

139 FERC ¶ 61,214
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

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

Docket Nos. RC11-1-002
RC11-2-002

ORDER ACCEPTING COMPLIANCE FILING

(Issued June 13, 2012)

1. On June 16, 2011, the Commission denied the appeals of two registry decisions in which the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), found that two entities, Cedar Creek Wind Energy, LLC (Cedar Creek) and Milford Wind Corridor Phase I, LLC (Milford), were properly included on the NERC Compliance Registry as transmission owners and transmission operators.¹ The Commission also identified specific requirements of Reliability Standards applicable to transmission owners and operators with which Cedar Creek and Milford must comply based on their ownership and operation of tie line facilities. In addition, the Commission directed NERC to negotiate with Cedar Creek and Milford to determine what, if any, additional Reliability Standards and requirements would apply. The Commission directed NERC to submit a list of applicable Reliability Standards and requirements for Commission review.

2. On December 2, 2011, NERC submitted a filing to comply with the directives in the June 16 Order. We accept NERC's compliance filing, as discussed herein.

¹ *Cedar Creek Wind Energy, LLC and Milford Wind Corridor Phase I, LLC*, 135 FERC ¶ 61,241 (June 16 Order), *order or reh'g and clarification*, 137 FERC ¶ 61,141 (2011). The Commission addressed both appeals in the June 16 Order given the similarity of issues raised in the two proceedings.

I. Background

A. Milford and Cedar Creek

3. Cedar Creek owns and operates a 300 MW wind power facility in Weld County, Colorado that commenced operations in 2007. Cedar Creek owns 72 miles of a 76-mile, 230 kV radial generation tie-line extending from the Cedar Creek Facility to an interconnection point with Public Service Company of Colorado (PSCo) approximately 4 miles from PSCo's Keenesburg Switching Station. PSCo owns and maintains the remaining 4 miles of the tie-line.

4. Milford owns a 203.5 MW wind facility with 97 individual wind turbines connected in clusters to a number of 34.5 kV collection lines which comprise an on-site underground collection system. Milford's underground collection system links each turbine to the next and is connected to the facility substation that consists of two 168 MVA, 34.5 to 345 kV on-site step up transformers. The high voltage side of the transformers is connected to an 88-mile overhead 345 kV line, connecting the Milford Facility to the Bulk-Power System.²

5. WECC registered Milford and Cedar Creek as generator owners and operators. In addition, WECC registered Milford and Cedar Creek as transmission owners and operators, identifying their respective tie-lines as transmission facilities. Milford and Cedar Creek separately appealed the WECC registration decisions to NERC. Upon review, NERC upheld the WECC registration determinations. Subsequently, Cedar Creek and Milford petitioned the Commission for review of the registry determinations.

B. June 16 Order

6. In the June 16 Order, the Commission denied Cedar Creek's and Milford's appeals and affirmed that Cedar Creek and Milford are properly registered as transmission owners and operators. The Commission affirmed the NERC registrations, based on the specific facts of the cases, because the reliable operation and maintenance of the Cedar Creek and Milford facilities were material to the reliability of the Bulk-Power System.³

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

² For additional information regarding the Cedar Creek and Milford facilities and the registry proceedings before the ERO, *see* June 16 Order, 135 FERC ¶ 61,241 at PP 8-19, 38-47.

³ *Id.* P 58.

concluded that if adequate reliability requirements, including coordination of protection systems, operations and maintenance and properly trained and certified staff are not provided for as to the facilities, there is a reliability risk that would affect the Bulk-Power System in WECC.⁴ Based on that analysis, the Commission found that at a minimum Cedar Creek and Milford should be required to comply with certain Reliability Standards and directed WECC and NERC to negotiate with Cedar Creek and Milford as to what additional Reliability Standards and Requirements will be applicable.⁵ The Commission also directed NERC to submit a compliance filing identifying the applicable Reliability Standards and Requirements for each entity. With regard to Cedar Creek, the Commission directed:

WECC and/or NERC should negotiate with Cedar Creek as to whether Cedar Creek should comply with other Reliability Standards and Requirements to maintain Bulk-Power System reliability. We direct NERC to submit, within 90 days from the date of the issuance of this order, a compliance filing identifying the applicable Reliability Standards and Requirements. Cedar Creek will have the ability to comment on NERC's filing.⁶

The Commission directed a similar compliance filing with regard to Milford.

II. NERC Compliance Filing

8. On December 2, 2011, NERC submitted a compliance filing in response to the June 16 Order. NERC states in the filing that NERC, WECC, Cedar Creek and Milford agreed to Reliability Standards that apply to Cedar Creek and Milford as transmission owners and operators. Attachment A of the compliance filing identifies 68 requirements or sub-requirements of 12 Reliability Standards with which Cedar Creek and Milford will comply with respect to the projects at issue in this proceeding. (Attachment A identifies both the Reliability Standards and requirements set forth in the June 16 Order and additional requirements mutually agreed to by the parties.) NERC states that the list is based on information available to NERC and WECC to date regarding the current operation of Milford and Cedar Creek and is subject to revision with appropriate notice as needed to ensure that no reliability gap exists should Milford or Cedar Creek change their operations. Likewise, NERC explains that the Attachment A list is subject to revision as

⁴ *Id.* PP 59, 74.

⁵ *Id.* PP 71, 87.

⁶ *Id.* P 73.

a result of Commission orders that relate to existing, pending or new Reliability Standards and requirements applicable to transmission owners or transmission operators.

9. NERC notes that it is continuing to develop generic guidance “to better align appropriate standards for generator owners and generator operators that own and operate transmission facilities without general applicability of al TO and TOP standards.”⁷ NERC explains that the Attachment A list of applicable Reliability Standards does not preclude Cedar Creek or Milford from participating in future initiatives by NERC or Regional Entities “that seek to define an appropriate set of standards to apply to these types of entities, their facilities or operations.”⁸ According to NERC, to the extent a NERC initiative results in a minimum applicable list of standards that differs from the Attachment A list, Cedar Creek or Milford may request any necessary approvals to replace the Attachment A list with the list that results from the initiative. NERC adds that the Attachment A list “is not intended to prejudge the outcome of the NERC Reliability Standards development process for Project 2010-07 (Generator Requirements at the Transmission Interface).”⁹

III. Notice of Filing, Interventions and Comments

10. On December 19, 2011, notice of NERC’s filing was published in the *Federal Register* with interventions and protests due on or before December 23, 2011.¹⁰

11. Joint comments were filed by the Electric Power Supply Association, the Edison Electric Institute, and the American Wind Energy Association (collectively, Trade Associations). NERC filed an answer to the Trade Associations comments, and the Trade Associations submitted a reply to NERC. Neither Cedar Creek nor Milford filed comments.

12. Trade Associations request that the Commission reject the inclusion of additional standards and requirements applicable to Cedar Creek and Milford beyond those set forth in the June 16 Order. Trade Associations object that NERC did not provide a technical justification for the inclusion of the additional provisions in Attachment A. According to Trade Associations, the additional standards and requirements parallel a list of requirements developed by NERC in Draft Compliance Process Directive #2011-CAG-

⁷ NERC Compliance Filing at 4.

⁸ *Id.*

⁹ *Id.*

¹⁰ 76 Fed. Reg. 78,641 (2011).

001 (Directive Regarding Generation Transmission Leads). Trade Associations argue that the Draft Directive was developed outside NERC's standards development process and provides insufficient explanation for the inclusion of certain standards.

13. Further, Trade Associations claim that NERC's compliance filing appears to prejudge the results of Project 2010-07 (Generator Requirements at the Transmission Interface). According to Trade Associations, to the extent that Project 2010-07 "determines that certain TO/TOP Reliability Standards are not applicable to generators with generator tie lines, and, as a result, does not require revision to such standards, NERC does not intend to seek removal of those standards from the Appendix A List."¹¹ Trade Associations also complain that NERC's filing fails to address the de-registration of Cedar Creek and Milford as transmission owners and operators upon completion of Project 2010-07. Trade Associations argue that NERC's "election to ignore this material aspect of Project 2010-07" effectively displaces the standards development process and thus runs afoul of the openness requirements of section 215(c) of the FPA.

14. Trade Associations further contend that NERC's filing conflicts with the June 16 Order, which, Trade Associations explain, recognized the ongoing work of standards Project 2010-07 and encouraged NERC to "develop an approach to this matter that satisfies Bulk-Power System reliability concerns and also allows entities to understand upfront their compliance responsibilities."¹² Trade Associations argue that NERC "cannot now restrict the application of Project 2010-07 based on the specific facts relevant to Milford and Cedar Creek."¹³ Further, Trade Associations argue that NERC's compliance filing does not allow entities to understand upfront the scope of their compliance responsibilities but, rather, creates confusion as to what standards will apply in the future. Thus, Trade Associations urge the Commission to clarify that the approach outlined in the compliance filing circumvents the standards development process required by section 215 of the FPA and the June 16 Order.

IV. Discussion

A. Procedural Matters

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the

¹¹ Trade Associations at 5.

¹² *Id.* at 7, quoting June 16 Order, 135 FERC ¶ 61,241 at P 25.

¹³ *Id.* at 7.

decisional authority. We are not persuaded to accept NERC's and the Trade Associations' answers and will, therefore, reject them.

B. Commission Determination

16. The Commission accepts NERC's compliance filing and approves the list included in Attachment A identifying the applicable Reliability Standards and Requirements for Cedar Creek and Milford. Consistent with the directive from the June 16 Order, NERC identifies in the compliance filing the Reliability Standards and requirements in addition to those set forth in the June 16 Order that apply to Cedar Creek and Milford in their role as transmission owners and operators. NERC represents that NERC, WECC, Cedar Creek and Milford agree to the applicable list of Reliability Standards and requirements identified in Attachment A; and neither Cedar Creek nor Milford protest the filing. In these circumstances, we accept NERC's compliance filing.¹⁴

17. The Commission concludes that the arguments raised by Trade Associations for rejecting the additional Reliability Standards and requirements identified in NERC's compliance filing are beyond the scope of the immediate proceeding and - to the extent relevant - unpersuasive. This proceeding is limited to NERC's compliance filing and, thus, Trade Associations' comments are beyond the scope of the proceeding to the extent that they address the substance or scope of Project 2010-07 or NERC's Directive Regarding Generation Transmission Leads.

18. Moreover, as noted above, NERC, WECC, Cedar Creek and Milford agree to the Attachment A list of applicable Reliability Standards and requirements. In this circumstance, we disagree with Trade Associations that NERC's failure to explain the inclusion of certain Reliability Standards or requirements renders the filing defective or not in compliance with the June 16 Order. In the June 16 Order, the Commission directed WECC and/or NERC to negotiate with Cedar Creek and Milford as to whether each should comply with other Reliability Standards and Requirements to maintain Bulk-Power System reliability and submit a compliance filing identifying the applicable Reliability Standards and Requirements. NERC and WECC have fully complied with the Commission's directive. Further, we are not persuaded by Trade Associations' argument that NERC has prejudged Project 2010-07. NERC's compliance filing applies only to Cedar Creek and Milford with regard to the facilities and operations at issue in the immediate, case-specific proceeding. Thus, we reject Trade Associations' characterization of the language - or absence of language - in the NERC compliance filing as somehow prejudging Project 2010-07. NERC explicitly states that it has not

¹⁴ Modifications to the list of applicable Reliability Standards will require Commission review and approval.

prejudged Project 2010-07, and nothing in Trade Associations' pleading persuades us otherwise.

19. Finally, we are not persuaded by Trade Associations' arguments that NERC's filing thwarts the Commission's statement in the June 16 order suggesting that NERC "develop an approach to this matter that satisfies Bulk-Power System reliability concerns and also allows entities to understand upfront their compliance responsibilities."¹⁵ Again, NERC's compliance filing is responsive to the June 16 Order directives specific to Cedar Creek and Milford. This order does not preclude NERC from pursuing a generic approach, which NERC is pursuing through the standards development process in Project 2010-07.

The Commission orders:

The Commission hereby accepts NERC's compliance filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁵ June 16 Order, 135 FERC ¶ 61,241 at P 25.