

**Board of Trustees Compliance Committee
Decision on Appeals of Compliance Registry Determinations
(Issued October 6, 2010)**

In this decision, the NERC Board of Trustees Compliance Committee affirms the decision of the Western Electricity Coordinating Council (“WECC”) to include Cedar Creek Wind Energy, LLC (“Cedar Creek”) on the NERC Compliance Registry as a Transmission Owner (“TO”) and Transmission Operator (“TOP”).

Statement of Appeal

On April 19, 2010, Cedar Creek filed an appeal of its inclusion on the NERC Compliance Registry within the WECC Region for the functions of TO and TOP.

Cedar Creek is operated and maintained by the Bluarc Management Group LLC. It is located east of Grover in north-central Weld County, Colorado. Cedar Creek has a capacity of 300 MW and has entered into a Standard Large Generator Interconnection Agreement (“LGIA”) with the Public Service Company of Colorado (“PSCo”). In addition, PSCo purchases 100 percent of the electric energy produced by Cedar Creek at market-based rates under a Renewable Energy Purchase Agreement.¹

Cedar Creek owns 72 miles of a 76-mile, 230 kV, radial generation tie-line extending from the Cedar Creek Facility to an interconnection point with PSCo approximately 4 miles from PSCo’s Keenesburg Switching Station and PSCo owns the remaining 4 miles of the tie-line, which ties into the Keenesburg Switchyard. According to Cedar Creek, PSCo has full ownership and “full control of the entire line, line breaker, line disconnects and ground disconnects in the Switch Station.”² Cedar Creek asserts that it does not have operational control over any portion of the generator tie-line, rather PSCo, through its operation of the facilities on its side of the generator tie-line, operates the entire 76-mile generator tie-line.

Cedar Creek asserts that it is exempt from registration as a TO and TOP because it does not meet the requirements of the NERC *Statement of Compliance Registry Criteria (Rev. 5.0)* (“*NERC Registry Criteria*”). In particular, Cedar Creek states that, while it owns a generator tie-line that is higher than 100 kV, its generator interconnection facilities are not integrated with the bulk power system (“BPS”) or associated with a facility included on WECC’s critical facility list. Cedar Creek contends that its generator tie-line is not integrated with the bulk power system based on the five factors articulated in *Mansfield*

¹ Cedar Creek Supplemental Information at 1-2 (May 24, 2010).

² Cedar Creek Supplemental Information at 2; Cedar Creek Response to WECC Assessment at 4-5 (June 21, 2010).

Municipal Electric Department v. New England Power Company,³ as well as other Federal Energy Regulatory Commission (“FERC” or “Commission”) precedent.

Cedar Creek also contends that its registration is not necessary for the reliable operation of PSCo’s transmission system. Cedar Creek argues that since its facilities are powered by wind, an “uncontrollable and intermittent” energy resource, it is not relied upon as a source of reliability for the bulk power system.⁴ Cedar Creek states that a failure on its generation tie-line would have no material impact on the BPS other than it could not execute sales of power or move that power onto PSCo’s transmission system, which it states is no different than when the wind does not blow and it provides no energy.

Cedar Creek also claims that it should be deregistered as a TO and TOP due to the differences between its facilities and those involved in *New Harquahala*,⁵ in which the Commission denied a Compliance Registry appeal for TO and TOP designations.

Cedar Creek asserts that it is properly registered as a GO and GOP and it is not necessary for it to be registered as a TO and TOP. Cedar Creek contends that, even if it is determined that it is a TO, its registration as a TOP should be reversed. According to Cedar Creek, PSCo, through its operation of the facilities on its side of the generator tie-line, operates the entire 76-mile generator tie-line. Cedar Creek states that PSCo is already registered as a TOP and has NERC Certified Operators as required under applicable NERC Reliability Standards.⁶

Cedar Creek also observes that, of 100 wind-powered generation facilities registered in NERC, 13 of which are in WECC, 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 Phase I, LLC.

Rule

Rule 501.1.2.3 of NERC’s *Rules of Procedure* states that, “[an] entity directly connected to the bulk power system selling, purchasing, or transmitting electric energy over the bulk power system will generally be considered a user of the bulk power system, unless the entity’s actions or facilities [do] not have a material impact on the bulk power system.” Rule 501.1.2.2 states that the BPS includes all “electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher.” Rule 501.1.4 further provides that, “[f]or all geographical or electrical areas of the bulk power system, the registration process shall ensure that (1) no areas are lacking any entities to perform the duties and tasks identified in and required by the reliability standards to the fullest extent practical,

³ *Mansfield Municipal Electric Department and North Attleborough Electric Department v. New England Power Company*, 97 FERC ¶ 61,134 at 5 (2001) (“Mansfield”).

⁴ Cedar Creek Supplemental Information at 7; Cedar Creek Response to WECC Assessment at 4.

⁵ *New Harquahala Generating Company, LLC*, 123 FERC ¶ 61,173 (2008) (“New Harquahala”).

⁶ Cedar Creek Supplemental Information at 8.

and (2) there is no unnecessary duplication of such coverage or of required oversight of such coverage.”

In addition, NERC maintains a Compliance Registry of the BPS users, owners and operators that are subject to approved Reliability Standards.

The criteria set forth in the *NERC Registry Criteria* that apply to this case are in Section II and Section III(d). Section II defines a TO as an 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.”

Section III(d) applies to TOs and TOPs. Entities that meet the definitions of TO and TOP in Section II should be excluded from the Compliance Registry list if they do not meet one of the two criteria below:

III.d.1 An entity that owns/operates an integrated transmission element associated with the bulk power system 100 kV and above, or lower voltage as defined by the Regional Entity necessary to provide for the reliable operation of the interconnected transmission grid; or

III.d.2 An entity that owns/operates a transmission element below 100 kV associated with a facility that is included on a critical facilities list that is defined by the Regional Entity. *[Exclusion: A transmission owner/operator will not be registered based on these criteria if responsibilities for compliance with approved NERC reliability standards or associated requirements including reporting have been transferred by written agreement to another entity that has registered for the appropriate function for the transferred responsibilities, such as a load-serving entity, G&T cooperative or joint action agency as described in Sections 501 and 507 of the NERC Rules of Procedure.]*

The *NERC Registry Criteria* also provides that any entity reasonably deemed material to the reliability of the bulk power system will be registered, irrespective of other considerations.⁷

Procedures

On April 19, 2010, Cedar Creek submitted a formal appeal to NERC regarding its registration as a TOP and TO on the NERC Compliance Registry. On May 7, 2010, NERC acknowledged receipt of Cedar Creek’s appeal and requested that Cedar Creek provide any additional information in support of the appeal within ten days of the date of the letter. On May 13, 2010, Cedar Creek requested a one-week extension of time, until May 24, 2010, to submit supplemental information. On May 14, 2010, NERC granted

⁷ *NERC Registry Criteria* at 3.

this request, and also granted WECC an extension of time until June 3, 2010, to file its regional assessment of the appeal. On May 24, 2010, Cedar Creek provided additional information concerning its facilities and arguments in support of its appeal. On June 10, 2010, WECC submitted a Regional Assessment (“WECC Assessment”) detailing the basis for its registration of Cedar Creek as a TO and TOP and its supporting argument. On June 21, 2010, Cedar Creek provided a response to WECC’s Assessment. On August 3, 2010, the NERC Board of Trustees Compliance Committee considered the Cedar Creek appeal, WECC’s Assessment, and Cedar Creek’s Response, in accordance with the provisions of Rule 501 of NERC’s *Rules of Procedure*.

Statement of Facts

Cedar Creek’s Position

Cedar Creek notes that Section III of the *NERC Registry Criteria* provides, “Entities identified in Part II above as being subject to registration as a...TO, or TOP should be excluded from the registration list for these functions if they do not meet any of the criteria listed below.”⁸

For TOs/TOPs:

III.d.1 An entity that owns/operates an integrated transmission element associated with the bulk power system 100 kV and above, or lower voltage as defined by the Regional Entity necessary to provide for the reliable operation of the interconnected transmission grid; or

III.d.2 An entity that owns/operates a transmission element below 100 kV associated with a facility that is included on a critical facilities list that is defined by the Regional Entity. *[Exclusion: A transmission owner/operator will not be registered based on these criteria if responsibilities for compliance with approved NERC reliability standards or associated requirements including reporting have been transferred by written agreement to another entity that has registered for the appropriate function for the transferred responsibilities, such as a load-serving entity, G&T cooperative or joint action agency as described in Sections 501 and 507 of the NERC Rules of Procedure.]*

Cedar Creek argues that the *NERC Registry Criteria* requires that an entity must fulfill the criteria in Section II **and** one of the two provisions in Section III: “An entity that falls within the definition of a TO/TOP but does not meet one or both of the additional criteria set forth above, is explicitly excluded from registration with NERC as a TO/TOP.”⁹

⁸ See Section III, *NERC Registry Criteria*.

⁹ Cedar Creek Response to WECC Assessment at 2; Cedar Creek Supplemental Information at 7.

Cedar Creek argues that its transmission facility is not integrated with the BPS and therefore does not qualify for TO/TOP registration under the *NERC Registry Criteria*.¹⁰ As support for this argument, Cedar Creek references *Mansfield*,¹¹ which introduced five factors to determine whether a transmission facility was integrated. These factors include:

- (i) [w]hether the facilities are radial, or whether they loop back into the transmission system;
- (ii) [w]hether energy flows only in one direction, . . . or in both directions . . . ;
- (iii) [w]hether the transmission provider is able to provide transmission service to itself or other transmission customers . . . over the facilities in question;
- (iv) [w]hether the facilities provide benefits to the transmission grid in terms of capability or reliability, and whether the facilities can be relied on for coordinated operation of the grid; and
- (v) [w]hether an outage on the facilities would affect the transmission system.¹²

According to Cedar Creek, its generator tie-line facilities: (i) are radial; (ii) allow it to receive station power from the grid but this does not constitute bi-direction energy flow; (iii) do not serve other transmission customers; (iv) connect Cedar Creek to the transmission grid but do not provide benefits to PSCo in terms of capability or reliability and cannot be relied on for coordinated operation of the grid; and (v) would not affect the PSCo transmission system if there were an outage on Cedar Creek’s generator tie-line.¹³

Cedar Creek states that a failure on its generation tie-line would have no material impact on the BPS other than it could not execute sales of power or move that power onto PSCo’s transmission system, which it states is no different than when the wind does not blow and it provides no energy.¹⁴

Cedar Creek also cites the *Final Report from the Ad Hoc Group for Generator Requirements at the Transmission Interface*, which recommends that any “[GO] or [GOP] that owns and/or operates a Generator Interconnection Facility . . . should not be registered as a [TO] or [TOP] by virtue of owning or operating its Generator Interconnection Facility” and that “no existing [TOP] requirements should apply to

¹⁰ Cedar Creek Supplemental Information at 5-6; Cedar Creek Response to WECC Assessment at 2-3.

¹¹ *Mansfield* at 5.

¹² *Id.*; Cedar Creek Supplemental Information at 5.

¹³ Cedar Creek Supplemental Information at 5-6.

¹⁴ Cedar Creek Supplemental Information at 7; Cedar Creek Response to WECC Assessment at 4.

[GOPs] as a result of the Generator Interconnection Facility.”¹⁵ Such a recommendation, Cedar Creek argues, supports the conclusion that a generator tie-line such as Cedar Creek’s should not be registered because it “would be explicitly excluded from the definition of an ‘integrated transmission element.’”¹⁶

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). For this reason, wind-powered generation facilities, like Cedar Creek, are not relied upon to provide reliability for the bulk power system.”¹⁷

Cedar Creek also argues that it should be deregistered as a TO and TOP because of the dissimilarities between its facilities and those involved in *New Harquahala*, in which FERC rejected an entity registration appeal for the TO/TOP functions. Cedar Creek claims that:

The New Harquahala Facility is a combined cycle generation facility and has a capacity of approximately 1,092 MW. Both of these characteristics increase New Harquahala’s ability to contribute to the reliability of the bulk power system. In contrast, Cedar Creek is a wind-powered generation facility and has a maximum capacity of only 300 MW, both characteristics which demonstrate that Cedar Creek’s generation is not needed to ensure the reliability of the bulk power system. Additionally, New Harquahala shares a bus with a 4,000 MW nuclear power plant that was considered to be critical to the reliability of the bulk power system. Cedar Creek, on the other hand, doesn’t share a bus with any other entity, particularly one that is included on WECC’s list of critical facilities.¹⁸

Cedar Creek asserts that because FERC’s decision regarding *New Harquahala* was based on system characteristics that are distinguishable from Cedar Creek’s, its appeal for deregistration as a TO and TOP should be granted.

Cedar Creek contends that, even if it is determined that it is a TO, its registration as a TOP should be reversed. According to Cedar Creek, PSCo, through its operation of the facilities on its side of the generator tie-line, operates the entire 76-mile generator tie-line. Cedar Creek states that PSCo is already registered as a TOP and has NERC Certified

¹⁵ Cedar Creek Supplemental Information at 6 (citing *Final Report from the Ad Hoc Group for Generator Requirements at the Transmission Interface* at 3-4, available at: [//www.nerc.com/files/GO-TO_Final_Report_Complete_2009Nov16.pdf](http://www.nerc.com/files/GO-TO_Final_Report_Complete_2009Nov16.pdf)).

¹⁶ Cedar Creek Supplemental Information at 6.

¹⁷ Cedar Creek Supplemental Information at 7; Cedar Creek Response to WECC Assessment at 4.

¹⁸ Cedar Creek Response to WECC Assessment at n.13 (internal citations omitted).

Operators as required under applicable NERC Reliability Standards.¹⁹ Cedar Creek contends that it should not be registered for facilities operated by PSCo.

Cedar Creek states it has requested but has not received clarification from WECC as to what the applicable Reliability Standards are or what its obligations are with respect to self-certifications.²⁰

WECC's Position

WECC asserts that it registered Cedar Creek for the functions of TO and TOP based on Rule 501 of the *NERC Rules of Procedure* and Sections I, II, and III of the *NERC Registry Criteria*.

Section I of the *NERC Registry Criteria* defines the BPS as:

As defined by the Regional Reliability Organization, the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition²¹.

WECC found that Cedar Creek qualifies as a user, owner or operator of the BPS, as defined by Section I of the *Registry Criteria* because “it owns and maintains transmission facilities that are operated at 100 kV or higher.”²¹ WECC also found that Cedar Creek meets the definition of a TO in Section II of the *NERC Registry Criteria* because “it owns and maintains transmission facilities that are operated at 100 kV or higher.”²² WECC further found that Cedar Creek is connected to the bulk electric system via the transmission line that ties into PSCo’s portion of the line that connects to PSCo’s Keenesburg Switchyard.

WECC also found that Cedar Creek meets the definition of a TOP in Section II of the *Registry Criteria* because Cedar Creek is operates 72 miles of a 76-mile long, 230 kV transmission line and related facilities. Specifically, according to WECC, “Cedar Creek is by default the TOP for these facilities unless the responsibility for this function has been transferred to another entity.”²³ Moreover, consistent with Section III(d) of the *NERC Registry Criteria*, WECC found that Cedar Creek does not qualify for exemption or exclusion from registration as either a TO or TOP and that no other entity, including PSCo, has accepted compliance responsibility as a TOP for Cedar Creek. To the contrary, WECC determined that Cedar Creek’s LGIA with PSCo obligates Cedar Creek

¹⁹ Cedar Creek Supplemental Information at 8.

²⁰ Cedar Creek Supplemental Information at 2-4; Cedar Creek Response to WECC Assessment at 6.

²¹ WECC Assessment at 3.

²² *Id.*

²³ *Id.* at 4.

to operate and maintain the interconnection facilities owned by Cedar Creek, which includes the 72 miles of 230 kV transmission line.

WECC did not find persuasive Cedar Creek's assertion that its transmission facility is not "integrated" with the BPS, based on the factors articulated in *Mansfield*.²⁴ WECC determined that the *Mansfield* order addressed differences between types of facilities for the purpose of ratemaking based on Section 205 of the Federal Power Act ("FPA") and not Section 215, which was outside of the reliability regime now in place. WECC relied on FERC's order in *New Harquahala* in support of its position on the integration issue. As noted above, WECC concluded that Cedar Creek's interconnection facilities interconnect Cedar Creek to the transmission grid by connecting them to PSCo's transmission system. WECC noted that Cedar Creek's transmission line connects Cedar Creek's generation facility to PSCo's transmission system, which are both material to the grid as reflected by their individual registrations.

With regard to the 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) cited by Cedar Creek, WECC responded that recommendations from the report have not been adopted by NERC or FERC and no order or rule has been issued by FERC concerning the project, so the project "currently has no bearing at this time on entity registration decisions."²⁵

While WECC acknowledged there were differences in Cedar Creek and New Harquahala, it also noted similarities in that both own high voltage transmission lines that connect a substantial amount of generation to the BES and both entities own high voltage switching equipment that must be properly operated and maintained in order to prevent events that could impact the BES.²⁶

WECC determined that there would be a gap in registration in the event that Cedar Creek is not registered as a TO and TOP.

Analysis

After review of the arguments advanced in the Cedar Creek Appeal, the WECC Assessment, and the Cedar Creek Response to the WECC Assessment, the NERC Board of Trustees Compliance Committee has determined that Cedar Creek is properly registered as a TO and TOP in the WECC region. Cedar Creek objects to its registration as a TO and TOP on the grounds that it does not meet the criteria and it raises several policy issues in support of its claim that it should not be registered as a TO and TOP. These arguments do not support removal of Cedar Creek from the NERC Compliance Registry. Each is addressed in turn below.

²⁴ *Mansfield* at 5.

²⁵ WECC Assessment at 5.

²⁶ *Id.* at 5-6.

1. *Importance of Cedar Creek Transmission Facilities*

The Commission certified NERC as the Electric Reliability Organization (“ERO”) pursuant to Section 215 of the FPA.²⁷ NERC defines the bulk-electric system as:

the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition.

Section I of the *NERC Registry Criteria* provides that entities that use, own or operate elements of the bulk electric system pursuant to NERC’s definition of the bulk-electric system are candidates for registration. 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.”

Thus, to be a TO and TOP, Cedar Creek must, as an initial matter, own and operate transmission facilities. Specifically, to meet the requirements of Section III.d.1 of the *NERC Registry Criteria*, Cedar Creek must own and operate an integrated transmission element associated with the BPS 100 kV or above. By its own admission, Cedar Creek meets these requirements. 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 BPS.²⁸

Cedar Creek admits that its interconnection facilities are transmission facilities that connect its generation facilities with the PSCo transmission system. 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 point approximately four miles from the [Keenesburg] Switching

²⁷ *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh’g and compliance*, 117 FERC ¶ 61,126 (2006), *order on compliance*, 118 FERC ¶ 61,030, *order on clarification and reh’g*, 119 FERC ¶ 61,046 (2007); 16 U.S.C. § 824o.

²⁸ See *New Harquahala* at P 44 (“In making this finding, [FERC] 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.’”).

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.*²⁹

Cedar Creek does not dispute that it meets the 100 kV and above requirement because Cedar Creek owns 230 kV transmission facilities. Still, Cedar Creek claims that it should be excluded from the registration list for TO/TOP functions because it does not meet either of the two applicable criteria for TOs/TOPs in Sections III.d.1 and III.d.2 of the *NERC Registry Criteria*.

That is, Cedar Creek contends that its facilities are not an integrated transmission element nor are they associated with a facility on a critical facilities list.³⁰ Yet, Cedar Creek is material to the BPS, as evidenced by its registration as a GO and GOP. PSCo similarly is material to the BPS as it is registered as a TO and TOP because it owns and operates BPS assets. 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.

Moreover, Cedar Creek's transmission facilities have a material impact on the BPS. Cedar Creek admits that if its generator tie-line were lost, "Cedar Creek could not execute sales of power or move that power onto PSCo's transmission system."³¹ However, Cedar Creek argues that because it is a wind facility, it is not material to the reliability of the bulk power system. In addition, Cedar Creek states that the Cedar Creek facility has not been designated as being critical to support the grid, a reliability must-run unit, or as a blackstart unit.³² Yet, 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."³³ WECC also argues that "improper maintenance and operation of the Cedar Creek 230kV transmission line and associated

²⁹ Cedar Creek Supplemental Information at 2 (*emphasis added*).

³⁰ Cedar Creek Supplemental Information at 4; Cedar Creek Response to WECC Assessment at 4-5.

³¹ Cedar Creek Supplemental Information at 7; Cedar Creek Response to WECC Assessment at 4.

³² Cedar Creek Supplemental Information at 7.

³³ WECC Assessment at 5.

transmission equipment could have an impact on reliability far beyond the loss of the generating facility

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*.

Cedar Creek 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. Cedar Creek claims that its interconnection facilities are radial transmission lines.³⁴ This argument does not support removal of Cedar Creek 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.

Citing factors such as wind, generator size, the amount of generation and the connecting substation, Cedar Creek attempts to distinguish its facilities from the New Harquahala facilities. While WECC acknowledges the factual differences between the two facilities, WECC also notes the similarities between the transmission facilities, including ownership of high voltage transmission lines and high voltage switching equipment.³⁵

In response to Cedar Creek's other arguments, there is no requirement in the registration criteria that Cedar Creek's generation facility be a must-run unit, nor is there a requirement that it serve load or provide transmission service to third parties. It requires only that an entity own a transmission element 100 kV and above that is integrated with the BPS. This requirement is met.

Cedar Creek cites the NERC *Final Report from the Ad Hoc Group for Generator Requirements at the Transmission Interface*, which states, that a "[GO] or [GOP] that owns and/or operates a Generator Interconnection Facility . . . should not be registered as 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

³⁴ Cedar Creek Supplemental Information at 2.

³⁵ WECC Assessment at 5-6.

Generator Interconnection Facility.”³⁶ However, WECC points out that “neither NERC nor FERC have issued any guidance or revised any rules or regulations to implement any of this project’s recommendations.”³⁷ The 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 the Cedar Creek registration.

2. *Reliability Gap*

The committee does not find compelling Cedar Creek’s argument that it already complies with many of the TO and TOP requirements because it is registered as a GO and GOP and therefore there is no need to register as a TO and TOP. Cedar Creek is subject to the GO and GOP requirements and applicable Reliability Standards because of its ownership and operation of a generating facility. Cedar Creek is subject to TO and TOP requirements because of its ownership and operation of transmission facilities. Thus, contrary to Cedar Creek’s assertion, only those generators that own integrated transmission elements as specified in the registration criteria will be registered for the TO and TOP functions.

While GOs, GOPs, TOs and TOPs may be subject to certain of the same requirements and Reliability Standards, these apply based on the nature of the facilities or entities at issue in recognition of the many different types of entities, facilities and relationships that can exist. To 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.

Indeed, there are NERC Reliability Standards that are applicable only to a TO or TOP that apply here. For example, Cedar Creek’s facility meets the 200 kV requirements for application of FAC-003 vegetation management requirements. FAC-003 only applies to a TO. There would be a gap in registration if Cedar Creek were not found to be a TO because no other entity would be obligated to perform vegetation management of the 72 miles of transmission line owned by Cedar Creek.

As noted above, a TO/TOP will not be registered if responsibilities for compliance with approved NERC Reliability Standards or associated requirements including reporting have been transferred by written agreement to another entity that has registered for the appropriate function for the transferred responsibilities. That appears not to be the case here. WECC found, and Cedar Creek does not dispute, that the agreement between Cedar Creek and PSCo states that Cedar Creek is to maintain the interconnection facilities. Cedar Creek could still pursue a written agreement with PSCo to transfer compliance responsibility.

3. *Compliance*

³⁶ Final Report at 3-4.

³⁷ WECC Assessment at 5.

Cedar Creek contends that, even if it is determined that it is a TO, its registration as a TOP should be reversed. According to Cedar Creek, PSCo, through its operation of the facilities on its side of the generator tie-line, operates the entire 76-mile generator tie-line. Cedar Creek states that PSCo is already registered as a TOP and has NERC Certified Operators as required under applicable NERC Reliability Standards. Cedar Creek also contends that it should not be registered for facilities operated by PSCo. As noted by WECC, Cedar Creek is obligated under the LGIA to operate its interconnection facilities.³⁸ In addition, there is nothing in the record to suggest that PSCo has accepted compliance responsibility for Cedar Creek's transmission facilities.

As discussed above, Cedar Creek admits that it owns and has produced evidence that it operates transmission facilities.³⁹ Moreover, Cedar Creek has not demonstrated that compliance responsibility for the facilities has been transferred to another entity. The committee therefore finds that Cedar Creek is subject to the TO and TOP requirements and Reliability Standards.

With respect to Cedar Creek'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 Cedar Creek from demonstrating to WECC and NERC that it should not be subject to certain of the TO and TOP requirements and Reliability Standards, based on technical or physical limitations of the facilities.

4. Miscellaneous

Cedar Creek states it has requested but has not received clarification from WECC as to what the applicable Reliability Standards are or what its obligations are with respect to self-certifications. Cedar Creek also mentions that it was notified of an audit to be conducted by WECC. To the extent that WECC has not already done so, it should review, as part of the audit or separately, the self-certifications submitted by Cedar Creek and should work with Cedar Creek to put in place mitigation plans, as needed, with respect to any applicable Reliability Standard requirements.

Cedar Creek also observes that, of 100 wind-powered generation facilities registered in NERC, 13 of which are in WECC, 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.⁴⁰ The committee notes that registration decisions are based on individual facts and circumstances. While registered entities have an obligation to notify NERC and Regional

³⁸ See LGIA between PSCo and Cedar Creek, Section 10.2 (Interconnection Customer Obligations), Section 11.1 (Interconnection Customer Interconnection Facilities), Section 13.4 (Immediate Action), Section 13.6 (Interconnection Customer Authority), and Appendix C to LGIA (Interconnection Details).

³⁹ Cedar Creek Supplemental Information at 2.

⁴⁰ Cedar Creek Response to WEEC Assessment at 6.

Entities of the functions they perform, NERC and Regional Entities have the ability to review registrations on an ongoing basis. NERC and WECC have the authority to register entities at any time and will evaluate the list provided by Milford to determine if other registrations are warranted.

Conclusion

The NERC Board of Trustees Compliance Committee finds that Cedar Creek is properly included on NERC's Compliance Registry as a TO and TOP. Cedar Creek has the right to file an appeal of this ruling with the Federal Energy Regulatory Commission, in accordance with 18 C.F.R. Part 385, within 21 days of the issuance of this decision, as specified in Rule 501.1.3.4 of NERC's *Rules of Procedure*.

By the Board of Trustees Compliance Committee