Comment Period Opens
Proposed Amendments to NERC Rules of Procedure Section 509, Section 1703 and Appendix 5C
Comment Period Ends October 27, 2011

The North American Electric Reliability Corporation (NERC) is proposing changes to its Rules of Procedure (ROP) and associated Appendices.

NERC is requesting comments on a proposed revision to the NERC Rules of Procedure to add new sections 509 and 1703, as well as, Appendix 5C: Procedure For Requesting and Receiving An Exception From The Application Of The NERC Definition of Bulk Electric System. The comment period begins September 13, 2011 and ends October 27, 2011.

The proposed revisions are in response to FERC Orders 743 and 743A where NERC was directed to revise the definition of the Bulk Electric System (BES) and to develop a proposed exemption process. The proposed amendments would effectuate the exemption process directive by creating a new ERO rule implementing an exceptions process.

Under this process entities would be allowed to pursue either including within the BES an Element or Elements that would otherwise be excluded by application of the BES Definition or excluding from the BES an Element or Elements that would otherwise be included by application of the BES Definition. This exception process was developed with the participation of interested stakeholders who believe it to be practical in application and less burdensome than the NOPR proposal where a Regional Entity would have sought ERO and Commission approval before exempting each facility rated at 100kV or above from compliance with the Reliability Standards.

Materials Included in this Request for Comments

- Proposed new Section 509: Exceptions to the Definition of the Bulk Electric System
- Proposed new Section 1703: Challenges to NERC Determinations of BES Exception Requests under ROP Section 509
- Proposed new Appendix 5C: Procedure for Requesting and Receiving An Exception From the Application of The NERC Definition of Bulk Electric System (clean and redline showing changes from the May 2011 posting)

Additional Materials Included for information

- Consideration of comments from May 2011 posting
- BES Exception Request flowchart and timelines
- Exception Request Form template
Submission of Comments
Comments are due October 27, 2011, and must be submitted electronically using the form provided.

1. The ROP team believes the proposed amendments represent a process that balances the need for effective and efficient reliability administration with due process and clarity of expectations. Do you agree? Please comment why or why not...If not please offer your proposed revision.

☐ Yes
☒ No

Comments: The process needs simplification in order to be efficient. The whole process may take over 22 months to be completed as shown in the flowcharts.

NERC has failed to address the specific requirements of a key FERC directive contained in Orders No. 743 and 743-A. These Rules of Procedure amendments potentially violate the jurisdictional boundary set between Transmission and local distribution in Federal Power Act (FPA), Section 215, 824(o) and in those Orders.

The Regions and NERC must first screen all Elements and facilities presented for exception for the presence of “facilities used in the distribution of electric energy.” In our view, and that of FERC, these local distribution facilities must be excluded from the Bulk Electric System (BES) as is specifically required in FPA, Section 215, 824(o), and through reference to the FPA by FERC in Order Nos. 743 and 743-A. This local distribution exclusion from the BES should be automatic upon presentation of appropriate proofs. Only then may NERC apply its various administrative procedures and technical criteria for exempting jurisdictional Transmission Elements and Facilities from the BES, where they may be found not “necessary for operating an interconnected electric energy transmission network.”

NERC should adopt, in the proposed amendments to the RoP as a potential “first screen”, the FERC Seven Factor test, and use it for identifying and excluding any and all “facilities used in the distribution of electric energy.” Filing Entities presenting such appropriate proofs should not need to present further evidence to demonstrate that such Elements and facilities are eligible for exclusion from the BES.

The presentation of a local distribution determination by a jurisdictional Federal, State or Provincial body, that such Elements or facilities are “facilities used in the distribution of electric energy,” represents appropriate proof and is sufficient for said Elements and facilities to be excluded from the BES.

Supporting Discussion:
Federal Power Act (FPA), Section 215, 824(o), Definitions differentiates between jurisdictional Transmission and non-jurisdictional local distribution as follows:

(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.
In FERC Order 743-A the Commission stated

69. We agree ... that the Seven Factor Test could be relevant and possibly is a logical starting point for determining which facilities are local distribution for reliability purposes”

By adopting this FERC Seven Factor test, the BES SDT will have fulfilled its obligation to respond to these FERC mandates relating to “local distribution” as stated in FERC Order 743:

“Determining where the line between ‘transmission’ and ‘local distribution’ lies,” (¶37),

“To the extent that any individual line would be considered to be local distribution, that line would not be considered part of the bulk electric system” (¶39), to establish

“[A] means to track and review facilities that are classified as local distribution to ensure accuracy and consistent application of the definition” (¶119).

**Supporting References:**

FERC Order 743 observed some believe that “the Commission’s [and by extension NERC’s] proposal exceeds its jurisdiction by encompassing local distribution facilities that are not necessary for operating the interconnected transmission network.” [FERC Order 743, ¶27.]

In this regard FERC Order 743 states:

At ¶37, Congress specifically exempted “facilities used in the local distribution of electric energy” from the definition. ... Determining where the line between “transmission” and “local distribution” lies, which includes an inquiry into which lower voltage “transmission” facilities are necessary to operate the interconnected transmission system, should be part of the exemption process the ERO develops.

And at ¶39, To the extent that any individual line would be considered to be local distribution, that line would not be considered part of the bulk electric system.

And at ¶119, ... [W]e believe that it would be beneficial for the ERO in maintaining a list of exempted facilities, to consider including a means to track and review facilities that are classified as local distribution to ensure accuracy and consistent application of the definition. Similarly, the ERO could track exemptions for radial facilities. [Emphasis added]

Note that in ¶119 the Commission clearly distinguishes between “radial facilities” and “local distribution” just as it differentiates between jurisdictional radials and non-jurisdictional local distribution facilities in footnote 82:

82 As discussed further below, the Commission uses the term “exclusion” herein when discussing facilities expressly excluded by the statute (i.e., local distribution) and the term “exemption” when referring to the exemption process NERC will develop for use with facilities other than local distribution that may be exempted from compliance with the mandatory Reliability Standards for other reasons.

2. The ROP team believes the proposed amendments represent a process that is consistent, repeatable, and verifiable. Do you agree? Please comment why or why not...If not, please offer your proposed revision.

☐ Yes

☒ No

☐ Comments: Refer to the response to Question #1.
There is a very noticeable gap and lack of transparency on how the exception application will be evaluated and processed. Suggest the ROP team develop a reference/guidance document in order to assist Registered Entities, Regional Entities, and the ERO on how and on what basis an exception application would or should be processed.

While the proposed process is repeatable, it is difficult to evaluate if the process will be verifiable because it will depend, for example, how the RE conducts its review of an Exception request.

In addition, there is a significant need to provide Applicants greater clarity and improved transparency with regard to how their exception applications will be evaluated by Regional Entities and NERC. Absent some guidance we are concerned that Regional variances will arise during application of the Exception Process within the eight NERC regions.

The RoP Drafting Team and/or the BES Standard Drafting Team develop an Applicant’s and Evaluator’s Guidance document to assist Applicants, Regional Entities, and NERC in preparing and evaluating exception applications. For example, the Federal Power Act provides Congress’ vision for a reliable transmission system. Federal Power Act (FPA), Section 215, 824(o), Definitions states,

(4) The term ‘reliable operation’ means operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements.

NERC and the Regions should specifically adopt this Congressional guidance, defining ‘reliable operation,’ as their overriding Technical Principle when evaluating Exception Process applications concerning jurisdictional Transmission Elements and facilities.

3. The ROP team believes the proposed amendments represent a process that supports consistent treatment of transmission lines that cross international borders. Do you agree? Please comment why or why not...If not, please offer your proposed revision.

☐ Yes
☐ No

☐ Comments: The Procedure for requesting and receiving an exception from the application of the NERC definition of BES may not be applicable because of the obligation to make submissions to the applicable Governmental Authorities in Canada. NERC will have to take into consideration that procedures exist under Canadian jurisdictions which may be quite different from the one proposed.

Also, footnote 2 in section 1.2 presumes automatic adherence of Canadian Authorities or the need for its procedure to be submitted to NERC. Instead, it will be necessary that NERC and Canadian Authorities, with the Canadian Entities involved, to come to a common understanding of differences to arrive at an agreement. Those exchanges should aim to ensure reliability across the border while respecting proper jurisdictions. It could be done by
addressing reliability in bulk power transfer within (intra) or between (inter) two Balancing
Authority Areas, and monitored facilities included in an Interconnection Reliability Operating
Limit (IROL). Other criteria must be left to the discretion of the applicable jurisdiction.

4. The ROP team believes the proposed amendments represent a process that helps alleviate concerns about a
“one-size fits all” approach. Do you agree? Please comment why or why not...If not, please offer your
proposed revision.

☐ Yes
☒ No

☒ Comments: As stated previously, the Procedure needs to be made more efficient,
recognize that applicable Governmental Authorities in Canada may adopt different
approaches or methodologies for addressing exceptions to the NERC BES definition.
Also refer to the response to Question #1.

5. The ROP team believes the proposed amendments represent a process that allowed commenters to raise
and address a number of their substantive concerns. Do you agree? Please comment Please comment why
or why not...If not, please offer your proposed revision.

☐ Yes
☒ No

☒ Comments: Refer to the response to Question #2.

6. Do you have any other comments not covered above?

☐ Comments: Sections 4.5.3 and 4.6 discuss the disclosure of confidential information
mandated by or under the rules, laws, or acts within the United States. Suggest that
alternate language be used for clarity, or adequate provisions be provided to include other
jurisdictions, such as Canada.

As stated in previous responses, the Procedure in the document in general, and specifically
in the document’s Section 1.3 footnote needs to be made more efficient, and that it needs
to be recognized that applicable Governmental Authorities in Canada may adopt different
approaches or methodologies for addressing exceptions to the NERC BES definition. In
addition, before implementing this process, NERC will have to ensure that they fit all
applicable Governmental Authorities frameworks as addressed in the proposed Section 1703
- Challenges to NERC Determinations of BES Exception Requests under ROP Section 509.

Section 5.3 should be made to read:
“Each Regional Entity shall establish provisions for a Technical Review Panel consisting of not less than five (5), three (3) individuals as appointed by the Board of the Regional Entity. Panel members shall comply with Subsection 7 of Section 403 of the NERC Rules of Procedure, shall not have participated in the review of the Exception Request, and shall have the required technical background to evaluate Exception Requests.”