

NERC Registration of Generators as Transmission Owners and Operators? FERC is Facing the Decision.

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Publication Date: November 15, 2010

On October 27, and November 1, 2010, two wind generation projects, Cedar Creek Wind Energy, LLC (Cedar Creek) and Milford Wind Corridor Phase I, LLC (Milford), appealed to the Federal Energy Regulatory Commission (FERC) decisions by the North American Electric Reliability Corporation (NERC) requiring each to register as transmission owner (TO) and transmission operator (TOP) for purposes of compliance with NERC's mandatory reliability standards. NERC determined each of Cedar Creek's and Milford's radial generation interconnection tie lines are "integrated transmission elements," and because each exceeds 100 kV in size, are by definition a "transmission facility," requiring their owners and operators to register as TO/TOPs for reliability compliance purposes.

In their appeals, Cedar Creek (Docket No. RC11-1-000) and Milford (Docket No. RC11-2-000) argue that NERC misapplied its registration criteria to their generator tie line interconnection facilities, arguing that they are not integrated with the bulk power system (BPS),¹ and as such, do not qualify for TO/TOP registration under the *NERC Registry Criteria*.

The central fight in each case is the TO/TOP definition of an "integrated transmission element." If FERC upholds NERC's decisions, NERC may have precedent to register as TO/TOPs all generation projects with generator lead lines of 100 kV or more, if those projects are currently registered as Generator Owners (GO) or Generator Operators (GOP). Registration as TO/TOPs requires generators to comply with additional and burdensome mandatory reliability standards.

The deadlines to file motions to intervene and protests are **November 26, 2010** for the *Cedar Creek* appeal and **December 1, 2010** for the *Milford* appeal.

Background

Cedar Creek owns and operates a 300 MW wind generation facility located in Colorado that is connected to a switching station through its 72-mile, 230 kV radial generation interconnection tie line and associated equipment connected to the BPS. Milford owns and operates a 203.5 MW wind generation project located in Utah which, through several 34.5 kV collection lines, is connected to its 88-mile, 345 kV radial generation interconnection tie line, two 362 kV/34.5 kV transformers, circuit breakers, and related equipment connected to the BPS.

These appeals arise from NERC affirming determinations by the Western Electricity Coordinating Counsel (WECC) that Cedar Creek and Milford must register and comply with NERC's TO/TOPs reliability standards because they own/operate radial generation interconnection lines that have an "integrated transmission element" associated with the BPS, and therefore are "transmission facilities."

Section III of the *NERC Registry Criteria* provides that a TO or TOP should be registered if it meets any of the following criteria:

- An entity that owns/operates an integrated transmission element associated with the bulk power system 100 kV and above, or lower voltage as defined by the Regional Entity necessary to provide for the reliable operation of the interconnected transmission grid; or
- An entity that owns/operates a transmission element below 100 kV associated with a facility that is included on a critical facilities list that is defined by the Regional Entity.

The *NERC Registry Criteria* also provides that the specified criteria "are general criteria only." A Regional Entity thus may register an entity that does not meet the specified criteria if the Regional Entity "believes and can reasonably demonstrate that the organization is a bulk power system owner, or operates, or uses bulk power system assets, and is material to the reliability of the bulk power system."² In addition, the *NERC Registry Criteria* provides that a class of entities, each of which would be individually excluded, may nevertheless be registered based on their aggregate impact on BPS reliability.

FERC previously addressed the issue of whether generator leads at 100 kV or above could be deemed "transmission facilities" in *New Harquahala*, which was also based on a WECC decision.³ In that case, FERC found that NERC and WECC had "adequately supported the registration...pursuant to NERC's plenary authority to register entities that own or operate assets that are 'material to the reliability of the bulk power system.'" However, FERC's decision was "based on the specific facts of this case, that the reliable operation and maintenance of the interconnection facilities that connect the Harquahala generator to Hassayampa are necessary to the reliability of the Bulk-Power System."⁴

More significantly, FERC specifically refused to address the interpretation of Section III(d)(1) of the *NERC Registry Criteria* and the definition of an "integrated transmission element."⁵

In each of their appeals to FERC, Cedar Creek and Milford argue that (i) their tie lines are not integrated with the BPS; (ii) failure of their tie lines would not be material to the reliability of the BPS; (iii) their facilities are distinguishable from those involved in *New Harquahala*; (iv) radial lines are generally excluded from compliance based on NERC's TO/TOP criteria; and (v) a recent *Ad Hoc Report*, which recommended that NERC refrain from registering GO/GOPs as TO/TOPs generically by virtue of their generator interconnection facility, warrants removal of their registrations as TO/TOPs.⁶

NERC, in accepting WECC's decisions that Cedar Creek and Milford are TO/TOPs, determined that (i) each of the interconnection facilities interconnecting the generating facilities to the BPS is an "integrated transmission element," exceeding 100 kV, and by definition constitutes a transmission facility; (ii) an outage of the interconnection facilities would result in the loss of a generating facility; (iii) *Harquahala* included no ruling regarding the definition of an "integrated transmission element" and there were similarities to that case because Cedar Creek and Milford each own high voltage transmission lines, including high voltage switching equipment that must be properly operated and maintained in order to prevent events that could impact the BPS; (iv) their tie lines do not meet the exclusion from TO/TOP requirements for radial transmission lines serving only load with one transmission source because each tie line is used for generation; and (v) the recommendations in the *Ad Hoc Report* have not been adopted by NERC or FERC and as such are not binding.

Observations

According to the *Ad Hoc Report*, there have been a small number of appeals to NERC of Regional Entity registration decisions that resulted in the registration of GO/GOPs as TO/TOPs. The *Ad Hoc Report* also notes that there may be a number of GO/GOPs that received similar registration instructions, but chose not to appeal those determinations to NERC.⁷

The *Cedar Creek* and *Milford* cases may finally force FERC to determine what factors NERC must consider when deciding whether generator radial interconnection tie lines and related facilities should be deemed "integrated transmission elements." Regardless of whether FERC addresses the "integrated transmission element" issue or decides each appeal based on its facts, FERC's decisions are likely to affect whether NERC adopts and FERC ultimately approves the recommendation in the *Ad Hoc Report*. That report, which was prepared in response to *New Harquahala*, recommends that NERC not "generically" require GO/GOPs with 100 kV generator lead lines to be registered as TO/TOPs.

Ultimately, if GO/GOPs with generator lead lines of 100 kV or larger are required to be registered as TO/TOPs, they will face additional financial and human resource burdens in order to comply with the additional 30 mandatory reliability standards and more than 450 additional requirements to which TO/TOPs are subject.

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If you are interested in participating in these FERC proceedings, or if you have further questions about the *Cedar Creek* and *Milford* appeals pending before FERC, or about NERC's reliability standards in general, please contact one of the authors or the Reed Smith attorney with whom you regularly work.

1. Defined in Section 1 of the NERC Statement of Compliance Registry Criteria (Revision 5.0) (*NERC Registry Criteria*) as "the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load

with one transmission source are generally not included in this definition."

2. *NERC Registry Criteria*, Notes to Criteria, note 1 (footnote excluded); see also NERC Rules of Procedure, Rule 501.1.2.6 (then effective); Rule 501.1.2.4 (effective October 1, 2010).

3. *New Harquahala Generating Co. LLC*, 123 FERC ¶ 61,173 (2008) (*New Harquahala*), clarified, 123 FERC ¶ 61,311 (2008). In this case, FERC found that NERC's and WECC's registration determinations were appropriate based on (i) the size of the Harquahala plant (more than 1,000 MW), (ii) its interconnection with the Hassayampa substation, a large "generation hub" with more than 10,000 MWs of generation either directly or indirectly interconnected with it, including the Palo Verde Nuclear plant (at 4,050 MW, the largest nuclear facility in the United States), (iii) the substation's critical importance to reliability of the power grid in the southwest, (iv) a history of switching errors at the substation, including one that caused an outage of 3 units at Palo Verde, and (v) the potential that a reliability gap would result if Harquahala were not registered as the TO/TOP for the facilities, since operation of the interconnection facilities could result in a loss of service at the substation.

4. *Id.* at P 44.

5. *Id.*

6. *Final Report from the Ad Hoc Group for Generator Requirements at the Transmission Interface* (Project 2010-07) (Nov. 16, 2009) (*Ad Hoc Report*).

7. *Ad Hoc Report* at 7.

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