

122 FERC ¶ 61,141  
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. RC07-3-001

Solid Waste Authority of  
Palm Beach County, Florida

Docket No. RC07-5-001

ORDER DENYING REHEARING

(Issued February 21, 2008)

1. In this order, the Commission denies rehearing of its November 15, 2007 Order<sup>1</sup> in which it affirmed two compliance registration decisions of the North American Electric Reliability Corporation (NERC). In the November 15 Order, the Commission affirmed NERC's determination that the Florida Reliability Coordinating Council (FRCC), a NERC Regional Entity, had properly registered Lee County, Florida (Lee County) as a generator owner and had registered Covanta Lee, Inc. (Covanta), a contractor operating the Lee County generating facility, as a generator operator. Further, the November 15 Order affirmed NERC's determination that FRCC had properly registered the Solid Waste Authority of Palm Beach County, Florida (SWA) as a generator owner and generator operator.<sup>2</sup> Lee County and SWA seek rehearing of the Commission's factual findings and conclusions in the November 15 Order. As discussed below, the Commission denies the requests for rehearing.

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<sup>1</sup> *Lee County, Florida*, 121 FERC ¶ 61,143 (2007) (November 15 Order).

<sup>2</sup> SWA states that it is only the generator owner. The operator of its facility is Palm Beach Resource Recovery Corporation (PBRRC); PBRRC registered as a generator operator and did not contest its registration.

## 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).<sup>3</sup> Subsequently, in April 2007, the Commission approved delegation agreements between NERC and eight Regional Entities, including a delegation agreement between NERC and FRCC.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.

### B. Lee County and SWA

4. 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. The net output (gross output less station

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<sup>3</sup> *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006), *order on compliance*, 118 FERC ¶ 61,030, *order on clarification and reh'g*, 119 FERC ¶ 61,046 (2007); 16 U.S.C. § 824o (Supp. V 2005).

<sup>4</sup> *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060, *order on reh'g*, 120 FERC ¶ 61,260 (2007).

<sup>5</sup> *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).

<sup>6</sup> Order No. 693 P 92-95.

power) of the Lee County Facility is sold to Seminole Electric Cooperative, Inc. pursuant to a long-term power purchase agreement.<sup>7</sup>

5. 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.

### **C. November 15 Order**

6. The Commission, in the November 15 Order, found that NERC had provided adequate support that both Lee County and SWA are properly registered as a generation owner and generator operator pursuant to section III.c.1 of NERC's Registry Criteria, i.e., that each owns and operates an individual generating unit larger than 20 MVA (gross nameplate rating).<sup>8</sup> The November 15 Order rejected Lee County's and SWA's contention 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. The Commission explained that NERC's criteria for registration of generator owners or operators are written in the alternative so that an entity that satisfies any one of the criteria should be registered. Thus, the Commission concluded that NERC's registration of Lee County and SWA was proper where each satisfied section III.c.1, even if they did not satisfy section III.c.2.<sup>9</sup>

## **II. Requests for Rehearing**

### **A. Lee County**

7. Lee County states that the November 15 Order is arbitrary and capricious because it (1) misapplies the NERC Registry Criteria and (2) is based on new rationale instead of the rationale offered by FRCC and NERC.

8. Lee County states that it owns a generating plant consisting of a 39 MW unit and a 20 MW unit. Based on its understanding, Lee County's facility is neither an individual generating unit that would be registered under section III.c.1 nor a generating plant with a gross aggregate nameplate rating of more than 75 MW pursuant to section III.c.2. Lee County argues that the November 15 Order ignores the distinction between a generating plant and an individual generating unit in sections III.c.1 and III.c.2 of the Registry Criteria in finding that Lee County was properly registered because an individual unit from its plant has a rating that exceeds 20 MW. Lee County contends that the

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<sup>7</sup> FRCC states that the sale to Seminole is 30 MW.

<sup>8</sup> November 15 Order, 121 FERC ¶ 61,143 at P 27-28.

<sup>9</sup> *Id.* P 29.

Commission's "partition" rationale is incorrect and only supportable in a vacuum. It claims that, for the Commission's understanding to be accurate, the Registry Criteria "would have to expressly state or imply that registration of small generating plants should first be evaluated under Section III.c.1 based on the size of their largest generating unit, and then if still exempt from registration, under section III.c.2 based on the generating plant's aggregate size . . ." <sup>10</sup> Lee County notes that the Registry Criteria are silent on such an evaluation.

9. Further, Lee County contends that the November 15 Order does not explain how the FRCC or NERC registry determination was adequate but, rather, offers new support (the "partition" rationale). Lee County states that FRCC and NERC registered Lee County based on the misunderstanding that Lee County owns (and its contractor, Coventa, operates) a single, 59 MW generating facility. According to Lee County, the November 15 Order, which recognizes that Lee County owns two units, affirmed the underlying registration decision based on rationale that differs from that provided by NERC and FRCC. Lee County contends that the Commission's decision was arbitrary and capricious because it failed to explain how the FRCC or NERC support was adequate and, instead, "created new support for the determination and ascribed such new support to FRCC as retroactive support." <sup>11</sup>

#### **B. SWA**

10. SWA argues that the Commission erred by not analyzing SWA's facility based on its net export to the grid of 47.5 MW rather than on its 73 MVA gross nameplate rating. SWA also argues that the NERC did not rest its registry determination solely on section III.c.2, but also on a finding that the SWA facility has a material impact on grid reliability, and that under the circumstances the Commission should have analyzed the impact of SWA's impact on grid reliability.

### **III. Discussion**

#### **A. Lee County**

11. The Commission denies Lee County's request for rehearing. The Commission disagrees with Lee County's claim that the Registry Criteria must expressly state a "two staged evaluation process" to support the notion that a single generating unit that is part of a generating plant can be considered individually pursuant to section III.c.1 in determining whether a generator owner or operator should be registered. As we explained in the November 15 Order, the Registry Criteria are written in the alternative,

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<sup>10</sup> Lee County Request for Rehearing at 8.

<sup>11</sup> *Id.* at 6.

each connected by “or,” so that an entity that satisfies any one of the four criteria should be registered.<sup>12</sup> This adequately supports the Commission’s interpretation. Moreover, having determined that it is appropriate for the reliability of the Bulk-Power System to register the owner or operator of an individual generating unit with a rating that exceeds 20 MW, the Commission believes that it is wrong to interpret the Registry Criteria as allowing the owner or operator of a 39 MW unit to avoid registration for no reason other than the unit is one unit in a plant. Lee County does not offer any explanation why the registration of an owner or operator of an otherwise similarly-situated generator unit is less significant to Bulk-Power System reliability because the unit is part of a generator plant. Moreover, Lee County’s interpretation would offer entities with one generating unit of greater than 20 MVA a perverse incentive to build another generating unit at that same site (so long as the two did not exceed 75 MVA) if it wanted to be removed from the compliance registry.

12. The Commission also disagrees with Lee County that the November 15 Order is based on materially different rationale than the underlying FRCC and NERC determinations. FRCC and 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 > 20 MVA (gross nameplate rating).<sup>13</sup> The Commission’s decision is based on the same provision of the Registry Criteria. While FRCC and NERC indicated that Lee County owns a single 59 MW generating unit, and Lee County subsequently represented to the Commission that it owns two units, including a 39 MW unit, this does not materially change the analysis under section III.c.1.

## **B. SWA**

13. SWA’s arguments are specious. SWA concedes that the net output of SWA’s 73 MVA facility “exceeds the NERC 20 MVA threshold.”<sup>14</sup> SWA satisfies the NERC Registry criteria based on both its unit rating and its net output. That NERC may have focused on the unit rating is insignificant. Because NERC and FRCC provide adequate support to register SWA based on section III.c.1 of the Registry Criteria, there is no need to analyze whether SWA should also be registered based on section III.c.4 (providing for the registration of any generator, regardless of size, that is material to the reliability of the bulk power system).<sup>15</sup> Thus, SWA’s arguments regarding FRCC’s policy and the failure

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<sup>12</sup> See November 15 Order, 121 FERC ¶ 61,143 at P 29.

<sup>13</sup> See, e.g., *id.* P 11.

<sup>14</sup> SWA request for rehearing at 3.

<sup>15</sup> See November 15 Order, 121 FERC ¶ 61,143 at P 27 & n.13.

to analyze the impact of SWA's 47.5 firm sale are irrelevant. Accordingly, the Commission denies SWA's request for rehearing.

The Commission orders:

(A) The request for rehearing of Lee County, Florida, is hereby denied, as discussed in the body of this order.

(B) The request for rehearing of Solid Waste Authority of Palm Beach County, Florida, is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.