UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

MILFORD WIND CORRIDOR PHASE I, LLC	**)**	**Docket No. RC11-2-000**

MOTION TO INTERVENE AND COMMENTS OF THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

Pursuant to Rules 211, 212 and 214 of the Federal Energy Regulatory Commission's ("Commission" or "FERC") Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, 385.212 and 385.214, the North American Electric Reliability Corporation ("NERC") hereby moves to intervene and submits these comments in the above-referenced proceeding.

I. BACKGROUND

On October 27, 2010, Milford Wind Corridor Phase I, LLC ("Milford") filed an appeal of the October 6, 2010 decision ("Decision") rendered by the NERC Board of Trustees Compliance Committee ("BOTCC") to include Milford on the NERC Compliance Registry within the Western Electricity Coordinating Council ("WECC") region for the functions of Transmission Owner ("TO") and Transmission Operator ("TOP").

The Milford Wind Project ("Project") is located in Beaver and Millard Counties in southwestern Utah and began commercial operation on November 16, 2009. First Wind O&M, LLC ("First Wind") is the registered Generator Operator ("GOP") for the Project. Milford is registered on the NERC Compliance Registry as a Generation Owner, Transmission Owner, and Transmission Operator within the WECC Region. Milford

challenges only its registration as a TO and TOP. Milford is registered as a TO and TOP because it owns "an 88-mile overhead 345 kV line connecting to the bulk power system" extending from the Milford project to an interconnection point with "the bulk-electric system by way of the 345 kV Intermountain Power Project ("IPP") AC Switchyard owned by Intermountain Power Agency ("Intermountain")."[1]

Milford argues that its 88-mile, 345 kV line used to transmit energy is a radial generator lead interconnection facility that is not integrated into the bulk-electric system and, thus, does not meet the NERC *Statement of Compliance Registry Criteria Version 5.0* ("Registry Criteria") applicable to TOs and TOPs. However, under Section 215 of the Federal Power Act ("FPA"), as a transmission line that connects two other material elements of the bulk power system (Milford's 203.5 MW wind generation facility and the Intermountain Power Agency switchyard) Milford's line is integrated. As an owner of integrated transmission facilities, Milford squarely meets the Registry Criteria for registration as a TO and TOP. As such, Milford necessarily must be subject to the TO and TOP Reliability Standards. Yet, to support its appeal, Milford relies on Commission precedent that pertains to generator interconnection policies, which were developed prior to FPA Section 215.

NERC notes that the Commission recently issued a Final Rule regarding the definition of bulk electric system (also referred to herein as "BES") directly responding to certain commenters regarding generation and radial transmission facility issues.[2] That proceeding is directly relevant to the instant appeal.

[1] *See* Milford FERC Appeal at 5.
[2] *Revision to Electric Reliability Organization Definition of Bulk Electric System*, 133 FERC ¶ 61,150 (November 18, 2010)("BES Final Rule").

To ensure that the BES definition encompasses all necessary facilities, the Commission eliminated regional discretion and determined that a bright-line threshold that includes facilities operated at or above 100 kV, except defined radial facilities, should still apply. The Commission also declined to establish other categorical exemptions and instead authorized NERC to use the standards development process to establish an exemption process and the criteria for excluding facilities.

Specifically, the Commission detailed its expectations with respect to the process:

> We expect that our decision to direct NERC to develop a uniform modified definition of "bulk-electric system" will eliminate regional discretion and ambiguity. The change will not significantly increase the scope of the present definition, which applies to transmission, generation and interconnection facilities. The proposed exemption process will provide sufficient means for entities that do not believe particular facilities are necessary for operating the interconnected transmission system to apply for an exemption.[3]

FERC also noted that NERC may develop an alternative proposal for addressing FERC's concerns with the present definition:

> In accordance with Order No. 693, the ERO may develop an alternative proposal for addressing the Commission's concerns with the present definition with the understanding that any such alternative must be as effective as, or more effective than, the Commission's proposed approach in addressing the identified technical and other concerns,[] and may not result in a reduction in reliability.[4]

Of particular relevance here is that the Commission reaffirmed the exclusion from the definition of BES of radial transmission facilities as "facilities *serving only load* with one transmission source."[5] With respect to other categories of radial facilities, FERC determined that the exemption issues should be determined through the standards

[3] *Id*. at P 144.
[4] *Id* at P 31.
[5] *Id*. at P 55 (*emphasis added*).

development process.[6] As for the definition of bulk electric system, the Commission determined that it was not necessary to define "integrated transmission elements" and "material impact."

In addition, the Commission took note in the BES Final Rule of the *Ad Hoc Group for Generator Requirements at the Transmission Interface* final report.[7] Specifically, the BES Final Rule notes that the NERC Board of Trustees "has not approved any action" on the report, and that these issues should be addressed through the standards development process.[8] Moreover, the Commission did not seek to alter mechanisms already in place for facilities that meet the criteria for registration.

With respect to Milford's request that NERC advise as to what Reliability Standards apply to it, the Commission has already made the determination that *all* Reliability Standards applicable to a given function apply to an entity included in the NERC Compliance Registry. In Order No. 693, the Commission ruled:

> The compliance registry identifies specific categories of users, owners and operators that correlate to the types of entities responsible for performing specific functions described in the NERC Functional Model.[] These same functional types are also used by the ERO to identify the entities responsible for compliance with a particular Reliability Standard in the Applicability section of a given standard. Thus, each registered entity will be registered under one or more appropriate functional categories, and that registration by function will determine with which Reliability Standards – and Requirements of those Reliability Standards – the entity must comply. In other words, a user, owner or operator of the Bulk-Power System would be required to comply with each Reliability Standard that is applicable to any one of the functional types for which it is registered."[9]

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[6] *Id*. at PP 146-150 (*emphasis added*).
[7] *See Final Report from the Ad Hoc Group for Generator Requirements at the Transmission Interface and related materials*, available at http://www.nerc.com/filez/standards/Project2010-07_GOTO_Project.html.
[8] BES Final Rule at P 145.
[9] Mandatory Reliability Standards for the Bulk-Power System, Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 94 (2007), *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

However, this rule does not prevent an entity from subsequently demonstrating to NERC and the Regional Entity that there may be legitimate reasons why some requirements cannot or do not apply. For example, a list of applicable requirements were developed in *New Harquahala*,[10] which are publicly available, although this list is based on a case-by-case review and FERC has not acted on the submission. NERC also notes that under the current compliance registration process, a registered entity with physical or technical limitations (*i.e.*, it does not have certain equipment such as load shedding or blackstart facilities and is not required to do so) can discuss these issues with Regional Entities or NERC without challenging registration in a formal FERC proceeding.

Moreover, there are a number of TO and TOP Reliability Standard requirements, such as vegetation management and relay protection standards (among others) that do not apply to a GO. Removal of Milford's TO and TOP designations, therefore, would result in a gap in reliability that is directly contrary to Congressional directives and implementing Commission rules and orders, as well as final NERC BOTCC Decisions on similar appeals. The NERC BOTCC Decision to include Milford in the NERC Compliance Registry should be affirmed.

[10] *See, e.g., New Harquahala Generating Company, LLC,* 123 FERC ¶ 61,173 (2008) ("New Harquahala").

II. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to:

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III. MOTION TO INTERVENE

NERC was formed to serve as the electric reliability organization ("ERO") authorized by Section 215 of the FPA. NERC was certified as the ERO by the Commission's Order issued July 20, 2006, in Docket No. RR06-1-000.[11] NERC's mission is to improve the reliability and security of the bulk power system in North America. To achieve that, NERC develops and enforces reliability standards; monitors the bulk power system; assesses future adequacy; audits owners, operators and users for preparedness; and educates and trains industry personnel. NERC relies on the diverse and collective expertise of industry participants. As the ERO, NERC is subject to oversight by the Commission and applicable governmental authorities in Canada.

[11] *North American Electric Reliability Corporation*, "Order Certifying North American Electric Reliability Corporation as the Electric Reliability Organization and Ordering Compliance Filing," 116 FERC ¶ 61,062 (2006).

On April 19, 2007, the Commission approved delegation agreements between NERC and eight Regional Entities, including a delegation agreement between NERC and WECC.[12] Pursuant to a delegation agreement, NERC delegated to WECC the authority to enforce mandatory Reliability Standards within the WECC region.

On June 18, 2007, the NERC reliability standards, approved in Order No. 693, became mandatory and enforceable in the United States for all owners, operators and users of the bulk power system. Also, in Order No. 693, the Commission approved NERC's Compliance Registry process, including NERC's Registry Criteria. The Registry Criteria describes how NERC and the Regional Entities identify organizations that should be registered for compliance with the mandatory Reliability Standards. NERC has delegated the responsibility to the Regional Entities, including WECC, to identify the organizations subject to inclusion on the NERC Compliance Registry. NERC provides notice of registration to all organizations included on the NERC Compliance Registry.

Section 500 of the NERC *Rules of Procedure* sets forth the process for an entity to challenge its inclusion on the NERC Compliance Registry. The NERC BOTCC issues a decision on such appeals. Once that decision has been rendered, an entity may file an appeal with the Commission.

Because the instant appeal has been filed with the Commission, NERC has a substantial and direct interest in the Commission decision in this proceeding. No other party can adequately represent NERC's interest. Therefore, it is in the public interest to permit this intervention.

[12] *North American Electric Reliability Council, North American Electric Reliability Corp.*, 119 FERC ¶ 61,060, *order on reh'g*, 120 FERC ¶ 61,260 (2007).

IV. COMMENTS

Milford asserts that it should not be responsible for the TO and TOP Reliability Standard requirements applicable to the 88-mile, 345 kV transmission line it owns that connects its 203.5 MW generation plant to the BPS. The Milford Project consists of 97 wind turbine generators: 39 GE 1.5 xle 1.5 MW wind turbines and 58 Clipper C99 2.5 MW wind turbines.[13] An underground collection system links each turbine to the next and is connected to a Project substation that consists of two 168 MVA, 34.5 to 345 kV on-site step up transformers. As stated by Milford, the high voltage side of the transformers is connected to an 88-mile overhead 345 kV line, "connecting the Project to the [BPS]."

Milford further explains that the Project interconnects to the bulk electric system by way of the 345 kV IPP AC Switchyard. Milford states that the IPP AC Switchyard is on the property of the IPP plant, a coal-fired steam-electric generating station north of Delta, Utah. The IPP plant consists of two 900 MW units, totaling 1,800 MW of generation. The IPP AC Switchyard consists of a 345 kV breaker-and-a-half bus configuration that, in addition to connecting to the Milford 345 kV line, connects each of the IPP coal plants, two 345 kV lines owned by Intermountain to the Mona Switching Station in Utah, one 230 kV line owned by Intermountain to the Gonder Substation in Nevada, and three connections to a 500 kV DC line and its related facilities owned by Intermountain and connecting to the Los Angeles Department of Water and Power's ("LADWP") Adelanto Converter Station in California. Therefore, 2,003.5 MW of generation is connected to the IPP AC Switchyard (IPP Unit 1 at 900 MW, IPP Unit 2 at

[13] Milford FERC Appeal at 5.

900 MW and Milford Project at 203.5 MW) and four transmission lines are connected to the IPP AC Switchyard (2 Mona lines at 345 kV, 1 Gonder line at 230 kV and 1 DC).

Accordingly, Milford's transmission facilities are the link between its generation facility and Intermountain's Switchyard, both of which are material to and a part of the BPS. Loss of Milford's transmission facility would result in the loss of a generating facility which is material to the BPS. Yet, Milford asserts that its 88-mile transmission line is not an integrated transmission element of the BPS. Under the circumstances, however, such an interpretation is inconsistent with the Energy Policy Act of 2005, FPA Section 215, Commission precedent under Section 215, and the NERC Registry Criteria.

As set forth in its Decision, the NERC BOTCC reviewed and considered the evidence and arguments presented by Milford and WECC, determined that Milford is properly registered as a TO and TOP and explained the bases for its findings and conclusions. The BOTCC Decision is based on a straightforward application of the NERC Registry Criteria and is fully supported by the record presented to the BOTCC and the record now before the Commission. The Decision is consistent with Section 215 of the FPA and Commission precedent thereunder. Milford's claims to the contrary are without merit, and the Commission should affirm the NERC BOTCC Decision.

In the instant appeal, Milford resurrects many of the same arguments it advanced in its registration appeal that were considered and rejected in the BOTCC Decision. In summary, Milford contends that:

- While it owns a generator tie-line that is higher than 100 kV, it does not meet the criteria for TO or TOP because its transmission facilities are not *integrated* with the bulk power system or associated with a facility included on WECC's critical facility list, as that term is defined in prior Commission generation interconnection precedent;
- there will be no gap in reliability if Milford is not registered as a TO/TOP;

- other entities are not registered; and
- recommendations from the NERC *Final Report from the Ad Hoc Group for Generator Requirements at the Transmission Interface* (NERC Project 2010-07 – Transmission Requirements at the Generator Interface) supports de-registration of GOs and GOP previously registered as a TO and TOP.[14]

As discussed below, the relief requested by Milford is unjustified, and the Commission should deny the appeal.

1. The NERC BOTCC Decision Sets Forth Adequate Support and a Rational Basis for Its Determination that Milford Meets the Registry Criteria Applicable to a TO and TOP.

Milford misinterprets the Registry Criteria applicable to TOs and TOPs. Milford contends that its "radial generator lead interconnection facility is not integrated into the bulk-electric system and, thus, does not meet the relevant standard,"[15] in the Registry Criteria. As set forth in the NERC BOTCC Decision, the Registry Criteria clearly provides that, to be a TO or TOP, an entity must own or operate transmission facilities:

> Section II defines a TO as an entity that, "owns and maintains transmission facilities" and a TOP as "[t]he entity responsible for the reliability of its local transmission system and operates or directs the operations of the transmission facilities."[16]

The only exclusion set forth in the Registry Criteria from registration as a TO/TOP is that "*Radial transmission facilities serving only load with one transmission source are generally not included in this definition.*"[17]

The NERC BOTCC Decision applied the Registry Criteria and found that, based in part on Milford's own characterization of its interconnection facilities, Milford owns and operates transmission facilities. As the BOTCC Decision notes, according to

[14] Milford FERC Appeal at 12-37.
[15] Milford FERC Appeal at 29.
[16] NERC BOTCC Decision at 4.
[17] Registry Criteria at 4.

Milford's public statement on its own website, the Project has an "88-mile transmission line connecting the wind farm to the Intermountain Power Agency in Delta, Utah."[18] Milford also filed a Petition for Declaratory Order with the Commission regarding the very same transmission facilities. In its order granting Milford's request, the Commission described the Milford interconnection facilities as an "already-constructed 88-mile, 345 kV transmission line."[19]

Although Milford offers to re-characterize "the nomenclature on its website if that would be dispositive for NERC," in its order granting Milford's open-access transmission tariff ("OATT") waiver request, the Commission cautioned Milford that characterizing its transmission facilities as a "generator lead line" does not exempt it from regulations governing transmission facilities:

> We note that, although Milford characterizes its 88-mile, 345 kV line interconnecting the Milford Wind Project to the integrated transmission system as a "generator lead line," such a designation does not render the Milford Line exempt from Commission regulation of *transmission facilities*.[20]

The same is true of Milford's characterization of its interconnection facilities here. Thus, as the NERC BOTCC Decision notes, Milford meets the 100 kV and above requirement because Milford's transmission facilities are operated at 345 kV.[21]

The NERC BOTCC Decision also addressed the issue of owning or operating an "integrated transmission element" associated with the BPS:

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[18] NERC BOTCC Decision at 11.
[19] NERC BOTCC Decision at 11-12.
[20] NERC BOTCC Decision at 12 (quoting *Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149 (2009) ("[Milford] filed a Petition for Declaratory Order requesting that the Commission confirm Milford's firm priority rights to use the entire 1,000 MW of capacity on the already-constructed 88-mile, 345 kV transmission line (Milford Line) that is intended to connect Milford's multi-phased 1,000 MW wind-powered generating facilities… to the integrated transmission grid.")).
[21] NERC BOTCC Decision at 12 (citing Milford's Appeal to NERC at 3).

> Milford clearly meets the requirement as an entity that owns and operates an integrated transmission element associated with the BPS 100 kV and above. In any event, in *New Harquahala*, the Commission concluded that it did not need to rule on whether a facility was an integrated element where a transmission line connects two facilities that are material to the grid, which ultimately connects into the bulk power system.[22]

As such, the NERC BOTCC Decision gave due consideration to and rejected other arguments advanced by Milford that its interconnection facilities are not "integrated transmission elements."

In the instant appeal, Milford reiterates its claim that its interconnection facilities are not a part of the "integrated grid," but are instead radial interconnection facilities.[23] While the Registry Criteria does not define the term "integrated transmission element," Milford's appeal focuses on whether the term "integrated" can be defined by the Commission's interconnection policy, as it applies to reliability matters.

Noting that the Commission declined to determine whether the interconnection facilities at issue in *New Harquahala* were "integrated transmission elements," under the NERC Registry Criteria, Milford argues that "integrated" should be consistent with Commission's interconnection policy precedent:

> FERC precedent draws a clear distinction between integrated facilities and non-integrated facilities. In the generator interconnection context, in addressing whether generator interconnection facilities are "integrated" into the transmission network, the Commission has explained that the transmission "network begins at the point where the Interconnection Customer connects to the Transmission System, not somewhere beyond that point. Facilities beyond the Point of Interconnection are part of the Transmission System and benefit all users."[24]

The Commission's distinction between "integrated (non-radial)" and "non-integrated (radial)" is inapplicable here, because the Commission used those terms to differentiate

[22] NERC BOTCC Decision at 12.
[23] Milford FERC Appeal at 12.
[24] *Id*. at 11.

facilities that were part of the transmission network, in developing its policies with respect to assignment of costs related to generator interconnections, the applicability of open access requirements and requirements for the provision of certain data, all of which were developed prior to FPA Section 215. Thus, as noted in the BOTCC Decision, "[c]ontrary to Milford's assertions, there is no exclusion in the registration criteria, or any basis in FERC precedent, that exempts a generator whose transmission facilities are interconnection facilities from TO and TOP requirements."[25]

Moreover, the Commission has recognized that it has broader authority under Section 215, particularly as it relates to maintaining reliability of the BPS. With respect to interconnection policy, the Commission did not take into consideration the applicability of the Reliability Standards. In the post-FPA Section 215 era, the Commission has affirmatively recognized that radial transmission lines connecting generators to the grid are part of the bulk power system.

For example, in *New Harquahala*, the Commission rejected similar arguments opposing registration and recognized, "NERC's plenary authority to register entities that own or operate assets that are 'material to the reliability of the bulk power system.'"[26] The Commission reasoned that it "need not address the issues raised regarding the interpretation of Section III (d)(1) of NERC's Registry Criteria and the definition of an "integrated transmission element."[27]

Milford also references the definition of bulk-electric system, included in the FERC-approved Reliability Standards and in the Statement of Compliance Registry

[25] NERC BOTCC Decision at 14.
[26] *New Harquahala* at P 44 (citing NERC Registry Criteria, Notes to Criteria, note 1 (footnote excluded); NERC Rules of Procedure, Rule 501.1.2.6).
[27] *Id*.

Criteria, which provides an exclusion for radial transmission lines serving load as follows:

> *Radial transmission facilities serving only load with one transmission source are generally not included in this definition.*

However, Milford does not meet the exclusion from TO/TOP requirements for radial transmission lines serving only load with one transmission source. Here the issue is generation, so the exclusion does not apply. Milford claims that its interconnection facilities are sole-use radial transmission lines, and therefore should be exempt under the NERC definitions, the NERC registration criteria and FERC orders. As the BOTCC Decision concluded, these arguments do not support removal of Milford from the NERC Compliance Registry.

NERC has always recognized that from a physical perspective a single transmission line between a single substation and a generator, even at 230 kV, will result in the generator being "radially" connected to the BPS. Further, NERC also recognizes that such facilities may not, from the standpoint of Section 205 of the FPA, be available for transmission service by third parties under a transmission provider tariff. However, from a reliability perspective and from the standpoint of Section 215 of the FPA, this transmission line is integrated with other elements of the BPS and is being used to transmit power to the grid and to receive station power, requiring coordination of operation with those other elements.

Milford cites a Notice of Proposed Rulemaking where FERC proposed to modify the definition of bulk-electric system, as further support for its position that the bulk-electric system definition generally excludes radial transmission facilities. However, with full knowledge of the Milford registration appeal, the Commission recently issued

its Final Rule on the definition of bulk electric system, and FERC revisited the concepts of "integrated transmission element" and "material impact." [28] The Commission held that defining such terms is not dispositive when it comes to reliability matters:

> defining these terms is not necessary to revise the definition as directed herein. Whether specific facilities have a material impact is not dispositive with respect to whether they are needed for reliable operation. These questions are more appropriately addressed through development of an exemption process at NERC.[29]

Accordingly, Milford's contention that the interconnection facilities for the Project are not covered by NERC's definition of bulk-electric system is inaccurate.[30] Milford ignores the plain meaning of the term "integrated" that is consistent with FPA Section 215 and NERC's long-standing application of that term from a reliability perspective, which has spanned more than four decades.

In simple, commonly used terms, and as NERC used the term in *New Harquahala*, "integrated" means "combining or coordinating separate elements so as to provide a harmonious, interrelated whole."[31] As stated above, the transmission facilities at issue here link Milford's generating facility (a part of the bulk power system) with the Intermountain's substation (also a part of the bulk power system). NERC's Registry Criteria uses "integrated" in that sense, combining the generating stations with other elements of the bulk power system.

From a reliability perspective, interconnection facilities are physically and electrically connected to the bulk power system. Indeed, the laws of physics that apply to transmission elements connected to the bulk power system are not bound by an

[28] BES Final Rule at PP 146-150.
[29] *Id* at P 150.
[30] Milford FERC Appeal at 31.
[31] *See* www.dictionary.com (last visited Dec. 1, 2010).

interconnection pricing policy, which are economic policy decisions and are not based on reliability issues.

Unlike under its Section 205 policies, the Commission has recognized under FPA Section 215 that radial interconnection facilities are part of the bulk power system if they operate at 100 kV or higher.[32] Therefore, the NERC BOTCC Decision properly relied on FPA Section 215 and Commission precedent thereunder in determining whether Milford's transmission facilities constitute an integrated transmission element.

Notably, Section 215 defines the bulk power system as:

> (A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and
>
> (B) electric energy from generation facilities needed to maintain transmission system reliability.[33]

The Commission has had occasion to consider the breadth of Congress' directives in Section 215:

> When Congress enacted section 215, it used broad language to ensure that all those entities that could affect the reliability of the bulk power system would be subject to mandatory reliability standards. Specifically, section 215(b)(1) states that, "The Commission shall have jurisdiction, within the United States, over . . . all users, owners and operators of the bulk-power system (including the entities described in section 201(f)), for purposes of approving reliability standards established under this section and enforcing compliance with this section."[] Further, section 215(b)(2) provides that "All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section."[] In using such broad language, Congress gave no indication that it intended to exempt any entity that could affect the reliability of the bulk-power system from the reach of mandatory reliability standards.[34]

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[32] *Lee County, Florida, et al.*, 121 FERC ¶ 61,143 at P 28 (2007), *reh'g denied*, 122 FERC ¶ 61,141 (2008)("Lee County").

[33] 16 U.S.C.A. § 824o(a)(1)(A) and (B).

[34] *Applicability of Federal Power Act Section 215 to Qualifying Small Power Production and Cogeneration Facilities*, 119 FERC ¶ 61,149 at P 24 (2007) (Order No. 696) (footnotes omitted); *See also* 16 U.S.C.A. § 824o(b).

Other relevant definitions in Section 215 include:

> The term 'reliability standard' means a requirement, approved by the Commission under this section, to provide for *reliable operation of the bulk power system*.[35]
>
> The term 'reliable operation' means *operating the elements of the bulk-power system* within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements.[36]

Milford operates up to 203.5 MW of generation which is part of the supply that the Reliability Coordinator ("RC"), in whose footprint Milford is located, must consider when it coordinates the operational plans of Balancing Authorities in its area. Since an RC has overall responsibility for the reliable operation of the BPS in its area, the operational plans in its area must consider contingencies that can affect reliability. It is Milford's 345 kV facilities that "integrate" Milford's generation into the BPS, and the loss of either its transmission *or* generation must be anticipated.

Milford repeatedly alleges that "NERC is generically labeling all generators connected to the grid at 100kV or higher and registered as GOs as TO/TOPs."[37] Yet, as with all registry decisions, determinations as to whether generator interconnection facilities must necessarily be registered are made on a case-by-case application of the relevant Registry Criteria.

Given the directive from Congress that <u>all</u> users, owners, and operators of the bulk-power system be subject section 215 and thus subject to the mandatory and

[35] 16 U.S.C.A. § 824o(a)(3) (*emphasis added*).
[36] 16 U.S.C.A. § 824o(a)(4) (*emphasis added*).
[37] Milford FERC Appeal at 30.

enforceable reliability standards,[38] it is disingenuous for Milford to claim that its 88-mile transmission line by which it is interconnected to the bulk power system is not an integrated transmission element. Its 345 kV transmission line clearly falls within the scope of "facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof)." Milford erroneously denies that its interconnection facilities are part of the bulk power system, because the Commission has expressly rejected claims that radial transmission lines (operated at 100 kV or higher) that connect a generator to the grid are not directly interconnected to the bulk power system.[39] For example, in *Lee County* FERC ruled:

> Like Lee County, SWA argues that because it is connected to a radial line, it is not directly interconnected to the Bulk-Power System. As we stated above, transmission facilities that provide service to a generation facility do not qualify as "serving only load" and are thus part of the Bulk-Power System if they operate at voltages of 100 kV or higher."[40]

With the Energy Policy Act of 2005, Congress ushered in a new era and expanded the scope of the Commission's authority over reliability and included within the scope of Section 215 entities that are normally excluded from the Commission's jurisdiction under Part II of the FPA.[41] As the Commission itself has held:

> The provision providing that these otherwise jurisdictionally exempt utilities will be subject to section 215 supports our determination that Congress intended that all utilities, regardless of whether those utilities are otherwise exempt from the FPA, be subject to section 215.[42]

This same logic supports the NERC BOTCC Decision which recognizes that while facilities (or their owners or operators) may be exempt from certain provisions of the

[38] Order No. 696 at P 27.
[39] *Lee County, Florida*, 121 FERC ¶ 61,143 at P 28.
[40] *Id*.
[41] Order No. 696 at P 25.
[42] *Id.* at P 25.

FPA, or Commission regulations there under, they are not thereby exempt from application of FPA Section 215.[43]

2. Milford's Claims that the TO/TOP Reliability Standards Are Not Designed to Address Reliability With Respect to Its Radial Transmission Interconnection Facilities Are Wrong.

As in its appeal before the NERC BOTCC, Milford objects to being subject to the TO and TOP reliability standards, on a number of grounds. These are addressed in turn below.

a. Contrary to Milford's Assertions, its Interconnection Facilities Are, By Their Nature, an Independent Transmission Element.

Milford contends that:

> the Milford generator lead is not an integrated portion of the bulk electric system. It is a generator lead line that delivers power into the bulk-electric system. As Milford understands it, under NERC's Registry Criteria, an owner of a generating facility should be registered as a GO… As stated by NERC in its decision, registration as a GO makes an entity critical to the bulk-electric system… If a generator is interconnected to the grid at or above 100 kV, NERC asserts that it is a TO/TOP as that interconnection is *per se* an integrated transmission element associated with the bulk power system at 100 kV and above. Under NERC's *per se* rule, all generators interconnected at 100 kV or above must be registered as TO/TOPs.[44]

As defined in FPA Section 215, the purpose of a reliability standard is to provide for *reliable operation of the bulk-power system*.[45] The term reliable operation is defined, in part, as *operating the elements of the bulk-power system*. The BPS is defined in FPA Section 215, in part, as the *facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof).*

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[43] The Commission already has revised its regulations to eliminate certain generic exemptions from reliability standards. *See* Order No. 696, *supra*. *See also* Order No. 696 at P 26 ("[S]ection 210(e) of PURPA grants the Commission broad authority to exempt most QFs from various provisions of the FPA, we cannot find that Congress intended that all entities that affect the reliability of the bulk-power system not be subject to mandatory and enforceable reliability standards.").

[44] Milford FERC Appeal at 29.

[45] 16 U.S.C.A. § 824o(a)(3) (*emphasis added*).

Milford's interconnection facilities are part of the bulk power system, and, by definition, they are, therefore, an *element* of the BPS. Indeed, Milford's 345 kV transmission line operates as a portion of the interconnected electric energy transmission network.

As an owner and operator of a transmission element (part of and interconnected with the BPS), Milford must comply with reliability standards that are designed to ensure reliable operation of its transmission facilities that are part of the BPS. Because the 345 kV line is a transmission element, the applicable Reliability Standards are the TO/TOP Reliability Standards. It is appropriate, therefore, that Milford comply with Reliability Standards applicable to ensuring reliable operation of its transmission facilities.

Milford does not dispute that it owns and maintains the facilities at issue here. Moreover, Milford has not demonstrated that compliance responsibility for the facilities has been transferred to another entity. The NERC Registry Criteria provides that the owner or operator seeking to transfer obligations must present to NERC and the Regional Entity a written agreement governing such transfer and an entity willing to be registered and responsible per that agreement. Someone must be accountable for the 88-mile transmission line and, in the absence of an agreement by which some else takes responsibility, that someone is Milford.

If Milford were merely required to comply with the GO requirements for its transmission line, the likely result if Milford prevails, it would avoid responsibility for other Reliability Standard requirements that only apply to transmission facilities. That is, it would not be subject to penalties, sanctions or other enforcement action for violations that might occur under the TO/TOP Reliability Standard requirements. For example, a

GO/GOP is not subject to Reliability Standard requirements applicable to vegetation management. These requirements apply only to a TO. Milford and First Wind would not be obligated as GO/GOP to have a vegetation management plan and to implement it. These are appropriately addressed in the TO Reliability Standard requirements. It is inconsistent with FPA Section 215 to permit Milford to avoid responsibility for such requirements. The NERC BOTCC Decision should be affirmed.

3. The NERC BOTCC Decision Properly Concluded that Milford's Transmission Facilities have a Material Impact on the BPS.

In Order No. 696, the Commission found that:

> The reliability criteria adopted by NERC and approved by the Commission, as well as the compliance registry process adopted by NERC and approved by the Commission, are designed to ensure that only those facilities needed to maintain the reliability of the bulk-power system are subject to the reliability standards. The ultimate decision with respect to [an entity] . . . must be, made on a case-by-case basis.[46]

In the instant case, the NERC BOTCC Decision concluded that Milford meets the Registry Criteria to be registered as a TO/TOP,[47] a fact that Milford refuses to accept. Rather, Milford argues (for over seven pages) that its facility is much less material than the Harquahala plant.[48] Yet, the Commission has found that:

> [Where] NERC… provide[s] adequate support to register [an entity] based on [one section] of the Registry Criteria, there is no need to analyze whether [an entity] should also be registered based on [another section of the Registry Criteria].[49]

The registration criteria contains a provision that an organization that otherwise meets the criteria for registration need not be registered if it can be demonstrated to NERC that the bulk power system, owner, operator, or user does not have a material

[46] Order No. 696 at P 30.
[47] NERC BOTCC Decision at 10-16.
[48] Milford FERC Appeal at 14-21.
[49] *See Lee County, Florida,* 122 FERC ¶ 61,141 at P 13.

impact on the bulk-power system.[50] Here, however, Milford has not, and cannot, make such a showing for all of the reasons set forth in the NERC BOTCC Decision and herein.

While the NERC BOTCC did not have to address the material impact issue, the NERC BOTCC Decision responded to Milford's claims that it would not have a material impact on the BPS.[51] The NERC BOTCC Decision found, to the contrary, that Milford's transmission facilities have a material impact on the BPS, because the loss of the Milford interconnection line would affect Milford's ability to put its power onto the transmission grid.[52]

In addition, Milford claims that the Milford facility has not been designated as being critical to support the grid, although Milford's 345 kV transmission line connects its 203.5 MW generating facility to the BPS. Milford confuses reliable operation of interconnected BPS elements with resource adequacy. The loss of the Milford line certainly could affect the reliable operation of the BPS and the result would not merely be "that the Project generation would no longer flow into the IPA Switchyard."[53] To the contrary, time and again the bulk power system demonstrates the far reaching consequences which can take place from otherwise isolated actions.

4. The NERC BOTCC Decision Explained Its Determination that a Gap in Reliability will occur if Milford is not Registered as a TO/TOP.

Milford also claims that there will be no gap in reliability if Milford is not registered as a TO/TOP, "[b]ecause no impacts beyond the Project will result from loss of the Project's interconnection line."[54] In support of its argument, Milford provides a

[50] Order No. 696 at P 33.
[51] NERC BOTCC Decision at 10-11.
[52] *Id.* at 10.
[53] Milford FERC Appeal at 21.
[54] Milford FERC Appeal at 17.

System Impact Study ("SIS") performed by Milford, LADWP and IPP as well as affidavits from Larry L. Henriksen, an engineering consultant familiar with the Milford system. As noted above, Milford also seeks to distinguish its facilities from those at issue in *New Harquahala*. However, the BOTCC Decision found that the SIS reports and Henriksen affidavits do not support removal, but confirm that Milford's registration as a TO/TOP:

> As WECC notes, SIS reports "are not intended to demonstrate, and therefore do not demonstrate, how the Milford facilities *could* impact the grid if the facilities are not properly registered and covered under the Mandatory Reliability Standards."[] WECC also notes that SIS reports were required under the generator interconnection protocols spelled out in FERC Order 2003. Milford's SIS, upon which Larry Henriksen relies for his analysis, was not conducted within the reliability context. However, the committee finds that the SIS does not support removal of Milford as a TO or TOP. To the contrary, the SIS confirms that proper equipment, maintenance and operation are required to ensure reliability of the facilities and the transmission system. The affidavits provide further support that faults and switching errors could occur even with respect to Milford's transmission line.[55]

Therefore, in order to ensure that Milford is held accountable for the specific requirements and Reliability Standards applicable to TOs and TOPs, it is necessary that Milford be registered for the TO and TOP functions. The NERC BOTCC Decision references, as an example, the NERC TO/TOP training requirements discussed in *New Harquahala*:[56]

> In *Harquahala*, the Commission reasoned that if Harquahala is only registered as a GO/GOP, and not a TO/TOP, "it will not be required to have its staff trained and NERC-certified to operate these facilities in an emergency or to coordinate protection for its transmission line and switchyard with other [TOPs] and the Regional Entity.[] The same is true here.

[55] NERC BOTCC Decision at 14.
[56] *Id*.

Yet, in its appeal to FERC, Milford argues that "reference to an element of the solution to the Harquahala reliability gap… has no relevance to Milford, where no reliability gap has been indentified and the breakers are rarely operated."[57]

As noted in BOTCC Decision, "[n]otwithstanding Milford's claims that a number of TO and TOP requirements and Reliability Standards are inapplicable, there is nothing in this decision, the registration criteria or the NERC *Rules of Procedure* to prevent Milford from demonstrating to WECC and NERC that it should not be subject to certain of the TO and TOP requirements and Reliability Standards."[58] Still, Milford views *New Harquahala* as a directive to NERC to negotiate a list of TO/TOP requirements that apply to it.

As noted above, Milford goes to great lengths to distinguish its interconnection facilities from the interconnection facilities involved in *New Harquahala*. While NERC acknowledges the factual differences between the two facilities, the nature of the facilities is very much the same, including ownership of high voltage transmission and switching equipment. Thus, as with the BOTCC Decision, NERC maintains that *New Harquahala* is limited to the entities, facts and circumstances therein and did not result in a global proclamation for all future registrations involving generation interconnection facilities.

Even so, currently there is a list pending before the Commission as to the Reliability Standards applicable to Harquahala, based on specific facts and circumstances. Those Reliability Standards were identified based on Harquahala's representations, among other things, as to its operations and equipment. Accordingly,

[57] Milford FERC Appeal at 34.
[58] NERC BOTCC Decision at 15.

there already are mechanisms in place for an entity to identity reliability standards that apply to equipment they do not have and are under no obligation to get (*i.e.*, load shedding equipment). To the extent that Milford can demonstrate a technical or physical limitation that would prevent it from being able to comply with an applicable standard, NERC and WECC can take that into consideration through their routine compliance monitoring activities.

In any event, no other entity has agreed to assume Milford's obligations as a TO/TOP and there is no duplication in coverage of TO/TOP compliance with respect to Milford's interconnection facilities. Because Milford is the only TO/TOP for its facility, there will necessarily be a gap if Milford does not comply. Of particular note is that Milford, as a TO and TOP, is responsible for compliance with the following reliability standard requirements, all of which also have a "High" Violation Risk Factor and involve system operation, protection, communications, and administration. Specifically, the below referenced standards, as they may be amended from time to time, currently include those requirements that do not otherwise apply to the other function (GO) for which Milford is registered, thus resulting in a gap if Milford is not registered as a TO or TOP for its 345 kV transmission line:

- Preparation and maintenance of a Transmission Vegetation Management Program (FAC-003-1 R1) and Vegetation Management Plan (FAC-003-1 R2).
- Taking corrective action as soon as possible if a protective relay or equipment failure reduces system reliability (PRC-001-1 R2.2).
- Coordination of protection systems on major transmission lines and interconnections (new and changes) with neighboring Generator Operators, Transmission Operators, and Balancing Authorities (PRC-001-1 R4).
- Analyzing its transmission Protection System Misoperations and development and implementation of a Corrective Action Plan to avoid future Misoperations of a similar nature (PRC-004-1 R1).

- Developing procedures for monitoring and controlling voltage levels and MVar flows within their individual areas and with the areas of neighboring Transmission Operators (VAR-001-1 R1).
- Exercising the responsibility and clear decision-making authority to take whatever actions are needed to ensure the reliability of its area and shall exercise specific authority to alleviate operating emergencies (TOP-001-1 R1).

Another example of a reliability standard to which Milford is subject is development, maintenance, and implementation of formal policies and procedures that address the execution and coordination of activities that impact inter- and intra-Regional reliability, including equipment ratings, monitoring and controlling voltage levels and real and reactive power flows, switching transmission elements, and planned outages of transmission elements (TOP-004-2 R6). This requirement is only applicable to TOPs and has a "Medium" Violation Risk Factor. Thus, a gap would necessarily exist if Milford avoids compliance with the mandatory TO/TOP Reliability Standards.

In its appeal to FERC, Milford reiterates its position that there are other similar facilities that are connected at facilities 100 kV and above that are not now registered as TOs and TOPs.[59] Although registered entities have an obligation to advise NERC of changes in their registration status, NERC has the authority to register entities at any time and will evaluate the entities provided by Milford to determine if other compliance registrations are warranted.

Finally, Milford argues that de-registration is supported by the NERC *Final Report from the Ad Hoc Group for Generator Requirements at the Transmission Interface's Conclusions and Recommendations*, which "recommended that NERC and the

[59] Milford FERC Appeal at 35.

Regional Entities refrain from registering generators as TO/TOPs."[60] According the Milford, NERC "brushes aside" the Final Report and its recommendations. Yet, as the BOTCC Decision notes, "no guidance has been issued by NERC or FERC 'suggesting that any additional recommendations related to this project have been implemented."[61] Moreover, "[t]he recommendations regarding TOs and TOPs are not binding and do not mean that it has been or will be adopted by NERC or FERC. Therefore, NERC Project 2010-07 has no bearing on the Milford registration and does not provide support for staying registration of Milford as a TO or TOP."[62] Thus, contrary to Milford's claims, NERC dispels the possibility that an un-adopted "Final Report" would or should have any bearing on NERC's interpretation of the Registry Criteria or Milford's compliance registration. Rather, FERC has determined that these issues should be evaluated as part of the exemption process described in the BES Final Rule.[63]

[60] *Final Report from the Ad Hoc Group for Generator Requirements at the Transmission Interface* (Nov. 16, 2009), available at http://www.nerc.com/files/GO-TO_Final_Report_Complete_2009Nov16.pdf ("Final Report").
[61] NERC BOTCC Decision at 14 (quoting WECC Assessment at 5).
[62] *Id*.
[63] BES Final Rule at P 145.

V. CONCLUSION

Wherefore, in view of the foregoing, NERC respectfully requests that it be permitted to intervene with all the rights that attend to such status and requests that the Commission issue an order consistent with the comments set forth herein.

Respectfully submitted,

/s/ Rebecca J. Michael

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 7th day of December, 2010.

/s/ *Willie L. Phillips, Jr.*
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