

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

NOTICE OF PROPOSED)	
RULEMAKING ON)	Docket No. RM10-5-000
INTERPRETATION OF)	
PROTECTION SYSTEM)	
RELIABILITY STANDARD)	

COMMENTS OF CENTRAL LINCOLN PEOPLE’S UTILITY DISTRICT, COLUMBIA RIVER PEOPLE’S UTILITY DISTRICT, INLAND POWER AND LIGHT COMPANY, THE NORTHWEST PUBLIC POWER ASSOCIATION, NORTHWEST REQUIREMENTS UTILITIES, PACIFIC NORTHWEST GENERATING COOPERATIVE AND ITS MEMBERS, PUBLIC POWER COUNCIL, PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, AND TILLAMOOK PEOPLE’S UTILITY DISTRICT

Pursuant to the December 16, 2010 Order Regarding Policy Statement on Penalty Guidelines issued by the Federal Energy Regulatory Commission (“Commission”) in the above captioned docket, Central Lincoln People’s Utility District, Columbia River People’s Utility District, Inland Power and Light Company, the Northwest Public Power Association,¹ Northwest Requirements Utilities,² Pacific Northwest Generating Cooperative and its retail cooperative utility Members,³ Public Power Council (PPC),⁴ Public Utility District No. 1 of Snohomish

¹ The Northwest Public Power Association has 131 public utility members outside of Alaska.

² NRU is a non-profit trade association representing the common business interests of 50 member utilities, which are located in 7 states served by BPA: Washington, Oregon, Idaho, Montana, Nevada, Wyoming, and California. NRU members include 13 municipals, 7 Public Utility Districts (“PUDs”), and 30 electric cooperatives, which are primarily nongenerating electric distribution utilities serving end-use electric consumers that rely on Bonneville Power Administration (“BPA”) as their primary supplier of wholesale power and transmission services.

³ PNGC Members are Blachly-Lane County Cooperative Electric Association, Central Electric Cooperative, Inc., Clearwater Power Company, Consumers Power, Inc., Coos-Curry Electric Cooperative, Inc., Douglas Electric Cooperative, Inc., Fall River Rural Electric Cooperative, Inc., Lane Electric Cooperative, Inc., Lincoln Electric Cooperative, Inc., Lost River Electric Cooperative, Inc., Northern Lights, Inc., Okanogan County Electric Cooperative,

County, and Tillamook People’s Utility District (collectively, the “Northwest Commenters”) respectfully submit the following comments.

I. Introduction.

The Northwest Commenters or their member utilities are listed in the North American Reliability Corporation (NERC) Compliance Registry under the NERC Functional Model as Registered Entities. As such, they have a strong interest in the proposed direction to the North American Electric Reliability Corporation (NERC) to develop modifications to the PRC-005-1 Reliability Standard in the Notice of Proposed Rulemaking (NOPR). Specifically, we are concerned that the Commission’s proposed direction to NERC would exceed the jurisdiction of the Commission and NERC under the Federal Power Act (FPA).

Communications

The Northwest Commenters request that service in this proceeding be made upon, and communications directed to, the following persons:

Steve Alexanderson
Central Lincoln People’s Utility Dist.
2129 N. Coast Highway
Newport, OR 97365
541 265 3211
salexanderson@cencoast.com

Steve Hursh
Engineering and Operations Manager
Columbia River People’s Utility Dist.
PO Box 1193
503 397 1844
shursh@crpud.org

Inc., Raft River Rural Electric Cooperative, Inc., Salmon River Electric Cooperative, Inc., Umatilla Electric Cooperative Association, and West Oregon Electric Cooperative, Inc.

⁴ PPC is a non-profit membership corporation that represents the common interests of more than 100 consumer-owned electric utilities in the Pacific Northwest that are requirements power and transmission customers of the Bonneville Power Administration (BPA). PPC is a member of the North American Electric Reliability Corporation (NERC) and the Western Electric Coordination Council (WECC), as are many of PPC’s members. PPC’s members are located and serve retail customers in Washington, Oregon, Idaho, Montana and Nevada; many are registered entities.

Richard Damiano
Chief Engineer
Inland Power and Light Co.
10110 W. Hallett Rd.
Spokane, WA 99224
509 747 7151
richd@inlandpower.com

Will Lutgen
Executive Director
Northwest Public Power Assoc.
9817 NE 54th Street, Suite 200
Vancouver, WA 98662
360 254 0109
will@nwppa.org

Betsy Bridge
Attorney for Northwest Requirements Utilities
The Law Office of Betsy Bridge, LLC
6426 NE Rodney Ave.
Portland, OR 97211
317 701 0524
betsy@betsybridge.com

Zabyn Towner
Attorney for Pacific Northwest
Generating Cooperative and Members
711 NE Halsey
Portland, OR 97232
503 288 1234
ztowner@pngcpower.com

Nancy P. Baker
Senior Policy Analyst
Public Power Council
825 NE Multnomah, Suite 1225
Portland, Oregon 97232
503 595 9770
nbaker@ppcpdx.org

Anne L. Spangler, General Counsel
Public Utility District No. 1 of
Snohomish County
2320 California St.
Everett, WA 98206
Tel: 425-783-8688
Fax: 425-783-8305
alspangler@snopud.com

Gail Shaw
Tillamook People's Utility District
PO Box 433
1115 Pacific Ave.
Tillamook, OR 97141
503 842 2535
gshaw@tpud.org

II. Background

In its December 16, 2010 NOPR, the Commission proposes to accept NERC's proposed interpretations of Requirement R1 of Reliability Standard PRC-005 and to direct NERC to

modify the PRC-005-1 to address what the Commission perceives as “gaps in the Protection System maintenance and testing standard, highlighted by the proposed interpretation.”⁵ The Commission proposes that NERC should modify PRC-005 because the Commission believes that:

all components that serve in some protective capacity to ensure reliable operation of the Bulk-Power System should be included within the definition of ‘Protection System’ and should be maintained and tested accordingly – not just the limited subset identified in the NERC interpretation.⁶

The NOPR states that NERC should modify PRC-005 so that:

any component that detects any quantity needed to take an action, or that initiates any control action (initial tripping, reclosing, lockout, etc.) affecting the reliability of the Bulk Power System should be included as a component of a Protection System.⁷

The NOPR goes on to suggest several specific changes to PRC-005 to accomplish this end.⁸

III. Argument

We express no views about the Commission’s acceptance of the proposed interpretation of Requirement R1 of PRC-005, but we have serious concerns that the Commission’s proposed direction to NERC to modify that standard would exceed the jurisdiction of the Commission and NERC under the FPA.

Congress, in enacting section 215(b)(1) of the FPA, gave FERC jurisdiction within the United States⁹ over the ERO, its regional reliability entities, and all “users, owners and operators of the bulk-power system” for purposes of approving reliability standards and enforcing compliance with FPA section 215. The FPA, however, precludes the development and

⁵ Interpretation of Protection System Reliability Standard Notice of Proposed Rulemaking, Federal Energy Regulatory Commission, December 16, 2010, *at* 1.

⁶ *Id.* *at* 8.

⁷ *Id.* *at* 9-10.

⁸ *See id.* *at* 10, 12, 14, 15.

⁹ Hawaii and Alaska are exempt from the provisions of Section 215. 16 U.S.C. § 824o(k).

enforcement of reliability standards pertaining to facilities used in local distribution. Section 215(i) of the FPA states that the ERO “shall have authority to develop and enforce compliance with reliability standards *for only* the bulk-power system,”¹⁰ indicating that Congress did not intend for section 215 standards to apply to “facilities used in the local distribution of electric energy” that are statutorily excluded from the definition of Bulk-Power System.¹¹

In Order No. 672, the Commission adopted for its rulemaking on reliability standards the definition of “Bulk-Power System” in the FPA, and held:

With regard to local distribution facilities, Congress specifically exempted “facilities used in the local distribution of energy” from the definition of Bulk-Power System, and, as such, the Commission’s regulations do not subject such facilities to the ERO’s or a Regional Entity’s Rules or the Commission-approved mandatory Reliability Standards.¹²

Thus, in prior reliability rulemakings, the Commission expressly held that facilities used in the local distribution of electric energy are beyond the scope of the Commission’s regulations, the ERO or Regional Entity’s Rules, and compliance with mandatory Reliability Standards.

¹⁰ 16 U.S.C. § 824o(i)(1) (emphasis added).

¹¹ In public testimony before Congress, Commissioners and Commission Staff have consistently recognized the statutory limits of FERC jurisdiction. On September 11, 2008, then FERC Chairman Kelliher testified before the United States House of Representatives, Subcommittee on Energy and Air Quality, Committee on Energy and Commerce, stating: “The current interpretation of ‘bulk power system’ also would exclude some transmission and all local distribution facilities, including virtually all of the grid facilities in large cities such as New York and Washington, D.C. ...” available at <http://www.ferc.gov/EventCalendar/Files/20080911110135-Kelliher%20Cyber%20Security-testimony.pdf> (emphasis added). Similarly, on Oct. 27, 2009, Joseph McClelland, Director of FERC’s Office of Electric Reliability, testified before the Committee on Energy and Commerce Subcommittee on Energy and Environment in the U.S. House of Representatives stating: “Currently, the Commission’s jurisdiction and reliability authority is limited to the ‘bulk power system,’ as defined in the FPA. . . . The current interpretation of ‘bulk power system’ also excludes some transmission and all local distribution facilities, including virtually all of the grid facilities in certain large cities such as New York . . .” available at <http://www.ferc.gov/EventCalendar/Files/20091027110205-mcclelland-10-27-09.pdf> (emphasis added).

¹² *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards, Order No. 672*, FERC Stats. & Regs. ¶ 31,204 P 100 (2006) (noting that “the owner or operator of a local distribution facility can be a user of the Bulk-Power System. If the owner or operator of a local distribution facility is a ‘user’ of the Bulk-Power System, it must comply with all relevant Reliability Standards as a user.”)

Jurisdiction for reliability over local distribution facilities remains the exclusive authority of the states.¹³

This statutory exclusion of facilities used in local distribution from the reliability jurisdiction of the ERO is consistent with the long-standing exclusion of local distribution facilities from FERC's statutory jurisdiction under section 201(b)(1) of the FPA, which states that the Commission "shall not have jurisdiction, except as specifically provided . . . over facilities used in local distribution"¹⁴ As the Supreme Court observed in *New York v. FERC*, "the legislative history [of the FPA] is replete with statements describing Congress' intent to preserve state jurisdiction over local facilities."¹⁵ Indeed, the Commission and the courts have consistently reaffirmed this jurisdictional boundary.¹⁶

In *Detroit Edison Co. v. FERC*,¹⁷ the D.C. Circuit considered a Commission rulemaking that attempted to create a category of "FERC-jurisdictional distribution facilities" comprising distribution facilities that were used in connection with transmission service to both wholesale and unbundled retail customers. The Commission proposed to regulate these so-called "FERC-jurisdictional distribution facilities" under its Open Access Transmission Tariff and rules. The court found that "Section 201(b)(1) of the FPA denies FERC jurisdiction over local distribution

¹³ See 16 U.S.C. § 824o(i)(3) ("Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard. . . .")

¹⁴ 16 U.S.C. § 824(b)(1).

¹⁵ *New York v. FERC*, 535 U.S. 1, 22 (2002).

¹⁶ See *New York*, 535 U.S. at 22, 122 S.Ct. at 1025-26; *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 691, 695-96 (D.C.Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1, 21-23 (2002); *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities*, Order 888, FERC Stats. & Regs. ¶31,036 at 31,784 (1996).

¹⁷ *Detroit Edison Co. v. FERC*, 334 F.3d 48 (D.C. Cir. 2003).

facilities” and held that FERC’s interpretation of jurisdiction “would rewrite the statute to exclude only ‘facilities used *exclusively* in local distribution,’”¹⁸ and “would eviscerate state jurisdiction over numerous local facilities, in direct contravention of Congress’ intent.”¹⁹ Thus, as required by the Administrative Procedures Act (APA), section 706(2)(C), the reviewing court held unlawful and set aside FERC’s action, finding it “in excess of statutory jurisdiction.”²⁰

Therefore, a final rule in this docket must require NERC to exclude from any modified version of PRC-005 any facilities used in local distribution in accordance with Section 215 of the FPA. The NOPR, though, by stating that “all components that serve in some protective capacity to ensure reliable operation of the Bulk-Power System should be included within the definition of ‘Protection System’ and should be maintained and tested accordingly,” and that “any component that detects any quantity needed to take an action, or that initiates any control action... affecting the reliability of the Bulk Power System should be included as a component of a Protection System” could lead to modification of PRC-005 that sweeps in numerous local distribution facilities.²¹

Again, any facilities use in local distribution are beyond the scope of NERC’s reliability authority as the ERO, regardless of whether FERC considers such facilities serve in some protective capacity. Such facilities are also beyond the Commission’s statutory jurisdiction in FPA section 201(b)(1).²² Congress has reserved to the states, not the ERO, the authority to

¹⁸ *Id.*, 334 F.3d at 54 (emphasis in original).

¹⁹ *Id.*

²⁰ *Id.* at 54-55 (citing 5 U.S.C. § 706(2)(C)).

²¹ See, e.g. *Order no. 743* at P 38.

²² 16 U.S.C. § 824(b)(1).

ensure the reliability of facilities used in local distribution. As the Commission correctly stated in Order No. 672, the Commission's regulations do not subject such facilities to the ERO's or a Regional Entity's rules or the Commission-approved mandatory Reliability Standards.²³ If NERC includes any facilities that are used in local distribution within a modified PRC-005, NERC would exceed the scope of its jurisdiction under the FPA, which limits the authority of the ERO to develop and enforce compliance with reliability standards for only the statutorily defined Bulk-Power System.²⁴

We therefore respectfully request that the Commission issue a final rule in this docket that ensures that NERC's modifications to PRC-005 do not result in a revised and unlawful reliability standard that includes facilities used in local distribution. The Commission should clearly and unequivocally require that the proposed modifications to PRC-005 expressly exclude any facilities that are used in local distribution of electric energy.²⁵

IV. Conclusion

The Commission should promulgate a final rule in the above-captioned docket that addresses the above-stated concerns.

Respectfully submitted this 25th day of February, 2011.

/s/ Steve Alexanderson

Steve Alexanderson
Central Lincoln People's Utility Dist.

²⁴ 16 U.S.C. § 824o(i)(1).

²⁵ Western Petitioners note that, in addition to being unlawful, a definition of the bulk electric system that includes facilities used in local distribution of electricity would create significant and unnecessary costs for utility ratepayers.

/s/ Steve Hursh

Steve Hursh
Engineering and Operations Manager
Columbia River People's Utility Dist.

/s/ Richard Damiano

Richard Damiano
Chief Engineer
Inland Power and Light Co.

/s/ Will Lutgen

Will Lutgen
Executive Director
Northwest Public Power Association

/s/ Betsy Bridge

Betsy Bridge
Attorney for Northwest Requirements Utilities

/s/ Zabyr R. Towner

Zabyr R. Towner
Attorney for Pacific Northwest Generating Cooperative
and Members

/s/ Nancy Baker

Nancy Baker
Senior Policy Analyst
Public Power Council

/s/ Anne L. Spangler

Anne L. Spangler
General Counsel
Public Utility District No. 1 of Snohomish County

/s/ Gail Shaw

Gail Shaw
Tillamook People's Utility District