

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

Cedar Creek Wind Energy, LLC	)	Docket No. RC11-1-000
	)	
Milford Wind Corridor Phase I, LLC	)	Docket No. RC11-2-000
	)	
	)	(Not Consolidated)

**COMMENTS OF THE ELECTRIC POWER SUPPLY ASSOCIATION**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure<sup>1</sup> of the Federal Energy Regulatory Commission (“FERC” or “Commission”) and the Commission’s November 2, 2010 Notices of Filing and November 18, 2010 Notice of Extension of Time in the above-captioned proceedings, the Electric Power Supply Association<sup>2</sup> (“EPSA”) respectfully submits these comments to the October 27, 2010 appeals of Cedar Creek Wind Energy, LLC (“Cedar Creek”) and Milford Wind Corridor Phase I, LLC (“Milford”) challenging the North American Electric Reliability Corporation’s (“NERC”) Board of Trustees Compliance Committee’s (“BOTCC”) decisions affirming that Cedar Creek and Milford were properly registered on NERC’s Compliance Registry (“Registry”) as a Transmission Owner (“TO”) and Transmission Operator (“TOP”) in the

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<sup>1</sup> 18 C.F.R. §§ 385.212 and 385.213 (2010).

<sup>2</sup> EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities serving power markets. EPSA seeks to bring the benefits of competition to all power customers. EPSA’s 21 member companies each operate in four or more NERC regions and represent over 700 registered entities in the NERC Compliance Registry. EPSA members own or operate billions of dollars of generating assets and are significant participants in the North American wholesale electricity market, and therefore have a direct interest regarding the reliable operation of the Bulk Power System (“BPS”) and NERC Compliance Registry decisions. The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue. EPSA intervened in the above-captioned dockets on November 16 and 29, 2010.

Western Electricity Coordinating Council's ("WECC") region.<sup>3</sup> In support of Cedar Creek's and Milford's respective appeals (the "Cedar Creek Appeal" and the "Milford Appeal," respectively), EPSA states as follows:

## **I. BACKGROUND**

On October 27, 2010, Cedar Creek filed its appeal of the Cedar Creek Decision in Docket No. RC11-1-000. On October 27, 2010, Milford filed its appeal of the Milford Decision in Docket No. RC11-2-000. On November 2, 2010, the Commission issued a Notice of Filing in Docket No. RC11-1-000 establishing November 26, 2010, as the date by which interventions and comments were due on the Cedar Creek Appeal. That same day, the Commission issued a Notice of Filing in Docket No. RC11-2-000 establishing December 1, 2010, as the date by which interventions and comments were due on the Milford Appeal.<sup>4</sup> On November 16, 2010, the American Wind Energy Association ("AWEA"), the Edison Electric Institute ("EEI") and EPSA filed a joint motion for an extension of time to file comments concerning Cedar Creek Appeal and Milford Appeal.<sup>5</sup> On November 18, 2010, the Commission granted the extension and established December 7, 2010, as the date by which interventions and comments would need to be filed in the unconsolidated proceedings.

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<sup>3</sup> *Cedar Creek Wind Energy, LLC*, NERC Board of Trustees Compliance Committee Decisions on Appeal of Compliance Registry Determinations, RA080009 (issued Oct. 6, 2010) (public version) ("Cedar Creek Decision") and *Milford Wind Corridor Phase I, LLC*, RA080008, NERC Board of Trustees Compliance Committee Decisions on Appeal of Compliance Registry Determinations (issued Oct. 6, 2010) (public version) ("Milford Decision," together with the Cedar Creek Decision the "Decisions").

<sup>4</sup> The Commission issued an Errata Notice on November 5, 2010, to make corrections unrelated to the December 1, 2010 date.

<sup>5</sup> AWEA, EEI and EPSA included requests to intervene in the joint motion. EEI had previously filed to intervene on November 2, 2010. EPSA filed separate motions to intervene on November 29, 2010.

## II. COMMENTS

As indicated above, EPSA's member companies represent over 700 registered entities in the NERC Compliance Registry and, as a result, are required to comply with mandatory NERC Reliability Standards approved by the Commission under Section 215 of Federal Power Act ("FPA")<sup>6</sup> to ensure reliability. As providers of wholesale electricity supply, competitive suppliers typically are registered by NERC Regional Entities as Generator Owners ("GOs"), Generator Operators ("GOPs"), Purchase Selling Entities ("PSEs") and/or Load Serving Entities ("LSEs"). Although EPSA members appreciate that there can be reliability concerns with respect to generator interconnection facilities, they are concerned how these issues are being addressed by WECC and NERC.<sup>7</sup>

Competitive suppliers are concerned in the instant proceedings<sup>8</sup> because not only do WECC's and NERC's interpretations under the Statement of Compliance Registry Criteria<sup>9</sup> circumvent stakeholders rights with respect to the entities that are subject to inclusion on the Registry but also circumvent the standards development process. WECC's and NERC's approach to registering GOs/GOPs as TOs/TOPs is based on interpretations of the Registry Criteria that have not been subject to industry input as is contemplated by Section 215(c)(2)(D) of the FPA.<sup>10</sup> Specifically, through the registration process, WECC and NERC are seeking to define the term "integrated transmission element" and define what is "material" to the BPS. This approach is not

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<sup>6</sup> 16 U.S.C. § 824o (2006).

<sup>7</sup> For purposes of these comments, the BOTCC shall be referred to interchangeably as NERC.

<sup>8</sup> Due to the overlap of issues between the two proceedings, EPSA is filing its comments in both proceedings.

<sup>9</sup> Statement of Compliance Registry Criteria, Revision 5 (Oct. 16, 2008) ("Registry Criteria") at [http://www.nerc.com/files/Statement\\_Compliance\\_Registry\\_Criteria-V5-0.pdf](http://www.nerc.com/files/Statement_Compliance_Registry_Criteria-V5-0.pdf).

<sup>10</sup> 16 U.S.C. § 824o(c)(2)(D).

only incorrect, but is a material departure from Commission precedent (i) defining what facilities constitute an integrated transmission system and (ii) addressing generation interconnection requirements. Because what NERC is proposing is a material change, there are impacts that must be properly addressed before subjecting generator interconnection facilities to mandatory TO and TOP Reliability Requirements. By WECC and NERC pursuing their current course of broadly interpreting the Registry Criteria in the registration of generator interconnection facilities as TOs and TOPs, they are undermining a core requirement of Section 215 of the FPA that due process be afforded industry stakeholders in order to participate in identifying reliability gaps and otherwise tailoring Reliability Standards to such gaps. Section 215(c)(2)(D) requires not only reasonable notice and opportunity for public comment, but also a balancing of interests. It is not a forgone conclusion that WECC's and NERC's approach would prevail. Given that due process rights are being denied by the approach NERC is taking in the Decisions and that NERC has not otherwise met its burden in registering Cedar Creek and Milford as TOs and TOPs, the Commission should (i) reverse such registrations and (ii) address generator interconnection issues through a FPA Section 215(c)(2)(D) process.

The Registry Criteria in its current form does not support registration of GOs and GOPs as TOs and TOPs by virtue of their interconnection facilities. While one approach would be to reinterpret the Registry Criteria subject to the requisite due process, the superior approach for addressing reliability concerns associated with interconnection facilities is NERC's standards development process. The irony is that there is a process already underway at NERC to address the very issue of the proper

treatment of generator interconnection facilities for reliability purposes. Under that process, NERC has charged a group:

with evaluating the existing body of NERC Reliability Standard requirements applicable to Generator Owners and Generator Operators to identify gaps in reliability coverage, determine how best to address those deficiencies using the compendium of comments as a guide to this effort, and offer its recommendations in the form of a standards authorization request that could then be forwarded to the Standards Committee for consideration.<sup>11</sup>

As discussed in greater detail herein, the issue of generator interconnection facilities is already the subject of NERC Project 2010-07.<sup>12</sup> By pursuing this issue in the context of Project 2010-07, not only can the Reliability Standards be tailored to the reliability issues that are unique to interconnection facilities, it avoids using the Registry Criteria to circumvent the standards process in the interest of expediency.

The issue of addressing reliability concerns with respect to generator interconnection facilities must be addressed through a process that provides for reasonable notice and opportunity for public comment, due process, openness, and a balancing of interests in the application of NERC Reliability Standards to generator interconnection facilities, including the Interconnection Facilities of Cedar Creek and Milford.<sup>13</sup> Project 2010-07, which is already on the books, is the mechanism through which the reliability gap should be addressed.

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<sup>11</sup> See Background section under “Generator Requirements at the Transmission Interface Ad Hoc Group” at <http://www.nerc.com/page.php?cid=2|247|307>.

<sup>12</sup> See Standards Announcement, Standards Authorization Request (SAR) Comment and Drafting Team Nominations Period Open, Project 2010-07: Generator Requirements at the Transmission Interface [http://www.nerc.com/docs/standards/sar/Stds\\_Announce\\_Cmmnt-Pd\\_DT\\_Nominations\\_2010-07\\_GOTO\\_2010Feb12.pdf](http://www.nerc.com/docs/standards/sar/Stds_Announce_Cmmnt-Pd_DT_Nominations_2010-07_GOTO_2010Feb12.pdf) (“Standards Announcement”). Of note, the group working on the SAR is generally known in the industry as the GO TO team.

<sup>13</sup> The same process would also apply to those GOs and GOPs that have been registered by NERC as TOs and TOPs by virtue of the interconnection facilities.

**A. NERC Has Not Demonstrated That Cedar Creek or Milford Qualify As Either A TO Or TOP Under The Registry Criteria.**

The Decisions uphold registration of Cedar Creek and Milford as TOs and TOPs on the basis of (i) the Interconnection Facilities are an “integrated transmission element” and (ii) the Interconnection Facilities are material to the reliability of the BPS. As discussed below, NERC has not met its burden of demonstrating that the Interconnection Facilities are an integrated transmission element or otherwise material to the reliability of the BPS. Instead, NERC’s approach sets forth interpretations of its Registry Criteria that are material changes to what constitutes an integrated transmission element under Commission precedent and what can be used to satisfy the materiality requirement under the Registry Criteria.

**1. NERC Has Not Demonstrated That The Cedar Creek Or Milford Interconnection Facilities Are An “Integrated Transmission Element.”**

In the Cedar Creek Decision and the Milford Decision, NERC concludes that both Cedar Creek’s and Milford’s respective generator interconnection facilities are an “integrated transmission element.”<sup>14</sup> Importantly, “integrated transmission element” is not defined in NERC materials, but is being defined by NERC for the purpose of registering generator interconnection facilities as TOs and TOPs. Significantly, there is Commission precedent on what qualifies as an “integrated transmission element.”<sup>15</sup> Not

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<sup>14</sup> Cedar Creek Decision at 9-12; Milford Decision at 11-12.

<sup>15</sup> Although the Commission was presented with the opportunity to address the term in the context of reliability in its order in *New Harquahala Generating Company, LLC*, 123 FERC ¶ 61,173 (“*New Harquahala*”), order on clarification, 123 FERC ¶ 61,311 (2008), it did not do so. As the Commission stated “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.” *New Harquahala* at P 44. Addressing the definition of an “integrated transmission element,” NERC, discussing an argument on the issue of an “integrated transmission element,” incorrectly states in the Cedar Creek Decision that “the Commission rejected almost identical arguments in *New Harquahala*,” Cedar Creek Decision at 11, yet recognized two pages earlier that “the Commission did not need to rule on whether the facility was an

only does NERC's interpretation of the term depart from the historic use of the term by FERC and the industry, the industry has not had the opportunity required under Section 215(c)(2)(D) of the FPA to address the implications of NERC's interpretation under the reliability regime. Specifically, Section 215(c)(2)(D) provides for certification of the Electric Reliability Organization ("ERO") "if the Commission determines that such ERO has established rules that provide for reasonable notice and opportunity for public process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties." While Section 215(c)(2)(D) provides for the establishment of such rules, application of such rules cannot be abandoned in the interest of expediency or because of a desire to address a potential or perceived gap in reliability that has not previously been vetted through the stakeholder process. To the extent NERC intends to interpret a term it has not previously defined, it should follow its own stakeholder-focused due process procedures rather than subjecting the industry to its own unilateral interpretation.

**a. Definition of Bulk Power System**

Section 501.1.2.1 of the Rules of Procedure<sup>16</sup> generally defines the BPS as follows:

as defined by the Regional Entity, the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher.<sup>17</sup>

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integrated element," *id.* at 9. The Milford Decision also recognizes that the Commission did not rule on the issue of an "integrated transmission element" in *New Harquahala*. Milford Decision at 12.

<sup>16</sup> Rules of Procedure of the North American Electric Reliability Corporation, §501.1.2.1 (Oct. 1, 2010) ("Rules of Procedure") at [http://www.nerc.com/files/NERC\\_Rules\\_of\\_Procedure\\_EFFECTIVE\\_20101001.pdf](http://www.nerc.com/files/NERC_Rules_of_Procedure_EFFECTIVE_20101001.pdf).

<sup>17</sup> *Id.* Section 215 of the FPA defines the bulk power system as "(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof);

The Registry Criteria qualifies, however, that entities identified in Part II of the Registry Criteria 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.**”<sup>18</sup> A criterion not met by either Cedar Creek or Milford is the requirement under Part III of the Registry Criteria that it “***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.”<sup>19</sup>

The only facilities at issue that Cedar Creek and Milford own and/or operate are generator interconnection facilities used to connect their respective generation facilities (“Facilities”) to the grid. (“Interconnection Facilities”). Contrary to NERC’s conclusion, the Interconnection Facilities necessary to interconnect the Facilities to the grid are not an “integrated transmission element.” The Interconnection Facilities upon which WECC

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and (B) electric energy from generating facilities needed to maintain transmission system reliability.” Currently, the Commission relies on the NERC definition of “Bulk Electric System” regarding the applicability of, and the responsibility of specific entities to comply with, the Reliability Standards. See *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242 at PP 50, 75, *on reh’g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007). NERC defined “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.” NERC’s Glossary of Terms Used in Reliability Standards at 8 (April 20, 2010) (“NERC Glossary”) at [http://www.nerc.com/files/Glossary\\_of\\_Terms\\_2010April20.pdf](http://www.nerc.com/files/Glossary_of_Terms_2010April20.pdf). This definition provided Regional Entities discretion to define “bulk electric system,” including the ability to exclude facilities 100 kV or above and has led to regulatory inconsistencies across regions. As a result, the Commission recently directed NERC to revise its definition of “Bulk Electric System,” and suggested it adopt a bright-line, 100 kV threshold and eliminate regional variations unless separately approved by the Commission. See *Revision to Electric Reliability Organization Definition of Bulk Electric System*, Order No. 743, 133 FERC ¶ 61,150 at PP 72-73 (2010). NERC must file its modifications within a year of the effective date of Order No. 743, and has the discretion to develop an alternate solution that is as effective as, or superior to, the Commission’s proposal. *Id.* at PP 33, 75.

<sup>18</sup> Registry Criteria at 6 (emphasis added).

<sup>19</sup> *Id.* at 9 (emphasis added). Section III.d.2 of the Registry Criteria also addresses a transmission element rated below 100 kV that is associated with a facility included on a critical facilities list. See *id.* Application of Section III.d.2 is not at issue in the Decisions.

and NERC have based the TO and TOP registrations are radial facilities that connect the Facilities to the BPS and do no more than carry power generated by the Facilities to the BPS or carry power to the Facility. These Interconnection Facilities are not used to carry interconnected system flows.

Because the Registry Criteria does not define “integrated transmission element” and, as a result, does not provide “as much certainty as possible regarding the applicability and responsibility of specific entities under the approved standards”<sup>20</sup> as the Commission directed, it is appropriate to look to other sources for what formed the industry’s understanding of the terminology. In the absence of NERC demonstrating that it presented a definition for “integrated transmission element” to the industry that clearly included generator interconnection facilities, understanding what the Registry Criteria requires is driven by numerous Commission orders addressing the concept of an integrated transmission system. The Commission’s characterization of an integrated transmission system supports the conclusion that interconnection facilities, including the Interconnection Facilities, are not an “integrated transmission element” associated with the BPS.

*i. “Connected” is not synonymous with “integrated.”*

Although the Registry Criteria does not define “integrated transmission element,” the plain language of the Registry Criteria first requires that the transmission element must be an integrated transmission element. Under the plain language of the Registry Criteria, it is not enough that the transmission element be a “connected transmission element.” Significantly, there is no substantive electric industry support that (i)

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<sup>20</sup> Order No. 693 at P 33.

generator interconnection facilities are integrated transmission elements or (ii) entities were on notice that the Registry Criteria would treat generator interconnection facilities as integrated transmission elements for purposes of registration as TOs and/or TOPs. To the extent NERC contends that “integrated” is synonymous with “connected,” such position ignores substantial Commission precedent on the term “integrated.” Even if NERC does not agree with the industry’s common understanding of what constitutes integrated transmission facilities, an approach that disregards the industry’s understanding of the integration requirement is not appropriate where the Registry Criteria specifically requires that the facilities at issue be an integrated transmission element for purposes of registration as TOs and/or TOPs.

Given that the Registry Criteria was developed and approved through the Commission, if NERC intended integrated transmission facilities to be subject to an interpretation other than that used by the Commission and understood by the industry, NERC should have indicated as much at the time the Registry Criteria was subject to comment to afford interested parties their right to due process to address the issue. It is not appropriate to wait until application of the Registry Criteria to develop an alternative interpretation that shifts facilities that were otherwise understood to be part of the GO and/or GOP functions, to the TO and/or TOP functions. Accordingly, the Commission should reject efforts to re-write the Registry Criteria without first directing NERC to provide industry participants the opportunity to address issues associated with such a material change.

- ii. The Registry Criteria specifically provides for exclusion from registration of entities that do not own or operate an integrated transmission element.*

The plain language of the Registry Criteria specifically provides for the exclusion of transmission facilities that are not an *integrated transmission element*. Part III of the Registry Criteria begins by stating that:

Entities identified in Part II above as being subject to registration as an LSE, DP, GO, GOP, TO, or TOP should be excluded from the registration list for these functions if they do not meet any of the criteria listed below.<sup>21</sup>

For TOs and TOPs, Part III.d.1 of the Registry Criteria sets forth the criteria relevant to the interconnection facilities at issue, which requires that the TO and TOP must be:

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.<sup>22</sup>

Because the Interconnection Facilities are not integrated transmission elements, Cedar Creek and Milford are specifically excluded from registration as TOs and/or TOPs. Accordingly, registration as a TO and TOP based on the Interconnection Facilities should be reversed.

*iii. Commission precedent does not support treatment of Interconnection Facilities as an “integrated transmission element.”*

The Interconnection Facilities upon which NERC has based the TO and TOP registrations are radial facilities that connect the Facility to the BPS and do no more than carry power generated by the Facility to the BPS or carry power to the Facility. These facilities are not used to carry interconnected system flows. The fact that interconnection facilities are not part of an integrated transmission system is at the very

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<sup>21</sup> Registry Criteria at 6.

<sup>22</sup> *Id.* at 9 (emphasis added).

heart of the Commission's open access transmission service and generation interconnection policies.

In Order No. 890,<sup>23</sup> the Commission issued its revised *Pro Forma* open access transmission tariff in which it defined the "Transmission System" in Section 1.53 as "[t]he facilities owned, controlled or operated by the Transmission Provider that are used to provide transmission service under Part II and Part III of the Tariff."<sup>24</sup> This definition is consistent with the definition of "Transmission System" used in the Commission's *Pro Forma* Large Generator Interconnection Agreement ("LGIA"), which provides that "**Transmission System** shall mean the facilities owned, controlled or operated by the Transmission Provider or Transmission Owner that are used to provide transmission service under the Tariff."<sup>25</sup> Distinguished from the definition of Transmission System are the generator's interconnection facilities, as set forth in the definition of "Interconnection Customer's Interconnection Facilities" in the LGIA:

. . . all facilities and equipment, as identified in Appendix A of the Standard Large Generator Interconnection Agreement, that are **located between the Generating Facility and the Point of Change of Ownership**, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Generating Facility to the

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<sup>23</sup> *Preventing Undue Discrimination and Preference in Transmission Serv.*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *reh'g denied*, Order No. 890-C, 126 FERC ¶ 61,228, *clarified*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>24</sup> Order No. 890, Appendix C, § 1.53.

<sup>25</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003) ("Order No. 2003"), *on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, Appendix 6 at 6 in Appendix B, (2004) ("Order No. 2003-A"), *on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs, et al. v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

Transmission Provider's Transmission System. ***Interconnection Customer's Interconnection Facilities are sole use facilities.***<sup>26</sup>

Any determination that interconnection facilities are an integrated transmission element also contravenes the Commission's longstanding interconnection pricing policy<sup>27</sup> that "network upgrades" consist only of those "facilities from the point where the generator connects to the grid. . . ."<sup>28</sup> By contrast, a generator's "sole-use" facilities are those located prior to the point of interconnection with the grid, such as radial lines, which are not a part of the wider transmission system and thus do not benefit all users of the grid.<sup>29</sup> This is consistent with the court's finding in *Sierra Pacific Power Co. v. FERC*,<sup>30</sup> wherein the issue of what constitutes an integrated facility was a central issue with respect to defining the scope of the transmission system:

Lower voltage transmission facilities are "integrated," . . . when, in addition to being connected with higher voltage facilities, the lower voltage facilities are themselves interconnected and designed to operate in parallel. This is also referred to as "looping," that is, the lower voltage transmission facilities form parallel paths for electric energy with the higher voltage transmission facilities. The

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<sup>26</sup> Order No. 2003-A, Appendix 6 at 6 in Appendix B (emphasis added).

<sup>27</sup> Although the analysis was in the context of cost allocation, the nature of the facilities is driven by an engineering and operations perspective and not by cost allocation.

<sup>28</sup> See *Consumers Energy Co.*, 95 FERC ¶ 61,233 at 61,804, *reh'g denied*, 96 FERC ¶ 61,132 (2001). See also *South Carolina Elec. & Gas Co.*, 118 FERC ¶ 61,185 at P 20 (2007) (reminding that the Commission's "policy that network upgrades include all facilities at or beyond the point where the generator connects to the grid, which the Commission reiterated in numerous cases, is not a new policy."); *Nevada Power Co.*, 111 FERC ¶ 61,161 at PP 12, 15 (2005) (noting "that there is an important distinction between 'interconnection facilities' and 'network upgrades' in that the former are *sole use facilities* (e.g., a radial line that extends from the generating facility to the point of interconnection with the grid) that benefit only the interconnection customer, while the latter are part of the integrated grid and, therefore, benefit all users of the transmission system.") (emphasis added), *aff'd*, 113 FERC ¶ 61,007 at PP 12, 19 (2005) (subsequent history omitted). This policy has been repeatedly affirmed by the United States Court of Appeals for the District of Columbia Circuit. See, e.g., *Entergy Servs., Inc. v. FERC*, 391 F.3d 1240, 1248 (D.C. Cir. 2004) (upholding the Commission's interconnection pricing policy, that "any changes to facilities located on the grid" are "network upgrades" for which the Commission's "standard policy" requires credits, with interest.).

<sup>29</sup> See, e.g., *Entergy Miss., Inc.*, 102 FERC ¶ 61,105 at P 8 (2003), *on reh'g*, 117 FERC ¶ 61,200 (2006), *dismissed sub nom. Entergy Servs., Inc. v. FERC*, 2007 WL 2405693 (D.C. Cir. Aug. 2, 2007).

<sup>30</sup> 793 F.2d 1086 (9th Cir. 1986).

existence of two or more parallel transmission paths from sources of power to receiving points establishes integration. This is true even where one of the parallel paths is normally operated “opened,” that is, with the connection broken by opening a switch.<sup>31</sup>

The conclusion that the Interconnection Facilities are not integrated transmission elements is further supported by application of what the Commission characterizes as the “*Mansfield* factors,” which the Commission uses to distinguish integrated from non-integrated facilities.<sup>32</sup> The *Mansfield* factors consist of the following five factors:

- (1) Whether the facilities are radial, or whether they loop back into the transmission system;
- (2) Whether energy flows only in one direction, from the transmission system to the customer over the facilities, or in both directions, from the transmission system to the customer, and from the customer to the transmission system;
- (3) Whether the transmission provider is able to provide transmission service to itself or other transmission customers . . . over the facilities in question;
- (4) Whether 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
- (5) Whether an outage on the facilities would affect the transmission system.<sup>33</sup>

Cedar Creek applies these five factors to its Interconnection Facilities.<sup>34</sup> The conclusion reached by Cedar Creek is typical for generator interconnection facilities under a *Mansfield* analysis.

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<sup>31</sup> *Id.* at 1088.

<sup>32</sup> See *S. Cal. Edison Co.*, Opinion No. 487, 117 FERC ¶ 61,103 at PP 68-104 (2007) (applying the *Mansfield* factors to a radial generator interconnection line and determining that the line was not an integrated transmission facility).

<sup>33</sup> *Id.* at P 77 (citing *Mansfield Municipal Elec. Dept.*, Opinion No. 454, 97 FERC ¶ 61,134 at 61,613-14 (2001), *reh'g denied*, Opinion No. 454-A, 98 FERC ¶ 61,115 (2002) (“*Mansfield*”).

<sup>34</sup> Cedar Creek Appeal at 9-11.

The conclusion under the *Mansfield* factors is further reinforced by the Commission's order in *PSEG Energy Resources & Trade*,<sup>35</sup> wherein the Commission addressed the classification of an eight-mile 345 kV line connecting a new 345 kV substation at a generating plant to the NYISO transmission system. Finding that there were no breaks in between the NYISO transmission system and the generating plant, the Commission concluded that the 345 kV line does "not form an integrated transmission grid. . . ."36

Applying the Mansfield factors to the Milford and Cedar Creek facts as explained in the Decisions, it appears that the Interconnection Facilities do not operate in parallel, and are not otherwise looped, with the integrated transmission network. Accordingly, under Commission precedent, the Interconnection Facilities are *not* part of the integrated transmission network, as "[t]he network begins at the point where the Interconnection Customer connects to the Transmission System, not somewhere beyond that point."<sup>37</sup>

Further, the Commission has an additional test for determining whether facilities are integrated facilities. In *Entergy Services, Inc.*, the Commission addressed how to demonstrate integration (or the lack of integration). There, through the use of a base case load flow study of the transmission system under normal situations and contingency conditions, both with and without the facilities for which integration was claimed, it was demonstrated that the transmission system owner's wholesale and retail customers would not be adversely affected without the facilities for which integration

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<sup>35</sup> 123 FERC ¶ 61,001 (2008).

<sup>36</sup> *Id.* at P 20.

<sup>37</sup> Order No. 2003 at P 65. Nor, *a fortiori*, does it begin somewhere *before* that point.

was claimed.<sup>38</sup> Applying this test in another case, an Administrative Law Judge, affirmed by the Commission, stated that “[t]he Commission has also made it clear that integration requires more than mere interconnection with the transmission provider’s system” and determined based on load flow studies that the facilities at issue were not integrated.<sup>39</sup> These cases in which the integration issue has been addressed have involved facilities other than radial interconnection facilities. In these cases, the Commission found that the facilities at issue were not integrated. Although it does not appear that load flow studies were performed in connection with the TO and TOP registrations of Cedar Creek or Milford as such were performed in *Entergy* and *ETEC* (neither WECC nor NERC has offered load flow studies demonstrating integration or an engineering analysis in support of integration), based on the descriptions of the Interconnection Facilities, such studies would likely demonstrate that the Interconnection Facilities are not integrated.

Additionally, Section 141.300(a) of the Commission’s regulations identifies the crucial distinction between integrated and nonintegrated transmission facilities.<sup>40</sup> In connection with the filing requirement for FERC Form No. 715 – Annual Transmission Planning and Evaluation Report, any transmitting utility “that operates integrated (that is, non-radial) transmission facilities at or above 100 kilovolts must complete FERC Form No. 715.”<sup>41</sup> The Commission’s treatment of radial lines (e.g., generator interconnection

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<sup>38</sup> Opinion No. 430, 85 FERC ¶ 61,163 at 61,649 (1998), *reh’g denied*, 91 FERC ¶ 61,153 (2000) (“*Entergy*”).

<sup>39</sup> *East Texas Elec. Coop., Inc. v. Central and South West Servs., Inc.*, 89 FERC ¶ 63,005 at 65,009 (1999), *aff’d*, Opinion No. 475, 108 FERC ¶ 61,079 (2004), *reh’g denied*, Opinion No. 475-A, 114 FERC ¶ 61,027 (2006) (“*ETEC*”).

<sup>40</sup> See 18 C.F.R. § 141.300(a) (2010).

<sup>41</sup> *Id.*

facilities) as non-integrated transmission facilities in the context of transmission planning and evaluation clearly demonstrates that interconnection facilities do not qualify as integrated transmission facilities.

- iv. *Inclusion of the Interconnection Facilities as an integrated transmission element requires a post hoc redefinition of “integrated transmission element.”*

In rejecting Cedar Creek’s reliance on FERC precedent, including *Mansfield*, NERC states that such reliance is misplaced because:

*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 as present 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>42</sup>

NERC misses the point. While Section 215 provides the Commission with additional responsibilities that can result in different treatment of facilities for reliability purposes under Section 215 than what precedent has established for the same facilities under Section 205,<sup>43</sup> Section 215 requires clarity as to the intended application (with the clarity to come through the stakeholder process, not a NERC redefining of a Commission defined term that had not previously been redefined through a NERC process). As discussed, such clarity was not provided for reliability purposes.<sup>44</sup>

The Commission has established precedent for what constitutes an “integrated transmission element.” The Commission’s precedent recognizes, and the electric

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<sup>42</sup> Cedar Creek Decision at 11.

<sup>43</sup> 16 U.S.C. § 824(d) (2006).

<sup>44</sup> While NERC concludes that “the Commission rejected almost identical arguments in *New Harquahala*,” no citations in support are provided. A review of the Commission’s order in *New Harquahala*, however, indicates that the Commission did not decide that case on the basis of the issue of an integrated transmission element. *New Harquahala* at P44.

industry understood that precedent to mean, that generation interconnection facilities are not an “integrated transmission element.” There is no evidence that implementation of new Section 215 of the FPA or the issuance of regulations and criteria governing certification of an ERO were intended to change FERC’s precedent when NERC included the integrated transmission element concept in the Registry Criteria. To the extent NERC, as the Commission-certified ERO, or WECC, to which NERC delegated responsibility for registration, intended to use terms of art that have taken on a particular meaning for the electric industry and the Commission, and then change their meaning, WECC and/or NERC had an affirmative obligation to bring such changes to the attention of not only the Commission, but also to those entities subject to its reliability standards. Specifically, Section 215(c)(2)(D) requires NERC to provide rules that “provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interest in developing reliability standards and otherwise exercising its duties.”<sup>45</sup> If NERC had previously established a process for defining “integrated transmission element” in either the Registry Criteria or the NERC Glossary to include interconnection facilities that had heretofore not been viewed to be part of the transmission system, NERC would have accomplished that goal and provided the transparency that the Registry Criteria lacks, while at the same time providing the process required by the FPA. But given the absence of such due process and the absence of a Commission-approved definition for “integrated transmission element” that includes sole-use radial interconnection facilities, WECC and NERC have exceeded the scope of the Registry Criteria. Any *post hoc* attempt to redefine the industry’s (and the

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<sup>45</sup> 16 U.S.C. § 824o(c)(2)(D).

Commission's) long-standing understanding of integrated transmission elements through the classification of Cedar Creek and Milford as TOs and TOPs must be reversed.<sup>46</sup> Instead, NERC should be directed to comply with the due process provisions of Section 215 of the FPA to address this issue.

v. *Any attempt to develop supplemental Registry Criteria without affording due process to Stakeholders should be rejected.*

Any *post hoc* attempt to redefine "integrated transmission element" is nothing more than development of Commission-prohibited supplemental Registry Criteria. The Commission has already rejected attempts to supplement the Registry Criteria:

[w]ith regard to the fact that certain Regional Entities have created supplemental criteria to determine which entities should be on the registry, we agree with California Cogeneration that this is not appropriate. Order No. 693 accepted NERC's compliance registration process "to provide as much certainty as possible regarding the applicability and responsibility of specific entities under the approved standards." NERC's Statement of Compliance Registry does not reference supplemental compliance registries created by Regional Entities.<sup>47</sup>

By departing from Commission-defined terms of art, NERC is attempting to develop supplemental registry criteria without affording "due process to those entities that would be subject to them" or requesting Commission approval of such supplemental criteria.<sup>48</sup>

In *Mosaic*, addressing NERC's application of the Registry Criteria, the Commission stated that:

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<sup>46</sup> Rules of statutory construction require the Commission to attach its common meaning to "integrated transmission element." "It is an elementary principle of statutory construction that ordinarily the plain meaning of statutory language controls, *i.e.*, 'words should be given their common usage.'" *United Scenic Artists, Local 829, Bhd. of Painters and Allied Trades, AFL-CIO v. NLRB*, 762 F.2d 1027, 1033 n.15 (D.C. Cir. 1985 (citations omitted)). Significantly, "unless contrary indications are present, a court can assume that Congress intended common usage of the term to apply." *Inner City Broad. Corp. v. Sanders*, 733 F.2d 154, 157-158 (D.C. Cir. 1984)

<sup>47</sup> Order No. 693-A at P 38 (footnotes omitted).

<sup>48</sup> *Id.* at n.32.

NERC must state whether it intended to rely on and how it relied on this section of its Registry Criteria and it must provide an analysis of whether and how the facilities satisfy the criteria and, in doing so, address all of Mosaic's and Tampa's arguments.<sup>49</sup>

NERC has failed to provide such an analysis. The Decisions are devoid of any substantive analysis.<sup>50</sup> Rather, they merely define "integrated transmission element" to be any interconnection facilities interconnected at 100kV and above. NERC fails to point to any support for the proposition that NERC's interpretation was also held by the industry or otherwise clear from its filings with the Commission. Accordingly, NERC has not met its requisite burden. Treating the Interconnection Facilities as integrated transmission elements is neither consistent with Commission precedent nor with the Registry Criteria. Absent a Commission-approved change in the criteria after affording entities their due process rights recognized by the Commission in Order No. 693-A and required by Section 215(c)(2)(D) of the FPA, such facilities do not serve a bona fide basis for classification as a TO and/or TOP function. Accordingly, registration of Cedar Creek and Milford as TOs and TOPs should be reversed to correct the inappropriate use of supplemental Registry Criteria.

**2. NERC Has Not Demonstrated That The Interconnection Facilities Are Material To The Reliability Of The BPS.**

**a. *The Materiality Analysis Under The Registry Criteria Is Intended To Address Unique Attributes That Can Require Registration, Not A Catch-All Analysis***

In Order No. 693-A, the Commission, citing the Registry Criteria, specifically recognized "that an entity that falls below the minimum registry criteria may be included

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<sup>49</sup> *Mosaic Fertilizer, LLC*, 121 FERC ¶ 62,058 at P 36 (2007) ("*Mosaic*").

<sup>50</sup> See Attachment D, Substitute Attachment G, and Attachment A, respectively.

on the compliance registry on a facility-by-facility basis . . . .”<sup>51</sup> Specifically, the Registry Criteria provides that

[t]he Regional Entity considering registration of an organization not meeting (e.g., smaller in size than) the criteria may propose registration of that organization **if the Regional Entity believes and can reasonably demonstrate** that the organization is a bulk power system owner, or operates, or uses bulk power system assets, and is material to the reliability of the bulk power system.<sup>52</sup>

Describing the process for such alternative registration, the Commission unequivocally stated that “NERC’s compliance registry places the burden on the Regional Entity to reasonably demonstrate that the organization is a user, owner or operator of the Bulk-Power System.”<sup>53</sup> Elaborating, the Commission explained that “[t]his language contemplates a case-by-case registration of entities outside the NERC criteria, provided that a reasonable demonstration of the need to register the entity is made by the Regional Entity.”<sup>54</sup> The Commission reinforced these requirements in *New Harquahala*:

We conclude that NERC and WECC adequately supported the registration of Harquahala as a transmission owner and transmission operator pursuant to NERC’s plenary authority to register entities that own or operate assets that are “material to the reliability of the bulk power system.” The Commission therefore affirms NERC and WECC’s findings, based on the specific facts of this case....<sup>55</sup>

Although the Registry Criteria provides for an alternative approach, such approach is not without restrictions. Those restrictions include application on a case-by-case basis and the Regional Entity meeting its burden.

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<sup>51</sup> Order No. 693-A at P 38.

<sup>52</sup> Registry Criteria at 10 (Note 1) (emphasis added; footnote omitted).

<sup>53</sup> Order No. 693-A at P 38 (footnote omitted); *see also Mosaic* at P 36.

<sup>54</sup> Order No. 693-A at P 38.

<sup>55</sup> *New Harquahala* at P44.

Although the Decisions are in the context of individual cases, NERC's application of this section of the Registry Criteria to Cedar Creek and Milford results in interpretations that are of generic applicability.<sup>56</sup> This application raises the same due process concerns discussed above with respect to an integrated transmission element and discussed below with respect to the regional development of supplemental criteria. Under the Decisions, interconnection facilities rated at 100 kV or above associated with an entity registered as a GO is material to the BPS.<sup>57</sup> The Decisions also appear to stand for the generic proposition that all GOs and GOPs with interconnection facilities for which switching must be performed or on which faults can occur must also be registered as TOs and TOPs.<sup>58</sup> Given that the absence of high voltage switching equipment would be the exception rather than the rule for interconnection facilities rated at 100 kV and above, most GOs interconnected at 100 kV and above would be subject to registration as TOs and TOPs.

It is inconsistent with the intended application of this portion of the Registry Criteria for WECC and NERC to develop generic criteria in the context of individual registration determinations. More than being inconsistent with the Registry Criteria, it is an end run around the due process rights recognized by the Commission in Order No.

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<sup>56</sup> The Decisions also address certain facts that are unique to Cedar Creek and Milford (e.g., specific equipment, ratings, interconnected utilities, other generation, etc.). EPSA will not address the materiality assessment as it is applied to such specific facts other than to state (1) that EPSA agrees with the Cedar Creek Appeal and Milford Appeal that NERC has not otherwise demonstrated that the interconnection facilities are material to the reliability of the BPS, see Cedar Creek Appeal at 7-8, 14-16; see *also* Milford Appeal at 29-34, and (2) point out that NERC's unsupported statement that "[l]oss of Milford's transmission facility would result in loss of a generating facility which is material to the BPS," Milford Decision at 14, is a violation of Section 215(i)(2) of the FPA, 16 U.S.C. § 824o(i)(2)(2006), which bars NERC from addressing resource availability (NERC is barred from setting or enforcing "compliance with standards for adequacy or safety of electric facilities or services.")

<sup>57</sup> Cedar Creek Decision at 10; Milford Decision at 13-14.

<sup>58</sup> Cedar Creek Decision at 8; Milford Decision at 14.

693-A and required by Section 215(c)(2)(D) of the FPA, which requires not only reasonable notice and opportunity for public comment, but also a balancing of interests. Accordingly, the Commission should order the reversal of Cedar Creek's and Milford's TO and TOP registrations and instruct NERC as to the intended application of this portion of the Registry Criteria.

- i. The Commission's prohibition against regional development of supplemental criteria applies to WECC's and NERC's registration of Cedar Creek and Milford as TOs and TOPs.*

The Commission addressed the ability of a Regional Entity to register entities on a case-by-case basis in the context of its restriction on Regional Entities creating supplemental criteria to determine which entities should be on the registry.<sup>59</sup> While the Commission has not prohibited the use of supplemental registry criteria, it rejected "regional registry criteria without prejudice to a Regional Entity creating supplemental registry criteria, provided that the Regional Entity affords due process to those entities that would be subject to them, and requests ERO and Commission approval of such criteria."<sup>60</sup> As a result, the Commission has banned the use of a case-by-case approach to surreptitiously create supplemental criteria that a Regional Entity intends to apply to similarly situated entities.

The Decisions' interpretation that all GOs and GOPs with interconnection facilities rated at 100 kV or above should be registered as TOs and TOPs as well as the generic proposition that all GOs and GOPs with interconnection facilities for which switching must be performed or on which faults may occur must also be registered as TOs and TOPs, reflect the development of supplemental criteria developed without

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<sup>59</sup> Order No. 693-A at P 38.

<sup>60</sup> *Id.* at n.32.

affording due process to those entities that would be subject to them or providing a process by which the Commission can approve such criteria. Notwithstanding NERC's and WECC's purported concerns about a reliability gap, the construct of due process under Section 215 of the FPA cannot be abrogated in the manner that is being pursued through the Decisions in these individual cases.

*ii. It is improper for NERC to develop criteria based on GO registrations for generic applicability.*

According to NERC, "Cedar Creek is material to the BPS, as evidenced by its registrations as a GO and GOP."<sup>61</sup> With respect to Milford, NERC states that "Milford has been identified as critical to the BPS, as evidenced by its registration as a GO."<sup>62</sup> Combined with the Interconnection Facilities being rated at or above 100 kV, NERC concludes that the Interconnection Facilities are material to the reliability of the BPS, requiring the TO and TOP registrations.<sup>63</sup> According to NERC, registration is necessary because no other entity would be obligated to perform certain requirements under the TO and TOP Reliability Standards.<sup>64</sup>

The fact that NERC believes that there could be a reliability gap does not justify NERC using the Registry Criteria to develop supplemental registration criteria while bypassing the due process requirements of Section 215(c)(2)(D) of the FPA. Under the Registry Criteria,

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<sup>61</sup> Cedar Creek Decision at 10.

<sup>62</sup> Milford Decision at 14. Note that in the quoted language, NERC introduces the concept of Milford being "critical" to the BPS by virtue of being registered as a GO, yet no evidence is provided that Milford has been determined to be "critical." Presumably, this is merely a misstatement on NERC's part with the intended term to be "material."

<sup>63</sup> Cedar Creek Decision at 10; Milford Decision at 13-14.

<sup>64</sup> See Cedar Creek Decision at 12; see *also* Milford Decision at 15.

Organizations will be responsible to register and to comply with approved reliability standards to the extent that they are owners, operators, and users of the bulk power system, perform a function listed in the functional types identified in Section II of this document, and are material to the reliable operation of the interconnected bulk power system as defined by the criteria and notes set forth in this document.<sup>65</sup>

The Registry Criteria requires registration and compliance based on meeting three conditions: (1) being an owner, operator, and users of the BPS, (2) performing a function listed in the functional types, and (3) being material to the reliable operation of the BPS. Accordingly, if an entity is already registered as a GO or GOP, the presumption is that it is already material to the BPS. NERC's blind desire for Cedar Creek and Milford to comply with Reliability Standards associated with the TO and TOP functions is driving these registrations. The end result that NERC seeks of compliance with certain Reliability Standards is not a sufficient basis upon which to require registration. The ends does not justify the means, particularly where due process is required by Section 215(c)(2)(D) of the FPA and addressed in Order No. 693-A. Adopting wholesale changes to the Registry Criteria that result in the generic applicability that NERC seeks to implement in the Decisions does not qualify as due process and cannot be approved in order to address NERC's concern that there is a potential gap in reliability.

*iii. It is improper for NERC to develop criteria based on switching operations or the possibility of faults for generic applicability.*

As indicated above, the Decisions also appear to stand for the generic proposition that all GOs and GOPs with interconnection facilities for which switching

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<sup>65</sup> Registry Criteria at 1.

must be performed must also be registered as TOs and TOPs.<sup>66</sup> In addition to the due process concerns discussed for an integrated transmission element and on concluding that all interconnection facilities rated at 100 kV or above are material to the reliability of the bulk power system if the entity is otherwise registered as a GO and GOP, relying on switching and fault concerns alone raises additional concerns. Specifically, NERC's approach in the Decisions raises concerns with respect to the Commission's interconnection process as well as the requirements of the understanding of the scope of NERC's GO and GOP Reliability Standards.

Generators are subject to the Commission's interconnection policies under Order No. 2003 and NERC's GO and GOP Reliability Standards. In the context of the Commission's interconnection policies, new interconnection facilities are subject, among other things, to an Interconnection System Impact Study ("SIS"). The LGIA defines SIS as:

an engineering study that evaluates the impact of the proposed interconnection on the safety and reliability of Transmission Provider's Transmission System and, if applicable, an Affected System. The study shall identify and detail the system impacts that would result if the Generating Facility were interconnected without project modifications or system modifications, focusing on the Adverse System Impacts identified in the Interconnection Feasibility Study, or to study potential impacts, including but not limited to those identified in the Scoping Meeting as described in the Standard Large Generator Interconnection Procedures.<sup>67</sup>

Additionally, Section 9.7.5 of the LGIA sets forth protection requirements as follows:

In compliance with Good Utility Practice, Interconnection Customer shall provide, install, own, and maintain relays, circuit breakers and all other devices necessary to remove any fault contribution of the Large Generating Facility to any short circuit occurring on the

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<sup>66</sup> Cedar Creek Decision at 8; Milford Decision at 14.

<sup>67</sup> LGIA, Article 1.

Transmission System not otherwise isolated by Transmission Provider's equipment, such that the removal of the fault contribution shall be coordinated with the protective requirements of the Transmission System. Such protective equipment shall include, without limitation, a disconnecting device or switch with load-interrupting capability located between the Large Generating Facility and the Transmission System at a site selected upon mutual agreement (not to be unreasonably withheld, conditioned or delayed) of the Parties. Interconnection Customer shall be responsible for protection of the Large Generating Facility and Interconnection Customer's other equipment from such conditions as negative sequence currents, over- or under-frequency, sudden load rejection, over- or under-voltage, and generator loss-of-field. Interconnection Customer shall be solely responsible to disconnect the Large Generating Facility and Interconnection Customer's other equipment if conditions on the Transmission System could adversely affect the Large Generating Facility.

Further, Section 5.10 of the LGIA addresses protection schemes. Among the requirements is the obligation for the Interconnection Customer to submit to the Transmission Provider specifications for its interconnection facilities ("ICIF"), including System Protection Facilities.<sup>68</sup> The LGIA defines System Protection Facilities as:

the equipment, including necessary protection signal communications equipment, required to protect (1) the Transmission Provider's Transmission System from faults or other electrical disturbances occurring at the Generating Facility and (2) the Generating Facility from faults or other electrical system disturbances occurring on the Transmission Provider's Transmission System or on other delivery systems or other generating systems to which the Transmission Provider's Transmission System is directly connected.<sup>69</sup>

As a result of the Transmission Provider's review of the Interconnection Customer's System Protection Facilities, the Interconnection Customer:

shall make such changes to the ICIF as may reasonably be required by Transmission Provider, in accordance with Good Utility Practice, to ensure that the ICIF are compatible with the technical

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<sup>68</sup> LGIA §5.10.1.

<sup>69</sup> LGIA, Article 1.

specifications, operational control, and safety requirements of Transmission Provider.<sup>70</sup>

Section 9.8 of the LGIA addresses switching:

Each Party [Interconnection Customer and Transmission Provider] shall provide the other Party a copy of its switching and tagging rules that are applicable to the other Party's activities. Such switching and tagging rules shall be developed on a non-discriminatory basis. The Parties shall comply with applicable switching and tagging rules, as amended from time to time, in obtaining clearances for work or for switching operations on equipment.

Accordingly, under the terms of the LGIA, reliability concerns are addressed in the design and operation of interconnection facilities, with Transmission Providers playing a significant role in the review of the interconnection protection schemes to protect the Transmission Provider's Transmission System.

In addition to the LGIA requirements, GOP's are subject to certain NERC Protection and Control ("PRC") Reliability Standards. For example, Reliability Standard PRC-001 applies to Balancing Authorities, TOPs and GOPs and requires that system protection is coordinated among operating entities.

Significantly, the LGIA and GOP-related PRC Reliability Standards address system protection and/or switching issues. There is no evidence in the Decisions that system protection or switching reliability concerns are not addressed by the LGIA or the GOP-related PRC Reliability Standards. NERC has provided no evidence why LGIAs and associated SISs carry no weight in its determinations when the LGIAs and SISs not only ensure that the facilities and upgrades needed to uphold system reliability are added to the transmission grid but that the generation equipment and interconnection

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<sup>70</sup> LGIA §5.10.2.

facilities are planned and operated to satisfy reliability. Instead, the concern is that there is no compliance responsibility.<sup>71</sup> While in the strict sense there is no compliance responsibility under TO and/or TOP Reliability Standards, there is certain compliance responsibility under the GO/GOP Reliability Standards (which generators treat as applying to their facilities as a whole), including the PRC-related Reliability Standards, as well as contractual obligations under the LGIA that are reliability-based and enforceable by the Transmission Provider and subject to Commission jurisdiction. It is improper for NERC to ignore SISs, LGIAs, and GOP-related PRC Reliability Requirements and instead develop criteria based on switching operations or the possibility of faults for generic applicability at the cost of due process rights in order to address a perceived potential gap in NERC-related compliance responsibility.

**B. The Final Report And The Process Underway In NERC Project 2010-07 Are Relevant To The TO/TOP Registration Issue**

NERC, addressing the Final Report and NERC Project 2010-07 in the Decisions, concludes that the Final Report is not binding and that NERC Project 2010-07 has no bearing on the registrations.<sup>72</sup> NERC is wrong in its conclusion. The Final Report and NERC Project 2010-07, while non-binding and not otherwise adopted by NERC or the Commission,<sup>73</sup> is exactly the due process required by Section 215(c)(2)(D) of the FPA and addressed in Order No. 693-A. As a result, these efforts are highly relevant. In fact, by pursuing reliability concerns associated with interconnection facilities in the context of Project 2010-07, not only can the Reliability Standards be tailored to the

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<sup>71</sup> See Cedar Creek Decision at 13; see *also* Milford Decision at 10.

<sup>72</sup> See Cedar Creek Decision at 11-12; see *also* Milford Decision at 13-14.

<sup>73</sup> *Id.*

reliability issues that are unique to interconnection facilities, it avoids using the Registry Criteria to circumvent the standards process.

### **1. Background On The Final Report And NERC Project 2010-07.**

In connection with the proceeding in *New Harquahala*, it became apparent to the electric industry that (i) NERC had determined that there was a reliability gap associated with generator interconnection facilities and (ii) that requiring GOs and GOPs to register as TOs and TOPs was not the correct solution to addressing the compliance reliability gap. In response, “NERC conducted a survey in the Fall of 2008 to define and collect recommendations for resolving stakeholder concerns, and to review and highlight those Transmission Owner and Transmission Operator requirement that should be considered for generic applicability for Generator Owners and Generator Operators for their tie-line facility.”<sup>74</sup> Based on the recommendations in the survey, NERC formed the Ad-Hoc Group for Generator Requirements at the Transmission Interface (“Group”).<sup>75</sup> The team charged with leading this effort was drawn from “a cross-section of participants across different geographic regions and industry segments, specifically linked with various NERC technical groups, and representative of both the operating and planning perspectives.”<sup>76</sup> The Group was charged with evaluating “existing NERC Reliability Standard requirements and develop[ing] a recommendation and possible standards authorization request to address gaps in the reliability for interconnection facilities of the Generator Owner and expectation for the Generator Operator in operating those

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<sup>74</sup> Standards Announcement at 1.

<sup>75</sup> *Id.*

<sup>76</sup> Final Report at 8.

facilities [and to] [p]ropose strategies to address or resolve other related issues as appropriate.”<sup>77</sup>

In the first half of 2009, the Group, referred to by the industry and NERC as the GO TO Team, prepared a draft report that was posted on NERC’s website for comments. Like the diversity of the team, comments came from a cross-section of participants. As NERC points out on its website, [t]here were over 100 respondents to the request for input with strong opinions on both sides of this highly important and sensitive issue.”<sup>78</sup> With input from the comments, the Final Report was completed and posted on NERC’s website in November, 2009. As described more fully in the Cedar Creek Appeal<sup>79</sup> and the Milford Appeal,<sup>80</sup> the Final Report contained recommendations, including NERC and Regional Entities refraining from registering GOs and GOPs as TOs and TOPs generically by virtue of the interconnection facility, recommendations for standards modifications, and registry criteria changes.<sup>81</sup>

The Final Report has since become the basis for the SAR designated as Project 2010-07. Project 2010-07 was introduced at the November 5, 2009 NERC Board meeting<sup>82</sup> and Project 2010-07 was ultimately included in NERC’s 2010 Standards Development Plan.<sup>83</sup>

## **2. Final Report’s Recommendation To Refrain From Registering GOs and GOPs as TOs and TOPs.**

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<sup>77</sup> Standards Announcement.

<sup>78</sup> <http://www.nerc.com/page.php?cid=2|247|307>.

<sup>79</sup> Cedar Creek Appeal at 12 and Attachment E.

<sup>80</sup> Milford Appeal at 4, 21-23, and 24-35.

<sup>81</sup> Final Report at 5.

<sup>82</sup> NERC Board of Trustees, November 5, 2009 minutes at <http://www.nerc.com/docs/docs/bot/BOT-01109m-Complete.pdf> at pdf pages 197-198.

<sup>83</sup> NERC Reliability Standards Development Plan: 2011-2013 at 3, 12, 14-15.

As indicated, one of the Final Report's key recommendations is that:

NERC and the Regional Entities should refrain from further registering Generator Owners and Generator Operators as Transmission Owners and Transmission Operators generically by virtue of the Generator Interconnection facility.<sup>84</sup>

The Final Report's recommendation is not considered by the Decision, however, because NERC argues that the Report has not been adopted by either NERC or the Commission.<sup>85</sup> EPSA finds this perplexing where NERC itself stated:

Upon reflection of the large number of comments, NERC agrees with many of the commenter's that an appropriate next step is to perform a more thorough vetting of the issues at the interconnection between generators and the transmission grid through a technical study group comprising industry participants.<sup>86</sup>

In light of the issues identified through the NERC survey and reflected in the Final Report, NERC's response in the Decisions is perplexing as such a statement could be interpreted as either a condemnation on NERC's own standards development process for failure to act quickly on a significant reliability issue or an indication that the reliability issue at hand is not significant, which calls into question why such a radical solution of registering GOs and GOPs as TOs and TOPs is even warranted. This is particularly the case given NERC's creation of supplemental criteria under the umbrella of the Registry Criteria without affording industry stakeholders the due process that the Final Report and SAR process are intended to bring to this issue. While it is true that the recommendations from the Final Report are still in the SAR phase of the NERC standards process, NERC is in the best position to utilize the Final Report as guidance.

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<sup>84</sup> *Id.*

<sup>85</sup> See Cedar Creek Decision at 11-12; see also Milford Decision at 13-14.

<sup>86</sup> <http://www.nerc.com/page.php?cid=2|247|307>.

Because the Final Report was included in the Cedar Creek and Milford records, NERC should have addressed the merits of the issues raised in the Final Report as they related to Cedar Creek's and Milford's specific registrations.

Also of concern is that WECC pursued Cedar Creek's and Milford's TO and TOP registrations in notwithstanding its own public statement supporting the recommendation that NERC and Regional entities refrain from such registrations. In its Comments on the Group's draft report addressing this issue, WECC stated:

WECC believes it is reasonable to refrain from further registering GOs/GOPs as TOs/TOPs pending modification of the standards. However, WECC is concerned that gaps in compliance coverage would continue to exist while the standards are being modified. WECC therefore believes such modification must be completely quickly in order to minimize any risks to reliability.<sup>87</sup>

Given that NERC formed the Group and that Project 2010-07 exists to address the issues presented by the registrations, EPSA agrees with WECC's comment that gaps be addressed through the process set forth in the Final Report on a priority basis and that Regional Entities refrain from registering GOs and GOPs as TOs and TOPs.

### **3. Action On Project 2010-07 Is Required To Address The TO and TOP Registration Issues.**

Project 2010-07 is tailored to surgically address reliability issues associated with registering GOs and GOPs as TOs and TOPs by virtue of their interconnection facilities. As reflected by the challenges both Cedar Creek<sup>88</sup> and Milford<sup>89</sup> face in understanding and ultimately implementing TO and TOP Reliability Standards, it is clear that the broad brush approach that NERC is taking to such registrations merely raises the very types

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<sup>87</sup> [http://www.nerc.com/files/GOTO\\_Comments\\_2009Sept23.pdf](http://www.nerc.com/files/GOTO_Comments_2009Sept23.pdf) at 48-49.

<sup>88</sup> See, e.g., Cedar Creek Decision at 7.

<sup>89</sup> See, e.g., Milford Appeal at 23-25, 34-35.

of concerns raised at the Commission's November 18, 2010 Technical Conference on Reliability Monitoring, Enforcement and Compliance Issues in Docket No. AD11-1-000. If the registrations are upheld based on NERC's expansive approach to applying the Registry Criteria, including redefining for the industry the term "integrated transmission element" or adopting NERC's interpretation that a GO with interconnection facilities rated at 100 kV or above is material to the reliability of the BPS, the focus will shift from addressing any real reliability issues associated with interconnection facilities to entities becoming immersed in the overloading of the NERC compliance pipeline. What is needed, and what Project 2010-07 will provide, is generators with a clear understanding of Reliability Standards (as revised) that are to be applied to generator interconnection facilities. The resources of the entities subject to NERC Reliability Standards, the Regional Entities, NERC, and the Commission are best served by pursuing a Project 2010-07 solution rather than adopting NERC's position in the Decisions because Project 2010-07 is not only a more efficient means to addressing the reliability issues, but otherwise will comport with the due process requirements of Section 215 of the FPA and Order No. 693-A.

EPSA encourages the Commission to recognize the importance of the Final Report and Project 2010-07 with respect to reliability, to reverse the registrations of Cedar Creek and Milford as TOs and TOPs, and to direct NERC that action on Project 2010-07 should be a priority and should proceed without further delay.

### III. CONCLUSION

Wherefore, EPSA respectfully requests that the Commission (1) reverse the registrations of Cedar Creek and Milford as TOs and TOPs, (2) direct NERC that action on Project 2010-07 should be a priority and proceed without further delay, and (3) provide such other relief as requested herein.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "N. Bagot", is written above a horizontal line.

Nancy Bagot, Vice President of Regulatory Policy  
Jack Cashin, Director of Regulatory Affairs  
Electric Power Supply Association  
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Washington, DC 20005

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the comments via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., December 7, 2010.

A handwritten signature in black ink, appearing to read "N. Bagot", written in a cursive style.

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Nancy Bagot, EPSA VP of Reg. Affairs