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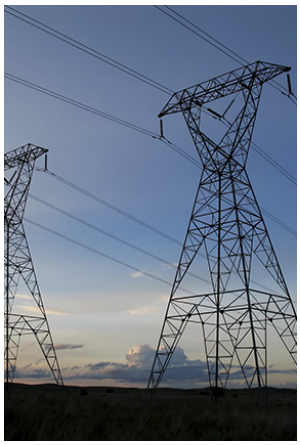

FERC Applies Order No. 773 to Exempt "Facilities Used in Local Distribution" from Mandatory Electric Reliability Standards

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On December 31, 2015, the Federal Energy Regulatory Commission ("FERC") issued an order classifying certain facilities as "facilities used in local distribution of electric energy" under Section 215 of the Federal Power Act, thereby exempting the facilities from mandatory electric reliability requirements. *So. Cal. Edison Co.*, 153 FERC 61,384 (2015) ("SoCal Edison Order"). This is FERC's first response to a request for a jurisdictional determination since the issuance of Order No. 773 in 2012.[1] The SoCal Edison Order illustrates how FERC will apply the jurisdictional factors set forth in Order No. 773, and how generation integrated into distribution systems – such as behind-the-meter generation – affects facility classifications.

Background

Section 215(a)(1) of the Federal Power Act exempts "facilities used in the local distribution of energy" from the obligation to comply with mandatory electric reliability standards. In Order No. 773, FERC established the standard by which this applicability determination will be made. The initial step is a determination of whether the facility fits within the definition of Bulk Electric System ("BES"). This determination is made through a "bright-line threshold that includes all facilities operated at or above 100 kV."[2] Then, (using a process established in a subsequent 2014 order) certain facilities excluded by the bright-line are included and certain facilities included by the bright-line test are excluded, based upon specific categories of facilities and their configurations.

While FERC anticipated that most facilities used in local distribution would be excluded from the BES by the bright-line test and the subsequent steps of inclusion and exclusion, FERC retains jurisdiction to resolve any "factual questions" and "make jurisdictional determinations on a case-by-case basis."[3] In making such a determination, FERC indicated that it would use the seven-factor test set forth in Order No. 888 as a "starting point" and that the Commission would "take into consideration other case-specific factors in particular situations."[4]

Analysis

Southern California Edison (SoCal Edison) submitted an application seeking a determination that seven 115kV facilities are used in local distribution. FERC applied its seven-factor test, and found that most of the facilities are local distribution facilities:

1. The facilities were found to be in close proximity to retail customers, with the remoteness of the areas in question allowing for a finding that operating above 100kV did not necessarily make them BES facilities.

2. The facilities are primarily radial, with little interaction with neighboring systems under normal circumstances.

[1] In *City of Hollard*, FERC 145 FERC ¶ 61,054 (2013), FERC evaluated whether facilities were used in local distribution in the context of a registration obligation for BES resources.

[2] SoCal Edison Order at P3.

[3] So. Cal Edison Order at P3; *Order Denying Rehearing*, 146 FERC ¶ 61,070 (2014) at P8.

[4] So. Cal Edison Order at P4.

3. Power typically flows into the indicated systems, but rarely flows out. Although one of the systems had outbound flows in certain periods with low local load and high wind generation, sending power back to the integrated transmission system, the preponderance of inbound flows allowed FERC to make this determination.

4. In considering whether power entering the systems was not, on balance, retransmitted back to the integrated transmission system or resold, FERC determined (contrary to SoCal Edison's assertion) that electricity generated on the distribution-level systems might be transported to the broader integrated transmission system, but that this did not change the overall determination of status.

5. Power entering the systems was consumed within a limited geographic area.

6. Meters at or near the point of interconnection to the integrated transmission system measured flow into the local system.

7. Local distribution is at reduced voltage, with even the 115kV facilities having been reduced relative to the broader transmission system.

Two SoCal Edison protection systems, and the associated transmission lines, were found not to be local distribution facilities *despite* passing the 7-factor test. FERC made this determination based on a finding that "the failure of the primary protection systems during a single fault … will result in the loss of multiple bulk electric system transmission lines." The distribution system into which these protection systems were integrated has significant amounts of cogeneration (158.8 MW) and hydroelectric generation (54.6 MW),[5] but this generation was not referenced in FERC's decision to include these facilities in the BES.

Implications

The SoCal Edison Order provides a road map for utilities seeing to exclude from the BES elements that are 100 kV or greater and used in local distribution. The case is particularly relevant to rural systems where, due to longer distances, distribution systems may be operated at voltages more typically seen in transmission systems, and to large integrated systems like that of SoCal Edison's.

Particular attention should be given to the engineering analysis that accompanied SoCal Edison's application and the analysis SoCal Edison submitted in response to the Commission's deficiency letter and NERC's comments. FERC took a hard look at SoCal Edison's system before making its findings and conclusions.

Additionally, the SoCal Edison Order is significant in that the presence of generation within SoCal Edison's distribution system did not itself prevent elements from being found to be primarily used in local distribution - a significant factor, as it is becoming more common for renewable generators to be interconnected to distribution systems. However, the order does not specify precise thresholds for when the quantity of the generation relative to the local load or the frequency of delivery to the broader integrated transmission system will cause distribution facilities to be treated as a BES element covered by reliability standards.

For more information

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[5] *Application of So. Cal. Edison Co. for Factual Determination that Indicated 115 kV Facilities are Used in Location Distribution*, FERC Docket No. RC15-1-000 (April 16, 2015) at page 30.

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