

FERC-725J, OMB Control No.: TBD

Docket No.: RM12-6/RM12-7, NOPR, Issued June 22, 2012, RIN: 1902-AE51

Revised 7-27-12

Supporting Statement for
FERC-725J, Definition of the Bulk Electric System
As Proposed in Docket Nos. RM12-6-000 and RM12-7-000
(A Proposed Rule Issued June 22, 2012)

The Federal Energy Regulatory Commission (Commission or FERC) requests that the Office of Management and Budget (OMB) review and approve **FERC-725J, Definition of the Bulk Electric System**, for a three year period. FERC-725J is a new collection (Control No. still to be determined) and is meant to capture the information collection burden associated with a new definition of the Bulk Electric System.

As explained in item 12 of this supporting statement, this information collection consists of three parts.

- System Review and List Creation. In this part Transmission Owners, Generator Owners and Distribution Providers must review their systems and make qualified asset lists.
- Exception Requests. Transmission Owners, Generator Owners and Distribution Providers may submit to NERC and the applicable Regional Entity requests for inclusion or exclusion of certain elements from the Bulk Electric System.
- Implementation Plans and Compliance. Some Transmission Owners, Generator Owners and Distribution Providers will have to come into compliance with certain Reliability Standards and the associated information collection requirements of those Reliability Standards. These entities may need to create implementation plans as they work toward compliance with Reliability Standards.

A. JUSTIFICATION

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

On August 8, 2005, The Electricity Modernization Act of 2005, which is Title XII of the Energy Policy Act of 2005 (EPAAct 2005), was enacted into law.¹ EPAAct 2005 added a new section 215 to the FPA, which requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved the Reliability Standards may be enforced by the ERO, subject to Commission oversight.

On March 16, 2007, in Order No. 693, pursuant to section 215(d) of the FPA, the Commission approved 83 of 107 proposed Reliability Standards, six of the eight proposed regional

¹ The Energy Policy Act of 2005, Pub. L. No 109-58, Title XII, Subtitle A, 119 Stat. 594, 941 (2005), codified at 16 U.S.C. 824o (2000).

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differences, and the NERC *Glossary of Terms Used in Reliability Standards* (NERC Glossary), which includes NERC's definition of bulk electric system.² That definition provides:

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.³

In approving NERC's definition of bulk electric system, the Commission stated that "at least for an initial period, the Commission will rely on the NERC definition of bulk electric system and NERC's registration process to provide as much certainty as possible regarding the applicability to and the responsibility of specific entities to comply with the Reliability Standards."⁴ The Commission also stated that "[it] remains concerned about the need to address the potential for gaps in coverage of facilities."⁵

Order Nos. 743 and 743-A

On November 18, 2010, the Commission revisited the definition of "bulk electric system" and issued Order No. 743, which directed the ERO, through the ERO's Reliability Standards Development Process, to revise its definition of the term "bulk electric system" to address the Commission's technical and policy concerns, including inconsistency in application of the definition and a lack of oversight and exclusion of facilities that are required for the reliable operation of the interconnected transmission network, and to ensure that the definition encompasses all facilities necessary for operating an interconnected electric transmission network, pursuant to section 215 of the FPA. In Order No. 743, the Commission stated that the best way to address these concerns is to eliminate the Regional Entity discretion to define bulk electric system without ERO or Commission review, maintain a bright-line threshold that includes all facilities operated at or above 100 kV except defined radial facilities, and adopt an exemption process and criteria for excluding facilities that are not necessary to operate an interconnected electric transmission network.⁶ However, Order No. 743 allowed the ERO to "propose a different solution that is as effective as, or superior to, the Commission's proposed

² See *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

³ Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 75 n.47 (quoting NERC's definition of "bulk electric system").

⁴ *Id.* P 75; see also Order No. 693-A, 120 FERC ¶ 61,053 at P 19 ("the Commission will continue to rely on NERC's definition of bulk electric system, with the appropriate regional differences, and the registration process until the Commission determines in future proceedings the extent of the Bulk-Power System").

⁵ Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 77 (footnotes omitted). For example, the Commission noted that some regional definitions of bulk electric system exclude facilities below 230 kV and transmission lines that serve Washington, DC and New York City, and the Commission stated its intent to address this matter in a future proceeding. *Id.*

⁶ Order No. 743, 133 FERC ¶ 61,150 at P 16.

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approach in addressing the Commission’s technical and other concerns so as to ensure that all necessary facilities are included within the scope of the definition.”⁷ The Commission directed NERC to file the revised definition of bulk electric system and its process to exempt facilities from inclusion in the bulk electric system within one year following the effective date of the final rule.⁸

In Order No. 743-A, the Commission reaffirmed its determinations in Order No. 743. In addition, the Commission clarified that the specific issue the Commission directed the ERO to rectify is the discretion the Regional Entities have under the current definition to define the parameters of the bulk electric system in their regions without any oversight from the Commission or NERC.⁹ The Commission also clarified that it was not the Commission’s intent through its determination regarding “impact-based methodologies” to disrupt the NERC Rules of Procedure or the Statement of Compliance Registry Criteria.¹⁰ Nor did the Commission intend to rule out using any form of a material impact test in the reliability context that can be shown to identify facilities needed for reliable operation.¹¹

The Commission further clarified that the statement in Order No. 743, “determining where the line between ‘transmission’ and ‘local distribution’ lies ... should be part of the exemption process the ERO develops” was intended to grant discretion to the ERO, as the entity with technical expertise, to develop criteria to determine how to differentiate between local distribution and transmission facilities in an objective, consistent, and transparent manner.¹² With respect to determining which facilities are local distribution for reliability purposes and in response to the rehearing requests, the Commission stated that the “seven factor test” in Order No. 888 could be relevant and possibly is a logical starting point for determining which facilities are local distribution for reliability purposes.¹³ However, the Commission left it to NERC in the first instance to determine if and how the seven factor test should be considered in differentiating between local distribution and transmission facilities.¹⁴ Order No. 743-A re-emphasized that local distribution facilities are excluded from the definition of Bulk-Power System and, therefore, must be excluded from the definition of bulk electric system.

Proposed Rule (Docket Nos. RM12-6 & RM12-7)

On January 25, 2012, NERC submitted two separate but contemporaneous petitions pursuant to the directives in Order No. 743, separately presenting (1) NERC’s proposed revision to the definition of bulk electric system and (2) revisions to NERC’s Rules of Procedure to add a

⁷ *Id.*

⁸ *Id.* P 113.

⁹ *Id.* P 11.

¹⁰ *Id.* P 47.

¹¹ *Id.*

¹² *Id.* P 67.

¹³ *Id.* P 69.

¹⁴ *Id.* P 70.

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procedure for requesting and receiving exceptions from the “bulk electric system” definition. In the NOPR, we address both petitions.

Revised Definition of Bulk Electric System

In Docket No. RM12-06-000, NERC filed a petition requesting Commission approval of a revised definition of “bulk electric system” in the NERC Glossary (NERC BES Petition). In the NERC BES Petition, NERC also requests approval of the proposed “Detailed Information to Support an Exception Request,” which will be used in the submittal, review, and approval or disapproval of requests for exceptions from the “bulk electric system” definition. Finally, NERC requests Commission approval of its plan for implementation of the revised definition of “bulk electric system.”

NERC Petition for Approval of Revisions to Rules of Procedure to Adopt a Bulk Electric System Exception Process

In Docket No. RM12-7-000, NERC filed proposed revisions to its Rules of Procedure for the purpose of adopting a procedure for requesting and receiving exceptions from the definition of bulk electric system (NERC ROP Petition). NERC states that the proposed exception process addresses the applicable concerns raised by the Commission, in Order No. 743, with respect to the current processes for determining what facilities are part of the bulk electric system and what facilities are not.¹⁵ NERC also states that the exception process provides for decisions to approve or disapprove exception requests to be made by NERC, rather than by the Regional Entities, thereby eliminating the potential for inconsistency and subjectivity that the Commission was concerned was created by having decisions as to what facilities are included in or excluded from the BES made at the Regional Entity level.¹⁶

NERC states that the exception process establishes a process that (1) balances the need for effective and efficient administration with due process and clarity of expectations; (2) promotes consistency in determinations and eliminates Regional discretion by having all decisions on exception requests made at NERC; (3) provides for involvement of persons with applicable technical expertise in making decisions on Exception Requests; and (4) should alleviate concerns about a “one-size-fits-all” approach.

2. HOW, BY WHOM, AND FOR WHAT PURPOSE THE INFORMATION IS TO BE USED AND THE CONSEQUENCES OF NOT COLLECTING THE INFORMATION

As part of the NOPR, building on the material filed by NERC, several action items are required

¹⁵ NERC ROP Petition at 4

¹⁶ *Id.*

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by industry. Owners of equipment need to review their system to determine which elements are BES under the revised definition and create a list that is available to other parties on request. For any newly identified BES elements, owners and other entities will work together to create implementation plans on timing and requirements that should be met to have new elements fully compliant. The lists and implementation plans should be used by the owners of the equipment, entities where those elements fall under the scope of responsibility, NERC and FERC.

Exception Requests will be available to owners of elements and entities where the elements are under their scope of responsibility. For Exception Request, technical data is required to be submitted to provide justification for the request. NERC has final call on each Request and FERC can check NERC material.

Failure to properly perform system reviews, list creation, exception requests and implementation plans could cause elements needed for BES to not be properly classified and could jeopardize system reliability.

3. DESCRIBE ANY CONSIDERATION OF THE USE OF IMPROVED TECHNOLOGY TO REDUCE BURDEN AND TECHNICAL OR LEGAL OBSTACLES TO REDUCING BURDEN.

The information collection requirements related to the proposed BES definition do not require information to be filed with the Commission. The use of current or improved technology is not covered in the proposed BES definition, and is therefore left to the discretion of each reporting entity.

4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION AND SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S) DESCRIBED IN INSTRUCTION NO. 2

Presently, no list exists to identify which elements are BES and there is no process to handle Exception Requests. Additionally, the revised definition may bring new elements into the BES and owners need to determine how the new elements will be compliant with the body of standards.

5. METHODS USED TO MINIMIZE BURDEN IN COLLECTION OF INFORMATION INVOLVING SMALL ENTITIES

Generally, small entities may not have large systems, may not have a significant impact on the BES, or tend to operate at lower voltages. For those small entities that do have critical elements that are included in the BES, their obligation is to meet all the applicable standards with no

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exceptions. A small entity could pursue an Exception Request to have an element removed and it will be evaluated by the regional entities and NERC.

6. CONSEQUENCE TO FEDERAL PROGRAM IF COLLECTION WERE CONDUCTED LESS FREQUENTLY

Failure to properly perform system reviews, list creation, exception requests and implementation plans could cause elements needed for BES to not be properly classified and could jeopardize system reliability.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION

Individual reliability standards to which some entities will have to comply may have records retention schedules that exceed OMB guidelines in 5 CFR 1320.5(d)(2)(iv) of not retaining records for longer than three years. The Commission has not prescribed a set data retention period to apply to all Reliability Standards. The Commission is not persuaded that a one-size fits all approach to data retention is appropriate, however, because different Reliability Standards may require data to be retained for shorter or longer periods. Nor has the Commission been persuaded that it should set a data retention requirement for any Reliability Standard for which one is currently lacking. [It should be noted that the industry had developed, vetted, voted on, and proposed the various Reliability Standards including reporting and recordkeeping requirements for review and approval by FERC. Upon approval by FERC, the Reliability Standards become mandatory.]

8. DESCRIBE EFFORTS TO CONSULT OUTSIDE THE AGENCY: SUMMARIZE PUBLIC COMMENTS AND THE AGENCY'S RESPONSE TO THESE COMMENTS

In the filing, NERC and regional entities did not specify any expected costs or number of Exception Requests that would be processed. Staff did have informal conversations with regional entities and review material on their proposed budgets to gain insight into how the revised definition may affect their operation. As NPCC region is expected to have largest change, we did consult with a September 2009 report to aid in Staff estimates.

The Proposed Rule seeks further public input on proposed bulk electric system definition and on the proposed exception request procedure, including the associated information collection requirements.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

No payments or gifts have been made to respondents.

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10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

No specific assurance of confidentiality has been mentioned to respondents. The asset lists should be considered CEII as they may identify critical elements needed for BES and system reliability.

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE THAT ARE CONSIDERED PRIVATE.

There are no questions of a sensitive nature that are considered private.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

As noted earlier, the proposal in the NOPR would result in entities reviewing systems and creating qualified asset lists, submitting exception requests where appropriate, and some entities complying for the first time with mandatory Reliability Standards with respect to certain facilities.

The Commission assumes for the system review and list creation requirement that the burden hours per response will vary by type of entity. The variation is due to the complexity of the system and volume of elements for each type of entity. For example, a generator owner may have less than 100 elements in its system to review while a transmission owner may have in its system thousands of elements to review. While NERC did not specify in its petition exactly what will appear on an entity's list or a specific format, the Commission expects that such lists would include what elements are included or excluded from the bulk electric system, why such elements are included or excluded and possibly a voltage class for each element.

The following table provides details on the burden estimate.

Requirement	Number and Type of Entity¹⁷ (1)	Number of Responses Per Entity (2)	Average Number of Hours per Response (3)	Total Burden Hours (1)*(2)*(3)
System Review and List Creation¹⁸	333 Transmission Owners	1 response	80 (engineer hours)	26,640 Yr 1

¹⁷ The "entities" listed in this table are describing a role a company is registered for in the NERC registry. For example, a single company may be registered as a transmission owner and generator owner. The total number of companies applicable to this rule is 1,522, based on the NERC registry. The total number of estimated roles is 1,730.

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	843 Generator Owners		16 (engineer hours)	13,488 Yr 1
	554 Distribution Providers		24 (engineer hours)	13,296 Yr 1
Exception Requests¹⁹	1,730 total Transmission Owners, Generator Owners and Distribution Providers	.15 responses in Yrs 1 and 2	94 (60 engineer hrs, 32 record keeping hrs, 2 legal hrs)	24,393 hrs in Yrs 1 and 2
		0.01156 responses in Yr 3 and ongoing		1,880 hrs in Yr 3 and ongoing
Regional and ERO Handling of Exception Requests²⁰	NERC and 8 Regional Entities	1 response	1,386.67 hrs	12,480 hrs in Yrs 1 and 2
Implementation Plans and Compliance²¹	111 NPCC Region Registered Entities ²²	1 response	700 hrs in Yrs 1 and 2*	77,700 hrs in Yrs 1 and 2
			350 hrs in Yr 3 and ongoing*	38,850 hrs in Yr 3 and ongoing
	75 Registered Entities from 7 other	1 response	700 hrs in Yrs 1 and 2	52,500 hrs in Yrs 1 and 2
			350 hrs in Yr	26,250 hrs in

18 This requirement corresponds to Step 1 of NERC’s proposed transition plan, which requires each U.S. asset owner to apply the revised bulk electric system definition to all elements to determine if those elements are included in the bulk electric system pursuant to the revised definition. See NERC BES Petition at 38.

19 We recognize that not all 1,730 transmission owners, generator owners and distribution providers will submit an exception request. Rather, from the total 1,730 entities, we estimate an average of 260 requests per year in the first two years, based on a low to high range of 87 to 433 requests per year. Therefore, the estimated total number of hours per year for years 1 and 2, using an average of 260 requests per year, is 24,393 hours. We estimate 20 requests per year in year 3 and ongoing.

20 Based on the assumption of two full-time equivalent employees added to NERC staff and 0.5 full-time equivalent employees added to each region’s staff, each full-time equivalent at \$120,000/year (salary + benefits). The Commission assumes that any ongoing burden to process exception requests will be minimal.

21 The Commission does not expect a significant number of registered entities outside of the NPCC region to identify new elements under the revised bulk electric system definition. NERC also states that the other Regional Entities do not expect an extensive amount of newly-included facilities. See NERC BES Petition at 38. “Compliance” refers to entities with new elements under the new bulk electric system definition required to comply with the data collection and retention requirements in certain Reliability Standards that they did not previously have to comply with. This collection captures the burden imposed on entities that have to comply with certain Reliability Standards for the first time. When changes are made to individual Reliability Standards the Commission uses its collections for those particular standards. These are FERC-725A (1902-0244), FERC-725B (1902-0248), FERC-725D (1902-0247), FERC-725E (1902-0246), FERC-725F (1902-0249), FERC-725G (1902-0252), FERC-725H (1902-0256), and FERC-725I (1902-0258).

22 The estimated range of affected NPCC Region Registered Entities is from 66 to 155 entities.

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	Regions		3 and ongoing*	Yr 3 and ongoing
TOTALS				220,497 hrs in Yr 1
				167,073 hrs in Yr 2
				66,980 hrs in Yr 3 and ongoing

*The numbers marked with an asterisk have been rounded.

The next table summarizes the burden estimate as it will be submitted to OMB. We are using an average of the burden over the first three years for submittal to OMB.

FERC-725J	Total Request	Previously Approved	Change due to Adjustment in Estimate	Change Due to Agency Discretion
Annual Number of Responses	2,018	-	-	2,018
Annual Time Burden (Hr)	151,517	-	-	151,517
Annual Cost Burden (\$)	-	-	-	-

13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

These cost estimates are calculated using the average of the ranges suggested in the burden hour estimates. It has projected the annual cost to be:

- Year 1: **\$13,641,200**
- Year 2: **\$10,435,760**
- Year 3 and ongoing: **\$4,343,520.**

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For the first two burden categories above, the loaded (salary plus benefits) costs are: \$60/hour for an engineer; \$27/hour for recordkeeping; and \$106/hour for legal. The breakdown of cost by item and year follows:

- **System Review and List Creation (year 1 only):** $(26,640 \text{ hrs} + 13,488 \text{ hrs} + 13,296 \text{ hrs}) = 53,424 \text{ hrs} * 60/\text{hr} = \$3,205,440$.
- **Exception Requests (years 1 and 2):** $(\text{sum of hourly expense per request} * \text{number of exception requests}) = ((60 \text{ hrs} * \$60/\text{hr}) + (32 \text{ hrs} * \$27/\text{hr}) + (2 \text{ hrs} * \$106/\text{hr})) * 260 \text{ requests} = \$1,215,760$.
- **Exception Requests (year 3):** $(\text{sum of hourly expense per request} * \text{number of exception requests}) = ((60 \text{ hrs} * \$60/\text{hr}) + (32 \text{ hrs} * \$27/\text{hr}) + (2 \text{ hrs} * \$106/\text{hr})) * 20 \text{ requests} = \$93,520$.
- **Regional and ERO handling of Exception Requests:** Between NERC and regional entities we estimate 6 full time equivalent (FTE) engineers will be added at an annual cost of \$120,000/FTE $(\$120,000/\text{FTE} * 6 \text{ FTE} = \$720,000)$. This cost is only expected in years 1 and 2.
- **Implementation Plans and Compliance²³ (years 1 and 2):** $(\text{hourly expense per entity} * \text{hours per response} * \text{sum of NPCC and non-NPCC entities}) = (\$64/\text{hour} * 700 \text{ hour per response} * 186 \text{ responses}) = \$8,332,800$.
- **Implementation Plans and Compliance (year 3 and beyond):** We estimate the ongoing cost for year 3 and beyond, at 50% of the year 1 and 2 costs, to be \$4,166,400.

²³ The cost and hourly burden calculations for this category are based on a past assessment (NPCC Assessment of Bulk Electric System Definition, September 14, 2009.) In that assessment NPCC indicated \$8.9 million annually for operations, maintenance and additional costs. We estimated that roughly half of that cost actually relates to information collection burden. Using the resulting figure, we used a composite wage and benefit figure of \$64/hour to estimate the hourly burden figures presented in the burden table.

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14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

	Number of Employees (FTEs)	Estimated Annual Federal Cost
Analysis and Processing of filings ²⁴	0.05	\$7,177
Data Clearance Cost ²⁵		\$1,588
FERC Total		\$8,765

15. REASONS FOR CHANGES IN BURDEN INCLUDING THE NEED FOR ANY INCREASE

The Commission proposes to adopt the modified definition of the nation's bulk electric system which will require an increase in burden. The increase in burden is necessary to ensure that certain facilities needed for the reliable operation of the nation's bulk electric system are subject to mandatory and enforceable Reliability Standards. As previously described in this supporting statement, entities will be required to review their systems and create lists of qualified assets, file exception requests where necessary, and in some instances, develop an implementation plan and begin complying with certain Reliability Standards. In regards to the last category, the Commission has other information collections currently approved by OMB for specific Reliability Standards. Once respondents are in compliance with the Reliability Standards, the Commission will begin counting the responses for this category under the individual collection for the Reliability Standards. The Commission intends to leave the other information collection elements related to this rulemaking under this collection.

These tasks are deemed necessary in order to maintain the reliable operation of the nation's bulk electric system.

16. TIME SCHEDULE FOR THE PUBLICATION OF DATA

There is no publication of data associated with this collection of information.

17. DISPLAY OF THE EXPIRATION DATE

It is not appropriate to display the expiration date for OMB approval of the information collected. The information will not be collected on a standard, preprinted form which would avail itself to that display.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

²⁴ Based upon 2012 FTE average salary plus benefits (\$143,540)

²⁵ The Commission bases the cost of data clearance on an average of 24 hours per clearance per year. The data clearance cost represents the activities and efforts of FERC staff to comply with the Paperwork Reduction Act of 1995.

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We do not display the expiration date as explained in response to item 17 above. In addition, that data collected for this reporting requirement is not used for statistical purposes.