

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability
Corporation: Petition for Approval of Risk
Based Registration Initiative Rules of
Procedure Revisions

Docket No. RR15-4-000

**COMMENTS OF THE
ELECTRICITY CONSUMERS RESOURCE COUNCIL (ELCON)**

ELCON appreciates the opportunity to comment on and express its strong support for the December 11, 2014 Petition of the North American Electric Reliability Corporation (NERC) for Approval of Risk-Based Registration Initiative Rules of Procedure Revisions.

ELCON is the national association representing large industrial consumers of electricity. ELCON member companies produce a wide range of products from virtually every segment of the manufacturing community. ELCON members operate hundreds of major facilities and are consumers of electricity in the footprints of all organized markets and other regions throughout the United States. ELCON has actively participated in NERC activities including its Risk-Based Registration Initiative.

ELCON urges the Commission to promptly approve the NERC Petition and endorse both the Risk Based Registration Initiative generally and the implementation of the materiality test for registration, which has been an important feature of NERC's Statement of Compliance Registration Criteria.

COMMENTS OF ELCON

I. ELCON STRONGLY SUPPORTS NERC'S PETITION AND IT'S RISK-BASED INITIATIVE

ELCON has been an active participant in and is a strong supporter of NERC's Risk-Based Registration Initiative. ELCON agrees that NERC compliance and enforcement should be forward-looking and focus on issues that pose a high risk to reliability. For the most part, NERC's recent efforts in development, implementation and revision of its reliability standards have reflected this mindset. NERC's many years of experience with its reliability standards now enable it to apply a similar approach in reforming the registration program so that NERC adopts a consistent risk-based approach from the beginning of its process. As the bottom line, ELCON endorses NERC's statement in the Petition that its "[p]riorities must be driven by a clear understanding of risks and consequences, and the costs and benefits associated with addressing them."¹

NERC's petition represents the culmination of a process that began with FERC's April 8, 2011 Technical Conference on Priorities for Addressing Risks to the Reliability of the Bulk Power System (Docket No. AD11-6). In its presentation at the Technical Conference, ELCON urged NERC to develop a process whereby only those entities that have a "material" impact on reliability are registered.² ELCON is pleased that NERC is adopting this approach and urges FERC to approve it.

II. ELCON SPECIFICALLY SUPPORTS IMPLEMENTATION OF A MATERIALITY TEST FOR REGISTRATION

An important aspect of NERC's Risk-Based Registration Initiative is "the establishment of a materiality test for registration, with clear procedures and criteria for evaluation of whether an entity has a material impact on reliability with respect to

¹ NERC Petition at pp. 3, 45-46.

² Opening Comments of Dr. John A. Anderson, Feb. 8, 2011, at p. 10.

above-the-line and below-the-line Registry Criteria determinations”.³ As NERC notes in its Petition, this approach will yield numerous benefits, including “[f]undamentally, . . . reduce[d] regulatory burden . . . to focus on issues that impact reliability,” “improved consistency and coordination,” and “additional clarity and transparency regarding registration requirements.”⁴

As explained by NERC, “NERC and the Regional Entities may exercise discretion *not* to pursue registration of an entity that meets the Registry Criteria thresholds if registration is unwarranted by reliability considerations.”⁵ Entities that are not material to reliability are not to be registered. This is explained in, and is a specific component of, the current edition of NERC’s Statement of Compliance Registry Criteria that was recently revised to reflect the new definition of the Bulk Electric System:

the 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.⁶

Of particular interest to ELCON and its members is the risk of unnecessary and inappropriate registration of retail, load-only manufacturing plants. Such plants that are not material to the reliability of the Bulk Power System (BPS), as determined in a way that considers their common and unique circumstances, should not be registered.

The nature and significance of this issue is explained in NERC’s design framework and implementation plan for risk-based registration:

[ELCON] provided RBRAG with an estimated order of magnitude of the number of United States manufacturing plants in the lower 48 states that might be interconnected with the BES at voltages in excess of 100 kV. There are over 600,000 manufacturing plants in the continental United States. An unknown but not insignificant number of these plants are at risk of becoming BES classified and subsequently registered entities based on a literal application of the BES bright-lines. After a review of only 16

³ NERC Petition at p. 5.

⁴ NERC Petition at pp. 5-6.

⁵ NERC Petition at p. 45 (emphasis added).

⁶ NERC, Statement of Compliance Registry Criteria, Revision 5.1 Effective July 1, 2014, at p. 11 Note 1.

manufacturing sectors (out of a total of 36), ELCON has conservatively estimated that 1,100 plants are potentially interconnected at 100 kV or higher. This number should be considered the lower end of a broad range. The high end could easily be two or three times that number. It is not known if 1%, 5% or 10% of these facilities would fail to meet the criteria for exclusion in BES Exclusions E2 and E3. The best-guess, order of magnitude estimate of the number of plants that are at risk of registration is between 11 and 330. Because most large manufacturing plants are served by multiple feeds, this configuration may result in BES classification and therefore a candidate for registration based on the bright-line application of the new BES Definition. To date, load-only manufacturing plants have not been registered as TOs/TOPs. Rather, in the case of these retail loads, BES reliability has been assured by the real-time actions of the RC/BA/TOP service providers.⁷

For these reasons, NERC determined that, applying a materiality threshold, NERC and the Regional Entities will exercise discretion not to register load manufacturing plants that meet certain criteria, notably that there is no BES generation at the site, that a utility maintains the interconnection or protection equipment element, and that the plant is a retail load.⁸ As NERC, notes, “[t]he application of the . . . criteria would not preclude the ability of the retail customer’s Regional Entity, in consultation with the entity’s RC/BA/TOP service providers, to register the entity if the Regional Entity can establish that the plant is material to the reliability of the BES,” provided that any such

⁷ NERC, Risk-Based Registration Phase 1 – Enhanced Design Framework and Implementation Plan, Oct. 2014, at pp. 11-12.

⁸ The full list of the non-exclusive criteria is as follows:

1. No BES generation at the site.
2. Utility maintains the element (e.g., the interconnecting substation and/or protection equipment under the terms and conditions of the applicable interconnection agreement or tariff).
3. Not an “integrated transmission Element” necessary to provide for the reliable operation of the interconnected transmission grid. Element is embedded in a retail customer’s electrical configuration and serves a local distribution function.
4. No third-party usage of element under terms and conditions of a FERC-jurisdictional Open Access Transmission Tariff (OATT).
5. The plant is a retail load.
6. The following additional factors may be used in support of the above criteria, which include that the organization is not required to participate in SPS, RAS, UVLS or UFLS programs.

Id. at p. 12.

materiality showing must “include a fact-specific analysis reflecting technical judgment.”⁹ If a Regional Entity pursues registration of a retail load manufacturer and proposes such a showing, it could be rebutted by the manufacturer in the course of NERC’s registration procedures, as were described in the Petition.¹⁰

This approach was vetted multiple times in NERC’s consensus driven processes and was not opposed. In fact, it garnered explicit support from a Transmission Owner that serves multiple retail, load-only manufacturing facilities. It is ELCON’s understanding load-only manufacturing facilities that are not material to the reliable operation of the BPS should continue to be excluded from the Compliance Registry.

In sum, the materiality test is an essential component of NERC’s Risk Based Registration Initiative and functions *inter alia* to avoid unnecessary costs and burdens on retail load manufacturing plants that do not pose a materiality risk to reliability.

III. ELCON SUPPORTS REMOVAL OF PURCHASING-SELLING ENTITIES, INTERCHANGE AUTHORITIES AND LOAD-SERVING ENTITIES FROM THE NERC REGISTRY CRITERIA

ELCON also supports NERC’s proposed modification to remove three functional registration categories from the NERC Registry Criteria. ELCON agrees with NERC that these activities are commercial in nature and that these entities do not own or operate BES elements. Accordingly, their removal poses little or no reliability risk.

The example of Purchasing-Selling Entities presents a strong case for the benefits of NERC’s proposed reform. NERC estimates that 197 entities now on the NERC Compliance Registry can be deregistered.¹¹ Further, NERC notes that, after other proposed revisions are implemented, only one Reliability Standard would be impacted by the removal of Purchasing-Selling Entities from registration.¹² Given that such entities serve a market rather than a reliability function, this is not surprising. The

⁹ Id.

¹⁰ NERC Petition at p. 12.

¹¹ NERC Petition at p. 6.

¹² NERC Petition at p. 21. The highly favorable compliance history of Purchasing-Selling Entities, described in detail by NERC at pp. 23-25 of the Petition, also supports their removal from registration.

removal of this category would pose no reliability risk while saving a number of entities the considerable costs and other burdens of registration.

Similarly, NERC's petition fully supports removal of Interchange Authorities and Load-Serving Entities as functional entities from the NERC Compliance Registry.¹³ Considerably fewer entities are currently registered in these categories.¹⁴

CONCLUSION

For the reasons as explained in these comments, ELCON urges the Commission to promptly grant NERC's petition in recognition of the significant benefits that will accrue from implementation of the Risk Based Registration Initiative.

¹³ NERC Petition at pp. 4, 25-34.

¹⁴ NERC Petition at p. 6.

NOTICES AND COMMUNICATIONS

Notices and communications with regard to these proceedings should be addressed to:

John P. Hughes
Vice President, Technical Affairs
ELECTRICITY CONSUMERS RESOURCE
COUNCIL
1101 K Street, NW, Suite 700
Washington, DC 20005
Email: jhughes@elcon.org
Phone: (202) 682-1390

W. Richard Bidstrup
CLEARY GOTTlieb STEEN &
HAMILTON LLP
2000 Pennsylvania Avenue, NW, Suite 900
Washington, DC 20006
Email: rbidstrup@cgsh.com
Phone: (202) 974-1500

Respectfully submitted,

/s/ W. RICHARD BIDSTRUP

W. Richard Bidstrup
CLEARY GOTTlieb STEEN & HAMILTON LLP
2000 Pennsylvania Avenue, N.W., Suite 900
Washington, D.C. 20006
Counsel for ELCON

Dated: January 12, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary of this proceeding.

Dated at Washington, D.C.: January 12, 2015

/s/ W. RICHARD BIDSTRUP

W. Richard Bidstrup