

OGRR Number	208	OGRR Title	Voltage Ride-Through (VRT) Requirement
Date of Appeal		October 16, 2008	
Date of TAC Decision		October 2, 2008	
TAC Decision		Approval of OGRR 208 requiring retrofits of existing wind generation units to comply with new zero-voltage ride-through standard without cost or reliability study and without explanation of a special exemption for pre-2003 units	
Submitter's Information			
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Appeal			

Pursuant to ERCOT OPERATING GUIDE §1.3.4.12(3), Horizon Wind Energy LLC. (“Horizon”) respectfully appeals the decision by the Technical Advisory Committee (“TAC”) to apply the newly adopted zero Voltage Ride-Through (“zero-VRT”) requirements in OGRR 208 retrospectively to existing wind-powered generating facilities. Horizon asks that the ERCOT Board remand the OGRR 208 to TAC to remove the retrospective application of the zero-VRT provisions, or reverse the TAC decision on OGRR 208. Horizon adopts, without repeating, the E.ON Climate & Renewables North America Inc.’s (“E.ON’s”) appeal of OGRR 208 previously submitted to ERCOT. Horizon reserves its independent right of appeal of the TAC decision to adopt OGRR 208 herein.

The new zero-VRT standard will require costly retrofitting that is not supported by an established need and neither ERCOT nor any of the market participants have studied the true reliability needs that require a zero-voltage ride through standard to be adopted with prospective application to new generating facilities and retrospective application to existing generators.

The retrospective application of this new ERCOT zero-VRT standard is a more stringent standard than any adopted for any other region of the United States. However, the experience of other jurisdictions that have integrated even more wind power supports the conclusion that a

reliability study could prove that a less stringent standard for installed wind capacity is warranted.

Spain, for example, has already integrated 14,875 MW of wind power and has a goal of 20,000 MW by 2010. The Spanish system operator determined that low voltage ride through is adequate for wind powered resources and adopted its Operating Procedure 12.3 in 2006 to require wind powered resources to remain on-line for voltage dips down to 15%. While there are significant differences between ERCOT's and Red Electrica's systems, Spain's example suggests that reliability studies could show that less severe voltage ride through standards might be sufficient for ERCOT, and certainly there should be no need to apply a new zero-VRT standard to existing wind generation. Comments to TAC indicate that a significant amount of wind capacity in ERCOT already has low voltage ride through capability, so the retrofit sought through the application of OGRR 208 might be unnecessary and yield no meaningful reliability benefits.

Given the decision to adopt this standard to existing units without any study, and no determination of the reliability need to be addressed, the TAC decision to require retrospective application of the new zero-VRT standard lacks a rational basis. Such types of retroactive requirements are generally disfavored.<sup>1</sup> Retrospective requirements serve to upset the investment-backed expectations of market participants, where, as here, the cost of compliance that will be incurred by one subsegment of market participants, and the order of magnitude of costs, may be in the many millions of dollars for a given wind developer.

OGRR 208 applies these standards retrospectively to some existing wind generation facilities, and not to others. Facilities with interconnection agreements signed after 2003 are required to comply with these expensive new requirements, or will not be permitted to access the ERCOT grid. Pre-2003 facilities are exempted from compliance. This is an arbitrary distinction. As a result, OGRR 208 discriminates between two similarly situated categories of existing wind generators without justification<sup>2</sup> and does not apply any VRT standard to other types of generation.

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<sup>1</sup>*Satterfield v. Crown Cork & Seal Co., Inc.*, 2008 WL 3984390 at \*9, 2008 LEXIS 7473 (Tex. App.—Austin Aug. 29, 2008, no pet. h.).

<sup>2</sup> PURA § 39.151(a)(1). ERCOT is required not to discriminate among market participants. *Id.* See also §31.002(9) (charging the Independent System Operator with “nondiscriminatory coordination of market transactions, system-wide transmission planning, and network reliability.”)

The zero-VRT requirement would adversely impact wind generators by increasing their costs to operate plants through expensive retrofitting, resulting also in increased costs to consumers. Compliance would entail retrofitting costs likely to cost millions of dollars<sup>3</sup> and in some cases may be commercially impractical.<sup>4</sup> As the TAC Action Report acknowledges, retrospective compliance ultimately impacts Texas citizens assuming compliance costs are passed on to consumers.<sup>5</sup> Such costs to retrofit units to comply with the retrospective zero-VRT requirements may well result in a compensable regulatory taking.<sup>6</sup>

Retrospective application would also discourage new investment in ERCOT. Changing construction standards retroactively establishes a precedent that would frustrate the ability of potential investors to predict and account for costs. ERCOT would discourage investors by increasing risk and uncertainty concerning final construction cost and potential return on investment for ERCOT-jurisdictional facilities.

The reliability needs of the ERCOT system should drive the requirements applicable to wind and other generators in the market. Here, there is no demonstrated need for retrospective application of the zero-VRT standards—and in implementing zero-VRT standards, no other jurisdiction has applied this stringent standard, let alone retrospectively applied these standards as a blanket requirement. This lack of any study or a determination of any reliability need to be addressed by retrospective application of OGRR 208 zero-VRT standards, and given the negative impacts on wind generators required to comply with these standards for existing units, there is no rational basis for the adoption of the retrospective provisions of OGRR 208. Clearly there is no imminent reliability need that such retrofits be conducted because OGRR 208 does not require compliance by existing facilities until 2015. Accordingly, there is more than sufficient time to study, make reasoned determinations of the appropriate levels of VRT, and tailor OGRRs to meet those needs. Given that no studies of the impact of the prospective zero-voltage ride through requirements has been made, there is no basis to determine whether any retrofits are required. The Federal Energy Regulatory Commission determined in the issuance of

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<sup>3</sup>Comments of Horizon Wind Energy, 208OGRR-22 (Sept. 30, 2008). *See also* Comments of E.ON, 208OGRR-23, (Sept. 30, 2008); Comments of AES Wind Generation, 208OGRR-24 (Oct. 1, 2008).

<sup>4</sup> *See* 208OGRR-01 Voltage Ride-Through (VRT) Requirement (April 15, 2008).

<sup>5</sup> TAC Action Report, 208OGRR-25 (October 3, 2008).

<sup>6</sup> A regulatory taking occurs when a law or regulation deprives a property owner of all economically beneficial use of the property or unreasonably interferes with the property owner's legitimate investment-backed expectations in the use of the property. *See Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537-40 (2005); *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 935 (Tex. 1998).

its *low* voltage ride through standard,<sup>7</sup> that no retrospective application of the requirement was necessary, even though the FERC standard, applied only prospectively, is weaker than ERCOT's newly adopted zero-VRT standard.

Horizon respectfully requests that the Board remand this matter to TAC with instructions that the new zero-VRT requirements in OGRR 208 should apply only prospectively and to new facilities, without any retrospective application to existing facilities.

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<sup>7</sup>See FERC Orders 661 and 661-A.