121 FERC ¶ 61,058
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Mosaic Fertilizer, LLC — Docket No. RC07-1-000

City of Tampa, Florida — Docket No. RC07-2-000

ORDER REMANDING PROCEEDINGS TO NERC

(Issued October 18, 2007)

1. In this order, the Commission remands to the North American Electric Reliability Corporation (NERC) two decisions in which NERC found that two Florida entities, Mosaic Fertilizer, LLC (Mosaic) and City of Tampa, Florida (Tampa), were properly included on the NERC compliance registry, and thus subject to NERC's mandatory and enforceable Reliability Standards. Florida Reliability Coordinating Council (FRCC), a NERC Regional Entity, registered Mosaic as a generator owner and generator operator. FRCC registered Tampa as a generator owner. Mosaic and Tampa each appealed the FRCC's decisions to NERC, arguing that their respective generation facilities did not fall within NERC's registration criteria. As discussed below, NERC did not adequately address Mosaic's and Tampa's arguments made on appeal of the FRCC's decisions. Accordingly, the Commission remands these proceedings to NERC so that NERC may either reconsider its decisions or take this opportunity to provide a further explanation of the basis for its denials of the Mosaic and Tampa appeals.

I. Background

A. Regulatory Background

2. In July 2006, the Commission issued an order certifying NERC as the Electric Reliability Organization (ERO) pursuant to section 215 of the Federal Power Act (FPA).[1]

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

Subsequently, in April 2007, the Commission approved delegation agreements between NERC and eight Regional Entities, including a delegation agreement between NERC and FRCC.[2] Pursuant to that delegation agreement, NERC delegated to FRCC the authority to enforce mandatory Reliability Standards within the FRCC region.

3. In Order No. 693, the Commission approved 83 Reliability Standards, which became effective on June 18, 2007.[3] Further, in Order No. 693, the Commission approved NERC's compliance registry process, including NERC's Statement of Compliance Registry Criteria (NERC Registry Criteria), which describes how NERC and the Regional Entities will identify organizations that should be registered for compliance with mandatory Reliability Standards.[4] NERC's Rules of Procedure also provide, however, that an entity registered by a Regional Entity may seek NERC review of the registration decision and, ultimately, may appeal the registration decision to the Commission.

4. Separately, in Order No. 696, the Commission revised its regulations governing qualifying facilities (QFs) to eliminate the generic exemption of QFs from the requirements of FPA section 215.[5] In Order No. 696, the Commission explained that Congress used broad language to ensure that all entities that could affect the reliability of the Bulk-Power System, including QFs where appropriate, would be subject to mandatory Reliability Standards.

---

[2] *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060, *order on reh'g*, 120 FERC ¶ 61,260 (2007).

[3] *Mandatory Reliability Standards for the Bulk Power System*, Order No. 693, 72 Fed. Reg. 16,416 (April 4, 2007), FERC Stats. & Regs. ¶ 31,242 (2007), *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

[4] *Id*. at P 92-95.

[5] *Applicability of Federal Power Act Section 215 to Qualifying Small Power Production and Cogeneration Facilities*, Order No. 696, 72 Fed. Reg. 29,056 (May 24, 2007), FERC Stats. & Regs. ¶ 31,248 (2007), *reh,g pending*. Mosaic and Tampa requested a stay of the effectiveness of Order No. 696 with respect to them so that they would not be subject to mandatory Reliability Standards during the pendency of their appeals of the FRCC decisions to NERC, and if necessary, during the appeal of the NERC decisions to this Commission. The Commission denied the requested stay. *Applicability of Federal Power Act Section 215 to Qualifying Small Power Production and Cogeneration Facilities*, 119 FERC ¶ 61,320, *reh'g denied*, 120 FERC ¶ 61,098 (2007).

B. NERC Registry Criteria

5. Section I of NERC's Registry Criteria determines if the entity is an owner, operator, or user of the bulk power system and, hence, a candidate for organization registration. Section I defines the bulk-power system as:

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

6. Section II of NERC's Registry Criteria categorizes registration candidates under various functional entity types including Generator Operators and Generator Owners.

7. Section III of NERC's Registry Criteria lists size thresholds for registering smaller entities that satisfy the criteria of sections I and II. Section III (c) provides that smaller generator owners or generator operators should be registered if they meet any of the following criteria:

> 1. Individual generating unit > 20 MVA (gross nameplate rating) and is directly connected to the bulk power system, or
>
> 2. Generating plant/facility > 75 MVA (gross aggregate nameplate rating) or when the entity has responsibility for any facility consisting of one or more units that are connected to the bulk power system at a common bus with total generation above 75 MVA (gross nameplate rating), or
>
> 3. Any generator, regardless of size, that is a blackstart unit material to and designated as part of a transmission operator entity's restoration plan, or;
>
> 4. Any generator, regardless of size, that is material to the reliability of the bulk-power system.[6]

In addition, Section III of NERC's Registry Criteria specifies the following exclusion:

> As a general matter, a customer-owned or operated generator/generation that serves all or part of retail load with electric energy on the customer's side of the retail meter may be excluded as a candidate for registration based on these criteria if (i) the net capacity provided to the bulk power

[6] NERC Registry Criteria, section III(c).

system does not exceed the criteria above or the Regional Entity otherwise determines the generator is not material to the bulk power system and (ii) standby, back-up and maintenance power services are provided to the generator or to the retail load pursuant to a binding obligation with another generator owner/operator or under terms approved by the local regulatory authority or the Federal Energy Regulatory Commission, as applicable.

8. NERC's Registry Criteria also provides that the specified criteria "are general criteria only." A Regional Entity thus may register an entity that does not meet the specified criteria 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."[7] Further, NERC's Compliance Registry Criteria provide that a class of entities, each of which would be individually excluded, may nevertheless be registered based on their aggregate impact on Bulk-Power System reliability.[8]

II. Appeals of NERC Registry Decisions

A. Mosaic - - Docket No. RC07-1-000

9. Mosaic states that it owns or operates seven generating facilities at fertilizer manufacturing locations in Florida. The facilities are cogeneration facilities and the electric energy produced by the facilities serves internal industrial load and only excess electricity is exported to the grid. Two of the facilities, Nichols and Green Bay, are currently for sale and are in long-term shutdown with no plans to resume operations in the foreseeable future. In 2006, the average MW export from Mosaic's facilities was as follows: New Wales – 1.5 MW, South Pierce – 9 MW, Bartow – 15 MW, Mulberry – 0 MW, Tampa – 3 MW, Nichols – 0 MW, and Green Bay – 0 MW. According to Mosaic, all of its facilities are interconnected at 69 kV or lower, and all are interconnected via radial transmission lines.

[7] NERC Registry Criteria, Notes to Criteria, note 1 (footnote excluded).

[8] *Id*. at 9, note 2 states "[i]f an entity is part of a class of entities excluded based on the criteria above as individually being unlikely to have a material impact on the reliability of the bulk power system, but that in aggregate have been demonstrated to have such an impact[,] it may be registered for applicable standards and requirements irrespective of other considerations."

1. NERC's Mosaic Decision

10. In April 2007, FRCC registered Mosaic as a generator owner and generator operator. Mosaic appealed the FRCC decision to NERC, contending among other things that its generators, which are interconnected at 69 kV, are not directly connected to the Bulk-Power System because they are interconnected at voltages less than 100 kV, and because they are interconnected to radial facilities. Further, Mosaic argued to NERC that: (1) the Nichols and Green Bay facilities are inoperable and thus exempt; (2) Mosaic's exports fall below the size threshold of Registry Criteria since its generating units serve retail load behind the meter and, according to NERC's Registry Criteria, generation serving such load is excluded under the applicable size criteria; and (3) the nameplate rating of Mosaic's facilities was not an accurate measure of their true ability to produce power and, thus, of their effect on reliability of the Bulk-Power System.

11. On July 5, 2007, NERC denied Mosaic's appeal. NERC acknowledged that Mosaic's facilities are connected at 69 kV. NERC explained, however, that within FRCC over 2,000 MW of generation are connected at 69 kV but are important to Bulk-Power System reliability because of limits on FRCC's import capability. According to NERC, underfrequency settings and generator trip settings must be coordinated to ensure adequate resources are available to avoid stability issues under certain conditions. Based on these considerations, NERC determined that "these generating facilities, and others like them in the FRCC footprint, have an aggregate importance to the reliability of the FRCC Bulk-Power System" and the registration of Mosaic as a generator owner and generator operator is appropriate.

12. Further, NERC explained that it evaluated two "key factors" in determining the impact of facilities connected below 100 kV[9] in determining their impact to the Bulk-Power System. First, NERC considered whether the generator nameplate rating was at 20 MVA or greater. It found that "most" of Mosaic's facilities have a nameplate rating greater than 20 MVA. Second, NERC considered whether the generator had commitments to supply firm power to another entity on the transmission grid. NERC found that Mosaic sells firm power to Progress Energy. NERC explained that Mosaic's firm power sales commitments are an important consideration because Progress Energy relies on that purchase, in part, to meet its operating and planning reserve margins. Further, according to NERC, by virtue of the firm power sales, Mosaic's units are included in the transmission planning studies to ensure that NERC Reliability Standards are met.

[9] As noted above, section I of NERC's Registry Criteria provides that the bulk power system consists of facilities generally operated at 100 kV or higher.

13. Based on the above evaluation, NERC concluded that Mosaic's generation has a material impact on the transmission grid in Florida. It explained that, although Mosaic's generators are connected radially, the exemption for radial transmission facilities serving load does not apply to generators. Finally, NERC stated that its conclusion was not altered by Mosaic's claims that (i) its exports to the grid fall below the registration thresholds and (ii) two of the generating facilities are inoperable.

2. Mosaic's Appeal to the Commission

14. On appeal to the Commission, Mosaic argues that NERC has failed to correctly apply the NERC Registry Criteria. According to Mosaic, NERC's determination that generators (regardless of size or contractual balancing provisions), like Mosaic, making any firm sales will have a material impact on grid reliability is not supportable. Mosaic states that its 15 MW sale of firm power to Progress Energy comprises less than 0.2 per cent of Progress Energy's peak load. Mosaic includes with its filing letters from Progress Energy stating that Mosaic's resource does not have a material impact on the reliability of Progress Energy's system. It also notes that, by contract, Mosaic can resolve energy imbalances over the course of a month or more.

15. Further, Mosaic argues that NERC acted arbitrarily in failing to address the arguments raised by Mosaic in its appeal to NERC. In particular, Mosaic claims that NERC failed to consider that: (1) none of Mosaic's facilities are connected at voltages of 100 kV or higher; (2) Mosaic's 15 MW supply contract will expire at the end of 2007; (3) Mosaic's units are radially connected to the Bulk-Power System; (4) Mosaic's annual average export of electricity capacity to the grid is well below the registry thresholds; and (5) standby, backup and maintenance power are provided to Mosaic pursuant to binding contractual obligations with the native retail electric provider. Mosaic also notes that two of its units, Nichols and Green Bay, are inoperable and thus should be exempt.

3. Interventions and Comments

16. Notice of Mosaic's filing was published in the *Federal Register*, 72 Fed. Reg. (2007), with interventions and protests due on or before August 21, 2007.

17. Timely motions to intervene were filed by the Solid Waste Authority of Palm Beach County, Florida (Palm Beach); Strategic Energy, LLC (Strategic Energy); Direct Energy Services, LLC (Direct Energy); NERC; FRCC; and Western Electricity Coordinating Council (WECC). Motions to intervene out of time were filed by ReliabilityFirst Corporation (RFC) and Midwest Reliability Organization (MRO). Mosaic filed an answer to the protests of FRCC and WECC.

18. Direct Energy requests that the Commission prohibit Regional Entities from deviating from NERC's Registry Criteria except when making a case-specific finding

that an entity has a reliability impact. Direct Energy comments that the Commission should not permit the practice of aggregating small entities to find that they collectively have a reliability impact when they individually do not have an impact.

19. FRCC argues that the Mosaic units fall squarely within the size criteria for compliance registry. It also contends that Mosaic, as a supplier of firm output, is an integral part of the operation and planning of the Bulk-Power System in the FRCC region. FRCC explains that Progress Energy relies on Mosaic to meet its operating and planning reserve margins. According to FRCC, the 2,000 MW of generation connected at 69 kV is over two times the largest single contingency in the region. It explains that the FRCC region import capability is limited to 3,700 MW, which significantly limits the ability of the FRCC region to import additional energy on peak days. Therefore, the cumulative size of relatively small units as compared to the largest single contingency is critical in peninsular Florida. FRCC concludes that registration of Mosaic is appropriate pursuant to the NERC Registry Criteria provision that allows for registration of entities that, in the aggregate, have been demonstrated to have a reliability impact.

20. WECC comments that, to the extent that the Commission determines that FRCC has not demonstrated that Mosaic's facilities meet the Registry Criteria, the Commission should remand the proceeding to NERC for further consideration, rather than reverse NERC. This, WECC urges, would provide greater guidance to WECC and other Regional Entities than a simple reversal.

21. Mosaic, in its answer to WECC and FRCC, claims that FRCC's aggregation argument is so broad that virtually every generator would be considered to have a material impact on reliability. Mosaic argues that FRCC and NERC have already had two opportunities to justify their determinations, and have failed. Mosaic also contends that a remand, as suggested by WECC, would leave NERC's decision in place while NERC determines whether to justify the decision or reverse itself. Mosaic suggests that reversal is more just and would leave FRCC and NERC the option to register Mosaic's generation facilities when and if they are able to justify such registration.

B. Tampa - - Docket No. RC07-2-000

22. Tampa owns the McKay Bay Resource Recovery facility (McKay Bay), which is operated by Wheelabrator Technologies, Inc. McKay Bay is a waste-to-energy facility that produces electricity through the burning of municipal waste. According to Tampa, the primary purpose of the facility is the disposal of municipal waste, and the production of electricity is a secondary purpose to waste disposal. Tampa states that the electricity that is not consumed on-site to meet McKay Bay's needs is sold pursuant to two firm capacity contracts totaling 19 MW. Tampa states that, because the requirements of both firm contracts can be met by exporting less than 20 MW and/or 20 MVA, its facility falls below the 20 MVA registry threshold.

1. NERC's Tampa Decision

23. On April 10, 2007, FRCC informed Tampa that it was to be included on the NERC compliance registry as a generator owner. Tampa appealed FRCC's registry decision to NERC, contending among other things that McKay Bay, which is interconnected at 69 kV, is not directly connected to the Bulk-Power System because it is interconnected at less than 100 kV, and because it is interconnected to a radial facility. Further, Tampa argued to NERC that McKay Bay is exempt because its 19 MW of export power is less than NERC's threshold and will not affect reliability.

24. On July 5, 2007, in a decision that closely mirrors the rationale described above regarding Mosaic, NERC denied Tampa's appeal. NERC acknowledged that Tampa's facilities are connected at the 69 kV level.[10] NERC explained, however, that within FRCC over 2,000 MW of generation connected at the 69 kV level is also important to Bulk-Power System reliability because of limits on FRCC's import capability. According to NERC, underfrequency settings and generator trip settings must be coordinated to ensure adequate resources are available to avoid stability issues under certain conditions. Based on these considerations, NERC determined that McKay Bay and others like it in FRCC have an aggregate importance to reliability in FRCC and the registration of Tampa as a generator owner is appropriate.

25. Further, NERC explained that it evaluated two "key factors" in determining the impact of facilities connected below 100 kV in determining their impact to the Bulk-Power System. First, NERC considered whether the generator nameplate rating was at 20 MVA or greater. Second, NERC considered whether the generator had commitments to supply firm power to another entity on the transmission grid. On the first factor, the NERC decision does not identify the nameplate rating of the McKay Bay facility. On the second factor, NERC found that Tampa sells firm power to Tampa Electric Company (TECO). NERC explained that Tampa's firm power sales commitment is an important consideration because TECO relies on that purchase, in part, to meet its operating and planning reserve margins. Further, according to NERC, by virtue of the firm power sales, McKay Bay is included in the transmission planning studies to ensure that NERC Reliability Standards are met.

26. Based on the above evaluation, NERC concluded that Tampa's generation has a material impact on the reliability of the transmission grid in Florida. It explained that, although McKay is connected radially, the exemption for radial transmission facilities

[10] As noted above, section I of NERC's Registry Criteria provides that the bulk power system consists of facilities generally operated at 100 kV or higher.

serving load does not apply to generators. Finally, NERC stated that its conclusion was not altered by Tampa's claim that its exports are less than the NERC Registry Criteria threshold.

2. Tampa's Appeal to the Commission

27. On appeal to the Commission, Tampa argues that NERC's decision does not dispute Tampa's claim that, because the McKay Bay facility is connected at 69 kV, it is not considered by NERC's Registry Criteria (which sets forth a 100 kV threshold) to be connected to the Bulk-Power System. Further, Tampa points out that the NERC decision does not assert that McKay Bay by itself is material to reliability. Rather, NERC affirmed the FRCC registration decision based on the aggregate impact of generation connected at 69 kV. According to Tampa, based on this rationale, no QF in Florida would be exempt.

28. Tampa contends that NERC's evaluation ignores the circumstances of a specific generator such as size, whether the QF's output is used mainly to serve its own needs, and whether a firm power sale to a utility is material to that utility's reliability. Further, according to Tampa, NERC's decision renders irrelevant the NERC criteria regarding whether a portion of a generator's capacity is used to supply its own needs or whether it has a back up supply arrangement from the utility. Tampa also contends that NERC's "firm power sales" rationale is mistaken and does not denote an impact on reliability. Tampa states that its sale of 19 MW to TECO comprises 0.4 percent of the utility's peak load.

29. Further, Tampa argues that NERC acted arbitrarily in failing to address arguments raised by Tampa in its appeal to NERC. In particular, Tampa claims that NERC failed to consider that: (1) the McKay Bay facility is connected at 69 kV; (2) McKay Bay is connected radially to the Bulk-Power System; (3) McKay Bay's annual average export of electricity power is less than 20 MW and therefore below the registry threshold; and (5) McKay Bay's 19 MW of firm capacity contracts will not affect system reliability because they comprise such a small share of the capacity relied upon by TECO, Tampa's customer.

3. Interventions and Comments

30. Notice of Tampa's filing was published in the *Federal Register*, 72 Fed. Reg. (2007), with interventions and protests due on or before August 21, 2007.

31. Timely motions to intervene were filed by the Palm Beach; Lee County, Florida (Lee County); Strategic Energy; Direct; NERC, FRCC, and WECC. Motions to intervene out of time were filed by RFC and MRO. Mosaic filed a response to the comments of FRCC and WECC.

32. The arguments made by Direct Energy, FRCC and WECC in their filings in the Tampa proceeding are substantially the same as those filed by the same entities in the Mosaic proceeding, and are not repeated here. Lee County argues that a determination of whether a facility is "material" to the reliability of the Bulk-Power System should be based on the actual, reasonably proven impact of the particular generating facility. Lee County argues that if a Regional Entity ignores the stated size criteria for registration and, instead, aggregates several generators to justify a finding a materiality, the size criteria become meaningless. Lee County urges the Commission to reverse NERC's denial of Tampa's appeal.

III. Discussion

A. Procedural Matters

33. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[11] the timely, unopposed motions to intervene serve to make the entities that filed them parties to the respective proceedings in which they sought to intervene. We will also grant the untimely motions to intervene given the early stage of these proceedings, the parties' interests, and the absence of undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[12] prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers of Mosaic and Tampa because these submittals have provided information that assists us in our decision-making process.

B. Commission Determination

34. The Commission remands to NERC the registry determinations regarding Mosaic and Tampa for further consideration. The Commission finds that NERC has not adequately demonstrated that Mosaic and Tampa are properly registered based on the NERC Registry Criteria and NERC has not adequately addressed the arguments that Mosaic and Tampa made to NERC that they were not properly registered by FRCC. While NERC discusses several reasons why Mosaic and Tampa should be registered, the Commission is concerned that NERC did not provide sufficient justification for affirming the FRCC decisions and rejecting certain arguments of Mosaic and Tampa. Accordingly, the Commission remands these proceedings to NERC. NERC must issue new revised determinations with further explanation in light of the discussion below. Alternatively, if NERC reverses its earlier registration decisions, it should notify the Commission of that determination, and the Commission will terminate these proceedings.

---

[11] 18 C.F.R. § 385.214 (2007).

[12] 18 C.F.R. § 385.213(a)(2) (2007).

35. Because we are remanding this matter to NERC, Mosaic and Tampa will remain on the NERC compliance registry.[13] While Mosaic and Tampa are responsible at this time for compliance with mandatory Reliability Standards, we note that the Commission in Order No. 693 directed NERC and the Regional Entities to use their enforcement discretion to focus on the most serious violations during an initial period through December 31, 2007.[14]

36. NERC, in its July 5, 2007 registry decisions, stated that section III.c.1 of its Registry Criteria, "individual generating unit > 20 MVA (gross nameplate rating) and is directly connected to the Bulk-Power System," applies to these cases. NERC, however, in its analysis did not discuss how it applied this section of its Registry Criteria; NERC also did not address Mosaic and Tampa's arguments that NERC should have measured the size of the Mosaic and Tampa facilities for purposes of section III.c.1 based on their net deliveries to the bulk power system and that because Mosaic and Tampa are interconnected at 69 kV, they are not "directly connected" to the Bulk-Power System. Thus, it is not clear whether NERC relies on the application of the threshold set forth in section III.c.1 of the Registry Criteria in its determination. On remand, 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.

37. NERC indicated that its rationale is also based on a combination of section III.c.4 of the Registry Criteria, "any generator, regardless of size, that is material to the reliability of the Bulk-Power System," and note 4, which allows the registration of a class of entities that have been demonstrated to impact reliability in the aggregate. In support of its analysis, NERC explained that, within the FRCC region, over 2,000 MW of generation is connected at 69 kV. It indicated that this generation, in the aggregate, is

---

[13] As noted above, the Commission previously denied Tampa's and Mosaic's requests for stay of any possible appeals to the Commission. *See supra* note 5. Tampa and Mosaic renew their requests for a stay in their appeals. They claim that they will suffer irreparable harm by incurring costs associated with implementing and maintaining compliance with reliability standards. The Commission, in denying the prior request for a stay, stated that while Mosaic and Tampa claimed irreparable harm, they did not provide financial information or documentation to support their claim. The Commission concluded that "unsupported claims that they will have to incur financial costs that may not be recoverable is insufficient, both factually and legally, to demonstrate the need for a stay while they appeal the registration determinations." 120 FERC ¶ 61,098 at P 11. Mosaic and Tampa have provided no additional support for their claims of irreparable harm and we see no reason to now grant a stay.

[14] Order No. 693 at P 222-223.

important to Bulk-Power System reliability because of limits on FRCC's import capability. The Commission is concerned, however, that NERC may have defined too broad of an aggregate class. Thus, NERC must provide additional explanation why this class is appropriate. NERC must also explain the limits or parameters on how it considered generation connected at 69 kV in the aggregate. Further, to provide context for its decision, NERC must identify each generator that comprises the class of generating units in the FRCC region connected at 69 kV, the nameplate rating, the extent to which it makes firm sales, the extent to which it serves load behind the meter, and whether it is registered. NERC must also identify the planning reserve margin in FRCC with and without generators interconnected at 69 kV.

38. NERC, in its decisions, also identified two "key factors" that it considered whether a generator was material to the reliability of the Bulk-Power System: (1) whether the generator nameplate rating was 20 MVA or greater; and (2) whether the generator had firm sales commitments. With regard to the first factor, section III (c) of NERC's Registry Criteria provides that a customer-owned generator that serves retail load may be excluded from registration if the net capacity provided to the Bulk-Power System does not exceed the thresholds for registering generator owners and generator operators, i.e., 20 MVA for an individual unit or 75 MVA for a generating plant. NERC, however, did not explain why it did not consider this exclusion and, instead, considered only the nameplate rating for Mosaic's and Tampa's generators (that also serve behind-the-meter load).

39. With regard to the second factor, NERC explained that the firm power sales of a generator are important because they are included in planning models and unit commitment determinations. Based on this rationale, a 5 MW (or perhaps even smaller) generating unit that makes a 1 MW (or perhaps even smaller) firm power sale would be registered as impacting Bulk-Power System reliability. The Commission is concerned that this approach may be overly-inclusive. NERC must provide a rationale for including any firm power sale or provide parameters regarding which firm power sales are considered *de minimis*. As applied to Tampa and Mosaic, both contend that their firm power sales are a small fraction of the incumbent utility's peak load, and Mosaic provides letters from its customer supporting that contention. NERC must explain whether and how the firm power sales of Tampa and Mosaic are significant.

40. Mosaic states that two of its facilities should be exempt because they are inoperable and, in addition, a contract for 15 MW of firm power sales from another generation unit will expire at the end of 2007. NERC summarily rejected these concerns. NERC must provide additional explanation why these facts did not alter its registration determination and why Mosaic must comply with Reliability Standards with respect to these facilities.

The Commission orders:

(A) The NERC registration determination regarding Mosaic Fertilizer, LLC is hereby remanded to NERC for further consideration, consistent with the discussion in the body of this order. NERC is hereby directed to issue a registration determination with further explanation or, alternatively, notify the Commission that it has reversed its determination, within 30 days of the date of this order.

(B) The NERC registration determination regarding City of Tampa, Florida, is hereby remanded to NERC for further consideration, consistent with the discussion in the body of this order. NERC is hereby directed to issue a registration determination with further explanation or, alternatively, notify the Commission that it has reversed its determination, within 30 days of the date of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.