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FEDERAL ENERGY REGULATORY COMMISSION

June 21, 2012

Commissioner Cheryl A.

LaFleur **STATEMENT**

Docket Nos. : RM12-6-000 and RM12-7-000

Item No.: E-4

Statement of Commissioner Cheryl A. LaFleur on NERC's Revised Definition for Bulk Electric System

"Almost two years ago, in Order No. 743, the Commission directed NERC to redefine the term "bulk electric system" (BES). The Commission explained that the current definition gives Regional Entities broad discretion to identify BES facilities, which has resulted in inconsistencies across regions and potential gaps in reliability.

In my remarks at the time, I observed that the Commission used Order No. 743 to establish a new paradigm for Commission directives under section 215(d)(5) of the Federal Power Act. The Commission explained that directives should not be unduly prescriptive, but should instead identify and explain the Commission's reliability concerns, offer NERC guidance and suggestions as to acceptable solutions, and permit NERC to propose equally efficient and effective alternatives.

I am pleased that the Commission has adhered to this formula since Order No. 743 and I expect it to continue to do so. I am also pleased that NERC has responded to our challenge in Order No. 743 by proposing a definition that eliminates regional discretion, establishes a general bright-line threshold of 100 kV, contains a thoughtful and nuanced list of specifically included and excluded facilities, and provides an exception process to add or remove specific facilities.

While I believe that NERC has succeeded in addressing the Commission's technical concerns, and therefore support the NOPR, I note that the NOPR seeks comment on the status of facilities under several specific fact patterns. As the NOPR states, these questions are intended to develop a common understanding among the Commission, NERC, and the regulated community of how the new definition applies in certain ambiguous circumstances.

Additionally, the NOPR seeks comment on whether NERC has successfully excluded local distribution



facilities from the BES. As I noted in a recent dissent,¹ section 215 of the Federal Power Act specifically excludes local distribution facilities from the Commission's reliability jurisdiction. The Commission must respect this limit on its jurisdiction. I also noted that in Order No. 743-A, the Commission deferred to this proceeding the critical question of whether the local distribution facilities excluded from the Commission's jurisdiction under section 215 are the same local distribution facilities excluded from the Commission's jurisdiction under section 201(b). I look forward to receiving comments on these important issues.

Finally, I want to thank Bob Stroh, Susan Morris, Nick Snyder and the entire FERC team for their diligence in participating in the Standards Development Process and for their hard work on this order. I also want to recognize and thank the NERC drafting team for developing a thoughtful and robust definition and for completing your work on time. I know that you, like all drafting teams, are volunteers and that your work on the definition was in addition to your day jobs at your companies. I appreciate your hard work and commitment to reliability."

¹ *City of Holland, Michigan Board of Public Works*, 139 FERC ¶ 61,055 (2012) (Comm. LaFleur, dissenting).