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Client Alert

Global Transactions Practice Group

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FERC Affirms Transmission Owner and Transmission Operator Registration of Wind Facilities that Own and Operate Interconnection Facilities

On June 16, 2011, the Federal Energy Regulatory Commission (FERC or Commission) issued an order affirming the North American Electric Reliability Corporation's (NERC) determination that two owners and operators of wind generating facilities, Cedar Creek Wind Energy, LLC (Cedar Creek) and Milford Wind Corridor Phase I, LLC (Milford), are properly registered with NERC as Transmission Owners (TO) and Transmission Operators (TOP) based on their ownership and operation of interconnection facilities.[i] In reaching this decision, FERC highlighted the "reliability gap" that would occur if the owner and operator of the interconnection facilities were not required to follow certain TO and TOP Reliability Standards.[ii]

Background

In Order No. 693,[iii] FERC approved 83 Reliability Standards, each of which specifies the type of registered entities that must comply with a particular standard. Order No. 693 also approved NERC's compliance registry process, which identifies and registers entities to specific function types.

Under NERC's Registry Criteria, any entity that uses, owns, or operates an element of the bulk electric system is a candidate for registration generally. NERC defines "bulk electric system" as "the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100kV or higher."[iv] It specifically excludes radial transmission facilities that serve only load with one transmission source.[v]

NERC then determines what function each candidate for registration performs. For instance, NERC's Registry Criteria specifies that entities are to be registered for the TO or TOP function if:

1. The entity 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

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2. The entity 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.[vi]

If an entity does not voluntarily register with NERC, NERC or one of the Regional Entities, such as the Western Electricity Coordinating Council (WECC), will add the organization to NERC's compliance registry. Entities that dispute their registration can appeal first to NERC, and then to FERC.

TO and TOP registration based on interconnection facilities has been a contentious issue in the electric industry in recent years, prompting NERC to establish first an Ad Hoc Group on Generator Requirements at the Transmission Interface, and then a Project 2010-07 Standard Drafting Team to revaluate proper registration of owners and operators of interconnection facilities. Although both the Ad Hoc Group and the Standard Drafting Team recommend that generators not be registered as TOs and TOPs based solely on their interconnection facilities, substantive changes have not yet been made to NERC's Registry Criteria or Reliability Standards.[vii]

The current definitions for TO and TOP, like the guidance in NERC's Registry Criteria, do not specifically include or exclude interconnection facilities. A Transmission Owner is defined as an "entity that owns and maintains transmission facilities."[viii] A Transmission Operator is defined as the "entity responsible for the reliability of its local transmission system and operates or directs the operations of the transmission facilities."[ix]

In 2009, in a case of first impression, FERC affirmed a NERC decision that New Harquahala Generating Company, the owner of a 26-mile 500 kV interconnection line and other interconnection facilities, should be registered as a TO/TOP based on its ownership of the interconnection facilities.[x]

Cedar Creek and Milford

Cedar Creek owns and operates a 300 MW wind facility in Colorado, and owns 72 miles of a 76-mile, 230 kV radial generation tie-lie running from the wind facility to a Public Service Company of Colorado (PSCo) switching station. PSCo is a registered TO and TOP, and controls the remaining four miles of the tie-lie.

Milford owns a 203.5 MW wind facility with individual wind turbines that connect to 34.5 kV collection lines, which comprise an on-site underground collection system. The underground system connects each turbine to a substation that consists of two step-up transformers. The high voltage side of the transformers is connected to an 88-mile 345 kV line, connecting the wind facility to the bulk power system.

WECC registered both Cedar Creek and Milford as TOs/TOPs. NERC upheld WECC's determinations, and Cedar Creek and Milford appealed NERC's determinations to FERC.

In its June 2011 order, FERC denied Cedar Creek and Milford's appeals, and affirmed NERC's determination that the entities are correctly registered as TOs/TOPs. Consistent with its decision in *New Harquahala*, FERC made a "fact-specific" determination on whether "reliable operation and maintenance of the interconnection facilities" in question "are necessary to the reliability of the Bulk-Power System."[xi] FERC found that the Cedar Creek and Milford tie lines are material to bulk power system reliability because loss of the lines "could have an impact on reliability beyond the loss of the [specific] generating facility."[xii] Moreover, the Commission found that if Cedar Creek and Milford were not

required to comply with certain Reliability Standards applicable to TOs and TOPs (and not to generator owners (GOs) and generator operators (GOPs)), there would be "reliability gaps" in (i) the coordination of protection systems, (ii) operations and operating credentials, and (iii) restoration and development and communications of system operating limits.[xiii] Specifically, FERC identified requirements from seven Reliability Standards with which Milford and Cedar Creek should "at a minimum" be required to comply.[xiv]

FERC also recognized that there may be disagreement on whether additional Reliability Standards should apply to Cedar Creek and Milford, and directed WECC and NERC to "negotiate as to what, if any, additional Reliability Standards and Requirements" will be applicable.[xv] NERC is to submit a compliance filing identifying the additional applicable requirements within 90 days of the issuance of the *Cedar Creek & Milford Order*.[xvi]

Numerous commenters in the proceedings noted that NERC's Ad Hoc Report on Generator Requirements at the Transmission Interface recommended that GOs/GOPs not be registered as TOs/TOPs based solely on their ownership and operation of interconnection facilities.[xvii] FERC "decline[d]" to address those "broader issues in the context of the two registry appeals."[xviii] It did, however, note that NERC has initiated Reliability Standards Project 2010-07 (Generator Requirements at the Transmission Interface) to make and implement recommendations on reliability obligations at the interface of the transmission grid.[xix] FERC also encouraged NERC to develop an approach on this issue that satisfies reliability concerns and "allows entities to understand upfront the scope of their compliance obligations."[xx]

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i *Cedar Creek Wind Energy, LLC*, 135 FERC ¶ 61,241 (2011) (*Cedar Creek & Milford Order*).

ii *Id*. at PP 63-73, 77-89.

iii *Mandatory Reliability Standards for the Bulk Power System*, Order No. 693, 72 Fed. Reg. 16,416 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242 (2007), *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

iv Statement of Compliance Registry Criteria (Revision 5.0) at Section I, *available at* http://www.nerc.com/files/Statement_Compliance_Registry_Criteria-V5-0.pdf (NERC Registry Criteria).

v *Id.*

vi *Id.*, Section III(d).

vii *See generally* Final Report from the Ad Hoc Group for Generator Requirements at the Transmission Interface, *available at* http://www.nerc.com/docs/standards/sar/GO-TO_Final_Report_2009Nov16.pdf; White Paper Proposal for Informal Comment, *available at* http://www.nerc.com/docs/standards/sar/2010-07_White_Paper_Proposal_for_Informal_Comment.pdf.

viii NERC Registry Criteria at Section II.

[ix] *Id.*

[x] *New Harquahala Generating Co., LLC*, 123 FERC ¶ 61,173, *order on clarification*, 123 FERC ¶ 61,311 (2008) (*New Harquahala).*

[xi] *Cedar Creek & Milford Order* at P 58.

[xii] *Id*. at P 59. *See also id*. at 75.

[xiii] *Id.* at PP 63, 77.

[xiv] *Id.* at PP 71, 87. The specific requirements are: 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.

[xv] *Id.* at PP 72, 88.

[xvi] *Id.* at PP 73, 89.

[xvii] *See id.* at PP 14, 90.

[xviii] *Id.* at P 90.

[xix] *Id.* at n.58.

[xx] *Id.* at P 90.