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September 4, 2012

SENT VIA ELECTRONIC FILING  
Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Room 1-A209  
Washington, D.C. 20426

Re: Docket Nos. RM12-6-000 and RM12-7-000- Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure

Dear Secretary Bose:

For filing, please find the Notice of Intervention and Comments of the New York State Public Service Commission in the above-entitled proceeding. Should you have any questions, please feel free to contact me at (518) 473-8178.

Very truly yours,

A handwritten signature in cursive script that reads "David G. Drexler".

David G. Drexler  
Assistant Counsel

Attachment

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Revisions to Electric Reliability	)	Docket Nos.	RM12-6-000
Organization Definition of Bulk	)		RM12-7-000
Electric System and Rules of	)		
Procedure			

NOTICE OF INTERVENTION AND COMMENTS  
OF THE NEW YORK STATE  
PUBLIC SERVICE COMMISSION

INTRODUCTION

On June 22, 2012, the Federal Energy Regulatory Commission (FERC or Commission) issued a Notice of Proposed Rulemaking (NOPR) that contemplates approval of the North American Electric Reliability Corporation's (NERC) revised definition of the Bulk Electric System (BES). NERC proposes to include, as part of the BES, "all Transmission Elements operated at 100 kV or higher and Real Power and Reactive Power resources connected at 100 kV or higher," unless modified by a category for inclusion or exclusion. The definition explicitly excludes facilities used in the local distribution of electric energy.

The Commission also proposes to approve revisions to NERC's procedures to create an exemption procedure whereby elements may be added or removed from the definition of BES on a case-by-case basis. Any FERC-approved reliability standards

would apply to elements and resources covered by the BES definition.

**NOTICE OF INTERVENTION**

The New York State Public Service Commission (NYPSC) hereby submits its Notice of Intervention and Comments pursuant to the NOPR published in the Federal Register on July 5, 2012, and Rule 214 of the Commission's Rules of Practice and Procedure. Copies of all correspondence and pleadings should be addressed to:

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**SUMMARY**

The NYPSC recognizes the Commission's statutory responsibilities to oversee NERC's development and enforcement of "Reliability Standards" applicable to the "Bulk-Power System," which is defined to include "facilities and control systems necessary for operating an interconnected electric

energy transmission network (or any portion thereof)."<sup>1</sup> The NYPSC also acknowledges the Commission's interest in ensuring consistency in applying FERC-approved Reliability Standards, and that the existing definition of the BES used by NERC may not cover all of the facilities and systems necessary for operating the transmission system. However, the Commission's proposal to adopt a bright-line definition of the BES as "... all Transmission Elements operated at 100 kV or higher ...," unless an exclusion or exception applies, would likely result in classifying certain facilities as part of the BES despite their being unnecessary for operating an interconnected transmission network.

The NOPR lacks a technical justification for a 100 kV bright-line definition. While a bright-line approach may ensure consistent application of Reliability Standards, it may also encompass facilities that are not needed to ensure the reliable operation of the transmission system, which the Commission expressly acknowledges by relying on the exemption process. As

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<sup>1</sup> 16 U.S.C. §824o(a)(1)(A). The Federal Power Act defines the Commission's authority to approve mandatory Reliability Standards related to the "Bulk-Power System" (BPS). However, the NOPR does not explain why NERC utilizes the term "Bulk Electric System" in applying Reliability Standards, rather than the BPS. In the absence of a compelling reason, the NYPSC recommends that the Commission use the single term BPS, with appropriate modifications, consistent with FERC's and NERC's statutory authority.

a result, the NOPR could force New York ratepayers to unnecessarily incur potentially significant costs for system upgrades or to pursue an exception. For example, New York City's local distribution system is characterized by several lines operated at 100 kV or above.

Furthermore, adopting a 100 kV bright-line would achieve little, if any, further reliability benefits, while causing entities to incur significant costs. The NERC and Northeast Power Coordinating Council (NPCC) have indicated that their impact-based approach to defining the bulk power facilities, in conjunction with regionally-tailored reliability criteria, adequately ensures reliability.<sup>2</sup> Despite the lack of a need for a 100 kV bright-line definition, the costs of compliance with such a definition, according to the NERC and the NPCC, would exceed \$280 million for the U.S. portion of the NPCC.<sup>3</sup> Most of these costs would be paid by New York ratepayers, although they would not obtain any measurable reliability benefits.

The definition of the bulk-power system contained within the Federal Power Act, which explicitly references facilities and control systems that are "necessary" for

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<sup>2</sup> Docket No. RC09-3-000, Compliance Filing and Assessment of Bulk Electric System Definition Report of the NERC and NPCC (filed September 21, 2009) p. 13.

<sup>3</sup> Id.

operating an interconnected transmission network, appears to recognize the need for a functional test in determining which facilities constitute the bulk-power system. We respectfully recommend that the Commission continue to allow such a functional test rather than pursue a bright-line approach. A functional test is consistent with the definition of the bulk-power system contained in the Federal Power Act; would avoid inappropriate designations of facilities and the imposition of unnecessary costs; and would ensure the Commission acts consistent with its jurisdictional authority.

#### DISCUSSION

I. There Is No Technical Basis For A Bright-Line Approach, Which Will Likely Encompass Facilities Beyond the Commission's Jurisdiction

The Energy Policy Act of 2005 authorizes the Commission to approve reliability standards for the "bulk-power system," which is defined to include: (A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and (B) electric energy from generating facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy.<sup>4</sup>

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<sup>4</sup> 16 U.S.C. §824o(a).

Defining the bulk-power system as all facilities operating at or above 100 kV would likely exceed the Commission's jurisdiction by encompassing facilities that are clearly part of the non-bulk power system, and are not necessary for operating an *interconnected* transmission network.<sup>5</sup> To illustrate, due to the high concentration of load, certain 138 kV facilities in New York City operate at voltage levels above 100 kV, yet do not serve a bulk system function.<sup>6</sup> In fact, these lines are not involved in the movement of energy on the "interconnected" bulk-power system.<sup>7</sup> As such, a loss of these lines would not affect the reliable operation of the Bulk-Power System. The NOPR contains no technical justification for

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<sup>5</sup> Through years of studies and functional testing, the New York Independent System Operator, Inc. (NYISO), as well as its predecessor (*i.e.*, the New York Power Pool), have developed a list of facilities that have the potential to cause cascading problems on the electric system. These facilities are considered part of the Bulk System in New York, and are under the NYISO's operational control. In addition, the NYISO has developed a secondary list of facilities that can impact the Bulk System, but whose main function is to serve load, and, as such, are under the control of the transmission owner.

<sup>6</sup> The majority of the 138 kV lines within New York City serve as direct feeders to the networked distribution system serving load. Although the few 138 kV facilities that can impact the bulk system are controlled by the transmission owner, any change in status must be reported to the NYISO.

<sup>7</sup> According to the Federal Power Act of 2005, the Bulk-Power System does not cover "facilities and control systems [un]necessary for operating an *interconnected* electric energy transmission network." Pub. L. No 109-58, Title XII, Subtitle A, 119 Stat.594, 941 (2005).

defining the BES to include these facilities, let alone all facilities operated at 100 kV or higher.

Although the NOPR proposes the inclusion of a process for obtaining an exception, assuming one of the exclusion categories does not apply, it is uncertain whether an exclusion or exception would apply to any of the examples cited above or to similarly functioning facilities. This approach presumes FERC has jurisdiction over all facilities operated at 100 kV or above, unless proven otherwise. This inappropriately shifts the legal and technical burdens to the states. However, the NOPR does not include any meaningful opportunities for the participation of states in the exception process for excluding facilities that are not necessary for the reliable operation of the interconnected transmission network. Because the states are appropriate entities that should be working with local Transmission Owners and/or regional reliability councils to identify local distribution facilities, the Commission should expressly provide for state involvement in any such process.

**II. The Proposed Revision To The Definition Of The Bulk Electric System Would Have Minimal Reliability Benefits, While Potentially Imposing Significant Costs Upon Customers and Diverting Limited Resources**

Adopting the Commission's proposed bright-line voltage test would be costly to implement within the NPCC footprint, as



utilities would be required to upgrade portions of their electric systems historically considered non-bulk facilities in order to comply with newly-applicable reliability standards. As noted above, these non-bulk facilities do not necessarily have the ability to impact the reliable operation of the "interconnected" bulk-power system. As the NPCC noted in its Compliance Report, the estimated cost of applying the 100 kV and higher definition could exceed \$280 million. Focusing on non-bulk parts of the system would divert the Commission's and the NERC's resources away from more urgent reliability matters. Moreover, New York utilities and ratepayers are currently facing various matters placing upward pressure on rates, and this diversion of resources away from more urgent system upgrades may in fact jeopardize the reliability of the electric system for end-use customers.

Before making any determination, the Commission should consider the costs and benefits (i.e., the incremental reliability benefits) of expanding the application of the standards to facilities that have never been subject to NERC's standards. The NERC should be required to evaluate and report back on the reliability impacts and the feasibility and costs of implementing the reliability standards for portions of the

system where such standards have not previously applied. This evaluation should help avoid any unintended consequences.

**III. The Commission Should Allow The Use of A Functional Test To Define The Bulk Electric System**

Given the legal and financial implications of adopting a bright-line test, the NYPSC encourages the Commission to allow a functional test for defining the bulk-power system, such as the one that has been used historically by the NPCC to identify facilities having an adverse impact on the bulk system. For example, the NPCC has identified facilities having an adverse impact on bulk systems by defining the bulk power system as the interconnected electrical systems within northeastern North America comprising generation and transmission facilities on which faults or disturbances can have a significant adverse impact outside of the local area. In this context, local areas are determined by the Council members.

Because a functional test identifies "facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof),"<sup>8</sup> it is consistent with the Federal Power Act. By determining which facilities are necessary to reliably operate the bulk-power system, a functional test would obviate the Commission's

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<sup>8</sup> Energy Policy Act of 2005 §1211(a).

concern that a discrepancy in definitions could lead to reliability gaps. Although this approach could result in the same voltage lines being classified differently, such an outcome is entirely consistent with an acknowledgement that facilities with similar voltages may or may not be part of the bulk-power system or affect such system, depending on the characteristics and configurations of regional electric systems.

In the event the Commission does not include a functional test as part of the definition of the bulk-power/electric system, as has been successfully done in the NPCC, the Commission should expressly indicate that a functional test will be part of the exception process for excluding facilities that are not necessary for the reliable operation of the interconnected transmission network. Moreover, the Commission should not require initiation of upgrades to facilities for which a timely request for an exception has been submitted, until after the exception process has been completed, including appeals to the Commission. This approach will ensure that any costs of compliance (e.g., facility upgrades) are not unnecessarily imposed upon ratepayers, and the Commission does not impermissibly exert its jurisdiction.

CONCLUSION

In accordance with the above discussion, the Commission should modify the proposed NOPR.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter McGowan". The signature is written in a cursive style with a large initial "P" and "M".

Peter McGowan  
General Counsel  
Public Service Commission  
of the State of New York

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Dated: September 4, 2012  
Albany, New York