Energy ADVISORY

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FERC Orders Generators to Comply with Transmission-Related NERC Reliability Standards

The Federal Energy Regulatory Commission (FERC) has denied the appeals of two wind generators from The North American Electric Reliability Corporation (NERC) decisions that they must register as transmission owners and operators for reliability purposes. The June 16, 2011, order may increase reliability responsibilities assigned to generation owners with gen-tie lines.

Background

NERC maintains criteria for entities that use, own, or operate elements of the bulk electric system to register under various functional categories. These categories then determine the reliability standards that the entity must observe. Cedar Creek Wind Energy, LLC ("Cedar Creek") and Milford Wind Corridor Phase I, LLC ("Milford"), two wind generators, separately challenged decisions classifying each under the categories of "transmission owner" and "transmission operator." Both companies own facilities that use long-distance electrical lines to connect their generation facilities ("gen-tie lines") with switchyards owned by separate entities. NERC's decisions arose from its finding that these gen-tie lines represented transmission facilities integrated with the nation's bulk power system. As a result, Cedar Creek and Milford faced reliability requirements that would not apply if NERC had merely classified them as generator owners and operators.

A number of parties representing a variety of generation interests filed comments vigorously protesting NERC's decision. Some argued that the decisions contradicted a NERC-sponsored "GO/TO Report" that recommended sparing generation operators from regulation as transmission operators. Parties noted that NERC's decisions could establish a generic policy for treating extended gen-tie lines as transmission assets, and urged against this expansion of NERC regulation. In particular, the appeals raised questions of how to interpret NERC's definition of an "integrated transmission element," and how FERC might apply its 2008 decision in *New Harquahala Generating Co., LLC ("New Harquahala")*. In *New Harquahala*, FERC affirmed the assignment of transmission owner and operator standards to another generator owner with a long-distance gen-tie line, but limited its ruling to the specific facts of the case.

FERC's Order

FERC affirmed NERC's decisions based on a "fact-specific analysis" of each case, but clearly relied on NERC's plenary authority to determine what facilities are "material" to Bulk Power System reliability.[1] The order focused on (1) each line's importance to the bulk power system, and (2) the gap in reliability that would appear if Cedar Creek or Milford were not required to comply with transmission owner and operator standards.

FERC found that the two tie lines were "material to Bulk-Power System reliability," determining that improper operation of the gen-tie line or failure to coordinate with other entities could adversely affect other facilities. Having held that the lines would be material, FERC went on to state that failures to apply the transmission owner and operator categories would leave "gaps" in the chain of bulk reliability obligations. It reasoned that an entity must be responsible for properly operating the gen-tie lines, managing vegetation, ensuring control by NERC-certified operators, responding to emergencies, and coordinating system protection and additional gen-tie operations with other entities. Failure to apply the transmission owner and operator designations would mean that no entity would have these responsibilities.

In finding the facilities "material," FERC dismissed system impact studies indicating that the loss of the generation facilities would not cause reliability issues. First, FERC noted that the studies did not evaluate the impact of a failure to properly perform certain protection procedures and other operations on the bulk power system. Second, FERC noted that Milford's study had been conducted three years ago, while Cedar Creek had presented a six-year-old study. Such dated findings, FERC held, might not accurately evaluate the current system. At the same time, FERC used the Milford study's observations concerning Milford's importance to a protection system in order to support its holding.

FERC specifically required the generators to comply with the following requirements:

- PRC-001-1 the "System Protection Coordination" Standard, Requirements R2, R2.2, and R4[2]
- PRC-004-1, the "Analysis and Mitigation of Transmission and Generation Protection System Misoperations" Standard, Requirement R1
- TOP-001, the "Reliability Responsibilities and Authorities" Standard, Requirement R1
- TOP-004-2, the "Transmission Operations" Standard, Requirements R6, R6.1, R6.2, R6.3, and R6.4
- PER-003-1, the "Operating Personnel Credentials" Standard, Requirements R1, R1.1, and R1.2

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[1] *Cedar Creek Wind Energy, LLC and Milford Wind Corridor Phase I, LLC*, 135 FERC ¶ 61,241 (June 16, 2011). Although Cedar Creek and Milford each filed their appeal separately, the similarity of issues led FERC to address both in the same order.

[2] In addition, FERC required Milford to comply with Requirement R 6.

- FAC-003-1, the "Transmission Vegetation Management Program" Standard, Requirements R1 and R2
- FAC-014-2, the "Establish and Communicate System Operating Limits" Standard, Requirement R2

FERC ordered the generators to negotiate with NERC and NERC's regional entity in the West (where the facilities are located) to determine if more requirements should apply.

Finally, FERC's order declined to address broader issues regarding Cedar Creek and Milford's registration, such as whether to adopt the recommendations of the GO/TO Report and establish a broader policy on what duties to impose on generators. Instead, FERC expressed an "ongoing concern" with the treatment of gen-tie lines and encouraged NERC to develop an approach that would satisfy reliability concerns while giving entities the ability to understand their compliance responsibilities upfront.

Implications

Since FERC has indicated that each case is to be decided on its specific facts, the cases allow owners and operators of gen-tie lines to argue whether these specific standards or others should apply to their own facilities. Yet the decision appears to establish a framework for FERC's future approach. FERC placed substantial reliance on NERC's decisions as to what is "material" to reliability of the Bulk Power System, and emphasized avoiding reliability "gaps." Prior to FERC's order, some parties had argued that transmission-related reliability standards were irrelevant to gen-tie lines. FERC's order partially addressed these arguments by detailing minimum requirements that will likely apply to such facilities.

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