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MEMORANDUM FOR ELCON AND AISI

Re: FERC Final Order On Applicability of NERC Reliability Standards To QFs

FERC issued a final order on the applicability of NERC reliability standards to QFs on May 17. Order No. 696, [119 F.E.R.C. P61,149 \(FERC 2007\)](#). The Order is an excellent result for the interests of QFs as advocated by ELCON and AISI because the Order corrects the inference in the NOPR suggesting that QFs above 20 MW would automatically be registered. The order also leaves in place favorable compliance registry criteria that would be used to exempt most QFs from any compliance obligations.

Discussion

FERC proposed in Docket RM07-11-000 that QF generation is for all practical purposes similar to other generation and accordingly that QFs above 20 MW are subject to registration. The proposal raised concerns by ELCON and allies that the Commission had failed to distinguish between QF and non-QF generation; and that FERC was proposing to require registration of QFs above 20 MW even if they do not have a material impact on reliability. FERC's final order corrects or clarifies the proposal to state that QFs should not have a "generic exemption" from reliability standards:

1. The Federal Energy Regulatory Commission (Commission) revises its regulations governing qualifying small power production and cogeneration facilities, to eliminate the exemption of QFs from the requirements of section 215 of the Federal Power Act. From a reliability perspective, there is not a meaningful distinction between QF and non-QF generators that warrants a generic exemption of QFs from reliability standards.

The Commission notes that ELCON and AISI submitted comments that focus on materiality as a condition for registration and that advocate that a netting concept be applied since often QF power does not reach the grid.

16. ELCON and AISI state that they do not oppose the registration of QFs if particular facilities are found to materially affect the reliability of the bulk-power system. ELCON and AISI state that in fact they have cooperated with NERC staff to draft registration criteria that would address the unique operational characteristics of cogenerators. ELCON and AISI state that, unfortunately, the NOPR proposes an automatic per se rule that would force the registration of all QFs above 20 MVA/MW regardless of whether a QF's operations have any effect on reliability. ELCON and AISI also ask the Commission to recognize that NERC has applied a " netting" concept that recognizes that often QF generation never reaches the grid, or does so on a limited basis.

The Final Order recognizes key points advocated by ELCON and AISI, i.e., that a) only QFs needed to maintain reliability should be registered and b) such a determination should be made on a case by case basis applying NERC criteria¹.

30. Whether a generation facility should be subject to reliability standards should depend on whether a generation facility is needed to maintain the reliability of the bulk-power system. The reliability criteria adopted by NERC and approved by the Commission, as well as the compliance registry process adopted by NERC and approved by the Commission, are designed to ensure that only those facilities needed to maintain the reliability of the bulk-power system are subject to the reliability standards. The ultimate decision with respect to individual generation units and/or plants is, and must be, made on a case-by-case basis. Thus, whether a particular QF or type of QF should be exempt

¹ FERC notes NERC's compliance registry criteria:

31. NERC's compliance registry criteria for generator owner/operators encompasses:
- a. Individual generating unit > 20 MVA (gross nameplate rating) and is directly connected to the bulk power system, or
 - b. Generating plant/facility > 75 MVA (gross aggregate nameplate rating) or when the entity has responsibility for any facility consisting of one or more units that are connected to the bulk power system at a common bus with total generation above 75 MVA (gross nameplate rating), or
 - c. Any generator, regardless of size, that is a blackstart unit material to and designated as part of a transmission operator entity's restoration plan, or;
 - d. Any generator, regardless of size, that is material to the reliability of the bulk power system.

from reliability standards is an issue that is more appropriately made in the context of NERC's establishment of registry criteria for owners and operators of generators, and in the context of NERC's compliance registry process. The reliability of the bulk-power system will be better protected by utilizing the NERC compliance registry process, which will ensure that no generator that is needed to maintain the reliability of the bulk-power system will be exempt from reliability standards, while excusing those generators that are not needed to maintain reliability.

FERC clarifies that there is no requirement that all QFs above a certain size be registered:

35. ...All the Commission proposed to do in the NOPR, and all the Commission is doing here in the Final Rule, is to eliminate the generic exemption of QFs from section 215 of the FPA and thus from mandatory reliability standards, thus treating them like other, non-QF generators for reliability purposes. The Commission was not proposing to, and does not, require that all QFs be subject to reliability standards no matter their circumstances. Rather QFs and non-QFs alike would have an equal opportunity to not be subject to reliability standards. But that would be a case-by-case determination based on the circumstances of each case.

FERC notes that any entity that disagrees with NERC's determination to place it on the registry can appeal to the Commission. *Id.* at 36.

In a paragraph directly responsive to ELCON and AISI's concerns, FERC specifically acknowledges that QFs may qualify for exemption regardless of size if they primarily serve behind the meter, or have contractual arrangements transferring responsibility for reliability to another registered entity. FERC concludes that few QFs are likely to be registered.

37. The Commission notes that because of the operation of the size sections of the NERC registry criteria applicable to generators (i.e., greater than 20 MVA), only 23 percent of all QFs would meet this generally applicable threshold of 20 MVA (although some other QFs may be specified as either blackstart units material and designated as part of a transmission entity's restoration plan or as generators material to the reliability of the bulk-power system) and so would be subject to reliability standards. While some QFs may be classified as blackstart or as "material" to the reliability of the bulk-power system, and so made subject to reliability standards, other QFs may qualify for exemptions because, despite their size, either as a QF that is a cogeneration facility that primarily serves behind the meter load such that the net capacity supplied to the bulk power system is less than the size threshold for compliance, or as a QF that has contractual arrangements to transfer responsibility for compliance with reliability standards or associated requirements including reporting to another entity that has registered with NERC. The net effect is that the universe of QFs that will be affected by this Final Rule, by virtue of operation of the NERC registry criteria, is likely to be relatively small.

Conclusion

In contrast to other recent FERC rulings that have been discouraging to the QF community, FERC certainly responded appropriately to the concerns voiced by ELCON and its allies with respect to NERC registration.

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