

**Extrait de la décision 693 de la FERC concernant  
le « Bulk Power System »**



impact assessment procedure to provide a consistent and uniform methodology that can be applied by any Regional Entity. Ontario IESO does not support the Commission's proposal to limit case-by-case determinations to underlying transmission systems operating at less than 100 kV.

**b. Commission Determination**

75. The Commission agrees with commenters that, at least initially, expanding the scope of facilities subject to the Reliability Standards could create uncertainty and might divert resources as the ERO and Regional Entities implement the newly created enforcement and compliance regime. Further, we agree with commenters that unilaterally modifying the definition of the term bulk electric system is not an effective means to achieve our goal. For these reasons, the Commission is not adopting the proposed interpretation contained in the NOPR. Rather, for at least an initial period, the Commission will rely on the NERC definition of bulk electric system<sup>47</sup> and NERC's registration process to provide as much certainty as possible regarding the applicability to and the responsibility of specific entities to comply with the Reliability Standards in the start-up phase of a mandatory Reliability Standard regime.<sup>48</sup>

76. However, we disagree with NERC, APPA and NRECA that there is no intentional distinction between Bulk-Power System and bulk electric system. NRECA states that "[W]here Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken."<sup>49</sup> In this instance, however, Congress did not borrow the term of art – bulk electric system – but instead chose to create a new term, Bulk-Power System, with a definition that is distinct from the term of art used by industry. In particular, the statutory term does not establish a voltage threshold limit of applicability or configuration as does the NERC definition of bulk electric system. Instead, section 215 of the FPA broadly defines the Bulk-Power System as "facilities and control systems necessary for operating an

---

<sup>47</sup> "As defined by the Regional Reliability Organization, the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition."

<sup>48</sup> See Section II.C.2., Applicability to Small Entities, *infra*.

<sup>49</sup> Citing Morissette v. United States, 342 U.S. 246, 263 (1952).

interconnected electric energy transmission network (or any portion thereof) [and] electric energy from generating facilities needed to maintain transmission system reliability.” Therefore, the Commission confirms its statements in the NOPR that the Bulk-Power System reaches farther than those facilities that are included in NERC’s definition of the bulk electric system.<sup>50</sup>

77. Although we are accepting the NERC definition of bulk electric system and NERC’s registration process for now, the Commission remains concerned about the need to address the potential for gaps in coverage of facilities. For example, some current regional definitions of bulk electric system exclude facilities below 230 kV and transmission lines that serve major load centers such as Washington, DC and New York City.<sup>51</sup> The Commission intends to address this matter in a future proceeding. As a first step in enabling the Commission to understand the reach of the Reliability Standards, we direct the ERO, within 90 days of this Final Rule, to provide the Commission with an informational filing that includes a complete set of regional definitions of bulk electric system and any regional documents that identify critical facilities to which the Reliability Standards apply (*i.e.*, facilities below a 100 kV threshold that have been identified by the regions as critical to system reliability).

78. The Commission believes that the above approach satisfies concerns raised by NARUC and New York Commission that the proposal to interpret Bulk-Power System exceeds the Commission’s jurisdiction. When the Commission addresses this matter in a future proceeding, it will consider NARUC’s and New York Commission’s comments regarding the “layer of ‘area’ transmission.”

79. We disagree with commenters claiming that the ERO’s definition of bulk electric system is broader than the statutory definition of Bulk-Power System. Connecticut Attorney General, Connecticut DPUC and others argue that the ERO’s definition of bulk electric system exceeds the Commission’s jurisdiction by including generation that is not needed to maintain transmission system reliability and, therefore, intrudes into state jurisdiction over generation resource adequacy. First, none of the Reliability Standards submitted by the ERO set requirements for resource adequacy. Moreover, commenters have not adequately supported their claim that the “threshold” in the NERC definition of bulk electric system that includes facilities “generally operated at 100 kV or higher” is

---

<sup>50</sup> NOPR at P 66. For these same reasons, the Commission rejects the position of those commenters that suggest the statutory definition of Bulk-Power System is more limited than the NERC definition of bulk electric system.

<sup>51</sup> See *id.* at P 64-65 & n.53-54.

broader than the statutory phrase “electric energy from generation facilities needed to maintain transmission system reliability.” As stated explicitly in the NERC definition, this is a “general” threshold and allows leeway to address specific circumstances. On its face, the NERC definition is not overbroad; as applied, it must be interpreted and applied consistent with the statutory language in section 215. Finally, as stated above, we believe that the ERO definition of bulk electric system is narrower than the statutory definition of Bulk-Power System.

## **2. Applicability to Small Entities**

80. The NOPR discussed NERC’s plan to, in the future, identify in a particular Reliability Standard limitations on applicability based on electric facility characteristics.<sup>52</sup> The Commission agreed that it is important to examine the impact a particular entity may have on the Bulk-Power System in determining the applicability of a specific Reliability Standard. However, the Commission stated that a “blanket waiver” approach that would exempt entities below a threshold level from compliance with all Reliability Standards would not be appropriate because there may be instances where a small entity’s compliance is critical to reliability. The Commission also proposed to direct NERC to develop procedures that permit a joint action agency or similar organization to accept compliance responsibility on behalf of their members.

81. In addition, the Commission solicited comment on whether, despite the existence of a threshold in a particular standard (e.g., generators with a nameplate rating of 20 MW or over), the ERO or a Regional Entity should be permitted to include an otherwise exempt facility, e.g., a 15 MW generator, on a facility-by-facility basis, if it determines that the facility is needed for Bulk-Power System reliability and, if so, what, if any, process the ERO or Regional Entity should provide when making such a determination.

### **a. Identifying Applicable Small Entities**

#### **i. Comments**

82. While certain commenters, including EEI, FirstEnergy, SERC, Xcel and Entergy, agree with the Commission that a blanket waiver to exempt small entities from compliance is not appropriate because there may be instances where a small entity’s compliance is critical to reliability, APPA, ELCON, Process Electricity Committee, MEAG and South Carolina E&G advocate a blanket waiver.

---

<sup>52</sup> Id. P 49-53.