

125 FERC ¶ 61,294  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Southeastern Power Administration

Docket No. RC08-1-001

ORDER UPHOLDING ELECTRIC RELIABILITY ORGANIZATION COMPLIANCE  
REGISTRY DETERMINATION AND CONDITIONALLY DIRECTING  
ADDITIONAL REGISTRATION

(Issued December 18, 2008)

1. In this order, the Commission denies Southeastern Power Administration's (SEPA) appeal of a June 2008 compliance registry decision of the North American Electric Reliability Corporation (NERC), which affirmed the registration of SEPA as a transmission operator in the SERC Reliability Corporation (SERC) region.
2. In a February 21, 2008 order, the Commission remanded NERC's initial registration decision for further consideration.<sup>1</sup> On June 28, 2008, NERC submitted a revised decision.<sup>2</sup> The Commission concludes that NERC's revised decision adequately supports SEPA's registration as a transmission operator. In addition, the record indicates that the U.S. Army Corps of Engineers (Corps) should be co-registered as transmission operator to address a potential reliability gap. Therefore, as discussed below, the Commission directs NERC to co-register the Corps as a transmission operator within the SERC region unless the Corps demonstrates why it should not be registered.

**I. Background**

3. In a September 25, 2007 compliance registry determination, NERC concluded that SERC properly registered SEPA, a Federal power marketing administration, as a

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<sup>1</sup> *Southeastern Power Administration*, 122 FERC ¶ 61,140 (2008) (February 21 Order).

<sup>2</sup> NERC June 28, 2008 Registry Decision on Remand.

transmission operator<sup>3</sup> and resource planner. NERC, in the September 2007 determination, reasoned in part that, pursuant to a Memorandum of Understanding between SEPA and the Corps, SEPA “directs the operation of transmission facilities, and it does so by coordinating outages with interconnected utilities as requested by [the Corps], granting permission to [the Corps] to conduct outages or requesting [the Corps] to reschedule outages. These fall within the scope of activities contemplated under the [transmission operator] function.”<sup>4</sup> On October 12, 2007, SEPA petitioned the Commission to reverse NERC’s registry decision.

4. In the February 21 Order, the Commission indicated that the record supported a finding that SEPA performs certain tasks consistent with the transmission operator function. However, the Commission directed NERC to analyze the Memorandum of Understanding between SEPA and the Corps, which was not at that time part of the record in the proceeding, and discuss how that document sets forth the respective responsibilities of SEPA and the Corps. The Commission noted that “if the Corps is responsible by statute as the owner and operator of its facilities and SEPA has not accepted contractual responsibility for the transmission operator activities that it performs, the Corps may be the appropriate entity to register for the transmission operator function. Alternatively, the specific circumstances may justify a joint registration of both the Corps and SEPA.”<sup>5</sup> The Commission also stated the record did not clearly indicate which transmission facilities SEPA is operating and directed NERC to clarify what transmission facilities NERC found SEPA to be operating.<sup>6</sup> In addition, the Commission directed NERC to further explain the decision to register SEPA as a resource planner.

## **II. NERC’s Decision on Remand**

5. On June 20, 2008, NERC filed with the Commission its decision on remand. NERC reversed its earlier determination that SEPA was properly registered as a resource planner, and affirmed SEPA’s registration as a transmission operator. NERC states that, in reaching this decision, it reviewed supplemental information and exhibits provided by

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<sup>3</sup> NERC defines a transmission operator as “[t]he entity responsible for the reliability of its local transmission system and operates or directs the operations of the transmission facilities.” NERC Statement of Compliance Registry Criteria (Registry Criteria) at 6.

<sup>4</sup> February 21 Order, 122 FERC ¶ 61,140 at P 7 (quoting NERC’s September 25, 2007 decision).

<sup>5</sup> *Id.* P 23.

<sup>6</sup> *Id.* P 25.

SERC, including the Memorandum of Understanding. NERC also states that SERC is in the process of registering the Corps as transmission owner and that NERC has directed SERC to evaluate whether the Corps should also be registered as transmission operator.<sup>7</sup>

6. With regard to the registration of SEPA as a transmission operator, NERC clarified that the transmission facilities at issue are the switchyards that connect the Corp's hydropower plants to the rest of the bulk electric system. These switchyards have multiple circuit breakers and disconnects that allow for power flow through the switchyards and provide interties with utility transmission systems. NERC notes that Amendment 1 to the Memorandum of Understanding provides that "the power generating facilities of the GA-AL-SC System should be marketed and operated in accordance with the North American Electric Reliability Council (NERC) Operating Policies."<sup>8</sup> According to NERC, Amendment 1 of the Memorandum of Understanding vests responsibility in SEPA regarding purchasing, installation and maintenance of the operations center equipment, software and the project-operation center communications system. NERC explains that the operations center is used to coordinate generation and sales to meet contractual arrangements. NERC states that, while the Corps has responsibility regarding equipment in the switchyard, section 7 of Amendment 1 requires the Corps and SEPA to make available information to each other in order to meet their responsibilities to operate the generating facilities and switchyards in accordance with NERC policies and electrical power industry practices.

7. According to NERC, other provisions of the Memorandum of Understanding also support the registration of SEPA as a transmission operator. NERC states that, pursuant to section 1.c. of the Memorandum of Understanding, SEPA is responsible for transmission and disposition of the power and energy generated beyond that required in the operation of the identified hydroelectric projects. Further, section 3.c. states the Corps shall operate the project so as to schedule and to make available electric power and energy as requested by SEPA, provided that, in the opinion of the Corps, compliance with such request in the operation of the projects would not require the safe limits of the generating, transforming and switching facilities, and appurtenant equipment of said projects to be exceeded. Section 3.d. states that planned outages must be scheduled in advance, so far as is practicable, to minimize interference with the availability of electric power to SEPA. NERC also points to section 4.a.3., which states the Corps and SEPA

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<sup>7</sup> NERC June 20, 2008 Registry Decision on Remand at 8. The Commission notes that, as of October 14, 2008, the NERC compliance registry identifies the Corps as a transmission owner and generator owner and operator in the SERC region. NERC provides monthly updates to the compliance registry on its website, [www.nerc.com](http://www.nerc.com).

<sup>8</sup> *Id.*, quoting Memorandum of Understanding, Amendment 1, section 2(a).

will discuss plans for adding or changing power projects, transmission facilities, and control and communication facilities in the preliminary planning phases to ensure optimum coordination

8. NERC concludes that “[g]iven that SEPA has Transmission Operator responsibilities and the obligation of both to coordinate such activities, it is appropriate that SEPA remain registered.”<sup>9</sup> In addition, NERC directed SERC to evaluate and determine whether co-registration of the Corps as a transmission operator is necessary. NERC stated that co-registration of the Corps, in the absence of a Joint Registration Organization or JRO between the parties, if warranted, would ensure that no gap in reliability coverage exists.

### **III. Public Notice and Comment**

9. Notice of NERC’s June 20, 2008 filing was published in the *Federal Register*, 73 Fed. Reg. 39,012 (2008), with interventions and protests due on or before July 21, 2008. SEPA and Southeastern Federal Power Customers, Inc. (SEPA Customers) filed timely protests.

10. SEPA objects to its continued registration as a transmission operator. SEPA argues that NERC has neither provided an analysis of the Memorandum of Understanding nor pointed to “specific language that obligates SEPA” to perform the transmission operator functions. SEPA argues that the Memorandum of Understanding does not establish contractual rights between the parties regarding transmission operator responsibilities.

11. SEPA disagrees with NERC’s characterization of certain provisions of section 3 (*Availability of Power and Energy*) of the Memorandum of Understanding, contending that NERC has selectively focused on limited language that, in context, does not vest responsibility with SEPA. SEPA argues that section 3 tracks the *Flood Control Act of 1944* regarding the Corp’s responsibility to deliver power to SEPA. SEPA contends that, under all circumstances, availability and delivery of power is under the control of the Corps. According to SEPA, section 3.c. deals with outages and leaves the decision making and declaration of outages in the complete control of the Corps, and not SEPA.

12. SEPA disagrees with NERC that Amendment 1 to the Memorandum of Understanding supports SEPA’s registration as a transmission operator. SEPA points out that NERC and SERC acknowledge that the purpose of the control center is to “coordinate the generation and sale of power and energy from the projects.”<sup>10</sup> According

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<sup>9</sup> *Id.* at 9.

<sup>10</sup> SEPA Protest at 11.

to SEPA, this language simply recognizes the generation and marketing functions of the Corps and SEPA respectively under the *Flood Control Act*, and no language regarding transmission operator responsibilities is mentioned in Amendment 1. SEPA claims that Amendment 2 to the Memorandum of Understanding is obsolete, as it pertains to the potential transition to a regional transmission organization, which has not occurred.

13. With regard to NERC's directive that SERC consider co-registering SEPA and the Corps as transmission operators, SEPA insists that its registration is not justified and should not be made a "placeholder" while SERC considers other options. SEPA also claims that SERC and NERC have failed to recognize that interconnected transmitting utilities or others are already performing the transmission operator functions for the hydroelectric projects in question. SEPA also protests that it does not understand how it can be registered as a transmission operator without being advised of the Reliability Standards with which it must comply.

14. SEPA Customers also protest NERC's decision to continue the registration of SEPA as a transmission operator. SEPA Customers argue that NERC has erred in its interpretation of the Memorandum of Understanding and contend that the Corps has ultimate authority regarding the operation of relevant transmission equipment. SEPA Customers believe that NERC has wrongly assumed that SEPA has operational control of transmission equipment because SEPA may request Corps project operators to provide voltage support. According to SEPA Customers, the Memorandum of Understanding does not give SEPA the authority to command this result. Rather, the Memorandum of Understanding provides that "the Corps shall 'make available electric power and energy as requested by [SEPA], provided that in the opinion of the Corps, compliance with such request in the operation of the projects' would not conflict with safe operation of the projects of the Corps' requirements to meet other obligations that are not related to the production of power."<sup>11</sup> Thus, SEPA Customers conclude that the Corps has the authority to decide whether to provide voltage support.

15. SEPA Customers also claim that the Amendments to the Memorandum of Understanding are not informative regarding SEPA's role. SEPA Customers state that Amendment 1 addresses the development of a Federal Operations Center that would aggregate ten Corps projects in the Southeast. SEPA Customers contend that this never occurred and, instead, only three projects were combined into a single control area. SEPA Customers conclude that the responsibilities between the agencies are vaguely defined in the public record before the Commission.

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<sup>11</sup> SEPA Customer's protest at 3, *quoting* Memorandum of Understanding at 5.

#### **IV. Discussion**

16. As discussed below, the Commission denies SEPA's petition. We find that the record supports NERC's finding that SEPA has responsibility for the transmission operator function. However, the record also supports a finding that SEPA shares this responsibility with the Corps. Accordingly, the Commission directs NERC to co-register the Corps as a transmission operator in the SERC region unless the Corps demonstrates why it should not be co-registered as a transmission operator.

17. In the February 21 Order, the Commission directed NERC to analyze whether the Memorandum of Understanding obligates SEPA to perform certain transmission operator functions. NERC has made the Memorandum of Understanding a part of the record and analyzed it. As discussed below, NERC identifies specific provisions of the Memorandum of Understanding to support its conclusion that SEPA has certain transmission operator responsibilities and obligations. The Commission finds that the record adequately supports NERC's finding that SEPA is responsible for certain tasks that are consistent with the transmission operator function. Further, the same record supports a finding that the Corps also is responsible for tasks that are consistent with the transmission operator function.

18. For example, NERC, in its June 20, 2008 registry decision, points to Amendment No. 1 to the Memorandum of Understanding. Amendment No. 1 provides for the establishment of a Federal Operations Center to be located in Elberton, Georgia for the creation of a Federal Control Area which integrates the SEPA transmission operator projects into a single control area. Amendment No. 1 provides that SEPA is responsible for the planning, design, construction, and operation of the Operations Center, while the Corps is responsible for the operation of the generation within the Federal Control Area. Although only three of the ten SEPA projects were combined into a single control area, SEPA does in fact perform transmission operator tasks for the Corps' facilities from its Operations Center. The "projects" referred to in the Memorandum of Understanding include the Corps's transmission facilities - the switchyards that connect the Corps's hydropower plants to the rest of the bulk electric system. As noted above, these switchyards have multiple circuit breakers and disconnects that allow for power flow through the switchyards and provide interties with utility transmission systems. Section 3.c of the Memorandum of Understanding between SEPA and the Corps cited in the order states that "the Corps shall operate the project so as to schedule and to make available electric power and energy as requested by [SEPA]." Section 3.c.1 refers to "generating, transforming, and switching facilities and appurtenant equipment of said projects" which includes switchyard equipment. Satisfying this direction from SEPA requires the Corps to configure and operate the switchyards needed to deliver power from the generation to the grid.

19. In finding that SEPA has responsibility for performing at least parts of the transmission operator function, NERC pointed to the fact that SEPA has historically

(prior to reliability standards being mandatory and enforceable) been registered as the transmission operator for the Corps switchyards. In its first decision in this case, its September 25, 2007 decision, NERC stated that SEPA, having been historically registered, should remain registered as transmission operator unless it could show that it had transferred responsibility for the function to another entity. The Commission, in its February 21 Order, recognized that SEPA historically was registered, but asked NERC to analyze whether the Corps, the owner of the transmission facilities, had actually transferred responsibility for the transmission operator function to SEPA.<sup>12</sup> NERC asserts that the fact that SEPA has historically been registered, without protest, as transmission operator is evidence that supports a finding of SEPA's having assumed responsibility for those tasks.<sup>13</sup>

20. We also find instructive, as did NERC, that Amendment No. 1 to the Memorandum of Understanding, section 7, provides that the Corps and SEPA will make available to each other all the information necessary for SEPA and the Corps to meet their responsibilities to operate the generating facilities and the switchyards in accordance with NERC policies. Moreover, Appendix B to Amendment No. 1 to the Memorandum of Understanding lists the division of responsibilities between the Corps and SEPA. For example, both SEPA and the Corps are listed as responsible for NERC policy compliance. The Corps is responsible for operation and maintenance of generation while SEPA schedules generation. SEPA is responsible for periodic reports and data archive. The Corps is responsible for water management. SEPA is responsible for the project operations center communications system. The Corps is responsible for the purchase, installation and maintenance of meters/transducers. The Corps is responsible for the purchase, installation and maintenance of power monitor equipment hardware, while SEPA is responsible for the purchase, installation and maintenance of power monitor software. The Corps is responsible for the purchase, installation and maintenance of Automatic Generation Control equipment hardware while SEPA is responsible for the purchase, installation and maintenance of Automatic Generation Control software.<sup>14</sup> Amendment No. 1 and Appendix B make clear that SEPA has assumed responsibility for and performs an integral part of the transmission operator function.

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<sup>12</sup> February 21 Order, 122 FERC ¶ 61,140 at P 22-23.

<sup>13</sup> While SEPA's historical registration is not enough, in itself, to show that SEPA has acknowledged responsibility for the transmission operator function, the historical registration is evidence of SEPA's then understanding of the Memorandum of Understanding.

<sup>14</sup> Appendix B to Amendment No. 1 to the Memorandum of Understanding.

21. Moreover, the Commission finds persuasive NERC's explanation that section 3.c. of the Memorandum of Understanding vests certain transmission operator responsibility with SEPA. Section 3.c provides:

Subject to temporary interruption or reduction in the availability of electric power and energy which, in the opinion of the Corps, are necessary for the purpose of maintenance, replacement, installation of equipment, or investigation and inspections, and subject to emergencies, uncontrollable forces as defined herein, or other extraordinary conditions, ***the Corps shall operate the project so as to schedule and to make available electric power and energy as requested by [SEPA]***, provided that, in the opinion of the Corps, compliance with such request in the operation of the projects:

(1) Would not require the safe limits of the generating, transforming and switching facilities, and appurtenant equipment of said projects to be exceeded, or otherwise cause damage to the same. . . .  
[emphasis added]

22. This provision, indicates that the Corps will configure and operate its transmission (the switchyards) and generation as directed by SEPA to supply SEPA with the electric power and energy it needs to serve its customers. Moreover, the record contains SERC's reference to a SEPA document, the Conduct of Operations Policy, which states that SEPA performs the BA *and TOP* functions through a Federal Operations Center that was built for this purpose.

23. However, the Memorandum of Understanding also appears to leave the final decision for certain transmission operator tasks to the Corps. For example, section 3 c. of the Memorandum of Understanding, as quoted in P 21 above, indicates that the Corps retains a degree of control on how the facilities will be operated. In addition, as noted above, the Corps and SEPA are both listed as responsible for NERC policy compliance in connection with the operations.<sup>15</sup> The Commission, therefore, concludes that, while NERC has adequately supported its decision that SEPA is properly registered as a transmission operator in the SERC region, this action alone will not assure that there is no reliability gap.

24. In the June 2008 registry decision, NERC directed SERC to evaluate whether co-registration of the Corps as a transmission operator is appropriate and necessary.<sup>16</sup>

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<sup>15</sup> *Supra* P 20 which recites the division of operational responsibility between SEPA and the Corps listed in Appendix B to Amendment 1 to the Memorandum of Understanding.

<sup>16</sup> NERC June 20, 2008 Registry Decision on Remand at 10.

NERC further noted that co-registration of the Corps may be necessary to ensure that no gap in reliability coverage exists.<sup>17</sup> As discussed above, the record indicates that the Corps performs, and is responsible for, a number of the tasks that are part of the transmission operator function. Ideally, in these circumstances, the Corps and SEPA would have entered into a Joint Registration Organization (as provided for by NERC) to perform the transmission operator function where the tasks for that function are divided. However, in the absence of a Joint Registration Organization registration, co-registration appears necessary.

25. Accordingly, within 60 days of the date of this order, NERC must co-register the Corps as a transmission operator in the SERC region unless the Corps demonstrates why it should not be co-registered with SEPA for the transmission operator function.

The Commission orders:

(A) The Commission hereby denies SEPA's petition and upholds the NERC registry decision, as discussed in the body of this order.

(B) Within 60 days of the date of this order, NERC is directed to co-register the Corps as a transmission operator in the SERC region unless the Corps demonstrates why it should not be co-registered with SEPA for the transmission operator function.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>17</sup> NERC June 20, 2008 Registry Decision on Remand at 10.