

## **FERC Clarifies Directive on Revision to Definition of Bulk Electric System, Stresses NERC's Ability to Propose Alternative Solution**

**March 24, 2011**

On March 17, the Federal Energy Regulatory Commission (FERC or the Commission) issued an order denying rehearing of Order No. 743, in which the Commission had directed the North American Electric Reliability Corporation (NERC) to modify its definition of "bulk electric system," which serves to identify those entities subject to mandatory Reliability Standards. While the Commission explained that a new definition was needed to remove the discretion granted to Regional Entities under the existing definition, the Commission stressed that NERC need not implement the 100 kV bright-line proposal put forward by FERC in Order No. 743 but could exercise its discretion and technical expertise to propose an alternative method for defining "bulk electric system," so long as it was "consistent, repeatable, and verifiable with supporting technical analysis."

In denying rehearing, the Commission clarified that the 100 kV bright-line proposal in Order No. 743 was only a recommendation; NERC is free to develop an alternative approach that would be at least as effective as the Commission's approach in removing Regional Entity discretion without reducing reliability. Regional Entities organized on an interconnection-wide basis (Texas Reliability Entity and Western Electricity Coordinating Council) would also be free to propose regional definitions that differ from NERC's revised definition. The Commission did not rule out the use of a material impact test in NERC's definition, but noted that such a test must not be subjective, as the Commission believed it was in the Northeast Power Coordinating Council Region.

The Commission reiterated that the impetus behind the directive was its concern that the existing definition permitted each of the eight Regional Entities to define the bulk electric system as it saw fit, without oversight from NERC or the Commission.

The Commission also explained that any bright-line approach should only provide the first step in identifying jurisdictional facilities. NERC could develop an exemption process for the removal of those facilities not necessary to reliability that would otherwise be included within the definition.

The Commission noted that distribution facilities should still be excluded from the definition, as required by statute, and that radial facilities could also be excluded, as they are excluded under the current definition. Finally, the Commission reiterated its prior conclusion that an 18-month transition period following the adoption of the revised definition would be an appropriate amount of time to permit any newly identified facilities to come into compliance with the Reliability Standards, but noted that NERC could propose a longer transition period.

If you have any questions or would like more information on the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

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