

FERC Reaffirms That Wind Farm Tie-Lines Can Be Subject to Transmission Reliability Standards

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The Federal Energy Regulatory Commission (FERC), in [an order dated Nov. 17, 2011](#) (Nov. 17 Order), reaffirmed on rehearing that the owners and operators of two wind farms can be required to comply with mandatory electric reliability standards for transmission facilities, because they own and operate tie-lines that connect their generators to the transmission grid. FERC stated that this determination was fact-specific and not meant to apply the industry generally, but it is difficult to see how FERC's ruling here would not impact future analyses in other generator tie-line situations.

Pursuant to the broad statutory language of section 215 of the Federal Power Act, "[a]ll users, owners and operators of the bulk-power system" must comply with mandatory electric reliability standards. The North American Electric Reliability Corporation (NERC) and FERC established procedures to specify which entities are required to comply. NERC developed categories of entities that are subject to the standards, including, for example, transmission owners and operators (TO/TOPs) and generator owners and operators (GO/GOPs). Entities that fall within NERC's criteria for a category are placed on a Compliance Registry that signifies they are subject to at least some of the reliability standards. Each category has a specific set of reliability standards that must be complied with.

Ever since the mandatory standards were implemented, there has been a debate about whether GO/GOPs that own sole-use radial transmission lines to deliver power to a grid interconnection must also register as TO/TOPs, and thus be subject to the additional reliability standards applicable to the transmission category. For the most part, generators have resisted the additional compliance burden, arguing that their radial tie-lines were not part of the integrated grid. In its first decision on this issue in 2008, FERC upheld NERC's decision to register *New Harquahala Generating Company* as a TO/TOP based on its ownership of a 500 kV interconnection line for its 1,092 MW gas-fired plant. In that case, the interconnecting substation for this large generator was a major hub where over 10,000 MW were connected, including the largest nuclear power plant in the U.S., and there had been a past incident where a fault at the interconnecting substation caused units of the nearby nuclear station to trip. Therefore, FERC found, based on these specific facts, that the tie-line had the potential to impact reliability.

In its Nov. 17 Order, FERC addressed rehearing requests of its June 16, 2011 order, which held that generator tie-lines for two wind farms, Cedar Creek and Milford, were material to the reliability of the Bulk-Power System, and that NERC was correct to register their owners as being subject to transmission reliability standards. In response to assertions on rehearing that FERC did not apply the same rigorous analysis of the facts to determine system impacts as it did in the *New Harquahala* case, FERC stated that *New Harquahala* was not meant to establish registration criteria for all generator tie-lines, but was a fact-specific analysis of reliability impact. FERC asserted that it also conducted a fact-specific analysis for Cedar Creek and Milford.

FERC's Nov. 17 Order rejected arguments that FERC erred in not discussing whether the tie-lines were "integrated transmission elements," which is part of NERC's specific criteria for when a transmission line was subject to reliability standards. FERC said it did not have to discuss this, because it is sufficient to find that the facilities are "material to the reliability of the Bulk Power System," citing to notes to NERC's registration criteria. FERC said the facts here showed such materiality, so its decision was correct.

FERC refused to give credence to system impact studies and engineering affidavits that found no system impacts caused by the tie-lines. FERC said these analyses did not address system impacts that result from protection system miscoordination or protection system failure. Indeed, the most significant point that FERC relied on to show a "reliability gap" was the absence of coordination and communication between operators at both ends of the tie-line with respect to monitoring protection systems and switching the line in and out of service. FERC asserted that it was not sufficient to have trained operators at only the interconnection point with the grid, but they also need to have control at the generator end of the tie-line.

FERC's Nov. 17 Order clarified that the order was not intended to prejudge NERC's current effort, in its Project 2010-07, to revise the Reliability Standards to generically clarify which standards and requirements apply to the owners and operators of generation interconnection facilities. FERC rejected a request that it direct NERC to expedite Project 2010-07. FERC also clarified that its analysis in this case does not apply to any generator other than Cedar Creek

and Milford.

Despite FERC's insistence that its Nov. 17 order is intended only to apply to the two specific projects before it, FERC's analysis is bound to have an effect on the development of law in this area. The facts concerning the two wind project interconnections are comparable to many generators, and offer a much less obvious potential impact on reliability than did the facts in *New Harquahala*. FERC's holding that the compliance obligation applies if a facility is "material to the reliability of the Bulk Power system," regardless of whether it is an integrated transmission element, broadens the universe of potential compliance entities beyond NERC's original criteria. It might be argued that FERC's criteria encompass more entities than the statute intended. The statutory criteria require that "users, owners and operators of the bulk-power system" must comply, not owners or operators of facilities that might impact the bulk-power system.

In addition, FERC's emphasis that reliability concerns arise from not having sufficient coordination on both ends of a tie line with respect to oversight of protection systems and switching establishes a precedent on these issues that will likely be applied in future cases. Although FERC has said that it does not want to prejudge NERC's Project 2010-07 effort to clarify which transmission standards should be applied to generators with tie-lines, FERC has to approve any changes to reliability standards, so those involved in the NERC process should not ignore FERC's analyses here.

For now, generators other than Cedar Creek and Milford need do nothing specific as a result of FERC's Nov. 17 Order, and do not need to voluntarily register as TO/TOPs. However, it is possible that the Regional Reliability Organizations may take a more aggressive approach to requiring generators to register as TO/TOPs as a result of the order. FERC's Nov. 17 Order can be appealed to the courts, but it is not known whether that will occur.

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