

ClientAlert

Energy, Infrastructure, Project and Asset Finance

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NERC Issues Draft Compliance Directive on Generator Lead Lines

Proposal Would Require Most Generator Owners (GOs) and Generation Operators (GOPs) to Register as Transmission Owners (TOs) and Transmission Operators (TOPs) Subject to a Subset of the TO/TOP Reliability Standards

The North American Electric Reliability Corporation (NERC) released for comment a proposed Compliance Directive (#2011-CAG-001) regarding generator lead lines. The stated purpose of the Directive is to provide “interim guidance” to address a perceived reliability gap stemming from GOs and GOPs that own or operate transmission facilities and are currently not required to comply with certain reliability standards applicable to TOs/TOPs. The Directive is intended to fill that gap on an interim basis until the Standard Drafting Teams revise Reliability Standards to address generator lead lines.

The Directive

The proposed Directive purports to “ensure consistency in the application of NERC Reliability Standards” by setting forth 11 TO/TOP Reliability Standards that may apply to GOs/GOPs. The Directive attaches a draft Memorandum of Understanding (MOU) to be executed between the applicable Regional Entity (RE) and Registered Entity setting forth which of the Reliability Standards apply to the particular GO/GOP. Recognizing “the need for flexibility” between the parties, the Directive allows the parties to negotiate the specific requirements that will apply to the Registered Entity. NERC also states that “[s]ince a GO/GOP does not operate a generator transmission lead similarly to the manner in which a traditional utility operates other transmission facilities,” the interim solution only applies a subset of additional Reliability Standards until the Standards Drafting Teams complete their work. Registered Entities would have six months to come into compliance with the new applicable Reliability Standards from the date the MOU is executed.

Applicability

The proposed Directive is broadly applicable to GOs/GOPs with one or more of the following characteristics:

- Has blackstart capability.
- A facility that is/has some portion operated at 100 kV or higher and has interconnections with neighboring Generator Operators, Transmission Operators and Balancing Authorities.



If you have questions or comments regarding this Alert, please contact one of the lawyers listed below.

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- Meets the criteria for registration as a TO/TOP as set forth in the NERC Statement of Registry.
- A facility that has some portion operated at 100 kV or higher and has a generator transmission line leading to the interconnection that has a visual impediment to the interconnection or has at least three tower structures that include the one connecting span at each end tower.

Potential Issues for GOs/GOPs

- It is not clear that NERC has the authority to implement the Directive because it would modify Reliability Standards by increasing their applicability without prior FERC approval.
- The broad applicability of the Directive effectively creates a bright-line test under which essentially all GOs/GOPs would be registered as TOs/TOPs in the NERC Compliance Registry. The cost and risk of complying with the proposed subset of TO/TOP Reliability Standards is unclear.
- Although the proposed Directive focuses on a subset of Reliability Standards, the draft MOU allows the RE to terminate the MOU at any time by providing written notice. Termination of the MOU would leave the Registered Entity subject to all the TO/TOP Reliability Standards.
- The ability of REs to negotiate with Registered Entities and determine which TO/TOP Reliability Standards will apply to each Registered Entity leaves room for inconsistent application, which is in direct conflict with the Directive's stated purpose of ensuring consistency. It also leaves room for unjust, unreasonable, or unduly discriminatory or preferential application of the TO/TOP Reliability Standards.

Comments

Comments are due by November 7, 2011. As of publication, some REs have distributed the Directive to GOs/GOPs within their regions for comment. We encourage any interested party to file comments with their respective RE or directly with NERC.

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