UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Revisions to Electric Reliability Organization Definition of Bulk Electric System	)))	Docket No. RM09-18-000

COMMENTS OF NORTHWEST REQUIREMENTS UTILITIES

Pursuant to the March 18, 2010 Notice of Proposed Rulemaking ("NOPR") issued by the Federal Energy Regulatory Commission ("Commission") in the above captioned docket, Northwest Requirement Utilities ("NRU") respectfully submits these comments on the proposed revision of the definition of Bulk Electric System ("BES"). NRU is a non-profit trade association representing the common business interests of 50 member utilities, which are located in 7 states served by BPA: Washington, Oregon, Idaho, Montana, Nevada, Wyoming, and California. NRU members include 13 municipals, 7 Public Utility Districts ("PUDs"), and 30 electric cooperatives, which are primarily non-generating electric distribution utilities serving end-use electric consumers that rely on Bonneville Power Administration ("BPA") as their primary supplier of wholesale power and transmission services.

Twenty-five of NRU's members are characterized by the North American Electric Reliability Corporation ("NERC") as Distribution Providers ("DP") and Load Serving Entities ("LSE"). A few are listed as Transmission Owners ("TO") and as Purchasing and Selling Entities ("PSE"). NRU anticipates the number of utilities categorized as

LSEs and DPs will grow as their peak loads move above the 25 MW threshold. Therefore, the issue of NERC standards compliance is of present and future importance to the member utilities of NRU.

For the purposes of this document, the terms "Element" and "Facility" are used interchangeably and have the same meaning. The same applies to the terms Bulk Electric System ("BES") and Bulk Power System ("BPS"), as well as "regional entity" and Regional Reliability Organization ("RRO").

NRU opposes the proposed rulemaking for reasons set forth below and offers an alternative means of defining the BES that would ensure the reliability of our nation's electricity grid.

I. INTRODUCTION AND EXECUTIVE SUMMARY.

NRU urges the Commission not to finalize a rule that would create a fixed voltage threshold definition of the BES, "to include all electric transmission facilities with a rating of 100kV or above,"[1] and thereby removing discretion afforded regional entities for Regional Reliability Organizations ("RROs") to determine which entities have a material impact on the BES. Such a rule would be contrary to statute and would not be a workable means of ensuring reliability. The number of potential submittals and lack of fixed timelines for action by NERC and FERC would create delays and additional

[1] *Revision to Electric Reliability Organization Definition of Bulk Electric System*, Notice of Proposed Rulemaking, 75 FR 14097; FERC Stats & Regs 130 ¶ 61,204 (March 18, 2010) ("NOPR").

workload burdens on the utility and regulatory bodies as well as create uncertainty with respect to compliance in the interim.

Instead, the Commission should ensure reliability by recognizing a definition of the BES that is supported by the Energy Policy Act of 2005, has the support of NERC, and is consistent with the current efforts of the Western Electricity Coordination Council ("WECC") to create a rational definition of the BES. WECC is working to define a Material Impacts Assessment ("MIA") that is an engineering based, rigorous, repeatable, and auditable procedure to judge the effect of an Element on the BES. Once this procedure is developed and approved by NERC and FERC, FERC should allow WECC and other RROs who undertake development of a rigorous procedure to make final judgment on inclusion of facilities in the BES without a further review.

In addition, the definition that the Commission adopts should clarify that if an Element is determined to be part of the BES, such an Element is not necessarily a Transmission Asset ("TA"). Furthermore, if a registered entity is registered for reliability purposes only as a Distribution Provider and a Load-Serving Entity and is determined not to own any Elements of the BES, then that entity may de-register as a Distribution Provider and a Load-Serving Entity.

NRU is also concerned that the very issuance of this NOPR is administratively excessive. To resolve issues identified in the NOPR, the NOPR proposes to assume authorities that the statute clearly intends to be delegated (subject to Commission oversight). The statute clearly prescribes that the Commission may remand matters of its concern to NERC, and

NRU is concerned that the Commission appears to not have taken this appropriate first step in resolving its concerns.

II. A FIXED VOLTAGE DEFINITION OF THE BES WOULD BE CONTRARY TO STATUTE AND WOULD NOT BE A WORKABLE MEANS OF ENSURING RELIABILITY.

A. A FIXED VOLTAGE THRESHOLD TO DEFINE THE BES WOULD BE CONTRARY TO STATUTE

A fixed voltage threshold of 100-kV is contrary to the statute in two respects: (1) Section 215 defines "bulk-power system" to exclude "facilities used in the local distribution of electric energy." Because a fixed voltage threshold of 100-kV fails to consider how facilities are "used", and it would bring in 115-kV Elements that are used for local distribution and not transmission (especially in the WECC), it violates the statute. (2) Section 215 requires reliability standards to be developed by WECC and/or NERC in the first instance, and FERC's only role is either to approve or disapprove and remand the standards, and in doing so it must give deference to the expertise of regional entities. FERC's top-down, command-and-control approach to imposing a 100-kV threshold violates the statute because it assumes FERC has standard-setting authority that the statute denies to FERC, and FERC also fails to defer to the expertise of WECC.

B. *A FIXED VOLTAGE THRESHOLD TO DEFINE THE BES WOULD NOT BE A WORKABLE MEANS OF ENSURING RELIABILITY*

1. *A fixed voltage threshold of 100 kV to define the BES would not be workable because it ignores regional differences.*

The Western landscape is vastly different than the Midwest and East Coast, which creates a dissimilar system of electric transmission, distribution, and generation. Many small Western utilities that have no material impact on the BES will be forced to comply with unnecessary and burdensome regulation unless the Commission affords Regional Entities the ability to exempt those utilities who have no effect on the BES from compliance with the mandatory Reliability Standards.

A 100kV voltage threshold set by the Commission is not appropriate in the Western U.S. where sparsely populated areas are typically connected by facilities with a rating above 100kV and where an outage on these types of lines and facilities would have no material impact on the BES. A transmission facility under 100kV in New York may likely have a material impact on the BES, but a facility in Eastern Oregon over 100kV serving a small, remote population most likely would not.

2. *A fixed voltage threshold definition would not be workable because the exemption process would be overly burdensome for both regulators and industry.*

The Commission states that its goal is to, "eliminate significant inconsistencies across regions and provide a backstop review to ensure that any regional variations do not compromise reliability," but that it does not intend to eliminate all regional variations.[2] However, the practical effect of a bright-line rule and the Commission's proposed exemption process on a facility-by-facility basis will result in the elimination of regional variations. In the NOPR, for a transmission facility rated[3] at or above 100kV to be exempt from the compliance with the mandatory Reliability Standards, a RRO would need to seek approval from NERC. NERC would then be required to seek Commission approval on a facility-by-facility basis for any exception for facilities at 100kV or above. NERC would also need to provide an explanation of why it is appropriate to exempt each facility. The exemption will not take effect until the Commission has approved the exemption.[4]

This process would be unworkably burdensome. Each facility wishing to apply for exemption will essentially have three significant levels of regulation it must navigate. The overhead added by the process would detract from reliability by requiring resources that could be focused on real local non-BES reliability issues, and instead, divert them to studies and paperwork to prove through an extended process what should have been accomplished quickly by the RRO. By forcing a facility-by-facility process which has no

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[2] NOPR at P 10.
[3] Rating in this context refers to a facility's actual operating voltage, not absolute maximum rating.
[4] NOPR at P 12.

fixed timelines for action by NERC and FERC (and could be years from start to finish) to correct this will require entities to comply with all standards in the interim, and ultimately provide no value in improved reliability to the BES. This is clearly not cost effective for the utility or for the RRO, ERO and FERC who must monitor and approve actions that ultimately do not affect the BES.

Requiring NERC and FERC concurrence will add endless complication and delay to this process. The Commission should not make this demonstration so burdensome so that it becomes impossible to perform.

III. A DEFINITION OF THE BES SHOULD BE SUPPORTED BY STATUTE, HAVE THE SUPPORT OF NERC, AND BE CONSISTENT WITH CURRENT WECC EFFORTS.

A. THE COMMISSION SHOULD RECOGNIZE A DEFINITION OF THE BES THAT IS SUPPORTED BY THE ENERGY POLICY ACT OF 2005.

The Energy Policy Act of 2005, which established reliability standards, recognized that RROs provide effective and efficient administration of the BES. In fact, the statute delegated significant authority to the regional reliability organizations, such as WECC. The statute states that "[t]he Commission shall issue regulations authorizing the ERO to enter into an agreement to delegate authority to a regional entity for the purpose of proposing reliability standards to the ERO and enforcing reliability standards,"[5] if a

[5] 16 U.S.C. Sec. 824o(e)(4) (2010).

regional entity meets certain criteria. These criteria include an agreement that "promotes effective and efficient administration of bulk-power system reliability."[6] Furthermore, the ERO and the Commission **"***shall rebuttably presume* that a proposal for *delegation to a regional entity* organized on an Interconnection-wide basis *promotes effective and efficient administration of bulk-power system reliability and should be approved*."[7]

By including a rebuttable presumption that delegation to a regional entity promotes effective and efficient administration demonstrates Congress made clear that regional variations create a need for regional discretion. Effective and efficient administration means that only those entities that truly affect the reliability of the BES should be registered and those that do not affect the reliability of the BES should not have to register. The factors that determine whether a facility has a material impact on the BES vary by region, and RROs are best positioned to make that determination. By including those entities and Elements that do not affect the reliability of the BES reliability is not enhanced. Including entities that do not affect the BES increases meaningless compliance workload and diverts the RRO and NERC's attention from those entities and Elements of the BES that do affect system reliability. A process to effectively and quickly determine what is BES in a technically sound, repeatable manner is the purpose of the work now being undertaken by WECC as discussed below.

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[6] Id.
[7] Id. (emphasis added).

B. *THE COMMISSION SHOULD RECOGNIZE A DEFINITION OF THE BES THAT HAS THE SUPPORT OF NERC.*

The statute provides NERC the advantage of giving RROs discretion to determine which facilities have a material impact on the BES. In the Statement of Compliance Registry Criteria ("SCRC"), NERC provides standards to determine which facilities should be included in its compliance registry but recognizes regional differences may cause very different results regarding a facility's impact on the BES.[8] NERC allows RROs to register entities that do not meet the registry criteria if they own an element that affects the reliability of the BES, "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."[9] Similarly, the RRO can "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."[10]

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[8] *Statement of Compliance Registry Criteria*, Revision 5.0, NERC http://www.nerc.com/files/Statement_Compliance_Registry_Criteria-V5-0.pdf (October 16, 2008).
[9] Id. at P 10.
[10] Id.

This approach allows for a more efficient and effective administration of the BES. There are many instances where a customer takes delivery from its power supplier at above 100kV, but has a no material impact on the bulk power system.

C. THE COMMISSION SHOULD RECOGNIZE A DEFINITION OF THE BES THAT IS CONSISTENT WITH CURRENT WECC EFFORTS.

WECC has undertaken a substantial effort to provide a rational definition for the BES. To address this issue in a systematic manner a task force made up of affected entities within the WECC region have been working on this issue for over a year. The task force has been working diligently to provide a coherent method to determine which entities truly have a material impact on the BES and which entities do not. Members of the task force include representatives from utilities both large and small throughout the WECC region.

WECC has undertaken the task of defining what actually affects the BES by developing a Material Impact Assessment ("MIA"). The MIA will be an engineering based, rigorous, repeatable, and auditable procedure to judge the effect of an Element on the BES. The goal of the MIA is to remove any doubt as to whether an Element should be included in the BES. The WECC task force plans to have the revised BES definition, which will include a MIA methodology approved by the WECC Operating Committee, WECC Board of Directors, NERC, and FERC. As a result, WECC would not need a facility-by-facility review by NERC and FERC to remove an Element from the BES.

The WECC BES task force has been diligently following the guidance provided by the NERC SCRC. The WECC approach to defining the BES adopts the principles of the "base" BES definition contained in the NERC SCRC. WECC defines the BES as: "the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, *generally* operated at voltages of 100kV or higher," and includes a methodology to determine whether an Element owned or operated by an entity or organization, has the potential to have "a material impact on the reliability of the bulk power system" or "is material to the reliability of the bulk power system", consistent with the principles contained in the NERC SCRC. Therefore, unless the Element meets certain inclusion provisions, this WECC material impact analysis would allow Elements found to have no material impact to be excluded from the BES. This is consistent with the "generally operated at voltages of 100kV or higher" language in the NERC SCRC definition."

The NOPR recognizes that radial lines would not be part of the BES, but that simple statement is not enough to remove ambiguity. The WECC process includes additional detail regarding demarcation points and system characteristics that are important in defining "radial." WECC also has also correctly chosen to address radial systems, where a backup feed is possible, but is normally open. These issues are important in improving overall customer service. A utility should not be penalized for having a non-flow through secondary feed for a line by requiring it to automatically become part of the BES. The regulatory burden for a BES facility can be substantial, and this could lead to small utilities to choose not to provide backup service options, reducing overall customer

service just to avoid expensive compliance obligations on what should be non-BES facilities. The WECC process correctly addresses this issue.

The demarcation between BES and non-BES is also important. At 100 kV, the high side of virtually every transformer would be included in the BES. It is important, as the WECC process details, to establish the demarcation point that does not force distribution facilities into the BES due to lack of clarity of function.

The WECC approach therefore would allow facilities under 100kV to be listed as BES and remove those facilities above 100kV that do not have a material impact on the BES. This approach will lead to the more efficient and effective administration of the BES as opposed to the Commission's bright-line rule. The question the Commission should be asking is does the facility have a material impact on the Bulk Electric System? If the facility does impact the BES then it should be registered under NERC. If it does not, then the facility should not be listed and not create unnecessary workload for both the regulators and the regulated. This is the approach WECC is taking and should be allowed to pursue.

IV. A DEFINITION OF THE BES SHOULD CLARIFY THAT AN ELEMENT THAT IS PART OF THE BES IS NOT NECESSARILY A TRANSMISSION ASSET AND THAT IF A REGISTERED ENTITY IS REGISTERED ONLY AS A DISTRIBUTION PROVIDER AND LOAD-SERVING ENTITY IS DETERMINED NOT TO OWN ANY ELEMENTS OF THE BES, THEN THAT ENTITY MAY DE-REGISTER.

A. *AN ELEMENT THAT IS PART OF THE BES IS NOT NECESSARILY A TRANSMISSION ASSET.*

Section 215 of EPAct 2005 defines the "bulk-power system" relatively narrowly, based on operational criteria – whether a facility or control system is "necessary to" operation of the interconnected transmission network". "Transmission" under other parts of the Federal Power Act (as contained in the 7-factor test used in FERC Order No. 888) is generally an economic concept, which extends FERC's rate authority to wholesale transactions, excluding "distribution" after bulk power is delivered to a distribution utility and voltage is stepped down for delivery to the ultimate consumer. Therefore, an Element that is determined to be part of the BES may not meet either of the criteria listed above, and as a result, be part of the "distribution" network, not a transmission asset.

B. *IF A REGISTERED ENTITY REGISTERED ONLY AS A DISTRIBUTION PROVIDER AND LOAD-SERVING ENTITY IS DETERMINED NOT TO OWN ANY ELEMENTS OF THE BES, THEN THAT ENTITY MAY DE-REGISTER.*

If an entity has no elements in the BES, it cannot be considered an "owner" or "operator" of the BES. Therefore, if an entity has no BES elements, logically, operation of that entity's distribution assets has no material impact on the BES. If an entity has no impact on the operation of the BES, it is statutorily exempt from regulation as transmission and the need for registration and participation in the regulatory framework. Requiring an entity with no BES Elements would be an unnecessary burden on the entity for

compliance activities, and a diversion of resources by the RRO, NERC and FERC to monitor activities which can never have a negative effect the operation of the BES.

V. CONCLUSION

The Commission should reject the proposed definition of the BES because the proposal is contrary to statute and would not be a workable means of ensuring reliability of our nation's electricity system. Instead, the Commission should recognize a definition that is supported by statute, has the support of NERC, and is consistent with current WECC efforts to create a rational definition of the BES. In addition, the BES definition that FERC recognizes should clarify that if an Element is determined to be part of the BES, such an Element is not necessarily a Transmission Asset, and that that if a registered entity is registered for reliability purposes only as a Distribution Provider and a Load-Serving Entity is determined not to own any Elements of the BES, then that entity may de-register.

NRU appreciates the opportunity to comment on the NOPR and commends the Commission's ongoing efforts to ensure the reliability of our nation's electricity grid.