

146 FERC ¶ 61,070
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

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

Docket Nos. RM12-6-003
RM12-7-003

ORDER DENYING REHEARING

(Issued February 6, 2014)

1. On June 13, 2013, the Commission issued an order granting an extension of time, from July 1, 2013 to July 1, 2014, of the effective date of the North American Electric Reliability Corporation's (NERC) revised definition of "bulk electric system" in the above-referenced proceeding.¹ On July 9, 2013, Pacific Northwest Generating Cooperative ("PNGC") and Northwest Requirements Utilities ("NRU") jointly filed a request for rehearing. In this order, the Commission denies rehearing.

Background

2. On December 20, 2012, the Commission issued Order No. 773, which approved modifications to NERC's definition of "bulk electric system" and revisions to NERC's Rules of Procedure that provide a process for entities to seek exceptions to the definition.² Pursuant to Order No. 773, the modified definition and exception process would become effective as of July 1, 2013. On April 18, 2013, in Order No. 773-A the Commission largely affirmed its findings in Order No. 773. However, the Commission also directed NERC to: (1) implement the exclusions for radial systems and local networks so that they do not apply to generator interconnection facilities for bulk electric

¹ *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, 143 FERC ¶ 61,231 (2013) (June 2013 Order).

² *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, Order No. 773, 141 FERC ¶ 61,236 (2012); *order on reh'g*, Order No. 773-A, 143 FERC ¶ 61,053 (2013), *order on reh'g and clarification*, 144 FERC ¶ 61,174 (2013).

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.³

3. On May 23, 2013, NERC filed a motion for an extension of time, from July 1, 2013 to July 1, 2014, of the effective date of the revised definition of “bulk electric system.” In its motion, NERC stated that, by virtue of the Commission directing changes in Order Nos. 773 and 773-A, without an extension of time, there would be a period of time during which the existing definition without the Commission-directed modifications would be in effect. NERC requested a one year extension of the effective date of the bulk electric system definition to resolve the “uncertainties” that would result from implementation of the approved definition while NERC develops modifications to the definition that address the Order Nos. 773 and 773-A directives.

4. On June 13, 2013, the Commission granted NERC’s request for extension of time and extended the effective date for the revised definition of bulk electric system to July 1, 2014.⁴ The Commission stated that the extension of time also applies to implementation of the exception process and local distribution determinations. The Commission held that a partial implementation would unnecessarily complicate implementation of the definition and the exception process. Most relevant to the immediate request for rehearing, the Commission explained:

we are not persuaded to allow the exception process to go into effect on a different date from the definition. NERC requested in its Rules of Procedure petition that “the Commission approve Appendix 5C and the other proposed [Rules of Procedure] revisions with the same effective date as the proposed effective date of the revised [bulk electric system definition].” We agree with NERC that the exception process is available only after an entity applies the definition and determines that the element is part of, or not part of, the bulk electric system. A partial implementation, as some commenters propose, would unnecessarily complicate implementation of the definition and the exception process. Similarly, with regard to ELCON’s statement that the extension should not restrict the opportunity for entities to make any appropriate filings to address local distribution determinations, as we stated in Order No. 773, an entity may file a local distribution determination after it applies the definition. Because an entity can only request a local distribution determination from the Commission after it has applied the definition, entities could not make such a filing as suggested by ELCON until the definition is fully implemented. For these reasons, before a local distribution determination

³ Order No. 773, 141 FERC ¶ 61,236 at PP 155, 164-169.

⁴ June 2013 Order, 143 FERC ¶ 61,231 at P 13.

can be filed with the Commission, an entity must first apply the definition of bulk electric system.⁵

Request for Rehearing

5. On July 9, 2013, Pacific Northwest Generating Cooperative and Northwest Requirements Utilities (Petitioners) jointly filed a request for rehearing. They argue that, because facilities used in local distribution are outside of the Commission's reliability standard jurisdiction, the Commission erred by requiring entities first to apply the definition of bulk electric system before seeking a local distribution determination from the Commission. Petitioners assert that whether a facility is used in the local distribution of electric energy is independent of whether a facility falls within the definition of the bulk electric system. They also argue that the Commission's conclusion that an entity must apply the definition before evaluating facilities used in the local distribution of electric energy impermissibly associates the definition with questions of which facilities can fall within FERC's jurisdiction under the FPA. According to Petitioners,

applying the definition before evaluating facilities used in the local distribution of electric energy could impermissibly and unintentionally narrow the facilities that can fall outside of the FPA's jurisdiction. The implication of applying the BES definition before making a distribution determination could be that only those facilities that do not satisfy the BES definition are eligible for consideration as distribution facilities. However, there are, in fact, facilities that will both satisfy the BES definition and that are used in the local distribution of electric energy. ... It is therefore not necessary to consider the BES definition when considering whether facilities are subject to FERC's jurisdiction.⁶

6. Further, Petitioners claim that, because the Commission lacks jurisdiction over local distribution facilities under the FPA, postponing utilities' ability to seek a jurisdictional determination results in the unlawful application of the Reliability Standards to facilities outside the Commission's jurisdiction. They argue that, by requiring utilities to postpone requests for jurisdictional determinations until the definition and exception requests are finalized, the Commission is allowing the standards to be applied to facilities over which it and NERC do not have jurisdiction.

Discussion

7. The Commission denies rehearing. We disagree with Petitioners that the Commission violated the FPA by requiring utilities first to apply the definition of bulk

⁵ *Id.* P 15 (footnotes omitted).

⁶ Request for Rehearing at 4-5 (footnote omitted).

electric system before seeking a local distribution determination from the Commission. Petitioners appear to misunderstand the process determining whether a facility is used in local distribution. As we have stated previously, “[a]lthough local distribution facilities are excluded from the definition, it still is necessary to determine which facilities are local distribution, and which are transmission” and “[w]hether facilities are used in local distribution will in certain instances raise a question of fact, which the Commission has jurisdiction to determine.”⁷ In addition, as we indicated in Order No. 743-A, the Commission viewed “a voltage threshold as an initial proxy for determining where the line between local distribution and transmission lies.”⁸ Further, in Order No. 773 the Commission explained that 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:

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.⁹

Consistent with this determination, the June 2013 Order stated that applying the definition is the first step in the process for potentially *excluding* facilities used in local distribution from being defined as part of the bulk electric system under the revised definition. This step will exclude many facilities that are used in local distribution. If, however, application of the definition does not exclude a facility that an entity believes is used in local distribution, an entity may petition the Commission seeking a factual determination that the facility is used in local distribution for consideration whether a facility should be excluded for this reason.¹⁰ Thus, application of the definition to exclude facilities, some of which may be used in local distribution, is not evidence that

⁷ *Revisions to Electric Reliability Organization Definition of Bulk Electric System*, Order No. 743-A, 134 FERC ¶ 61,210 at P 67 and n.78 (citing *California Pacific Electric Co., LLC*, 133 FERC ¶ 61,018, at n.59 (2010)).

⁸ Order No. 743-A, 134 FERC ¶ 61,210 at P 55.

⁹ Order No. 773, 141 FERC ¶ 61,236 at P 72 (citations omitted).

¹⁰ *See id.* P 70; Order No. 773-A, 143 FERC ¶ 61,053 at P 91; June 2013 Order, 143 FERC ¶ 61,231 at P 15.

the definition violates the FPA but instead is a means to ensure the application of the definition complies with the FPA.

8. Accordingly, the statement in the June 2013 Order challenged by the Petitioners simply echoed the determination from Order No. 773. Moreover, in context, the statement that an entity must apply the bulk electric system definition before seeking a local distribution determination is well-reasoned as the two aspects of the rulemaking are more inter-related than Petitioners acknowledge. As indicated in the June 2013 Order, implementing one aspect of the rulemaking without the other would “unnecessarily complicate” implementation of the new process.¹¹

9. We also disagree with Petitioners’ argument that, by extending the effective date of the revised definition of bulk electric system, the Commission is allowing standards to be applied to facilities over which it does not have jurisdiction. The process approved in Order No. 773 applies to the revised definition of bulk electric system and the associated processes for applying for exceptions and/or local distribution determinations, beginning July 1, 2014. Nothing today precludes entities from using NERC’s processes to seek a determination that Reliability Standards should not be applied to facilities used in local distribution.¹²

The Commission orders:

The Commission hereby denies the request for rehearing, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹¹ See June 2013 Order, 143 FERC ¶ 61,231 at P 15.

¹² See, e.g., *City of Holland, Michigan Board of Public Works*, 139 FERC ¶ 61,055 (2012), *order denying reh’g*, 145 FERC ¶ 61,054 (2013), *appeal pending sub nom. City of Holland, Michigan Board of Public Works v. FERC*, No. 13-1306 (D.C. Cir. filed Dec. 16, 2013) (seeking Commission review of NERC registry determination arguing, *inter alia*, that the entities’ facilities are used in local distribution).