

Unofficial Comment Form for the BES Exception Procedure

Please **DO NOT** use this form to submit comments. Please use the [electronic comment form](#) to submit comments on NERC Rules of Procedure to add Appendix 5C *Bulk Electric System Component Exception Procedure*. The proposed Appendix 5C is being posted for an initial 30-day comment period that will close on June 10, 2011 to allow for comment in concert with the proposed definition of the Bulk Electric System under NERC Standards Project 2010-17. An additional 45-day comment period will be held in August 2011, concurrent with the ballot of Project 2010-17.

The electronic comment form must be submitted by **June 10, 2011**.

If you have questions please contact Elizabeth Heenan at elizabeth.heenan@nerc.net.

Background

On November 18, 2010, the Federal Energy Regulatory Commission ("FERC" or the "Commission") issued an Order directing NERC to revise the definition of Bulk Electric System and address the Commission's concerns as identified in Order No. 693, issued on March 16, 2007. The definition encompasses all Elements necessary for the reliable operation and planning of the interconnected transmission network. A draft definition, developed by the Project 2010-17 standards drafting team, was posted for a 30-day comment period on April 28, 2011.

Concurrent with the development of the revised Bulk Electric System definition, a Bulk Electric System Rules of Procedure Team ("BES ROP Team") was formed to develop a procedure for facility-by-facility determinations of inclusions or exclusions to the Bulk Electric System not otherwise resolved through the Bulk Electric System definition. The BES ROP team has developed an initial draft of the proposed Appendix 5C *Bulk Electric System Component Exception Procedure*, which is being posted for comment for thirty days. Concurrently with the posting of the proposed Appendix 5C, NERC is also posting for a thirty-day comment period the *BES Technical Principles for BES Exceptions* document.

Appendix 5C Bulk Electric System Component Exception Procedure

NERC is requesting public comments on the new procedure for facility-by-facility determinations of inclusions or exclusions to the Bulk Electric System not otherwise resolved through the application of the definition of Bulk Electric System, which is proposed to be included in the NERC Rules of Procedure as Appendix 5C. The attached flowchart generally describes the proposed procedure which would apply to electrical elements that are requested to be excepted from the definition of the Bulk Electric System.

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Please enter all comments in simple text format.

Insert a "check" mark in the appropriate boxes by clicking the gray areas.

1. This draft provides in Section 1.1 that an entity unable to determine the status of an Element by application of the BES Definition may submit an Exception Request to obtain a determination of whether the Element is or is not within the BES. Do you agree? Please comment why or why not.

Yes

No

Comments:

NESCOE is the Regional State Committee for the New England region. NESCOE is governed by a board of managers appointed by the Governors of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. NESCOE's purpose is to represent the interests of the New England region by advancing policies that will provide electricity at the lowest possible price over the long term, consistent with maintaining reliable service and environmental quality.

The proposed revision to the BES definition, being developed concurrently with this Exception Procedure, could have significant impacts on New England's electric grid and ratepayers. NESCOE submitted comments on the proposed BES definition on May 27, 2011 that, in some instances, raised questions and concerns about what elements would be included or excluded under the draft definition. As NESCOE has stated in prior comments, NESCOE members share the interest in continually assessing means to improve system reliability, but are concerned that significant costs could be imposed without providing meaningful reliability benefits.

Given the potential reliability and cost implications of the proposed BES definition, it is critical that entities be afforded an opportunity to submit an Exception Request if there are questions about the status of an element. This will militate against over-inclusion of elements that do not impact the BES and under-inclusion of elements that should be subject to stringent NERC standards. The ability to submit an Exception Request recognizes the need for flexibility in applying the rule (e.g., generating units below the MVA threshold in the BES definition that directly impact the system or, conversely, generating units above the threshold that do not have a material impact on the BES).

2. The procedure is intended to be least burdensome while requiring sufficient information to show how the request meets the exception criteria of Section 3. Please comment as to how public the process should be? Should entities other than the RE, NERC, FERC, or Canadian Provincial authorities be allowed access to exception related information filed by an entity?

Yes

No

Comments: States and third parties should have access to exception related information. This access is critical to ensuring consistency within and across regions by informing affected parties that certain elements may fall inside or outside the BES

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definition. Access to such information is necessary for state and third party input on the specific Exception Request as well as informing requests from other entities regarding similar elements that should or should not be considered BES.

Additionally, NESCOE has previously stated its concern that the proposed BES definition could unintentionally incorporate into the BES local distribution facilities that do not have a direct impact on the reliability of the system, potentially imposing significant costs without providing meaningful reliability benefits. The Commission recognized in Order 743 the need for an exemption process that would make individual determinations regarding which facilities should be considered "local distribution" (*i.e.*, state-exclusive jurisdiction) and which facilities should be considered "transmission" (*i.e.*, federal-exclusive jurisdiction). See *Revision to Electric Reliability Organization Definition of Bulk Electric System*, Order 743, 133 FERC ¶ 61,150 (2010) at P 37. The potential intersection of local distribution facilities and the BES under the proposed definition raises questions regarding state-federal jurisdiction and local-regional cost recovery. Because of this, the process must afford states a meaningful opportunity to participate.

These collective implications of the proposed BES definition and Exception Process require that states, at minimum, are given (i) notice of an Exception Request following the Regional Entity's Acceptance pursuant to Section 5.1.4, (ii) notice of the issuance of a Recommendation pursuant to Section 5.2.3, and (iii) an opportunity to review the exception related information and to submit comments to the Regional Entity during its review and, later, to NERC following issuance of the Regional Entity's Recommendation.

NESCOE additionally believes the process should be transparent to ISO/RTOs and supports a more active role of ISO/RTOs and similar entities with oversight over portions of the transmission system. While Section 4.1 allows such entities to submit an Exception Request, the draft BES Exception Procedure does not appear to afford ISO/RTOs a role where they do not submit the Request. At a minimum, the procedure should ensure that ISO/RTOs receive notice and copies of all applications filed and recommendations made to NERC. NESCOE would support substantive involvement of ISO/RTOs (and similar entities charged with reliability of the transmission system) in the review process. ISO/RTOs and such similar entities should, like states, be given notice and an opportunity to comment on an Exception Request.

3. Section 4 contemplates an application in two parts; A and B. Do you agree that Part A information is appropriate for public posting on a region or NERC Website? If not, which pieces of information should be redacted?

Yes

No

Comments: NESCOE agrees that the public disclosure of materials must be balanced with the need to preserve the confidentiality of critical energy infrastructure information (CEII) and other information. Section 4.2(iii) provides some discretion to the Submitting Entity in making Part B materials public. NESCOE suggests incorporating a similar provision in Part A to permit a Submitting Entity to redact some information,

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provided the Submitting Entity provides justification for redacting such information and that there is a mechanism for those with CEII to receive the information upon request and within a defined time period permitting sufficient review prior to comment deadlines.

4. Section 4.1 allows for multiple, similar elements to be separately identified but submitted in a single request or multiple entities to join in a single request for exception. What should be the scope of the Elements that can be contained in a single Request?

Comments:

5. The procedure envisions (Sections 1.1 and 4.1) that, in addition to the owner for an element, any applicable Regional Entity, Planning Coordinator, Reliability Coordinator, or Balancing Authority may submit an Exception Request for an element. Do you agree that third parties should be able to request an Exception for an Element owned by another (whether or not the owner is on the Compliance Registry)? If so, please comment on which functional registrations are most appropriate to be allowed to do this.

Yes

No

Comments: NESCOE agrees that ISO/RTOs and similar entities with oversight over portions of the transmission system should be permitted to submit an Exception Request in accordance with the process outlined in Section 4.1. NESCOE further suggests, for the reasons stated in our response to Question 2 above, that the procedure include mechanisms that would facilitate states' ability to obtain review of the status of an element through the Exception Process. As a general matter, state personnel with CEII clearance should have access to the current list of elements classified as BES. A state should also be provided notice and an opportunity to comment, as detailed in our response to Question 2, on an Exception Request concerning elements located within the state's planning region.

States would not be in a position to submit an Exception Request because they lack the information required for submission under Part B of Section 4. However, NESCOE offers the following alternative mechanism to ensure meaningful state participation:

(i) To the extent a state has questions regarding the classification of elements, the Exception Procedure should provide states a mechanism to request an explanation from Owners of elements regarding why they consider certain elements to be included or excluded from the BES, with a response required from the Owner within a defined time period.

(ii) Upon request from a state, the Regional Entity should be required to undertake a review of the element or elements in question, including the Owner's response to the state, and, if it determines that the Owner's classification is in error, the Regional Entity shall submit to NERC an Exception Request.

(iii) States should be afforded an opportunity to file an appeal directly with NERC if the Regional Entity declines to file the Exception Request, or to seek NERC's review of the Regional Entity's classification of the element or elements in question.

6. With respect to entities that may be impacted by an exception decision, the procedure allows for multiple entities to join together in a single request. Should third parties be

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allowed to intervene as well? (For example, if Entity A submits an Exception Request for Element X to its Regional Entity for exclusion from the BES, but Entity B which is adjacent (electrically) to Entity A does not agree that Element X should be excluded, what options should be available to Entity B? What if Entity A and B are in different regions?) Please comment on what factors should be considered.

Yes

No

Comments: Similar to FERC proceedings, there are a number of third party entities that will be affected by an Exception Request, including states and other Owners within a region or in neighboring regions. It is critical that there be a mechanism for third parties to receive notice of an Exception Request and to intervene.

7. Section 5.1.5 considers requests that are rejected as incomplete or inappropriate. Does this provide sufficient access to the process? Please comment as to what additional recourse is available to an entity that is still unable to "cure" a rejected Exception Request.

Yes

No

Comments:

8. Section 8.0 describes NERC's Approval or Disapproval of an exception request. Is this NERC review defined sufficiently? Please comment where this may be streamlined (for example, other methods besides panel review of every Request).

Yes

No

Comments: See NESCOE's response in Question 2 above regarding notice and opportunity to comment.

9. What should be the status of an element during the pendency of the Request process?

Comments: Provided ISO/RTOs (and similar entities with oversight over portions of the transmission system) are given notice of an Exception Request as suggested in NESCOE's response to Question 2 above, NESCOE supports not changing the status of the element during the pendency of the Request. Should the ISO/RTO (or similar entity) identify an operational or reliability issue pending the determination of the element, it can take appropriate action to ensure that system reliability is not compromised.

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

Comments:

(1) Section 5.2.3. should require that, in addition to sending NERC copies of the Exception Request Form and other information submitted by the Submitting Entity, the Regional Entity shall send to NERC any comments submitted by third parties.

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