

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Lee County, Florida

| Docket No. RC07-3-000

**MOTION FOR LEAVE TO INTERVENE  
AND COMMENTS OF  
TRANSMISSION ACCESS POLICY STUDY GROUP**

On September 7, 2007, Lee County, Florida (“Lee County”) filed an appeal of an August 21, 2007 decision of the North American Electric Reliability Corporation (“NERC”) denying Lee County’s request that NERC remove Lee County’s municipal solid waste resource recovery generating facility (“Lee County Facility”) from the NERC Compliance Registry. Pursuant to the Commission’s September 11, 2007 Notice of Filing<sup>1</sup> in the above-captioned docket and 18 C.F.R. § 385.214, the Transmission Access Policy Study Group (“TAPS”) moves to intervene in this proceeding.

**I. MOTION TO INTERVENE**

TAPS is an informal association of transmission-dependent utilities in more than 30 states, promoting open and non-discriminatory transmission access.<sup>2</sup> As an organization with members in most Regional Entities (“RE”), TAPS has an interest in assuring that the industry and the REs have sufficient guidance from the Commission regarding determinations concerning registration of users, owners and operators of the bulk power system, to ensure that those entities

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<sup>1</sup> Notice of Filing, Docket No. RC07-3, 72 Fed. Reg. 52,871 (Sept. 17, 2007).

<sup>2</sup> TAPS is chaired by Roy Thilly, CEO of Wisconsin Public Power Inc. (“WPPI”). Current members of the TAPS Executive Committee include, in addition to WPPI, representatives of: American Municipal Power-Ohio; Blue Ridge Power Agency; Clarksdale, Mississippi; Electricities of North Carolina, Inc.; Florida Municipal Power Agency; Geneva, Illinois; Illinois Municipal Electric Agency; Indiana Municipal Power Agency; Madison Gas & Electric Co.; Missouri River Energy Services; Municipal Energy Agency of Nebraska; Northern California Power Agency; Oklahoma Municipal Power Authority; Southern Minnesota Municipal Power Agency; and Vermont Public Power Supply Authority.

that can have a material impact on the reliability of the bulk power system, and only those entities, are included on the Compliance Registry.

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## II. COMMENTS

TAPS takes no position regarding the relative merits of the positions of NERC/FRCC and Lee County. TAPS does, however, urge the Commission to resolve this dispute on the basis of the bright-line rules in the Registration Criteria if—as it appears to TAPS—this is feasible.

NERC bases its finding on FRCC's contention that generators like Lee County's could, in the aggregate, affect the reliability of the bulk power system, even though based on the facts as stated by NERC, the Lee County facility is a single generator with a gross nameplate rating over 20 MVA and is directly connected to the bulk power system. Under III.c.1 of the Compliance Registry Criteria (Version 3.1), NERC's inquiry could and should have ended there. Instead, NERC goes on to talk in general terms about the importance of firm sales and of a generator's inclusion in local and regional plans, and cites FRCC's belief that the Lee County Facility and others like it could have an aggregate impact on the bulk power system. If accepted, this dicta might be used to justify the improper registration of many other FRCC generators; the exceptions in the registration criteria could swallow the rule.

TAPS recognizes that under the Compliance Registry Criteria, a generator can be registered regardless of size if it is “material to the reliability of the bulk power system” (III.c.4) or if it 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” (note 4). But NERC should not reach III.c.4 unless the generator is not eligible for registration based on its size. Nor should NERC reach note 4 unless the generator is not eligible for registration under III.c.1-4.<sup>3</sup> Furthermore, as note 4 makes clear, NERC must *demonstrate* that otherwise exempt entities will have an impact in the aggregate. NERC and the REs must follow the Registry Criteria. The criteria were implemented for a reason. Judicial restraint and sound practice demand that the Regional Entities, NERC, and the Commission make registration decisions as narrowly as possible. The consequences for third parties of a broad decision that goes well beyond what is necessary to protect reliability in this situation have not been examined. If the bright-line Registry Criteria rules are sufficient, those rules should be applied and the resulting decision should be limited to the facts before the Commission.

If the Commission finds that the Lee County facility is subject to registration under the bright-line rules of sections III.c.1-3, there is no need to turn to III.c.4 or note 4. If, on the other hand, the Commission finds that the Lee County Facility is otherwise exempt under III.c.1-3, it should remand and require something more than a bald assertion from NERC and FRCC with respect to Lee County’s materiality under III.c.4, and should require a demonstration of aggregate impact as a precondition to registering Lee County under note 4. This will enable the Commission to establish important precedent in a clear and thoughtful manner. An

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<sup>3</sup> It is unclear from NERC’s decision whether it is registering the Lee County Facility under III.c.4 or note 4.

unnecessarily over-broad application of the exceptions to the exemptions would allow the exceptions to swallow the rules and destroy the relative certainty that the Registration Criteria were designed to provide small systems..

### CONCLUSION

WHEREFORE, for the reasons stated above, TAPS respectfully requests that the Commission act promptly to grant TAPS's motion to intervene and consider TAPS's comments in reaching a decision in the above-captioned appeal.

Respectfully submitted,

*/s/ Cynthia S. Bogorad*

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October 9, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have on this 9<sup>th</sup> day of October, 2007, caused the foregoing document to be served on all parties on the list compiled by the Secretary of the Commission in this proceeding.

*/s/ Rebecca J. Baldwin*

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