

121 FERC ¶ 61,143
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.

Lee County, Florida

Docket No. RC07-3-000

Solid Waste Authority of
Palm Beach County, Florida

Docket No. RC07-5-000

ORDER AFFIRMING ELECTRIC RELIABILITY ORGANIZATION COMPLIANCE
REGISTRY DETERMINATIONS

(Issued November 15, 2007)

1. In this order the Commission affirms two decisions in which the North American Electric Reliability Corporation (NERC) found that Florida entities were properly included on the NERC compliance registry, and thus subject to NERC's mandatory and enforceable Reliability Standards. The Florida Reliability Coordinating Council (FRCC), a NERC Regional Entity, had registered Lee County, Florida (Lee County) as a generator owner and had registered Covanta Lee, Inc. (Covanta Lee), a contractor operating the Lee County generating facility, as a generator operator. FRCC registered the Solid Waste Authority of Palm Beach County, Florida (SWA) as a generator owner and generator operator.¹ Lee County and SWA each appealed those decisions to NERC, arguing that their respective generation facilities did not fall within NERC's registration criteria. As discussed below, the Commission finds that NERC has adequately supported its determinations that FRCC properly registered Lee County as a generator owner, Covanta Lee as a generator operator and SWA as a generator owner.

¹ SWA states that it is only the generator owner. The operator of its facility is Palm Beach Resource Recovery Corporation (PBRRC); PBRRC has since registered as a generator operator. SWA states that its status as a generator operator is thus not an issue in this appeal.

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).² Subsequently, in April 2007, the Commission approved delegation agreements between NERC and eight Regional Entities, including a delegation agreement between NERC and FRCC.³ 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, 2007.⁴ Further, in Order No. 693, the Commission approved NERC's compliance registry process, including NERC's Statement of Compliance Registry Criteria (Registry Criteria), which describes how NERC and the Regional Entities will identify organizations that should be registered for compliance with mandatory Reliability Standards.⁵ NERC's Rules of Procedure also provide 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 215.⁶ 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.*, 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).

³ *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060, *order on reh'g*, 120 FERC ¶ 61,260 (2007).

⁴ *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).

⁵ *Id.* at P 92-95.

⁶ *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*.

B. NERC Registry Criteria

5. NERC defines the bulk-electric 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.⁷

6. Section I of NERC's Registry Criteria provides that an entity that uses, owns or operates elements of the bulk electric system pursuant to NERC's definition above are candidates for registration. Section II of the Registry Criteria categorizes registration candidates under various functional entity types including Generator Operators and Generator Owners.

7. Section III of NERC's Registry Criteria identifies certain thresholds for registering 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.⁸

8. NERC's Registry Criteria also provide 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

⁷ See Order No. 693 at P 51; NERC Glossary of Terms Used in Reliability Standards, May 2007; NERC Registry Criteria, section I.

⁸ NERC Registry Criteria, section III(c).

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.”⁹ 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.

II. Appeals of NERC Registry Decisions

A. Lee County – Docket No. RC07-3-000

9. The Lee County Facility, which is certified as a QF, consists of two generating units. The original unit is a 39 MW unit. The second unit, which Lee County has constructed and is placing into service, is a 20 MW unit. Both of these Lee County generating units are separately interconnected in parallel to a 138 kV substation which is connected to a 138 kV radial line. The interconnection facilities and transmission line are owned by Florida Power & Light Company (FP&L). The net output (gross output less station power) of the Lee County Facility is sold to Seminole Electric Cooperative, Inc. (Seminole) pursuant to a long-term power purchase agreement.¹⁰

1. NERC’s Lee County Decision

10. FRCC registered Lee County as a generator owner, and Covanta Lee as a generator operator. Lee County appealed the FRCC decision to NERC, contending among other things that the Lee County Facility: (1) is below the general size threshold (Lee County argued that the applicable size threshold is 75 MVA) for registration, (2) is not needed or material to maintaining reliability, and (3) is otherwise obligated, pursuant to Florida state law requirements and the provisions of FP&L’s open access transmission tariff, to operate in a manner to maintain reliability.

11. On August 21, 2007, NERC denied Lee County’s appeal. NERC found that the owner and operator of the Lee County facility should be registered under section III.c.1 of its Registry Criteria as an “individual generating unit >20MVA (gross nameplate rating) and is directly connected to the bulk power system” and under section III.c.4 as “any generator, regardless of size, that is material to the reliability of the bulk power system.” NERC explained that Lee County admitted that it owned a single 59 MW unit, which is the equivalent to a 59 MVA nameplate rating, and that it is connected to the Bulk-Power System at 138 kV. NERC states that the Lee County facility thus falls within section III.c.1 of the NERC Registry Criteria. NERC reasoned that the unit also should be registered under section III.c.4 (any generator, regardless of size, that is

⁹ NERC Registry Criteria, Notes to Criteria, note 1 (footnote excluded).

¹⁰ FRCC states that the sale to Seminole is 30 MW.

material to the reliability of the bulk-power system) because: (1) it sells a portion of its output as firm power to Seminole which Seminole relies on to meet its operating and planning reserve margins; and (2) the unit is included in the transmission planning studies during normal and contingency analysis to ensure that NERC Reliability Standards are met.

2. Lee County's Appeal to the Commission

12. On appeal to the Commission, Lee County argues, on behalf of itself and Coventa Lee, that the applicable size threshold for its plant is not the criterion contained in section III.c.1 of the Registry Criteria. Rather, according to Lee County, NERC should have applied section III.c.2, which pertains to a “generating plant/facility > 75 MVA (gross 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).” Lee County argues that section III.c.1 applies to single units, while section III.c.2 applies to a plant or facility containing multiple units. Thus, according to Lee County, its aggregate nameplate rating of 59 MW is below the applicable threshold.¹¹ Lee County also contends that its two units are connected by radial lines and, thus, not directly connected to the Bulk-Power System.

13. Lee County also argues that it does not follow from the fact that Lee County makes firm sales to Seminole that it has a material impact on the reliability of the Bulk-Power System. Lee County argues that equating firm sales with material impact is not logical and nullifies the size criteria for any small generating plants that make firm sales.

3. Interventions and Comments

14. Notice of Lee County's filing was published in the *Federal Register*, 72 Fed. Reg. 52,871 (2007), with interventions and protests due on or before October 9, 2007.

15. Timely motions to intervene were filed by FRCC, NERC, the Midwest Reliability Organization, ReliabilityFirst Corporation, Strategic Energy, LLC, American Municipal Power – Ohio, Inc., and the Transmission Access Policy Study Group (TAPS).

16. TAPS states that it takes no position regarding the merits, but suggests that the Commission resolve this dispute on the basis of the bright-line rules in the Registry Criteria if, as it appears to TAPS, this is feasible. TAPS suggests that if the Commission is unable to affirm NERC's finding that Lee County falls within section III.c.1, that it

¹¹ In its pleading, Lee County states that it has two units, with ratings of approximately 39 MW and 20 MW, with an aggregate nameplate rating of 59 MW, not a single 59 MW unit as indicated by NERC.

remand the proceeding to NERC for further explanation of how the generator is “material to the reliability of the bulk power system.”

17. FRCC states that the Commission should affirm NERC because the Lee County Facility contains a unit of 39 MW and thus exceeds the > 20 MVA criterion contained in section III.c.1 of the Registry Criteria. FRCC also argues that because the Lee County Facility sells 30 MW of output as firm power to Seminole, the facility is an integral part of the operation and planning of the bulk power grid in the FRCC region and, thus, has a material impact on reliability in Florida.

B. SWA – Docket No. RC07-5-000

18. The SWA facility is a 73 MVA (gross nameplate rating) waste-to-energy facility that produces electricity through the burning of municipal waste. SWA’s unit is interconnected at 138 kV. SWA’s facility sells 47.5 MW of firm power to FP&L.

19. FRCC informed SWA that it was registered as a generator operator and generator owner. On June 1, 2007, SWA made a filing with FRCC to challenge this determination. The June 1, 2007 filing was treated by NERC as an appeal from FRCC’s registry decision. SWA argued that it should not be registered because it was below the 75 MVA threshold for registration contained in section III.c.2 of NERC’s registry criteria, because it was interconnected on a radial line, and because it was not material to the reliability of the bulk-power system.

20. On August 22, 2007, NERC denied SWA’s appeal. NERC ruled that SWA was properly registered under sections III.c.1 of its Registry Criteria as an “individual generating unit > 20 MVA (gross nameplate rating) and is directly connected to the bulk power system.” NERC explained that the applicable registry criterion is section III.c.1 which applies to a single unit > 20 MVA (gross nameplate rating) and that section III.c.2 which applies to a multiple unit facility is not at issue in the SWA proceeding. NERC explained that the SWA unit was properly registered under section III.c.4 of its Registry Criteria as material to the reliability of the bulk power system because: (1) it sells a portion of its output as firm power to FPL which FPL relies on to meet its operating and planning reserve margins; (2) the unit is included in local and regional planning models which are used for studies and assessments (normal and contingency) necessary to satisfy the transmission planning standards; and (3) the unit is included in the transmission planning studies during normal and contingency analysis to ensure that NERC standards are met.

Interventions and Comments

21. Notice of SWA’s filing was published in the *Federal Register*, 72 Fed. Reg. 54,022 (2007), with interventions and protests due on or before October 11, 2007.

22. Timely motions to intervene were filed by FRCC, NERC, the Midwest Reliability Organization, ReliabilityFirst Corporation, Strategic Energy, LLC, American Municipal Power – Ohio, Inc., and TAPS.

23. TAPS states that it takes no position regarding the merits, but suggests that the Commission resolves this dispute on the basis of the bright-line rules in the Registry Criteria if, as it appears to TAPS, this is feasible. TAPS suggests that if the Commission is unable to affirm NERC’s finding that SWA falls within section III.c.1, it remand the proceeding to NERC for further explanation of how the generator is “material to the reliability of the bulk power system.”

24. FRCC states that the Commission should affirm NERC because the SWA unit is a single unit of 73 MVA and thus exceeds the > 20 MVA criterion contained in section III.c.1 of the Registry Criteria. FRCC also argues that because the SWA Facility sells a portion of its output as firm power to FPL, the facility is an integral part of the operation and planning of the bulk power grid in the FRCC region and, thus, has a material impact on reliability in Florida.

III. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure,¹² 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.

B. Commission Determination

26. The Commission affirms the NERC registry determinations regarding Lee County and SWA. We will address the appeals of Lee County and SWA together because of their similar factual posture and similar application of the relevant NERC Registry Criteria.

27. NERC has provided adequate support for determining that both the Lee County facility and the SWA facility are properly registered pursuant to section III.c.1 of NERC’s Registry Criteria.¹³ The Lee County facility consists of two generating units, one of which is a 39 MW unit (the equivalent of a 39 MVA unit), which exceeds NERC’s 20 MVA threshold. This unit is interconnected to a 138 kV transmission line. Lee County contends that both its units are connected to a radial line and, therefore, not

¹² 18 C.F.R. § 385.214 (2007).

¹³ We are not making a finding here with respect to the applicability of section III.c.4 of NERC’s Registry Criteria to either Lee County or SWA.

directly connected to the Bulk-Power System. Lee County misreads NERC's definition of bulk electric system, which, among other things applies to "transmission lines . . . operated at voltages of 100 kV or higher" but provides that "[r]adial transmission facilities serving only load with one transmission source are generally not included in this definition." The 138 kV line to which Lee County is interconnected serves more than load, it provides transmission service to Lee County's generation. Thus, for purposes of registering a generator owner or generator operator, the facility is directly connected to the Bulk-Power System.¹⁴

28. Likewise, we find that NERC has provided adequate support for determining that SWA is properly registered pursuant to section III.c.1 of NERC's Registry Criteria.¹⁵ SWA owns a 73 MVA facility, which exceeds the 20 MVA threshold of section III.c.1. SWA's unit is interconnected at 138 kV. Like Lee County, SWA argues that because it is connected to a radial line, it is not directly interconnected to the Bulk-Power System. As we stated above, transmission facilities that provide service to a generation facility do not qualify as "serving only load" and are thus part of the Bulk-Power System if they operate at voltages of 100 kV or higher.

29. Both Lee County and SWA contend that they should be excluded from NERC's compliance registry because they do not satisfy section III.c.2 of NERC's Registry Criteria, which provides an aggregate 75 MVA threshold for generating plants and facilities. Lee County and SWA apparently interpret the thresholds in section III.c.2 to the exclusion of section III.c.1, so that only one section can apply to a facility. We reject this interpretation. In fact, NERC's four criteria for the registration of generator owners and generator operators are written in the alternative, each connected by "or," so that an entity that satisfies any one of the four criteria should be registered. Thus, NERC can properly register Lee County and SWA because they satisfy section III.c.1 even if they do not satisfy section III.c.2 of the Registry Criteria.

¹⁴ In other registration determinations, NERC has explained "[t]he fact that the generator is connected radially does not alter [NERC's conclusion that a generator owner or generator operator should be registered]." The exemption for radial transmission facilities serving only load does not apply to generators." NERC's Compliance Registry Determination regarding City of Tampa, Florida, McKay Bay Resource, at 3 (July 5, 2007). Although NERC does not articulate this rationale in its Lee County decision, our finding in the current proceeding is consistent with NERC's rationale.

¹⁵ Because the SWA facility is operated by another entity, PBRR, that has voluntarily registered as a generator operator with respect to this facility, SWA should be included on the compliance registry as only the generator owner. Neither NERC nor FRCC challenged SWA's contention on appeal that it is not the operator of the facility that it owns.

30. These cases differ from those that we addressed in *Mosaic Fertilizer, LLC*, 121 FERC ¶ 61,058 (2007) (*Mosaic*). In *Mosaic*, it was not clear whether the entities challenging registration as generator owners and generator operators satisfied section III.c.1 of the Registry Criteria, or whether NERC even relied on section III.c.1 in its registry determination.¹⁶ In particular, the facilities in *Mosaic* are interconnected at 69 kV, while Lee County and SWA are each interconnected at 138 kV. Further, both the Lee County and SWA generation facilities have a nameplate rating that exceeds 20 MVA. In *Mosaic*, although it appears that the generator facilities at issue have nameplate facilities in excess of the NERC thresholds, the matter is complicated because they serve behind the meter load. NERC's Registry Criteria provides an exclusion for generation that serves behind the meter load and the net capacity provided to the Bulk-Power System does not exceed 20 MVA (or 75 MVA aggregate for a generating plant), which appears to be the case in *Mosaic*. Thus, in *Mosaic*, the Commission remanded the cases so that NERC could either reconsider its decisions or provide further explanation. In the cases before us, neither Lee County nor SWA claims that its size should be determined by the net capacity it provides to the Bulk-Power System.¹⁷

31. Accordingly, the Commission finds that NERC has provided adequate support for its registry determinations regarding Lee County and SWA.

The Commission orders:

(A) The NERC registration determination regarding Lee County, Florida and Covanta Lee, Inc. is hereby affirmed, as discussed in the body of this order.

(B) The NERC registration determination regarding the Solid Waste Authority of Palm Beach County, Florida is hereby affirmed, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁶ *Mosaic* at P 36.

¹⁷ It appears that the net output of the Lee County facility is at least 30 MW while the net output of SWA is at least 47.5 MW.