

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

New Harquahala Generating Company, LLC) Docket No. RC08-4-000

**MOTION TO INTERVENE AND
COMMENTS OF THE CALIFORNIA
INDEPENDENT SYSTEM OPERATOR**

In accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Commission’s February 8, 2008 Notice of Filing in the above-captioned docket, the California Independent System Operator (CAISO) hereby submits this Motion to Intervene and Comments regarding the Appeal of the New Harquahala Generating Company (Harquahala) filed on February 4, 2008.

I. Motion to Intervene

In its February 8, 2008 Notice of Filing, the Commission established March 5, 2008 as the date upon which interested parties should file motions to intervene, protests and comments. The CAISO seeks leave to intervene in this proceeding in order to participate as party and to file comments about the mandatory reliability standards policy issues raised by this appeal.

A. Description of the CAISO and Communications

The CAISO is a nonprofit, public benefit company organized under the laws of the State of California and located at 151 Blue Ravine Road, Folsom, California 95630. The CAISO is the Balancing Area Authority operator responsible for the reliable operation of the electric grid comprising the transmission system of a number of utilities,

as well as the coordination of the real-time and ancillary services electricity markets in California.

The CAISO requests that all notices and communications regarding this motion and this proceeding be directed to:

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B. CAISO’S Interest in the Proceeding

As an independent system operator, the CAISO is an “owner, operator or user” of the bulk power system and is registered in the NERC Compliance Registry as a Balancing Authority (BA), Transmission Operator (TOP), Transmission Service Provider (TSP) and Planning Authority (PA). In order to comply with the numerous tasks and responsibilities associated with the Reliability Standards applicable to these functions, the CAISO must interface and exchange information with other TO/TOPs. Having Generator Owners (GO) and Generator Operators (GOP) (hereinafter “GO/GOPs”) also registered as Transmission Owners (TO) and TOPs (hereinafter “TO/TOPs”) will substantially impact the manner in which the CAISO will be able to share information

with TO/TOPs and could detrimentally affect the CAISO's ability to efficiently and reliability manage the grid. Clearly the CAISO has an interest in the outcome of this proceeding and its interests will not be represented by other parties to the case. The CAISO will contribute to the Commission's consideration of the issues raised by this appeal by providing the CAISO's perspective as an ISO in the Western Interconnection. Because the CAISO's interests cannot be adequately represented by other parties, and the CAISO will facilitate to the development of complete record for the Commission's analysis, the CAISO's intervention is in the public interest and it should be granted.

II. Comments

A. Introduction

Harquahala has appealed from a North American Electric Reliability Corporation (NERC) Board of Trustees Compliance Decision (Decision) issued on January 14, 2008 affirming Harquahala's listing in the NERC Compliance Registry as a TO/TOP based on the 500 kV generator tie-line connecting its Generating Facility to the transmission grid. As explained below, the CAISO supports the Harquahala appeal and urges the Commission to reverse the NERC determination that Harquahala should be listed as a TO/TOP in the Compliance Registry. Should the WECC/NERC be affirmed on this registration issue, the CAISO is concerned that the Decision could have far-reaching and adverse implications with respect to the compliance obligations of other "owners, operators and users" of the bulk power system. Specifically, the CAISO believes that placing GO/GOPs in the same category as TO/TOPs will make it problematic for the CAISO to fully comply with the mandatory Reliability Standards and at the same time meet its Code of Conduct obligations under Commission Order Nos. 888, 889 and 2000.

Furthermore, the CAISO has concerns with NERC's finding that Registered Entities can be selectively excused from compliance with the Reliability Standards applicable to the functions for which the Entities are registered. Finally, to the extent that the Commission believes that reliability standards coverage gaps could exist if Harquahala (and other similarly situated GO/GOPs) are not listed as TO/TOPs, NERC should be directed to address such gaps through modifications to the GO/GOP standards and not by attempting to "fit a square peg into a round hole" by treating GO/GOPs as TO/TOPs.

B. Background and Statement of Facts

According to the public version of the Decision, Harquahala owns and operates a 1,092 MW generating facility, a 500 kV substation and a 26 mile 500 kV radial tie-line connecting the generator to the Hassayampa substation which is owned and operated by the Salt River Project (SRP).¹ Harquahala is registered as a BA, GO/GOP and according to the October 12, 2007 Assessment provided by the Western Electricity Reliability Council (WECC), was appropriately registered by WECC as a TO/TOP within the WECC footprint. It is only the TO/TOP function that is being disputed by Harquahala. WECC based its determination that Harquahala functions as a TO/TOP on criteria contained in the *Statement of Compliance Registry Criteria (Rev. 3.1)* and Rule 501.1.2.2 and 501.1.4 of the *NERC Rules of Procedure*. Specifically, Section III.d.1 of the *Statement of Compliance Registry Criteria* defines Transmission Owner/Operator as "an entity that owns/ operates an integrated transmission element associated with the bulk power system 100 kV and above, or lower voltage as defined by the Regional Entity

¹ Harquahala owns one position, including two 500kV circuit breakers and the dead end structure, at the Hassayampa substation. Decision, 1.

necessary to provide for reliable operation of the interconnected transmission grid.”

Section II of the *Criteria* provide that a TO “is the entity that owns and maintains transmission facilities” and that a TOP “is the entity responsible for the reliability of its local transmission system and operates or directs the operations of the transmission facilities.”²

In its appeal to NERC of the WECC TO/TOP registration, Harquahala asserted that 1) its generation tie-line is not an “integrated transmission element”; 2) WECC is using this case as a test case and there are inconsistencies between WECC and other regions regarding the registration of GO/GOPs as TO/TOPs; 3) there is no basis upon which to conclude that Harquahala’s non-compliance with the TO/TOP requirements would have a material impact on the bulk electric system; 4) Harquahala will comply with many of the TO/TOP requirements through its compliance responsibilities as a GO/GOP; and 5) many of the TO/TOP requirements would not apply to Harquahala and WECC has been unable to identify any gaps in coverage that would be caused by non-compliance with the TO/TOP standards.³

NERC disagreed with each of these contentions and found that WECC had properly registered Harquahala as a TO/TOP, noting that Harquahala’s arguments did not support removal from the NERC Compliance Registry.⁴ On appeal, Harquahala has taken issue with NERC’s findings on each of these points, particularly with respect to the lack of compelling support for the determination that its interconnection facilities

² Decision, 1-2.

³ *Id.*, 2.

⁴ *Id.*, 3.

constitute integrated transmission elements, and NERC's implicit finding that such facilities are material to the bulk power system.⁵

The CAISO believes that Harquahala has presented a sufficient basis for reversal of the Decision. However, after analyzing the arguments presented by Harquahala, should the Commission still be persuaded that there is merit in registering GO/GOPs as TO/TOPs, the policy considerations set forth below should be carefully considered.

C. Imposing TO/TOP compliance obligations on GO/GOPs based solely on their ownership and operation of interconnection facilities sets a precedent that could have adverse impacts on the CAISO's ability to reliably operate the transmission grid and comply with its Code of Conduct obligations.

Although WECC and NERC appeared to focus somewhat on the sheer size of the Harquahala generating facility as a partial basis for requiring registration as a TO/TOP, the Decision should be viewed by the Commission as a start down the slippery slope of registering *all* GO/GOPs with interconnection facilities above 100 kV as TO/TOPs. Indeed, NERC makes it clear that this new registration requirement will be pursued throughout the Regions in order to ensure "uniformity and consistency":

The possibility that Harquahala may be able to identify a generator who also owns transmission and has not yet been registered means simply that- it is not the basis for excluding from registration all generator owners who also own transmission.⁶

Thus, if the Decision is affirmed, there could be dozens of entities registered as both TO/TOPs and GO/GOPs in the CAISO footprint, placing the CAISO in an untenable situation.

As the Commission is well aware, the CAISO is required by Orders 888 and 889 to provide open and non-discriminatory access to transmission service and to the

⁵ Harquahala Appeal, Public Version, 20-53.

⁶ Decision, 9.

information necessary for Transmission Customers to buy and sell available transmission capacity offered under the CAISO's Open Access Tariff (codified as 18 C.F.R. §§37.1-37.6). On the other hand, the CAISO must carefully restrict access to market sensitive information and information about the transmission grid that could provide market participants with an unfair advantage or the ability to manipulate market prices.⁷ In the day-to-day operation of the grid, the CAISO operators must constantly be vigilant in determining which entities (or entity representatives) may be provided with certain information.

The mandatory Reliability Standards add another layer of complexity to the CAISO operators' careful balancing in the exchange of information. There are a variety of Reliability Standards applicable to TO/TOPs and BAs that require communication and the sharing of information that might not be appropriately shared with GO/GOPs. For example, some of these Reliability Standards include, but are not limited to, COM-001-1, R3.; EOP-001-0, R4.R4.1, R4.2, R4.3, R.4.4, R7, R7.1, R7.2, R7.3, R7.4; EOP-003-1, R3; TOP-001-1, R7, R7.1, R.7.2, R7.3; TOP-002-2, R4; TOP-005-1, R3; and IRO-004-1, R5.

TOP-002-2 and TOP-005-1 are good examples of Reliability Standards that could create situations where information that must be communicated under the Standards could violate the CAISO's Code of Conduct responsibilities if the CAISO were to provide such information to a GO/GOP:

⁷ See, e.g. CAISO Tariff, Section 20 and its Information Availability Policy at <http://www.caiso.com/docs/1998/12/14/199812141659535644.pdf>

TOP-002-2

R4. Each Balancing Authority and Transmission Operator shall coordinate (where confidentiality agreements allow) its current-day, next-day, and seasonal planning and operations with neighboring Balancing Authorities and Transmission Operators and with its Reliability Coordinator, so that normal Interconnection operation will proceed in an orderly and consistent manner.

TOP-005-1

R3. Upon request, each Balancing Authority and Transmission Operator shall provide to other Balancing Authorities and Transmission Operators with immediate responsibility for operational reliability, the operating data that are necessary to allow these Balancing Authorities and Transmission Operators to perform operational reliability assessments and to coordinate reliable operations. Balancing Authorities and Transmission Operators shall provide the types of data as listed in Attachment 1-TOP-005-0 “Electric System Reliability Data,” unless otherwise agreed to by the Balancing Authorities and Transmission Operators with immediate responsibility for operational reliability.

As an example, these Reliability Standards would require that transmission outage information be shared between the BA and the TOP. However, there is certain transmission outage information that should not be shared with a GO/GOP, even if time permitted an appropriate confidentiality agreement to be put in place, unless all generators participating in the CAISO markets were privy to the same information. Otherwise, the GO/GOP that is also registered as a TO/TOP could be provided with an unfair competitive advantage over other GO/GOPs that are not registered as TO/TOPs. If some GO/GOPs in the CAISO footprint suddenly become TOPs, the CAISO floor operators will be required to spend an inordinate amount of time making decisions as to how and to whom grid information can be imparted. This places a burden on grid operators that will distract them from their critical duties of reliably operating the grid, and could subject to the CAISO to situations where either a Reliability Standard is violated or its Code of Conduct responsibilities are disregarded. Neither situation is

desirable, and yet they could occur due to the inappropriate registration of generation owners as transmission operators.

The very real and practical problems that will be caused by blurring the distinction (and the “wall”) between generation and transmission for reliability monitoring purposes should cause the Commission to step back and carefully consider the ramifications of the WECC and NERC registration determination. Fundamentally, the CAISO is concerned that NERC and WECC have failed to take into account the need for a uniform and consistent alignment of the Order 888 and Code of Conduct separation requirements with the physical characteristics of the bulk power system. The CAISO operational difficulties described above are simply an outgrowth of the difficulties (if not impossibilities) that will be faced by generators required by the mandatory Reliability Standards to separate their operations into transmission and generation functions. By focusing on the interconnection of generation to the transmission system for reliability purposes, WECC and NERC have apparently lost sight of the wholesale electric industry restructuring principles established by this Commission and carefully adhered to by the CAISO and other ISOs/RTOs.

It is important for the Commission to recognize that there are generators, particularly smaller entities with limited personnel, who do not have Order 888 separation. If, by virtue of the Reliability Standards requirements for TO/TOPs, these generators are privy to market information that would not be provided to the “generation side” under Order 888 separation, they will have obtained a very real and unfair competitive advantage in the market. In considering the registration issues raised by the

instant appeal, the Commission must be mindful of the market implications arising from registering generators as transmission owner/operators.

Additionally, the CAISO believes that the step taken by NERC in registering Harquahala as a TO/TOP could expand the CAISO's compliance obligations. For example, the CAISO and three of its Participating Transmission Owners (Southern California Edison, Pacific Gas & Electric Company and San Diego Gas & Electric) with whom the CAISO is jointly registered as a TO/TOP within its Balancing Authority Area have entered into Reliability Standards Agreements that identify specific compliance tasks and responsibilities to be undertaken for each applicable Reliability Standard. In the context of GO/GOPs that are also jointly registered as TO/TOPs, the same agreement format is not likely to alleviate the information sharing and confidentiality concerns identified above, thereby requiring the CAISO to develop an entirely different agreement to address the overlapping compliance obligations that would be created for an entity registered as both a GO/GOP and a TO/TOP. This will be a cumbersome exercise with no obvious reliability benefits for the integrated transmission network and the bulk power system in general.

- D. Once an entity has been registered as a providing a certain function identified by the NERC Functional Model, the ERO and Regional Entities should not be permitted to make case by case determinations as to whether particular Reliability Standards, otherwise applicable to all entities registered in the same category, do not apply to that particular entity.**

The CAISO finds it particularly disconcerting that WECC and NERC apparently did not carefully consider each of the Reliability Standards applicable to TO/TOPs to determine whether it made any logical or practical sense to subject Harquahala and similarly situated GO/GOPs to the additional compliance obligations applicable to

TO/TOPs. Instead of undertaking this exercise and considering the analysis in this regard presented by Harquahala⁸, NERC merely states that “there is nothing in this decision, the registration criteria or the NERC Rules of Procedure to prevent Harquahala from demonstrating to WECC and NERC that it should not be subject to certain of the TO and TOP requirements and reliability standards.”⁹ This statement not only places the cart before the horse, but contradicts Commission direction in Order 693 and prior statements by both NERC and WECC.

In the first instance, an analysis of whether the Reliability Standards apply to the functions being performed by a particular entity should take place at the registration stage, not after an entity has been registered as providing a certain function in accordance with the NERC Functional Model. Indeed, the fact that the Reliability Standards applicable to a particular function (*e.g.* the TO/TOP function) do not “line up” with the functions actually being performed by a particular entity should inform the ultimate decision as to whether an entity meets the registration criteria. By first drawing conclusions as to whether an entity meets the Registry Criteria and then permitting the entity to “opt out” of compliance with Reliability Standards applicable to the registered function, NERC will be creating confusion as to the applicability of the Standards rather than promoting certainty and consistency across the regions.

More importantly, NERC’s willingness to engage in *ad hoc* determinations as to the applicability of the Reliability Standards to entities registered for a particular function constitutes a dramatic policy shift not previously vetted with the users, owners and operators of the bulk power system nor presented to the Commission for consideration.

⁸ Harquahala Appeal, 33-41.

⁹ Decision, 12.

Indeed, at ¶94 of Order 693, the Commission takes the opposite approach—that entities registered in a particular functional category must comply with all Reliability Standards applicable to that function:

...each registered entity will be registered under one or more appropriate functional categories, and that registration by function will determine with which Reliability Standards – and Requirements of those Reliability Standards – the entity must comply. In other words, a user, owner or operator of the Bulk-Power System would be required to comply with each Reliability Standard that is applicable to any one of the functional types for which it is registered.¹⁰

NERC has a similar comment on its website:

Bulk power system owners, operators, and users are required to register with NERC and comply with all approved reliability standards and report all violations of the reliability standards to their regional entity.¹¹

WECC, too, has repeatedly made the same statements to its members, as embodied by this statement from the WECC website:

Any entity registered under this registration will be responsible for compliance with all Reliability Standards that are applicable to functions for which they are registered.¹²

To further reinforce this message, WECC has informed participants at workshops and other WECC-sponsored conferences that once registered, Registered Entities will be held responsible for compliance with *all* Reliability Standards applicable to the Functional Model categories for which they are registered, regardless of other factors (*e.g.*, dependence upon the compliance of other entities to fulfill compliance obligations under the Standards). This approach to compliance caused the CAISO and other registered TO/TOPs in the CAISO area to enter into the Reliability Standard Agreements described above in order to ensure that all possible gaps in compliance, or overlapping compliance,

¹⁰ 118 FERC ¶ 61,218, p. 32

¹¹ <http://www.nerc.com/~comply/>

¹² <http://www.wecc.biz/wrap.php?file=wrap/entity-registration.html>

with the TO/TOP Reliability Standards had been addressed. The administration of the Reliability Standards Agreements is a continuing effort due ongoing modifications to the Standards or the adoption of new Standards.

The position taken by NERC in the instant appeal represents a substantial change in policy that would render the CAISO and the TO/TOPs efforts in this regard an unnecessary activity. Rather than enter into the Reliability Standards Agreement, the CAISO and the other TO/TOPs could simply have made the case to WECC that certain Standards (and Standards Requirements) were not applicable to them. Thus, if NERC now believes that Order 693 permits Registered Entities to selectively “opt out” of compliance with Standards that would otherwise be applicable to all entities in a functional category, this interpretation should be clarified in a continent-wide proceeding rather than in a registration appeal so that all Registered Entities can reconsider their compliance obligations.

E. To the extent that gaps in reliability would exist if Harquahala and similarly situated generators are not registered as TO/TOPs, NERC should be directed to address such gaps through modification of the GO/GOP Reliability Standards.

At pages 5-6 of the Decision, NERC opines that “a gap in reliability would be created if Harquahala is not registered as a TO and TOP.” The Decision goes on to list six Reliability Standard requirements applicable to TO/TOPs but not to the GO/GOP functions.

Should the Commission agree with NERC that exempting Harquahala as a TO/TOP could cause gaps in reliability, requiring TO/TOP registration is not necessarily the only solution to the problem (nor is it an appropriate solution). The Commission recently took a different tack when the same issue was raised regarding different

functional categories. In a December 20, 2007 Order on Reliability Organization Registry Determinations, issued in *Direct Energy Services, LLC, et. al.* (RM07-4-000, *et.seq.*), the Commission was asked to consider whether Direct Energy Services, LLC, Sempra Energy Solutions, LLC and Strategic Energy, LLC had been properly registered as load-serving entities (LSEs) by ReliabilityFirst Corporation.¹³ The Commission granted the retail marketers’ appeal but noted its concern that a gap in bulk power system reliability might result. At page 15 of the Order, the Commission ordered NERC to address the potential gap, stating that “NERC must develop a consistent, uniform approach to ensure that appropriate Reliability Standards and Requirements are applied to retail marketers.”

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¹³ 121 FERC ¶61,274.

The Commission should follow the same approach with respect to the registration of Harquahala as a TO/TOP. The CAISO urges the Commission to grant the Harquahala appeal, find that its registration as a TO/TOP is not supported by the record, and reject NERC's and WECC's determination. If appropriate and necessary, NERC should be required to address any reliability gaps that might exist if GO/GOPs are not registered as TO/TOPs by modifying the GO/GOP standards as appropriate.

Respectfully submitted,

/s/ **Judith B. Sanders**

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**ATTORNEYS FOR THE
CALIFORNIA INDEPENDENT
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California Independent
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March 5, 2008

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: New Harquahala Generating Company, LLC
Docket No RC08-4-000**

Dear Secretary Bose:

Please find enclosed a Motion to Intervene and Comments of the California Independent System Operator in the above-referenced dockets.

Thank you for your attention to this filing. Please contact the undersigned if you have any questions.

Respectfully submitted,

/s/ Judith B. Sanders

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CERTIFICATE OF SERVICE

I hereby certify that I have served, by electronic and United States mail, a Motion to Intervene and Comments of the California Independent System Operator in Docket No. RC08-4-000.

Executed on March 5, 2008, at Folsom, California.

/s/Charity N. Wilson
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