

137 FERC ¶ 61,141
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Cedar Creek Wind Energy, LLC
Milford Wind Corridor Phase I, LLC

Docket No. RC11-1-001
Docket No. RC11-2-001

ORDER DENYING REHEARING AND PARTIALLY GRANTING
CLARIFICATION

(Issued November 17, 2011)

1. On June 16, 2011, the Commission denied the appeals of two registry decisions in which the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), found that two entities, Cedar Creek Wind Energy, LLC (Cedar Creek) and Milford Wind Corridor Phase I, LLC (Milford), were properly included on the NERC Compliance Registry as transmission owners and transmission operators.¹ Several parties requested rehearing and/or clarification of the June 16 Order. In this order, we deny the requests for rehearing and partially grant the clarifications as discussed below.

I. Background

A. Appeals of NERC Registry Decisions

1. NERC's Cedar Creek Decision

2. In its October 6, 2010 decision (Cedar Creek Decision), NERC upheld Western Electricity Coordinating Council's (WECC's) registration of Cedar Creek as a transmission owner and operator. NERC explained that Cedar Creek meets the requirements of section III.d.1 of the Registry Criteria. NERC concluded that Cedar Creek's tie-line is an "integrated transmission element" as described in the

¹ *Cedar Creek Wind Energy, LLC and Milford Wind Corridor Phase I, LLC*, 135 FERC ¶ 61,241 (2011) (June 16 Order). The Commission addressed both appeals in the June 16 Order given the similarity of issues raised in the two proceedings.

Registry Criteria because the line is the link between its generation facility and Public Service Company of Colorado's (PSCo's) Keenesburg Switching Station, "both of which are material to and part of the [Bulk-Power System]." ² NERC also supported its conclusion that Cedar Creek's registration was proper by stating that Cedar Creek's facilities have a material impact on the Bulk-Power System in part due to Cedar Creek's admission that, if its generator tie-line were lost, it could not execute sales of power or move that power onto PSCo's transmission system. NERC also noted WECC's argument that "improper maintenance and operation of the Cedar Creek 230 kV transmission line and associated transmission equipment could have an impact on reliability far beyond the loss of the generating facility." ³ NERC thus found that a gap in reliability would occur if Cedar Creek is not registered as a transmission owner and operator.

2. Cedar Creek's Appeal to the Commission

3. On October 27, 2010, Cedar Creek filed its request for appeal of NERC's Cedar Creek Decision. Cedar Creek argued that NERC's finding that Cedar Creek is properly registered as a transmission owner and operator is inconsistent with the Registry Criteria. Cedar Creek stated it should be exempt from registration under the plain language of the Registry Criteria and that no showing can be made that such exemption should be over-ridden due to concerns about Bulk-Power System reliability. In support that its line is not integrated, Cedar Creek argued that generator lead lines consist of limited and discrete facilities that do not form an integrated transmission grid but merely connect two points without any electrical breaks between the two points. Cedar Creek contended that its registration as a transmission owner and operator is not necessary for the reliable operation of PSCo's transmission system. Cedar Creek argued that NERC's "claims of the 'importance' and 'integral' nature of Cedar Creek's generator tie-line are patently wrong." ⁴

3. NERC's Milford Decision

4. In its October 6, 2010 decision (Milford Decision), NERC upheld WECC's registration of Milford as a transmission owner and operator. NERC concluded that Milford meets the Registry Criteria requirements for owning and operating an integrated transmission element associated with the Bulk-Power System. NERC

² Cedar Creek Decision at 10.

³ *Id.* 10-11.

⁴ Cedar Creek Appeal at 8.

stated that, because Milford's line is the link between its generating facility and the Intermountain substation, both of which are material to and part of the Bulk-Power System, loss of the Milford line would result in the loss of a generating facility which is material to the Bulk-Power System. NERC reasoned that, under the Registry Criteria, if an integrated transmission element associated with the Bulk Power System exceeds 100 kV, it is by definition a transmission facility. Given that Milford acknowledges its interconnection facilities interconnect the generating facility to the Bulk-Power System by way of the 345 kV Intermountain Power Project, NERC concluded that Milford meets the requirement as an entity that owns and operates an integrated transmission element associated with the Bulk Power System.

4. Milford's Appeal to the Commission

5. On October 27, 2010, Milford filed its request for appeal of the NERC's Milford Decision. Milford argued that it should not be registered as a transmission owner or operator because it does not meet the definitions in the Registry Criteria. Milford noted that the definition of "bulk electric system" does not generally include "radial transmission facilities servicing only load with one transmission source" and argued that the Milford tie-line is such a radial line. Milford argued that the tie-line is not integrated into the bulk electric system and thus does not meet the thresholds in the NERC Registry Criteria. Milford also argued that its system impact study shows that there are no adverse system impacts with its connection to the Intermountain AC Switchyard.

B. June 16 Order

6. In the June 16 Order, the Commission denied Cedar Creek's and Milford's appeals and affirmed that Cedar Creek and Milford are properly registered as transmission owners and operators. The Commission affirmed the NERC registrations, based on the specific facts of the cases, that the reliable operation and maintenance of the Cedar Creek and Milford facilities were material to the reliability of the Bulk-Power System.⁵

7. With regard to Cedar Creek's tie-line, the Commission found that improper protection coordination and operation of the Cedar Creek 230 kV transmission line and associated transmission equipment could have an impact on reliability beyond the loss of the Cedar Creek generating facility.⁶ The Commission found that the record indicates that Cedar Creek owns and controls equipment at one end of the

⁵ June 16 Order, 135 FERC ¶ 61,241 at P 58.

⁶ *Id.* P 59-62.

tie-line and that some of this equipment, specifically the 230 kV circuit breakers and associated tie-line protective relays, provides Cedar Creek control over the switching of one end of the tie-line.⁷ The Commission concluded that equipment at the Cedar Creek end is important because its operation must be coordinated with the equipment at the other end of the line that is under the control of PSCo. If coordination does not occur, or is performed improperly, the Commission stated that there is the potential that operation of this equipment could have impacts beyond the generating facility and tie-line to the Bulk-Power System. The Commission rejected Cedar Creek's reliance on the PSCo system impact study to conclude that there are no reliability impacts. The study, among other things, did not evaluate the impact of improper protection coordination or improper operation of the facilities on Bulk-Power System reliability.

8. With regard to Milford, the Commission found that the record in the proceeding indicated that Milford owns and operates all equipment at one end of the tie-line and that Milford has operational and maintenance jurisdiction of all equipment at the Milford Facility.⁸ The Commission concluded that the scope of equipment under Milford's control must be coordinated with the equipment at the remote end of the line that is under the control of Los Angeles Department of Water and Power (LADWP) and without proper coordination, there is the potential that operation of this equipment could have impacts beyond the Milford generating facility and tie-line. The Commission dismissed reliance on Milford's system impact study because it does not evaluate the impact of protection system miscoordination or switching errors. The Commission noted that the system impact study does identify the need for the Milford facilities to be included in a special protection system, proper operation of which is necessary to keep the system from exceeding system operating limits or interconnection reliability operating limits. Therefore, the Commission found that improper coordination of the special protection system with other Bulk-Power System facilities could lead to wide area impacts on the WECC system. The Commission reasoned that all of these factors adequately supported a finding that the Milford facilities are material to the Bulk-Power System.

9. In the case of both Cedar Creek and Milford, the Commission found that that their respective tie-line facilities have a material impact on Bulk-Power

⁷ *Id.* P 60, n.49. Specifically, Cedar Creek controls the following equipment: three 230 kV Generation Breakers; one 230 kV Generator Tie-Line Primary Relay; one 230 kV Generator Tie-Line Secondary Relay; and one 230 kV Generator Tie-Line Bus Relay.

⁸ *Id.* P 74-76.

System reliability and concluded that if adequate reliability requirements, including coordination of protection systems, operations and maintenance and properly trained and certified staff are not provided for on the facilities, there is a reliability risk that would affect the Bulk-Power System in WECC. Based on that analysis, the Commission found that at a minimum Cedar Creek and Milford should be required to comply with certain Reliability Standards and directed WECC and NERC to negotiate with Cedar Creek and Milford as to what additional Reliability Standards and Requirements will be applicable.⁹

C. Requests for Rehearing and Clarification

10. The following parties requested rehearing of the June 16 Order: Cedar Creek, Milford, American Wind Energy Association (AWEA), Dominion Resources Services, Inc. (Dominion), and E.ON Climate & Renewables North America LLC (E.ON). The following parties requested clarification, or in the alternative rehearing: NERC, National Rural Electric Cooperative Association (NRECA) and Electric Power Supply Association joined by Independent Power Producers of New York, Inc., TransCanada Power Marketing Ltd. and TransCanada Maine Wind Development Inc., and KGen Power Management Inc. (collectively, EPSA).

11. Several entities argue that there is no factual support that the lines are material to Bulk-Power System reliability.¹⁰ In the case of the Cedar Creek line, Cedar Creek states that nothing could happen on its line that could affect the transmission grid at or beyond the Keenesburg Switching Station because the tie line is radial and PSCo can disconnect the line from the grid if any fault occurs. Cedar Creek states that the Commission's conclusion that the line is material because improper protection coordination and operation of the line could have an impact on the Cedar Creek facility is misplaced. Cedar Creek also argues that the

⁹ *Id.* P 71, 87. The Commission found that Cedar Creek should comply with the following standards: PRC-001-1, Requirements R2, R2.2, R4; PRC-004-1 Requirement R1; TOP-004-2, Requirements R6, R6.1, R6.2, R6.3, R6.4; PER-003-1, Requirements R1, R1.1, R1.2; FAC-003-1, Requirements R1, R2; TOP-001, Requirement R1 and FAC-014-2, Requirement R2. The Commission identified the following standards that should be applicable Milford: PRC-001-1, Requirements R2, R2.2, R4, R6; PRC-004-1 Requirement R1; TOP-004-2, Requirements R6, R6.1, R6.2, R6.3, R6.4; PER-003-1, Requirements R1, R1.1, R1.2; FAC-003-1, Requirements R1, R2; TOP-001, Requirement R1 and FAC-014-2, Requirement R2.

¹⁰ *E.g.* Cedar Creek, Milford, EPSA, AWEA, E.ON.

Commission's conclusion that it did not find persuasive that Cedar Creek has no operational control over its tie lines is inconsistent with a February 2011 Commission Order¹¹ in which the Commission recognized that PSCo operates the entire line and fails to recognize that PSCo can disconnect the line if any fault on the tie line were to occur. Cedar Creek and Milford and others also argue that the registration as transmission owners/operators represents a departure from the circumstances the Commission relied on in *New Harquahala*.¹²

12. In addition, Cedar Creek and EPSA argue that not relying on the system impact study was erroneous and that PSCo's restudy refutes the speculation that a fault on the tie line would impact the Rocky Mountain Energy Center. They add that the Commission did not cite evidence that system conditions have changed to prove that SIS are outdated which brings into question the value of performing studies if the results will be automatically discounted.¹³ Cedar Creek notes that it is already subject to coordination measures with respect to system protection facilities that are identical to those that would be imposed as a transmission owner/operator.

13. Several entities argue that the Commission erred in finding that a reliability gap would occur if Cedar Creek is not registered as a transmission owner/operator.¹⁴ Cedar Creek states that PSCo controls the interaction between the tie line and PSCo's system as a basis for concluding that there is no gap if Cedar Creek is not registered. Cedar Creek adds that it is already subject to the substance of the most critical standards through identical or similar requirements as a generator owner/operator and that PSCo already complies with the necessary standards to ensure no reliability gap. Cedar Creek insists that there is no effect on the Bulk-Power System because Cedar Creek is the only party disadvantaged by a failure to comply with the relevant standards. Cedar Creek, AWEA and E.ON

¹¹ *Cedar Creek Wind Energy, LLC*, 134 FERC ¶ 61,130 (2011) (February 17 Order).

¹² *New Harquahala Generating Company, LLC*, 123 FERC ¶ 61,173, order on clarification, 123 FERC ¶ 61,311 (2008) (*New Harquahala*) (finding that NERC adequately supported the registration of New Harquahala, which owns and operates a 1,092 MW generator and 26-mile tie line, as a transmission owner and operator based on NERC's authority to register entities that own or operate assets that are material to the reliability of the Bulk-Power System).

¹³ EPSA Rehearing Request at 25-27.

¹⁴ *E.g.*, Cedar Creek, EPSA, AWEA, E.ON.

contend that the reliability gaps are ones that exist for all interconnection facilities and thus the Commission's order has the effect of unduly discriminating against Cedar Creek by treating it in a disparate manner from other generators.¹⁵

14. Milford and EPSA argue that the Commission's fact-specific analysis is not based on facts and ignores the record.¹⁶ Milford also argues that there is nothing in the June 16 Order that differentiates Milford from the vast majority of generators or that addresses the specific facts presented by Milford. Milford contends that its engineering affidavit makes clear that the tie-line is a radial interconnection facility and that the Commission did not analyze or explain why it disagreed with Milford's analysis. In addition, Milford states that the Commission relied on unsupported conjecture that a fault on the Milford generator tie line could cause a loss on the IPP switchyard; this conclusion, without support, directly contradicts unrebutted expert testimony. Milford and AWEA claim that the Commission provided no statements concerning NERC's analysis and did not provide any substantive discussion of why it disagreed with contrary facts and evidence in the record.

15. Next Milford argues that there is no basis for the Commission's selection of the required Reliability Standards, stating, for example, there is no explanation of why Milford should be required to have NERC-certified operators on duty 24 hours a day to address highly infrequent operation of the breakers as opposed to the Commission not having a concern for the many much larger power plants that cycle on and off line with much greater frequency. Milford also argues that the Commission ignored significant facts and argument and did not analyze the facts to create a reasoned decision, and that the decision is based on conclusory statements and unsupported conjecture.

16. Some petitioners argue that the Commission erred by not addressing the plain language of section III(d) of the NERC Statement of Compliance Registry Criteria and its own precedent that tie lines are not integrated facilities.¹⁷ Some also argue that the Commission failed to consider the NERC Final Report from the Ad Hoc Group for Generator Requirements at the Transmission Interface findings.¹⁸ Entities also claim that the Commission failed to engage in reasoned

¹⁵ *E.g.*, AWEA Rehearing Request at 21.

¹⁶ Milford Rehearing Request at 12; EPSA Rehearing Request at 39.

¹⁷ *E.g.*, Cedar Creek and EPSA.

¹⁸ NERC Final Report from the Ad Hoc Group for Generator Requirements at the Transmission Interface, (Nov. 16, 2009) (GO/TO Report). In the GO/TO

decision-making by ruling on the appeals without ordering NERC to consider the GO/TO Report and should require expeditious work to complete the standards revisions effort in standards drafting team evaluating the GO/TO Report.¹⁹

17. In the same vein, EPSA asks that the Commission clarify that it did not intend either to prejudice the outcome of Project 2010-17 or that the standards identified in the June 16 Order must be applied to all generator interconnection facilities. EPSA also asks that the Commission clarify its rationale in finding that the lines are material to reliability and explain how it is narrowly tailored to the specific facts of the cases.

18. EPSA argues that the Commission's interpretation of the materiality provision in the Registry Criteria is overly broad because it would permit registration of any entity to any function where the Commission determines that the entity should be subject to a particular requirement regardless of whether the Standard was developed for application to the type of entity being registered. Several entities argue that the June 16 Order does not apply or discuss the Registry Criteria and is also a departure from precedent that does not allow the Registry Criteria to be supplemented.²⁰ EPSA also states that the June 16 Order fails to consider the due process rights of affected generator owners and operators because it sidesteps the standards development process to fix a potential reliability gap. EPSA also argues that Cedar Creek and Milford had no notice they had to comply with the transmission owner/operator requirements.²¹ Next EPSA claims that the Commission failed to address comments on the definition of "integrated transmission element" and in the order implicitly held that generator interconnection facilities are synonymous with integrated transmission facilities.²²

Report, the Ad Hoc Group recommended modifications to NERC's Rules of Procedure, Registry Criteria, and other documents to reflect that a generation operator should not be registered as a transmission operator on the basis of the generator interconnection facility. The GO/TO Report also recommended that certain Reliability Standards should apply to generator tie-lines.

¹⁹ *E.g.*, Cedar Creek, AWEA and Dominion.

²⁰ *E.g.*, Milford, EPSA.

²¹ EPSA Rehearing Request at 17.

²² *Id.* at 24.

19. NRECA requests that the Commission clarify how the NERC Registry Criteria requirement of an “integrated transmission element” or any other specific criteria has been satisfied based on the record. NERC and others request that the Commission clarify that the list of standards from the June 16 Order are not intended to prejudice or dictate the outcome for the GO/TO effort. Several petitioners request clarification that the concerns identified in the list of minimum transmission owner/operator requirements are to be treated as the equivalent of FPA Section 215(d)(5) directives and that the identified standards were for illustrative purposes and not intended to mandate compliance with the specific requirements in advance of the Commission-ordered negotiations, consistent with *New Harquahala*. NERC adds that the Commission should clarify the rationale and explain how its materiality findings are narrowly tailored to the specific facts and are not applicable to all generator interconnection facilities.

II. Discussion

A. Commission Determination

20. The requests for rehearing are denied, and, as discussed below, the Commission reaffirms its previous ruling that Cedar Creek and Milford should be registered as transmission owners and transmission operators. We reaffirm our conclusions with respect to the applicability of the identified Reliability Standards. In addition, as discussed below, the Commission partially grants and partially denies the requested clarifications to the June 16 Order.

1. Preliminary Matters

21. Several entities argue that the Commission did not engage in reasoned decision-making on the grounds that the June 16 Order does not provide any substantive discussion of facts and arguments opposing registration or fully articulate the basis for the decisions. We disagree. There is ample discussion in the June 16 Order of the reasons for the conclusion that the Cedar Creek and Milford lines should be registered as transmission owners and operators. The Commission addressed arguments that NERC misapplied the Registry Criteria by concluding that, in following its *New Harquahala* precedent and conducting a fact-specific analysis, it was not necessary to interpret NERC’s application of the Registry Criteria. The Commission also addressed the inappropriateness of using system impact studies in the context of Reliability Standards and reviewed and relied on record evidence to conclude that the lines are important to the Bulk-Power System and that there would be a reliability gap if Cedar Creek and Milford were not registered as transmission owners/operators.²³

²³ See, e.g., June 16 Order, 135 FERC ¶ 61,241 at P 58, 60-63, 74-77.

22. Cedar Creek and Milford argue that the Commission did not engage in a fact-specific analysis of the type that the Commission undertook in *New Harquahala*. They also argue that the facts in *New Harquahala* are distinguishable from the facts here and therefore they should not be required to register as transmission owners and operators. In support of these arguments, Cedar Creek and Milford, for example, claim differences between their lines and the facilities at issue in *New Harquahala*. We disagree with these arguments. *New Harquahala* did not establish registration criteria for all generator owners and operators relative to tie-lines nor did it set any parameters for transmission owner and operator registration relative to tie-lines. Instead, in *New Harquahala*, the Commission performed a fact-specific analysis to determine whether New Harquahala should be required to register as a transmission owner and operator. In the June 16 Order, the Commission also conducted a fact-specific analysis based upon the unique characteristics of Cedar Creek and Milford to determine whether each of these entities should be required to register as transmission owners and operators. In applying a fact-specific analysis, the June 16 Order recognized that Cedar Creek's and Milford's facilities are unique and, thus, made a determination on the Cedar Creek and Milford facts, respectively. In other words, as in *New Harquahala*, the Commission ruled solely on the appeal before it based solely on the facts before us.

23. Cedar Creek contends that the June 16 Order is in conflict with the February 17 Order in which, Cedar Creek states, the Commission "recognized" that PSCo has operational control over the entire line.²⁴ Cedar Creek is mistaken. "Operational control" has more aspects than Cedar Creek represented. For example, Cedar Creek states that PSCo owns, operates and maintains the 4 miles of line into the Keenesburg Switching Station, and the line breaker, line disconnect, and ground disconnect equipment located in the Keenesburg Switching Station. While Cedar Creek identifies 230 kV equipment that is associated with the Cedar Creek end of the line, it does not acknowledge that this equipment provides Cedar Creek with operational control over its end of the line. Cedar Creek also fails to address coordination of operation of the 230 kV equipment at its end with those at the PSCo end. In addition, the statement in the February 17 Order upon which Cedar Creek relies was not a Commission ruling but merely a restatement of what was stated in the application in that proceeding.

²⁴ February 17 Order, 134 FERC ¶ 61,130 at P 4, n.11. "PSCo owns, operates, and maintains the other 4 miles of tie line into the Keenesburg Switching Station and the line breaker, line disconnect, and ground disconnect equipment located in the Keenesburg Switching Station. PSCo has operational control over the entire 76 mile tie line."

The Commission did not rely on the language cited by Cedar Creek in the discussion. Thus, the June 16 Order is not inconsistent with the February 17 Order.

2. GO/TO Report And Requests for Clarification

24. Milford contends that there is no basis for the required Reliability Standards and that only the Reliability Standards that should be mandated are those set forth in GO/TO Report. Similarly, Cedar Creek and others argue that the Commission erred by not considering the GO/TO Report's recommendations.²⁵

25. In the June 16 Order the Commission recognized that application of transmission owner/operator Reliability Standards more generally is an issue not appropriately addressed in the context of these two registry appeals.²⁶ Contrary to Milford's assertion, we did not encourage adoption of the GO/TO Report recommendations. Rather, in the June 16 Order we encouraged "NERC to develop an approach to this matter that satisfies Bulk-Power System reliability concerns and also allows entities to understand upfront the scope of their compliance responsibilities."²⁷ To do as Milford and Cedar Creek request would be inappropriate because it would not allow the standards drafting team currently evaluating the GO/TO Report to complete its work nor allow for industry input on the standard drafting team's suggested resolution or to consider alternative solutions. For the same reasons, it would be inappropriate to apply only the Reliability Standards that are set forth in GO/TO Report. AWEA also requests that the Commission should direct NERC to complete the Project 2010-07 GO/TO standards development process within six months of this order. We reject this as outside the scope of this proceeding and as an inappropriate intrusion on the NERC standards development process.

26. Entities request that the Commission clarify that the determination of the Reliability Standards that Cedar Creek and Milford must comply with is not intended to prejudge the outcome of the Project 2010-07 standards development effort.²⁸ EPSA seeks clarification that the determinations in these proceedings are not generic determinations and that the Commission is not requiring NERC to find

²⁵ AWEA Rehearing Request at 21.

²⁶ June 16 Order, 135 FERC ¶ 61,241 at P 90.

²⁷ *Id.*

²⁸ *E.g.* NERC, NRECA, EPSA.

that the Reliability Standards identified in the June 16 Order must be applied to all generator interconnection facilities. We grant these clarifications. NERC, through its standard development process in Project 2010-07 is analyzing more generally which standards should be applicable to all generator interconnection lines, and industry will have input into NERC's determination. Our determinations in this proceeding apply solely to Cedar Creek and Milford, since our analysis in these cases was based solely on the facts in these proceedings. As such, these proceedings do not prejudge NERC's ongoing effort.

27. Because we grant these clarifications, we dismiss EPSA's concern that the Cedar Creek and Milford registrations as transmission owner/operators subject all generators to mandatory requirements to which they had no notice that they had to comply. The Reliability Standard Requirements that we imposed in these proceedings only apply to Cedar Creek and Milford. That order made no finding as to their applicability to other generator owners or operators. Any generator owner or operator has the opportunity to participate in Project 2010-07 to propose which standards should be applicable to generator interconnection lines. EPSA's argument that we failed to consider the due process rights of affected generator owners and operators because the June 16 Order sidesteps the standards development process to fix a potential reliability gap is, therefore, rejected.

28. We deny NERC and NRECA requests for clarification that the requirements identified in the June 16 Order were for illustrative purposes and not intended to mandate compliance with those specific requirements. In the June 16 Order, based on the facts of those cases, we stated that Cedar Creek and Milford must comply with certain transmission owner/operator Reliability Standards and that the negotiations that the Commission ordered were to determine whether any *additional* Reliability Standards and Requirements should be applicable to Cedar Creek and Milford.²⁹ We note that WECC's and NERC's underlying decisions had the effect of applying *all* the transmission owner/operator Reliability Standards to Cedar Creek and Milford. In the June 16 Order, while upholding NERC's decisions we concluded that a reliability gap would occur if Cedar Creek and Milford were not registered as transmission owner/operators and subject to at least some of the requirements. We concluded that Cedar Creek and Milford needed to comply with only a small subset of the transmission owner/operator Reliability Standards. Such a decision does not, however, dictate the outcome of the Reliability Standard development process or the Project 2010-07 effort. Again, the Commission's decision in the June 16 Order is only applicable to Cedar Creek and Milford. Thus, the Commission affirms that Reliability Standards described in the June 16 Order are ones with which Cedar Creek and Milford must comply, and were not listed for illustrative purposes.

²⁹ June 16 Order, 135 FERC ¶ 61,241 at P 72, 88.

3. Material Impact and Reliability Gaps

29. Entities argue that the Commission erred in finding that the generator tie-lines are material to the Bulk-Power System.³⁰ Specifically, Milford argues that the Commission erred in finding that the Milford generator tie-line is material to the Bulk-Power System and by not applying the Registry Criteria or addressing the definition of “integrated transmission element.” In a similar vein, NRECA requests that the Commission clarify how the June 16 Order supports a determination that Cedar Creek and Milford’s registration is consistent with the Registry Criteria. In the June 16 Order, the Commission noted that NERC has plenary authority to register entities that own or operate assets that are “material to the reliability of the Bulk Power System.”³¹ Thus, making a finding based on the materiality of a facility is consistent with the Registry Criteria. The Commission considered the importance and impact of the Cedar Creek facilities, as well as the reliability gap that could result if the facilities were not properly registered. The Commission concluded, based on the specific facts, that the reliable operation and maintenance of the interconnection facilities connected to Cedar Creek and Milford generating facilities were material to the reliability of the Bulk-Power System. In basing its decisions on fact-specific analyses and concluding that the facilities are material, the Commission expressly stated that “we 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’.”³² Undertaking the analyses in this manner was consistent with our precedent in *New Harquahala*, which applied a fact-specific analysis of a registry appeal that is the same fact-specific analysis we undertook for the registry appeals now before us. For these reasons, we dismiss the claims that the Commission erred by not addressing that the lines do not fit within the tests for inclusion in the bulk electric system and that the Commission did not apply the Registry Criteria or address the definition of “integrated transmission element”, and we also decline to provide the clarification requested by NRECA.

30. We are not persuaded by Cedar Creek’s argument that the Commission erred in finding that its generator tie-line is material to the Bulk-Power System. Cedar Creek bases its argument on the fact that the line is radial and PSCo

³⁰ *E.g.*, Cedar Creek, EPSA, AWEA and E.ON.

³¹ June 16 Order at P 58 (*quoting* NERC Registry Criteria, Notes to Criteria, note 1).

³² *Id.*

operates circuit breakers and line disconnects on its portion of the line with which it could disconnect the line if any fault were to occur. Cedar Creek's argument misses the fact that proper fault-clearing on the line depends on coordination of relays at *both* ends. Cedar Creek does not dispute that it controls protection relays on one end of the tie-line, and it does not refute that the relays on both ends must be coordinated. The Commission found that, specific to Cedar Creek's tie line, protection on Cedar Creek's tie-line requires proper operation of the protective relays and associated equipment on both ends of the line. Without such coordination, Cedar Creek's tie-line protection may fail to timely clear faults, necessitating fault clearing by downstream protection systems, and affecting facilities beyond the tie-line. As noted above, the Commission made a finding that is specific to Cedar Creek's line.

31. The Commission also rejects Cedar Creek's and Milford's arguments that the Commission erred in dismissing the use of the system impact studies to determine the impact of the respective tie-lines on the Bulk-Power System. The Commission also disagrees with Milford's contention that the Commission did not explain why it disagreed with Milford's witness and his explanation of why the system impact study shows that there is no reliability gap. To the contrary, in the June 16 Order, the Commission explained that the system impact studies presented by Cedar Creek and Milford do not address the possible consequences of protection system coordination or protection system misoperations on Bulk-Power System reliability.³³ The Commission also explained that the system impact studies used by Milford's witness did not address the impact of Milford-initiated switching errors on Bulk-Power System Reliability.³⁴

32. With respect to Milford's witness, he failed to address the system impacts that could result from protection system miscoordination or protection system failure. In addition, the comments by Milford's witness about the operating speed of the relays and the state of the art nature of the relays are inapposite, since these comments assume proper relay coordination. We also disagree with AWEA's argument that the Commission's concern that a fault on the Milford tie-line causing wide-area impacts on the WECC system are not supported by facts on the record. Successful clearing of a fault on the tie-line is only guaranteed when all components of the protection system covering the tie-line facility are functioning properly, and when protection system settings are coordinated to clear faults in the manner consistent with system studies. As the Commission explained in the June 16 Order, proper coordination in accordance with Reliability Standard PRC-001

³³ *Id.* P 62 and P 76.

³⁴ *Id.* P 76.

and misoperation correction pursuant to Reliability Standard PRC-004 must be in place to ensure proper operation of the protection schemes on the tie-line facilities.³⁵

33. Furthermore, the explanations given by Milford and Cedar Creek do not alleviate our concerns over switching errors. As we explained in the June 16 Order, the record does not demonstrate that Cedar Creek has turned over authority for tie-line switching to PSCo.³⁶ Cedar Creek only argues that PSCo could alleviate reliability problems by switching the end of the tie-line owned by PSCo. The Commission is concerned with those instances in which Cedar Creek exercises authority to operate the line at its end, and, as stated in the June 16 Order, there is no evidence in the record stating that PSCo or any entity controls the equipment to conduct the necessary switching on the Cedar Creek end of the line.

34. Similarly, we reject Milford's argument that we failed to address its witnesses' testimony. We explained that the record does not support that all switching will be performed under the direction of LADWP in their role as the registered transmission operator for the tie-line.³⁷ Successful switching of the tie-line facilities in and out of service requires coordination between both entities. Otherwise, switching errors could introduce faults onto the system, or could result in the closing or opening of the tie-line at improper times. Although AWEA and the Milford's witness argue that these switching operations will be "infrequent," they could still occur and the applicability of a Reliability Standard is not based on the frequency of its necessity. As explained in the June 16 Order, if switching occurs it must be under the direction of NERC-certified operators pursuant to Reliability Standard PER-003 and in coordination with neighboring transmission operators, in accordance with Reliability Standard TOP-004.³⁸ Milford also questions why it should be required to have NERC-certified operators on duty 24 hours a day to address infrequent operation of the breakers as opposed to the Commission not having a concern for the many much larger power plants that

³⁵ *Id.* P 78. Moreover, acceptance of Milford's argument would suggest that Reliability Standards should not be applied to an entity until that entity first experienced the failure (e.g., outage) which the Reliability Standards were designed to prevent.

³⁶ *Id.* P 61.

³⁷ *See* June 16 Order, 135 FERC ¶ 61,241 at P 75.

³⁸ *Id.* P 67, 81, 82.

cycle on and off line with much greater frequency. As noted above, the applicability of a Reliability Standard is not based on the frequency of its necessity. Thus, the Commission determined that Milford must have NERC-certified operators on duty based on whether the Reliability Standards should apply, not how often they should apply. Furthermore, we addressed only the specific facts of these two cases that were before us and thus reject Milford's argument as to other plants not before us as outside the scope of this proceeding. Milford could avoid the costs associated with NERC-certification if Milford enters into an agreement with LADWP that turns over control of its end of the tie-line facility to LADWP, with its operators only performing switching under the direction and supervision of the NERC-certified LADWP operator. Such transfer of operational control could also be backed by a negotiated agreement that transfers responsibility for compliance with transmission operator standards to LADWP.³⁹

35. Cedar Creek argues that there is no reliability gap because NERC already requires Cedar Creek to comply with the generator owner/generator operator Reliability Standards which, Cedar Creek argues, cover the reliability gaps described by the Commission. Cedar Creek believes that its registration as a generator owner/generator operator should allay the Commission's concerns over relay protection because it is subject to the requirements of Reliability Standard PRC-001 Requirement R2.1 and PRC-004 Requirement R2. However, these generator owner/generator operator requirements do not explicitly obligate communication in connection with relays on generator tie-lines. The inclusion of Reliability Standards PRC-001 Requirement R2.2, PRC-001 Requirement R4, and PRC-004 Requirement R1 ensures that Cedar Creek specifically coordinates tie-line protection with PSCo and reports misoperations associated with tie-line protection to its Regional Entity.

36. Cedar Creek also dismisses the need to comply with other Reliability Standards (TOP-001, TOP-004, FAC-014, PER-003) because, if an operating problem were to occur on the line, PSCo could simply alleviate the problem by operating their breakers at the PSCo end of the line. The Commission is concerned with those instances in which it is necessary to operate the line at the Cedar Creek end, and there is no evidence in the record that PSCo or any entity is controlling the breakers on the Cedar Creek end. Thus, there is no error in the June 16 Order's determination that a reliability gap must be filled by Cedar Creek's registration as a transmission operator.

³⁹ See Guidance for Entities that Delegate Reliability Tasks to a Third Party Entity, NERC Compliance Public Bulletin No. 2010-004 Section II.1 (Apr. 20, 2010).

The Commission orders:

(A) The Commission hereby denies the requests for rehearing, as discussed in the body of this order.

(B) The Commission hereby grants in part and denies in part the requests for clarification, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.