

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

New Harquahala Generating Co.,
LLC

Docket No. RC08-4-000

**MOTION TO INTERVENE AND COMMENTS OF
ELECTRICITY CONSUMERS RESOURCE COUNCIL (“ELCON”)**

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission’s Rules of Practice and Procedure, and the Commission’s notice issued in this proceeding on February 8, 2007, the Electricity Consumers Resource Council (“ELCON”) hereby moves to intervene.

In this proceeding, New Harquahala Generating Company, LLC (“Harquahala”) appeals an action by the North American Reliability Corporation (“NERC”) finding that Harquahala was property registered as a Transmission Owner (“TO”) and Transmission Operator (“TOP”) on the NERC Compliance Registry for the Western Electricity Coordinating Council (“WECC”) region. ELCON supports Harquahala’s appeal, as its minor tie line interconnection facilities do not have potential to materially impact reliability of the bulk power system. ELCON’s members, many of whom have similar interconnection facilities, would be adversely impacted by a Commission decision to deny the appeal.

Description and Standing of ELCON

ELCON is a national association of industrial consumers of electricity organized to promote the development of coordinated and rational federal and state policies that will assure an adequate, reliable and efficient electricity supply for all users at competitive rates. ELCON member companies produce a wide range of products from virtually every segment of the manufacturing community. The member companies of ELCON consume approximately five percent of all electricity in the United States. Many ELCON members own and operate major facilities in the footprint of WECC. On their behalf, ELCON has actively participated in the development of the NERC Compliance Registry and has sought that the development and implementation of criteria calling for registration only of those facilities that would materially impact the reliability of the bulk power system. Because certain of ELCON's members are customer generators that operate interconnection facilities similar in nature to those owned by Harquahala, the outcome of this proceeding may affect whether they are subject to a requirement to register as a TO or a TOP. Therefore ELCON members will be "directly affected by the outcome of this proceeding" as specified in Rule 214.

ELCON's Motion to Intervene and Comments

ELCON intervenes in support of the Harquahala's position that should not properly be registered as a TO or a TOP because, under NERC's criteria for registration, interconnection facilities are not "integrated transmission elements". The registration criteria were developed in an extensive process with broad-based stakeholder participation and extensive Commission participation, oversight and, ultimately, approval. NERC must be required to apply the criteria consistently and faithfully, adhering to well-recognized standards of due process and reasoned

decision-making. Market participants must not be subject to a patchwork quilt of different registration requirements that vary among regions and over time.

NERC's Rules of Practice and Procedure expressly impose on NERC the responsibility to ensure "that there is consistency, fairness of administration, and comparability of outcomes within each regional entity's certification and registration program among all of the programs" (Section 500, at 3.3). Here, NERC and WECC have given short shrift to Harquahala's argument that what is owned and operated is a minor piece of the transmission system that is not integrated with the grid and, in and of itself, bears no risk to reliability. Thus, there is no reliability gap or material impact on interconnection; the facility should only be registered as a generator.

Specifically, Harquahala states:

NERC's denial of Harquahala's NERC Appeal is inconsistent with the plain language of the NERC Registry Criteria, which excludes from registration any entity that does not own or operate "an *integrated transmission element* associated with the BPS 100 kV and above, or such lower voltage as defined by the Regional Entity necessary to provide for the reliable operation of the interconnected transmission grid." Harquahala's Tie line is a sole use, radial line and, therefore, not an integrated transmission element. NERC's principal error is its rejection of the historical and common usage of the term "integrated," which is used to describe transmission facilities that are looped with other facilities so as to provide a parallel path for power flows over an interconnected network of transmission facilities, and not to include sole use, radial lines such as the Interconnection Facilities. NERC, instead, without providing any notice to the Commission and the industry, asserts that it will deem "integrated" as synonymous with "connected;" that is, because the Interconnection Facilities connect the Generation Facility to Hassayampa, NERC concludes that they are integrated transmission elements under the Registry Criteria. The Commission must reject NERC's *post hoc* reinterpretation of the commonly understood term "integrated" as applied to transmission facilities.

Harquahala's Request for Appeal at pp. 7-8. Harquahala further points out that under FERC precedent "there is an important distinction between 'interconnection facilities' and 'network upgrades' in that the former are sole use facilities (*e.g.*, radial line that extends from the generating facility to the point of interconnection with the grid) that benefit only the

interconnection customer, while the latter are part of the integrated grid and, therefore, benefit all users of the transmission system.” *Id.* at p. 8.

The nature of TO/TOP requirements shows that treating a tie line as an interconnection facilities would impose substantial and unnecessary expenses on the entity and therefore would not represent reasoned decisionmaking. The requirements fall into two categories: (1) requirements that clearly are intended to apply to integrated facilities, as that term is commonly understood, and not to interconnection facilities; and (2) requirements that are duplicative of GO/GOP requirements and therefore already full captured with respect to such interconnection facilities. Included in the first category, for example, are requirements involving the direction of other entities during emergencies or to coordinate the activities of other entities; and standards that apply by their own terms only to significant transmission paths in WECC. Treating Harquahala like a TO/TOP would require Harquahala to employ at least five NERC-certified transmission operators to monitor the operation of its generator tie line, at an estimated cost to exceed \$1 million initially, with continuing costs for wages and training going forward.

Based on Harquahala’s showing that a tie line is not equivalent to an integrated transmission element, this case is similar to the other recent cases in which the Commission has overturned NERC’s flawed and over-expansive application of its registry criteria. In Mosaic Fertilizer, 121 FERC ¶ 61,058 (2007), the Commission reversed NERC’s registration of Mosaic and Tampa, two generators connected at 69 KV that each had a commitment to sell a miniscule amount of power to local utilities (in each case less than 0.5% of the utility’s Peak Load). Section III (c) of NERC’s Registry Criteria provides that smaller generator owners or generator operators should be registered only if they meet one of four specific criteria. Mosaic’s and Tampa’s facilities did not exceed the criteria, as they exported fewer than 20 MW annually and

were interconnected at 69 KV or lower via radial transmission lines. The Commission found insufficient NERC's vague argument that because there are over 2000 MW of generation connected at 69 KV, that Mosaic and Tampa should be registered; NERC failed to justify that either individually or on a class basis the facilities will have a material impact on reliability. Similarly, Direct Energy Services, 121 FERC ¶ 61,274 (2007), involved registration of retail marketers who were serving peak load in excess of 25MW as load serving entities. The Commission reversed NERC's registration of these entities since they did not meet the applicable criteria, *i.e.*, they were not connected to the bulk power system (at more than 100 KV). Likewise, the Commission should reverse the flawed registration here.

The present case is yet another example of NERC and regional entity overreaching on registration and failing to adequately explain their decisions. This series of cases suggests that there is insufficient vetting of ongoing implementation of the *Statement of Compliance Registry Criteria*. While ELCON appreciates that FERC received these criteria as part of the certification process, and that as initially drafted they were vetted to some extent by ELCON and other groups, these criteria are being implemented in a black box without sufficient process to obtain input from affected parties. No stakeholder committee (including the Compliance and Certification Committee) is allowed to our knowledge to provide input to proposed changes to the *Compliance Registry Criteria* document. Accordingly, the key stakeholders do not have sufficient rights or protections. This procedural problem has substantive consequences. If NERC's rationale in this proceeding is applied to other facilities, NERC and the regional entities could seek to register numerous entities with vanishingly small potential impact on bulk power reliability.

Conclusion

For the foregoing reasons, ELCON respectfully requests that the Commission grant ELCON leave to intervene, consider ELCON's comments set out above, and grant Harquahala's appeal.

Notices and Communications

Notices and communications with regard to these proceedings should be addressed to:

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Respectfully submitted,

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Dated: March 5, 2008

Certificate of Service

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary of this proceeding.

Dated at Washington, D.C.: March 5, 2008

/s/ W. Richard Bidstrup
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