 engineer hrs, 32 record keeping hrs, 2 legal hrs).	736 hrs in Yr 3 and ongoing.
		1 response	92 (60 engineer hrs, 8 record keeping hrs, 24 legal hrs).	736 hrs.

¹⁵² See *supra* P 42.

¹⁵³ See Order No. 773, 141 FERC ¶ 61,236 at P 70.

¹⁵⁴ See NERC BES Petition at 38.

¹⁵⁵ The “entities” listed in this table are describing a role an entity is registered for in the NERC registry. For example, a single entity may be registered as a transmission owner and generator owner. The total number of entities applicable to this rule is 1,522, based on the NERC registry. The total number of estimated roles is 1,730.

¹⁵⁶ From the total 1,730 estimated roles, we estimate an average of 285 requests per year in the first two years. See Order No. 773 at n. 225. Therefore, the estimated total number of hours per year for years 1 and 2, using an average of 285 requests per year, is 26,790 hours. We estimate 20 requests per year in year 3 and ongoing.

¹⁵⁷ The Commission estimates 92 hours for a local distribution request comprised of 60 engineer hours, 8 record keeping hours and 24 legal hours. For the local distribution burden category, the

loaded (salary plus benefits) costs are: \$60/hour for an engineer; \$27/hour for recordkeeping; and \$106/hour for legal. The breakdown of cost by item and year follows: (sum of hourly expense per request * number of local distribution determinations) = ((60 hrs * \$60/hr) + (8 hrs * \$27/hr) + (24 hrs * \$106/hr)) * 8 requests = \$50,880. Hourly costs are loaded (wage plus benefits) and are based on Commission staff study and industry data from the Bureau of Labor Statistics.

Costs to Comply:

- Year 1: \$13,841,400 (\$367,400 increase from the initial estimate)
- Year 2: \$10,436,340 (\$167,780 increase from the initial estimate)
- Year 3 and ongoing: \$4,310,800 (\$50,704 increase from the initial estimate)¹⁵⁸

For the burden categories above, the loaded (salary plus benefits) costs are: \$60/hour for an engineer; \$27/hour for recordkeeping; and \$106/hour for legal. The revised breakdown of cost by item and year follows:

- System Review and List Creation (year 1 only): (28,305 hrs + 13,488 hrs + 14,958 hrs) = 56,751 hrs * 60/hr = \$3,405,060.
- Exception Requests (years 1 and 2): (sum of hourly expense per request * number of exception requests) = ((60 hrs * \$60/hr) + (32 hrs * \$27/hr) + (2hrs * \$106/hr)) * 285 requests = \$1,332,660.
- Local Distribution (each year): (sum of hourly expense per request * number of exception requests) = ((60 hrs * \$60/hr) + (8 hrs * \$27/hr) + (24 hrs * \$106/hr)) * 8 requests = \$50,880.

Title: FERC-725-J “Definition of the Bulk Electric System”

Action: Proposed Collection of Information

OMB Control No: 1902-0259

Respondents: Business or other for profit, and not for profit institutions.

Frequency of Responses: On Occasion

Necessity of the Information: The proposed revision to NERC’s definition of the term bulk electric system, if adopted, would implement the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation’s Bulk-Power System. Specifically, the proposal would ensure that certain facilities needed for the operation of the nation’s bulk electric system are subject to mandatory and enforceable Reliability Standards.¹⁵⁹

Internal review: The Commission has reviewed the proposed definition and has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirements.

130. Interested persons may obtain information on the reporting

¹⁵⁸ See NOPR, 139 FERC ¶ 61,247 at P 135 for the initial estimates. In the summary costs for years 1–3 displayed in the NOPR and final rule, due to a arithmetic error, the Years 1–3 cost estimates should have been \$13,474,000, \$10,268,560 and \$4,259,920, respectively.

¹⁵⁹ For more information regarding the necessity of the information collected, disclosed or retained, see *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, Order No. 773, 141 FERC ¶ 61,236 (2012).

requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, email: DataClearance@ferc.gov, phone: (202) 502-8663, fax: (202) 273-0873].

131. For submitting comments concerning the collection of information and the associated burden estimate, please send your comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395-4718, fax: (202) 395-7285]. For security reasons, comments to OMB should be submitted by email to: oir_submission@omb.eop.gov. Comments submitted to OMB should include Docket Number RM12-6 and OMB Control Number 1902-0259.

2. Regulatory Flexibility Analysis

132. The Commission grants rehearing in part, and denies rehearing in part, with regard to the impact of the Final Rule on small entities’ applying for local distribution determinations at the Commission and the Final Rule directive regarding implementation of exclusions E1 and E3 for looped configurations. The Commission provides revised estimates below.

133. In the NOPR, the Commission estimated that approximately 418 of the 1,730 registered transmission owners, generator owners and distribution service providers may fall within the definition of small entities.¹⁶⁰ The Commission estimated that, of the 418 small entities affected, 50 small entities within the NPCC region would have to comply with the rule. The Commission assumed that the rule would affect more small entities in the NPCC Region than those outside NPCC because there are more elements in NPCC that would be added to the bulk electric system based on the new definition than elsewhere. The Commission estimated the first year effect on small entities within the NPCC region to be \$39,414.¹⁶¹ The Commission based this figure on information collection costs plus additional costs for compliance. The Commission estimated the average annual effect per small entity outside of NPCC will be less than for the entities within NPCC. The Commission concluded that there would not be a significant economic impact for small entities within or outside of NPCC because it should not represent a significant percentage of the operating

budget. In Order No. 773, the Commission affirmed its analysis and certified that the Final Rule will not have a significant impact on a substantial number of small entities.¹⁶²

134. While we affirm our certification that the Final Rule will not have a significant impact on a substantial number of small entities, we grant rehearing in part to adjust our estimates on the impact of the Final Rule on small entities. In particular, we adjust our initial estimate to recognize the approximately \$6,360 cost incurred by a small entity that petitions the Commission for a local distribution determination. As stated above, the Commission estimates eight local distribution requests per year. The Commission does not believe that small entities will account for all local distribution requests, but even if they do, this estimate will not have a significant economic impact on a substantial number of small entities.

135. We recognize that an entity may have some facilities that do not qualify for exclusions E1 or E3 as revised by the Final Rule and may choose to use the exception process. As stated above, the Commission estimates that the total number of entities with looped configurations that do not qualify for exclusions E1 or E3 who choose to use the exception process to be approximately 25, based on an approximately ten percent increase in the estimated number of exception requests (i.e., an estimated 260 requests revised to 285 requests) submitted during the first year after implementation. Of those, the Commission estimates that ten of the entities could be small entities, with the effect on those small entities to be \$4,676 per entity. The Commission bases this figure on the result of the exception request calculation total above, \$1,332,660, divided by the number of total estimated exception requests, 285, resulting in the cost per exception request equal to \$4,676. We do not assume additional costs of compliance for these ten small entities requesting exceptions because looped systems connected at multiple connections of 100 kV and above are already part of the bulk electric system. If the elements remain in the bulk electric system as a result of the exception process, they will not be newly identified elements and thus the compliance costs associated with these elements are already accounted for in

¹⁶⁰ NOPR, 139 FERC ¶ 61,237 at P 138.

¹⁶¹ NOPR, 139 FERC ¶ 61,237 at P 139.

¹⁶² Order No. 773, 141 FERC ¶ 61,236 at P 338.

other rulings approving Reliability Standards.¹⁶³

136. Based on the above, as many as 18 small entities may experience an economic impact upwards of approximately \$50,000 per year.¹⁶⁴ The Commission does not consider 18 out of 418 small entities (4.3%) to be a substantial number of small entities. Accordingly, the Commission certifies that the Final Rule will not have a significant economic impact on a substantial number of small entities.

137. APPA argues that their members' burdens will change by virtue of being included on the NERC Compliance Registry. We disagree with APPA on this issue. First, it is important to understand that NERC registers entities, not facilities, in the NERC Compliance Registry. We do not expect that NERC's revised BES definition, as well as our determinations in the Final Rule and on rehearing, will have Compliance Registry implications for a significant number of entities. As we have indicated consistently throughout this proceeding, small entities in the NPCC region are most likely to be substantively impacted by the Final Rule, and we have previously recognized the costs of compliance for that sub-group of small entities. APPA has not provided any information to persuade us that NERC will register a significant number of small entities as a result of the Final Rule.

138. APPA also argues that the Commission's estimate that a total of 418 small entities may be affected by the Final Rule is too low and that the Commission did not justify this estimate. We disagree with APPA on this matter. The Commission justified the estimate in the NOPR stating that we started with the Order No. 693 estimate that *all* the Reliability Standards approved in Order No. 693 would apply to approximately 682 small entities.¹⁶⁵ The Commission concluded that the bulk electric system rulemaking would affect a smaller subset of the categories of registered entities and thus our estimate was lower in this proceeding than cited in Order 693.¹⁶⁶ Therefore, we deny rehearing on this issue.

¹⁶³ See, e.g., Order No 693, FERC Stats. & Regs. ¶31,242 at PP 1899–1907.

¹⁶⁴ This is based on a conservative assumption that the eight local distribution determination requests and the ten additional entities to use the exception process all are part of the NPCC region. Under this assumption, the total estimated annual cost per entity is \$50,450 (\$39,414 + \$6,360 + \$4,676).

¹⁶⁵ NOPR, 139 FERC ¶61,247 at P 139 n.156 (citing Order No 693, FERC Stats. & Regs. ¶31,242 at P 1940).

¹⁶⁶ *Id.*

III. Document Availability

139. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

140. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

141. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at public.reference.room@ferc.gov.

By the Commission.

Kimberly D. Bose,
Secretary.

Note: Attachment A will not appear in the *Code of Federal Regulations*.

ATTACHMENT A

Definition of Bulk Electric System

Unless modified by the 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

Inclusions:

I1—Transformers with the primary terminal and at least one secondary terminal operated at 100 kV or higher unless excluded under Exclusion E1 or E3.

I2—Generating resource(s) with gross individual nameplate rating greater than 20 MVA or 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.

I3—Blackstart Resources identified in the Transmission Operator's restoration plan.

I4—Dispersed power producing resources with aggregate capacity greater than 75 MVA (gross aggregate nameplate rating) utilizing a system designed primarily for aggregating capacity, connected at a common point at a voltage of 100 kV or above.

I5—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 that is designated in Inclusion I1.

Exclusions:

E1—Radial systems: A group of contiguous transmission Elements that emanates from a single point of connection of 100 kV or higher and:

(a) Only serves Load. Or,

(b) Only includes generation resources, not identified in Inclusion I3, with an aggregate capacity less than or equal to 75 MVA (gross nameplate rating). Or,

(c) Where the radial system serves Load and includes generation resources, not identified in Inclusion I3, with an aggregate capacity of non-retail generation less than or equal to 75 MVA (gross nameplate rating).

Note—A normally open switching device between radial systems, as depicted on prints or one-line diagrams for example, does not affect this exclusion.

E2—A generating unit or multiple generating units on the customer's side of the retail meter that serve all or part of the retail Load with electric energy if: (i) the net capacity provided to the BES does not exceed 75 MVA, and (ii) standby, back-up, and maintenance power services are provided to the generating unit or multiple generating units or to the retail Load by a Balancing Authority, or provided pursuant to a binding obligation with a Generator Owner or Generator Operator, or under terms approved by the applicable regulatory authority.

E3—Local networks (LN): A group of contiguous transmission Elements operated at or above 100 kV but less than 300 kV that distribute power to Load rather than transfer bulk-power across the interconnected system. LN's emanate from multiple points of connection at 100 kV or higher to improve the level of service to retail customer Load and not to accommodate bulk-power transfer across the interconnected system. The LN is characterized by all of the following:

(a) Limits on connected generation: The LN and its underlying Elements do not include generation resources identified in Inclusion I3 and do not have an aggregate capacity of non-retail generation greater than 75 MVA (gross nameplate rating);

(b) Power flows only into the LN and the LN does not transfer energy originating outside the LN for delivery through the LN; and

(c) Not part of a Flowgate or transfer path: The LN does not contain a monitored Facility of a permanent Flowgate in the Eastern Interconnection, a major transfer path within the Western Interconnection, or a comparable monitored Facility in the ERCOT or Quebec Interconnections, and is not a monitored Facility included in an Interconnection Reliability Operating Limit (IROL).

E4—Reactive Power devices owned and operated by the retail customer solely for its own use.

Note—Elements may be included or excluded on a case-by-case basis through the Rules of Procedure exception process.

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