

NERC

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

BES Definition Implementation Guidance

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RELIABILITY | ACCOUNTABILITY



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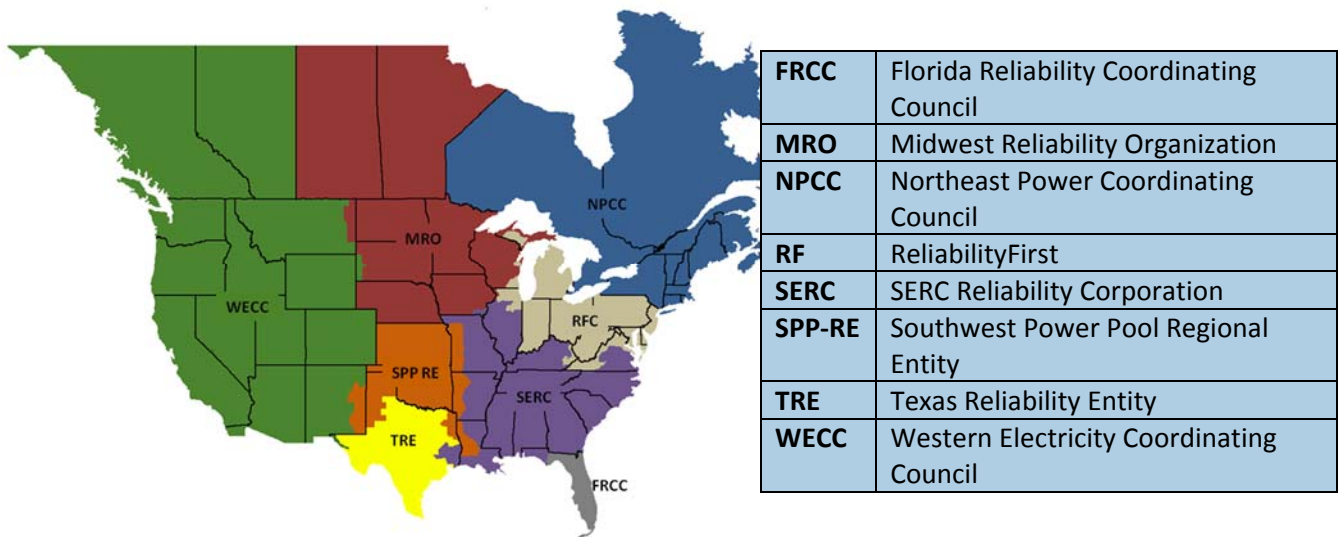
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Preface

The North American Electric Reliability Corporation (NERC) is a not-for-profit international regulatory authority whose mission is to ensure the reliability of the bulk power system (BPS) in North America. NERC develops and enforces Reliability Standards; annually assesses seasonal and long-term reliability; monitors the BPS through system awareness; and educates, trains, and certifies industry personnel. NERC’s area of responsibility spans the continental United States, Canada, and the northern portion of Baja California, Mexico. NERC is the electric reliability organization (ERO) for North America, subject to oversight by the Federal Energy Regulatory Commission (FERC) and governmental authorities in Canada. NERC’s jurisdiction includes users, owners, and operators of the BPS, which serves more than 334 million people.

The North American BPS is divided into several assessment areas within the eight Regional Entity (RE) boundaries, as shown in the map and corresponding table below.



Introduction

The following BES implementation guidance is offered to Regional Entities and Responsible Entities¹.

On December 20, 2012, the Federal Energy Regulatory Commission (FERC) issued Order No. 773² approving Phase 1 modifications to the currently effective NERC definition for Bulk Electric System (BES), which will become effective on July 1, 2014.³ On December 13, 2013, NERC filed BES Phase 2 modifications for approval, with a requested effective date of July 1, 2014, to correspond with the Phase 1 effective date.⁴ On March 20, 2014, FERC approved the Phase 2 modifications with a July 1, 2014 effective date.⁵

This document addresses implementation issues and communicates expectations for users, owners, and operators of the BPS,⁶ registered entities, and Regional Entities during the transition period for the FERC-approved BES Definition. Specifically, this document covers the following:

- Application of the BES Definition
- Self-Determined Notifications and the BES Exceptions Request Process
- Registration Changes
- Reliability Standards Applicability
- Local Distribution Determinations

The revised BES Definition was developed through the NERC Standards Development Process for inclusion in the NERC Glossary.⁷ The BES Definition removes language allowing for regional discretion and establishes a bright-line threshold that includes all Facilities operated at or above 100 kV. The revised BES Definition also identifies specific categories of facilities and configurations as Inclusions or Exclusions to the BES. Changes in classification of BES Elements due to the revised BES Definition (e.g., newly identified Inclusions or Exclusions) will be processed by NERC and the Regional Entities through the BES Notification and Exceptions Tool (BESnet application), to be made available by NERC by July 1, 2014.⁸

Additional information regarding application of the BES Definition can be found in the BES reference documents and training materials available at the NERC BES Definition web page:

<http://www.nerc.com/pa/RAPA/Pages/BES.aspx>.

¹ The term Responsible Entities refers to entities that are subject to registration as, or are registered as, users, owners or operators of the Bulk Power System (BPS).

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

³ On June 6, 2013, FERC approved an extension of the Phase 1 BES effective date from July 1, 2013 to July 1, 2014.

⁴ In Order No. 773, as clarified in Order 773-A, the Commission directed NERC to: (1) modify the Exclusions for radial systems (Exclusion E1) and local networks (Exclusion E3) so that they do not apply to tie-lines, *i.e.* generator interconnection facilities, for BES generators; and (2) modify the local network exclusion to remove the 100 kV minimum operating voltage to allow systems that include one or more looped configurations connected below 100 kV to be eligible for the local network exclusion. NERC addressed the Commission's directives in Phase 2 of the BES Definition. NERC requested expedited action for the Commission to approve the proposed Phase 2 BES Definition by no later than March 31, 2014. If approved by that time, the proposed Phase 2 BES Definition will go into effect on July 1, 2014, the effective date of the Phase 1 BES Definition. The proposed Phase 2 BES Definition will supersede, in its entirety, the Phase 1 version.

⁵ *Order Approving Revised Definition*, 146 FERC ¶ 61,199 (2014).

⁶ Users, owners and operators of the BPS are users, owners and operators of the BES.

⁷ http://www.nerc.com/files/glossary_of_terms.pdf.

⁸ The application will provide a common mechanism for each asset owner to provide notice to its Regional Entity of newly identified Exclusions and Inclusions after applying the BES Definition to its asset list.

Chapter 1 – Application of the BES Definition

Under the revised BES Definition, there are four methods for categorizing BES Elements:

1. Application of the BES Definition, allowing for Inclusions and Exclusions of Elements
2. Approval of removal or addition of Elements through the BES Exceptions Process
3. Determination by the Commission of whether an Element is “Local Distribution”
4. Determination by the Commission that an Element is included in the BES after an opportunity for notice and comment

The application of the BES Definition by an entity should generally be done in three steps:

STEP 1 (CORE DEFINITION): The core BES Definition is used to establish the bright line of 100 kV, the overall demarcation point between BES and Non-BES Elements.⁹ The core BES Definition identifies the Real Power and Reactive Power resources connected at 100 kV or higher, as included in the BES.

STEP 2 (INCLUSIONS): This step involves applying the specific Inclusions to determine specific Elements that are included in the BES, such as certain Transmission Elements and Real Power and Reactive Power resources.

STEP 3 (EXCLUSIONS): This step evaluates specific situations for potential exclusion from the BES and should be applied in the sequence below:

Exclusion E2 (Behind-the-Meter Generation) provides for the specific exclusion of certain Real Power resources that reside behind the retail meter (on the customer’s side) and supersedes the more general Inclusion I2 (Generating Resources).

Exclusion E4 (Reactive Power Devices) provides for the specific exclusion of Reactive Power devices installed for the sole benefit of a retail customer(s) and supersedes the more general Inclusion I5 (Static or Dynamic Reactive Power Devices).

Exclusion E3 (Local Networks) provides for the exclusion of local networks that meet the specific criteria identified in the exclusion language. Exclusion E3 does not allow for the exclusion of Real Power and Reactive Power resources captured by Inclusions I2 through I5.

Exclusion E1 (Radial Systems) provides for the exclusion of “Transmission Elements” from radial systems that meet the specific criteria identified in the exclusion language. Exclusion E1 does not allow for the exclusion of Real Power and Reactive Power resources captured by Inclusions I2 through I5.

As discussed below, an entity must submit any Self-Determined Notifications or requests for Exception to its Regional Entity and NERC through the BESNet application. Self-Determined Notifications are only required for: (i) Elements that were part of the BES under the original BES Definition and are not part of the BES under the new BES Definition; or (ii) Elements that were not part of the BES under the original BES Definition, but are now part of the BES under the new BES Definition.

⁹ An “Element” is defined in the NERC Glossary as “[a]ny electrical device with terminals that may be connected to other electrical devices such as a generator, transformer, circuit breaker, bus section, or transmission line. An element may be comprised of one or more components.”

FERC also approved a four-step BES transition plan for the revised BES Definition.¹⁰ This BES transition plan provides a roadmap for entities to follow in moving from the current BES Definition to the revised BES Definition.

- Step 1: Identify a Comprehensive List of BES Facilities and Elements.
- Step 2: Perform a Gap Analysis.¹¹
- Step 3: Develop Implementation Plans (for newly included Elements) to become compliant with Reliability Standards.
- Step 4: Complete Implementation Plans and Certify Completion.

A registered entity should follow the existing NERC Rules of Procedure set forth in Section 500 and Appendices 5A and 5B to submit requests for changes in Registration and Certification. To the extent an entity seeks de-activation or de-registration for a given functional designation due to application of the BES Definition, NERC will determine the appropriate time frame for making such a determination.¹²

¹⁰ BES petition at pp 38-43 available at:

http://www.nerc.com/FilingsOrders/us/NERC%20Filings%20to%20FERC%20DL/Petition_Rev_Def_BES_20120125.pdf.

¹¹ The Gap Analysis should identify:

- (i) any Registration and/or Certification changes that are required due to the newly-identified Elements (e.g., reliability functions for which the entity is not currently registered on the Compliance Registry but should be registered based on the newly-included Elements), and
- (ii) changes in compliance obligations for the entity, (i.e., the applicable Requirements of Reliability Standards with which the entity must now become compliant due to the inclusion or exclusion of the new Elements in the BES.)

¹² Order No. 773 at P 55.

Chapter 2 – Self-Determined Notifications and the BES Exceptions Request Process

Self-Determined Notifications

FERC has recognized that applying the new BES Definition may result in the identification of Elements that currently are treated as part of the BES but will no longer be considered part of the BES.¹³ FERC further noted that registered entities are obligated to inform their Regional Entities and NERC of any Self-Determination that an Element is no longer part of the BES. For Notifications of Self-Determined Exclusions or Inclusions, the NERC BESNet application provides the functionality for entities to notify the Regional Entities of Self-Determined BES Inclusions and Exclusions.

With respect to a Self-Determined Notification of exclusion, the Regional Entities will validate, with NERC oversight, the submittal to determine complete and proper application of the BES Definition. The Regional Entities may request additional information, as needed, under existing authority, in order to establish a complete and proper Notification. In order to provide consistent application of the BES Definition and associated processes, NERC in its oversight role will review Self-Determined Notifications through sampling or other approaches, and will provide necessary guidance or direction to achieve consistent results. Compliance monitoring and enforcement obligations for Elements that are excluded through a correct application of the BES Definition will be considered to have ended as of the date that a complete Notification was submitted, barring any unique facts and circumstances. Incomplete Notifications of exclusion or incorrect applications of the BES Definition will continue to subject those Elements to compliance monitoring and enforcement until all required information is submitted and the BES Definition is correctly applied.

An entity makes a good faith¹⁴ Notification of a Self-Determined Exclusion of a particular Element by properly applying the BES Definition and relevant Inclusions or Exclusions, then notifying its appropriate Regional Entity. **Good faith Self-Determinations are those that are made consistent with the BES Definition and reference materials provided by NERC.** With NERC oversight, the Regional Entity will validate the Notification to ensure that the BES Definition was properly applied and that no mistakes occurred.¹⁵ Once validation is concluded, the registered entity will be advised of the determination. If additional information is required, the registered entity may be requested to supply it prior to the Regional Entity reaching a conclusion. An Element will not be excluded from the BES until the removal is validated.¹⁶

¹³ See Order No. 773 at P 317; see also Order No. 773-A at P 110.

¹⁴ Order No. 773-A at P 110 (“... [I]n the absence of bad faith, if a registered entity applies the [BES] Definition and determines that an element no longer qualifies as part of the [BES], upon notifying the appropriate Regional Entity that the element is no longer part of the [BES] the element should not be treated as part of the [BES] unless NERC makes a contrary determination in the exception process. If the Regional Entity disagrees with the classification of the element and believes the element is necessary for reliable operation, the Regional Entity should initiate an exception request to include the element in the [BES]. If NERC agrees with the Regional Entity and determines that the element should be included in the [BES], the registered entity should not be subject to retroactive liability for the time period the element was not included in the [BES].”).

¹⁵ The validation process is consistent with current practice with respect to Notifications to NERC Rules of Procedure Section 501.1.3.5, as well as Order Nos. 773 and 773-A. In Order No. 773, FERC stated that the Notification was a necessary feature, because NERC and the Regional Entities would need this information for their compliance programs, for audit purposes and to understand the contours of the BES within a particular region. Order No. 773 at P 317 (FERC further noted that, because entities had discretion to declassify certain facilities as part of the BES, NERC, the Regional Entities and FERC needed “notification of such instances to assure that the entities are appropriately implementing the revised definition.”). *Id.*

¹⁶ In Order No. 773-A, FERC responded to a circumstance in which a Regional Entity disagrees with the registered entity’s determination that an element is not part of the BES and the registered entity acts in good faith, by outlining the appropriate process to use. Order No. 773-A at PP 108-109. FERC agreed that, in the absence of bad faith, and the Regional Entity believes the element is necessary for reliable operation, it should initiate an exception request to include the element in the BES. Order No. 773-A at P 110.

Taken together, Order Nos. 773 and 773-A, as well as the NERC Rules of Procedure, point to the need for NERC and the Regional Entity to review a Notification to determine if it comports with the Definition and validate the Notification to confirm appropriate application of the Definition. The registered entity can facilitate this effort by reviewing these situations with the Regional Entity prior to formally submitting the Notification. This will provide the greatest confidence of appropriate application of the BES Definition and facilitate consistent application of the Definition.

Until the validation process described for Self-Determined Notifications of exclusion is completed, the registered entity has the potential to be subject to applicable Reliability Standards. Any instances of non-compliance for potentially excluded Elements will be held in abeyance until such time as the Notification is validated by the Regional Entity, with NERC oversight as described above. If the Self-Determined Notification of exclusion is accepted as valid, instances of potential non-compliance involving excluded Elements that occurred after the submission of the complete and proper Notification up to the date of its validation will be closed, barring any unique facts and circumstances. A Self-Determined Notification of exclusion that is incomplete or based on improper application of the BES Definition will result in Elements associated with that Notification remaining subject to compliance monitoring and enforcement until such time all required information is submitted and the BES Definition is correctly applied.

If a Regional Entity believes that a Notification of a Self-Determined Exclusion is based on an incorrect application of the Definition and is unable to come to a common understanding of the Definition with the submitting entity, the Notification will be rejected and the Element at issue will remain part of the BES by application of the Definition.¹⁷

If a Regional Entity and NERC determine that an Element that is excluded as a result of properly applying the BES Definition should be included in the BES for other reasons, the Regional Entity would initiate an Inclusion exception request through the BESNet application and inform the registered entity. Once the process has been completed, the Element then would be included in the BES and the registered entity notified accordingly. The registered entity will not be subject to retroactive liability for the time period the Element was not included in the BES.

As discussed previously, the July 1 implementation date for the new BES Definition is rapidly approaching. As part of the transition across the ERO, NERC recognizes that entities may desire to submit Self-Determined Notifications of exclusion as soon as possible after the effective date. In order to accommodate all entities and manage the flow of processing such materials, NERC is providing an extended initial submittal period as described below.

NERC and the Regional Entities are committed to processing and efficiently managing these submissions in a timely manner for all entities. Accordingly, NERC requests that entities pace their submittals within period beginning July 1 and ending September 1 to ensure a smooth transition. Entities that submit a Notification during the period of July 1, 2014, through September 1, 2014, will be deemed to have submitted such Notification on July 1 for purposes of determining compliance obligations.

In other words, during this initial submittal period of activity, a Notification of Self-Determined exclusion will be treated the same as one received on July 1 when it comes to effective dates for compliance with NERC Reliability Standards. An extended initial submittal period will enable a leveled pace that can be more effectively managed for entities, NERC, and the Regional Entities.

¹⁷ Order No. 773-A at PP 317 (“...[T]he revised definition allows entities the discretion to “declassify” certain facilities as part of the [BES], and NERC, Regional Entities and the Commission need notification of such instances to assure that the entities are appropriately implementing the revised definition.”).

BES Exception Request Process

Appendix 5C of the NERC Rules of Procedure sets forth the process to be followed with respect to exception requests for Inclusion and Exclusion of Elements from the BES.¹⁸

If an Element that is already deemed part of the BES and subject to relevant Reliability Standards is included by application of the revised BES Definition, but an entity believes it has good reason for it not to be included, an entity may submit an Exclusion exception request for the Element through the BESnet application. The Element will remain subject to the relevant Reliability Standards during the pendency of the exception process. All existing BES Elements consistent with the BES Definition continue to remain subject to Reliability Standards—with no gap in coverage or compliance obligations—when the new BES Definition goes into effect on July 1, 2014.

As noted in Order No. 773-A (at P 26), entities with newly included Elements may file exception requests (after a gap analysis is performed). Regional Entities and NERC will make determinations for the exception requests submitted during the 24-month implementation period applicable to newly included Elements. Accordingly, newly included BES Elements will only become subject to relevant Reliability Standards 24 months after the effective date of the revised BES Definition (i.e., July 1, 2016).

If, after validation by the Regional Entity and NERC of a Self-Determined Notification of Exclusion, an Element is excluded from the BES by application of the revised BES Definition, a third-party entity with a reliability oversight obligation may submit an Inclusion exception request to include the Element in the BES as part of the exception process. The Element will not be subject to Reliability Standards during the pendency of the Inclusion exception process.

As noted in the BES transition plan (Steps 3 and 4 above) an entity with newly included Elements may need to develop a Registration implementation plan (which may include the need for Certification or a revision to an existing Certification), a compliance implementation plan, or both. If the Regional Entity and registered entity are unable to agree on the implementation plan, the Regional Entity will notify NERC, and NERC will specify a reasonable implementation schedule.

Finally, to the extent an Element is needed to comply with a Reliability Standard that is based on facility characteristics (e.g., FAC-003 200 kV threshold for individual transmission lines), the Element would not be excluded under the exception process. However, such entities could be considered for a sub-list of Reliability Standards, as appropriate.

Appeal Process

Section 500 and Appendices 5A and 5B of the NERC Rules of Procedure provides for appeals of entity registration and certification decisions.

BESnet Application Access

Requests for Exceptions to the BES will only be accepted through the BESnet Application. Entities that anticipate submitting a BES exception request should contact their applicable Regional Entity contact below, review the relevant training and resource materials, and establish a user account for the BESnet Application.

¹⁸ <http://www.nerc.com/AboutNERC/Pages/Rules-of-Procedure.aspx>.

Region	Method of Contact
FRCC	Send email to bes@frcc.com
MRO	Send email to besnet@Midwestreliability.org
NPCC	Send email to bes@npcc.org
RF	Online at https://www.rfirst.org/Pages/ContactUs.aspx
SERC	Send email to serccomply@serc1.org
SPP	Send email to sppregistration@spp.org
TRE	Send email to bes@texasre.org
WECC	Send email to support@wecc.biz

Reference materials for Regional Entities either are being or have been developed—and will be provided to Responsible Entities for informational purposes—regarding: (1) BES Guideline for Reviewing Self-Determined Notifications; (2) BES Exception Request Evaluation Guideline; (3) BESNet Application User Guide; and (4) Frequently Asked Questions (FAQs). In addition, a [BES Definition Reference Document](#) developed through the NERC standards drafting process has been made available to Responsible Entities to demonstrate proper application of the BES Definition.

Chapter 3 – Registration Changes

NERC’s objective in implementing the revised BES Definition is to ensure that the proper entities are registered and responsible for Reliability Standards that are necessary to ensure the reliability of the BPS. In Order No. 773 (at P 55), FERC stated, “[w]e do not expect there to be significant numbers of entities either needing to register or deregister due to the change in definition.” NERC shares FERC’s expectation that only a small number of entities will require changes to their NERC registration as a result of the revised BES Definition.

An entity seeking to modify its current registration, including de-registration or deactivation, must inform its applicable Regional Entity of this change in status. In turn, the Regional Entity will notify NERC of such changes. All changes to registration are processed by the NERC Registration and Certification department, in accordance with the NERC Rules of Procedure.

Guidance on DP-Specific Registration Deactivation Requests

For entities registered for the Distribution Provider (DP) function, and that currently own or operate BES protection schemes, including Underfrequency Load Shedding (UFLS), Undervoltage Load Shedding (UVLS), or Special Protection Systems (SPS) and Remedial Action Schemes (RAS), these devices support the reliability of the Bulk Electric System (BES), often serving as the “last-resort” tool for avoiding a total power system blackout. Consequently, NERC and the Regional Entities will not approve the deactivation of the DP function for Registered Entities on the NERC Compliance Registry that have these types of protection devices, solely on the basis that the entity does not own or operate a BES Element by application of the BES Definition. NERC and the Regional Entities will evaluate the relevant facts and circumstances in reaching a decision.

Registered Entities currently performing the DP function may determine to file a Self-Determined Notification of Exclusion of Elements based on the current BES Definition. There is no automatic change in the registration status of an entity for any functional registration categories if a particular Element is excluded from the BES Definition either through the Self-Determined Notification of Exclusion or the BES Exception process. Determinations of registration status are addressed through the registration program. NERC believes that the deactivation of the DP function registration of Registered Entities that have responsibilities relating to BES protection schemes including UFLS, UVLS, and SPS/RAS equipment would present a reliability risk due to the lack of compliance oversight. These types of equipment are essential to the reliable operation of the BES, even in cases where the equipment is installed below the BES 100 kV bright line. In addition, NERC will closely evaluate requests which involve entities that have transmission Remedial Action Schemes or other types of schemes that have the same or similar BES system protection objectives.

Registered Entities should note that if an Element owned by an entity is excluded from the BES Definition, either through an Exclusion Exception Request or a validated Self-Determined Notification of Exclusion, this exclusion alone does not necessarily provide for deactivation of any functional registration from the NERC Compliance Registry. The Registration Criteria states that a “Distribution Provider is the responsible entity that owns, controls, or operates Facilities that are part of any of the following Protection Systems or programs designed, installed, and operated for the protection of the Bulk Power System.” The list includes references to required UFLS programs, UVLS programs, SPS/RAS and transmission Protection Systems. The importance of these programs to system reliability is not diminished by the revised BES Definition.

Under the current registration rules, entities have an opportunity to establish that they are not material to the reliability. Such determinations depend on the specific facts and circumstances. In the future, NERC is moving forward with a new proposal for Distribution Provider registration criteria related to the Risk-Based Registration (RBR) initiative. The proposed criteria will accommodate those DPs who are registered only as a result of the owning of UFLS systems and will include a reduced set of reliability standards for which UFLS-Only DPs will be

responsible. RBR also will build on current authority to allow an entity to make a case that it should not remain registered if it is not material to the reliability of the BES. To ensure consistency, a new materiality test is being developed that would be reviewed by a new NERC-led panel comprised of NERC and Regional Entity participants, that the entity is not material to the reliability of the BES and should not remain registered as a DP. The draft design program also includes a process for determining a sub-set of applicable Reliability Standards.

NERC notes that, to the extent that direct application of the BES Definition results in a determination that an Entity's Elements are not BES, an Inclusion Exception process can be initiated by a Responsible Entity to bring such Elements back into the BES. While this would not affect the DP registration status, it may affect other functional registration categories.

Chapter 4 – Reliability Standards Applicability

On a case-by-case basis, NERC may determine if an entity is eligible for a sub-list of applicable Reliability Standard requirements rather than automatically subjecting the entity to the full scope of standards applicable to a particular function. This occurs through the NERC Organization Registration process, in concert with the respective Regional Entity.¹⁹ To initiate a request for a sub-list of applicable Reliability Standards, an entity must inform its Regional Entity contact. As part of its Risk-Based Registration Initiative that was launched in 2014, NERC will lead a review panel with participation by Regional Entities to evaluate, among other things, subsets of applicable Reliability Standard requirements for certain functional entities.

NERC has previously worked with industry to modify applicability designations for Reliability Standards that affect large groups of entities. For example, to address a reliability gap for generator interconnection facilities, FERC recently approved the NERC GO-TO Project.²⁰ Specifically, in Order No. 785, FERC approved modifications to the applicability sections for Reliability Standards FAC-001-1, FAC-003-3, PRC-004-2.1a, and PRC-005-1.1b.²¹ FERC also noted that a small number of “complex” facilities may be subject to additional Reliability Standards than those approved in the GO-TO Project.²² NERC will continue to address these “complex” facilities on a case-by-case basis.

Dispersed Generation

Project 2014-01 Standard Drafting Team is focusing on identifying Reliability Standard requirements applicable to dispersed power-producing resources. The list developed from the Standards Authorization Request (SAR) may provide a subset of applicable Reliability Standards. Once the Standard Drafting Team concludes its work, NERC will determine next steps, as part of the Risk-Based Registration Initiative.

¹⁹ NERC has identified a corporate goal for 2014 to examine the registration and certification framework.

²⁰ *Generator Requirements at the Transmission Interface*, Order No. 785, 144 FERC ¶ 61,221 (2013).

²¹ FERC approved NERC’s request for an effective date of one year following the first quarter after regulatory approvals for FAC-001-1, and for FAC-003-3 Requirement R3. For the remaining requirements of FAC-003-3, FERC approved an effective date of two years following the first calendar quarter after regulatory approvals. FERC also approved that PRC-004-2.1a and PRC-005-1.1b become effective upon receiving required regulatory approvals. (See Order No. 785 at P 9).

²² Order No. 785 at P 53 (“Consistent with prior decisions in *New Harquahala Generating Co., LLC*, and *Cedar Creek Wind Energy, LLC*, for the anticipated small number of generator owners and operators owning facilities deemed to be “complex” and therefore potentially subject to additional Reliability Standards, NERC should evaluate, in consultation with the Regional Entity, which Reliability Standards should apply to the particular entity based on the specific facts and circumstances.”).

Chapter 5 – FERC Local Distribution Determinations

In Order No. 773 (at P 66) FERC approved NERC’s BES exception request process to determine the technical issue of whether facilities are part of the BES; however, FERC determined that it (FERC) will decide the jurisdictional question of whether facilities are “used in local distribution.” Thus, FERC reserved authority to designate sub-100 kV facilities, or other facilities, as part of the BES.

FERC also established a process by which an entity can seek a determination by FERC as to whether facilities are “used in local distribution” as set forth in the Federal Power Act. FERC will make such case-by-case jurisdictional determinations by starting with the Seven-Factor Test set forth in Order No. 888.

When and whether to submit such a jurisdictional question to FERC are business and legal decisions for a registered entity, upon which NERC is not opining in this guidance document.