

SLECA should remain registered –SLECA is not registered on the NCR because of the radial transmission elements of its facilities. Rather, SLECA is registered on the NCR because its distribution facilities and load are directly connected to the BES and, as such, SLECA meets the criteria for registration as a DP and LSE.

I. BACKGROUND

SLECA is a non-profit distribution cooperative that owns two line segments that operate at 115 kV and are used to connect remote load centers. SLECA takes all of its power and energy under a long-term power purchase agreement with LaGen which delivers that energy through a single bulk transmission line.³ SLECA was registered on the NCR as a DP and LSE on May 28, 2008. Although it registered voluntarily as a DP and LSE, SLECA asserts that it registered on the NCR based on advice from its power supplier, LaGen. SLECA subsequently determined it should be deregistered from the NCR. On August 23, 2011, SLECA filed a request for removal with SERC Reliability Corporation (“SERC”). SERC declined SLECA’s request in a letter dated December 9, 2011.⁴

SERC’s position in this dispute is that SLECA should be registered as a DP and LSE because: (a) SLECA has a peak load of 25 MW or greater; and (b) SLECA’s facilities are directly connected to the BES with respect to several of its service points. SERC’s position is based on its review of several diagrams supplied by SLECA during the course of its evaluation of SLECA’s request for removal. SERC determined that SLECA is a user of the BPS and meets the criteria to be registered because SLECA’s radial connections directly connect SLECA with a 100 kV network considered a part of the BPS. SERC also determined that SLECA is considered

³ SLECA FERC Appeal at 2.

⁴ SLECA FERC Appeal at 3.

material to the reliability of the BPS because SLECA meets the criteria for registration as a DP and LSE.⁵

After SERC denied SLECA's request to be removed from the NCR, SLECA appealed to NERC. The NERC Board of Trustees Compliance Committee ("NERC BOTCC") considered the appeal and rendered a decision on January 16, 2013, which upheld SERC's decision. On January 29, 2013, SLECA filed an appeal of the NERC BOTCC Decision ("Decision" or "BOTCC Decision") at FERC. SLECA subsequently filed a brief setting forth the arguments supporting its request for deregistration. The arguments raised in SLECA's appeal and support for SLECA's continued registration as a DP and LSE on the NCR are addressed below.

II. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to:⁶

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⁵ BOTCC Decision at 6.

⁶ Persons to be included on the Commission's service list are identified by an asterisk. NERC respectfully requests a waiver of Rule 203 of the Commission's regulations, 18 C.F.R. § 385.203 (2012), to allow the inclusion of more than two persons on the service list in this proceeding.

III. MOTION TO INTERVENE

On July 20, 2006, NERC was certified as the ERO under Section 215 of the FPA. NERC's mission is to improve the reliability and security of the BPS in North America. To fulfill its obligation as ERO, NERC develops and enforces NERC Reliability Standards; monitors the BPS; assesses future adequacy; audits owners, operators and users for preparedness; and educates and trains industry personnel.

As the ERO, NERC is subject to oversight by the Commission and applicable governmental authorities in Canada. On April 19, 2007, the Commission approved delegation agreements between NERC and eight Regional Entities, including a delegation agreement with SERC.⁷ On June 18, 2007, the NERC Reliability Standards, approved in Order No. 693, became mandatory and enforceable in the United States for all owners, operators and users of the BPS.⁸ Also, in Order No. 693, the Commission approved NERC's Compliance Registry process, including NERC's Registry Criteria. The Registry Criteria describe how NERC and the Regional Entities identify organizations that should be registered for compliance with mandatory NERC Reliability Standards. Section 500 of the NERC *Rules of Procedure* and Appendices 5A and 5B set forth the process for an entity to challenge its inclusion on the NCR. The NERC BOTCC issues a Decision on such appeals, after which an entity may file an appeal with the Commission.

NERC has a substantial and direct interest in this case because it involves the appeal of the NERC BOTCC Decision. No other party can adequately represent NERC's interest.

⁷ *North American Electric Reliability Council, North American Electric Reliability Corp.*, 119 FERC ¶ 61,060, order on reh'g, 120 FERC ¶ 61,260 (2007).

⁸ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 FR 16,416 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242 (2007).

Furthermore, it is in the public interest to permit this intervention as NERC's intervention and comments will contribute to the development a complete record in this proceeding.

IV. COMMENTS

A. The Existing Registry Criteria Were Properly Applied and SLECA Meets the Criteria for Registration as a DP and LSE.

NERC's analysis regarding the application of the Registry Criteria includes several steps. The first step in the analysis is to determine whether or not the entity is a user, owner, or operator of the BES. The second step includes an analysis of what function the entity performs. The third step includes an evaluation of whether the entity meets the criteria for a given function. If NERC determines that the entity does not meet the criteria, NERC then evaluates whether the entity should still be registered and subject to compliance with mandatory Reliability Standards.

SLECA is a user of the BES in its role as a DP and LSE. SLECA meets the criteria of a DP and LSE.

1. SLECA Meets the Criteria of DP

A DP is 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 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.

An entity is registered as a DP if it meets one of several criteria. An entity is a DP if it "serv[es] greater than 25 MW of peak Load that is directly connected to the Bulk Power System." By SLECA's own admission, it takes service at greater than 100 kV at five service points of LaGen: (1) Ashland, (2) Bayou L'Ourse, (3) Bayou Ramos, (4) Greenwood and (5) Landry. SLECA serves 119.3 MW of Load.

As stated above, NERC's analysis also includes an evaluation of whether the entity is directly connected to the BES. The current BES definition excludes certain radial transmission facilities from being BES assets:

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

While SLECA's distribution facilities are not BES assets, those distribution facilities are directly connected to the BES via the Landry substation.

2. SLECA Meets the Definition of LSE

A LSE “[s]ecures energy and Transmission Service (and related Interconnected Operations Services) to serve the electrical demand and energy requirements of its end-use customers.” NERC Registration Criteria further provide that DPs 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. SLECA meets the criteria set forth in Section III.b.1, which states: “Distribution Provider system serving greater than 25 MW of peak Load that is directly connected to the Bulk Power System.” Therefore, SLECA meets the criteria of Section III.b.1 and should be registered as a LSE.

3. NERC's Response To The Arguments Raised In SLECA's Brief

As set forth in the BOTCC Decision, the NERC BOTCC reviewed the evidence and arguments presented by SLECA in its appeal and determined that SLECA is properly registered

⁹ In Order No. 743, the Commission directed NERC to develop revisions to the BES definition. *See Revision to Electric Reliability Organization Definition of Bulk Electric System*, Order No. 743, 75 Fed. Reg. 72,910 (2010), 133 FERC ¶ 61,150 (2010); *order on reh'g*, Order No. 743-A, 134 FERC ¶ 61,210 (2011). The revised definition does not change the analysis of SLECA's registration, as discussed *infra*.

as a DP and LSE. The NERC BOTCC Decision is based on an objective application of the NERC Registration Criteria to the specific facts and circumstances as they apply to SLECA. The BOTCC Decision is fully supported by the record presented to the NERC BOTCC and the record now before the Commission. Moreover, the Decision is consistent with Section 215 of the FPA and related Commission precedent.

SLECA bases its request for appeal of the registration decision on the following four claims:

- A. SLECA’s facilities are used solely for the local distribution of electric energy and are exempt from reliability regulations under Section 215 of the FPA;
- B. SLECA’s facilities are exempt from registration because they are radial under the NCR and FERC precedent;
- C. SLECA’s facilities are distribution facilities under the seven-factor test of Order No. 888; and
- D. SLECA’s facilities would be exempt from registration under the new Order No. 773 rules.

SLECA’s claims are rooted in SLECA’s misapplication of the NCR which provides that users, owners and operators of the BPS are candidates for registration.

B. SLECA’s Local Distribution Facilities Are Exempt From Reliability Regulations under Section 215 of the FPA.

NERC agrees with SLECA’s statement that SLECA’s facilities are distribution facilities and that they are exempt from the definition of the BPS under Section 215 of the FPA.¹⁰ For this reason, SLECA’s distribution facilities are not considered BES facilities, and SLECA is not registered as a Transmission Owner (“TO”) or Transmission Operator (“TOP”). That issue was not before the NERC BOTCC and is not before FERC.

¹⁰ SLECA FERC Appeal at 6.

The purpose of the NCR is to “clearly identify those entities that are responsible for compliance with the FERC approved Reliability Standards.”¹¹ Rule 1.2 of the NERC Rules of Procedure sets forth the criteria for determining which organizations should be placed on the NCR. It states as follows:

1.2.1 Owners, operators and users of the bulk power system will generally be included on the NCR. The bulk power system includes, as defined by the Regional Entity, 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;

1.2.2 A customer that receives electric service at retail and does not otherwise directly receive, sell, purchase, or transmit power over the bulk power system or own, operate, maintain, or control facilities or systems that are part of the bulk power system will not, in general, be considered a user of the bulk power system, unless the entity’s actions or facilities have material impact on the bulk power system;

1.2.3 An entity directly connected to the bulk power system selling, purchasing, or transmitting electric energy over the bulk power system will generally be considered a user of the bulk power system, unless the entity’s actions or facilities does not have a material impact on the bulk power system; and

1.2.4 Notwithstanding the other considerations in this Section 1.2, if the consequences of an entity’s actions or inactions could have a material impact on the bulk power system, that entity may be considered a user of the bulk power system.

The registration criteria are set forth in the FERC-approved NERC *Statement of Compliance Registry Criteria* document, set forth in Appendix 5B of the NERC Rules of Procedure. As discussed above, SLECA meets the Registry Criteria.

As stated in the BOTCC Decision, Rule 501.1.4 provides that, “[f]or all geographical or electrical areas of the BPS, the Registration process shall ensure that (1) no areas are lacking any

¹¹ See Rule 501 of the NERC Rules of Procedure available at: <http://www.nerc.com/page.php?cid=1|8|169>.

entities to perform the duties and tasks identified in and required by the Reliability Standards to the fullest extent practical, and (2) there is no unnecessary duplication of such coverage or of required oversight of such coverage.”

The BOTCC Decision appropriately notes that SLECA is not registered because its radial lines are considered a part of the BES. Rather, it is registered because (1) its local distribution, radial facilities connect directly to the BES; and (2) SLECA takes service at greater than 100 kV. NERC notes that SLECA has not been, and is not being, registered as a TO or TOP due to the radial transmission elements of SLECA’s facilities. LaGen, the owner of the BES transmission facilities to which SLECA interconnects, is a registered Transmission Owner on the NCR because it owns facilities that are part of the BES. SLECA’s facilities interconnect to the LaGen system at five points of interconnection, representing 119.3 MW. Relevant to this matter, SLECA’s interconnection at Landry directly connects with the BES because it connects with LaGen’s 115 kV transmission network facilities. The interface interconnection arrangement at the Landry station is included in the BES as it permits through flow and contains all elements that are greater than 100 kV in a networked configuration. SLECA’s Landry interconnection as well as the four others, connect to the BES at 115 kV, they each include BES assets in the form of relays, protection schemes, and interrupting devices [switches, circuit switchers, *etc.*] and as a result would make SLECA eligible for inclusion as a DP/LSE to avoid any potential gaps in registration and compliance with applicable Reliability Standards. SLECA’s individual interconnections with the BES are through individual radial transmission connections serving only Load, and preclude the flow of BES power from one portion of the network to another. NERC staff issued several requests for information and held conference calls to clarify the nature of the connection at the Landry substation. SLECA’s representatives confirmed that the

connection at the Landry substation was through SLECA's 115 kV radial connections to LaGen's BES substation bus.

While these connections do not rise to obligate registration as a TO, it remains that the registration as a DP/LSE is warranted. SLECA's radial connection to the BES network at 115 kV at the Landry substation in order to serve SLECA's load, supports the rationale for SLECA's registration on the NCR as a DP and LSE. SLECA's continued registration on the NCR will ensure that there are no gaps in reliability.

The NERC BOTCC fully considered all of SLECA's claims and explained in detail why SLECA's registration as DP/LSE should be maintained. The NERC BOTCC Decision properly applied the existing criteria in determining that SLECA must be registered. SLECA's arguments appealing its registration misapplied the Registration Criteria and analysis required in the application of the criteria.

C. SLECA's Facilities are not exempt from registration as a DP and LSE, because they are Connected to the BPS Via the Landry 115 kV Substation.

SLECA argues that its facilities are exempt from registration because they are radial under NERC Registry Criteria and FERC precedent. NERC agrees that SLECA's transmission facilities are radial and are not themselves BES assets; however, SLECA's registration as a DP and LSE is appropriate because SLECA's facilities are directly connected to BES via the Landry 115 kV substation operated by LaGen. Contrary to SLECA's arguments, NERC has not misinterpreted Diagram No. 6 which depicts SLECA's facilities; NERC clarified its interpretation with SLECA staff directly.

SLECA asserts that the Landry Substation is connected to the LaGen delivery point through a flexible wire similar to the type of connection that exists at the other SLECA substations. However, after reviewing the diagrams provided by SLECA during the NERC

appeals process, NERC found that SLECA's facilities are directly connected to LaGen's bus and therefore directly connected to the BES through the Landry substation. As part of its evaluation of SLECA's claim, NERC submitted a request for supplemental information to SLECA concerning the connection of its facilities at the Landry substation. In response, SLECA submitted a legend applicable to a previously submitted One Line Diagrams and a revised One Line Diagram No. 6 (Landry). NERC then submitted a second request for supplemental information to SLECA, which SLECA responded to by providing simplified versions of Diagrams 2-6 and illustrations of the Bayou Ramos and Greenwood substations.

Finally, on December 11, 2012, NERC held a teleconference with representatives from SLECA and SERC to clarify Diagram No. 6 provided by SLECA. During the December 11, 2012 teleconference, NERC asked SLECA to confirm whether the facility marked as "radial feed" in the simplified version of Diagram No. 6 which also appeared in the One Line Diagram for the same set of facilities represents a line or a bus section. SLECA confirmed it is a bus section. SLECA also confirmed that the facilities marked as 672 and 671 in Diagram No. 6 are 115 kV circuit switchers as associated protection schemes requiring coordination with the BES assets of Landry. Despite SLECA's assertions to the contrary, SLECA confirmed during the December 11, 2012 conference call with NERC staff that the connection at the Landry substation was not radial but in fact bus work and has looped flow capability. On December 13, 2012, SLECA submitted a revised simplified version of Diagram No. 6 (Landry) which provided further evidence to support the conclusion that SLECA's connection to the LaGen delivery point at the Landry substation is a direct connection to the BES at 115 kV.

D. FERC Determined in Order No. 773 that It Would Use the Seven-Factor Test as the Starting Point for An Analysis of Whether A Facility is a Local Distribution Facility or a BES Facility; However, it is not the Sole Determinant.

SLECA argues that its facilities are distribution facilities under the seven-factor test of Order No. 888¹² and therefore, exempt from registration on the NCR. In Order No. 888, FERC adopted a seven-factor test for determining which facilities are distribution and which are transmission. Those seven factors are:

- (1) Local distribution facilities are normally in close proximity to retail customers;
- (2) Local distribution facilities are primarily radial in character;
- (3) Power flows into local distribution systems; it rarely, if ever, flows out;
- (4) When power enters a local distribution system, it is not reconsigned or transported on to some other market;
- (5) Power entering a local distribution system is consumed in a comparatively restricted geographical area;
- (6) Meters are based at the transmission/local distribution interface to measure flows into the local distribution system;
- (7) Local distribution systems will be of reduced voltage.

SLECA asserts that its facilities are distribution facilities under these criteria.

SLECA's reliance on the seven-factor test articulated in Order No. 888 to avoid registration as a DP and LSE is misplaced. NERC agrees that SLECA's facilities are local distribution and that fact is not at issue here. The basis for the registration is SLECA's distribution facilities are directly connected to the BES at Landry. As discussed above, SLECA meets the criteria and is, therefore, material to the reliability of the BES.

The NERC BOTCC also found that SERC properly determined that SLECA is material to the reliability of the BPS. The NERC Registry Criteria provide that "[o]rganizations will be responsible to register and comply with approved Reliability Standards to the extent that they are

¹² *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, 61 FR 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036, *clarified*, 76 FERC ¶ 61,009 and 76 FERC ¶ 61,347 (1996).

owners, operators, and users of the Bulk Power System, perform a function listed in the functional types identified in Section II [...], and are material to the Reliable Operation of the interconnected Bulk Power System as defined by the criteria....”¹³ SLECA is material to the BPS because it meets the criteria for registration as a DP and LSE.

E. SLECA’s Facilities Would Not Be Exempt From Registration Under the New Order No. 773 Rules.

SLECA argues that its facilities will be exempt from registration under the revised definition of the BES as set forth in Commission Order No. 773.¹⁴ Under the definition of BPS in Section 215, the currently effective BES definition in the NERC Glossary, and the new definition of BES in Order No. 773, SLECA’s facilities will still be distribution facilities, as the BOTCC Decision recognized. Under both definitions of BES, SLECA’s distribution facilities are directly connected to the BES at greater than 100 kV. Accordingly, SLECA is properly registered as a DP and LSE.

¹³ Appendix 5B at p 2.

¹⁴ See *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, Order No. 773, 141 FERC ¶ 61,236 (2012).

V. **CONCLUSION**

NERC respectfully requests that the Commission affirm NERC's decision upholding SLECA's registration as a DP and LSE.

Respectfully submitted,

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Dated: March 18, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 18th day of March, 2013.

/s/ Rebecca J. Michael

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