

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability
Corp.

Docket No. RR24-2-000

**MOTION TO INTERVENE AND COMMENTS
OF THE TRANSMISSION ACCESS
POLICY STUDY GROUP**

Pursuant to the March 20, 2024 notice issued by the Federal Energy Regulatory Commission (“Commission” or “FERC”), the Transmission Access Policy Study Group (“TAPS”) moves to intervene in the above-captioned docket and offers limited comments on the Rules of Procedure (“ROP”) revisions filed by the North American Electric Reliability Corporation (“NERC”).¹

I. MOTION TO INTERVENE

TAPS is an association of transmission-dependent utilities (“TDUs”) in more than 35 states promoting open and non-discriminatory transmission access.² TAPS members have long recognized the importance of grid reliability. As TDUs, TAPS members are users of the Bulk Power System (“BPS”) and are highly reliant on the reliability of facilities owned and operated by others for the transmission service required to meet TAPS members’ loads. In addition, many TAPS members participate in the development of and are subject to compliance with NERC reliability standards. In particular, third-party-owned and -operated inverter-based resources (“IBRs”) that meet the proposed new

¹ Petition of the North American Electric Reliability Corporation for Approval of Revisions to the NERC Rules of Procedure to Address Unregistered Inverter-based Resources (Mar. 19, 2024), eLibrary No. 20240319-5204 (“Petition”).

² Jane Cirrincione, Northern California Power Agency, is TAPS Chair. Kevin Gaden, Illinois Municipal Electric Agency, is Vice Chair. Tom Heller is TAPS Executive Director.

registration thresholds are interconnected to TAPS members' systems; and some TAPS members themselves own and operate such IBRs.

The outcome of this proceeding will affect the members of TAPS and the customers they serve. TAPS wishes to intervene in this proceeding to represent the interests of these members as such interests may arise. TAPS submits that its participation in this proceeding is in the public interest, and respectfully moves to intervene.

Communications regarding these proceedings should be directed to:

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II. COMMENTS

NERC's March 19 Petition proposes³ to, *inter alia*:

update the Generator Owner and Generator Operator ("GO" and "GOP") Registry Criteria [in Appendix 5B of the NERC Rules of Procedure] to include a new category ("Category 2 GOs" and "Category 2 GOPs") of entities that own or operate non-BES inverter based generating resources that (i) either have or contribute to an aggregate nameplate capacity of greater than or equal to 20 MVA, (ii) connected through a system designed primarily for delivering such capacity to a common point of connection at a voltage greater than or equal to 60 kV.

³ Petition at 2.

TAPS provided extensive feedback on the various stages of NERC's development of its proposal. While TAPS continues to have reservations regarding aspects of NERC's proposal,⁴ it is important that revised registration criteria be in place as soon as possible to support the ongoing work to comply with Order 901.⁵ TAPS therefore supports NERC's request for prompt approval of the revised Rules of Procedure.

However, TAPS requests that the Commission make clear that in approving NERC's proposed changes, it is not making any determination as to the contours of the Bulk Power System. This clarification is needed due to what TAPS understands to be an unintended implication of the Petition's discussion of the dataset on which NERC based its analysis.

Specifically, the Petition states that ERO Enterprise staff "evaluated *BPS* trends data based on Energy Information Administration Form 860s submitted between 2017-2021 for generation greater than 1 MW and connected at 40 kV and above."⁶ The Petition then goes on to state, based on "[t]his *BPS* trend analysis," that "approximately 97% of synchronous *BPS* assets overlap with the scope of the [Bulk Electric System ("BES")] Definition [but] only 84% of these [nonsynchronous] *BPS* facilities overlap with the scope of the BES Definition."⁷ In other words, the Petition appears to assume

⁴ TAPS is working through NERC's processes to attempt to address its concerns outside the context of these proposed Rules of Procedure changes.

⁵ *Reliability Standards to Address Inverter-Based Res.*, Order No. 901, 185 FERC ¶ 61,042 (2023).

⁶ Petition at 11 (emphasis added).

⁷ *Id.* at 12 (emphasis added).

that “generation greater than 1 MW and connected at 40 kV and above”⁸ defines the scope of “BPS” generation.⁹

“Bulk Electric System” is a NERC-created and NERC-defined term,¹⁰ subject to Commission approval; as the Commission recently reiterated, “NERC’s Commission-approved BES definition is a *subset of the Bulk-Power System* and defines the scope of the Reliability Standards and the entities subject to NERC compliance.”¹¹ The “bulk-power system,” on the other hand, is defined in Section 215 of the Federal Power Act,¹² which goes on to define a “reliability standard” as “a requirement, approved by the Commission under this section, to provide for reliable operation of the *bulk-power system*.”¹³

The Petition’s unnecessary and unfortunate characterization of an EIA dataset in terms of the BPS has no bearing on the Commission’s determination of whether NERC’s proposed Rules of Procedure changes meet the standards set out in Section 215 of the

⁸ *Id.* at 11.

⁹ EIA itself draws no link between the Form 860 dataset at issue and the Bulk Power System; it simply characterizes the data as “generator-level specific information about existing and planned generators and associated environmental equipment at electric power plants with 1 megawatt or greater of combined nameplate capacity.” U.S. Energy Info. Admin., *Form EIA-860 detailed data with previous form data* (last visited Apr. 11, 2024), <https://www.eia.gov/electricity/data/eia860/>.

¹⁰ NERC, *Glossary of Terms Used in NERC Reliability Standards* at 6-8 (definition of “Bulk Electric System”) (Apr. 1, 2024), https://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf (NERC Glossary).

¹¹ *Registration of Inverter-Based Res.*, 181 FERC ¶ 61,124, P 1 n. 3 (2022) (“IBR Registration Order”) (citing *Revisions to Elec. Reliability Org. Definition of Bulk Elec. Sys. & Rules of Proc.*, Order No. 773, 141 FERC ¶ 61,236 (2012) (“Order 773”), *order on reh’g*, Order No. 773-A, 143 FERC ¶ 61,053, *reh’g denied*, 144 FERC ¶ 61,174 (2013), *petition for review denied sub nom. People of the State of N. Y. v. FERC*, 783 F.3d 946 (2d Cir. 2015) (rejecting New York’s challenge to the presumptive threshold for local distribution lines at 100 kV).

¹² 16 U.S.C. § 824o(a)(1). While “Bulk Power System” is also a defined term in the NERC Glossary, the Glossary definition mirrors the statute. NERC Glossary at 8 (definition of “Bulk Power System”).

¹³ 16 U.S.C. § 824o(a)(3) (emphasis added).

Federal Power Act¹⁴ and satisfy the Commission's directive in the IBR Registration Order. The proposed definitions of Generator Owner and Generator Operator do *not* use BPS terminology. To the extent the EIA dataset is relevant to whether the proposed ROP changes are compliant, it is due to the EIA-determined scope of the dataset, not how NERC chose to refer to that dataset in its Petition.

And TAPS understands that despite the potential implication of NERC's use of the BPS in labeling this dataset in its Petition, it is *not* NERC's intent to define the scope of the Bulk Power System in doing so. This is as it should be: the statutory term "bulk-power system," like "local distribution," is pertinent to the boundaries of the Commission's jurisdiction, and as the Commission stated in Order 773, "[t]he determination whether an element or facility is 'used in local distribution,' as the phrase is used in the FPA, requires a jurisdictional analysis that is more appropriately performed by the Commission."¹⁵ The question of the precise delineation of the Bulk Power System is similarly a jurisdictional matter for the Commission to decide, which it is *not* called upon to do by NERC's Petition.

¹⁴ 16 U.S.C. §§ 824o(c)(2), 824o(f).

¹⁵ Order 773, P 69. It is instructive that in developing the revised BES Definition, it was necessary for NERC to propose a "first step or proxy" that was expected to "remove from the bulk electric system the vast majority of facilities that are used in local distribution" (Order 773, P 67), while still allowing entities to "petition the Commission seeking a determination that the facility is used in local distribution" (Order 773, P 70). In the same way, the IBR Registration Order's directive (Ordering Paragraph A) to "identify and register owners and operators of unregistered IBRs that are connected to the Bulk-Power System and that, in the aggregate, materially impact the reliable operation of the Bulk-Power System" implicitly required NERC to propose a *proxy* voltage boundary for the BPS. NERC has proposed 60 kV as its threshold for registering IBR Generator Owners and Operators, and TAPS does not object to that proposal. Rather, our concern is that NERC's characterization of the EIA dataset appears to suggest that BPS generation is *defined as* facilities 1 MW and above, connected at 40 kV and above. That the 40 kV voltage boundary in the EIA dataset differs from NERC's proposed 60 kV proxy threshold only adds to the potential for confusion.

To avoid any future confusion from the Petition's needless use of BPS terminology to characterize an EIA dataset, TAPS requests that the Commission clarify that by approving NERC's Petition, it is not making any determination as to the limits of the Bulk Power System.

CONCLUSION

TAPS respectfully asks the Commission to grant its motion to intervene in this proceeding, approve NERC's proposed changes to its Rules of Procedure, and make clear that, in so doing, the Commission is not making any determination as to the limits of the Bulk Power System.

Respectfully submitted,

/s/ Rebecca J. Baldwin

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April 18, 2024

CERTIFICATE OF SERVICE

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

Dated on this 18th day of April, 2024.

/s/ Rebecca J. Baldwin

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