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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Holland, Michigan Board of Public Works	)	Docket No. RC11-____-000

APPEAL OF THE CITY OF HOLLAND, MICHIGAN BOARD OF PUBLIC WORKS OF REGISTRATION DECISION OF THE NERC BOARD OF TRUSTEES COMPLIANCE COMMITTEE

***** REQUEST FOR CONFIDENTIAL TREATMENT *****

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***** REQUEST FOR CONFIDENTIAL TREATMENT *****

Pursuant to Section 39.2 of the Federal Energy Regulatory Commission's ("FERC" or "Commission) Regulations[1] and Rule 501.1.3.4 of the Rules of Procedure of the North American Electric Reliability Corporation ("NERC"),[2] the City of Holland, Michigan Board of Public Works ("Holland BPW") hereby appeals the August 12, 2011, decision of the NERC Board of Trustees Compliance Committee ("NERC Decision") denying Holland BPW's appeal of the decision of Reliability*First* Corporation ("RFC") to register Holland BPW as a Transmission Owner ("TO") and Transmission Operator ("TOp") on the NERC Compliance Registry.

I. INTRODUCTION

NERC's decision that Holland BPW should be registered as a TO and TOp exceeds its scope of authority under Section 215 of the Federal Power Act ("FPA") and is therefore

[1] 18 C.F.R. § 39.2 (2010).

[2] *Rules of Procedure of the North American Electric Reliability Corporation*, rule 501.1.3.4 (effective Apr. 12, 2011) (stating a decision of the NERC Board of Trustees Compliance Committee may be appealed to the applicable governmental authority within 21 days of the date of the decision.).

unlawful. Under Section 215 of the FPA, compliance with reliability standards may be mandated only against "users, owners and operators of the bulk-power system," which specifically excludes "facilities used in the local distribution of electric energy."[3] Neither the Commission, NERC nor RFC have authority to apply reliability standards to entities, such as Holland BPW, that operate only "facilities used in the local distribution of electric energy." NERC's decision to register Holland BPW as a TO and a TOp is an unlawful assertion of jurisdiction over "facilities used in the local distribution of electric energy."

NERC's decision is also contrary to its own standards, is not the product of reasoned decision-making and is arbitrary and capricious. NERC's articulated rationale for concluding that Holland BPW should be registered as a TO and a TOp ignored important facts and arguments raised by Holland BPW. It is not possible to fully comprehend which facts NERC relied upon in rendering its decision. In addition, its decision references material beyond that which was presented to it. Under the arbitrary and capricious standard, an agency decision that does not reflect reasoned decision-making or fails to demonstrate a rational relationship between the facts and the decision reached by the agency must be set aside.[4] As a quasi-governmental agency, NERC must be held to this same standard. The NERC decision that is the subject of this appeal to the Commission fails to satisfy these basic standards and should be reversed.

NERC's decision also violates the due process requirement contained in Section 215 of the FPA. NERC must establish and follow rules that, among other things, "provide for…due

[3] Federal Power Act § 215 (a)(1), 16 U.S.C. § 824o(a)(1) (2006).

[4] *See Northern States Power Co. v. FERC,* 30 F.3d 177, 180 (D.C. Cir. 1994). (Citing to *Town of Norwood v. FERC,* 962 F.2d 20, 22 (D.C. Cir. 1992). *See also Central Maine Power Co. v. FERC,* 252 F.3d 34, 43 (1st Cir. 2001) (An agency is not excused from explaining its actions. Addressing contrary arguments is part of establishing public acceptability and, in any event, is part of the agency's own responsibility")).

process, openness, and balance of interests in…exercising its duties."[5] The process to which Holland BPW has been subjected does not meet these criteria. Neither NERC's Statement of Registry Criteria nor its procedures recognize the prohibition in Section 215 against asserting jurisdiction over facilities used in the local distribution of electric energy. Neither RFC's nor NERC's decision even addresses the local distribution exclusion expressly provided for in Section 215 of the FPA. Instead, their decisions are based on their incorrect conclusion that Holland BPW's facilities are not "radial" and therefore do not fall the NERC-developed exclusion from the NERC-developed definition of Bulk Electric System.

Moreover, RFC did not provide an assessment setting forth the basis for its decision to register Holland BPW until after it registered Holland BPW. Holland BPW did not have a meaningful opportunity to address or challenge the factual and technical basis asserted by RFC and relied upon by NERC to support the registration decision.

For the reasons set forth herein, the Commission should direct NERC to remove Holland BPW from the NERC Compliance Registry as a TO and TOp, effective as of the date it was registered.

[5] 16 U.S.C. § 824o(c)(2)(D)(2006).

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II. COMMUNICATIONS

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III. REQUEST FOR CONFIDENTIAL TREATMENT

Pursuant to Section 388.112 of the Commission's Regulations,[6] Holland BPW requests confidential treatment of certain operating information presented in this appeal. This information is considered either critical to Holland BPW's distribution system or was labeled as "CONFIDENTIAL" when it came into Holland BPW's possession and should not be disclosed to the public. Both public and confidential versions of this appeal are being filed and marked accordingly.

IV. BACKGROUND

A. Holland BPW

Holland BPW operates a municipally-owned utility that serves approximately 27,000 bundled retail customers in Holland, Michigan.[7] Holland BPW is located in the reliability

[6] 18 C.F.R. § 388.112 (2010).

[7] *See* Exh. HOL-1 at P 4

footprint of RFC and in the Michigan Electric Transmission Company ("METC") transmission zone of MISO. Holland BPW's local distribution system includes approximately 24 miles of 138 kV local distribution lines and seven (7) "behind-the-meter" generating units (ranging from 11.5 to 83 MW, nameplate capacity).[8]

Holland BPW's system was built for and is used to supply the load of Holland BPW's local distribution customers.[9] Its system is connected with the METC transmission system at a single interconnection point – the Black River Substation.[10] The only flow on Holland BPW's local distribution system is its own load; no other load is served by Holland BPW's system and no other power flows through Holland BPW's system.[11] Holland BPW's facilities do not provide transmission service to any wholesale or retail open access customers; nor is there a commercially viable transmission path through Holland BPW's system.[12] Holland BPW's interconnection at Black River Substation is not a part of any unit's cranking path.[13] In short, Holland BPW's facilities are local distribution facilities that serve only Holland BPW native load and are connected to the BES at a single source.

B. Procedural History

On August 8, 2009, RFC advised Michigan Public Power Agency ("MPPA") that it had determined that Holland BPW's facilities were included in RFC's definition of Bulk Electric

[8] *Id.* at P 5.

[9] *Id.* at PP 5-6.

[10] *Id.* at P 5.

[11] *Id.*

[12] *Id.*

[13] Exh. HOL-2 at P 5. (Affidavit of William Bush).

System ("BES") facilities.[14] RFC stated that it intended to include Holland BPW as a TO and TOp on the NERC Compliance Registry if Holland BPW did not self register.[15] MPPA and Holland BPW staff contacted RFC to explain that the Holland BPW facilities are functionally radial, are used in local distribution and requested that RFC provide it with the technical basis for its determination. RFC referred Holland BPW to the August 2009 letter which merely recites the NERC definition of BES and RFC's conclusion that Holland BPW's facilities are BES. Holland BPW again requested the technical basis for RFC's conclusion because its facilities are functionally radial (and therefore meet the radial exclusion of NERC's BES definition) and are not part of the bulk-power system. RFC was not responsive to Holland BPW's claims or requests. Holland BPW requested that RFC provide the parameters and assumptions that RFC would consider when evaluating whether Holland BPW is material to the BES. RFC advised Holland BPW that it would not entertain any evaluation of materiality for purposes of exclusion from the registry and did not otherwise respond to Holland BPW's request.

On August 12, 2010, RFC issued a letter to Holland BPW stating that it intended to unilaterally register Holland BPW as a TO and TOp on the NERC Compliance Registry if Holland BPW did not self register.[16] Holland BPW did not self register. On August 27, 2010, Holland BPW received the "Notice of Listing in NERC Compliance Registry" from NERC stating that Holland BPW was registered as a TO and TOp, effective on August 24, 2010.[17]

[14] Exh. HOL-7 (RFC Letter to MPPA, August 8, 2009).

[15] *Id.*

[16] Exh. HOL-8 (RFC Letter to Holland BPW, August 12, 2010).

[17] Exh. HOL-9 (NERC Notice of Listing in NERC Compliance Registry, August 27, 2010).

On September 20, 2010, Holland BPW filed a formal challenge to NERC appealing its registration as a TO and TOp on the NERC Compliance Registry.[18] Holland BPW explained that it had not been informed of the basis for registration, and reiterated that, under the plain language of NERC's Registry Criteria, Holland BPW's facilities were excluded from the BES as radial facilities.[19] Holland BPW also explained that its facilities are used solely to serve its distribution load and are not integrated facilities.[20] Holland BPW argued in the alternative that, even if its system is deemed to constitute BES facilities, it should be excluded from the registry as a TO and TOp because its facilities are not material to the reliability of the BES.[21] Holland BPW proffered a study conducted by Black & Veatch Corporation, a nationally-recognized consulting engineering firm, supporting Holland BPW's claim that it is not material to the BES.[22] Holland BPW also explained that there is no risk of a gap in reliability coverage by excluding it from the compliance registry, and that Holland BPW's compliance with reliability standards will not improve reliability of the BES.[23]

On October 22, 2010, RFC disclosed to NERC the basis for its decision to register Holland BPW as TO and TOp.[24] This was the first time RFC had expanded on its belief that Holland BPW's facilities constituted BES facilities. RFC stated that Holland BPW's facilities

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[18] Exh. HOL-10 (Appeal of Holland BPW as a Registered TO/TOP in RFC Region, September 20, 2010).

[19] *Id*. at 2.

[20] *Id*.; *see also* Exh. HOL-1 at 5.

[21] Exh. HOL-10 at 3.

[22] *Id*. at pg. 7-8; *see also* Exhs. HOL-3 (Affidavit of Steven Balser (2010); HOL-4 (Affidavit of Steven Balser (2011).

[23] Exh. HOL-10 at 11-12.

[24] Exh. HOL-11 ("RFC Assessment," dated October 22, 2010).

are greater than 100kV and are therefore BES facilities.[25] RFC acknowledged that the NERC definition generally excludes radial facilities, and did not dispute that Holland BPW is connected via a single interconnection – Black River Substation.[26] However, according to RFC, the radial exclusion does not apply because Holland BPW owns two breakers at the Black River Substation.[27] RFC claimed that ownership of two breakers constitutes a "loop" which integrates Holland BPW's distribution system with the BES.[28] RFC also referenced two documents, a "Special Temporary Operating Practice" in place between METC and Consumers Energy and the "METC System Restoration Plan," claiming that these documents demonstrate that Holland BPW's facilities are BES. RFC did not include any sponsoring witnesses to substantiate its interpretation of those documents. RFC further claimed that Holland BPW's materiality study is "irrelevant" and refused to entertain any such demonstration.[29] Likewise, RFC did not proffer any witness to refute Holland BPW's study.

On November 3, 2010, Holland BPW submitted a response to the RFC Assessment advising NERC that the RFC Assessment contained numerous factual errors and mischaracterizations, and that RFC's technical evaluation was so fundamentally flawed and misrepresentative of Holland BPW's system that it could not credibly support a registration decision.[30] Holland BPW explained that the "Special Temporary Operating Practice" was

[25] RFC Assessment at 3.

[26] *Id.* at 4.

[27] *Id.*

[28] *Id.* at 7-9; *See also* Section IV.B, *infra*; Exh. HOL-5 at P 6.

[29] *Id.*

[30] Exh. HOL-12 (Holland BPW Response to RFC Assessment, November 4, 2010 (corrected).

irrelevant[31] The agreement was in place only during a two-day scheduled outage at the Black River Substation.[32] Holland BPW also provided documentation directly from METC that stated that Black River was not a critical facility, and that Holland BPW was not considered critical in the METC System Restoration Plan. Holland BPW also re-iterated that its facilities are used for local distribution, and that they are not material to the BES.[33]

On April 22, 2011, NERC requested supplemental information from Holland BPW.[34] On May 6, 2011, Holland BPW submitted its response to NERC's request.[35] On May 20, 2011, RFC responded to Holland BPW's May 6, 2011 responses.[36]

On August 12, 2011, NERC's Board of Trustees Compliance Committee issued its Decision denying Holland BPW's appeal of its registration as a TO and TOp.[37] Holland BPW is now seeking review to reverse the registration decision.

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[31] *Id.*

[32] *Id.*

[33] *Id.* at 7.

[34] Exh. HOL-13 (NERC Request for Supplemental Information from Holland BPW, April 22, 2011).

[35] Exh. HOL-14 (Holland BPW Response to NERC Request for Supplemental Information, May 6, 2011).

[36] Exh. HOL-15 (RFC Response to Holland BPW's Response to NERC Request for Supplemental Information, May 20, 2011).

[37] Exh. HOL-16 ("NERC Decision," dated August 12, 2011).

V. APPEAL

A. Holland BPW's Facilities Are Used in the Local Distribution of Electric Energy and May Not be Regulated under Section 215 of the FPA

1. Section 215 of the FPA excludes from regulation "facilities used in the local distribution of electric energy"

Section 215 of the FPA[38] is the source of authority for the Commission, NERC and RFC[39] to enforce reliability standards. The plain and express language of this statue allows the standards to be applied only to "users, owners and operators of the bulk-power system."[40] Section 215 of the FPA defines the "bulk-power system" as: "(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and (B) electric energy from generation facilities needed to maintain transmission system reliability…"[41] The definition further provides that the bulk-power system "*does not* include facilities used in the local distribution of electric energy."[42] Consequently, neither the Commission nor NERC nor RFC have authority to apply the standards to entities, such as Holland BPW, that operate "facilities used in the local distribution of electric energy."

Congress underscored this limit on the Commission's authority in the "Savings Provisions" of Section 215 of the FPA. Therein, Congress emphasized that NERC, as the

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[38] 16 U.S.C. § 824o(a)(1)(2006).

[39] FERC authorized NERC to promulgate and enforce reliability standards pursuant to FPA Section 215 in July 2006. *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g,* 117 FERC ¶ 61,126 (2006), *order on compliance,* 118 FERC ¶ 61,030, *order on reh'g,* 119 FERC ¶ 61,046 (2007). FERC approved delegation of these functions to RROs under Section 215 in April 2007. *North American Electric Reliability Corp.,* 119 FERC ¶ 61,060, *order on reh'g,* 120 FERC ¶ 61,260 (2007).

[40] 16 U.S.C. § 824o(b)(1) (2006).

[41] 16 U.S.C. § 824o(a)(1)(2006).

[42] 16 U.S.C. § 824o(a)(1)(2006) (emphasis added).

Electric Reliability Organization ("ERO"), has "authority to develop and enforce compliance with reliability standards for *only the bulk-power system*."[43] As the Commission itself has observed, "the statutory definition of Bulk-Power System does not establish voltage threshold limits on applicable transmission facilities or electric energy from generating facilities. It does, however, *explicitly exclude* facilities used in the local distribution of electricity."[44]

The Commission has recognized that the critical distinction between transmission and distribution facilities is one of function, not voltage:

> The transmission component of the Bulk-Power System is understood to provide for the movement of power in bulk to points of distribution for allocation to retail electricity customers. Essentially, transmission lines and other parts of the transmission system, including control facilities, serve to transmit electricity in bulk from generation sources to concentrated areas of retail customers, while the distribution system moves the electricity to where these retail customers consume it at a home or business.[45]

NERC unlawfully departs from the Commission's understanding by registering Holland BPW as a TO and TOp, simply because Holland BPW's facilities are interconnected with the BES at 138kV. NERC ignores the fact that Holland BPW's 138 kV facilities are used solely to distribute power to its own retail customers and are not used to not transmit bulk power across the interconnected transmission system.

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[43] 16 U.S.C. § 824o(i)(1)-(2)(2006).

[44] Notice of Proposed Rulemaking, Mandatory Reliability Standards for the Bulk-Power System, 71 FR 64,770 at P 62 (Nov. 3, 2006), FERC Stats. & Regs., Vol IV, Proposed Regulations, ¶ 32,608 (2006) (emphasis added).

[45] *Mandatory Reliability Standards for the Bulk Power System*, (Order No. 693), 72 FR 16,416 (April 4, 2007), FERC Stats & Regs ¶31,242 (2007)(at P 23 n.20), *reh'g denied*, 120 FERC ¶61,053 (2007) (Order No. 693-A); *See also Notice of Proposed Rulemaking, Mandatory Reliability Standards for the Bulk-Power System*, 71 FR 64,770 at P 60 (Nov. 3, 2006), FERC Stats. & Regs., Vol IV, Proposed Regulations, ¶ 32,608 (2006).

Rather than starting its analysis with the explicit statutory language that requires NERC to consider whether Holland BPW's facilities are used in the local distribution of electric energy, NERC begins with an arbitrarily-chosen voltage threshold of 100kV to support its view that Holland BPW's facilities are bulk electric system facilities.[46] NERC's shallow analysis begins and ends at page 11 of the NERC decision. NERC merely recites its own definition of the "bulk electric system", which includes "the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher," and generally excludes "radial transmission facilities serving only load with one transmission source."[47] Nowhere in NERC's definition or its registry criteria is there any acknowledgement of the statutory limitation on facilities used for local distribution. NERC summarily concludes that Holland BPW meets the NERC threshold determination of bulk electric system facilities simply because, according to NERC, "Holland, by its own admission, maintains and operates 24 miles of 138 kV transmission lines."[48]

It is contrary to the statutory definition for NERC to mandate that Holland BPW comply with reliability standards simply because Holland BPW's local distribution facilities are greater than 100kV. NERC must demonstrate that Holland BPW's facilities function such that they are necessary for the reliable operation of the interconnected transmission system and are not facilities used in the local distribution of electric energy. RFC and NERC have neither presented any credible evidence nor conducted any analysis to that effect.

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[46] NERC Decision at 11.

[47] *Id.* (NERC's definition of bulk electric system facilities further provides that "radial transmission facilities serving only load with one transmission source are generally not included in this definition.")

[48] *Id.*

As explained below, in determining whether Holland BPW's facilities should be excluded, NERC focuses solely on whether Holland BPW's facilities are "radial." Yet, "radial" is not a term that is found in Section 215 of the FPA – it is found only in NERC's definition of "bulk electric system". NERC concludes (erroneously) that Holland BPW's facilities are not "radial," and therefore are not excluded from NERC's definition of BES.[49]

2. NERC's decision unlawfully regulates facilities used in the local distribution of electric energy

NERC's decision in this case unlawfully exceeds the authorized scope of Section 215 of the FPA because it results in regulation of "facilities used in the local distribution of electric energy" and are, therefore, not part of the "bulk-power system".[50] The function of Holland BPW's facilities, not the voltage or number of breakers, is the key to the limitation imposed by Congress. If the facilities are "used in the local distribution of electric energy," they are not part of the "bulk-power system," regardless of the voltage at which those facilities operate.[51] NERC ignores this statutory limitation, and it ignores the facts that render Holland BPW's facilities outside of the scope of Section 215 of the FPA.

And, even assuming *arguendo* that Holland BPW does not meet NERC's "radial" exclusion, the fact remains that Holland BPW's facilities are used only in local distribution and thus clearly fall outside of the mandatory reliability regime. NERC entirely ignores this claim by Holland BPW, and the evidence submitted by Holland BPW that demonstrates that its facilities

[49] This error is addressed at Section IV.B, *infra*.

[50] 16 U.S.C. § 824o(a)(1) (emphasis added).

[51] See *Infra*, IV.B. RFC and NERC erroneously conclude that Holland BPW's connection is not radial in nature because it has two connections at a single substation. Neither RFC nor NERC ever engage in any discussion of the provision of Section 215 that limits the Commission's jurisdiction.

are used for distribution purposes, and as such should be excluded from NERC's reliability standards.

Holland BPW's facilities were not designed to provide support to the BES, but rather were designed to meet Holland BPW's needs in serving its own load.[52] RFC does not dispute this fact. Holland BPW advised NERC that it operated for many years as an independent stand alone utility (i.e., with no connections to the integrated network). Holland BPW advised NERC that its present system configuration, and its interconnection with the METC transmission system at Black River Substation, were designed and are operated to allow Holland BPW to access economical external resources to reliably serve Holland BPW's bundled retail customers.[53] Holland BPW advised NERC that there are no third party transmission or retail wheeling customers that use Holland BPW's facilities.[54] Holland BPW advised NERC that there is no viable wholesale commercial path through Holland BPW's facilities.[55] In short, Holland BPW demonstrated that its facilities are used solely as local distribution.

Holland BPW has demonstrated that METC, the entity to which Holland BPW is interconnected, does not consider any facilities at the Holland BPW/METC point of interconnection to be "critical" to the METC transmission system.[56] This evidence also contradicts RFC's vague, unsubstantiated interpretation that claims that Holland BPW's facilities include "key synchronizing points" to the METC system. A plain reading of the METC Restoration Plan clearly reveals that RFC grossly mischaracterized the identification of Holland

[52] Exh. HOL-1 at 6; Exh. HOL-12 at 7

[53] Exh. HOL-12 at 7.

[54] Exh. HOL-12 at P 4; Exh. HOL-14 at P 3.

[55] Exh. HOL-1 at P 5.

[56] Exh. HOL-14 at P 9; See also Exh. HOL-1 at P 11; Exh. HOL-2 at P 5.

BPW's synchronization points.[57] Holland also refuted RFC's unsubstantiated interpretation of the "Temporary Special Operating Practice", which in fact demonstrates nothing more than Holland BPW's load is just that - load on METC's system.[58] Yet, nowhere does NERC address these fundamental facts that demonstrate that Holland BPW's facilities are used solely for the "local distribution of electric energy."

3. Holland BPW's facilities are not necessary or used for the reliable operation of the bulk-power system

In Order No. 743, the Commission directed NERC to revise the definition of "bulk electric system" amid concerns that there lacked consistency among the regions on what constitutes "bulk electric system" facilities.[59] The Commission's stated objective was "to ensure that the definition encompasses all facilities necessary for operating an interconnected electric transmission network."[60] The Commission acknowledged, however, that its jurisdiction is limited to facilities that comprise the "Bulk Power System." The Commission further acknowledged that, although it had not defined the extent of the coverage of "Bulk Power System," Congress specifically exempted "facilities used in the local distribution of energy" from the definition.[61] The Commission therefore ordered NERC to adopt a process for excluding facilities that are not necessary to maintain a reliable transmission system.[62] Holland cannot,

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[57] See Section IV.B, *infra* (pp 19-21).

[58] Exh. HOL-1 at P 11.

[59] *Revision to Electric Reliability Organization Definition of Bulk Electric System*, Order No. 743, 75 Fed. Reg. 72,910 (Nov. 26, 2010), 133 FERC ¶ 61,150 (2010) ("Order No. 743"); o*rder on reh'g*, Order No. 743-A, 134 FERC ¶ 61,210 (2011).

[60] *Id.* at P 1.

[61] *Id.* at P 37.

[62] *Id.*

nor should it have to, wait for such a process to be developed when there is no credible evidence that demonstrates that Holland BPW's facilities are "necessary for operating an interconnected electric transmission network." Holland BPW is clearly a distribution system that is outside of the Commission's jurisdiction.

In considering what generation facilities were part of the Bulk-Power System, the Commission stated that, "if electric energy from a generating facility is needed to maintain a reliable transmission system, that [generating] facility is part of the Bulk-Power System with respect to the energy it generates that is needed to maintain reliability."[63] The Commission stated in Order No. 743 that this language is instructive in determining which transmission and distribution facilities comprise the "bulk power system."[64]

The Commission interprets Section 215(a)(1) of the FPA as focusing on whether facilities are necessary to reliably operate the interconnected transmission system, and not solely on the consequences of unreliable operation of those facilities.[65] To this end, the Commission observed that lower voltage facilities needed to reliably operate the grid tend to operate in parallel with other high voltage and extra high voltage facilities, interconnect significant amounts of generation sources and may operate as part of a defined flow gate.[66] The Commission further observed that such parallel facilities operated at 100-200 kV will experience similar loading as higher voltage facilities at any given time.[67] The Commission also observed that, in the case of

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[63] *Id.*

[64] Order No. 743 at P 37.

[65] *Id.* at P 38.

[66] *Id.*

[67] *Id.*

parallel facilities, the lower voltage facilities would be relied upon during contingency scenarios.[68]

Applying the above principles to the Holland BPW facilities, there can be no question that Holland BPW's 138 kV facilities are "used in the local distribution of electric energy," and are not necessary to maintain a reliable transmission system. First, there are no consequences to the bulk electric system of unreliable operation of Holland BPW's system. Holland BPW retained Black & Veatch Corporation to perform an independent analysis to investigate whether an event on the Holland BPW system could result in a significant or cascading event on the BES. In addition to providing general support and technical assistance to Holland BPW, Black & Veatch Corporation prepared and ran several system simulations to model the impact on the BES of events on the Holland BPW system.

The analysis is explained in the affidavits of Mr. Steven Balser.[69] Mr. Balser explains that Black & Veatch developed three test scenarios to investigate Holland BPW's impact on the BES, including (a) A bolted three-phase bus fault with a 20 cycle duration at Holland BPW's Quincy substation; (b) A bolted three-phase bus fault with a 20 cycle duration at Holland BPW's Waverly substation; and (c) The Waverly – Black River line open and all internal Holland BPW generation off line.[70] The third case simulated the impact of removing the total generation of Holland BPW under what would effectively be a multiple contingency situation and causing the Holland BPW load to be totally dependent on the BES.

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[68] *Id.*

[69] *See* Exhs. HOL-3; HOL-4.

[70] *Id.*

Black & Veatch's analyses showed that the bus fault events on the Holland BPW system did not result in any unacceptable voltages or flows on the BES, and that voltages, phase angles and flows on those BES points electrically close to the Black River Substation returned to pre-event levels within a reasonable time after the fault cleared.[71] Based on these results, Black and Veatch concluded that the Holland BPW system has no material impact on the BES.[72] Black and Veatch also concluded that the impact of events on the Holland BPW system are virtually identical regardless of whether the Holland BPW system is modeled as a "loop" with internal generation, or only as a load serving entity with a single connection between the Black River Substation and the Holland BPW system.[73]

NERC does not proffer any substantial challenges to the Black & Veatch study or any of the results. Instead, NERC accepts RFC's superficial and baseless complaints that it did not understand the justification for the three test scenarios, and that Holland BPW did not produce the model for the generators, governors, power system stabilizers or excitation systems.[74] Holland BPW finds these arguments incredible. For nearly two years, Holland BPW made repeated attempts to engage RFC staff in precisely these types of discussions so that Holland BPW could be responsive to the test scenarios that RFC would be interested in evaluating, and to understand what data and models RFC would find reasonable. RFC refused at every turn to engage or to respond to Holland BPW's inquiries and requests.

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[71] Exh. HOL-3

[72] *Id.*

[73] *Id.*

[74] NERC Decision at 10.

Holland BPW used the Multiregional Modeling Working Group ("MMWG") 2009 summer data base model of the Eastern Interconnection as adapted by RFC for the model development.[75] Holland BPW included a sworn affidavit by an expert in the field to support the demonstration.[76] NERC failed to provide any credible basis for rejecting the evidence Holland BPW proffered. Most notably, RFC did not produce any of its own studies, nor did RFC refute that the study shows that a reliability event on Holland BPW's system would not impact the bulk electric system.

Second, Holland BPW's facilities are not necessary to reliability operate the interconnected transmission system. There is no credible evidence that proves otherwise. None of the scenarios suggested by the Commission as indicators of BES function in Order 743 and identified above is present in this case. Specifically, Holland BPW's 138 kV facilities do not operate in parallel with other high voltage and extra high voltage facilities; Holland BPW's facilities do not interconnect significant amounts of generation sources to the integrated transmission system; and, Holland BPW's facilities do not operate as part of a defined flow gate.

The RFC Assessment claims that Holland BPW is material to the reliable operation of the BES based upon its interpretation of two documents. First, RFC claims that the "METC System Restoration Plan" specifically lists Holland BPW's Black River-James St. and Black River-Industrial substations as key synchronizing points on the METC system to connect with outside systems or entities."[77] However, RFC's reliance on the METC Restoration Plan to support its registration decision is grossly misplaced. [** **BEGIN REDACTED INFORMATION**

[75] Exh. HOL-3 at 7.

[76] Exh. HOL-10 at pg. 7.

[77] RFC Assessment at 7.

[redacted]

[78] RFC cited to the METC Restoration Plan and therefore presumably has a copy of it.

[79] METC Restoration Plan at Ch. 1, p. 1.

[redacted]

[redacted] END REDACTED INFORMATION. **]

NERC compounds RFC's lack of knowledge of Holland BPW by finding that "Holland does not dispute the assertion, that two of its internal generating units are listed as key synchronizing points on the METC system to connect with outside systems or entities."[82] As explained by Mr. Koster in the attached affidavit, the "key synchronization points" relied upon by RFC are where *Holland BPW* must synchronize with the METC system so that *Holland BPW* can access the electricity it imports into its local distribution, which it uses to serve its retail

[80] The actual sequence of operation in case of a system collapse [redacted]

[81] Exh. HOL-10 at pp. 26-27.

[82] NERC Decision at 13

load.[83] Contrary to RFC's assertion, METC does not use those points to synchronize with any other system nor are those points critical to METC's system restoration plan. The NERC Decision states that Holland BPW does not refute RFC's mischaracterization; in fact, Holland BPW has always maintained that it is not critical to METC's system restoration plan.[84] Holland included in its appeal to NERC correspondence between METC and Holland BPW that neither Holland BPW facilities, nor the Black River substation is critical to METC's system restoration.

The RFC Assessment also references a "Special Temporary Operating Practice" between METC and Consumers.[85] RFC entirely misrepresents the purpose and significance of this temporary operating procedure, as Mr. Koster explains in his affidavit.[86] A plain reading of that agreement belies any assertion that Holland BPW is critical to the BES. The operating agreement was between METC and Consumers Energy and in place for a scheduled outage of two days in Match of 2009. Holland BPW was not a party to the agreement.

The Special Temporary Operating Practice merely states that the flow into Holland BPW should be limited during the two-day duration of the scheduled outage. This limitation was not a reflection on Holland BPW's "heavy load" as RFC erroneously alleges. It merely recognizes Holland BPW's load as load. RFC infers significance where there is none. It in no way suggests or implies that Holland BPW is essential for BES operations. RFC failed to proffer any witness to attest to RFC's interpretation of a document with which it was clearly unfamiliar, or to the accuracy of RFC's statements concerning the document. As RFC later admitted, the practice

[83] Exh. HOL-1 at 11.b

[84] *Id.*

[85] RFC Assessment at 8.

[86] Exh. HOL-1 at P 15.

upon which it relied was no longer in effect. As such, this document is not credible evidence to support a conclusion that Holland BPW is material to the BES.[87]

Apart from these two documents, which actually support the conclusion that Holland BPW's facilities are *not* BES, RFC offers no other evidence. Holland BPW has demonstrated that its internal generating units are not included in METC's plans either as Black Start resources or as part of the system restoration plan.[88] Holland BPW has also demonstrated that its interconnection at the Black River Substation with METC is not a part of any unit's cranking path under METC's plan.[89] Holland demonstrated, and RFC has never disputed, that there are no other flows on Holland BPW's system, other than Holland BPW's distribution load. Simply put, no record evidence exists that supports any finding that Holland BPW's facilities are necessary for the reliable operation of BES facilities or that Holland BPW's facilities are anything but facilities used in the local distribution of electric energy.

B. Holland BPW's Facilities are Radial and Properly Excluded from Regulation under NERC's Own Definition of "Bulk Electric System"

The statutory exclusion of "facilities used in the distribution of electric energy" in Section 215 of the FPA discussed above bars NERC from registering Holland BPW as a TO or a TOp. But, in addition to falling outside of the reliability criteria expressly set forth in Section 215 of the FPA, Holland BPW's facilities also qualify for exclusion under NERC's own radial exclusion. NERC erroneously concludes that Holland BPW's facilities are "integrated" with the bulk electric system and therefore do not qualify for the NERC definition of radial exclusion.

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[87] *Id.*

[88] Exh. HOL-10 at 6; *see also* Exh. HOL-1 at P 11.b; Exh. HOL-2 at P 5.

[89] Exh. HOL-2 at P 5.

Assuming *arguendo* that Holland BPW falls within the scope of Section 215 of the FPA, NERC must still make a showing that Holland BPW falls within the NERC definition of "bulk electric system" in order to register Holland BPW as a TO or a TOp. NERC's definition of the "bulk electric system" generally does not include radial transmission facilities serving only load with one transmission source. NERC defines the bulk electric system as follows:

> As defined by the Regional Reliability Organization, the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in the definition.[90]

NERC's Statement of Compliance Registry Criteria states how NERC will identify organizations that may be candidates for registration and assign them to the compliance registry. Section I of NERC's Registry Criteria provides that an entity that uses, owns or operates elements of the bulk electric system pursuant to NERC's definition (above) are candidates for registration.[91]

Section II of the Registry Criteria uses NERC's current functional type definitions to provide an initial determination of the functional types for which entities in Section I should be considered for registration. Among other functional types, this list includes "transmission owner" and "transmission operator."[92] Section II defines transmission owner as, "the entity that owns and maintains transmission facilities,"[93] and transmission operator as, "the entity

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[90] *Statement of Compliance Registry Criteria (Revision 5.0)*, Section I, *available at* http://www.nerc.com/files/Statement_Compliance_Registry_Criteria-V5-0.pdf.

[91] *Id.*

[92] *Id.* at Section II.

[93] *Id.* at Section II.

responsible for the reliability of its local transmission system and operates or directs the operations of the transmission facilities."[94]

Section III of NERC's Registry Criteria lists the criteria regarding smaller entities. This section states that the criteria listed in this section is to be used to forego the registration of smaller entities that are otherwise considered candidates under Sections I and II.[95] Section III(d) provides that a transmission owner or transmission operator should be excluded from the registry if it does not meet any of the following criteria:

> (1) An entity that owns/operates an integrated transmission element associated with the bulk power system operated at 100 kV and above, or lower voltage as defined by the Regional Entity necessary to provide for the reliable operation of the interconnected transmission grid; or
>
> (2) An entity that owns/operates a transmission element below 100 kV associated with a facility that is included on a critical facilities list that is defined by the Regional Entity.

Holland BPW's facilities are connected with the METC transmission system at a single interconnection point - the Black River Substation.[96] The configuration of Holland BPW's system and its connection to the Black River Substation are such that there are no flows from the Black River Substation through the Holland BPW system and back into the Black River Substation. Holland BPW's system is used only to deliver energy to Holland BPW's customers. No other load is served by Holland BPW's system. The Holland BPW facilities do not provide transmission service to any wholesale or open access customers; nor is there a commercially

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[94] *Id.*

[95] *Id.* at Section III.

[96] Exh. HOL-1 at p 5.

viable transmission path through Holland BPW's system for transmission service to entities other than Holland BPW. The only load on Holland BPW's system is its own load.

These facts are consistent with the configuration of a radial system. By contrast, a non-radial facility would experience "through" flows (to and from one or more third parties); would include one or more commercially viable paths for the transmission of energy; and have more than one distinct point of interconnection (i.e., more than one substation). None of these factors are present in Holland BPW's case. And, none of these facts are disputed by RFC or NERC.

RFC contends that Holland BPW's facilities constitute a "transmission loop."[97] Incredibly, RFC cites to the definition of "loop flow" in its effort to characterize Holland BPW's facilities as a "transmission loop". As Mr. Cooper explains in his attached affidavit, Holland's facilities do not constitute a transmission loop, and RFC's reference to the term "loop flow" is fundamentally incorrect.[98]

NERC claims that Holland BPW's system is integrated and not radial by relying on the fact that Holland BPW owns not one breaker, but two breakers at a point of interconnection.[99] It is impossible to discern from the face of NERC's decision why the existence of two breakers at Black River renders Holland BPW's system "integrated" rather than "radial." NERC raises a new claim, that there is a possibility of "bi-directional flows" across the breakers.[100] NERC makes only a vague reference to Holland BPW's configuration in making this assertion, but cites to no experts or witnesses who can attest to this interpretation and conclusion. Nor is there any

[97] RFC Assessment at 4, fn 5.

[98] *See* Exh. HOL-5 at P 6.

[99] NERC Decision at 11.

[100] *Id.* (citing to RFC Assessment at 3).

explanation as to the significance of NERC's allegation of the possibility of bi-directional flows.[101]

NERC appears to conflate net flow *into* Holland BPW with through flow (into and then out of Holland BPW's system). Holland BPW explained that the relaying scheme precludes flow through Holland BPW as if it was an element of the BES network. If a fault occurs that causes an outage of one of the two buses at Black River, thereby causing the Black River bus tie breaker to open, Holland BPW's breaker that is connected to the dead bus will open, thereby maintaining a radial feed from the other bus at Black River. The low impedance path provided by the bus tie breaker at the Black River Substation, as well as the protection system mentioned above, means there is effectively no chance under normal or contingency conditions that power will flow from the BES through one of the Holland BPW breakers, through the Holland BPW system and back into the BES through the other Holland BPW breaker.

Because Holland BPW's only interconnection is at Black River Substation, there are no flows over Holland BPW's lines other than flows supporting Holland BPW's native loads. There are no flows from third party generators to third party loads. The operation of the Holland BPW breaker only merely isolates the faulted line but would not have any impact on the BES since the other line would still be in service.

C. NERC's Registration Decision is Arbitrary and Capricious, and is Not the Result of Reasoned Decision-making.

NERC's decision is not the product of reasoned decision-making and is therefore arbitrary and capricious. NERC's articulated rationale for concluding that Holland BPW should be registered as a TO and a TOp ignored important facts and arguments raised by Holland BPW.

[101] *Id.*

NERC not only relied upon RFC's unsupported allegations, but it also went outside of the record.[102] Under the arbitrary and capricious standard, an agency decision that does not reflect reasoned decision-making or fails to demonstrate a rational relationship between the facts and the decision reached by the agency must be set aside.[103] As a quasi-governmental agency, acting pursuant to power delegated by an agency of the federal government, NERC must be held to this same standard.

NERC does not rebut or make any substantive challenge to material facts that support Holland BPW's radial exclusion, and in fact ignores the following facts:

1. **Holland BPW has a single point of interconnection with the integrated transmission system.**

Holland BPW is interconnected with the BES at one point – the Black River Substation.

2. **Holland BPW has no control of its interconnection to the BES at Black River Substation.**

The Black River Substation is owned and operated by METC.[104] Both of the breakers that tie the Holland BPW lines to the Black River Substation are maintained and operated by METC.[105] METC is responsible for the maintenance and relay coordination at the Black River

[102] *See e.g.* NERC Decision at 1 fn. 3.

[103] *See Northern States Power Co. v. FERC,* 30 F.3d 177, 180 (D.C. Cir. 1994). (Citing to *Town of Norwood v. FERC,* 962 F.2d 20, 22 (D.C. Cir. 1992). *See also Central Maine Power Co. v. FERC,* 252 F.3d 34, 43 (1st Cir. 2001) (An agency is not excused from explaining its actions. Addressing contrary arguments is part of establishing public acceptability and, in any event, is part of the agency's own responsibility.")).

[104] Exh. HOL-10 at 4.

[105] *Id.*

Substation.[106] Holland BPW does not have the control capability to open either of the breakers tying its facilities to Black River Substation.[107]

3. Holland BPW's facilities are used for local distribution.

Holland BPW's facilities were constructed for local distribution only and to support Holland BPW's internal system and were not constructed to support the BES.[108] Holland BPW has been a municipal electric utility for over 100 years.[109] For a substantial portion of that time, Holland BPW had no ties to outside systems. This instilled a strong respect for, and culture of, reliability within Holland BPW's internal system. As a result of this culture of reliability, Holland BPW installed 24 miles of 138 kV lines around its own service territory.[110] This culture of self-reliance is reflected by the fact that Holland BPW has enough internal generation to support its internal load under all conditions except the highest peak load conditions. The 138 kV lines were installed to supply the needs of Holland BPW's bundled customers within, and only within, Holland BPW's limited service territory.[111] The installation of two connections at the same substation (Black River) was aimed at improving reliability of Holland BPW's internal distribution system. That is, if there was an outage on one of the Black River connections, power from external sources could still be delivered to retail loads within Holland BPW's service

[106] *Id.*

[107] *Id.* at 4-5

[108] *Id.* at 5.

[109] *Id.*

[110] Exh. HOL-10 at 5.

[111] *Id.*

territory. The lines continue to serve this purpose. Holland BPW's facilities serve only Holland BPW's local distribution load, just as a radial connection provides.[112]

4. Holland BPW appears as net load.

Holland BPW appears as a net load on the BES. First, the Holland BPW internal generating units are "behind the meter" units; they are used only to supply the load of Holland BPW's internal customers.[113] Second, Holland BPW has "life of plant" purchased power agreements with the Michigan Public Power Agency ("MPPA") for a portion of the output of two base load generating units that are outside of Holland BPW's system.[114] These agreements result in a normal bias of approximately 46 MW flow into Holland BPW.[115]

5. Holland BPW provides no Black Start or any other ancillary service to the BES.

Holland BPW's internal generating units are not included in METC's plans either as Black Start resources or as part of the general system restoration process.[116] Holland BPW's interconnections with the BES are not a part of any unit's cranking path under METC's system restoration plan.[117]

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[112] *Id.*

[113] *Id.*

[114] *Id.* at 6.

[115] *Id.*

[116] *See* METC System Restoration Plan; *See also* HOL-10 at 6.

[117] *Id.*

D. Excluding Holland BPW from the Compliance Registry Will Not Result in A Gap In Reliability Coverage

Registering Holland BPW as a TO or a TOp will not improve BES reliability, and instead will burden Holland BPW with compliance with standards that were developed for much larger systems. Holland BPW provided to NERC several examples of standards whose application make no sense to Holland BPW's local distribution system.[118] The discussion below underscores the burden imposed upon Holland BPW if it is directed to comply. NERC's only response to this claim has been that there is nothing that prevents Holland BPW from demonstrating to RFC and NERC that it should not be subject to certain of the TO and TOp requirements and standards, based upon technical or physical limitations.[119] This statement does not meaningfully address Holland BPW's claim.

Holland BPW requested that RFC identify which gaps would result should Holland BPW not be registered, and which standards would fill those gaps. RFC's response was that all TO and TOp standards would apply to Holland BPW.[120] RFC then mischaracterized Holland BPW's request for exclusion from the registry as seeking to escape compliance due to an alleged "inconvenience".[121] Holland BPW's position is pragmatic and practical. The cost of compliance is significant. The application of standards must first be lawfully imposed based upon the statute. But such application must also be proven to serve a purpose consistent with the statute. And, Holland BPW submits, that such application should also result in some measurable improvement in reliability.

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[118] *See, e.g.*, Exh. HOL-10 at 9-11.

[119] NERC Decision at 14.

[120] RFC Assessment at 9.

[121] RFC Assessment at 12.

Several examples exist where the application of standards does not further the goals of reliability, including the collection and use of Steady-state and Dynamic data for modeling and simulation of the interconnected transmission system (MOD-010 and MOD-012). METC/ITC has stated on several occasions that it does not factor Holland BPW's system in its planning or operations. Therefore, METC/ITC has no need for the data on Holland BPW's 138kV equipment characteristics and system that would be provided under MOD-010, or data on generation that would otherwise be provided under MOD-012.

Other examples include PER 002, R1–R4 and PER 003, R1, which require each TOp control center to be staffed with adequately trained and NERC certified operating personnel. Holland BPW has a training program for its operators that is tailored to the reliable operation of the Holland BPW system. Holland BPW does not require its operating personnel to obtain NERC certification because its operations are limited only to the control and monitoring of Holland BPW's system, which does not impact the ITC/METC system or any BES critical assets. Requiring Holland BPW's operating personnel to obtain the training necessary for certification would be a lengthy and expensive process with no benefit to BES reliability since ITC/METC does not communicate or interact with Holland BPW personnel. Further, it is ITC/METC personnel – not Holland BPW personnel – who are responsible for maintaining and operating the breakers that are the sole tie between the Holland BPW facilities and the BES.

Further examples include cyber-security requirements for Holland BPW's operations center. Holland BPW has no control equipment or monitoring capability for facilities or assets outside of its own system. Its operations and control equipment were designed for reliable control of Holland BPW's distribution system. Changes in facilities or construction of new facilities, along with possible changes or additions in communications channels and equipment,

will be an expensive and lengthy process for Holland BPW without any corresponding improvement to BES reliability.

Several other examples of mandatory standards whose application to Holland BPW have no practical purpose or benefit include:

- FAC-014 would require Holland BPW to establish and communicate operating limits. Communicate to whom, and to what end? Holland BPW is the only user of its facilities.

- MOD-001 would require Holland BPW to calculate and post its Available Transmission Capacity. Again, since Holland BPW is the only user of its facilities, no other party would or could use this information.

- TOP-007 would require Holland BPW to monitor and take action on Interconnection Reliability Operating Limit violations. METC operates and monitors the interconnection facilities with Holland BPW. Holland BPW cannot perform this function, and even if it could, it would duplicate entirely the work already being performed by METC.

- TOP-008 would require Holland BPW to respond to transmission limit violations. Since Holland BPW monitors and controls only its own facilities, and since Holland BPW is the only user of those facilities, application of this standard makes no sense.

- PRC-018 would require Holland BPW to install disturbance monitoring equipment and report any results. Holland BPW already monitors its internal system and takes action when necessary. METC monitors its BES facilities. Requiring Holland BPW to install and report on disturbance monitoring equipment that reports on BES conditions would have no positive impact to reliable operation of the BES or serve any rational purpose.

E. NERC Violated Holland BPW's Due Process Rights

NERC's registration decision is also unlawful because it violates Holland BPW's due process rights. Section 215 of the FPA provides that the Commission may certify NERC as the ERO only after the Commission determines that the ERO has met certain criteria. Among the criteria is that the ERO must establish rules that "provide for reasonable notice and opportunity

for public comment, due process, openness and balance of interests in developing reliability standards and otherwise exercising its duties."[122] NERC's process does not meet these criteria.

First, nowhere in NERC's definition of bulk-electric system, its "Statement of Registry Criteria," or its rules of procedure does NERC acknowledge the prohibition against regulating "facilities used in local distribution" as specified in Section 215 of the FPA. Holland BPW repeatedly pleaded to RFC and then to NERC for recognition that its facilities were used for local distribution purposes, and thus were not within the statutory jurisdiction of Section 215 of the FPA. Those pleas were ignored. RFC and NERC merely referred Holland BPW to the NERC definition of "bulk electric system" facilities. According to RFC and NERC, if Holland BPW's facilities are above NERC's threshold rating of 100 kV, then they are "bulk electric system" facilities and the owner and operator of those facilities is subject to the NERC standards. Neither RFC nor NERC elaborated on their reasoning.

Second, failing to engage RFC and NERC in a process that would require RFC to prove that Holland BPW's facilities were "necessary for operating an interconnected electric energy transmission network (or any portion thereof)", Holland BPW attempted to work within the NERC framework by seeking a determination that its facilities were not material to the bulk electric system. Holland BPW advised NERC that, even if one were to find that Holland BPW's 138kV lines are presumed to be bulk electric system facilities, which they are not, the facilities should be excluded due to the absence of a material impact of Holland BPW on the BES.[123] To this end, Holland BPW requested from RFC the criteria that RFC would use to determine materiality. RFC consistently refused to engage in any discussion about materiality despite

[122] 16 U.S.C. § 824o (c)(2)(D)(2006).
[123] Exh. HOL-10 at XX; Exh. HOL-12 at pp 8-12.

Holland BPW's repeated requests for guidance regarding what information RFC would find suitable to demonstrate that Holland BPW lacked materiality.

RFC dismissed Holland BPW's efforts to demonstrate lack of materiality as meritless. According to RFC, only RFC could decide whether it believed it was necessary or desirable to entertain a lack-of-materiality demonstration.[124] RFC's peculiar interpretation of the NERC Rules of Procedure foreclosed Holland BPW's right to challenge its placement on the registry on the basis of materiality.

Holland BPW's experience with RFC is contrary to NERC's Rules of Procedure, which clearly confer upon Holland BPW a right to challenge its registration on the basis that Holland BPW lacks materiality. Note 1 to NERC Statement of Compliance Registry Criteria provides that the registration criteria upon which the RRO uses as the basis for placing entities on the compliance registry are general criteria only, and that an RRO may exclude from the registry an organization that otherwise meets the registry criteria if the RRO "believes and can reasonably demonstrate to NERC that the bulk power system owner, operator, or user does not have a material impact on the reliability of the bulk power system."[125] RFC has improperly interpreted this Note to support its claim that it may elect to *refuse* to address a claim that an entity is not material to the bulk electric system.

RFC's exercise of discretion does not mean that RFC may elect to ignore a challenge based upon material impact, contrary to RFC's claim. Rather, the exercise of discretion that is

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[124] RFC Assessment at 2. Contrary to RFC's position, Holland BPW does not claim that it has authority to exercise discretion in this respect. Such an argument would not make sense. Rather, as the entity over which authority has been asserted, Holland is exercising its right to challenge that authority.

[125] NERC Statement of Compliance Registry Criteria, Note 1.

contemplated by Note 1 necessarily requires the RRO to review the documentation proffered by an entity seeking to be excluded. Any other interpretation would render meaningless an entity's right to challenge a decision of the RRO. If the RRO agrees with the demonstration, then it must advise NERC that there exists an entity that otherwise meets the general criteria, but has demonstrated that it does not have a material impact on the BES and should therefore be excluded. If it does not agree with the demonstration, then, as a quasi-governmental agency, it is obliged to articulate the basis for its disagreement, after which the entity may seek to appeal that decision. RFC failed to provide any meaningful opportunity for Holland BPW to avail itself of this materiality demonstration process, in violation of the mandate in Section 215 of the FPA that due process be afforded all entities being subjected to the reliability mandate.[126]

Third, only after Holland BPW appealed its registration to NERC did RFC provide its assessment of why it believed registration of Holland BPW was appropriate. As is discussed more fully at Sections IV.B herein, the RFC Assessment is a flawed document that displays a lack of understanding of the Holland BPW's system, as well as a fundamental misunderstanding and/or misapplication of industry-recognized engineering principles.[127] The burden of proof first lies with RFC to prove that it is operating within its authority. RFC did not proffer any affidavits in support of the Assessment. Furthermore, RFC relied upon documents with which it was clearly unfamiliar. Yet, the NERC rules do not permit Holland BPW an opportunity to cross examine any witness, and they do not afford an opportunity for Holland BPW to request discovery. In short, there is no process before RFC or NERC by which Holland BPW could effectively refute RFC's allegations.

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[126] 16 U.S.C. 8240(c)(2)(D) (2006).

[127] *See also* Exhs. HOL-1 through HOL-5.

Procedural due process requires that parties be afforded an "opportunity to be heard at a meaningful time and in a meaningful manner."[128] Unfortunately, NERC failed to recognize time-honored notions of due process and fair play by which a quasi-governmental agency is bound. NERC failed to scrutinize the RFC assessment as an objective observer, and instead appears to have accepted the RFC Assessment, notwithstanding RFC's numerous factual errors and omissions and questionable application of engineering principles.

The process to which Holland BPW was subjected does not meet the due process requirement mandated in Section 215 of the FPA. It is RFC that bears the burden of demonstrating that its decision is justified. RFC produced a document that lacks foundation and relies upon interpretation of third party documents with which RFC was clearly unfamiliar. There were no sponsoring witnesses to attest under oath that he or she is qualified to provide an opinion, and that the assertions and positions in that Assessment have been investigated and are true and accurate to the best of the sponsoring witnesses' belief.

NERC's failure to impartially review an appeal from one of its regional organizations also raises questions of fair play. While the tone of the NERC decision is tempered compared to the RFC Assessment, the NERC conclusion, in part because it rests on the RFC Assessment, lacks a credible foundation. It is impossible to discern from the analysis section of the NERC decision which facts NERC relied upon to render its decision. NERC was apparently not compelled to limit itself to the information that was presented to it, and instead reached beyond

[128] *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), *citing*, *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

what was presented to it by performing internet searches – information that Holland BPW did not have an opportunity to explain, rebut, or clarify, or with which it might concur.[129]

Finally, there are no assurances about what else the NERC Board of Trustees may have evaluated or entertained in its "outside of the record investigation" and there is no confidence that *ex parte* communications between NERC (as the ERO) and RFC (as the RRO) (or other third parties) did not occur. At this point, whether such communications did or did not occur, and whatever "extra" evidence may or may not have been considered, the process is so lacking in procedure, openness and integrity that it is fundamentally unfair to a party challenging the authority being asserted against it.

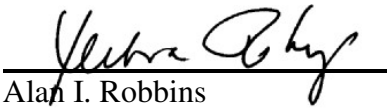
[129] *See e.g.* NERC Decision at 1 fn. 3.

VI. CONCLUSIONS

For the reasons set forth herein, Holland BPW requests that the Commission direct NERC to remove Holland BPW from the Compliance Registry as TO and TOp effective as of the same date it was registered.

Alternatively, should the Commission conclude that Holland BPW's facilities are not excluded from regulation of reliability standards, Holland BPW request that the Commission recognize that application of many of the standards to a system like Holland BPW's results in duplication and overlap, or otherwise does not further the objectives of Section 215 of the FPA; and, in such case, direct NERC to identify reliability gaps specific to Holland BPW's circumstances and propose applicability of specific standards and requirements.

Respectfully submitted,



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Exh. HOL-1

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Exh. HOL-2

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Exh. HOL-3

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Exh. HOL-6

METC System Restoration Plan

(Holland BPW does not have permission to copy or distribute this document)

Exh. HOL-7

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Exh. HOL-8

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Exh. HOL-9

NERC
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

August 27, 2010

Holland Board of Public Works
625 Hastings Avenue
Holland, MI 49423

Dear William Bush,

Notice of Listing in NERC Compliance Registry

The North American Electric Reliability Corporation (NERC) provides notice, as required by Rule 501.1.3.1 of NERC's Rules of Procedure, that NERC intends to list **Holland Board of Public Works**, NERC Compliance Registry ID number **NCR11060**, in the NERC Compliance Registry as set forth below. The NERC Compliance Registry identifies the owners, operators, and users of the bulk power system that are responsible for complying with approved reliability standards applicable to the functions for which each entity is registered.

The Federal Energy Regulatory Commission (Commission or FERC) certified NERC as the Electric Reliability Organization (ERO) under Section 215 of the Federal Power Act on July 20, 2006. Section 39.2 of the Commission's regulations, 18 C.F.R. § 39.2 (2007), requires each owner, operator, and user of the bulk power system to register with NERC and to comply with approved reliability standards. NERC has delegated the responsibility to the eight regional entities for identifying the organizations to be registered in the NERC Compliance Registry.

The *Statement of Compliance Registry Criteria (Revision 5.0)* identifies the criteria organizations and the regional entities use to determine which organizational entities must be included on NERC's Compliance Registry. It is posted on the NERC Web site under Organization Registration.[1]

Being listed in the NERC Compliance Registry indicates that an entity is subject to compliance with the NERC Reliability Standards that have been approved by the Commission. Holland Board of Public Works, NCR11060, is listed as a Registered Entity in the following region(s) for the indicated functional category(ies) with the listed effective registration date(s):

Region	Function	Effective Registration Date
RFC	TO	8/24/2010
RFC	TOP	8/24/2010

Organization registration by function establishes that Holland Board of Public Works is:

1. Subject to monitoring and enforcement of compliance with all applicable requirements

[1] http://www.nerc.com/page.php?cid=3|25

within reliability standards approved by the Commission, and

2. Responsible for any sanctions, penalties, and mitigation actions (including mitigation plans and remedial action directives) that are assessed due to noncompliance with the applicable requirements of the reliability standards.

To date, the Commission has approved 94 NERC Reliability Standards (Order No. 693, Docket No. RM06-16-000, issued March 16, 2007; Order No. 705, Docket No. RM07-3-000, issued December 27, 2007; Order No. 706, Docket No. RM06-22, issued January 18, 2008). There are an additional 8 Commission-approved reliability standards applicable within WECC. The initial 83 reliability standards approved in Order No. 693 became effective June 25, 2007.

NERC has posted on its Web site a matrix that lists all the requirements within the approved reliability standards and the associated functional entity types that are responsible for each requirement.[2]

Any entity included on the NERC Compliance Registry may challenge its listing and functional assignments with NERC. All formal challenges to the registration list must be filed in writing with:

Craig Lawrence, Manager of Organization Registration and Certification
North American Electric Reliability Corporation
116-390 Village Blvd.
Princeton, New Jersey 08540

All formal challenges must be received within 21 days of receipt of this letter. In its challenge, the entity must state the reasons it believes it should not be considered as an owner, operator, or user of the bulk power system based on the criteria listed in the Statement of Compliance Registry Criteria (Revision 5.0).

Prior to filing a formal challenge, NERC encourages you to contact the applicable regional entity to further discuss any matters regarding the inclusion of your organization in the NERC Compliance Registry.[3] If the regional entity discovers an error in registration, the regional entity may provide NERC with corrections to the NERC Compliance Registry, and NERC will issue a corrected notice.

The Compliance Committee of the NERC Board of Trustees will provide a written decision regarding any challenges, along with the basis for its decision. The decision of the committee will be final unless the entity appeals the decision to the applicable governmental authority (for U.S. entities, FERC, in accordance with 18 C.F.R. Part 385) within 21 calendar days of the issuance of the committee's decision on the challenge.

Rule 501.1.3.7 of NERC's Rules of Procedure requires the registered entity to notify NERC and its corresponding regional entity of any changes in ownership, corporate structure, or similar matters that affect the entity's responsibilities with respect to the reliability standards. Failure to

[2] http://www.nerc.com/commondocs.php?cd=2
[3] http://www.nerc.com/page.php?cid=3|23

notify NERC will not relieve the entity from any responsibility to comply with the reliability standards or shield it from any penalties or sanctions associated with failing to comply with such standards.

NERC's Rules of Procedure are available on the NERC Web site.[4]

Entities responsible for funding NERC and the regional entities have been identified in the budget documents filed with FERC. An entity's inclusion on or omission from the Compliance Registry has no bearing on an entity's independent responsibility for funding NERC and the regional entities.

If you have further questions, please contact Craig Lawrence, Manager of Organization Registration and Certification at 609-452-8060 or at craig.lawrence@nerc.net

Respectfully,

Craig Lawrence
Manager of Organization Registration and Certification

[4] http://www.nerc.com/page.php?cid=1%7C8%7C169

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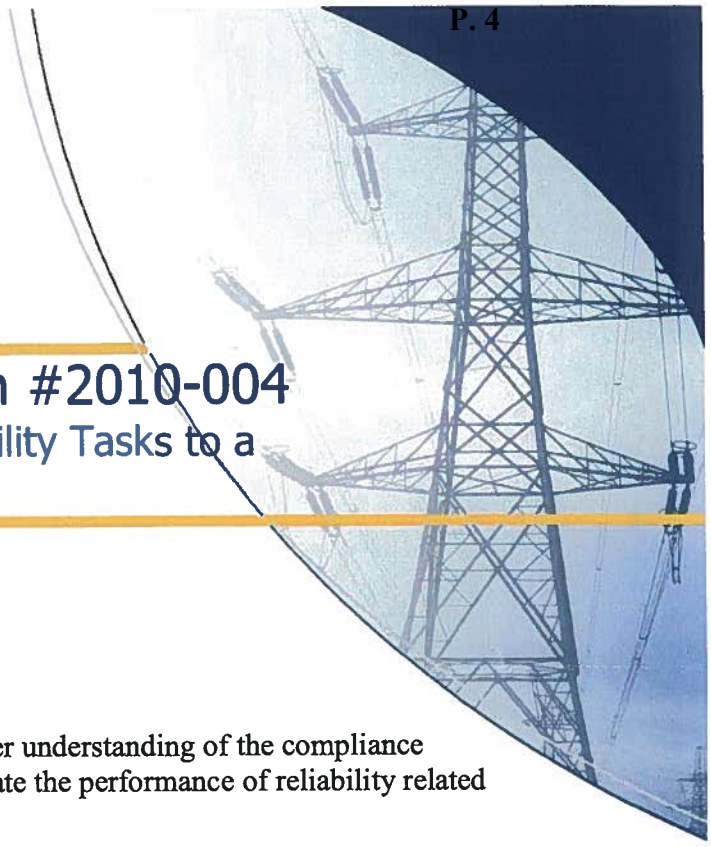

NERC Compliance Public Bulletin #2010-004

Guidance for Entities that Delegate Reliability Tasks to a Third Party Entity

Version 1.0
April 20, 2010 | Public Process Announcement

I. Introduction

This guidance document is provided to facilitate a better understanding of the compliance responsibility and accountability for entities that delegate the performance of reliability related tasks to a third party.

The NERC *Rules of Procedure*, section 215 of the Federal Power Act (FPA),[1] and Federal Energy Regulatory Commission (FERC) precedent[2] are clear that an entity that is registered for a function identified in the NERC Compliance Registry is responsible for compliance with all NERC Reliability Standard requirements applicable to that function and is accountable for and subject to applicable sanctions and penalties associated with violations of such NERC Reliability Standard requirements.

Even so, compliance responsibility[3] for applicable NERC Reliability Standard requirements and accountability for violations thereof may be achieved through several means, including the following:[4]

1. **By Individual**: an entity is registered on the NERC Compliance Registry and such registered entity assumes full compliance responsibility and accountability; or

2. **By Written Contract**:[5] parties enter into a written agreement whereby:
    a. a registered entity delegates the performance of some or all functional activities to a third party that is not a registered entity, and the registered entity retains full compliance responsibility and violation accountability; or

[1] 16 U.S.C. § 824o.
[2] *See* NERC *Rules of Procedure* at section 500. (The NERC *Statement of Compliance Registry Criteria* is used to determine the reliability standards applicable to a registered entity.). *See also* Order No. 693 at P 94.
[3] *See Mandatory Reliability Standards for the Bulk-Power System*, 120 FERC ¶ 61,065 at P 20 (2007) ("Compliance responsibility means that the organization is responsible for ensuring compliance with a Reliability Standard and that the organization is liable for failure to comply.").
[4] NERC filed proposed amendments to its Rules of Procedure that, if approved, will include a new Section 508, "Provisions Relating to Coordinated Functional Registration (CFR) Entities."
[5] NERC *Statement of Compliance Registry Criteria (Rev. 5.0)*, Section III.d.2.

b. a registered entity delegates the performance of some or all of the functional activities to a third party, and the third party accepts full compliance responsibility for the specific functions it performs and violation accountability. In this case, there may be individual, concurrent or joint registration of the entities, depending on the nature of the contractual relationship and, in any event, only the registered entity would be held responsible or accountable by a Regional Entity or NERC; or

3. **By Joint Registration Organization (JRO)**:[6] each party is registered and is required to clearly identify and allocate compliance responsibility and violation accountability for their respective functions under applicable NERC Reliability Standard requirements.

II. Registration Guidance

Both the NERC *Statement of Compliance Registry Criteria (Rev. 5.0)* and FERC Order No. 693, provide guidance for registration of an entity in the NERC Compliance Registry for functional tasks that are delegated to and performed by another entity:

1. For example, the NERC *Statement of Compliance Registry Criteria (Rev. 5.0)*, Section III.d.2, provides an exemption for a Transmission Owner (TO) or Transmission Operator (TOP) to forego registration as a TO or TOP, if responsibilities for compliance with NERC Reliability Standards or associated requirements are transferred by written agreement to a third party entity:

   [Exclusion: A transmission owner/operator will not be registered based on these criteria if responsibilities for compliance with approved NERC reliability standards or associated requirements including reporting have been transferred by written agreement to another entity that has registered for the appropriate function for the transferred responsibilities, such as a load-serving entity, G&T cooperative or joint action agency as described in Sections 501 and 507 of the NERC Rules of Procedure.]

2. FERC Order No. 693, paragraph 143-145 provides additional guidance on registration issues generally and specifically:

   143. In response to MISO, we did not intend to be prescriptive in assigning tasks to specific entities. The intent was to allow flexibility in identifying the actual user, owner or operator of the Bulk-Power System that would be responsible for complying with the requirements in the NERC Reliability Standards. *One approach could be that the RTO, ISO*

[6] *See* NERC *Rules of Procedure* at section 507.2 ("Where a JRO and any of its members or related entities agree, in writing, upon a division of compliance responsibility among them for one or more reliability standard(s) applicable to a particular function, and/or for one or more requirements within particular reliability standard(s), both the JRO and such member(s) or related entity(ies) shall register as an organization responsible for that function. The JRO and its member(s) or related entity(ies) must have a written agreement that clearly specifies their respective responsibilities, which shall be submitted as part of the joint registration.").

or other pooled resource registers as the transmission operator pursuant to the NERC compliance registry process and, while retaining ultimate responsibility, assigns specific tasks to be performed by what are sometimes known as local control centers or other relevant organizations. Alternatively, the local control center operators could register together with the RTO, ISO or pooled resources as transmission operators clearly delineating their specific responsibilities with regard to the Requirements of particular Reliability Standards. Such joint registration must assure that there is no overlap between the decision-making and implementation functions, i.e., that there are not two sets of hands on the wheel. Again, our intent is to ensure that there is neither redundancy nor gap in responsibility for compliance with the Requirements of a Reliability Standard, while allowing entities flexibility to determine how best to accomplish this goal.

144. Consistent with our above explanation, we agree with NPCC that there is a difference between being assigned to perform a task and being responsible for completing the task. *The organization that registers with NERC to perform a function will be the responsible entity and, while it may delegate the performance of that task to another, it may not delegate its responsibility for ensuring the task is completed.*

145. *Accordingly, the Commission directs that the ERO, in registering RTOs, ISOs and pooled resource organizations (or, indeed in registering any entity), assure that there is clarity in the assigning responsibility and that there are no gaps or unnecessary redundancies with regard to the entity or entities responsible for compliance with the Requirements of each relevant Reliability Standard.* Accordingly, although the Commission is not requiring NERC to amend the Functional Model, we believe our concerns can be addressed by having the ERO, through its compliance registry process, ensure that each user, owner and operator of the Bulk-Power System is registered for each requirement in the NERC Reliability Standards that relate to transmission owners to assure there are no gaps in coverage of the type discussed here.

III. Recommendation

In all cases, NERC and the Regional Entities will hold the registered entity accountable for compliance responsibilities and violations thereof. While a registered entity may delegate the performance of a task to another entity, it may not delegate its responsibility for ensuring the task is completed. For these reasons, NERC and the Regional Entities seek to reiterate that:

1. A registered entity has compliance responsibility for NERC Reliability Standard requirements applicable to the function(s) for which it is registered and is accountable for violations thereof.

a. An entity that might otherwise qualify to be a registered entity could arrange for or contract with a third party to assume compliance obligations and/or accountability for violations on its behalf and such third party be registered with NERC. In such a case, the third party registered entity would be responsible and accountable for compliance and violations to NERC and Regional Entities. To reiterate, in all events, the registered entity will be responsible for compliance with NERC Reliability Standards and accountable for violations thereof.

2. If a registered entity delegates tasks to a non-registered third party entity, the registered entity remains solely responsible for compliance and is accountable for violations, even with respect to tasks performed by the non-registered third party on its behalf.

    a. If an entity is not registered with NERC, this non-registered entity would not have "responsibility" as a registered entity (*i.e.*, could not be issued a penalty by the Regional Entity or NERC), but the non-registered entity could have contractual responsibility to the registered entity.

    b. That is, a registered entity may arrange for or contract with a third party to perform compliance responsibilities and to be liable for violations thereof but such third entity would not be registered with NERC. Therefore, the non-registered entity might be obligated under its contract to reimburse the registered entity for any NERC penalties assessed against the registered entity but would not be held directly liable by NERC or Regional Entities for compliance or penalties. To be clear, in all events, the registered entity will be responsible for compliance with NERC Reliability Standards and accountable for violations thereof.

3. As a result, the registered entity must put mechanisms in place that allow it to:

    a. Ensure that non-registered entities performing reliability tasks on its behalf comply with the applicable NERC Reliability Standard requirements;

    b. Ensure that non-registered entities provide evidence of such compliance, at a minimum, upon request to the registered entity or Compliance Enforcement Authority. This may arise with respect to, but is not limited to, audits, compliance investigations, or other compliance monitoring activities and could include on-site visits to the non-registered entity locations; and

    c. Provide self-certifications, self-reports, or other information to the Compliance Enforcement Authority, as required by the CMEP, regarding tasks performed by non-registered entities.

4. The registered entity should ensure that NERC and Regional Entities are aware of any registrations that involve a third party entity performing reliability tasks on its behalf.

A copy of this guidance should be provided as part of the initial Notice of Registration materials sent to a registered entity, as well as any entities that are identified as performing reliability tasks and any known third party entities that perform reliability tasks on the registered entity's behalf.

Craig P. Lawrence
Manager of Organization Registration,
Certification, and Compliance Monitoring
609.452.8060
craig.lawrence@nerc.net

Process disclaimer: NERC reserves the right to issue new process bulletins or modify existing process bulletins when necessary and at its discretion.

REVISION HISTORY

Version	Date	Reviewers	Revision Description
1	April 20, 2010	NERC and Regional Entity Staff	Version 1.0

Exh. HOL-10

Jennings Strouss

Jennings, Strouss & Salmon, PLC
Attorneys at Law

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Admitted only in Washington, D.C.

CONFIDENTIAL DOCUMENT – DO NOT RELEASE
September 20, 2010

Via Electronic and Overnight Mail

Mr. Craig Lawrence
Manager of Organization Registration and Certification
North American Electric Reliability Corporation
116-390 Village Boulevard
Princeton, NJ 08540-5721
Email: craig.lawrence@nerc.net

Re: **Appeal of Holland, Michigan BPW as a Registered TO/TOP in the RFC Region**
(NERC Compliance Registry ID NCR11060)

Dear Mr. Lawrence:

On August 30, 2010, the Holland Board of Public Works ("Holland BPW" or "Holland") received a "Notice of Listing in NERC Compliance Registry" ("Registry Notice") from the North American Electric Reliability Corporation ("NERC"). The Registry Notice states that NERC has listed Holland BPW as a Registered Entity in the Reliability*First* Corporation ("RFC") reliability region as a Transmission Owner ("TO") and Transmission Operator ("TOP"), effective August 24, 2010. The Registry Notice states that Holland BPW may challenge its listing on the registry, and that such a challenge must be submitted within 21 days of receipt of the Registry Notice. Holland BPW hereby submits this timely challenge to and protest of NERC's registration of Holland as a TO and TOP on the NERC Compliance Registry.

I. BACKGROUND

A. Description Of Holland Board Of Public Works.

Holland BPW operates a small, municipally-owned utility that serves approximately 27,000 bundled retail and industrial customers in Holland, Michigan. Holland's distribution system includes approximately 24 miles of 138 kV lines and seven (7) "behind-the-meter" generating units (ranging from 11.5 to 83 MW (nameplate capacity). Holland BPW is located in the reliability footprint of Reliability*First* Corporation ("RFC"), and in the Michigan Electric Transmission Company ("METC")[1] transmission pricing zone of the Midwest ISO. Holland's

[1] METC a subsidiary of the International Transmission Company ("ITC").

****** THIS DOCUMENT WAS REDACTED ******

Exh. HOL-11

Vimarie Luna
Paralegal, Compliance Enforcement
Reliability*First* Corporation
320 Springside Drive, Suite 300
Akron, Ohio 44333
Telephone: 330.247-3447
Vimarie.luna@rfirst.org

Contains Critical Energy Infrastructure Information – Do Not Release

October 22, 2010

VIA OVERNIGHT MAIL

Alan I. Robbins
Debra D. Robby
Jennings, Strouss & Salmon, P.L.C.
1350 I Street, NW, Suite 810
Washington, DC 20005

RE: Reliability*First* Corporation's Assessment and Brief in Opposition to Holland Board of Public's Works Appeal of TO and TOP Registration

Dear Mr. Hughes, Mr. Moon and Mrs. Michael:

Please find enclosed the following materials pertaining to the above referenced matter:

- Reliability*First* Corporation's Assessment and Brief in Opposition to Holland Board of Public's Works Appeal of TO and TOP Registration

Please do not hesitate to contact me at the number above with any questions.

Very Truly Yours,

Vimarie Luna
Paralegal, Compliance Enforcement
Reliability*First* Corporation

Enclosures

****** THIS DOCUMENT WAS REDACTED ******

Exh. HOL-12

****** THIS DOCUMENT WAS REDACTED ******

Exh. HOL-13

NERC
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

April 22, 2011

VIA ELECTRONIC MAIL

Debra Roby
Jennings, Strouss & Salmon, PLC
1350 I Street, NW – Suite 810
Washington, D.C. 20005-3305
Tel. (202) 464-0539
Email: droby@jsslaw.com

Re: **Request for Supplemental Information from Holland, Michigan BPW and Due Dates for Holland and Reliability*First* Responses Thereto**

Dear Ms. Roby:

The North American Electric Reliability Corporation ("NERC") respectfully requests the following supplemental information from the Holland Board of Public Works ("Holland BPW") to assist NERC in making a registration determination with respect to Holland's pending registration appeal. All references are to the November 4, 2010 *Corrected Response of Holland, Michigan BPW to RFC's Assessment and Brief Opposing Appeal of TO/TOP Registration.*

Specifically, NERC requests the following information from Holland by May 6, 2011:

1. Holland BPW states that it receives 46 MW flow into its system from a third party (p. 7). Please state at what time interval you receive it: on a daily, monthly, annual basis or other and explain.

2. You state that Holland BPW's two connections to the Black River substation are electrically at the same point. (pp. 2-3). Please explain, given Holland BPW's connections are to two different bus sections in the Black River Substation.

3. Please provide a map or drawing that:
   a. shows the physical configuration of the 24 miles of 138 kV line;
   b. notes the connections to substations;
   c. explains the source and sync for the 46 MW flow from the Michigan Public Power Agency;
   d. identifies any third party entity interconnections with the system;
   e. states the interconnected entity's name, location, and nature of facilities.

4. With respect to the Black and Veatch Corporation's analysis, please explain the statement that "the bus fault events on the Holland BPW system did not result in any unacceptable voltages or flows on the BES, and that BES voltages and flows returned to pre-event levels within a reasonable time after the fault cleared" (p. 11).

5. Please explain what you mean by "within a reasonable time" in the preceding quotation on p. 11 of the referenced document.

6. How did you define "unacceptable voltages or flows" (p. 11)?

7. Is the Joint Temporary System Operating Practice Document still in effect? If not, please state the effective date and termination date.

8. Does it remain the case that any load on the Black River substation including Holland BPW's load "would aggravate the potential low voltage situation on the Consumers Energy 46kV system under the double contingency" (p. 13)?

9. Please provide any correspondence by METC/ITC to support the statement that "it does not factor Holland BPW's system in its planning or operations. Therefore, METC/ITC has no need for the data on Holland BPW's 138kV equipment characteristics and system that would be provided under MOD-010, or data on generation that would otherwise be provided under MOD-012" (p. 15).

10. With reference to p. 17, it is unclear whether Holland BPW is stating that it is currently complying with all but a few Reliability Standards. Please state whether and to what extent Holland BPW is compliant with TO/TOP Reliability Standards.

11. Please identify the approximate amount of the "cost of compliance" associated with TO/TOP Reliability Standards that Holland BPW asserts is an undue hardship. (p. 17).

12. Please indentify any technical or physical limitations of Holland BPW's facilities that prevent compliance with TO/TOP Reliability Standards.

To ensure a complete record, Reliability*First* may provide a response to Holland's supplemental on May 20, 2011. Holland may provide a response to any submittal by Reliability*First* on May 27, 2011.

If you have any questions, please contact the undersigned.

Respectfully submitted,

/s/ Rebecca J. Michael
Rebecca J. Michael
Attorney for North American Electric Reliability Corporation

CC: Jason Blake, Reliability*First*
Megan Gambrel, Reliability*First*

Exh. HOL-14

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Attorneys at Law

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May 6, 2011

Via Electronic Mail

Ms. Rebecca J. Michael, Attorney
North American Electric Reliability Corporation
1120 G Street, NW, Suite 990
Washington, DC 20005
Email: Rebecca.michael@nerc.net

Re: **Responses to Requests for Supplemental Information Concerning Appeal of Holland, Michigan BPW as a TO/TOp in the RFC Region**
(NERC Compliance Registry ID NCR11060)

Dear Ms. Michael,

Enclosed please find responses of Holland BPW to the requests of North American Electric Reliability Corporation for additional information, dated April 22, 2011. This is being provided via electronic mail. If you have any questions, please feel free to contact me.

Very truly yours,

JENNINGS, STROUSS & SALMON, P.L.C.

By 
Alan I. Robbins
Debra D. Roby

Counsel to Holland BPW

cc: Loren Howard, Holland BPW
Megan Gambrel, RFC

****** THIS DOCUMENT WAS REDACTED ******

Exh. HOL-16

Michael Moon
Director, Compliance Operations

NERC
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

August 12, 2011

Loren H. Howard
General Manager
Holland Board of Public Works
625 Hastings
Holland, MI 49423

Holland Board of Public Works, RA080010

Dear Loren H. Howard:

Enclosed is the decision of the NERC Board of Trustees Compliance Committee on the appeal of Holland Board of Public Works regarding its inclusion on the NERC Compliance Registry within Reliability*First* Corporation's footprint for the functions of Transmission Owner and Transmission Operator.

Holland Board of Public Works has the right to file an appeal of this ruling with the Federal Energy Regulatory Commission within 21 days of the issuance of this decision, as specified in Rule 501.1.3.4 of NERC's *Rules of Procedure*.

Sincerely,

Michael Moon
Director, Compliance Operations

Enclosure

Cc: Timothy Gallagher – President and CEO, Reliability*First*
Raymond J. Palmieri – Senior Vice President, Reliability*First*
Megan Gambrel – Associate Attorney, Reliability*First*
Jim Hughes – Manager of Organization Registration and Certification, NERC
Rebecca Michael – Associate General Counsel, NERC
Alan I. Robbins – Counsel for Holland Board of Public Works
Debra D. Roby – Counsel for Holland Board of Public Works

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Board of Trustees Compliance Committee
Decision on Appeals of Compliance Registry Determinations
(August 12, 2011)

In this decision, the NERC Board of Trustees Compliance Committee ("BOTCC") affirms the decision of the Reliability*First* Corporation ("RFC") to include Holland Board of Public Works ("Holland") on the NERC Compliance Registry as a Transmission Owner ("TO") and Transmission Operator ("TOP").

Statement of Appeal

On September 20, 2010, Holland filed an appeal (the "Appeal") of its inclusion on the NERC Compliance Registry within the RFC Region for the functions of TO and TOP.

Holland appeals its registration as a TO and TOP arguing that: (a) its facilities are operated as radial facilities and, therefore, fall under the exclusion of RFC's definition of bulk electric system ("BES") facilities;[1] (b) its facilities are not material to the BES; (c) registration of its facilities will not improve BES reliability; (d) excluding its facilities from the registry will not result in a gap in BES reliability; and (e) compliance with TO and TOP standards presents a disproportionate and undue hardship on Holland.[2]

Holland serves approximately 27,000 retail and commercial customers in Holland, Michigan, as well as portions of Holland, Park, Laketown, and Fillmore townships.[3] Holland owns and operates 24 miles of 138 kV transmission lines, seven generating units (ranging from 11.5 to 83 MW) and eight high voltage substations.[4] Holland has a total of 226 MW of internal generation.[5] Holland also owns shares in the J.H. Campbell Complex and the Belle River Plant which are operated by Consumers Energy and Detroit Edison, respectively.[6]

Holland is interconnected to the BPS through the Black River Substation, owned and operated by the Michigan Electric Transmission Company, LLC ("METC").[7] Holland is interconnected at two separate bus sections of the substation. Holland's points of

1 As indicated in NERC's Statement of Compliance Registry Criteria ("Registry Criteria"), "Entities that use, own or operate elements of the bulk electric system as established by NERC's approved definition of bulk electric system below are (i) owners, operators, and users of the bulk power system [("BPS")] and (ii) candidates for registration (…)." Both "BES" and "BPS" are used in this decision.
2 Appeal at 2-3.
3 Appeal at 1; *see also* Holland website, Fast Facts, http://www.hollandbpw.com/Electric/Pages/Home.aspx ("Holland Fast Facts").
4 Appeal at 1, RFC Assessment at 1, Holland Fast Facts.
5 *Id*. Holland owns three electric generation facilities, including the James De Young Power Plant, the 48th Street Generation Station, and the 6th Street Generation Station. Holland website Base Load Generation, http://www.hollandbpw.com/electric/Pages/BaseLoadGeneration.aspx ("Holland Base Load Generation").
6 Holland Base Load Generation.
7 Appeal at 4.

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connection are the Holland Black River-Waverly 138 kV line and the Holland Black River – Quincy 138 kV line. Holland states that the two buses are connected with a breaker which is closed in normal operations and under most contingencies. Holland also argues that the relaying scheme precludes flow through Holland. Holland also claims that METC controls the breakers that tie the Holland lines to the Black River Substation and is responsible for the maintenance and relay coordination at the Black River Substation.[8]

Holland claims that its internal generation is "behind the meter" and generally not subject to scheduling or dispatch by the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO"). Holland claims that its generating units are not registered for the Midwest ISO market. Holland has power purchase agreements with Michigan Public Power Agency for a portion of the output of two base load generating units that are outside of Holland's system which result in a flow of approximately 46 MW into Holland.[9]

Holland also submitted an affidavit referencing an analysis by an independent contractor of whether an event on the Holland system could result in a significant or cascading event on the BES. Holland's analysis concludes that Holland has no material impact on the BES.[10] Holland also discusses how METC considers Holland's facilities for purposes of emergency restoration, planning, communication and reserves. Holland also states that METC does not consider the Black River Substation to which Holland is interconnected to be a critical asset for purposes of the NERC critical infrastructure protection ("CIP") standards.[11] Moreover, Holland asserts that METC does not treat Holland's facilities as integrated elements of its own transmission system.[12]

Holland argues that it follows internal procedures that are consistent with TO and TOP standards, and that these internal procedures are sufficient for ensuring reliable and safe operation on its system. Moreover, Holland notes its historical outage history and record of infrequent disturbances to highlight the effectiveness of its own reliability measures.[13]

Holland asserts that, for certain Reliability Standards, due to the configuration and nature of its connection to the BPS, it "either cannot comply in a meaningful manner or would be duplicating actions and arrangements that are already in place to protect the BES."[14]

Holland also argues that compliance with the TO and TOP standards will bring a disproportionate an undue hardship on Holland and its customers.[15]

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[8] Appeal at 4.
[9] Appeal at 5-6.
[10] Appeal at 6-9.
[11] There is no reference as to how other utilities interconnected at the Black River Substation consider the criticality of the Black River Substation.
[12] Appeal at 8-9.
[13] Appeal at 11-12.
[14] Appeal at 11.
[15] Appeal at 12-13.

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Rule

The Registry Criteria states that "electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher" will be considered part of the bulk power system.

Rule 501.1.4 further provides that, "[f]or all geographical or electrical areas of the bulk power system, the registration process shall ensure that (1) no areas are lacking any entities to perform the duties and tasks identified in and required by the reliability standards to the fullest extent practical, and (2) there is no unnecessary duplication of such coverage or of required oversight of such coverage."

In addition, NERC maintains a Compliance Registry of the BPS owners, operators, and users that are subject to approved Reliability Standards.

The Registry Criteria provides that

> Entities that use, own or operate elements of the bulk electric system as established by NERC's approved definition of bulk electric system below are (i) owners, operators, and users of the bulk power system and (ii) candidates for registration (…).[16]

The BES is defined as:

> As defined by the Regional Reliability Organization, the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition.[17]

Section II of the Registry Criteria categorizes registration candidates under various functional entity types including TO and TOP. Section II defines TO as, "[t]he entity that owns and maintains transmission facilities," and TOP, "[t]he entity responsible for the reliability of its local transmission system and operates or directs the operations of the transmission facilities."

[16] Registry Criteria, section I.
[17] *Id*. In Order No. 743, the Commission directed NERC to develop revisions to the BES definition. *See Revision to Electric Reliability Organization Definition of Bulk Electric System*, Order No. 743, 75 Fed. Reg. 72,910 (Nov. 26, 2010), 133 FERC ¶ 61,150 (2010); *order on reh'g*, Order No. 743-A, 134 FERC ¶ 61,210 (2011).

Section III of NERC's Registry Criteria identifies certain thresholds for registering entities that satisfy the criteria of sections I and II. Entities that meet the definitions of TO and TOP in Section II should be excluded from the Compliance Registry list if they do not meet one of the two criteria below:

> III.d.1 An entity that owns/operates an integrated transmission element associated with the bulk power system 100 kV and above, or lower voltage as defined by the Regional Entity necessary to provide for the reliable operation of the interconnected transmission grid; or
>
> III.d.2 An entity that owns/operates a transmission element below 100 kV associated with a facility that is included on a critical facilities list that is defined by the Regional Entity. *[Exclusion: A transmission owner/operator will not be registered based on these criteria if responsibilities for compliance with approved NERC reliability standards or associated requirements including reporting have been transferred by written agreement to another entity that has registered for the appropriate function for the transferred responsibilities, such as a load-serving entity, G&T cooperative or joint action agency as described in Sections 501 and 507 of the NERC Rules of Procedure.]*

NERC's Registry Criteria also provide that the specified criteria "are general criteria only." A Regional Entity thus may register an entity that does not meet the specified criteria if the Regional Entity "believes and can reasonably demonstrate that the organization is a bulk power system owner, or operates, or uses bulk power system assets, and is material to the reliability of the bulk power system."[18]

Procedures

On September 20, 2010, Holland submitted a formal appeal to NERC regarding its registration as a TOP and TO on the NERC Compliance Registry. On October 4, 2010, NERC acknowledged receipt of Holland's appeal and requested that Holland provide any additional information in support of the appeal within ten days of the date of the letter. On October 22, 2010, RFC submitted a Regional Assessment and Brief in Opposition to Holland's Appeal of TO and TOP Registration ("RFC Assessment") detailing the basis for its registration of Holland as a TO and TOP and its supporting argument. On November 3, 2010, Holland provided a response to the RFC Assessment and additional information concerning its facilities and arguments in support of the Appeal. On November 4, 2010, Holland submitted a revised copy of its November 3, 2010 letter that corrected typographical errors ("Holland Response"). On April 22, 2011, NERC submitted a

[18] Registry Criteria, Notes to Criteria, note 1 (footnote excluded).

request for supplemental information to Holland. On May 6, 2011, Holland submitted the supplemental information. On May 20, 2011, RFC submitted a response to Holland's supplemental information. On August 2, 2011, the NERC Board of Trustees Compliance Committee considered the Holland Appeal, RFC's Assessment, and Holland's Response, in accordance with the provisions of Rule 501 of the *NERC Rules of Procedure*.

Statement of Facts

Holland's Position

In support of the Appeal, Holland asserts that its system qualifies for an exclusion from the registry criteria because its facilities operate as radial facilities that are used only to support Holland's system and its bundled customers, and does not provide service to any wholesale or open access customers. Specifically, Holland states that its 138 kV lines are connected at two different bus sections of the same substation, the Black River Substation, which is owned and operated by METC. Holland asserts that the configuration of the connection and relaying scheme preclude flow through Holland as if it was an element of the BPS. METC also controls the two breakers that tie the Holland lines to the Black River Substation. Holland also asserts that no wholesale transmission customers outside of the Holland system rely on Holland's lines for delivery of power to their system. Holland's generation is not scheduled or dispatched by the Midwest ISO. Holland purchases power from Michigan Public Power Agency resulting in a normal bias of approximately 46 MW flow into Holland. Holland's does not provide black start or other ancillary services to the BPS.[19]

Holland notes that the RFC BES definition excludes radial facilities, which include:

> (1) radial facilities connected to load serving facilities or individual generation resources smaller than 20 MVA or a generation plant with aggregate capacity less than 75 MVA where the failure of the radial facilities will not adversely affect the reliable steady-state operation of other facilities operated at voltages of 100 kV or higher and
>
> (2) balance of generating plant control and operation functions (other than protection systems that directly control the unit itself and step-up transformer); these facilities would include relays and systems that automatically trip a unit for boiler, turbine, environmental, and/or other plant restrictions, and
>
> (3) all other facilities operated at voltages below 100 kV.

Holland acknowledges that a radial line typically exists where there is but a single point of

[19] Appeal at 3-6.

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interconnection and that, generally, multiple points of interconnection typically constitute "networked" facilities, thereby integrating multiple loads, resources and other equipment. However, Holland argues, the atypical configuration of its system, which is connected at two bus sections in the same substation, renders its facilities radial in nature.[20]

Holland argues that RFC improperly identified Holland's facilities as integrated. Specifically, Holland claims that, RFC conflates the terms "looped" and "integrated."[21] Holland also states that, "RFC either misconstrues Holland's unique configuration, or it has applied the criteria so rigidly as to include a system that is otherwise properly excluded."[22] Holland explains that its loop is not a conventional loop because it has two connections at the same substation:[23]

> a conventional loop, in contrast, would entail two or more separate points of interconnection at two or more different substations. Holland BPW has a compact service territory with a modest amount of load and internal generation. Holland BPW's point of interconnection with the BES occurs at a single substation, albeit at two points in that same substation. The two points of interconnection are electrically the same under normal operating conditions. Holland BPW acknowledges that a radial line typically exists where there is but a single point of interconnection and that, generally, multiple points of interconnection typically constitute "networked" facilities, thereby integrating multiple loads, resources and other equipment. But, as explained below, the configuration of the Holland BPW system is atypical, rendering the configuration radial in nature.

Furthermore, Holland states that the "low impedance path provided by the bus tie breaker at the Black River Substation as well as the protection system mentioned above, means there is effectively no chance under normal or contingency conditions that power will flow from the BES through one of the connection breakers, through the Holland BPW system and back into the BES through the other Holland breaker."[24] By contrast, Holland states that RFC fails to provide a valid technical basis for its assertion that Holland's 138 kV lines are integrated with the BES and that they are not radial.[25]

Holland also argues that RFC confuses the term "source" with a simple "connection." While Holland acknowledges that it has two connection points at the Black River substation, Holland also claims that a connection is not a source: "facilities that begin and

[20] Appeal at 4.
[21] Appeal at 2.
[22] Appeal at 2.
[23] Appeal at 4.
[24] Appeal at 4.
[25] Holland Response at 3.

end at a single electrical source, whether in a 'looped' or a classic configuration, appear as radial from the viewpoint of the BES."[26]

Moreover, Holland asserts that "Example 1A" to the RFC BES definition does not provide support for registering Holland as a TO and TOP on the NERC Compliance Registry. Holland explains that the accompanying diagram to "Example 1A" referenced in the RFC Assessment should not apply to the Holland system. Example 1A provides:

> For example, if a 138/12.47 kV distribution transformer is tapped from a networked 138 kV line (i.e. not radial to load) which is included in the BES, and that distribution transformer contains protective relays that are designed to remove the networked 138 kV line from service; then that Protection System equipment (excluding breakers, ground switches, etc.) in the 138/12.47 kV distribution substation is included as part of the BES. (Reference Diagram 1A.).[27]

According to Holland, RFC's Assessment does not make any credible attempt to relate the diagram to Holland's system or explain why Holland's 138 kV line does not qualify as a radial feed.

In addition, Holland claims that "Example 1A" does not apply to Holland because its system has line breakers, whereas "Example 1A" describes a system "that would not be included as a radial tap, because [the line] is tripped if there is a fault since there is no breaker on the load."[28] Conversely, Holland claims, "Example 1B" to the RFC BES definition is more applicable to Holland's system and illustrates that Holland's facilities should be excluded from the BES. Example 1B provides:

> In another example, if a 138/12.47 kV distribution transformer is tapped from a networked 138 kV line which is included in the BES, and that transformer has protective relays (such as differential relays) that trip only the distribution transformer out-of-service and do not trip the networked 138 kV line; then those protective relays are not included as part of the BES definition. Breaker failure relaying on Breaker A, if any, is included if operation results in tripping of the networked 138kV line (Reference Diagram 1B.)[29]

[26] Holland Response at 2.
[27] Holland Response at 4-5.
[28] Holland Response at 5.
[29] Holland Response at5. *See also* RFC BES Definition at 3, available at: https://www.rfirst.org/Documents/RFC%20BES%20Definition.pdf .

Therefore, as Holland argues, Holland should not be registered as a TO or TOP because its facilities are not part of the BES.

Holland also argues that its facilities appear as net load on the BES system because its internal generating units are behind the meter, and also due to "life of plant" purchased power agreements with the Michigan Public Power Agency that result in a "normal bias of approximately 46 MW flow into Holland BPW."[30]

Furthermore, Holland states that it has no control over its connection to the BES at the Black River Substation and that both breakers that connect the Holland's loop to the BES are controlled by METC. METC is also responsible for handling the maintenance and relay coordination at the Black River Substation, and Holland must gain approval from METC to work on any line that affects the breakers tying Holland's system to the Black River Substation.[31]

As noted above, Holland cites a Study performed by the Black & Veatch Corporation, which tested whether an event on the Holland system could cause a significant event on the BES. In each of the three test scenarios studied, simulated bus fault events did not cause unacceptable voltages or flows on the BES. Holland cites these studies as evidence that its facilities are not material to the BES. Moreover, Holland states that its facilities are not included in METC's system plans as black start resources nor are incorporated into the general system restoration process. Providing metering data information to METC as required by standards applicable to TOs and TOPs (*i.e.*, MOD-10), would be redundant given that the data is already available to METC as part of its own metering information at the Black River substation. In its appeal, Holland lists several TO and TOP standards that, if registered, Holland would be required to follow that are either redundant or purposeless due to Holland's configuration and historical purpose as a stand-alone unit. These standards illustrate the "unnecessary nature of a board brush application of mandatory standards in this particular case."[32]

With respect to RFC's claim that exclusion of entities from registration on the basis of materiality is left solely to its discretion, Holland argues that discretion is not a proper substitute for a technical evaluation of the evidence Holland provides as part of its argument.

Holland also contends that its facilities do not have a material impact on the BES, that registration and compliance with TO and TOP Reliability Standards will not improve BES reliability, that its exclusion from the Compliance Registry will not create a reliability gap, and that compliance with the TO and TOP standards will bring "undue hardship" on Holland.[33]

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[30] Appeal Letter at 6.
[31] Holland Response at 6.
[32] Appeal at 10-11.
[33] Appeal at 3.

Lastly, Holland asserts that, if required to comply with the TO and TOP standards, Holland will be presented with a disproportionate and undue hardship. Specifically, ensuring compliance with TO and TOP standards would require additional staff, equipment, computer software, and additional items that Holland does not have a sufficient budget to obtain. Therefore, these heightened costs would be passed on to Holland's customers, increasing Holland's rates.[34]

RFC's Position

RFC asserts that it registered Holland for the functions of TO and TOP based on NERC's *Registry Criteria* and on RFC's BES definition. Specifically, RFC found that Holland qualifies as a user, owner or operator of the BES, as defined by RFC's BES Definition because it has "lines operated at voltages of 100 kV or higher."[35] Given that Holland's transmission loop operates above the 100 kV threshold, RFC concludes that its system satisfies the NERC criteria and is an element of the BES.

The NERC definition of BES facilities provides that, "[r]adial transmission facilities serving only load with one transmission source are generally not included in this definition."[36] However, RFC notes that Holland's facilities are connected through two sources at the Black River Substation and, therefore, this exclusion criteria does not apply to Holland's case.

RFC also notes "Example 1A" to the RFC BES definition, which provides that a facility with two transmission sources is not radial. Because Holland has two transmission sources at the Black River Substation, RFC concludes that Holland qualifies as part of the BES and should be added to the NERC Compliance Registry. RFC also notes that the fact that the Holland loop may operate with only one transmission source when an outage occurs on one of the Black River connections is irrelevant because, as soon as the second transmission source is restored, the loop resumes its status as a two-source, non-radial transmission loop.[37]

RFC found that materiality is not relevant to Holland's appeal because only a Regional Entity (in this case, RFC) has discretion to exclude entities from registration for materiality reasons under the NERC *Registry Criteria*:

> [T]he Regional Entity may exclude an organization that meets the criteria described above as a candidate for registration if it believes and can reasonably demonstrate to NERC that the bulk power system owner, operator, or user does not have a material impact on the reliability of the bulk power system.

[34] Appeal at 12-13.
[35] RFC Assessment at 3. *See also* https://www.rfirst.org/Documents/RFC%20BES%20Definition.pdf.
[36] Registry Criteria, section I.
[37] RFC Assessment at 5.

RFC finds, instead, that Holland's transmission facilities are in fact material to the BES. RFC states that the Black & Veatch Corporation Study is inconclusive and concludes that the three test scenarios used in the Study do not demonstrate that a loss on Holland's system will not have a negative impact on the BES. In addition, RFC states that Holland's description of the Study lacks evidence to justify the conditions of the test scenarios and does not include specific details on what system components were monitored for potentially adverse conditions.

RFC disputes Holland's argument that its system is not included as part of a general system restoration procedure or as blackstart resources. According to RFC, Holland's Black River-James St. and Black River-Industrial are listed as "key synchronizing point on the METC system to connect with outside systems or entities."[38] Furthermore, RFC reports that the state of Holland's generation and accompanying transmission lines are reported to Midwest ISO for emergency situations. [39] Thus, RFC concludes that Holland's systems are important to the functioning of the BES and merit registration of Holland as a TO and TOP. Ultimately, RFC found Holland's argument that its facilities are not material to the BES without merit, and that there would be a gap in registration in the event that Holland is not registered as a TO and TOP.

Lastly, RFC finds unpersuasive Holland's a claim of undue hardship. Moreover, RFC notes that undue hardship is not recognized under Section 215 of the Federal Power Act, the NERC Statement of Compliance Registry Criteria, or the NERC *Rules of Procedure* as a justification for removing a an entity from the Compliance Registry. In fact, RFC states that Holland's claim of undue hardship "underscores the need to retain Holland BPW on the NERC Compliance Registry…"[40]

Analysis

The NERC Board of Trustees Compliance Committee has reviewed the various submittals of Holland and RFC. After reviewing all of the arguments, information and supporting documentation presented for its consideration, the NERC Board of Trustees Compliance Committee has determined that Holland is properly registered as a TO and TOP in the RFC region.

As noted above, Holland objects to its registration as a TO and TOP on several grounds. Such arguments, however, do not support removal of Holland from the NERC Compliance Registry. Each is addressed in turn below.

[38] RFC Assessment at 7.
[39] RFC Assessment at 8.
[40] RFC Assessment at 3.

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Application of Registry Criteria to Holland's Facilities

As noted above, NERC defines the BES as "[t]he electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition."

Entities that use, own or operate elements of the BES, pursuant to NERC's BES definition, are candidates for registration. A TO is defined as "[t]he entity that owns and maintains transmission facilities," and a TOP is defined as, "[t]he entity responsible for the reliability of its local transmission system and operates or directs the operations of the transmission facilities."

Holland, by its own admission, owns, maintains and operates 24 miles of 138 kV transmission lines. However, Holland argues that such facilities are operated as radial facilities.[41]

Although Holland acknowledges that "a radial line typically exists where there is but a single point of interconnection and that, generally, multiple points of interconnection typically constitute 'networked' facilities…."[42] Holland argues that its two separate connections to the Black River Substation satisfy the radial exclusion in the RFC and NERC BES definitions. Holland's argument appears to be based on the assertion that its relaying scheme would preclude flow through Holland from and to the BES.[43] The configuration of the interconnection, however, depicted in Attachment 3 to the Appeal, shows that bi-directional flows can occur on Holland's facilities despite the relaying scheme. In a radial configuration, a fault on either of Holland's Black River-Waverly or Black River-Quincy lines would be removed from the system by operation of the METC breaker at Black River associated with the line. Holland's system configuration would require that Holland's own breaker (at the Waverly or Quincy substations) also operate to break flow to the fault from the opposite side of the Black River bus (carried through Holland's loop of 138 kV lines from the other side of the bus). Moreover, even if the METC breaker on the other side of the 138 kV bus at Black River were open or opened as part of the METC protection system action in connection with a fault, Holland would still need to open its own breaker to stop flow to the fault from its generating units at 48th St/Industrial Substation or DeYoung Generating Plant.

As a result, Holland's facilities are not radial and, as a consequence, Holland meets the Registry Criteria as a TO and TOP.

[41] Appeal at 3. ("BPW's 138kV ***facilities are greater than the 100kV threshold***, but they are also radial and therefore fall under the exclusion of RFC's definition of BES facilities.")(*emphasis added*).
[42] Appeal at 4.
[43] Holland Response at 6.

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Materiality

Holland claims that even if its facilities fall under the BES definition, the specific facts of this appeal demonstrate that Holland has no material impact to the BES. Holland puts forth its own standards for evaluating materiality: (1) Does Holland directly affect a critical asset or facility of the BES; and (2) can events on the Holland system result in significant or cascading events on the BES?[44]

Holland concludes, because the Black River Substation is not considered a critical asset by METC, and based upon the results of the Study, that Holland has no material impact on the BES.[45] Holland states that the Study "was performed to determine if a significant line or substation fault events on the Holland BPW system would be likely to cause either unacceptable voltage swings on electrically 'close' points on the BES, or would be likely to result in undamped swings in voltage, flow angle or line flows on the BES."[46]

Holland further explains that its facilities are not integrated elements of the METC transmission system. As evidence, Holland states that METC does not include Holland facilities in it Emergency Restoration Plan.[47] Also, Holland asserts that Holland's system is not included in the METC planning process, and that Holland has communications protocols to coordinate with METC whenever Holland is performing maintenance on elements that will sever Holland's loop. Therefore, according to Holland, it "acts and appears to the BES as a load tapped off of METC's Black River substation, rather than an integrated and integral part of the BES."[48]

As RFC notes, however, "[T]he criteria and the notes set forth in [the NERC Registry Criteria] are used to identify which users, owners and operators are *material to the reliable operation of the Bulk-Power System*."[49] By definition, an entity meeting the Registry Criteria (which contains the minimum threshold for registration) is likely to be material to the reliability of the BPS. This presumption can be overcome, however, since the Registry Criteria provides that a Regional Entity may exclude an organization if it can reasonably demonstrate to NERC that the organization does not have a material impact. However, the analysis necessarily starts with the Registry Criteria itself.

However, RFC also found, and we concur, that Holland is material to the reliability of the BPS.

Holland's description of its Study is inconclusive and does not sufficiently demonstrate that a loss of the Transmission Loop will not adversely impact the BES. RFC notes that

[44] Appeal at 6.
[45] Appeal at 7 (citing Affidavit of Mr. Steven Balser at 12).
[46] Appeal at 7.
[47] Appeal at 8.
[48] Appeal at 9.
[49] RFC Assessment at 6 (citing U.*S. Department of Energy, Portsmouth/Paducah Project Office*, 124 FERC ¶ 61,072 (2008) at P 55.)(*emphasis in original*).

the Study, "allegedly concerns three test scenarios regarding 3-phase faults with delayed clearing times… however, [the Study] provides no justification for the election of any of the three test scenarios and provides insufficient data demonstrating the results of the tests." [50] Additionally, RFC notes that, "there is no indication as to what generators and buses were monitored during the three test scenarios for frequency, angle, and voltage stability."[51]

NERC also notes that the Commission has recently clarified in Order No. 743-A, that "In defining jurisdictional facilities, section 215(a)(1) focuses on whether facilities are necessary to operate the interconnected transmission system, not solely on the consequences of unreliable operation of those facilities."[52]

RFC also points out, and Holland does not dispute this assertion, that two of its internal generating units are listed as key synchronizing points on the METC system to connect with outside systems or entities.[53]

As noted above, because Holland's system is not radial, a fault on one of the 138 kV lines could require relaying coordination between Holland and METC. Compliance with Reliability Standards, including but not limited to those that require or ensure protection system maintenance, testing, coordination and corrective action plan in the event of misoperations is necessary to ensure the reliability of the BPS under these circumstances.

Similarly, Holland's condition as a net load does not by itself demonstrate lack of materiality. The loss of Holland's internal generation would produce an increased draw from the BPS that could be significant if multiple units are lost. The restoration of Holland's internal load must be considered and provided for in restoration plans.

Other Arguments

Holland argues that its system configuration is such that registration as a TO and TOP will not improve BES reliability, and Holland objects to the "pointless and unnecessary nature of a broad brush application of mandatory standards."[54] As RFC points out, Holland is subject to TO and TOP requirements because it owns and operates transmission facilities. To ensure that Holland's transmission facilities are compliant with Reliability Standards applicable to TOs and TOPs (and to ensure there is no gap in reliability) it is necessary that Holland be registered for the TO and TOP functions. Simply claiming that it already has internal procedures similar to those required by the TO and TOP standards does not justify removal from the NERC Compliance Registry.

[50] RFC Assessment at 7.
[51] RFC Assessment at 7.
[52] Order No. 743-A at P 46.
[53] RFC Assessment at 7.
[54] Appeal at 11.

However, the committee notes that TO and TOP registration is not required for entities that transfer responsibilities for compliance with NERC Reliability Standards by written agreement to another entity that has registered for the appropriate function for the transferred responsibilities. That appears not to be the case here. Although Holland may have limited control over the Black River Substation interconnection, that does not exempt its facilities at this interconnection from registration. Holland has not presented, and NERC has not found, that any agreement exists between Holland and METC regarding responsibility for and service to the Holland connections at the Black River Substation.[55]

Finally, with respect to Holland's claims that a number of TO and TOP Reliability Standards are inapplicable, we note that there is nothing in this decision, the Registry Criteria, or the NERC *Rules of Procedure* that prevent Holland from demonstrating to RFC and NERC that it should not be subject to certain of the TO and TOP requirements and Reliability Standards, based on technical or physical limitations of the facilities.

Conclusion

The NERC Board of Trustees Compliance Committee finds that Holland is properly included on NERC's Compliance Registry as a TO and TOP. Holland has the right to file an appeal of this ruling with the Federal Energy Regulatory Commission, in accordance with 18 C.F.R. Part 385, within 21 days of the issuance of this decision, as specified in Rule 501.1.3.4 of NERC's *Rules of Procedure*.

By the Board of Trustees Compliance Committee

[55] Holland has a Joint Registration Organization agreement in place with Michigan Public Power Agency for Holland's Load Serving Entity compliance obligations. *See* Appeal at 9.

Exh. HOL-17

****** THIS DOCUMENT WAS REDACTED ******

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Holland, Michigan Board of Public Works) Docket No. RC11-____-000

PROTECTIVE ORDER

(Issued)

1. This Protective Order shall govern the use of all Protected Materials produced by, or on behalf of, any Participant. Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Presiding Administrative Law Judge (Presiding Judge) (which includes the Chief Administrative Law Judge) or the Federal Energy Regulatory Commission (Commission).

2. This Protective Order applies to the following two categories of materials: (A) A Participant may designate as protected those materials which customarily are treated by that Participant as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Participant or its customers to risk of competitive disadvantage or other business injury; and (B) A Participant shall designate as protected those materials which contain critical energy infrastructure information, as defined in 18 CFR§ 388.113(c)(1) ("Critical Energy Infrastructure Information").

3. Definitions -- For purposes of this Order:

(a) The term "Participant" shall mean a Participant as defined in 18 CFR § 385.102(b).

(b) (1) The term "Protected Materials" means (A) materials (including depositions) provided by a Participant in response to discovery requests and designated by such Participant as protected; (B) any information contained in or obtained from such designated materials; (C) any other materials which are made subject to this Protective Order by the Presiding Judge, by the Commission, by any court or other body having appropriate authority, or by agreement of the Participants; (D) notes of Protected Materials; and (E) copies of Protected Materials. The Participant producing the Protected Materials shall physically mark them on each page as "PROTECTED MATERIALS" or with words of similar import as long as the term "Protected Materials" is included in that designation to indicate that they are Protected Materials. If the

Protected Materials contain Critical Energy Infrastructure Information, the Participant producing such information shall additionally mark on each page containing such information the words "Contains Critical Energy Infrastructure Information B Do Not Release".

(2) The term "Notes of Protected Materials" means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in Paragraph 3(b)(1). Notes of Protected Materials are subject to the same restrictions provided in this order for Protected Materials except as specifically provided in this order.

(3) Protected Materials shall not include (A) any information or document that has been filed with and accepted into the public files of the Commission, or contained in the public files of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court, or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order, or (C) any information or document labeled as "Non-Internet Public" by a Participant, in accordance with Paragraph 30 of FERC Order No. 630, FERC Stat. & Reg. & 31,140. Protected Materials do include any information or document contained in the files of the Commission that has been designated as Critical Energy Infrastructure Information.

(c) The term "Non-Disclosure Certificate" shall mean the certificate annexed hereto by which Participants who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Protective Order, and that such Participants have read the Protective Order and agree to be bound by it. All Non-Disclosure Certificates shall be served on all parties on the official service list maintained by the Secretary in this proceeding.

(d) The term "Reviewing Representative" shall mean a person who has signed a Non-Disclosure Certificate and who is:

(1) Commission Trial Staff designated as such in this proceeding;

(2) an attorney who has made an appearance in this proceeding for a Participant;

(3) attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in Subparagraph (2);

(4) an expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for or testifying in this proceeding;

(5) a person designated as a Reviewing Representative by order of the Presiding Judge or the Commission; or

(6) employees or other representatives of Participants appearing in this proceeding with significant responsibility for this docket.

4. Protected Materials shall be made available under the terms of this Protective Order only to Participants and only through their Reviewing Representatives as provided in Paragraphs 7-9.

5. Protected Materials shall remain available to Participants until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected Material is concluded and no longer subject to judicial review. If requested to do so in writing after that date, the Participants shall, within fifteen days of such request, return the Protected Materials (excluding Notes of Protected Materials) to the Participant that produced them, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Material may be retained, if they are maintained in accordance with Paragraph 6, below. Within such time period each Participant, if requested to do so, shall also submit to the producing Participant an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 6. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Order.

6. All Protected Materials shall be maintained by the Participant in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8-9. The Secretary shall place any Protected Materials filed with the Commission in a non-public file. By placing such documents in a non-public file, the Commission is not making a determination of any claim of privilege. The Commission retains the right to make determinations regarding any claim of privilege and the discretion to release information necessary to carry out its jurisdictional responsibilities. For documents submitted to Commission Trial Staff ("Staff"), Staff shall follow the notification procedures of 18 CFR § 388.112 before making public any Protected Materials.

7. Protected Materials shall be treated as confidential by each Participant and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 9. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials.

8. (a) If a Reviewing Representative's scope of employment includes the marketing of energy, the direct supervision of any employee or employees whose duties include the marketing of energy, the provision of consulting services to any person whose duties include the marketing of energy, or the direct supervision of any employee or employees whose duties include the marketing of energy, such Reviewing Representative may not use information contained in any Protected Materials obtained through this proceeding to give any Participant or any competitor of any Participant a commercial advantage.

(b) In the event that a Participant wishes to designate as a Reviewing Representative a person not described in Paragraph 3 (d) above, the Participant shall seek agreement from the Participant providing the Protected Materials. If an agreement is reached that person shall be a Reviewing Representative pursuant to Paragraphs 3(d) above with respect to those materials. If no agreement is reached, the Participant shall submit the disputed designation to the Presiding Judge for resolution.

9. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate; provided, that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney=s instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Participant asserting confidentiality prior to disclosure of any Protected Material to that Reviewing Representative.

(b) Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this order.

10. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that any Reviewing Representative to whom the Protected Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraph 3(d), access to Protected Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and the certification.

11. Subject to Paragraph 18, the Presiding Administrative Law Judge shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Presiding Administrative Law Judge, the parties to the dispute shall use their best efforts to resolve it. Any participant that contests the designation of materials as protected shall notify the party that provided the protected materials by specifying in writing the materials the designation of which is contested. This Protective Order shall automatically cease to apply to such materials five (5) business days after the notification is made unless the designator, within said 5-day period, files a motion with the Presiding Administrative Law Judge, with supporting affidavits, demonstrating that the materials should continue to be protected. In any challenge to the designation of materials as protected, the burden of proof shall be on the participant seeking protection. If the Presiding Administrative Law Judge finds that the materials at issue are not entitled to protection, the procedures of Paragraph 18 shall apply. The procedures described above shall not apply to protected materials designated by a Participant as Critical Energy Infrastructure Information. Materials so designated shall remain protected and subject to the provisions of this Protective Order, unless a Participant requests and obtains a determination from the Commission's Critical Energy Infrastructure Information Coordinator that such materials need not remain protected.

12. All copies of all documents reflecting Protected Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked "PROTECTED MATERIALS" and shall be filed under seal and served under seal upon the Presiding Judge and all Reviewing Representatives who are on the service list. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information B Do Not Release". For anything filed under seal, redacted versions or, where an entire

document is protected, a letter indicating such, will also be filed with the Commission and served on all parties on the service list and the Presiding Judge. Counsel for the producing Participant shall provide to all Participants who request the same, a list of Reviewing Representatives who are entitled to receive such material. Counsel shall take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons.

13. If any Participant desires to include, utilize or refer to any Protected Materials or information derived therefrom in testimony or exhibits during the hearing in these proceedings in such a manner that might require disclosure of such material to persons other than reviewing representatives, such participant shall first notify both counsel for the disclosing participant and the Presiding Judge of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of such Protected Material will be governed by procedures determined by the Presiding Judge.

14. Nothing in this Protective Order shall be construed as precluding any Participant from objecting to the use of Protected Materials on any legal grounds.

15. Nothing in this Protective Order shall preclude any Participant from requesting the Presiding Judge, the Commission, or any other body having appropriate authority, to find that this Protective Order should not apply to all or any materials previously designated as Protected Materials pursuant to this Protective Order. The Presiding Judge may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

16. Each party governed by this Protective Order has the right to seek changes in it as appropriate from the Presiding Judge or the Commission.

17. All Protected Materials filed with the Commission, the Presiding Judge, or any other judicial or administrative body, in support of, or as a part of, a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Protected Materials subject to this Protective Order. Such documents containing Critical Energy Infrastructure Information shall be additionally marked “Contains Critical Energy Infrastructure Information – Do Not Release.”

18. If the Presiding Judge finds at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Order for three (3) business days from the date of issuance of the Presiding Judge's determination, and if the Participant seeking protection files an interlocutory

appeal or requests that the issue be certified to the Commission, for an additional seven (7) business days. None of the Participants waives its rights to seek additional administrative or judicial remedies after the Presiding Judge's decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. The provisions of 18 CFR §§ 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act. (5 U.S.C. § 552) for Protected Materials in the files of the Commission.

19. Nothing in this Protective Order shall be deemed to preclude any Participant from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Protective Order.

20. None of the Participants waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.

21. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with this (these) proceeding(s). Any violation of this Protective Order and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

Presiding Administrative Law Judge

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Holland, Michigan Board of Public Works) Docket No. RC11-____-000

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____
Printed Name: _____
Title: _____
Representing: _____
Date: _____

Document Content(s)