

145 FERC ¶ 61,232
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

South Louisiana Electric Cooperative Association

Docket No. RC13-4-001

ORDER DENYING REHEARING

(Issued December 19, 2013)

1. In this order, the Commission denies rehearing of its July 18, 2013 order in this proceeding.¹ In the July 18 Order, the Commission determined that the North American Electric Reliability Corporation (NERC) failed to support the registration of the South Louisiana Electric Cooperative Association (SLECA) as a distribution provider and load-serving entity (LSE) based on the registry thresholds set forth in NERC's Statement of Compliance Registry Criteria (Registry Criteria). NERC filed a timely request for rehearing, arguing that the July 18 Order (1) misapplied the Registry Criteria's definition of Bulk-Power System as greater than 100 kV in concluding that SLECA's facilities are not "directly connected" to the Bulk-Power System; (2) improperly expanded the registration criteria; (3) erred in its technical analysis of SLECA's facilities connected at Louisiana Generating L.L.C.'s (LaGen) Landry substation; (4) disregarded the bright-line criteria set forth in Order Nos. 773 and 773-A²; and (5) ignored that SLECA is a "user" of the Bulk- Power System.

2. For the reasons discussed below, we deny NERC's request for rehearing, and affirm our prior ruling that NERC has not adequately supported the registration of SLECA as a distribution provider and LSE. NERC has failed to demonstrate that the July

¹ *South Louisiana Electric Cooperative Assoc.*, 144 FERC ¶ 61,050 (2013) (July 18 Order).

² *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, Order No. 773, 141 FERC ¶ 61,236 (2012); *order on reh'g*, Order No. 773-A, 143 FERC ¶ 61,053 (2013); *appeal pending sub nom., People of the State of New York v. FERC*, No. 13-2316 (2d Cir. filed June 12, 2013).

18 Order misapplied the Registry Criteria or that there were flaws in the Commission's technical analysis.

I. Background

A. Regulatory Background

3. In July 2006, the Commission certified NERC as the Electric Reliability Organization (ERO) pursuant to section 215 of the Federal Power Act (FPA).³ In that order, the Commission also approved NERC's Rules of Procedure which, *inter alia*, provide rules for the registration of users, owners and operators of the Bulk-Power System to comply with Reliability Standards.⁴ Subsequently, in April 2007, the Commission approved delegation agreements between NERC and eight Regional Entities, including a delegation agreement between NERC and the SERC Reliability Corporation (SERC). Pursuant to that agreement, NERC delegated to SERC certain authority and responsibilities for oversight and enforcement of Reliability Standards for the region in which SLECA's facilities are located.⁵

4. In Order No. 693, the Commission approved 83 Reliability Standards, which became effective on June 18, 2007.⁶ Further, in Order No. 693, the Commission approved NERC's compliance registry process, including NERC's Registry Criteria, which describe how NERC and the Regional Entities will identify the entities that should be registered for compliance with mandatory Reliability Standards.⁷ While that process

³ *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006), *aff'd sub nom., Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009); 16 U.S.C. § 824o (2006).

⁴ See NERC Rules of Procedure, section 500 (Organization Registration and Certification).

⁵ *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060, *order on reh'g*, 120 FERC ¶ 61,260 (2007).

⁶ *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).

⁷ Order No. 693 at PP 92-95. The Commission has approved subsequent amendments to the Registry Criteria. See *North American Electric Reliability Corp.*, 122 FERC ¶ 61,101 (2008) and *North American Electric Reliability Corp.*, 138 FERC ¶ 61,072 (2012).

allows a Regional Entity to register an entity over its objection, NERC's Rules of Procedure provide a mechanism for such an entity to seek NERC review of the Regional Entity's registration decision and, ultimately, to appeal to the Commission if NERC upholds the Regional Entity's decision.⁸

B. NERC Registry Criteria

5. NERC currently defines the bulk electric system as follows:

As defined by the Regional Reliability Organization, the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition.⁹

6. NERC's Registry Criteria contains three sections. Section I provides that an entity that uses, owns or operates elements of the bulk electric system pursuant to NERC's definition above is a candidate for registration. Section II of the Registry Criteria categorizes registration candidates under fifteen functional entity types, including distribution provider and LSE. Section III contains exclusionary threshold criteria for entities identified as candidates for registration under Sections I and II.

7. Section II defines distribution provider as an entity that "[p]rovides and operates the 'wires' between the transmission system and the end-use customer. For those end-use customers who are served at transmission voltages, the Transmission Owner also serves

⁸ Rules of Procedure of the North American Electric Reliability Corporation, Rule 501.1.1-1.5 and Appendix 5A (Organization Registration and Certification Manual), section V (Registration Appeals Process).

⁹ NERC Registry Criteria, Section I. In Order No. 743, the Commission directed NERC to develop revisions to this bulk electric system definition. *See Revision to Electric Reliability Organization Definition of Bulk Electric System*, Order No. 743, 75 Fed. Reg. 72,910 (Nov. 26, 2010), 133 FERC ¶ 61,150 (2010); *order on reh'g*, Order No. 743-A, 134 FERC ¶ 61,210 (2011). Subsequently, in Order Nos. 773 and 773-A the Commission approved modifications to the currently-effective bulk electric system definition, along with procedures for obtaining an exclusion from that definition. The revised definition and procedures are to become effective on July 1, 2014. *See Revision to Electric Reliability Organization Definition of Bulk Electric System*, 143 FERC ¶ 61,231 (2013) (granting an extension of time to July 1, 2014 for the effective date of the revised definition of "bulk electric system").

as the Distribution Provider. Thus, the Distribution Provider is not defined by a specific voltage, but rather as performing the distribution function at any voltage.” Section II defines LSE as an entity that “[s]ecures energy and Transmission Service (and related Interconnected Operations Services) to serve the electrical demand and energy requirements of its end-use customers.”

8. Section III of NERC’s Registry Criteria provides for the exclusion of registration candidates identified in Sections I and II that do not satisfy certain threshold criteria. For LSE candidates, Section III (a) provides the following criteria for inclusion in the NERC Registry:

(III.a.1) Load-Serving Entity peak load is > 25 MW and is directly connected to the Bulk Power (>100 kV) System, or;

(III.a.2) Load-Serving Entity is designated as the responsible entity for Facilities that are part of a required underfrequency load shedding (UFLS) program designed, installed, and operated for the protection of the Bulk Power System, or;

(III.a.3) Load-Serving Entity is designated as the responsible entity for Facilities that are part of a required undervoltage load shedding (UVLS) program designed, installed, and operated for the protection of the Bulk Power System.

(III.a.4) Distribution Providers registered under the criteria in III.b.1 or III.b.2 will be registered as a Load-Serving Entity (LSE) for all load directly connected to their distribution facilities.

9. For distribution provider candidates, Section III (b) provides the following criteria:

(III.b.1) Distribution Provider system serving > 25 MW of peak load that is directly connected to the Bulk Power System or;

(III.b.2) Distribution Provider is the responsible entity that owns, controls or operates Facilities that are part of any of the following Protection Systems or programs designed, installed, and operated for the protection of the Bulk Power System:

- a required UFLS program.
- a required UVLS program.

- a required Special Protection System.
- a required transmission Protection System

C. Overview of SLECA's Facilities

10. SLECA is a non-profit distribution cooperative that serves over 17,000 members with approximately 119 MW of load over a five-parish area in South Louisiana.¹⁰ SLECA states that it owns two line segments operated at 115 kV used to connect its load and serve SLECA-owned distribution substations located within its service territory. SLECA asserts that it is not interconnected with any other utility system, does not own generation facilities, and does not sell or trade power.

11. SLECA explains that it takes all of its power and energy under a long-term power purchase agreement with Louisiana Generating L.L.C (LaGen). SLECA asserts that LaGen owns all of the delivery points off the bulk transmission line that is the source of the power and energy it uses to serve its load. Also, SLECA states that it is not designated as the responsible entity for facilities that are included in an underfrequency load shedding (UFLS) program.¹¹ According to SLECA, its system load is included in LaGen's UFLS program, and LaGen is responsible for the demand and energy forecasts provided to SERC and NERC.¹²

12. SLECA has five substations where it takes service from LaGen: Ashland, Bayou L'Ourse, Bayou Ramos, Greenwood and Landry. While SLECA states that there are no significant differences among the substation connections with LaGen, the focus of the appeal is on the Landry substation. According to SLECA, power flows at the LaGen service points are not bi-directional, as all power flows into SLECA's system and not out to the single bulk transmission line.¹³

¹⁰ See Brief of South Louisiana Electric Cooperative Association in Support of Appeal of Decision of NERC Board of Trustees Compliance Committee at 2 (February 14, 2013) (SLECA Appeal).

¹¹ *Id.* at 3.

¹² *Id.*

¹³ *Id.* at 2-3, and SLECA Ex. B, certified engineer's drawing of SLECA's system and SLECA Ex. C, a narrative description of SLECA's distribution substations and distribution system.

D. SLECA's Registry Appeal

13. SLECA has been voluntarily registered as a distribution provider and LSE since May 2008. SLECA subsequently determined that its registration was an error given that the SLECA facilities are radial and constitute a local distribution system that, in SLECA's view, is not directly connected to the bulk electric system. On August 23, 2011, SLECA requested that SERC remove it from the Compliance Registry. SERC denied that request on December 9, 2011, and SLECA appealed SERC's decision to NERC.

14. In a decision dated January 8, 2013, the NERC Board of Trustees Compliance Committee (BOTCC) denied the appeal, finding that SLECA is properly registered as a distribution provider and LSE (BOTCC Registry Decision).¹⁴ The BOTCC determined that SLECA is a user of the bulk electric system because it takes service at greater than 100 kV and "its distribution facilities (and its load) are directly connected to the LaGen 115 kV system, which is part of the BES."¹⁵ The BOTCC agreed that SLECA's facilities are radial and excluded from the bulk electric system under Section I of the NERC Compliance Registry. However, the BOTCC stated that "SLECA is not registered as a result of its ownership and operation of such radial lines. Rather, it is registered because its load is directly connected to the BES."¹⁶ Further, the BOTCC rejected SLECA's argument that certain non-bulk electric system facilities owned and operated by LaGen are located "between SLECA and the BES," because SLECA's facilities "depicted in Diagram No. 6 . . . shows SLECA's facilities directly connected to LaGen's 115 kV bus."¹⁷

15. On January 29, 2013, SLECA filed an appeal of the Registry Decision at the Commission, supplemented on February 14, 2013, advancing several grounds for reversal. SLECA argued that its facilities are used solely for local distribution and, therefore, are exempt from regulation under section 215 of the FPA.¹⁸ SLECA asserted

¹⁴ Board of Trustees Compliance Committee Decision on Appeal of Compliance Registry Determination (RA080012).

¹⁵ NERC Registry Decision at 9.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ SLECA Appeal at 5 (quoting the FPA section 215(a)(1) definition of Bulk-Power System: (A) facilities and control system necessary for operating an interconnected electric energy transmission network (or any portion thereof); and (B)

that its facilities are distribution facilities under the seven factor test adopted by the Commission in Order No. 888.¹⁹ Further, SLECA contended that its facilities are exempt under the radial exclusion contained in NERC's definition of bulk electric system.²⁰

16. SLECA argued that it is exempt from registration as a distribution provider and LSE under the specific NERC thresholds set forth in Part III of the Registry Criteria.²¹ Specifically, SLECA contended that its facilities are not "directly connected" to the Bulk-Power System as required by the registry thresholds for distribution providers and LSEs because "[t]hey are connected to LaGen facilities that are radial and not part of the BES. If LaGen facilities are not part of the BES, then SLECA's cannot be, because the LaGen facilities are between SLECA and the BES."²² Regarding its protection scheme, SLECA maintained that its 115kV circuit switchers are designed and operated to protect its own radial facilities and are coordinated with LaGen's radial facilities, which are not bulk electric system assets.²³

electric energy from generation facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy).

¹⁹ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

²⁰ SLECA Appeal at 8 (quoting NERC's definition of bulk electric system, which states in part that "[r]adial transmission facilities serving only load with one transmission source are generally not included in this definition." SLECA also argued that its facilities would be exempt from reliability regulation under Order No. 773, which approved NERC's revised definition of bulk electric system. SLECA Appeal at 14-15).

²¹ *Id.* at 11.

²² *Id.* at 13.

²³ *See* Motion to Reply and Reply of South Louisiana Electric Cooperative Association in Response to Protest and Comment of the North American Electric Reliability Corporation at 11 (April 2, 3013) (SLECA Reply).

E. The Commission's July 18 Order

17. In the July 18 Order, the Commission granted SLECA's appeal of NERC's Registry Decision, finding that NERC had not adequately supported SLECA's registration as a distribution provider and LSE. Specifically, the Commission found that NERC had not adequately demonstrated that SLECA's facilities are "directly connected" to the Bulk-Power System, as required by the NERC Registry Criteria for distribution providers and LSEs. Accordingly, the Commission directed NERC to remove SLECA from the Compliance Registry as a distribution provider and LSE.²⁴

18. Regarding the compliance registry thresholds for distribution provider and LSEs, the Commission found that there was no dispute in the record that SLECA's peak load is greater than 25 MW, and that its facilities are interconnected to LaGen's facilities at above 100 kV. Rather, the parties disagreed over whether SLECA's load is "directly connected" to the Bulk-Power System.²⁵ Accordingly, the Commission examined the nature of SLECA's connection at the Landry substation as depicted on revised Landry Diagram No. 6.²⁶ The Commission determined that SLECA is directly connected to LaGen's 115 kV bus, which itself is connected to LaGen's two 230-115 kV transformers. However, the Commission also determined that "a normally open switch on LaGen's 115 kV bus prevents power from flowing on one of the two transformers. As presently configured, it appears that these facilities can only transfer power delivered from Entergy's 230 kV transmission lines to SLECA's load through a single line."²⁷

19. The Commission disagreed with NERC's description of the Landry substation as a "transmission network" with "looped flow capability."²⁸ Instead, the Commission found that "revised Landry Diagram No. 6 indicates that a normally open switch prevents bi-directional or looped flows from occurring on these facilities."²⁹ Accordingly, the

²⁴ July 18 Order, 144 FERC ¶ 61,050 at P 26.

²⁵ *Id.* P 27.

²⁶ SLECA Reply Ex. A, revised Landry Diagram No. 6, included in this order as Attachment A.

²⁷ July 18 Order, 144 FERC ¶ 61,050 at P 28.

²⁸ *Id.* P 29.

²⁹ *Id.*

Commission found that NERC had not adequately demonstrated that SLECA is directly connected to networked transmission facilities.³⁰

20. The July 18 Order also addressed section III.b.2 of the Registry Criteria, which contains threshold criteria for distribution providers based upon an entity's ownership, control or operation of a "required transmission Protection System" that is "designed, installed and operated for the protection of the Bulk Power System."³¹ The Commission rejected NERC's arguments that SLECA's 115 kV circuit switchers and associated protection schemes require "coordination with the BES assets of Landry,"³² and found that there was only a "remote possibility" SLECA's circuit switchers could indirectly impact bulk electric system facilities that interface with the LaGen facilities in the Landry substation. Further, the Commission found no evidence in the record supporting NERC's view that SLECA's circuit switchers were "designed, installed, and operated for the protection of the Bulk Power System."³³

II. NERC's Request for Rehearing

21. NERC filed a request for rehearing of the Commission's July 18 Order on August 19, 2013. NERC asserts that the July 18 Order is flawed, arguing that the Commission: (1) misapplied the NERC Registry Criteria in concluding that SLECA's facilities are not "directly connected" to the Bulk-Power System; (2) improperly expanded the Registry Criteria; (3) erred in its technical analysis of SLECA's facilities connected at the Landry substation; (4) disregarded the bright-line criteria for inclusion as part of the bulk electric system set forth in Order Nos. 773 and 773-A; and (5) ignored that SLECA's status as a user of the Bulk-Power System obligates it to register and comply with applicable Reliability Standards.

22. With respect to the Registry Criteria, NERC first argues that the Commission committed legal error by ignoring the plain language of its Registry Criteria, which "make[] clear that an entity is directly connected to the Bulk Power System when it is directly connected to facilities at greater than 100 kV."³⁴ NERC bases its argument on

³⁰ *Id.*

³¹ *Id.* P 30 (referencing Section III.b.2 of Registry Criteria).

³² *Id.*

³³ *Id.* P 31.

³⁴ NERC Rehearing Request at 8.

the threshold language for registration of a LSE in Section III.a.1 of the Registry Criteria, which includes entities “directly connected to the Bulk-Power (100 kV) System.” Likewise, NERC argues, distribution providers meet the Registry Criteria if they serve more than 25 MW of peak load that is directly connected to the Bulk-Power System. NERC claims that, because it is undisputed that SLECA’s facilities are connected to the Landry substation at greater than 100 kV, the Commission “erroneously concluded that the Landry substation is not BPS and LaGen’s facilities are not transmission.”³⁵

23. NERC also asserts that the Commission improperly created new registration criteria, “namely, that NERC must show ‘the facilities could deliver power from SLECA to the bulk electric system, or experience networked flows.’”³⁶ NERC argues that by considering whether the power flows within the Landry substation are bi-directional or looped, the Commission’s findings “contravene FPA Section 215(a)(1) and should be reversed because they go well beyond the statutory definition of BPS to unreasonably restrict what constitutes BPS facilities.”³⁷ NERC argues that it established that “SLECA’s facilities are necessary for operating an interconnected electric energy transmission network” due to their “network character,”³⁸ which NERC argues “is established by the multiple substation connections of SLECA at LaGen at over 100 kV.” NERC maintains that, because the NERC Registry Criteria were met, as well as the Section 215 definition of BPS, no further review of the facilities was required.

24. NERC also notes that the currently effective bulk electric system definition “does not require that SLECA’s facilities have bi-directional flow or looped capability.”³⁹ Instead, NERC maintains that the two transmission sources and multiple substation

³⁵ *Id.* at 9.

³⁶ *Id.* at 10 (quoting July 18, Order, 144 FERC ¶ 61,050 at P 29).

³⁷ *Id.* at 10. The definition of Bulk-Power System in the FPA section 215(a)(1) states: “(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and (B) electric energy from generation facilities needed to maintain transmission system reliability.” 16 U.S.C. §824o(a)(1) (2013).

³⁸ NERC Rehearing Request at 11.

³⁹ *Id.* at 11

delivery points render the exception for radial transmission facilities serving only load “inapplicable.”⁴⁰

25. NERC maintains the Commission also erred in its technical analysis of the SLECA and LaGen facilities, asserting that SLECA’s and LaGen’s protection schemes at the Landry substation are “interwoven” and directly connected to the Bulk-Power System. First, NERC maintains that the Commission’s conclusion regarding the normally open switch at the Landry substation is flawed. NERC asserts that:

[t]he Landry substation is fed at 230 kV from two different sources at Raceland and Terrebonne, which are part of the overall bulk transmission network. The network character is established by the dual points of connection and the interwoven protection schemes. It is not established by the position of the switch. The position of the switch on these facilities is dictated by the facility operator and can be changed.⁴¹

26. Next, NERC maintains that SLECA’s circuit switchers operate to protect the Bulk-Power System. NERC explains that LaGen’s circuit switchers on the 230 kV side of its transformers are set with differential and over-current to trip both the 230 kV side and SLECA’s 115 kV side for faults within the zone of protection. NERC claims that if either circuit switcher fails to clear a fault, remote 230 kV terminals beyond the Landry substation trip, as well as the high side SLECA 115 kV circuit switchers.⁴² NERC explains:

This differential protection scheme is in place because there is no low-side breaker on the LaGen substation. Therefore, SLECA’s facilities are integrated with the circuit switchers on the 230 kV side. Essentially, the only breaker for the SLECA system is a BPS element.⁴³

⁴⁰ *Id.*

⁴¹ NERC Rehearing Request at 12-13.

⁴² *Id.* at 13.

⁴³ *Id.* NERC’s argument regarding the “interwoven” nature of LaGen’s and SLECA’s protection schemes, including circuit switchers on the 230 kV side of LaGen’s transformers, is based upon two one-line diagrams attached to NERC’s Rehearing

(continued...)

27. NERC claims that the Commission further erred in ignoring the importance of using a 100 kV bright-line threshold in determining the applicability of Reliability Standards under the bulk electric system definition, in accordance with Order Nos. 743 and 773. NERC explains that in Order No. 743, the Commission “determined that the best way to address its concerns with regard to the BES definition was to ‘eliminate regional discretion in the ERO’s current definition, maintain a bright-line threshold that includes all facilities operated at or above 100 kV except defined radial facilities, and adopt an exemption process and criteria for removing from the bulk electric system facilities that are not necessary for operating the interconnected transmission network.’”⁴⁴ NERC further notes that the Commission “reiterated the utility and importance of the 100 kV bright-line threshold in Order No. 773.”⁴⁵ NERC maintains that the July 18 Order essentially eviscerates the 100 kV bright-line threshold established or espoused in these orders.

28. Finally, NERC asserts that the July 18 Order is inconsistent with FPA section 215 (b)(1), which provides that “[a]ll users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.”⁴⁶ NERC points out that the July 18 Order “recognized that SLECA buys power from LaGen and sells that power to SLECA’s customers” and “receives that power from LaGen’s bulk electric system facilities.”⁴⁷ NERC argues that, because SLECA owns no generation and the power LaGen provides to SLECA comes from beyond the Landry substation, “SLECA necessarily ‘uses’ the BPS to secure the energy and generation it needs to serve its load.”⁴⁸ Accordingly, NERC asserts that “[t]he combined effect of deregistering LSEs

Request. (Supplemental Landry Diagrams). While this new information is subject to exclusion under Rule 713, 18 C.F.R. §385.713 (c)(3) (2013), the Commission will accept the diagrams because they have provided us with information that assisted us in our decision-making process.

⁴⁴ *Id.* at 15 (citing Order No. 743, 133 FERC ¶ 61,150 at P 30 (2010)).

⁴⁵ *Id.* at 16.

⁴⁶ *Id.* at 18 (citing 16 U.S.C. §824o(b)(1) (2013)).

⁴⁷ *Id.*

⁴⁸ *Id.* at 22.

and DPs, such as SLECA, over time, could cause a gap in NERC registration and compromise reliability of the bulk system.”⁴⁹

III. Discussion

A. Procedural Matters

29. Rule 713 (d)(1) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §385.713(d)(1) (2013), prohibits answers to requests for rehearing. Accordingly, we will not accept SLECA’s Motion to Respond and Limited Response. We will also not accept NERC’s Answer to SLECA’s Response or SLECA’s Reply to NERC’s Answer.

B. Commission Determination

30. The Commission denies NERC’s Request for Rehearing of the July 18 Order and, based on the record and appeal materials in this proceeding, affirms that NERC has not adequately supported its assertion that SLECA should be registered as a distribution provider and LSE. We uphold our July 18 Order because we find that the normally open switch in the Landry substation prevents looped or network power flows at the point where SLECA’s facilities interconnect. Accordingly, we affirm that SLECA’s load is not “directly connected” to the Bulk-Power System and, therefore, NERC has failed to satisfy the threshold criteria for distribution providers and LSEs set forth in section III of NERC’s Registry Criteria. Further, we reject NERC’s arguments that SLECA’s connection at Landry at above 100 kV, or its “user” status, require SLECA to be registered.

1. The July 18 Order Properly Applied the NERC Registry Criteria and Did Not Create New Registry Criteria

31. On rehearing, NERC argues that the phrase in the Registry Criteria’s definition of LSE “directly connected to the Bulk Power (>100 kV) System” alone provides adequate support for SLECA’s registration. NERC asserts that “[b]ecause the threshold requirements for registration as DP and LSE were met, the July 18 Order’s review should have ended in support of upholding the registration.”⁵⁰ In a related argument, NERC also claims that by examining whether there are bi-directional or looped power flows within the Landry substation, the Commission created a “new criterion” for distribution provider and LSE registration, because “[t]here is no requirement in the Registry Criteria that

⁴⁹ *Id.* at 23.

⁵⁰ *Id.* at 8.

NERC make such a determination.”⁵¹ NERC further asserts that the current bulk electric system definition does not mention bi-directional flows or looped capability.⁵²

32. NERC adds that “[t]he July 18 Order erroneously concluded that SLECA’s load was not directly connected to the BPS, even though the applicable NERC Registry Criteria defines BPS as greater than 100 kV and SLECA’s facilities are connected at multiple substation locations to [LaGen’s] BPS facilities at greater than 100 kV.”⁵³ NERC further asserts that the Commission erred in finding that LaGen’s facilities at the Landry substation into which SLECA connects “are not transmission” (an apparent reference to the finding concerning the radial exemption in NERC’s bulk electric system definition). However, NERC describes this aspect of the July 18 Order as “irrelevant to registration.”⁵⁴

33. We disagree with NERC’s suggestion that the use of the phrase “Bulk Power (>100 kV) System” in the Registry Criteria’s LSE definition precludes any examination into the nature of the connecting facilities at issue, including whether they meet NERC’s definitional threshold for bulk electric system facilities.⁵⁵ First, we note that the statutory definition of Bulk-Power System in FPA section 215(a)(1) does not include a 100 kV limitation.⁵⁶ Moreover, we have found that use of the 100 kV threshold operates as an initial first step or proxy in the analysis of registration decisions.⁵⁷ We have also

⁵¹ *Id.* at 10.

⁵² *Id.* at 11.

⁵³ *Id.* at 2.

⁵⁴ *Id.*

⁵⁵ In its January 8, 2013 decision, the BOTCC utilized NERC’s bulk electric system definition, not the statutory definition of Bulk-Power System contained in FPA section 215(a)(1). Further, the BOTCC stated that SLECA “is registered because its load is directly connected to the BES.” (BOTCC Registry Decision at 9).

⁵⁶ The relevant passage in section 215(a)(1) defines Bulk-Power System as “facilities and control systems necessary for operating an interconnected electric energy transmission network.”

⁵⁷ See Order No. 743-A, 134 FERC ¶ 61,210 at PP 40, 67, 102-103; Order No. 773, 141 FERC ¶ 61,236 at P 10; *City of Holland, Michigan Board of Public Works*,

previously determined that “at least for an initial period, the Commission will rely on the NERC definition of bulk electric system and NERC’s registration process to provide as much certainty as possible regarding the applicability to and the responsibility of specific entities to comply with the Reliability Standards.”⁵⁸

34. Accordingly, we affirm our use of the bulk electric system definition in the July 18 Order, including the exclusion of “[r]adial transmission facilities serving only load with one transmission source,” in determining that SLECA is not “directly connected” to the Bulk Power System as that term is used in NERC’s Registry Criteria. As we explained in that Order, the central disagreement between NERC and SLECA concerned whether SLECA’s load was directly connected to the Bulk-Power System. If, as the Commission determined, the facilities within the Landry substation into which SLECA’s facilities connect are radial, the “directly connected” registry criterion is not satisfied. NERC’s argument that the currently effective bulk electric system definition “does not require that SLECA’s facilities have bi-directional flow or looped capability”⁵⁹ misconstrues the purpose of these considerations. These are not requirements; rather, whether power flows within a system are bi-directional, looped or part of a network, directly bears upon the radial or non-radial nature of facilities, and hence whether the SLECA facilities are “directly connected” to the bulk electric system.⁶⁰

145 FERC ¶ 61,054, at P 30 (2013) (Holland) (“while the April 19 Order found use of the 100 kV threshold acceptable as an ‘initial proxy’ for assessing jurisdictional status under FPA section 215, it did not end the inquiry at that point.”).

⁵⁸ Order No. 773, 141 FERC ¶ 61,236 at P 7 (citing Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 75 and Order No. 693-A, 120 FERC ¶ 61,053 at P 19 (reaffirming the Commission’s intention to rely on NERC’s definition of the bulk electric system “until the Commission determines in future proceedings the extent of the Bulk-Power System.”).

⁵⁹ NERC Rehearing Request at 11.

⁶⁰ See Holland, 139 FERC ¶ 61,055 at P 44 (finding that “the facilities are not radial in nature, and can and will experience bi-directional flow under certain conditions”) *order on reh’g* 145 FERC ¶ 61,054, at PP 36-37 (2013) (rejected Holland’s argument that bi-directional flows are irrelevant to non-radial nature of facilities, stating that “Holland does not qualify as a radial facility because it experiences bi-directional flows.”).

2. The July 18 Order Properly Found that the Landry Substation Facilities Are Operated to Prevent Network or Looped Power Flows and that SLECA's Circuit Switchers Do Not Interface with the Bulk Electric System

35. NERC asserts that the Commission erred in finding that the facilities within the Landry substation are not part of a transmission network with looped power flows, and further erred in concluding that SLECA's circuit switchers are not designed and operated to protect the Bulk-Power System. NERC maintains that SLECA's multiple substation delivery points at greater than 100 kV and two incoming transmission lines connecting with LaGen's 230 kV bus and transformers establish the "network character" of the Landry substation. Therefore, NERC argues, LaGen's facilities do not qualify for the radial exemption contained in the bulk electric system definition.

36. NERC's reliance on SLECA's interconnections at multiple substations as support for its assertion that LaGen's facilities within the Landry substation are part of the bulk electric system network is misplaced and is inconsistent with its decision on appeal, which is based on a single SLECA connection to the BPS.⁶¹ NERC does not explain how aggregating SLECA's radial substation connections has any bearing on the nature and operation of each individual substation, or on the Landry substation in particular. Further, in its comments protesting SLECA's registry appeal, NERC itself focused on the Landry substation, including Revised Landry Diagram No. 6, and did not base its arguments on any of SLECA's other substation interconnections above 100 kV.⁶²

37. NERC asserts that the July 18 Order's analysis of the normally open switch within the Landry substation is flawed. In the July 18 Order, the Commission determined that:

NERC's characterization of the Landry substation as a "transmission network" with "looped flow capability" exaggerates the nature and operation of LaGen's facilities. Although revised Landry Diagram No. 6 shows two parallel 230-115 kV transformers connecting LaGen's 230 kV bus to SLECA's facilities, the record does not support that these transformers are operated in a networked fashion. Rather, revised Landry Diagram No. 6 indicates that a normally open switch prevents bi-directional or looped flows from occurring on these facilities. Accordingly, NERC has

⁶¹ BOTCC Registry Decision at p. 9.

⁶² NERC Comments at 10-11.

not adequately demonstrated that SLECA is directly connected to networked transmission facilities.⁶³

NERC argues that two different sources deliver power into the Landry substation at 230 kV, the Raceland and Terrebonne substations on the bulk transmission network beyond Landry. Rather than the normally open switch, NERC maintains that these “dual points of connection” establish the network character of the Landry substation because “[t]he position of the switch on these facilities is dictated by the facility operator and can be changed.”⁶⁴

38. We are not persuaded by NERC’s explanation. The July 18 Order found that SLECA’s facilities connect to LaGen’s 115 kV bus, which is connected to LaGen’s two 230-115 kV transformers. However, based on revised Diagram No. 6, we determined that the normally opened switch on LaGen’s 115 kV bus prevents power from flowing on one of the two transformers. Therefore, “it appears these facilities can only transfer power delivered from Entergy’s 230 kV transmission lines to SLECA’s load through a single line.”⁶⁵ In the Order No. 773 rulemaking regarding NERC’s revised bulk electric system definition, the Commission accepted NERC’s explanation that normally open switch configurations are “well understood in the electric utility industry” and that including normally open switches in the E1 radial exclusion definition “preserve[s] the bright-line so that the facilities can be characterized as they are planned to be operated and avoids the need to constantly reclassify elements to adjust to the changing operating conditions that occur on the system.”⁶⁶

39. Accordingly, we find that the July 18 Order correctly analyzed the Landry substation configuration based on the currently open switch, rather than possible future adjustments as NERC now suggests. We also reject NERC’s argument that the Landry

⁶³ July 18 Order, 144 FERC ¶ 61,050 at P 29 (footnotes omitted).

⁶⁴ NERC Rehearing Request at 13.

⁶⁵ July 18 Order, 144 FERC ¶ 61,050 at P 28.

⁶⁶ Order No. 773, 141 FERC ¶ 61,236 at PP 170, 172. Exclusion E1 for radial systems contains a note stating “A normally open switching device between radial systems, as depicted on prints or one-line diagrams for example, does not affect this exclusion.” See Petition of the North American Electric Reliability Corporation for Approval of a Revised Definition of “Bulk Electric System” in the NERC Glossary of Terms Used in Reliability Standards, Docket No. RM12-6-000 (January 25, 2012) at 19-21.

substation does not fall within the radial exemption in the bulk electric system definition because there are “two points of interconnection from SLECA to LaGen designed to operate with a dual path of supply.”⁶⁷ As we explained in the July 18 Order, the Landry substation is planned and operated as two radial transmission systems, connected with a normally open switch on the secondary side of the two 230-115 kV transformers. Landry is configured so that there is no “loop” at the point where SLECA is connected, and only one radial feed to SLECA’s facilities.

40. NERC further argues that SLECA’s and LaGen’s protection schemes are “interwoven” and directly connected to the Bulk-Power System. NERC asserts that the Commission erred in finding that these facilities do not operate as a network and that the circuit switchers are not operated to protect the Bulk-Power System. NERC explains that LaGen’s circuit switchers on the 230 kV side of its transformers are set with differential and over-current to trip both the 230 kV side and SLECA’s 115 kV side for faults within the zone of protection. According to NERC, if either circuit switcher fails to clear a fault, remote 230 kV terminals located on Entergy’s system beyond the Landry substation trip and the high side SLECA 115 kV circuit switchers also trip. NERC maintains that this differential protection scheme exists because there is no low-side breaker in the substation, indicating that SLECA’s facilities are integrated with the circuit switchers on the 230 kV side. NERC argues that, because the only breaker for SLECA’s system is a Bulk-Power System element, it is “directly connected” to the Bulk-Power System.⁶⁸

41. We disagree with NERC’s argument regarding the protection scheme within the Landry substation. The record indicates that SLECA’s circuit switchers are not directly connected to the bulk electric system. Rather, as explained in the July 18 Order, the circuit switchers are intended solely to protect SLECA’s equipment.⁶⁹ The only protection devices needed for the reliable operation of the bulk electric system are LaGen’s 230 kV circuit switchers. Whether or not SLECA’s 115 kV circuit switchers operate during an event, LaGen’s 230 kV circuit switchers are the devices that isolate the radial facilities within the Landry substation from the bulk electric system.

⁶⁷ NERC Rehearing Request at 13.

⁶⁸ *Id.*

⁶⁹ July 18 Order, 144 FERC ¶ 61,050 at P 31.

3. **The July 18 Order is Consistent With the 100 kV Bright-Line Threshold in the Revised Bulk Electric System Definition**

42. NERC argues that the July 18 Order undermines the 100 kV bright-line threshold included in the new bulk electric system definition approved in Order No. 773, and otherwise endorsed by prior Commission orders. We disagree. Our use of a 100 kV threshold to define bulk electric system elements has always included some provision for exceptions or exclusions for facilities above 100 kV that are not necessary for operating the interconnected transmission network, and an explicit exclusion for radial facilities of the sort at issue in this case. As discussed below, we have characterized the 100 kV threshold as a “proxy” or “first step” in the analysis that is intended to capture the vast majority of bulk electric system facilities. However, we disagree with NERC’s characterization that once it is determined that a facility is operated at above 100 kV that is the end of the inquiry in all circumstances.

43. In Order No. 743, to ensure that the bulk electric system definition “encompasses all facilities necessary for operating an interconnected electric transmission network,” we directed NERC to revise the definition to accomplish certain specified goals. At that time, we stated that “the best way to accomplish these goals is to eliminate the regional discretion in the current definition, maintain a bright-line threshold that includes facilities operated at or above 100 kV *except defined radial facilities and to establish an exemption process and criteria for excluding facilities that are not necessary for operating the interconnected transmission network.*”⁷⁰

44. In Order No. 773 we approved a revised bulk electric system definition that incorporated a 100 kV initial threshold. There, we found that “NERC’s definition satisfies the Commission’s technical concerns in Order No. 743 through the use of a bright-line 100 kV threshold, *with specific inclusions and exclusions within the definition, for identifying bulk electric system elements and the establishment of an exception process for facilities that are not necessary for operating the interconnected transmission network.*”⁷¹ One of the exclusions we approved was for radial systems, similar to the radial exemption contained in the currently effective bulk electric system definition. Regarding the radial exclusion, we stated that “[w]e agree with NERC that the currently-effective definition of bulk electric system excludes radial facilities, and the modifications provide additional granularity regarding the radial exclusion.”⁷²

⁷⁰ Order No. 743, 133 FERC ¶ 61,150 at P 1 (emphasis added).

⁷¹ Order No. 773, 141 FERC ¶ 61, 236 at P 38 (emphasis added).

⁷² *Id.* at P 128.

45. We note that the implementation of the revised definition and related exception process has been extended to July 1, 2014.⁷³ Therefore, the bulk electric system definition in effect when issuing our July 18 Order, which remains in effect today, is the definition adopted prior to Order No. 773. However, we find no inconsistency between our July 18 Order and *either* of these definitions or the orders in which they were adopted. Each definition provides for exceptions to the 100 kV “bright line” threshold, and each definition includes a specific exemption or exclusion for radial facilities similar to the LaGen facilities at issue in this proceeding. Accordingly, we reject NERC’s argument that the July 18 Order is inconsistent with the 100 kV threshold for bulk electric system elements contained in the revised bulk electric system definition and otherwise reflected in prior Commission orders.

4. SLECA’s Status as a “User” of the Bulk-Power System Does Not Supplant NERC’s Registry Criteria

46. NERC maintains that the Commission failed to properly consider SLECA’s status as a “user” of the Bulk-Power System under Section 215 of the Federal Power Act.⁷⁴ In doing so, NERC argues that SLECA is required to register with NERC as a distribution provider or LSE because it is a “user” of the Bulk-Power System, even if it does not otherwise meet the Registry Criteria thresholds for those functional entities.

47. We disagree. The Commission’s regulations provide that users, owners and operators of the Bulk-Power System “shall register...in such manner as prescribed in the Rules of the Electric Reliability Organization and each applicable Regional Entity.”⁷⁵ Section I of NERC’s Registry Criteria provides that entities that use, own or operate “Elements of the Bulk Electric System as established by NERC’s approved definition of Bulk Electric System” are “candidates for Registration.” Section II categorizes registration candidates by function, and Section III provides criteria that may be used to exclude entities from registration, even though they have been identified as candidates and placed into functional categories. The July 18 Order focused on the criteria in Section III related to distribution providers and LSEs. Accordingly, we find no merit to NERC’s assertion that SLECA must be registered as a distribution provider or LSE because it is a user of the Bulk-Power System, if it does not otherwise meet the Registry Criteria thresholds for such entities.

⁷³ See Order 773 Extension of Time, 143 FERC ¶ 61,231 (2013).

⁷⁴ NERC Rehearing Request at 18.

⁷⁵ 18 C.F.R. § 39.2 (c).

The Commission orders:

The Commission hereby denies NERC's request for rehearing of the July 18 Order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

ATTACHMENT A
Revised Landry Diagram No. 6

