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**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**CEDAR CREEK WIND )      Docket No. RC11-1-000**  
**ENERGY, LLC        )**

**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, Cedar Creek Wind Energy, LLC ("Cedar Creek") filed an appeal of the October 6, 2010 decision ("Decision") rendered by the NERC Board of Trustees Compliance Committee ("BOTCC") to include Cedar Creek on the NERC Compliance Registry within the Western Electricity Coordinating Council ("WECC") for the functions of Transmission Owner ("TO") and Transmission Operator ("TOP"). Cedar Creek is registered on the NERC Compliance Registry as a Generation Owner, Generation Operator, Transmission Owner, and Transmission Operator within the WECC Region. Cedar Creek challenges only its registration as a TO and TOP. Cedar Creek is registered as a TO and TOP because it owns 72 miles of a 76-mile, 230 kV transmission line extending from the Cedar Creek Facility to an interconnection point with Public Service Company of Colorado ("PSCo") approximately 4 miles from PSCo's Keenesburg

Switching Station. PSCo owns the remaining 4 miles of the transmission line, which ties into the Keenesburg Switchyard.

Cedar Creek argues that its 72 miles of a 76-mile, 230 kV line used to transmit energy is not an “integrated transmission element,” and should be exempt from Reliability Standards 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 (the Cedar Creek 300 MW generating station and the remaining 4 miles of the 230 kV line owned by PSCo), Cedar Creek’s line is integrated. As an owner of integrated transmission facilities, Cedar Creek squarely meets the NERC *Statement of Compliance Registry Criteria Revision 5.0* (“Registry Criteria”) for registration as a TO and TOP. As such, Cedar Creek necessarily must be subject to the TO and TOP Reliability Standards. However, to support its appeal, Cedar Creek relies on Commission precedent that pertains to the assignment of costs related to generator interconnections, 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.<sup>1</sup> That proceeding is directly relevant to the instant appeal.

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

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<sup>1</sup> *Revision to Electric Reliability Organization Definition of Bulk Electric System*, 133 FERC ¶ 61,150 at P 55 (November 18, 2010)(“BES Final Rule”).

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.<sup>2</sup>

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.<sup>3</sup>

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.”<sup>4</sup> With respect to other categories of radial facilities, FERC determined that the exemption issues should be determined through the standards development process.<sup>5</sup> As for the definition of bulk electric system, the Commission determined that it was not necessary to define “integrated transmission elements” and “material impact.”

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<sup>2</sup> *Id.* at P 144.

<sup>3</sup> *Id.* at P 31.

<sup>4</sup> *Id.* at P 55. (*emphasis added*).

<sup>5</sup> *Id.* at PP 146-150.

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.<sup>6</sup> 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.<sup>7</sup> Moreover, the Commission did not seek to alter mechanisms already in place for facilities that meet the criteria for registration.

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.”<sup>8</sup>

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*,<sup>9</sup> 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

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<sup>6</sup> 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](http://www.nerc.com/filez/standards/Project2010-07_GOTO_Project.html) (“Final Report”).

<sup>7</sup> BES Final Rule at P 145.

<sup>8</sup> *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).

<sup>9</sup> See, e.g., *New Harquahala Generating Company, LLC*, 123 FERC ¶ 61,173 (2008) (“New Harquahala”).

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 its 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 or GOP. Removal of Cedar Creek'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 Cedar Creek in the NERC Compliance Registry should be affirmed.

## II. NOTICES AND COMMUNICATIONS

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

Gerald W. Cauley  
President and Chief Executive Officer  
David N. Cook\*  
Sr. Vice President and General Counsel  
North American Electric Reliability Corporation  
116-390 Village Boulevard  
Princeton, NJ 08540-5721  
(609) 452-8060  
(609) 452-9550 – facsimile  
david.cook@nerc.net

Rebecca J. Michael\*  
Assistant General Counsel  
Willie L. Phillips, Jr.\*  
Attorney  
North American Electric Reliability Corporation  
1120 G Street, N.W.  
Suite 990  
Washington, D.C. 20005-3801  
(202) 393-3998  
(202) 393-3995 – facsimile  
rebecca.michael@nerc.net  
willie.phillips@nerc.net

\*Persons to be included on the Commission's official service list. NERC requests waiver of the Commission's rules and regulations to permit the inclusion of more than two people on the service list.

### 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.<sup>10</sup> 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.

On April 19, 2007, the Commission approved delegation agreements between NERC and eight Regional Entities, including a delegation agreement between NERC and WECC.<sup>11</sup> 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

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<sup>10</sup> *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).

<sup>11</sup> *North American Electric Reliability Council, North American Electric Reliability Corp.*, 119 FERC ¶ 61,060, *order on reh’g*, 120 FERC ¶ 61,260 (2007).

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.

#### **IV. COMMENTS**

Cedar Creek asserts that it should not be responsible for the TO and TOP Reliability Standard requirements applicable to the 72 miles of a 76-mile, 230 kV transmission line it owns that connects its 300 MW generation plant to the PSCo transmission system. Cedar Creek's transmission facilities are the link between its generation facility and remaining 4 miles of the 230 kV transmission line owned by PSCo, which in turn connects to PSCo's Keenesburg Switching Station, both of which are material to the BPS.

Cedar Creek asserts that its 72 miles of a 76-mile transmission line is not an integrated transmission element of the BPS. Yet, 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 Cedar Creek and WECC, determined that Cedar Creek 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. Cedar Creek's claims to the contrary are without merit, and the Commission should affirm the NERC BOTCC Decision.

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

- While it owns a generator tie-line that is higher than 100 kV, it is exempt from registration as 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 interconnection cost allocation precedent;
- there is no demonstration that TO/TOP registration is necessary for the reliable operation of BPS;
- its TOP registration should be reversed because PSCo operates a 4-mile portion of the 76-mile generation tie-line connecting the Cedar Creek Facility to the PSCo transmission system, 72 miles of which are owned by Cedar Creek;
- there will be no gap in reliability if Cedar Creek 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.<sup>12</sup>

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

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<sup>12</sup> Cedar Creek FERC Appeal at 7-18.



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

Cedar Creek misinterprets the Registry Criteria applicable to TOs and TOPs.

Cedar Creek contends that it “is exempt from registration as a TO or TOP und under the plain language of NERC’s Registry Criteria” because “Cedar Creek neither owns or operates an integrated transmission element associated with the bulk power system 100 kV and above, nor owns or operates a transmission element associated with a facility that is included on the Regional Entity’s critical facilities list.”<sup>13</sup> 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 of the *Registry Criteria* defines TO as, “[t]he entity that owns and maintains transmission facilities,” and TOP as, “[t]he entity responsible for the reliability of its local transmission system and operates or directs the operations of the transmission facilities.”<sup>14</sup>

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.*”<sup>15</sup>

The NERC BOTCC Decision applied the Registry Criteria and found, based in part on Cedar Creek’s own characterization of its interconnection facilities, that Cedar Creek owns and operates transmission facilities. According to Cedar Creek:

Cedar Creek’s interconnection facilities consist of, *inter alia*, a portion of a 76-mile, 230 kV, radial generation tie-line that connects the Cedar Creek Facility to the [PSCo] transmission system at the [Keenesburg] Switching Station (the “generator tie-line”). Specifically, Cedar Creek owns approximately 72 miles of the tie-line extending from the Cedar Creek Facility to the interconnection point with PSCo. At the interconnection

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<sup>13</sup> Cedar Creek FERC Appeal at 8.

<sup>14</sup> NERC BOTCC Decision at 9.

<sup>15</sup> Registry Criteria at 4.

point approximately four miles from the [Keenesburg] Switching Station, the tie-line becomes the property of PSCo. PSCo owns and maintains the four miles of tie-line into the [Keenesburg] Switching Station and has full control of the entire line, line breaker, line disconnects and ground disconnects in the Switching Station. *Other than its ownership of the interconnection facilities described herein, Cedar Creek does not own or operate any transmission facilities.*<sup>16</sup>

The NERC BOTCC Decision further found that there is no dispute that Cedar Creek meets the 100 kV and above requirement because Cedar Creek's transmission facilities are operated at 230 kV.<sup>17</sup> The NERC BOTCC Decision also addressed the issue of owning or operating an integrated transmission element associated with the BPS. The NERC BOTCC Decision held that:

Cedar Creek's transmission facilities are the link between its generation facility and PSCo's Keenesburg Switching Station, both of which are material to and a part of the BPS. Loss of Cedar Creek's transmission facility would result in the loss of a generating facility which is material to the BPS. Therefore, this transmission facility is integral to the reliability of the BPS. Because the transmission facility is integral to other elements of the BPS, which are material to the BPS, coordination of the operation and maintenance with those other elements and registration of Cedar Creek as a TO and TOP is necessary to provide for a registered TO and TOP for these facilities. Thus, there is no question that Cedar Creek meets the criteria set forth in Section III.d.1.<sup>18</sup>

As such, the NERC BOTCC Decision gave due consideration to and rejected other arguments advanced by Cedar Creek that its interconnection facilities are not "integrated transmission elements" as the term "integrated" is defined in *Mansfield Municipal Electric Department and North Attleborough Electric Department v. New England Power Company* ("Mansfield"):<sup>19</sup>

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<sup>16</sup> NERC BOTCC Decision at 9-10 (citing Cedar Creek Supplemental Information at 2) (*emphasis in original*).

<sup>17</sup> *Id.* at 10.

<sup>18</sup> NERC BOTCC Decision at 10.

<sup>19</sup> *Mansfield*, 97 FERC ¶ 61,134 (2001).

Cedar Creek’s reliance on *Mansfield* for its position that its transmission facilities are not integrated is misplaced. As WECC noted, *Mansfield* predates NERC’s mandatory and enforceable Reliability Standards and is based on Section 205 of the FPA, not Section 215, which governs here. As such, *Mansfield* is inapplicable under the facts presented at hand. The Commission has recognized that it has broader authority under Section 215, particularly as it relates to maintaining reliability of the BPS, and the Commission rejected almost identical arguments in *New Harquahala*.<sup>20</sup>

In the instant appeal, Cedar Creek reiterates its claim that based on the five factors in *Mansfield*, “it is clear that Cedar Creek’s generator tie-line is not integrated with bulk power system.”<sup>21</sup> While the Registry Criteria does not define the term “integrated transmission element,” the thrust of Cedar Creek’s appeal turns on whether the term “integrated” is defined by the Commission’s interconnection cost allocation policy, as it applies to reliability matters. In its appeal to FERC, Cedar Creek takes issue with the NERC BOTCC Decision holding that the term should be defined from a reliability perspective under FPA Section 215 rather than FPA Section 205:

Moreover, it is well-established that facilities of the type owned by Cedar Creek are not considered to be “integrated” components of the transmission grid under Commission precedent. The Commission has held that “generator lead lines (also known as generation-tie facilities) consist of limited and discrete facilities that do not form an integrated transmission grid, but instead connect at two points – a generation unit and a substation – without any electrical breaks between the two points.”[] The Commission in [*Mansfield*] set forth the five factors it will examine to determine whether a transmission line is integrated with the bulk power system.<sup>22</sup>

As noted in the BOTCC Decision, Cedar Creek’s reliance on *Mansfield* for its position that its transmission facilities are not “integrated” is misplaced. Importantly, *Mansfield* predates NERC’s mandatory and enforceable Reliability Standards and is

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<sup>20</sup> NERC BOTCC Decision at 11.

<sup>21</sup> Cedar Creek FERC Appeal at 10.

<sup>22</sup> Cedar Creek FERC Appeal at 9.

based on Section 205 of the FPA, not Section 215, which governs here. Therefore, *Mansfield* is inapplicable under the facts presented at hand.

The Commission has recognized that it has broader authority under Section 215, particularly as it relates to maintaining reliability of the BPS, and the Commission rejected almost identical arguments in *New Harquahala*, in which Cedar Creek intervened and submitted comments in support of New Harquahala's appeal of its TO and TOP registration.<sup>23</sup>

With respect to interconnection cost allocation policy, the Commission did not take into consideration the applicability of the Reliability Standards. In addition, subsequent to *Mansfield*, 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.'"<sup>24</sup> 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."<sup>25</sup>

In the Commission's Final Rule on the definition of the term bulk electric system, with full knowledge of *Mansfield* and the current registration appeal, FERC revisited the

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<sup>23</sup> *New Harquahala Generating Company, LLC*, "Motion for Leave to Intervene Out of Time and Comments of Cedar Creek Wind Energy, LLC," Docket No. RC08-4-000 (April 3, 2008).

<sup>24</sup> *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).

<sup>25</sup> *Id.*

concepts of “integrated transmission element” and “material impact.”<sup>26</sup> The Commission held that defining such terms is not dispositive with respect 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.<sup>27</sup>

Accordingly, Cedar Creek’s contention that terms and definitions utilized in one section of the FPA (Section 205) must be afforded the same meaning with respect to another section (Section 215) is inaccurate.<sup>28</sup> Cedar Creek 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.”<sup>29</sup> As stated above, the transmission facilities at issue here link Cedar Creek’s generating station (a part of the bulk power system) with the PSCo Keenesburg Switching Station (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

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<sup>26</sup> BES Final Rule at PP 146-150.

<sup>27</sup> *Id.*

<sup>28</sup> Cedar Creek FERC Appeal at 11.

<sup>29</sup> See [www.dictionary.com](http://www.dictionary.com) (last visited Dec. 1, 2010).

transmission elements connected to the bulk power system are not bound by an interconnection pricing policy, which are economic policy decisions and are not based on reliability issues. Therefore, Cedar Creek’s claim that it is “nonsensical” to apply the *Mansfield* factors for integration under FPA Section 205, but not under Section 215 is misguided.<sup>30</sup>

Importantly, in its appeal to FERC, Cedar Creek does not dispute that its interconnection facilities are part of the bulk power system. There also can be no dispute that Cedar Creek must coordinate its operations and activities with respect to the interconnection facilities in synch with the bulk power system.

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.<sup>31</sup> Therefore, the NERC BOTCC Decision properly relied on FPA Section 215 and Commission precedent thereunder in determining whether Cedar Creek’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.<sup>32</sup>

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

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<sup>30</sup> See Cedar Creek FERC Appeal at 9-11.

<sup>31</sup> *Lee County, Florida, et al.*, 121 FERC ¶ 61,143 at P 28 (2007), *reh’g denied*, 122 FERC ¶ 61,141 (2008)(“Lee County”).

<sup>32</sup> 16 U.S.C.A. § 824o(a)(1)(A) and (B).

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.<sup>33</sup>

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*.<sup>34</sup>

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.<sup>35</sup>

Cedar Creek operates 300 MW of generation which is part of the supply that the Reliability Coordinator (“RC”), in whose footprint Cedar Creek 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 Cedar Creek’s 230 kV facilities that “integrate” Cedar Creek’s generation into the BPS, and the loss of either its transmission *or* generation must be anticipated. As with all registry decisions, determinations as to whether generator interconnection facilities must

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<sup>33</sup> *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).

<sup>34</sup> 16 U.S.C.A. § 824o(a)(3) (*emphasis added*).

<sup>35</sup> 16 U.S.C.A. § 824o(a)(4) (*emphasis added*).

necessarily be registered are made on a case-by-case application of the relevant Registry Criteria.

Given the directive from Congress that all users, owners, and operators of the bulk-power system be subject to Section 215 and thus subject to the mandatory and enforceable reliability standards,<sup>36</sup> it is disingenuous for Cedar Creek to claim that its 72 miles of a 76-mile transmission line by which it is interconnected to the bulk power system is not an integrated transmission element. Its 230 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).” As noted above, Cedar Creek does not deny that its interconnection facilities are part of the bulk power system, nor could it 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.<sup>37</sup> 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.”<sup>38</sup>

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

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<sup>36</sup> Order No. 696 at P 27.

<sup>37</sup> *Lee County, Florida*, 121 FERC ¶ 61,143 at P 28.

<sup>38</sup> *Id.*



Section 215 entities that are normally excluded from the Commission's jurisdiction under Part II of the FPA.<sup>39</sup> 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.<sup>40</sup>

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 FPA, or Commission regulations there under, they are not thereby exempt from application of FPA Section 215.<sup>41</sup>

**2. Cedar Creek'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, Cedar Creek 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 Cedar Creek's Assertions, its Interconnection Facilities Are, By Their Nature, an Independent Transmission Element.**

Cedar Creek contends that it:

neither owns or operates an integrated transmission element associated with the bulk power system 100 kV and above, nor owns or operates a transmission element associated with a facility that is included on the Regional Entity's critical facilities list. As a result, Cedar Creek is exempt from registration as a TO or TOP under the plain language of NERC's Registry Criteria.<sup>42</sup>

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<sup>39</sup> Order No. 696 at P 25.

<sup>40</sup> *Id.* at P 25.

<sup>41</sup> 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.”).

<sup>42</sup> Cedar Creek FERC Appeal at 8.

As defined in FPA Section 215, the purpose of a reliability standard is to provide for *reliable operation of the bulk-power system*.<sup>43</sup> 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)*.

Cedar Creek does not dispute that its interconnection facilities are part of the bulk power system, and, by definition, they are, therefore, an *element* of the BPS. Indeed, Cedar Creek's 230 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), Cedar Creek must comply with reliability standards that are designed to ensure reliable operation of its transmission facilities that are part of the BPS. Because the 230 kV line is a transmission element, the applicable Reliability Standards are the TO/TOP Reliability Standards. It is appropriate, therefore, that Cedar Creek comply with Reliability Standards applicable to ensuring reliable operation of its transmission facilities.

Even though Cedar Creek suggests that these activities are more appropriately the responsibility of PSCo,<sup>44</sup> NERC notes that PSCo is already registered as the TOP for its 4-mile portion of the 76-mile line at issue. At issue, however, is that Cedar Creek is the sole TOP and TO for its 72-mile portion of the transmission line. While Cedar Creek may enter into agreements with third parties to assume such obligations on its behalf, in accordance with Sections 501, 507 and 508 of the NERC *Rules of Procedure*, it has not

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<sup>43</sup> 16 U.S.C.A. § 824o(a)(3) (*emphasis added*).

<sup>44</sup> Cedar Creek FERC Appeal at 3 and 17.

done so. Until such time as it does, Cedar Creek is appropriately the entity that must comply.

Still, Cedar Creek insists that it has no operational control because, “PSCo owns, controls and maintains the generator tie-lines, the circuit breakers, the line disconnects and the line ground disconnects in the Keenesburg Switching Station.”<sup>45</sup> Yet, Cedar Creek does not dispute that the agreement between Cedar Creek and PSCo requires Cedar Creek to maintain its interconnection facilities. In addition, that agreement predates FPA Section 215. As such, the agreement does not deal with accountability under FPA Section 215 and the Reliability Standards.

In any event, 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. Cedar Creek does not explain why it cannot enter into an agreement with PSCo to transfer its obligations for the transmission facilities. Someone must be accountable for the 72 miles of a 76-mile transmission line and, in the absence of an agreement by which some else takes responsibility, that someone is Cedar Creek.

If Cedar Creek were merely required to comply with the GO/GOP requirements for its transmission line, the likely result if Cedar Creek 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

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<sup>45</sup> *Id.* at 17.

TO. Cedar Creek 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 Cedar Creek to avoid responsibility for such requirements. The NERC BOTCC Decision should be affirmed.

**3. The NERC BOTCC Decision Properly Concluded that Cedar Creek’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.<sup>46</sup>

In the instant case, the NERC BOTCC Decision concluded that Cedar Creek meets the Registry Criteria to be registered as a TO/TOP,<sup>47</sup> a fact that Cedar Creek refuses to accept. Rather, Cedar Creek asserts that it is not pivotal to the reliability of the BPS because its facility is powered by wind, which is “an uncontrollable and intermittent resource. As a result, the amount of energy the Cedar Creek Facility is able to generate is largely dependent on circumstances outside of its control (*e.g.*, wind conditions).”<sup>48</sup>

According to Cedar Creek, “the loss of the Cedar Creek Facility or the generator tie-line would not result in the loss of an element that ‘is integral to the reliability of the BPS’,” therefore, it should be exempt from the TO/TOP registration criteria.<sup>49</sup> Yet, the

Commission has found that:

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<sup>46</sup> Order No. 696 at P 30.

<sup>47</sup> NERC BOTCC Decision at 8-14.

<sup>48</sup> Cedar Creek FERC Appeal at 10.

<sup>49</sup> Cedar Creek FERC Appeal at 9.

[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].<sup>50</sup>

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 impact on the bulk-power system.<sup>51</sup> Here, however, Cedar Creek 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 Cedar Creek's claims that it would not have a material impact on the BPS.<sup>52</sup> The NERC BOTCC Decision found, to the contrary, that Cedar Creek's transmission facilities have a material impact on the BPS, because the loss of the Cedar Creek interconnection line would affect Cedar Creek's ability to put its power onto the transmission grid.<sup>53</sup> In addition, Cedar Creek claims that the Cedar Creek facility has not been designated as being critical to support the grid, although Cedar Creek's 230 kV transmission line connects its 300 MW generating facility to the PSCo transmission system. As set forth in the NERC BOTCC Decision:<sup>54</sup>

WECC notes that "these arguments [relate[]] to the materiality of the generating facility, not the Cedar Creek transmission line on which Cedar Creek's TO and TOP registration is based."[] WECC also argues that "improper maintenance and operation of the Cedar Creek 230kV transmission line and associated transmission equipment could have an impact on reliability far beyond the loss of the generating facility."

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<sup>50</sup> See *Lee County, Florida*, 122 FERC ¶ 61,141 at P 13.

<sup>51</sup> Order No. 696 at P 33.

<sup>52</sup> NERC BOTCC Decision at 10-11.

<sup>53</sup> *Id.* at 10.

<sup>54</sup> *Id.* at 10-11.

Yet, in its appeal to FERC, Cedar Creek confuses reliable operation of interconnected BPS elements with resource adequacy. The failure of that line certainly would affect the reliable operation of the BPS and the result would not merely be “that Cedar Creek could not execute sales of power.”<sup>55</sup> 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 Cedar Creek is not Registered as a TO/TOP.**

Cedar Creek also argues that there will be no gap in reliability if Cedar Creek is not registered as a TO/TOP, because PSCo, through its operation of its 4-mile portion of the interconnection facilities, really operates the entire 76-mile line.<sup>56</sup> To the contrary, the BOTCC Decision noted that in order, “[t]o ensure that Cedar Creek is held accountable for the specific requirements and Reliability Standards applicable to TOs and TOPs, it is necessary that Cedar Creek be registered for the TO and TOP functions.”<sup>57</sup> Yet, Cedar Creek dismisses arguments that it is material to the BPS as “patently wrong.”<sup>58</sup>

As the BOTCC Decision notes, there are Reliability Standards that are applicable only to a TO or TOP that apply here.<sup>59</sup> No other entity, such as PSCo, has agreed to assume Cedar Creek’s obligations as a TO/TOP and there is no duplication in coverage of TO/TOP compliance with respect to Cedar Creek’s interconnection facilities. Because

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<sup>55</sup> Cedar Creek FERC Appeal at 10.

<sup>56</sup> Cedar Creek FERC Appeal at 17.

<sup>57</sup> NERC BOTCC Decision at 12.

<sup>58</sup> Cedar Creek FERC Appeal at 8.

<sup>59</sup> NERC BOTCC Decision at 12.

Cedar Creek is the only TO/TOP for its facility, there will necessarily be a gap if Cedar Creek does not comply.

Yet, 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, there are already mechanisms in place for an entity to identify 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 Cedar Creek 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.

Of particular note is that Cedar Creek, 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 other functions (GO or GOP) for which Cedar Creek is registered, thus resulting in a gap if Cedar Creek is not registered as a TO or TOP for its 230 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 Cedar Creek 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 Cedar Creek avoids compliance with the mandatory TO/TOP Reliability Standards.

In its appeal to the NERC BOTCC, Cedar Creek observed that, of 100 wind-powered generation facilities registered in NERC, it is aware of only one other wind-powered generation facility that has been required to register as a TO and TOP, Milford Wind Corridor, LLC.<sup>60</sup> As noted in the BOTCC Decision, registration decisions are based on individual facts and circumstances. While registered entities have an obligation to notify NERC and Regional Entities of the functions they perform, NERC and Regional Entities have the ability to review registrations on an ongoing basis.

Finally, Cedar Creek 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 states, “that a “[GO] or [GOP] that owns and/or operates a Generator Interconnection Facility . . . should not be registered as

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<sup>60</sup> NERC BOTCC Decision at 13 (Cedar Creek Response to WEEC Assessment at 6).



a [TO] or [TOP] by virtue of owning or operating its Generator Interconnection Facility” and that “no existing [TOP] requirements should apply to [GOPs] as a result of the Generator Interconnection Facility.”<sup>61</sup> Yet, as the BOTCC Decision notes, “neither NERC nor FERC have issued any guidance or revised any rules or regulations to implement any of this project’s recommendations.”<sup>62</sup> Cedar Creek also references a WECC report regarding a proposal to exclude “Generator Interconnection Elements” from the bulk electric system definition; however, the BES Final Rule considered and rejected such regional discretion and variations and observed that the “present definition” of BES “applies to transmission, generation and interconnection facilities.”<sup>63</sup>

Therefore, Contrary to Cedar Creek’s claims, NERC dispels the possibility that an un-adopted “Final Report” should or would have any bearing on NERC’s interpretation of the Registry Criteria or Cedar Creek’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.<sup>64</sup>

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<sup>61</sup> Cedar Creek FERC Appeal at 12. (citing Final Report at 3-5).

<sup>62</sup> NERC BOTCC Decision at 12 (quoting WECC Assessment at 5).

<sup>63</sup> BES Final Rule at PP 67, 144.

<sup>64</sup> *Id.* 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,

Gerald W. Cauley  
President and Chief Executive Officer  
David N. Cook  
Sr. Vice President and General Counsel  
North American Electric Reliability Corporation  
116-390 Village Boulevard  
Princeton, NJ 08540-5721  
(609) 452-8060  
(609) 452-9550 – facsimile  
david.cook@nerc.net

/s/ Rebecca J. Michael  
Rebecca J. Michael  
Assistant General Counsel  
Willie L. Phillips, Jr.  
Attorney  
North American Electric Reliability  
Corporation  
1120 G Street, N.W.  
Suite 990  
Washington, D.C. 20005-3801  
(202) 393-3998  
(202) 393-3955 – facsimile  
rebecca.michael@nerc.net  
willie.phillips@nerc.net

**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.*  
Willie L. Phillips, Jr.

*Attorney for North American Electric  
Reliability Corporation*