UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Revision to Electric Reliability Organization Definition of Bulk Electric System	**)** **)** **)**	**Docket No. RM09-18-000**

COMMENTS OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

The New York Independent System Operator, Inc. ("NYISO") respectfully submits these comments in response to the Federal Energy Regulatory Commission's ("FERC" or "Commission") March 18, 2010 *Notice of Proposed Rulemaking* ("NOPR") regarding *Revision to Electric Reliability Organization Definition of Bulk Electric System.*

I. COMMUNICATIONS AND CORRESPONDENCE

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II. SUMMARY

If the Commission determines that a uniform definition of the Bulk Electric System ("BES") should be adopted across North America, the NYISO does not object to

the Commission's proposal to define the BES in which North American Electric Reliability Corporation ("NERC") standards apply to all transmission facilities 100 kV and above. Should FERC adopt the proposed 100 kV BES definition in a final rule, NERC and the Regional Entities will need to determine that all assets 100 kV and above are covered by appropriate registrations to meet the NERC's Transmission Operator and Transmission Planning Standards (Point IV.A). Further, it is essential that the Commission provide a reasonable transition period of no less than 24 months to allow implementation of procedural and system changes, and for identification of facility exclusions necessary to apply NERC standards to all transmission facilities 100 kV and above. The NYISO supports the comments of the NPCC on the need for a sufficient and orderly transition period, as well as the NPCC's other comments (Point IV.B). Finally, implementing the 100 kV BES definition in the NYCA will cause the NYISO to incur increased capital costs and costs for hiring and training of additional staff that it will have to recover from its stakeholders (Point IV.C), which will ultimately be borne by retail ratepayers.

III. BACKGROUND

Enacted in August 2005, the Energy Policy Act of 2005 ("EPAct 2005")[1] authorized the creation of an Electric Reliability Organization ("ERO") that spans North America, with FERC oversight in the United States. In Order 672, FERC certified NERC as the ERO.[2] In Order 693, the Commission approved 83 of the 107 NERC Standards as

[1] Pub. L. No. 109-58, Title XII, Subtitle A, 199 State. 594, 941(2005); 16 U.S.C. § 824o.

[2] North American Reliability Corp., 116 FERC ¶ 61,062; Order on Rehearing and Compliance, 117 FERC ¶ 61,126 (2006).

mandatory and enforceable for BES facilities as of June 18, 2007, and ordered NERC to make improvements to many of those standards.[3] New Section 215 of the Federal Power Act requires NERC to develop mandatory and enforceable Reliability Standards for the BES, subject to Commission review and approval.[4] Section 215(a) does not specify a voltage-based or other metric for identifying BES facilities, but defines that term as:

> (A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof) and (B) electric energy from generating facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of energy.[5]

NERC defines "bulk electric system" as follows:

> 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.[6]

In Order 693, the Commission accepted this definition of BES "at least for an initial period" despite its allowance for variations by Regional Reliability Organizations, including variations from the 100 kV threshold. The Commission noted that certain regional entities, such as the NPCC, define BES in a manner that excludes facilities below 230 kV and transmission lines that serve New York City. The NPCC utilizes an

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[3] Mandatory Reliability Standards for the Bulk Power System, Order No. 693, FERC States. & Regs. ¶ 31,242, Order on Rehearing, Order No. 693-A, 120 FERC ¶ 61,053 (2007)(directing improvements to 56 of the 83 approved Reliability Standards and leaving 24 Reliability Standards pending further information). Additional Standards have been developed by NERC and approved by FERC in subsequent orders.

[4] 16 U.S.C. § 824o(e)(3).

[5] 16 U.S.C. § 824o(a).

[6] Order No. 693, FERC Stats. & Regs. ¶ 31,242, at ¶ 51.

impact-based methodology rather than a voltage threshold to define Bulk Power System as "[t]he interconnected electrical systems within northeastern North America comprised of system elements on which faults or disturbances can have a significant adverse impact outside of the local area."[7]

In December 2008, FERC directed NERC and the NPCC to submit to the Commission a comprehensive list of BES facilities located within the United States portion of the NPCC region.[8] NERC and NPCC submitted compliance filings on February 20, 2009 and April 21, 2009 which listed the NPCC facilities constituting the BES under the impact-based methodology. With respect to identifying the BES facilities in the NYCA, the NYISO provided data to the NPCC, which was subsequently provided by NPCC to NERC. The NYISO also provided the NPCC information on the impacts and costs to the NYISO of adopting a 100 kV threshold for defining BES in the NYCA. In September 2009, NERC and NPCC submitted a further compliance filing:
(i) evaluating the impact and usefulness of a 100 kV "bright line" BES definition;
(ii) identifying another functional test utilizing a Transmission Distribution Factor method to determine reliability impacts; and (iii) stating that the NPCC's current impactbased methodology sufficiently protects BES reliability.

In this NOPR, the Commission proposes to direct NERC to revise its definition of the term BES to include all electric transmission facilities with a rating of 100 kV or above. FERC further proposes that NPCC and other Regional Entities must seek NERC and Commission approval before exempting any facility rated at 100 kV or above from

[7] NPCC Glossary of Terms, at 4 (definition of "Bulk Power System").

[8] North American Electric Reliability Corp., 125 FERC ¶ 61, 295 (2008).

compliance with mandatory Reliability Standards. The NOPR states that a 100 kV threshold for identifying BES facilities will protect the reliability of the BES, and will provide consistency across the nation's reliability regions regarding the identification of such facilities.

IV. COMMENTS

A. Adoption of a 100 kV BES Definition Will Require Appropriate Registrations for Transmission Operator and Transmission Planner Functions for NYCA Transmission Facilities over which the NYISO does not have Authority.

1. Transmission Operator Registration.

The formational agreements establishing the NYISO allocate responsibility among the New York Transmission Owners (NYTOs) and the NYISO for operating the NYCA transmission system. The NYISO/NYTO Agreement, which has been approved by the Commission, states that the NYTOs "will continue to own, physically operate, modify and maintain the Transmission Facilities Under ISO Operational Control."[9] The Agreement authorizes the NYISO to operate only a specific list of transmission facilities (known as the "A-1 list" facilities) over which the NYISO may control the facilities' operational (in-service) status.[10] These facilities are NYCA transmission facilities generally operated at voltages of 230 kV and above. Even as to these facilities, the physical control operations are taken ---at the direction of the NYISO--- by the individual NYTOs at their control centers.[11] The NYTOs operate all of their remaining

[9] NYISO/NYTO Agreement, at 2.

[10] NYISO/NYTO Agreement, Section 2.01 and Appendix A-1.

[11] NYISO/NYTO Agreement, Section 2.02 ("Each Transmission Owner shall operate and maintain its facilities that are designated as Transmission Facilities Under ISO Operational Control and Transmission Facilities Requiring ISO Notification in

transmission facilities at their control centers.[12] For some of these facilities, (known as the "A-2 list" facilities), the NYTOs must notify the NYISO regarding their operational status.[13] In addition, the NYTOs have reserved the right to take individual actions they deem necessary to maintain safe operations.[14]

Operational control authority for directing the status of electric power transmission facilities is fundamental to meeting NERC reliability compliance requirements for Transmission Operators. With one exception,[15] only the NYISO is currently registered as a Transmission Operator ("TOP") in the NYCA. Based upon the current allocation of responsibility in the NYISO-NYTO agreements, a 100 kV BES definition would leave certain facilities in the NYCA that are not on the A-1 list, but that are 100 kV and above, without an accountable entity registered to comply with the NERC TOP requirements. Accordingly, should FERC adopt the 100 kV BES definition, NERC

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accordance with the terms of this Agreement and in accordance with all Reliability Rules and all other applicable operating instructions, and ISO Procedures."); NYISO Agreement, Section 1.109 defines "Reliability Rules" as "Those rules, standards, procedures and protocols developed and promulgated by the NYSRC, including Local Reliability Rules, in accordance with NERC, NPCC, FERC, PSC and NRC standards, rules and regulations and other criteria, pursuant to the NYSRC Agreement."

[12] NYISO/NYTO Agreement, Section 2.03 ("Transmission system facilities not designated as Transmission Facilities Under ISO Operation al Control or as Transmission Facilities Requiring ISO Notification shall be collectively known as 'Local Area Transmission Facilities." Each Transmission Owner shall have sole responsibility for the operation of its Local Area Transmission System Facilities ..... "

[13] NYISO/NYTO Agreement, Appendix A-2.

[14] NYISO/NYTO Agreement, Section 2.04 ("Notwithstanding any other provisions of this Agreement, a Transmission Owner may take such action with respect to the operation of its facilities as it deems necessary to maintain Safe Operations.")

[15] National Grid, dba Niagara Mohawk Power Corporation, is registered as a TOP for its facilities in the NYCA.

and the NPCC as the regional entity for NYCA will need to address the registrations in the NYCA so that all assets that are not otherwise granted an exclusion are covered by an appropriate TOP registration.

2. Transmission Planning Registration.

With respect to responsibilities under the NERC Transmission Planning ("TPL") Standards, the NYISO conducts NYCA-wide planning for transmission facilities designated on the NPCC Area Transmission Review ("ATR") list. The ATR list generally consists of higher voltage transmission facilities (230 kV and above) and generators interconnected at that level. The NYISO employs the ATR list for purposes of its annual Area Transmission Review, FERC Form 715 filing, Annual Transmission Reliability Assessment ("ATRA"), and for its long-term reliability planning studies under Attachment Y of the NYISO Open Access Transmission Tariff ("OATT").[16] The NYISO further uses the ATR list to conduct its summer and winter operating studies, and for its long-term planning studies**.**

The NYISO's planning processes, which are undertaken with the NYTOs and other interested parties in accordance with Attachment Y of the NYISO Open Access Transmission Tariff (OATT), encompasses the New York State Bulk Power Transmission Facilities ("BPTF")[17] for both reliability (the Comprehensive Reliability Planning Process or "CRPP") and for economic purposes (the Congestion Assessment

[16] The NYISO conducts interconnection planning studies for facilities above and below 100 kV pursuant to OATT Attachments S, X and Z.

[17] OATT Attachment Y defines "New York State Bulk Power Transmission Facilities" as "The facilities identified as the New York State Bulk Power Transmission Facilities in the annual Area Transmission Review submitted to NPCC by the NYISO pursuant to NPCC requirements."

and Resource Integration Study or "CARIS" process). In addition, the tariff specifies that the NYTOs conduct planning for all of their facilities, whether or not on the ATR list.[18] Pursuant to Order 890, Attachment Y provides that each NYTO conducts its own Local Transmission Owner Planning Process ("LTPP").

The NOPR's proposed 100 kV threshold for BES does not take into account the current allocations of responsibility among the NYISO and the NYTOs under the formational agreements and tariffs, described above. Presently, the NYISO and National Grid are the only entities registered as a Transmission Planner ("TP") in the NYCA. If FERC adopts the 100 kV BES definition, certain facilities in the NYCA that are not on the ATR list will not have an accountable entity registered to comply with the NERC TPL standards. Accordingly, should FERC adopt the 100 kV BES definition, the NERC and the NPCC as the regional entity for NYCA will need to address the registration issue so that all assets are covered by an appropriate TP registration.

B. FERC Should Provide a Reasonable Transition Period of 24 Months to Allow Implementation of Changes Required to Apply NERC Standards to all BES Facilities 100 kV and Above.

Should a new BES definition be adopted, the NYISO supports a reasonable transition process under which standards should be considered to be mandatory and enforceable on all newly identified facilities. The NYISO supports the NPCC's comments on providing an orderly transition process, including the NPCC's recommendation that the effective date of any new definition should be no sooner than 24 months following the effective date of a FERC order requiring compliance with that

[18] OATT Attachment Y, Section 1.2 ("The Transmission Owners will continue to plan for their transmission systems, including the BPTFs and other NYS Transmission System facilities.")

definition . During this transition period, the current BES definition would remain in effect, and entities could work with their Regional Entity to put in place the measures needed for: (i) certification and registration as Transmission Operators and/or Transmission Planners; (ii) applications for exclusion of facilities from the new BES definition; (iii) hiring necessary staff and procuring equipment; and (iv) other activities necessary to comply with the new BES definition on the effective date. This transition period would allow all entities to identify the facilities and standards with which they will have to comply for those assets. During the transition period, no parties should be required to self-report or be deemed non-compliant by the NPCC**.**

At the conclusion of the transition period, all standards would be mandatory and enforceable with respect to all BES facilities. At that time, any registered entities not in compliance would be required to self-report noncompliance and submit mitigation plans pursuant to the applicable self-reporting procedures of the Regional Entity. As part of these mitigation plans, each registered entity should include its implementation plan to achieve full compliance.

Generally, monetary penalties should not be assessed during the transition period and while a mitigation plan is in place, except to the extent that a registered entity fails to file or to comply with its filed mitigation plan. Monetary penalties also should not be imposed during periods of unresolved requests for exclusions or longer-term capital construction projects. If a mitigation plan extends beyond the 24 month transition period, the Commission should confirm that no monetary penalties will be imposed provided a mitigation plan is in place and is being adhered to. Moreover, exclusions should take effect for penalty purposes when the ERO makes a determination that a facility should be

excluded. In the NOPR, FERC states that "[o]nly after Commission approval would the proposed exclusion take effect."[19] If NERC has determined that an exclusion should be approved and the Commission has not ruled on that exclusion yet, monetary penalties should not be imposed pending FERC's final determination.

This approach has the advantage of utilizing the existing compliance review processes of the Regional Entities without requiring the addition of new procedures during the transition process. Moreover, this approach places primary importance on compliance with the 100 kV BES definition by providing a structured process to address the Commission's concern about risk to the electric system in the absence of a uniform BES definition.

The NYISO previously completed an initial assessment of the steps necessary to implement a revised definition of BES to include all facilities 100 kV and above. The NYISO plans to work with the NPCC to assist in appropriately defining NERC compliance responsibilities among the NYISO and the NYTOs in a manner consistent with NYISO's established operational and planning responsibilities that have been approved by the Commission. The NYISO believes that these responsibilities should be based upon its FERC-approved formation agreements, such as the NYISO Agreement and the NYISO/NYTO Agreement, and the NYISO's OATT and the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff"). In this manner, every BES asset will have at least one identified NERC registered entity responsible for compliance.

[19] NOPR at ¶ 18, page 12.

C. Implementing the 100 kV BES Definition in the NYCA Will Cause The NYISO to Incur Increased Capital Costs and Staff Additions for which Cost Recovery will be Required.

In conjunction with the NPCC's analysis of the impacts of an expanded definition of BES on the region, the NYISO assessed the effect of the amended definition on its own budget and operations. In its review, the NYISO considered its existing NERC registrations as a Reliability Coordinator, Transmission Operator, Balancing Authority, Transmission Planner, Planning Coordinator, Interchange Authority, Transmission Service Provider and Purchasing-Selling Entity. The NYISO estimates that it will require a significant number of additional full time employees to carry out its additional operations and planning functions under the proposed 100 kV BES definition. Due to increased responsibility as Reliability Coordinator for the NYCA, the NYISO will incur capital costs and require additional operators to supplement the control room staff. Additional scheduling engineers, operations planning engineers, long-term system planning engineers and operations training personnel will also need to be added to the NYISO staff. These positions will cost an estimated $2.85 million on an annual basis. These estimates assume that the New York Transmission Owners will be registered with NERC and the NPCC as TOPs and TPs to continue carrying out their operation and planning functions for their lower voltage facilities, as currently provided for in the NYISO formation agreements.[20] These incremental costs will increase the NYISO's budget and, therefore, the amounts NYISO will need to recover from its stakeholders through Rate Schedule 1, which costs are ultimately borne by retail ratepayers.

[20] If not, and the NYISO were somehow expected to carry out the operations and planning functions the NYTOs presently fulfill, the costs for further additional personnel would be much higher.

V. CONCLUSION

Wherefore, for the foregoing reasons, the NYISO respectfully requests that the Commission consider the comments and recommendations of the NYISO and the NPCC in it final rule regarding the definition of BES facilities to which NERC reliability standards apply.

Respectfully submitted,

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May 10, 2010