



Comments on Bulk Electric System (BES) Concept Document

The Electricity Consumers Resource Council (ELCON) appreciates the opportunity to submit the following comments on the draft concept document prepared by the Regional Bulk Electric System Definition Coordination Group (RBESCG), a team of representatives of the Regional Entities (REs).

ELCON is the national group representing the interests of large industrial consumers of electricity. Many ELCON member facilities are Registered Entities. One or more ELCON members are registered as: BA, IA, GO, GOP, TO, TOP, TSP, PA, RP, LSE, and PSE. However, the most common registered functions of large industrial end users are GO, GOP and PSE by virtue of the need to supply a complex industrial process with low-cost thermal energy and/or low-cost electric energy.

The stated purpose of the concept document is to provide a “common approach” for:

- Defining the BES and therefore improve the clarity, reduce ambiguity and establish a universal method (i.e., bright line) for distinguishing between BES and non-BES Elements and Facilities.
- Identifying BES Elements and Facilities so as to establish a “repeatable” method for applying NERC Reliability Standard requirements and facilitate consistent application of compliance efforts across regional boundaries.

Comments

ELCON members have always supported fair and effective reliability efforts at NERC. However, the expansion of the standards compliance responsibility implied by the NERC Concept Document goes too far. As written, this proposal could have the effect of devaluing a large number of industrial owned electrical power assets by forcing industrials to meet new and unnecessary compliance obligations. Many will be forced to choose to either accept a significant new cost or fire sale their assets to local providers increasing the purchaser’s market power in the process. ELCON feels the addition of new compliance obligations should not be done in such a wholesale manner but instead done on an exception and as needed basis that factors in both a realistic appraisal of the underlying risk and the economic burden imposed on the registered entity relative to the expected benefits.

Specific recommendations and concerns are:

1. An Overarching “Principle” for the Identification of BES Elements and Facilities Must be the Guidance Provided by FERC That Significant Expansion of the Compliance Registry is Not Contemplated.

In FERC’s March 18, 2010 Notice of Proposed Rulemaking (NOPR) on the Revision to Electric Reliability Organization Definition of Bulk Electric System, the Commission stated regarding the revision to the BES definition:

This proposal would eliminate the discretion provided in the current definition for a Regional Entity to define “bulk electric system” within a region. Importantly, however, we emphasize that we are not proposing to eliminate all regional variations and we do not anticipate that the proposed change would affect most entities. ¶ 16.

... the Commission does not believe that the proposal would have an immediate effect on entities in any Regional Entity other than NPCC. ¶ 27.

Similarly, in Order No. 743, the Commission stated:

We expect that our decision to direct NERC to develop a uniform modified definition of “bulk-electric system” will eliminate regional discretion and ambiguity. The change will not significantly increase the scope of the present definition, which applies to transmission, generation and interconnection facilities. The proposed exemption process will provide sufficient means for entities that do not believe particular facilities are necessary for operating the interconnected transmission system to apply for an exemption. ¶ 144.

One area where the proposed BES definition and exception process will significantly expand the Compliance Registry is the criteria applicable to behind-the-meter generation (primarily cogeneration facilities). We urge that the BES definition should not change the currently applicable 20 MVA / 75 MVA generation size threshold applicable to generation facilities or the manner in which that threshold is currently applied, with behind-the-meter cogeneration facilities evaluated based on the net capacity actually provided to the grid.

2. A Second Overarching “Principle” for the Identification of BES Elements and Facilities Is the Need to Clarify Which Facilities Perform a True Transmission Function and Excluding Facilities That Perform a Local Distribution Function, As Required by Law.

Congress stated in Federal Power Act section 215:

SEC. 215. ELECTRIC RELIABILITY.

“(a) DEFINITIONS.—For purposes of this section:

“(1) The term ‘bulk-power system’ means—

“(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.

The term does not include facilities used in the local distribution of electric energy.

There has been little attempt by NERC to clarify what in fact are “facilities used in the local distribution of electric energy” even though any plain English application of the term makes such a determination self-evident. The proposed BES definition should expressly exclude facilities used in the local distribution of electric energy, and the identification of such facilities is independent of the identification of BES transmission. Facilities used for local distribution are NOT the residual of any determination of what are BES transmission facilities.

3. A Third Overarching “Principle” for the Identification of BES Elements and Facilities Must be Recognition of the Risk Imposed by the Element or Facility, and the Economic Burden of the Owner/Operator of the Element of Facility.

The efforts of the BES Standards Drafting Team follow the release of two important policy documents.

First, on January 18, 2011, the White House issued an Executive Order (“Improving Regulation and Regulatory Review”) by President Obama regarding improvements to federal regulations and the review of existing regulations to ensure, among other things, that a regulation be proposed or adopted “only upon reasoned determination that its benefits justify its costs,” and that regulations be tailored “to impose the least burden on society.”

Second, the NERC Planning Committee issued on January 10, 2011, “Risk-Based Reliability Compliance – White Paper Concept Discussion,” which attempts to advance “processes and procedures to prioritize [NERC’s] efforts and ‘tiering’ elements of its programs to maximize their value and optimize the benefit/cost of effort from stakeholders.” This white paper complements the President’s Executive Order.

ELCON believes that BES exclusion criteria and process should recognize and exclude elements and facilities in which the risk to bulk electric system reliability is at most theoretical or speculative, and where the compliance burden clearly outweighs the benefits. Such a determination should recognize the historical record of the element or facility in terms of the owner or operator’s coordination with the BA or control area, and transmission operators. This principle should be applied to the development of exclusion/inclusion criteria for private lines that connect loads and behind-the-meter generation to true BES Elements and Facilities.

4. An Additional Principle for the Identification of BES Elements and Facilities Should Be the Explicit Recognition on How the Element or Facility is Actually Operated or Used, Not Its Physical or Nominal Rating That May be Irrelevant to Reliability Considerations.

In Order No. 743, FERC clarified that it did not intend to require NERC to utilize the term “rated at” rather than the term “operated at” for the voltage threshold in the revised BES definition. A principle for the identification of BES Elements and Facilities should be such recognition and not exclusively on the rated value of an Element or Facility. This principle should be used to retain the exclusion in the Statement of Compliance Registry Criteria (Revision 5.0) for “net capacity provided to the bulk power system” in the context of the 20 MVA generating unit and 75 MVA generating plant thresholds. The “net capacity” applies to capacity “put” of a behind-the-meter generator whose predominant function is to serve load at the same site.

5. An Additional Principle for the Identification of BES Elements and Facilities Should be the Exclusion of PSEs That Do Not Own or Operate Physical Assets and Whose Power Transactions Are Exclusively Financial in Nature.

Many PSEs that operate in FERC jurisdictional organized wholesale markets (i.e., ISOs and RTOs) do not own, operate or lease physical assets and are currently bombarded with data requests that assume that they own or control such assets. An example of a superfluous data request is to prove that adequate reactive power has been procured to support the load. This is a question that should not have been asked and displays a profound ignorance of the operation of ISO/RTO markets. One potential solution

to this problem is to create two subsets of PSEs: one that owns and operates physical assets that are used to serve their loads, and a second that does not.

Some Regional Entities have also begun to ask questions that require PSEs to reveal the details of specific commercial transactions. This raises a broader question on what NERC and regional compliance staffs and auditors “need to know” and whether such questions are an abuse of their enforcement authority.

6. Any Attempt to Make Demand Side Management (DSM) Measures an Element or Facility of BES Will Be Shortsighted and Counterproductive.

Proposals that unilaterally and arbitrarily remove exclusions for generation and transmission, including the application of new compliance obligations to DSM programs, go far beyond what FERC intended in its guidance for revisions. Any new requirement concerning voluntary DSM adds cost to a process that so far has only acted to support reliability with performance equal to and sometimes superior to traditional providers. How is it that a potential resource that can contribute to maintaining reliability is now so quickly identified as a risk? We warn against the overzealous pursuit of control over every asset and resource on the electric system. This mindset will only breed cynicism and end the willingness of potentially dispatchable loads to cooperate with the real operators and owners of the BES.

A recently issued FERC study highlights the potential value to reliability of DSM (in the form of dispatchable demand response) (See Joseph H. Eto et al., Use of Frequency Response Metrics to Assess the Planning and Operating Requirements for Reliable Integration of Variable Renewable Generation, LBNL-4142E, December 2010). To reliably integrate greater amounts of wind energy resources to the bulk electric system, the study recommended the:

Expanded use of demand response that is technically capable of providing frequency control (potentially including smart grid applications), starting with broader industry appreciation of the role of demand response in augmenting primary and secondary frequency control reserves.

7. Revising the Definition of BES Does Not Justify Shifting the Plenary Burden for BPS Reliability from Utilities to Utility Customers. A BES Principle Should Recognize That the Obligation to Serve Applies in One Direction.

The only reason the bulk power system exists is to deliver electric power to residential households, commercial businesses, government facilities and industrial facilities of all sizes. The value of a reliable BPS is dependent on the needs of end use customers. Nothing in the legislative history of section 215 of the Federal Power Act suggests that Congress wittingly intended to change that relationship.

The burden of complying with NERC Reliability Standards is a cost of doing business for utility providers of generation, transmission and distribution services. Generation and interconnection facilities of industrial customers are almost never intended for or used to “operate the interconnected transmission network.” Those facilities are integral to a manufacturing process, including purchasing power from the grid. They were built in expectation that the BPS was prudently planned and operated by utilities. The rare exceptions are administered under applicable tariffs or contracts, and are already Registered Entities.

Part of NERC's effort should include defining the line between a BES asset that is used to deliver power and an End User asset that's sole purpose is to serve the End User's load. The NERC Functional Model includes a vague definition of End-use Customer. The problem is determining the scope of an end-use device. If an industrial company owns a 138 kV to 13.8 kV transformer that feeds its plant, is that an end-use device or a transmission asset that is used to transmit power to the low voltage distribution network within the manufacturing facility? Any work to revise the definition of the BES should also include a clarification of its boundaries. We believe that NERC should not expand the scope of the BES to include assets within end-use customer's private use networks.

8. An Additional BES Principle Should be that BES Elements and Facilities be Limited to Only Functions Currently Specified in the NERC Functional Model (Version 5).

NERC's development of the revised BES definition and exclusion/inclusion criteria and processes should be limited to functions specified in the NERC Functional Model (Version 5).

9. NERC is Encouraged to Propose a "Different Solution" That is as Effective as, or Superior to, the Commission's Proposed Approach. The Proposed Principles for the Exclusion of Elements and Facilities from the BES Should Include a Process for Categorical Exclusion Based on Common Physical Characteristics.

The Commission stated in Order No. 743 regarding its proposed revision of the BES definition (and presumably the exclusion/inclusion criteria and processes):

... NERC may propose a different solution that is as effective as, or superior to, the Commission's proposed approach in addressing the Commission's technical and other concerns so as to ensure that all necessary facilities are included within the scope of the definition. ¶ 16.

In addition, specific to the exclusion of Elements and Facilities from the BES, the Final Rule did not adopt the exclusion process proposed in the NOPR (i.e., facility-by-facility review). In the Final Order, FERC directed NERC to develop an exclusion process "with practical application that is less burdensome than the NOPR proposal."

FERC has also allowed NERC to consider concerns (mainly industrials') regarding "exclusion categories" in developing the exclusion process and criteria. ¶ 120.

ELCON interprets the Commission's statements to mean that the agency is open to developing a more efficient compliance process, including processes that minimize unnecessary regulatory burdens on potential Registered Entities and the administrative costs of NERC and RE compliance operations. In the spirit of "streamlining" NERC and the REs' review of smaller entities, ELCON recommends the addition of a principle on the exclusion of Elements and Facilities from the BES that encourages a process for categorical exclusion of entities based on common physical characteristics.

Dated January 21, 2011