

June 17, 2011

Generators Required to Comply with Transmission Reliability Requirements

The Federal Energy Regulatory Commission (FERC) has found that two wind farm generators must comply with reliability requirements applicable to transmission owners and operators because of the tie-lines that interconnect their generating facilities to the transmission grid. FERC identified specific requirements under the North American Electric Reliability Corporation's (NERC) mandatory and enforceable Reliability Standards with which the generators must comply, but directed them to negotiate with NERC to determine if other requirements should also apply. FERC's decision opens the door for other owners/operators of generator tie-lines to renegotiate the extent to which they must comply with the transmission owner/operator reliability requirements.

Background

FERC issued its decision in the context of appeals by two wind generators—Cedar Creek Wind Energy, LLC (Cedar Creek) and Milford Wind Corridor Phase I, LLC (Milford)—of NERC's decisions to approve the registration of the generators as "Transmission Owners" (TOs) and "Transmission Operators" (TOPs). Both generators were registered by their Regional Entity, the Western Electricity Coordinating Council (WECC), as TOs and TOPs due to their ownership and operation of high-voltage tie-lines that interconnect their generating facilities to the transmission grid. In accordance with the applicable NERC rules, both generators appealed WECC's registration decisions to NERC. NERC denied their challenges, finding that both generators' tie-lines constituted "integrated transmission elements," that they could materially impact the Bulk Electric System, and that TO/TOP registration and compliance were necessary to avoid a "reliability gap." The generators then appealed to FERC. In its June 16, 2011 order, FERC denied their appeals.

FERC's Decision

FERC found that both generators were properly registered as TOs and TOPs. FERC reaffirmed NERC's "plenary authority" to register entities that own and/or operate assets that are material to the reliability of the Bulk-Power System. The Cedar Creek and Milford tie-lines were found to be material to the Bulk-Power System because the improper protection coordination and operation of the tie-lines and related facilities could impact not only the Cedar Creek and Milford wind facilities and tie-lines, but also larger generators connected to the same substations with which the tie-lines were interconnected. FERC specifically noted that failure to coordinate the tie-line relays could affect other, adjoining facilities, "potentially turning an otherwise localized system fault into a region-wide disturbance."

FERC also cautioned against the creation of a reliability gap. FERC found that an entity—here, the generators—must be formally assigned compliance responsibilities for generator interconnection facilities such as these tie-lines. FERC rejected the generators' arguments that the utilities with which they were interconnected, not the generators, have operational control over the tie-lines; FERC found that the generators had control because they have control over switching and other facilities on the generator end of the tie-lines. In particular, FERC identified Reliability Standards concerning (1) coordination of protection systems, (2) operations and operating credentials, and (3) restoration and development and communications of system operating limits as applicable to at least these two owners/operators of tie-lines interconnecting generating facilities to the transmission grid.

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To prevent a reliability gap, FERC found that Cedar Creek and Milford should first be registered TOs/TOPs. FERC identified certain Reliability Standards with which the generators should, at a minimum, be required to comply:

- PRC-001-1, Requirements R2, R2.2, R4, R6;
- PRC-004-1 Requirement R1;
- TOP-004-2, Requirements R6, R6.1, R6.2, R6.3, R6.4;
- PER-003-1, Requirements R1, R1.1, R1.2;
- FAC-003-1, Requirements R1, R2;
- TOP-001, Requirement R1; and
- FAC-014-2, Requirement R2.

FERC also directed WECC and/or NERC and the generators to negotiate whether any additional Reliability Standards and Requirements should apply to the generators to maintain Bulk-Power System reliability. FERC directed NERC to report in 90 days whether any such requirements have been identified. If the parties are unable to agree on whether additional requirements apply, the generators will be able to comment on NERC's submission. FERC then will resolve the dispute based on the language of the Reliability Standards and the reliability risks posed by the facilities.

Related NERC Proposal

NERC has been evaluating for some time the issue of the extent to which generator tie-lines should be subject to the TO/TOP Reliability Standards. Most recently, in March 2011, NERC issued a "White Paper" that discussed if and to what extent generator interconnection facilities have been properly classified as transmission and therefore subject to the appropriate Reliability Standards. The White Paper determined that generator interconnection facilities may be classified as part of the Bulk Electric System, but recommended a delineation of compliance responsibilities at the interface between GOs/GOPs and TOs/TOPs to prevent both gaps and redundancies in compliance obligations. The White Paper concluded that applying all TO/TOP Reliability Standards to owners and operators of generator interconnection facilities would not significantly enhance the overall reliability of the Bulk Electric System.

The changes outlined in the White Paper, which were posted for industry comment today, will not take effect for at least a year. For the time being, NERC recommended that GOs/GOPs concerned with TO/TOP registration obligations consider third-party delegation options as discussed in NERC Compliance Bulletin 2010-004 (see our April 21, 2010 alert [NERC Provides Guidance on Delegating Reliability Tasks](#)).

In its June 16 order, FERC declined to opine on the White Paper, finding that it was outside the scope of the generators' registration appeals. However, FERC recognized that the application of Reliability Standards to generator tie-lines is an ongoing concern and encouraged NERC to develop an approach that satisfies reliability concerns and allows entities to understand the scope of their compliance responsibilities. The Reliability Standards and Requirements identified by FERC in its order appear to be broader in scope than those identified in the White Paper, which may require NERC to return to the drafting table.

What this Means for You

Generators with high-voltage (100 kV or higher) interconnection facilities may be directly affected by this order. Although FERC's order emphasizes the fact-specific nature of the inquiry, the order indicates that the ownership or operation of tie-in lines and other generator interconnection facilities may trigger some TO/TOP obligations. FERC has identified several such requirements based on the specific facts

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presented by the Cedar Creek and Milford cases, but others could apply as well. Although generators would prefer not to register as TOs/TOPs at all and thereby completely avoid the burden of compliance with the TO/TOP requirements, FERC's order at least opens the door to narrowing the scope of generators' TO/TOP compliance obligations. Owners/operators of generator tie-lines that are already registered for the full panoply of TO/TOP requirements should consider renegotiating with NERC and the applicable Regional Entity to determine which specific Reliability Standards would apply and what level of compliance is expected.



If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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