

145 FERC ¶ 61,054
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

City of Holland, Michigan Board of
Public Works

Docket No. RC11-5-001

ORDER DENYING REHEARING

(Issued October 17, 2013)

1. On April 19, 2012, the Commission issued an order denying the City of Holland, Michigan Board of Public Works' (Holland) appeal of a Registry Decision by the North American Electric Reliability Corporation (NERC), finding that Holland is properly included in the NERC Compliance Registry as a transmission owner and transmission operator.¹ Holland submitted a timely request for rehearing of the April 19 Order, arguing that: (1) Holland's facilities are statutorily outside the purview of section 215 of the Federal Power Act (FPA)² because they serve a local distribution function; (2) Holland's facilities should be exempt as radial facilities; (3) the Commission failed to refute the only evidence in the record demonstrating that Holland's facilities have no material impact on the BES; (4) no reliability gap or harm to reliability will occur if Holland is not registered as a transmission owner or transmission operator; and (5) Holland was denied due process by NERC and the ReliabilityFirst Corporation (RFC).

2. We hereby deny Holland's request for rehearing, and affirm our prior ruling that NERC properly included Holland's 138 kV facilities as part of the bulk electric system and found that the facilities do not qualify for an exemption as radial transmission facilities. Holland has not demonstrated that its system is not material to the reliability of the interconnected transmission system, or that its facilities qualify as local distribution facilities.

¹ *City of Holland, Michigan Board of Public Works*, 139 FERC ¶ 61,055 (2012) (April 19 Order).

² 16 U.S.C. § 824o (2006).

3. Our decision to deny rehearing, however, is without prejudice to Holland's ability to seek relief under NERC's revised bulk electric system definition process as described in Order No. 773, including the process for seeking a subsequent determination from the Commission that its 138 kV facilities are used for local distribution and therefore not part of the Bulk-Power System under FPA section 215.³

I. Background

A. Regulatory Background

4. In July 2006, the Commission issued an order certifying NERC as the Electric Reliability Organization (ERO) pursuant to section 215 of the Federal Power Act (FPA).⁴ Subsequently, in April 2007, the Commission approved delegation agreements between NERC and eight Regional Entities, including a delegation agreement between NERC and RFC. Pursuant to that agreement, NERC delegated to RFC certain authority and responsibilities for oversight and enforcement of Reliability Standards for the region in which Holland's system is located.⁵

5. In Order No. 693, the Commission approved 83 Reliability Standards, which became effective on June 18, 2007.⁶ Further, in Order No. 693, the Commission approved NERC's compliance registry process, including NERC's Statement of Compliance Registry Criteria (Registry Criteria), which describes how NERC and the Regional Entities will identify the entities that should be

³ See *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedures*, 143 FERC ¶ 61,231, at P 15 (2013) (Order 773 Extension of Time).

⁴ *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006), *aff'd sub nom., Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009); 16 U.S.C. § 824o (2006).

⁵ *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060, *order on reh'g*, 120 FERC ¶ 61,260 (2007).

⁶ *Mandatory Reliability Standards for the Bulk Power System*, Order No. 693, 72 Fed. Reg. 16,416 (April 4, 2007), FERC Stats. & Regs. ¶ 31,242 (2007), *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

registered for compliance with mandatory Reliability Standards.⁷ While that process allows a Regional Entity to register an entity over its objection, NERC's Rules of Procedure (ROP) provide a mechanism for that entity to seek NERC review of the Regional Entity's registration decision and, ultimately, to appeal to the Commission if NERC upholds the Regional Entity's decision.⁸

B. BES Definition

6. NERC currently defines the 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.⁹

7. However, in Order No. 743, the Commission directed NERC to develop revisions to this definition after finding that the definition was "insufficient to ensure that all facilities necessary for operating an interconnected electric energy transmission network are included."¹⁰ NERC subsequently developed and filed proposed revisions to the bulk electric system definition, which included specific "inclusions" and "exclusions" from the bulk electric system and an ROP exception process for entities to demonstrate that facilities should not be treated as part of the bulk electric system.¹¹ The Commission accepted NERC's proposed revisions to

⁷ Order No. 693, FERC Stats. & Regs. ¶31,242 at PP 92-95. The Commission has approved subsequent amendments to the Registry Criteria. *See, e.g., North American Electric Reliability Corp.*, 122 FERC ¶ 61,101 (2008).

⁸ Rules of Procedure of the North American Electric Reliability Corporation, Rule 501.1.3.4.

⁹ NERC Registry Criteria, section I.

¹⁰ *See Revision to Electric Reliability Organization Definition of Bulk Electric System*, Order No. 743, 133 FERC ¶ 61,150, at P 30 (2010) (Order No. 743); *order on reh'g*, Order No. 743-A, 134 FERC ¶ 61,210 (2011).

¹¹ *See Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, Order No. 773, 141 FERC ¶ 61,236 (2012) (Order No. 773).

the bulk electric system definition on December 20, 2012, with two modifications, after Holland had filed its request for rehearing.¹²

8. In Order No. 773, the Commission also approved NERC's proposed ROP exception process, finding that it "provides a reasonable mechanism for the ERO to determine whether a facility or element should be added to, or removed from,

¹² The revised definition, as proposed, includes explicit exclusions for radial systems (E1), as well as for local networks (E3). Radial systems are defined, in relevant part, as "[a] group of contiguous transmission Elements that emanates from a single point of connection of 100 kV or higher and . . . [w]here the radial system serves Load and includes generation resources, not identified in Inclusion I3, with an aggregate capacity of non-retail generation less than or equal to 75 MVA (gross nameplate rating)." Local networks are defined in relevant part as follows:

E3 – Local networks (LN): A group of contiguous transmission Elements operated at or above 100 kV but less than 300 kV that distribute power to Load rather than transfer bulk-power across the interconnected system. LN's emanate from multiple points of connection at 100 kV or higher to improve the level of service to retail customers Load and not to accommodate bulk-power transfer across the interconnected system. The LN is characterized by all of the following:

- a) Limits on connected generation: The LN and its underlying Elements do not include generation resources identified in Inclusion I3 and do not have an aggregate capacity of non-retail generation greater than 75 MVA (gross nameplate rating).

In Order No. 773, the Commission accepted NERC's revised definition of bulk electric system with these exclusions except that it directed NERC to: (1) implement the exclusions for radial systems and local networks so that they do not apply to generator interconnection facilities for bulk electric system generators identified in inclusion I2; and (2) modify the local network exclusion to remove the 100 kV minimum operating voltage to allow systems that include one or more looped configurations connected below 100 kV to be eligible for local exclusions. Order No. 773, 141 FERC ¶ 61,236 at PP 155, 164-169.

the bulk electric system on a case-by-case basis.”¹³ While the Commission found in Order No. 773 that NERC’s core definition of bulk electric system, together with exclusion E3, is consistent with the section 215 exclusion of local distribution facilities, it found that the jurisdictional question of whether facilities are used in local distribution should be decided by the Commission in those cases “that present a factual question as to whether a facility that remains in the bulk electric system after applying the ‘core’ definition and the four exclusions should nonetheless be excluded because it is used in local distribution.”¹⁴ The Commission stated that in such cases, it would apply the seven-factor test set forth in Order No. 888, including its recognition that “there may be other factors that should be taken into account in particular situations.”¹⁵

9. The revised definition of bulk electric system was initially scheduled to go into effect on July 1, 2013. However, the Commission granted NERC a one-year extension for implementation of the revised definition and ROP exception process, i.e., until July 1, 2014.¹⁶

C. Overview of Holland’s System

10. Holland operates a municipal system that serves approximately 27,000 retail customers.¹⁷ Holland’s system includes 24 miles of 138 kV lines, as well as seven generating units that range in size from 11.5 to 83 MW (nameplate). Holland is interconnected to the bulk electric system through two separate lines that connect through Michigan Electric Transmission Company’s (METC) Black River substation.¹⁸ According to Holland, the two buses are connected with a

¹³ *Id.* P 252.

¹⁴ *Id.* P 70.

¹⁵ *Id.* P 71 (citing *See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Transmitting Utilities, order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,242).

¹⁶ *See* Order 773 Extension of Time, 143 FERC ¶ 61,231 (2013).

¹⁷ *See* Appeal of the City of Holland, Michigan Board of Public Works of Registration Decision of the NERC Board of Trustees Compliance Committee at 4 (Sept. 2, 2011) (Holland Appeal).

¹⁸ *Id.* at 4-5.

breaker that is closed (allowing power to flow) in normal operations and under most contingencies.¹⁹ Holland also owns a 10 MW portion of the Consumers Energy's Campbell power plant and a 35 MW portion of Detroit Edison's Belle River Power plant, and uses its interconnection to the METC transmission network to deliver this capacity to its distribution substations to serve its retail load.

11. Holland asserts that it does not provide transmission service to any wholesale or retail open access customers, and that the only power that flows on its system is power used to serve Holland's own internal load.²⁰ In addition to its internal generating capacity of 226 MW,²¹ Holland purchases power from the Michigan Public Power Agency, resulting in a normal bias of 46 MW of net flow into Holland.²² Holland does not sell power into the market and does not transmit power across its system. According to Holland, the configuration of its connection and relaying scheme at Black River prevents flow through Holland as if it were an element of the Bulk-Power System.²³

D. Holland's Registry Appeal

12. RFC unilaterally registered Holland as a transmission owner and transmission operator on August 24, 2010, and Holland appealed its status to NERC. On August 12, 2011, the NERC Board of Trustees Compliance Committee (BOTCC) denied Holland's appeal of RFC's registry determination.²⁴ In a written decision, NERC rejected Holland's characterization of its system as radial in nature,²⁵ and rejected Holland's claims that its facilities had no material impact on the bulk electric system.²⁶

¹⁹ Ex. HOL-9 at 4 (Sept. 20, 2010 letter from Debra Roby of Jennings Strouss to Craig Lawrence of NERC).

²⁰ Holland Appeal at 5.

²¹ See Ex. HOL-16 (NERC Registry Decision) at 2 (citing to <http://www.hollandbpw.com/electric/Pages/BaseLoadGeneration.aspx>).

²² Holland Appeal at 30. See Ex. HOL-16 at 2.

²³ Holland Appeal at 25.

²⁴ See Ex. HOL-16 (NERC Registry Decision).

²⁵ Ex. HOL-16 at 12. NERC pointed out the contrasting response needed to deal with a fault on one of Holland's interconnecting lines in a radial system

13. Holland appealed NERC's Registry Decision to the Commission on September 2, 2011, providing several alternative grounds for overruling the NERC decision. First, Holland asserted that its facilities qualify as local distribution facilities and are therefore exempt from inclusion as part of the Bulk-Power System under FPA section 215. Holland argued that a functional test must be used to determine whether facilities qualify as local distribution facilities, and claimed that it met that "functional" test based on the following: (1) Holland's system was designed to meet its own needs in serving its load; (2) Holland operated for years as an independent stand-alone utility; (3) Holland has no third party transmission or retail wheeling customers; (4) there are no viable wholesale commercial paths through Holland's facilities; and (5) METC does not consider Holland's system critical to METC's transmission system.²⁷

14. Holland also argued that its system is not part of the Bulk-Power System as defined in FPA section 215, because its facilities are not necessary to reliably

versus Holland's looped system. NERC noted that with a true radial configuration, a fault on Holland's Black River-Waverly line or Black River-Quincy line would be isolated by operation of METC's breaker at Black River. With Holland's actual, looped system configuration, Holland's own breaker (at the Waverly or Quincy substations) would also operate to break flow to the fault from the opposite side of the Black River bus (carried through Holland's loop of 138 kV lines from the other side of the bus). *Id.*

²⁶ *Id.* at 13. NERC found that the independent study prepared by Black & Veatch on behalf of Holland, which examined the impact on METC of three different fault scenarios on Holland's system, was "inconclusive and did not sufficiently demonstrate that a loss of the Transmission Loop will not adversely impact the BES." NERC also concurred with RFC's criticism that the Black & Veatch study "provides no justification for the election of any of the three test scenarios and provides insufficient data demonstrating the results of the tests." *Id.* at 14. NERC noted that two of Holland's internal generating units are listed as key synchronizing points on the METC system, a point which NERC asserted was not refuted. *Id.* NERC also pointed out that a fault on one of Holland's 138 kV lines could require relay coordination with METC. Finally, NERC found that Holland's "condition as net load" did not, by itself, demonstrate a lack of materiality, and instead found that Holland's loss of internal generation could impact METC's system through significant draws of power.

²⁷ Holland Appeal at 14.

operate the interconnected transmission system.²⁸ In support of this claim, Holland retained Black & Veatch “to perform an independent analysis to investigate whether an event on the Holland BPW system could result in a significant or cascading event on the BES.”²⁹ Holland maintained that the study shows that “events on the Holland BPW system did not result in any unacceptable voltages or flows on the BES.”³⁰

15. In the alternative, Holland maintained that its 138 kV facilities qualify for an exclusion from NERC’s bulk electric system definition, as radial transmission facilities. Finally, Holland argued that NERC’s Registry Decision was arbitrary and capricious because it ignored facts and arguments raised by Holland. Holland also argued that it was denied due process, because NERC and RFC’s registration process did not provide for (or otherwise allow consideration of) exemptions for local distribution, and because neither entity adequately demonstrated or otherwise provided guidance as to why Holland’s facilities are considered sufficiently material to be considered part of the bulk electric system.³¹

E. April 19 Order

16. The Commission denied Holland’s appeal in an order issued on April 19, 2012, agreeing with NERC that Holland is properly registered as a transmission owner and transmission operator based on its 138 kV facilities.³²

17. The Commission acknowledged its endorsement of NERC’s 100 kV threshold as “an initial proxy for determining which facilities are local distribution and which are transmission,” but reiterated that any local distribution that might be improperly included through use of that threshold must be identified and excluded “to remain within the jurisdictional bounds of FPA section 215.”³³ Accordingly, the Commission examined whether Holland’s 138 kV facilities essentially function as transmission components rather than distribution components, and

²⁸ *Id.* at 16.

²⁹ *Id.* at 17.

³⁰ *Id.* at 18.

³¹ *Id.* at 33-38.

³² April 19 Order, 139 FERC ¶ 61,055.

³³ April 19 Order, 139 FERC ¶ 61,055 at P 38.

found that they are properly considered transmission facilities because they are used to transport power at higher voltages across the METC ties and across Holland's system, where it is subsequently stepped down at distribution substations for distribution to retail load.³⁴ The Commission further found that the non-radial nature of Holland's system (which can experience bi-directional flows) supported its decision to classify the 138 kV facilities as transmission rather than local distribution.³⁵

18. The Commission similarly found that Holland is not entitled to a radial facility exemption, since Holland's 138 kV system is looped, can experience bi-directional flows, and does more than serve retail load (i.e., it also transports power from generating sources).³⁶ The Commission also determined that Holland had not adequately demonstrated a lack of impact on the bulk electric system, and agreed instead with NERC that a reliability gap would occur if Holland was not required to comply with certain Reliability Standards applicable to transmission owners and transmission operators.³⁷ The Commission agreed with NERC's finding that Holland failed to justify or explain the three test scenarios chosen as part of the Black & Veatch study purporting to demonstrate Holland's lack of impact on the Bulk-Power System. The April 19 Order also noted the need for Holland to coordinate with METC in the operation and testing of the lines tied in to the Black River substation, as well as the potential impact on METC of a fault on one of the interconnected Holland lines.

19. The April 19 Order also rejected Holland's due process arguments, finding adequate support in the record for NERC's Registry Decision, including an articulated response to each of Holland's arguments. Moreover, the Commission found that Holland's statutory arguments on the local distribution exemption had been fully preserved for the Commission's review.

³⁴ *Id.* P 39.

³⁵ The Commission noted that in certain circumstances the usual flows on Holland's system may reverse in such a way that power flows out of Holland's system at one connection point with METC across a bus-tie breaker, onto another bus at METC's Black River substation, and back on to Holland's system to supply Holland load on the other side of the breaker. *Id.* P 41.

³⁶ *Id.* PP 44-45.

³⁷ *Id.* PP 46-51.

F. Holland's Request for Rehearing

20. Holland filed a request for rehearing of the Commission's April 19 Order on May 21, 2012. Holland asserts that the April 19 Order errs in a number of respects, arguing that: (1) Holland's facilities are statutorily outside the purview of FPA section 215 authority because they serve a local distribution function; (2) Holland's facilities should be exempt as radial facilities; (3) the Commission failed to refute the only evidence in the record demonstrating that Holland's facilities have no material impact on the bulk electric system; (4) no reliability gap or harm to reliability will occur if Holland is not registered as a transmission owner or transmission operator; and (5) Holland was denied due process by NERC and RFC because they failed to apprise Holland of the criteria necessary to show that its facilities would not have a material impact on the BES.

21. With respect to the Commission's authority under FPA section 215, Holland first argues that the Commission committed legal error "by applying the NERC Registry Criteria as a proxy for determining which facilities are local distribution, and which are transmission."³⁸ Further, Holland argues that the Commission's analysis was inconsistent with precedent, in failing to apply the same test for determining whether facilities are used in local distribution under FPA section 215 as has been articulated for FPA section 201(b), i.e. the "seven-factor" test.³⁹ Holland also argues that the burden was on NERC to demonstrate that Holland's facilities are *not* local distribution "as they have heretofore been treated."⁴⁰ Holland also claims that the April 19 Order is "directly at odds" with

³⁸ Holland Rehearing Request at 10.

³⁹ *Id.* at 10-11 & n.27 (citing to Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,771 and listing the seven factors as follows: (1) local distribution facilities are generally in proximity to retail customers; (2) local distribution facilities are primarily radial in character; (3) power flows into local distribution facilities; but rarely, if ever, flow out; (4) once it enters the local distribution system, the power is not re-consigned or transported into some other market; (5) the power is consumed in a comparatively restricted geographical area; (6) meters are based at the local distribution interface to measure flows into the local distribution system; and (7) the facilities are generally of reduced voltage).

⁴⁰ *Id.* at 12-13.

the Commission's statements to Congress stating that the term Bulk-Power System "would exclude 'some transmission and all local distribution facilities.'"⁴¹

22. Holland asserts that the Commission's determination that its facilities are not "functionally radial" is contrary to the record evidence.⁴² Holland notes that the Commission based its finding on the fact that: (1) the Holland system is a loop and is subject to bi-directional flows; and (2) Holland is not serving "only load" from one transmission source. Holland argues that the existence of bi-directional flows within Holland's system is irrelevant, and that the Commission should have instead focused on "where those bidirectional flows occur and whether power flows from Holland's . . . system onto a neighboring system."⁴³ Holland maintains, moreover, that the only evidence in the record demonstrates that the relaying scheme "precludes flow from the BES across Holland's . . . system and then back to the BES."⁴⁴ Holland characterizes the Commission as improperly focusing on the "fact that Holland has internal generation" as a reason to deny an exclusion as a radial facility, without "explain[ing] why it should matter that Holland has generation internal to its system, and how this could be material to a determination that Holland must be registered as a TO/TOP."⁴⁵

23. Holland argues that the Commission further erred in rejecting its demonstration that its system does not have a material impact on the bulk electric system and/or is not necessary to reliably operate the interconnected transmission system. Holland maintains that "NERC failed to proffer any substantial challenges to the Black & Veatch study, and instead merely indicated that "they did not understand the justification for the three test scenarios, and that Holland did not produce the model for the generators, governors, power system stabilizers or excitation systems."⁴⁶ Moreover, Holland notes that RFC and NERC did not produce any of their own studies, or refute those of Black & Veatch. Holland argues that the Commission erred by relying on the same justifications for

⁴¹ Holland Rehearing Request at 17 (footnotes and citations omitted) (emphasis supplied by Holland).

⁴² *Id.* at 18.

⁴³ *Id.* at 19.

⁴⁴ *Id.*

⁴⁵ *Id.* at 20-21.

⁴⁶ *Id.* at 24.

rejecting the Black & Veatch study as cited by NERC, without acknowledgement or consideration of the affidavits submitted by Holland in response to NERC.

24. Holland also maintains that the April 19 Order relied on the “irrelevant” finding that reliability could suffer due to the loss of internal generation on Holland’s system. Holland argues that the April 19 Order not only fails to explain what amount of internal generation would qualify as significant, but also fails to explain why this could have an impact on reliability.⁴⁷

25. Holland further argues that the April 19 Order fails to provide support for its findings that Holland’s registration is needed to avoid a reliability gap. Holland claims that the Commission’s stated concern about the need for coordination in operating its circuit breakers and protective relays at Holland’s end of interconnection lines is unfounded, because “coordination of each is already performed by virtue of Holland’s status as a ‘Distribution Provider’ (through the Michigan Public Power Association as the Joint Registered Organization).”⁴⁸ Holland points to a number of Reliability Standards that it believes would “serve no practical purpose or benefit” if applied to Holland, including FAC-014, MOD-001, TOP-007, TOP-008 and PRC-018, as it did in its initial appeal, as a contrast to the “only two” standards that the April 19 Order provides as examples to demonstrate the reliability gap if Holland is not registered as a transmission owner or operator. Holland argues that there is no need for it to be required to comply with those standards (MOD-10 and MOD-12), because it has voluntarily provided the information that the standard would require.

26. Finally, Holland re-asserts its due process claims on rehearing. First, Holland argues that RFC and NERC would not entertain Holland’s claim for an exemption as local distribution, and that they instead relied solely on the NERC registry criteria and 100 kV threshold to deny its challenge to the registration.⁴⁹ In addition, Holland maintains that it was not given an effective means to demonstrate that it did not have a material impact on the bulk electric system, because RFC and NERC would not provide direction or instruction as to what constitutes materiality. Holland further asserts that due process was denied

⁴⁷ *See id.* at 27-28.

⁴⁸ *Id.* at 29.

⁴⁹ *Id.* at 35.

because the only information provided by RFC regarding its decision to register Holland was untimely and flawed in its understanding of Holland's system.⁵⁰

II. Discussion

27. The Commission denies Holland's Request for Rehearing of the April 19 Order, and, on the record before us, affirms that Holland is properly registered as a transmission owner and transmission operator. We uphold NERC's Registry Decision because we find that Holland's 138 kV facilities function as transmission elements and, therefore, are properly included as part of the Bulk-Power System subject to FPA section 215 jurisdiction. We further find that NERC properly found that Holland is not entitled to an exemption as a radial facility under NERC's definition of bulk electric system, and that it has not met its burden of showing that its system does not have a material impact on the rest of the Bulk-Power System.

A. The April 19 Order Properly Found that Holland's 138 kV Facilities Serve a Transmission Function

28. On rehearing, Holland asserts that the Commission erred in finding that Holland is properly registered as a transmission owner and transmission operator because, according to Holland, its facilities are used in local distribution and thus exempt from compliance under the FPA section 215 definition of Bulk-Power System. Moreover, Holland argues that the Commission erred in applying the NERC Registry Criteria "as a proxy" for determining which facilities are used for local distribution versus transmission.⁵¹ According to Holland, the Commission ignored its own precedent and should have used the "seven-factor" test to assess whether Holland's 138 kV system is used for local distribution. Holland claims that the Commission's approach establishes, without justification, two classes of local distribution, one applicable to FPA section 201(b) and the other to section 215.

29. With respect to Holland's assertion that neither NERC nor the Commission have the authority to subject facilities that are used in local distribution to the requirements of Reliability Standards promulgated under FPA section 215, we note that the April 19 Order stated that FPA section 215 does not allow the

⁵⁰ *Id.* at 35-37.

⁵¹ Holland Rehearing Request at 10 (citing April 19 Order, 139 FERC ¶ 61,055 at P 38).

Commission to simply apply the 100 kV screen used in NERC's registry criteria to determine what is or is not local distribution, without further inquiry. Instead, in the April 19 Order the Commission acknowledged the "necessity of identifying and excluding any local distribution that is improperly included as part of the bulk electric system using [NERC's 100 kV] threshold, in order to remain within the jurisdictional bounds of FPA section 215."⁵²

30. Accordingly, the Commission went on in the April 19 Order to examine the nature of Holland's 138 kV facilities based on their essential function, and found that the facilities serve a transmission function because "they are used to transport power at higher-voltages, from Holland's own generation or imported across the METC ties (at the same voltage levels that the power is transmitted by METC), to distribution substations where that power is *then* stepped down for distribution to Holland's retail load."⁵³ We then looked at other "functional" aspects of Holland's 138 kV facilities, including whether the facilities are radial in nature and operate at relatively high voltage levels. Thus, while the April 19 Order found use of the 100 kV threshold acceptable as an "initial proxy" for assessing jurisdictional status under FPA section 215, it did not end the inquiry at that point.

31. As to the actual test applied to differentiate between transmission and local distribution, Holland maintains that the Commission ignored history and precedent in failing to recognize that Holland's facilities have historically been treated as distribution facilities and in failing to apply the seven-factor test for the identification of local distribution facilities under FPA section 215. However, Holland supplies little information other than its own assertions to support its historic treatment as a distribution-only system. For instance, Holland asserts that "[t]he decades of Holland's operational history and the Commission's own precedent operate in Holland's favor," and that it "is not Holland's burden to prove what has always been recognized until now."⁵⁴

32. Holland does not cite to any Commission (or other) decision finding that Holland has been recognized as a distribution system without any transmission assets. Moreover, Holland does not recognize the statement in the April 19 Order explaining that the Commission has "endorsed the use of a 100 kV threshold as an

⁵² April 19 Order, 139 FERC ¶ 61,055 at P 38 (citing Order No. 743-A, 134 FERC ¶ 61,210 at P 67).

⁵³ *Id.* P 39.

⁵⁴ Holland Rehearing Request at 12.

‘initial proxy for determining which facilities are local distribution and which are transmission.’”⁵⁵ Because the facilities in question are over that threshold, the burden is on Holland to demonstrate that the facilities qualify as local distribution rather than transmission facilities.⁵⁶ Finally, Holland’s current position is inconsistent with the way it describes its system in other contexts. Holland’s webpage describes the Holland system as follows:

The Holland Board of Public Works’ electric *transmission* and distribution system consists of a 24 mile loop of 138,000 Volt transmission lines and over 600 miles of both underground and overhead distribution circuits.⁵⁷

33. With respect to Holland’s arguments on the need to apply the same test under FPA section 215 as has been applied under FPA section 201(b)(1), i.e., the “seven-factor” test, we note that we recently determined in Order No. 773 that we would apply the seven-factor test set forth in Order No. 888, including any other factors that should be taken into account in particular situations, when a registrant seeks a Commission determination that its facilities should be exempt from FPA section 215 compliance because they are used in local distribution.⁵⁸ Accordingly,

⁵⁵ April 19 Order, 139 FERC ¶ 61,055 at P 39.

⁵⁶ *See also id.* P 46 (stating that “[b]ecause Holland’s facilities exceed the 100 kV threshold as set forth in NERC’s Registry Criteria, they are assumed to be material to the Bulk Power System”) (citations omitted); NERC Rules of Procedure Appendix 5A, Section V – NERC Organization Registration Appeals Process (requiring a registered entity challenging its listing or functions as determined by the regional entity on appeal to NERC to “state why it should not be registered based on the NERC Rules of Procedure and the *NERC State of Compliance Registry Criteria*”).

⁵⁷ Holland Board of Public Works: Electric Distribution, [www.hollandbpw.com/electric/Pages/Electric Distribution.aspx](http://www.hollandbpw.com/electric/Pages/Electric%20Distribution.aspx) (emphasis added).

⁵⁸ Order No. 773, 141 FERC ¶ 61,236 at PP 66-73 (finding that “applying the four exclusions in NERC’s proposed definition should serve to further exclude facilities used in local distribution” and that E3 in particular would “reasonably exclude many above-100 kV facilities that are used in local distribution,” but that additional case-by-case jurisdictional determinations to identify local distribution should be undertaken by the Commission using the seven-factor test, including “any other factors that should be taken into account in particular situations.”)

we agree that, going forward, it is appropriate to apply the seven-factor test to determine whether facilities that might otherwise be defined as bulk electric system components under NERC's definition should be excluded from FPA section 215 compliance because they function as local distribution facilities.

34. Holland's initial appeal to the Commission and its request for rehearing were filed prior to issuance of Order No. 773. Holland did not advocate for the application of the seven-factor test in its initial appeal to the Commission. Instead, Holland argued that the Commission should look at the function of its facilities and "not the voltage or the number of breakers."⁵⁹ On rehearing, when Holland first advocates for the use of the seven-factor test, Holland makes the assertion that its facilities should qualify as local distribution without showing how each factor should be applied to its specific system configuration or other relevant information pertaining to its particular situation.⁶⁰ Holland has not had an opportunity to seek relief under NERC's revised BES definition and ROP exception process as provided by Order No. 773, including the process for seeking a subsequent determination from the Commission that facilities are used for local distribution. Accordingly, we decline to undertake an analysis of Holland's facilities under the seven-factor test at this time, and affirm our findings in the April 19 Order that Holland's 138 kV facilities function as transmission on this record.⁶¹

⁵⁹ See generally, Holland Appeal at 12-15.

⁶⁰ Order No. 773, 141 FERC ¶ 61,236 at P 71. By contrast, in other seven-factor cases before us, entities have offered evidence of the size of the area served to help establish that the facilities are or are not local distribution facilities. See, e.g., *City of Pella, Iowa v. Midwest Independent Transmission System Operators*, 134 FERC ¶ 61,081 (2011) (relying in part on evidence that certain 69 kV facilities served areas up to 30 miles away in finding that the facilities served a transmission function under the seven-factor test); *California Pacific Electric Co.*, 133 FERC ¶ 61,018 (2010) (relying in part on evidence that all retail customers served were within an area of 15 miles in finding that the facilities served a distribution function under the seven-factor test).

⁶¹ Nor do we find any inconsistency between our finding that Holland's 138 kV facilities serve a transmission function, and prior statements by the former Chairman or by Commission staff that the term "Bulk-Power System" could be interpreted to exclude some transmission and all local distribution. See Holland Rehearing Request at 17-18. Instead, we have acknowledged that "some transmission" facilities may be excluded from FPA section 215 jurisdiction if they do not have a material impact on the bulk electric system, as we discuss with

(continued ...)

35. Our denial of rehearing on this issue is without prejudice to Holland's ability to seek relief under NERC's revised BES definition and ROP exception process as described in Order No. 773, including the process for seeking a subsequent determination from the Commission that its 138 kV facilities are used for local distribution and therefore not part of the Bulk-Power System under FPA section 215. We believe that this approach will allow the parties to take full advantage of the criteria and fact-finding processes being developed under NERC's new definition and ROP exception process, and will allow Holland to fully present any additional relevant facts and arguments under the new processes and under the seven-factor test.

B. Holland's 138 kV Facilities Do Not Qualify for Exclusion from the Bulk Electric System as Radial Facilities

36. Holland asserts that the April 19 Order's findings on the non-radial nature of Holland's 138 kV facilities are contrary to the record evidence, arguing that any bi-directional flows *on Holland's system* are irrelevant to the analysis, and that the presence of internal generating resources on Holland's system cannot serve to preclude an exemption as a radial facility.

37. We are not persuaded by either argument, particularly in the context of determining whether Holland qualifies for an exemption under NERC's existing definition of bulk electric system, which states that "[r]adial transmission facilities serving only load with one transmission source are generally not included in [the bulk electric system] definition." As NERC found in its Registry Decision, Holland does not qualify as a radial facility because it experiences bi-directional flows, and because a fault on one of its interconnecting lines cannot be removed solely by operation of the METC breaker at Black River associated with that line.⁶² Moreover, Holland does not qualify for this exemption as written, as it is interconnected to the bulk electric system through two separate transmission lines (the Black River-Waverly line and the Black River-Quincy line) and does not serve "only load," but has significant generating resources connected to its 138 kV lines.

respect to Holland's facilities in Section II.C, below. This has no bearing on our finding that Holland's 138 kV facilities do not qualify for an exclusion from FPA section 215 as "local distribution" facilities.

⁶² Ex. HOL-16 (NERC Registry Decision) at 12.

38. In an attempt to avoid this result, Holland refers to its point of interconnection with METC as a “single point of interconnection,” asserting that “[a]lthough the Holland BPW connections are to two different bus sections in the Black River Substation, the buses are connected with a breaker which is closed in normal operations and under most contingencies.”⁶³ Holland also argues that its “internal generating units are . . . used only to supply the load of Holland’s BPW’s internal customers”⁶⁴ and that there are “no flows over Holland’s lines other than flows supporting Holland’s native load.”⁶⁵ Thus, Holland suggests that its facilities should be considered functionally radial, and therefore exempt from regulation as part of the bulk electric system, as long as power does not flow back onto the METC system.⁶⁶

39. However, as we found in our initial order, Holland’s system can experience bi-directional flows across the METC breaker at Black River, even if power does not normally flow that way:

Moreover, the Holland system can experience bi-directional flows, as NERC found in its Registry Decision, unlike a typical radial line. In certain circumstances the usual flows on Holland’s system may reverse in such a way that power flows *across the METC breaker* at Black River. The configuration of Holland’s interconnection, depicted in Holland’s one-line diagram, indicates that when certain segments of Holland’s 138 kV loop are taken out of service for maintenance, the power can flow out of Holland’s system onto one bus at METC’s Black River substation, across the bus-tie breaker, onto the other bus at METC’s Black River substation and back on to

⁶³ Ex. HOL-9 at 4 (Sept. 20, 2010 letter from Debra Roby of Jennings Strouss to Craig Lawrence of NERC).

⁶⁴ *Id.*

⁶⁵ Rehearing Request at 21-22.

⁶⁶ Similarly, Holland argues that any occurrence of bi-directional flows is irrelevant to the inquiry of whether its system is functionally radial, unless those bi-directional flows could “cause electric energy to flow from Holland’s . . . system back to the BES.” Holland Rehearing Request at 19.

Holland's system to supply Holland load on the other side of the breaker.⁶⁷

Although Holland asserts that it submitted "uncontested" evidence "demonstrating that the relaying scheme for the facilities that connect Holland to METC's Black River Substation precludes flow from the BES across Holland's . . . system and then back to the BES," Holland failed to consider improper coordination or the misoperation of the relays that prevent flow from its system onto the bulk electric system. In the event that Holland's protection system does not respond when required, power can indeed flow onto the bulk electric system from Holland's system.

40. Holland further argues that the April 19 Order "unlawfully restricts the statutory exclusion to local distribution systems that rely solely on external generation and suggests that local distribution facilities are not traditionally networked distribution facilities, which of course is false." We disagree with Holland's characterization of the April 19 Order. The April 19 Order affirmed NERC's determination that the Holland system was not eligible for an exemption as a radial transmission facility under NERC's bulk electric system definition, which requires an examination of whether Holland's facilities "serve only load" and whether Holland has more than one transmission source. Notably, the Commission undertook a *separate* inquiry into whether or not Holland's 138 kV loop functioned as "local distribution" under FPA section 215, which relied *in part* on the non-radial, looped nature of the facility. We did not make a blanket finding that facilities used for local distribution *must* be radial in character,⁶⁸ or that facilities that include generating resources cannot qualify as local distribution.

C. The April 19 Order Properly Found that Holland Failed to Demonstrate that its 138 kV Facilities Do Not Have a Material Impact on the Bulk Electric System

41. Holland argues on rehearing that the Commission erred in failing to consider Holland's response to NERC's and RFC's criticisms of the independent study performed by Black & Veatch, which Holland relied on to "confirm[] that

⁶⁷ April 19 Order, 139 FERC ¶ 61,055 at P 41 (footnotes omitted).

⁶⁸ We note, however, that under the seven-factor test "local distribution tends to be radial in character." See *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,981.

Holland does not have a material impact on the METC system”⁶⁹ In doing so, Holland suggests that our references to NERC’s and RFC’s criticisms of the study form the entire basis of our findings with respect to Holland’s impact on the bulk electric system.⁷⁰

42. In the April 19 Order, the Commission stated as follows with respect to the Black & Veatch study:

While Holland cites to a study that it asserts demonstrates a lack of material impact on the Bulk-Power System when faults on its own system occur, RFC and NERC found the study to be inadequate in a number of respects. As NERC noted, the study “provides no justification for the election of any of the three test scenarios and provides insufficient data demonstrating the results of the test.” Moreover, NERC noted that there was “no indication as to what generators and buses were monitored during the three test scenarios for frequency, angle, and voltage stability.” We agree that the findings in the Black & Veatch study are insufficient to overcome the assumption that Holland’s 138 kV facilities, which are non-radial and have not been shown to be used solely for local distribution, can have a material impact on the Bulk-Power System.⁷¹

43. However, in the April 19 Order, we examined several factors beyond the Black & Veatch study to assess Holland’s potential impact on the rest of the bulk electric system. First, we noted NERC’s findings in its Registry Decision that Holland’s 138 kV lines transmit “a substantial amount of generation,” and that

⁶⁹ Holland Rehearing Request at 23.

⁷⁰ Holland also asserts that it “demonstrated that METC does not consider any facilities at the Holland/METC point of interconnection to be ‘critical’ to restoring the METC transmission systems.” Holland Rehearing at 26 (footnotes and citations omitted). We find this argument insufficient to overcome the Commission’s other findings with respect to Holland’s potential impact on the Bulk-Power System.

⁷¹ April 19 Order, 139 FERC ¶ 61,055 at P 47 (citing to Ex. HOL-16 at 14).

“the loss of internal generation on Holland’s system could produce an increased draw from METC that could be significant.”⁷² We also looked at the need for coordination between Holland and METC in the operation of Holland’s circuit breakers at the ends of the Black River-Quincy and Black River-Waverly lines, noting that “[o]peration of the equipment on both ends of the lines must be coordinated whenever the lines are being switched in and out of service.”⁷³ We accordingly agreed with NERC that “compliance with Reliability Standards governing protection system maintenance, testing, coordination, and corrective action in the event of misoperations is necessary to ensure the reliability of the Bulk-Power System under these circumstances.”⁷⁴

44. Holland’s response to these findings is to argue that the amount of internal generation on Holland’s system is irrelevant. Holland further maintains that the Commission failed to establish what amount of generation would be considered “significant,” and that the Commission’s approach would mean that “every Distribution Provider or Load Serving Entity with internal generation connected at any voltage to the BES would be required to register as a TO/TOP.”⁷⁵

45. We disagree with Holland’s assertions. As Holland acknowledges, one of the factors the Commission has examined in determining whether facilities are necessary to reliably operate the interconnected transmission system is whether the facilities interconnect significant amounts of generation.⁷⁶ While Holland asserts that its facilities “do not connect significant amounts of generation sources to the integrated transmission system,”⁷⁷ we cannot agree that its generation is insignificant. We find no merit to its concern that treating 226 MW as a significant amount of generation is unprecedented, and note that under the new

⁷² *Id.* P 48.

⁷³ *Id.*

⁷⁴ *Id.* P 49.

⁷⁵ Holland Rehearing Request at 28.

⁷⁶ *See id.* at 22 (stating that the Commission observed in Order No. 743 that “lower voltage facilities needed to reliably operate the grid tend to operate in parallel with other high voltage and extra high voltage facilities, *interconnect significant amounts of generation sources* and may operate as part of a defined flow gate.”) (emphasis added).

⁷⁷ Holland Rehearing Request at 26.

bulk electric system definition and ROP exception process, automatic exclusions for radial facilities or local networks are limited to those with net generation of 75 MW or less. In other words, we have explicitly endorsed a system that allows for automatic exclusions where there is some level of interconnected generation (even for facilities above 100 kV), and, consistent with our approach here, that system does not provide for an automatic exclusion from the bulk electric system if the facilities connect generation exceeding a certain threshold amount. Here, Holland's generation exceeds the threshold amount by a factor of three.

46. Nor can we agree that our findings with respect to Holland mean that any distribution provider or load serving entity could be registered as a transmission owner or operator if it has any amount of interconnected generation at any voltage. Our analysis of Holland's 138 kV facilities, which are at a voltage level generally considered to be part of the bulk electric system, is not inherently applicable to lower-voltage facilities.

47. Finally, we reject Holland's arguments that the April 19 Order fails to identify a credible gap in reliability that could occur if Holland is not registered as a transmission owner or transmission operator. We are not persuaded that the Reliability Standard requirements imposed on the Michigan Public Power Agency as a "Distribution Provider" acting on Holland's behalf impose adequate obligations regarding testing, maintenance, and coordination of protective systems, as Holland maintains. The Reliability Standard that mandates protection systems be coordinated, PRC-001-1, is applicable only to transmission operators, generator operators and balancing authorities, and not distribution providers. In addition, the Reliability Standard that mandates protection systems be tested and maintained, PRC-005-1, is applicable to entities that own a transmission system Protection System. Therefore, a gap in reliability does exist if Holland's 138 kV facilities are not considered to be transmission elements and if Holland is not registered as a transmission owner and operator.

48. Moreover, Holland cannot rely on the fact that it has *voluntarily* provided information that would be required under the MOD-10 and MOD-12 standards (as cited in the April 19 Order) to argue against the need for imposition of mandatory Reliability Standard requirements. Instead, as found in the initial order:

METC/ITC does make use of Holland's steady-state and dynamic data for modeling and simulations required under MOD-010, and data on generation as required under MOD-012. Evidence in the record shows that METC includes "a model of Holland's system of generation substations, distribution substations, and 138 kV line[]" in METC's system planning models, rather than net load, based on

METC's assessment that the use of Holland's dynamic sources provides a more accurate model. While this is just one example, it illustrates the importance of Holland's compliance with the Reliability Standards that govern modeling data and analysis, including MOD-010 and MOD-012.⁷⁸

49. We accordingly confirm our findings that Holland has not shown that its system is not material to the operation of the interconnected transmission system, and agree with NERC that a gap in reliability could occur if Holland is not registered as a transmission owner or transmission operator. In doing so, however, we reiterate that "there is nothing in [NERC's] decision, the Registry Criteria, or the NERC Rules of Procedure that prevent Holland from working with NERC and the RFC to demonstrate that it should not be subject to certain of the TO and TOP requirements and Reliability Standards, based on technical or physical limitations of its facilities."⁷⁹

D. Holland Was Afforded Due Process in its Challenge to RFC's and NERC's Registration Decisions

50. Holland asserts that there were three fundamental departures from due process in its challenges to RFC's and NERC's registration decisions, in that: (1) NERC failed to consider whether Holland's facilities are used in local distribution under FPA section 215; (2) RFC and NERC failed to provide Holland with criteria or guidance on how to demonstrate that its facilities are not necessary for operating an interconnected electric energy transmission network; and (3) Holland did not have a sufficient opportunity to explore, through discovery and other hearing-type procedures, RFC's basis for its assessment that Holland's facilities have a material impact on the bulk electric system.⁸⁰

51. With respect to consideration of whether Holland's facilities qualify as local distribution under FPA section 215, we find that Holland received a full and fair opportunity to present that argument through this appeal to the Commission, and note that our denial of rehearing without prejudice to Holland's right to seek further relief under NERC's new bulk electric system definition and exceptions

⁷⁸ April 19 Order, 139 FERC ¶ 61,055 at P 50 (footnotes omitted).

⁷⁹ *Id.* P 51; *see also New Harquahala Generating Company, LLC*, 123 FERC ¶ 61,173 at PP 56-57 (2008).

⁸⁰ Holland Rehearing Request at 35-37.

process ensures that Holland will be able to present any additional relevant facts or arguments. Moreover, as we stated in the April 19 Order:

On the question of whether Holland's facilities qualify as local distribution, we find no denial of due process for NERC to rely on its Registry Criteria to make an initial determination that Holland's facilities qualify as transmission, and note that Holland's statutory arguments regarding the local distribution exemption have been fully preserved and considered as part of our review.

52. Similarly, we find that Holland had ample opportunity to respond to RFC's and NERC's assessment and findings through the registration appeal process.⁸¹

⁸¹ The Commission found in the April 19 Order that:

Holland was afforded the opportunity to submit additional information in support of its appeal, as well as a response to RFC's Assessment and Brief in Opposition to Holland's Appeal. In addition, NERC requested additional information from Holland and those responses, along with the rest of the information submitted by both parties, were considered by the NERC Board of Trustees Compliance Committee in rendering its decision.

April 19 Order, 139 FERC ¶ 61,055 at P 53 (footnotes omitted).

The Commission orders:

The Commission hereby denies Holland's request for rehearing of the April 19 Order, as discussed in the body of this order.

By the Commission. Commissioner LaFleur is concurring with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

City of Holland, Michigan Board of
Public Works

Docket No. RC11-5-001

(Issued October 17, 2013)

LaFLEUR, Commissioner, *concurring*:

I agree with the majority decision, but write separately to address my earlier dissent in this docket in the April 19 Order.¹ I dissented in the April 19 Order because I believed that the Commission should have deferred consideration of whether the City of Holland facilities in question constituted facilities used in transmission or local distribution until the Commission answered a threshold question regarding the meaning of “local distribution” in Section 215 of the Federal Power Act.² Subsequent to issuing the original order in this proceeding, the Commission answered that question in Order No. 773.³ The Commission explained in Order No. 773 that most facilities that are local distribution and hence exempted from the bulk electric system (BES) will be excluded based on the core BES definition and exclusions. However, the Commission also recognized that there may be circumstances that present a factual question as to whether a facility not excluded by application of the core definition and exclusions “should nonetheless be excluded because it is used in local distribution.” In those infrequent circumstances, the Commission will make a factual determination whether a facility is used in “local distribution,” using the seven-factor test and other relevant considerations.⁴

¹ *City of Holland, Michigan Board of Public Works*, 139 FERC ¶ 61,055 (2012) (April 19 Order).

² April 19 Order, 139 FERC ¶ 61,055, dissenting opinion at 2.

³ *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, Order No. 773, 141 FERC ¶ 61,236 (2012) (Order No. 773), *order on reh’g and clarification*, Order No. 773-A, 143 FERC ¶ 61,053 (2013).

⁴ Order No. 773, 141 FERC ¶ 61,236, at PP 70-71.

Thus, as noted by the majority herein, the jurisdictional question of whether facilities are used in local distribution should be decided by the Commission only after NERC applies the core definition and the exclusions to the facilities in question.

Since the final BES definition is not yet effective,⁵ the Commission's decision today does not definitively resolve the status of the City of Holland's facilities. As the majority notes, today's decision is without prejudice to Holland's ability to seek relief under NERC's revised BES definition and Rules of Procedure exception process as described in Order No. 773, including the process for seeking a subsequent determination from the Commission as to whether the facilities are used for local distribution and therefore not part of the BES.

Accordingly, I respectfully concur.

Cheryl A. LaFleur
Commissioner

⁵ *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, Order Granting an Extension of Time, 143 FERC ¶ 61,231 (2013) (granting NERC's motion to extend the effective date of the definition of the bulk electric system and the Rules of Procedure exception process from July 1, 2013 to July 1, 2014).