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May 12, 2010

Honorable Jon Wellinghoff
Chairman
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Dear Chairman Wellinghoff:

Many of our public power organizations and utilities in the Northwest submitted formal comments regarding FERC's proposals for definition of the bulk electric system and for new compliance penalty guidelines. In the meantime, we are jointly writing to you in order to emphasize the depth of concern in the Northwest regarding some current initiatives associated with electricity system reliability.

It should be clear that consumer-owned utilities in the Northwest – and the entire electric utility industry – place a high premium on ensuring the reliable operation of the transmission grid. Our strong record in this arena speaks for itself.

We recognize that the intent of the Energy Policy Act of 2005, in response to the 2003 blackout in the Northeast, was to create a new legal and regulatory regime to protect the nation's transmission grid. The new regime would create mandatory standards, designed by the non-federal North American Electric Reliability Corporation (NERC) and the regional reliability councils – with the Federal Energy Regulatory Commission (FERC) providing oversight. This structure was intended to provide consistent and effective national standards, while also allowing for variations that reflect regional differences of geography and system operation.

Unfortunately, recent FERC initiatives threaten to tip the carefully crafted balance between NERC and FERC, impose significant and unnecessary expenses on electric utilities, and potentially divert resources and attention from efforts to prevent significant threats to the nation's transmission grid.

Defining the Bulk Electric System

The first key area of concern is a pending Notice of Proposed Rulemaking (NOPR) issued by FERC that seeks to define the bulk electric system. This definition is critically important, since facilities defined as part of the bulk electric system are held to a very high operational standard. Utilities owning or operating such facilities are subjected to significant administrative burdens to keep records regarding those facilities, and they face penalties if they fail to demonstrate compliance with standards. Even small utilities with no ability to adversely impact bulk electric system reliability can be subjected to these burdens if they simply interconnect with bulk electric system facilities, whether or not they own or operate those bulk facilities.

The utility industry has already gone through a lengthy process through the regional reliability organizations to identify those facilities that are central to the operation of the inter-connected transmission grid (*e.g.*, those where a failure would impact neighboring utilities and potentially beyond). In the West, the Western Electricity Coordinating Council (WECC) is developing a mechanism to exclude transmission facilities that are not integral to the operation of the nation's electric grid, even though they are rated at higher voltage. In contrast, FERC's NOPR suggests inclusion of all transmission facilities rated at 100 kv or above, with the only opportunity for de-designation being a case-by-case review at FERC.

FERC's proposal poses a number of significant problems:

- ❖ ***Overbroad definition brings in facilities with no impact on the grid.*** Because of the distance being covered, many higher voltage facilities in the West operate only as distribution facilities, serving a utility's retail consumers. Utilities place the highest priority on the reliable operation of their distribution system; however, oversight and enforcement appropriately rests with the entity that understands and regulates retail service for that area – state commissions and public power governing boards, not FERC.
- ❖ ***Exemption process cumbersome and unworkable.*** The NOPR would allow for case-by-case review by FERC. This tedious and time-consuming process creates a no-win situation. Either thousands of filings seeking exemptions will overwhelm FERC and distract its staff from reviewing the operations of truly critical facilities, or utilities will decide to forgo an appeal and assume the significant time and expense of ensuring compliance for facilities that should not be included.

Penalties Should be Reasonable

Another key area of concern is a recently released policy statement from FERC on penalties for violation of the reliability rules. The policy paper envisions significant fines for violations. We agree that utility failures that result in threats to the nation's transmission grid need to be sanctioned in order to send a strong message and encourage the highest level of compliance. However, severe fines for minor infractions – or for failures at facilities that don't impact the interconnected grid – are simply punitive and may be beyond FERC's jurisdiction in some cases. In addition, they are likely to be counter-productive, since a key feature of the current reliability protocol, self-reporting of violations, would face a strong disincentive in the form of unreasonably high fines.

The need to operate the system to avoid penalties could further reduce reliability. During certain operating conditions larger utilities will sometimes intentionally shed load in order to preserve the reliability of the larger system (since failure to act could result in uncontrolled and cascading blackouts). Because the proposed guidelines contemplate penalizing utilities for *any* load loss, a perverse incentive is created to avoid taking prudent utility management actions.

In light of the above concerns, FERC should revisit these reliability policies and ensure not only that the penalties are appropriate, but also that the focus is properly upon those facilities and actions that truly impact the nation's transmission grid. On a related point, FERC should increase its efforts to ensure that

utilities have the opportunity to get full and timely information on frequent rules changes, and have time to adapt to new or updated interpretations of rules and standards.

Thank you for your consideration of this letter. We have provided more lengthy and detailed comments in the formal agency review process.

Sincerely,



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