

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

Constellation Energy Commodities Group, Inc.) Docket No. RC08-___-000

**Request for Appeal from North American Electric Reliability
Corporation Decision Erroneously Including
Constellation Energy Commodities Group, Inc. in the Generator
Operator Category in the NERC Compliance Registry for the Texas
Regional Entity Region**

July, 11, 2008

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Decision Erroneously Including Constellation Energy Commodities Group,
Inc. in the Generator Operator Category in the NERC Compliance Registry for
the Texas Regional Entity Region**

Pursuant to Rule 501.1.3.4 of the North American Electric Reliability Corporation (“NERC”) Rules of Procedure,¹ and the Electric Reliability Organization Certification Order,² issued by the Federal Energy Regulatory Commission (“Commission” or “FERC”), Constellation Energy Commodities Group, Inc. (“Constellation”) respectfully appeals a NERC decision regarding Constellation’s registration as a Generator Operator (“GOP”) in the NERC Compliance Registry (“Registry”).

Pursuant to 18 C.F.R. § 388.112, Constellation requests confidential treatment of (1) certain information contained in Attachments I and J because

¹Rules of Procedure of the North American Electric Reliability Corporation, Rule 501.1.3.4 (effective March 21, 2008) (“Rules of Procedure”).

²*North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, at P 679 (2006).

NERC treats such information as nonpublic, and (2) the agreement submitted in Attachment M because it contains confidential, commercially sensitive information that would harm the parties to that agreement if released publicly.

I. BACKGROUND

A. Description of Constellation

Constellation is a power marketer authorized by the Commission to sell energy and capacity and certain ancillary services at market-based rates in interstate markets. Constellation also is an active market participant in the market administered by the independent transmission system operator of the Electric Reliability Council of Texas (“ERCOT ISO”). Constellation focuses on serving the full requirements power needs of distribution utilities, co-ops and municipalities and retail marketers that competitively source their load requirements. Constellation also sells natural gas and other commodities at wholesale, both in the United States and abroad, and holds interests in exploration and production companies. Constellation does not own any physical assets for the generation, transmission, or distribution of electric power and has no retail electric customers or service territories.

Power Resources, Ltd. (“PRL”) and Constellation are parties to a Tolling Agreement that governs PRL’s sales and Constellation’s purchases of electric generation capacity and electric energy, including all ancillary products and

services marketable in the ERCOT transmission area from PRL's gas-fired, combined-cycle electrical generation facility (the "PRL Facility") located in Howard County, Texas ("Tolling Agreement", included as Confidential Attachment M). Under the Tolling Agreement, Constellation agreed to be the Qualified Scheduling Entity ("QSE") for the PRL Facility.³ Constellation also signed a Standard Form Market Participant Agreement ("MP Agreement") with the ERCOT ISO.

B. Procedural History

On May 4, 2007, Constellation filed an appeal of its inclusion by the Texas Regional Entity ("TRE") on the Registry within the TRE region as the sole GOP for the PRL Facility ("NERC Appeal", included as Attachment A). On June 14, 2007, Constellation submitted supplemental information to TRE in support of its NERC Appeal ("June 14, 2007 Constellation Supplement", included as Attachment B). In the NERC Appeal and Constellation Supplement, Constellation demonstrated that it should not be registered as a GOP as to the PRL Facility.

³A QSE is defined as "[a] Market Participant that is qualified by ERCOT in accordance with Section 16 [of the ERCOT Protocols], Registration and Qualification of Market Participants, to submit Balanced Schedules and Ancillary Services bids and settle payments with ERCOT." See ERCOT Protocols § 2: Definitions and Acronyms, located at <http://www.ercot.com/content/mktrules/protocols/current/02-070108.doc>.

On October 5, 2007, Constellation received, in response to its NERC Appeal, TRE's assessment of Constellation's registration as the sole GOP for the PRL Facility ("TRE Assessment", included as Attachment C). Constellation responded to the TRE Assessment on October 19, 2007 ("Constellation Response to TRE Assessment", included as Attachment D).

On October 22, 2007, the NERC Board of Trustees Compliance Committee ("BOTCC") issued a decision remanding Constellation's appeal back to TRE to work with PRL and Constellation to resolve the registration dispute and to determine if a Joint Registration Organization ("JRO") agreement would provide a suitable mechanism for resolution.⁴ Discussions between TRE, Constellation and PRL ensued, but the parties were unable to reach an agreement.

Subsequently, TRE conceded that Constellation could not ensure compliance with the GOP Reliability Standards or the specific Requirements thereunder ("Requirements" or "GOP Requirements") for the PRL Facility and registered PRL as a GOP on January 8, 2008.⁵ However, TRE did not remove

⁴*Constellation Energy Commodities Group, Inc.*, RA070005 "Decision to Remand Appeal" (Oct. 22, 2007) ("BOTCC Remand", included as Attachment E).

⁵E-mail from Tony A. Shiekhi to David Hilt regarding NERC Case No. RA070005 (Jan. 21, 2008) ("TRE Notification", included as Attachment F). The TRE Notification also contained a request to NERC to hold Constellation's appeal in abeyance pending further information about whether PRL intended to appeal its registration.

Constellation as a GOP from the Registry. PRL appealed its GOP registration on February 1, 2008. On February 14, 2008, Constellation responded to TRE's determination to concurrently register both Constellation and PRL, objecting to any form of registration, joint or otherwise, that would require it to be a GOP for the PRL Facility. Constellation also requested that NERC deny TRE's request to hold Constellation's appeal in abeyance and act expeditiously to grant Constellation's appeal and remove Constellation from the NERC Compliance Registry as the GOP for the PRL Facility ("Constellation February 14, 2008 Letter", included as Attachment G).

On March 7, 2008, TRE responded to Constellation's Response to TRE's Assessment and Constellation's February 14, 2008 Letter, and requested that NERC consolidate the Constellation and PRL appeals for determination and that, upon final consideration, NERC confirm the concurrent GOP registrations of Constellation and PRL for the PRL Facility ("TRE March 7, 2008 Response", included as Attachment H).

On March 25, 2008, Constellation replied to TRE's March 7, 2008 Response ("Constellation March 25, 2008 Response", included as Confidential Attachment I). NERC issued its decision denying Constellation's NERC Appeal

on May 22, 2008 (“Decision”, included as Confidential Attachment J).⁶ In the same Decision, NERC rejected PRL’s appeal of NERC’s decision to also register PRL as GOP with respect to the PRL Facility. As set forth in the Decision, Constellation had 21 days to appeal. However, on June 2, 2008, Constellation requested additional time to submit its appeal to the Commission in an effort to again try to reach agreement with PRL.⁷ On June 6, 2008, NERC granted this request, and thus extended the time for appeal to July 11, 2008.⁸

Constellation fully supports the objective of maintaining the reliable operation of the Bulk-Power System (“BPS”), and does not object to NERC’s registration of Constellation in other regions with respect to other appropriate functions, i.e., Generator Owner (“GO”), GOP, Purchasing and Selling Entity (“PSE”). However, the registration of Constellation as a GOP for the PRL Facility in the TRE region is improper for the reasons discussed herein. Therefore, the

⁶*Constellation Energy Commodities Group, Inc.*, RA070005 “Board of Trustees Compliance Committee Confidential Version of Consolidated Decision on Appeals of Compliance Registry Determinations” (issued May 22, 2008).

⁷Constellation’s June 2, 2008 Letter is included in Attachment K.

⁸NERC’s June 6, 2008 Letter is included in Attachment L. On July 10, 2008, NERC granted an additional extension of time to file this appeal to July 25, 2008, to the extent that Constellation and PRL were in a position to submit a mutually agreeable settlement proposal for TRE review by July 11, 2008. Despite extensive negotiations between the parties of which the parties apprised NERC in various status reports, Constellation and PRL were unable to resolve all issues within the time available.

Commission should direct NERC to remove Constellation from the Registry as a GOP as to the PRL Facility in the TRE region.

II. EXECUTIVE SUMMARY

NERC's Decision Is Arbitrary and Capricious

Despite the Commission's prior admonishment that NERC adequately address arguments raised on appeal and sufficiently justify its decisions, NERC's findings and conclusions in the Decision are largely conclusory and lack any underlying foundation. Having determined to affirm TRE's decision, NERC delivered the Decision without engaging in a reasoned analysis of the issues that Constellation raised in its various submissions to NERC and TRE. This approach may be expedient, but it fails to meet the standard of review, and results in an arbitrary and capricious Decision.

Specifically, NERC concludes that "the MP Agreement and the Tolling Agreement do clearly delineate the responsibilities and tasks performed by the parties;"⁹ and that "PRL and [Constellation] both assume responsibility for activities falling under the Reliability Standards that are applicable to GOP;"¹⁰ and therefore, "it is appropriate that they both be registered."¹¹ NERC does not

⁹Decision at 17.

¹⁰*Id.* at 17.

¹¹*Id.* at 17.

demonstrate how the MP Agreement and Tolling Agreement actually do “clearly delineate” that Constellation and PRL “both assume responsibility for activities falling under the Reliability Standards that are applicable to GOP.” Rather, NERC draws these conclusions without any analysis, discussion or citation to the MP Agreement or Tolling Agreement—the agreements on which it purports to base its findings and conclusions. Moreover, it drew its unsupported conclusions without addressing Constellation’s arguments (which were supported by citation to and analysis of the Tolling Agreement and MP Agreement) that neither agreement delegated any responsibility for the GOP Reliability Standards to Constellation. On this basis alone, NERC’s Decision is patently defective and Constellation’s appeal should be granted.

The Logic Underlying NERC’s Decision Is Fatally Flawed

The predicate for NERC’s Decision is that:

1. Constellation agreed to be a QSE with respect to the ERCOT Protocols (the rules approved by the Public Utility Commission of Texas (“PUCT”) as to the PRL Facility;
2. Only QSEs under the ERCOT Protocols can communicate with the ERCOT ISO, and the ERCOT ISO also is the sole Balancing Authority (“BA”), Reliability Coordinator (“RC”) and Transmission Operator (“TOP”) in the TRE footprint; and
3. Some communications under the ERCOT Protocols are similar to communications required under the GOP Requirements.

On this basis, NERC contends that Constellation is responsible for ensuring performance of GOP Requirements with respect to the PRL Facility. NERC's logic simply does not follow, resulting in a fatally flawed, arbitrary and capricious Decision.

As QSE, Constellation Did Not Agree To Accept Responsibility for Any GOP Requirements

While it is true that Constellation agreed to provide QSE services for the PRL Facility, it did not agree to accept responsibility for any GOP Requirements. A fundamental principle underlying any registration determination is that there is a difference between *responsibility for ensuring performance* of GOP Requirements and the *actual performance* of the GOP Requirements.¹² Constellation's agreement to be the QSE with respect to ERCOT Protocols under which the ERCOT ISO administers its markets for the PRL Facility does not equate to an agreement that Constellation is or will be a registered GOP for the purpose of compliance with NERC's Commission-approved Reliability Standards. The QSE provisions in the Tolling Agreement are narrowly drawn. They clearly limit Constellation's QSE obligations to the requirements found in the ERCOT Protocols. They do not refer to the FERC-approved NERC Reliability Standards, which are administered by NERC, nor can the Tolling Agreement

¹²*Id.*

definition of ERCOT Protocols be interpreted to include such Reliability Standards.¹³ Moreover, the Tolling Agreement clearly states that PRL is responsible for complying with reliability requirements, and as owner and operator of the PRL Facility, PRL is appropriately registered as GOP. PRL, as GOP, is free to contract with a third party to serve as a communications interface under the GOP Requirements. Such a contractual relationship may result in Constellation performing *tasks* related to communications, but not bearing any responsibility under the GOP Requirements.

NERC, like TRE before it, inappropriately merges QSE and GOP functions. Constellation clearly is only an intermediary in the communications path between the PRL Facility and ERCOT ISO under the ERCOT Protocols. Serving as a QSE performing a communications interface for market operations does not amount to Constellation having the ability to ensure that PRL's GOP Requirements are met. Importantly, the substantive basis for all communications required under the GOP Requirements is completely dependent on PRL's action in transferring accurate and required information (both verbal and data transmissions) to the communications facilitator to pass on, or on PRL's action in receiving and acting upon information relayed by the communications facilitator

¹³See Tolling Agreement, Section 1.1 (Definition of "ERCOT Protocols").

to PRL. Registration must rest with the entity that has the authority and ability to actually ensure compliance with the GOP Requirements. Here, only PRL can create the required information, initiate communications and act upon communications from ERCOT ISO. Constellation cannot be held responsible—nor does it have the ability or authority contractually or otherwise—to ensure that PRL does so.

Also, NERC's reliance on a QSE serving as the "sole" communications interface with the ERCOT ISO under the ERCOT Protocols as a reason to register the QSE as GOP is both incorrect and irrelevant because, contrary to NERC's apparent belief, the fact that the QSE is not registered as a GOP will not result in a gap under the GOP Requirements. First, PRL, as registered GO is *obligated* to communicate with the ERCOT ISO or TRE, as applicable, in the role of Regional Entity, TOP, Transmission Provider and RC under numerous Reliability Standards, e.g., EOP-009, R2; FAC-008, R2; MOD-010, MOD-012, PRC-005, PRC-017, PRC-016, PRC-018 and VAR-002. Even within the ERCOT Protocols, PRL has direct communications channels and responsibilities as a registered Resource within the ERCOT ISO, e.g., ERCOT Protocols §§ 5.9.1.2, 6.5.7.2(4), 8.2.4, 10.6.2, ERCOT Operating Guide §§ 2.2.4, 3.1.4.1, 3.1.4.6, 8.2. PRL, therefore, is capable of, is required to and has the authority under the Reliability Standards to communicate with ERCOT ISO.

Moreover, even with respect to those ERCOT Protocols which require that a QSE serve as the communications interface between the PRL Facility and ERCOT, there is no basis to register both the facility operator and the communications intermediary as GOP. The fact that PRL may utilize a third party as a communications intermediary to meet its obligations under the GOP Requirements does not transfer responsibility for ensuring compliance with the GOP Requirements to that third party.

Finally, the fact that Constellation communicates certain information between PRL and the ERCOT ISO relative to the PRL Facility as a QSE under the ERCOT Protocols is the same information that PRL must provide or receive under some of the NERC Reliability Standards cannot serve as the basis for making Constellation accountable for ensuring that this information is developed and communicated under the Reliability Standards. Thus, NERC is wrong when it states that Constellation “does not dispute that it is performing the communications services that are required under the NERC GOP Reliability Standards.”¹⁴ Constellation does indeed dispute this assertion because Constellation has agreed only to perform, and only has the authority to perform,

¹⁴Decision at 16.

the QSE functions, i.e., limited intermediary communications in market operations under PUCT-approved ERCOT Protocols.

NERC Fails to Apply Its Registry Definition, Which Does Not Permit the Registration of Constellation as GOP for the PRL Facility

A GOP is defined as the “entity that operates generating unit(s) and performs the functions of supplying energy and interconnected operations services.”¹⁵ Nowhere in 19 pages does NERC explain how Constellation, as a QSE—an entity that has a limited intermediary communications role with respect to market operations between ERCOT ISO and PRL—meets this definition. Rather, it simply concludes, without explanation and without addressing Constellation’s arguments to the contrary, that while PRL physically operates the [PRL Facility], it does so pursuant to the directives of [Constellation].”¹⁶

In fact, Constellation neither owns nor operates any physical assets connected to the BPS in ERCOT. The GOP definition clearly applies to the entity that is responsible for directing and controlling the physical operations of a generation facility and does not apply to an entity that has entered into a contract to purchase the output of and/or request the scheduling of an electric generation

¹⁵NERC, Statement of Compliance Registry Criteria (Revision 4.0), at 4 (“*Registry Criteria*”) (defining GOP).

¹⁶Decision at 16.

facility. As demonstrated through an analysis of the Tolling Agreement in Section VI.C., below, PRL has retained full operational control of the PRL Facility; PRL does not operate the PRL Facility at Constellation's direction and neither the Tolling Agreement nor the MP Agreement transferred to Constellation any responsibilities under the GOP Requirements. Thus, the entity that directs and controls the physical operation of the PRL Facility, and is responsible for reliability requirements, is without doubt PRL, not Constellation.

NERC's Decision Is Inconsistent With Its Registrations in Other Regions.

The entirety of NERC's analysis as to why Constellation should be registered as a GOP turns on a conclusion that a generation facility's communications interface with an ISO for market operations should be designated as GOP.¹⁷ Other ISOs/RTOs also require a single communications interface for market operations, but Regional Entities for these other ISOs/RTOs (e.g., ReliabilityFirst Corporation and Northeast Power Coordinating Council) have not adopted this simplistic, and erroneous, assumption in their registration practices. Even TRE has not registered all QSEs as GOPs. Thus, by taking this inconsistent approach to the application of the GOP Reliability Standards to

¹⁷*Id.* at 16.

entities providing a communications interface to an ISO/RTO, NERC has failed to abide by FERC's consistency requirement and its own Rules of Procedure.

Despite Constellation fully supporting its argument as to NERC's inconsistent approach, NERC summarily dismisses the argument by stating that Constellation "has failed to demonstrate that other Regions have a regulatory framework similar to ERCOT in which a QSE must act on behalf of a Resource."¹⁸ This turns the burden of ensuring consistency on its head. It is NERC that is required to ensure consistency and it is NERC that has failed to demonstrate any distinguishing feature of a communications interface in ERCOT ISO compared to a communications interface in any other ISO. Instead, NERC adopts, without any analysis or investigation, TRE's claim that ERCOT Protocols are somehow unique. This conclusion is at odds with Constellation's experience in other markets, like PJM (which, like ERCOT ISO, is a BA, TOP and RC), which do in fact implement similar communications methods for purposes of market operations but where the Regional Entities have not registered those communications agents as GOPs.

¹⁸*Id.* at 18.

Concurrent Registration Should Be Reserved For Extraordinary Circumstances That Are Not Presented Here

Concurrent registration, i.e., registering two entities as responsible for the same Reliability Standards, is antithetical the Commission's fundamental requirement that NERC's registration process prevent two sets of hands on the wheel. While the Commission allows an entity responsible for compliance with Reliability Standards ("Responsible Entity") to delegate responsibility for Reliability Standards to a third party, such delegation must be well-defined and intentional and with the third party's clear agreement to accept responsibility for ensuring compliance with NERC Reliability Standards.¹⁹ Nonvoluntary concurrent registration, therefore, should be reserved for the rare situation where (1) parties have very clearly separated *responsibility* for Reliability Standards, and (2) absent a voluntary agreement on joint responsibility, there will be a clearly identifiable and significant gap in responsibilities under the Reliability Standards if both are not registered. The Commission should not allow NERC to use a concurrent registration as a default in the very common situation where a Responsible Entity has contracted with a third party to perform services that may be related to and supportive of a Responsible Entity's performance of its

¹⁹See, e.g., *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 Fed. Reg. 16416, at P 143 (April 4, 2007) (finding that joint registration requires that entities "clearly delineat[e] their specific responsibility with regard to the Requirements of particular Reliability Standards").

obligations under the Reliability Standards, but where there is no well-defined and intentional allocation of *responsibilities* under the Reliability Standards to the third party. Thus, while concurrent registration is expedient and allows NERC to avoid addressing the merits of challenges to the registration decisions of its Regional Entities, it is a perilous and slippery slope of controversies.

Under NERC's concurrent registration here, there is no clarity as to Requirements, or even the discrete tasks or sub-requirements, for which each entity is responsible. Indeed, concurrent registration will have the very consequences that the Commission's requirements for registration are intended to avoid—it would lead to confusion, lack of clarity, controversy, and could endanger reliability because, as TRE and NERC recognize, it leaves sorting out who is responsible for which particular task within a Requirement to enforcement actions—after events have arisen that could have been avoided had responsibility been clearly delineated and the registration criteria been properly applied in the first instance. Certainly, this is not what the Commission envisioned when it required NERC to avoid duplication of responsibilities in registering Responsible Entities.

In addition, reliance on concurrent registration in the face of controversy will incentivize Responsible Entities to claim that third parties that provide services supportive in minor respects to their operations to seek concurrent

registration as a means of preserving the Responsible Entity's opportunity to shift the exposure for violations that may occur to its service provider. As PRL made clear to NERC, [BEGIN CONFIDENTIAL INFORMATION, which has been removed from the public version of this document, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] END CONFIDENTIAL INFORMATION]

Clearly, there are no extraordinary circumstances presented here that warrant this extreme measure of concurrent registration. Again, NERC failed to address any of Constellation's arguments in this regard.

Request for Relief

Given NERC's factually incorrect findings and unsubstantiated conclusions, the Commission should grant Constellation's appeal and overturn the Decision to affirm the registration of Constellation, and direct NERC to immediately remove Constellation from the Registry as a GOP for the PRL Facility.

²⁰[BEGIN CONFIDENTIAL INFORMATION, which has been removed from the public version of this document, [REDACTED]

[REDACTED]

[REDACTED] END CONFIDENTIAL INFORMATION]

III. STANDARD OF REVIEW

At the outset, it is important to consider the standard of review that the Commission expects from NERC when adjudicating registration challenges. Constellation believes that the Commission expects NERC, as a private body with delegated enforcement authority over Reliability Standards approved by the Commission, to adhere to the same standards that typically apply to agency decisionmaking, including to the Commission itself. Specifically, a regulatory agency must examine the relevant data and articulate a satisfactory explanation for its action including a “rational connection between the facts found and the choice made.”²¹ The agency may not “ignore evidence placed before it by interested parties”²² and, in all cases, failure to respond to arguments raised constitutes a breach of the agency’s obligation to engage in reasoned decisionmaking.²³

²¹*Motor Vehicle Mfrs. Ass’n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (“*Motor Vehicle*”) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

²²*Consumers Union of United States, Inc. v. Consumer Product Safety Commission*, 491 F.2d 810, 812 (2d Cir. 1974) (“*Consumers Union*”).

²³*Moraine Pipeline Co. v. FERC*, 906 F.2d 5, 9 (D.C. Cir. 1990) (“*Moraine*”); *NorAm Gas Transmission Co. v. FERC*, 148 F.3d 1158, 1165 (D.C. Cir. 1998) (“*NorAm*”) (engaging the arguments raised before it is a component of reasoned decisionmaking).

NERC's Decision does not meet this standard of review. As Constellation will show below, the Decision fails to respond in any way to many of Constellation's arguments. In addition, NERC's own findings are largely conclusory and lack any underlying foundation or support.²⁴ It appears that, having determined to affirm TRE, NERC adopted TRE's positions as its own without engaging in a reasoned analysis of the issues that Constellation had raised in its various submissions to TRE and NERC. The Commission has cautioned NERC that it must adequately address arguments raised on appeal.²⁵ Under these standards, NERC must submit sufficient justification for affirming TRE and rejecting Constellation's arguments,²⁶ which as discussed in detail below, it did not do. NERC's Decision, thus, is arbitrary and capricious because it lacks reasoned decisionmaking,²⁷ and for this reason alone, the Commission should grant Constellation's appeal.

²⁴*ARCO Oil & Gas v. FERC*, 932 F.2d 1501, 1504 (D.C. Cir. 1991) (“[C]onclusory statements cannot substitute for the reasoned explanation that is wanting in this decision.”).

²⁵*Mosaic Fertilizer, LLC*, 121 FERC ¶ 61,058, at P 1 (2007) (“*Mosaic*”).

²⁶*Id.* at P 34.

²⁷*Sithe/Independence Power Part., L.P. v. FERC*, 165 F.3d 944, 948 (D.C. Cir. 1999).

IV. THE COMMISSION SHOULD ENSURE THAT CONCURRENT REGISTRATION IS ADOPTED ONLY WHEN EXTRAORDINARY CIRCUMSTANCES WARRANT IT

Concurrent registration, i.e., registering two entities as responsible for the same Reliability Standards, is antithetical the Commission's fundamental requirement that NERC's registration process prevent duplication of responsibilities;²⁸ and prevent "overlap[s] between the decisionmaking and implementation functions, i.e., that there are not two sets of hands on the wheel."²⁹ While the Commission allows Responsible Entities to delegate responsibility for Reliability Standards to a third party, such delegation must be well-defined and intentional.³⁰ And, the Commission directed NERC "in registering any entity . . . [to] assure that there is clarity in the assigning responsibility and that there are no gaps or unnecessary redundancies with regard to the entity or entities responsible for compliance with the Requirements of each relevant Reliability Standard."³¹

It is not at all clear that the Commission authorized NERC to utilize concurrent registration as a means to skirt the requirement for voluntary

²⁸ Order No. 693 at P 107; *see also* Rules of Procedure § 501.1.4.

²⁹*Id.* at P 143.

³⁰*See, e.g., id.* at P 143 (finding that joint registration requires that entities "clearly delineat[e] their specific responsibilities with regard to the Requirements of particular Reliability Standards").

³¹*Id.* at P 145.

allocation of responsibilities under the Reliability Standards.³² However, to the extent that the Commission arguably endorsed its use, the Commission should consider it to be an extreme step to be employed in truly extraordinary circumstances. That is, nonvoluntary concurrent registration should be reserved for the rare situation where (1) parties have very clearly separated *responsibility* for Reliability Standards, and (2) absent a voluntary agreement on joint responsibility, there will be a clearly identifiable and significant gap in responsibilities under the Reliability Standards if both are not registered. Consequently, the Commission should not allow NERC to use a concurrent registration as a default in the very common situation where a Responsible Entity has contracted with a third party to perform services that may be related to and supportive of a Responsible Entity's performance of its obligations under the Reliability Standards, but where there is no well-defined and intentional allocation of responsibilities under the Reliability Standards to the third party.

³²In the context of a central organization with related member organizations, FERC described NERC's proposal to register both entities concurrently if they could not agree on a split of Requirements and neither registered. Order No. 693 at P 103. However, it never explicitly accepted this proposal. Moreover, in describing its determination on the issue of organization/member registration, FERC directed NERC to develop procedures "which permit (but do not require) an organization, such as a joint action agency, G&T cooperative or similar organization to accept compliance responsibility on behalf of its members." *Id.* at P 107. The Commission emphasized that an entity should be not be required to assume responsibility "where it is not possible to do so." *Id.* at P 108.

If concurrent registration becomes the default whenever a Responsible Entity engages a third party to assist the Responsible Entity in performing some tasks supportive of the Responsible Entity's obligations under the Reliability Standards, it will incentivize Responsible Entities to claim that third-party service providers are responsible for applicable Reliability Standards, and that therefore, NERC should concurrently register the third party, as a means of preserving the Responsible Entity's opportunity to shift the exposure for violations to its service provider. Thus, while concurrent registration may be expedient and allows NERC to avoid addressing the merits of challenges to the registration decisions of its Regional Entities, it is a perilous and slippery slope of controversies.

NERC's Decision here results in NERC upholding TRE's concurrent registration of PRL and Constellation as the PRL Facility's co-GOPs. As Constellation demonstrates below, PRL alone must and can be the sole GOP with no gaps. By contrast, under concurrent registration, there is no clarity as to the Requirements, or even the discrete tasks or sub-requirements, for which each entity is responsible. Indeed, concurrent registration will have the very consequences that the Commission's requirements for registration are intended to avoid—it would lead to confusion, lack of clarity, controversy, and could

endanger reliability because, as TRE³³ and NERC³⁴ recognize, it leaves sorting out who is responsible for which particular task within a Requirement to enforcement actions and ultimately the Commission—after events have arisen that could have been avoided had responsibility been clearly delineated and the registration criteria properly applied in the first instance. Certainly, this is not what the Commission envisioned when it required NERC to avoid duplication of responsibilities. There are no extraordinary circumstances presented here that warrant this extreme measure. Notably, NERC failed to address any of Constellation’s prior arguments in this regard.³⁵

V. CONSTELLATION DOES NOT MEET THE *REGISTRY CRITERIA* FOR GOP REGISTRATION

NERC pays lip service to its *Registry Criteria*, when it recites that a GOP is the “entity that operates generating unit(s) and performs the functions of supplying energy and interconnected operations services.”³⁶ Yet, nowhere in 19 pages does NERC explain how Constellation meets this definition. Rather, NERC made its conclusions by pointing to sub-requirements under the GOP

³³TRE March 7, 2008 Response at 6.

³⁴Decision at 17.

³⁵Constellation February 14, 2008 Letter at 4–10; Constellation March 25, 2008 Response at 19–23.

³⁶Decision at 4; *see also Registry Criteria* at 4 (defining GOP).

Requirements, and assumed, without any substantive analysis, that a JRO was a required solution.³⁷ NERC's approach here is squarely at odds with another registration decision in which the definition in the *Registry Criteria* was the sole basis for determining whether an entity should be registered, and where NERC summarily dismissed the registered entity's attempt to show that an analysis of applicable Reliability Standards demonstrated why the entity should not be registered.³⁸ NERC cannot have it both ways; it cannot simply ignore its own *Registry Criteria* when the definitions contained therein do not fit the registration it wants to approve. Thus, NERC's failure to apply its own definition of GOP to Constellation was inconsistent with reasoned decisionmaking, resulting in an arbitrary and capricious Decision.

In fact, NERC's registration of Constellation—which neither owns nor operates any physical assets connected to the BPS in ERCOT—as a GOP contradicts the definition of GOP in NERC's *Registry Criteria*. This definition clearly applies to the entity that is responsible for directing and controlling the physical operations of a generation facility and does not apply to an entity that has entered into a contract to purchase the output of and/or request the

³⁷Decision at 16.

³⁸*New Harquahala Generating Company, LLC, RA070104, "NERC Board of Trustees Compliance Committee Decision on Appeal of Compliance Registry Determination"* (issued Jan 14, 2008), at 12.

scheduling of an electric generation facility. As demonstrated through an analysis of the Tolling Agreement in Section VI.C., below, the entity that directs and controls the physical operations of the PRL Facility is without doubt, PRL, not Constellation.

Constellation understands that certain types contractual arrangements may, depending on their terms, support the transfer of GOP responsibility, e.g., an operation and maintenance (“O&M”) agreement with a third party that does, in fact, transfer GOP operational authority to a third party. However, as fully discussed herein, neither the Tolling Agreement nor any other agreement referenced in NERC’s Decision is such an agreement. PRL has, in fact, retained operational authority over the PRL Facility and, therefore, is the only entity that meets the definition of GOP and is responsible for all GOP Requirements.

VI. NERC ERRED IN CONCLUDING THAT CONSTELLATION SHOULD BE REGISTERED AS A GOP FOR THE PRL FACILITY

A. NERC’s Decision Is Arbitrary and Capricious

NERC’s basic findings are, first that:

the regulatory framework in ERCOT is unique. A Resource, such as PRL, must contract with a QSE to engage in communications with the ERCOT ISO (the sole [Balancing Authority (“BA”), Reliability Coordinator (“RC”) and Transmission Operator (“TOP”)] in the Texas RE footprint), except in the event of certain emergency conditions. In the instant case, PRL has contracted with [Constellation] to be its QSE, and [Constellation] has voluntarily

assumed the obligation to perform certain communications services and other activities for PRL.³⁹

And, second,

[w]ith respect to operational matters . . . both PRL and [Constellation] have assumed obligations that require each of them to comply with GOP Reliability Standards. As the excerpts from the PRL and [Constellation] pleadings make clear, while PRL physically operates the facility, it does so pursuant to directives of [Constellation].⁴⁰

Given these findings, NERC concludes that (a) “the MP Agreement and the Tolling Agreement do clearly delineate the responsibilities and tasks performed by the parties;”⁴¹ (b) “PRL and [Constellation] both assume responsibility for activities falling under the Reliability Standards that are applicable to GOP;”⁴² and therefore, (c) “it is appropriate that they both be registered.”⁴³

But NERC fails to provide any analysis of the facts, contractual agreements or Reliability Standards in making its findings or drawing its conclusions. The Commission has found that when NERC relies on a commercial contract that purports to allocate responsibilities for Reliability Standards in its registration decisions, NERC must provide an analysis of such

³⁹Decision at 16.

⁴⁰*Id.*

⁴¹*Id.* at 17.

⁴²*Id.*

⁴³*Id.*

contract, and must “point to specific language that obligates” the entity in question.⁴⁴ Moreover, while NERC may have summarized Constellation’s arguments against registration, NERC made no attempt to address any of the points raised by Constellation, other than to dismiss them out of hand.⁴⁵ Consequently, because NERC’s Decision consists only of unsupported findings and conclusory statements that are without merit (as fully set forth in Sections VI.B. and VI.C. below) and because NERC does not address in any meaningful manner issues raised by Constellation, the Decision is arbitrary and capricious,⁴⁶ and the Commission should grant Constellation’s appeal.

B. Performance of the QSE Communications Responsibilities Under ERCOT Protocols Does Not Make Constellation Responsible for GOP Reliability Standards

Boiled down, NERC’s position is that (i) Constellation agreed to be a QSE as to the PRL Facility, (ii) only QSEs under the ERCOT Protocols can communicate with the ERCOT ISO, which also is the sole BA, RC and TOP in the TRE footprint, and, therefore, (iii) because some communications under the

⁴⁴*Southeastern Power Admin.*, 122 FERC ¶ 61,140, at P 22 (2008) (“SEPA Remand”).

⁴⁵*See, e.g.*, Decision at 16, 17, 18.

⁴⁶*ARCO Oil & Gas*, 932 F.2d at 1504 (“[C]onclusory statements cannot substitute for the reasoned explanation that is wanting in this decision.”); *Mosaic*, 121 FERC ¶ 61,058, at P 1 (admonishing NERC that it must adequately address issues raised on appeal); *Moraine*, 906 F.2d at 9 (engaging the arguments raised before it is a component of reasoned decisionmaking); *NorAm*, 148 F.3d at 1165 (same).

ERCOT Protocols are similar to communications required under the GOP Requirements, Constellation is appropriately registered as a GOP. NERC's Decision is fatally flawed.

TRE concedes that Constellation does not operate the PRL Facility; does not initiate communications; and has no authority to respond to communications.⁴⁷ Nevertheless, TRE (and now NERC) foists GOP registration on Constellation because Constellation has a limited intermediary communications role with respect to market operations between the ERCOT ISO and PRL as a QSE under the ERCOT Protocols.

TRE takes this position out of convenience because it apparently concluded early on that it would prefer to hold one entity responsible for two roles—satisfaction of QSE Requirements under the ERCOT Protocols and satisfaction of the GOP Requirements under the NERC Reliability Standards—and so it adopted a blanket rule that a Level 4 QSE will be a GOP regardless of whether it actually operates generation facilities. However, convenience is not a

⁴⁷See, e.g., TRE March 7, 2008 Response at 4, 25, 39.

criterion for registration. [BEGIN CONFIDENTIAL INFORMATION, which has been removed from the public version of this document—

[REDACTED]

[REDACTED] END CONFIDENTIAL

INFORMATION] And, NERC, rather than thoroughly considering Constellation's position, has bought into the rhetoric, twisted logic and unsupported conclusions of TRE and PRL.

A fundamental guideline for any registration determination is that the entity that is responsible for *ensuring performance* is the entity to be registered as GOP.⁴⁹ At the same time, the Commission recognized that a responsible entity could delegate tasks to a third party for actually performing such tasks. In other words, there is a difference between *responsibility for ensuring performance* of GOP Requirements and the *actual performance* of the GOP Requirements.⁵⁰

⁴⁸[BEGIN CONFIDENTIAL INFORMATION, which has been removed from the public version of this document,

[REDACTED]

END CONFIDENTIAL INFORMATION]

⁴⁹Order No. 693 at P 144.

⁵⁰*Id.*

Applying this standard, PRL, as owner and operator of the PRL Facility, is appropriately registered as GOP. PRL is free to contract with a third party to serve as a communications interface with entities with whom PRL must communicate, e.g., Constellation. Such a contractual relationship may result in that third party performing *tasks* related to communications, but not bearing any responsibility under the GOP Requirements. Again, the Commission's orders on this point have been clear—delegation of performance of certain tasks is not the relevant inquiry for purposes of registration; responsibility is.⁵¹ Here, NERC and TRE have turned the Commission's guidance regarding the difference between performance and responsibility on its head, resulting in its registration of two GOPs for the same generating facility.

NERC claims that a Joint Registration Organization agreement ("JRO") would resolve the problem. However, rather than providing a substantive analysis of Constellation's role, arguments and Tolling Agreement to determine how Constellation meets the definition of GOP or has actual responsibility for any part of the GOP Requirements, NERC just assumes that Constellation has such responsibility in the first place. A JRO only is appropriate where both parties have responsibilities under the Reliability Standards—that is not the case

⁵¹*Id.*

here. Moreover (and not surprisingly), the parties have been unable to reach a JRO solution to date because TRE and PRL insist on imposing on Constellation responsibility for tasks that Constellation has no authority to undertake and for which it has no ability or authority to ensure compliance. Moreover, even if a JRO solution was possible, NERC's Rules of Procedure could be read to require that a single entity be responsible for the entirety of a single Requirement. No one disputes that Constellation has no ability or authority to comply with or ensure compliance with any entire Requirement,⁵² as discussed below.

1. Constellation's Agreement To Be the QSE for the PRL Facility Does Not Support GOP Registration

Constellation's and PRL's understanding that Constellation will be the QSE for the PRL Facility does not equate to an agreement that Constellation is or will be a registered GOP for the purpose of compliance with NERC's Reliability Standards. Under the Tolling Agreement, PRL delegated to Constellation, and Constellation agreed to be, the QSE for the PRL Facility, not the GOP.⁵³ QSE is

⁵²See, e.g., TRE March 7, 2008 Response at 4, 25, 39.

⁵³Tolling Agreement, Section 4.2(g). PRL recognizes in the Tolling Agreement that Constellation's ability to perform its QSE functions properly is dependent on PRL actions with respect to the PRL Facility. For example, PRL is required to indemnify Constellation for any costs, charges, penalties or liabilities Constellation incurs in its capacity as a QSE where PRL negligently or willfully prevents Constellation from fulfilling its obligations as a QSE for the PRL Facility or fails to operate the PRL Facility in accordance with the Tolling Agreement or

(footnote continued on next page)

defined in the Tolling Agreement by reference to the “ERCOT Protocols.” The ERCOT ISO is defined in the Tolling Agreement as the entity carrying out the independent system operator functions as designed by the Texas Public Utility Commission (“PUCT”).⁵⁴ ERCOT Protocols are defined in the Tolling Agreement as operating protocols promulgated by the ERCOT ISO and approved by the PUCT.⁵⁵ The ERCOT Protocols were established by the ERCOT ISO for purposes of administering its markets and providing transmission services to its customers. They are not FERC-approved NERC Reliability Standards.

Nothing in the QSE provisions of the Tolling Agreement expands Constellation’s QSE obligations to include being the GOP for the PRL Facility under NERC’s Reliability Standards. The QSE provisions in the Tolling Agreement are narrowly drawn. They clearly limit Constellation’s QSE obligations to the requirements found in the ERCOT Protocols. They do not refer to the FERC-approved NERC Reliability Standards, which are administered by NERC, nor can the Tolling Agreement definition of ERCOT Protocols be interpreted to include such Reliability Standards.

applicable schedule for ancillary services or energy. Tolling Agreement, Section 4.2(h).

⁵⁴Tolling Agreement, Section 1.1 (Definition of “ERCOT Independent System Operator”).

⁵⁵*Id.* (Definition of “ERCOT Protocols”).

While Constellation communicates certain information relative to the PRL Facility to ERCOT ISO as a QSE under the ERCOT Protocols, it has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards. This is an important distinction. Even if there may be some overlap in the information that Constellation, as QSE, typically receives from PRL and passes on to ERCOT ISO, and the information that may be required to be provided under GOP Reliability Standards, this overlap cannot serve as the basis for making Constellation accountable for ensuring that this information is developed and communicated under the Reliability Standards.

TRE disregards this important distinction when it cavalierly concludes that the overlap in communication topics provides a basis to assign responsibility for GOP Reliability Standards to the final link in the communications chain under ERCOT Protocols.⁵⁶ Moreover, NERC also disregards this important distinction when it states that Constellation “does not dispute that it is performing the communications services that are required under the NERC GOP Reliability Standards.”⁵⁷ Constellation most emphatically does dispute this assertion as it is contractually bound only to perform, and has the authority only

⁵⁶See, e.g., TRE Assessment at 8–9, 14.

⁵⁷Decision at 16.

to perform, the QSE functions, i.e., limited intermediary communications in market operations.

NERC cannot rely on mere performance of tasks as the basis for registration; it must point to a contractual basis for the transfer of responsibility for ensuring compliance.⁵⁸ Because the Tolling Agreement only addresses Constellation's QSE responsibilities under the ERCOT Protocols, these provisions show that the Tolling Agreement does not constitute a contractual arrangement between Constellation and PRL to allocate responsibility for the GOP Requirements to Constellation. Neither NERC nor TRE has the authority to modify the Tolling Agreement and force Constellation to take over PRL's obligations under the Reliability Standards.⁵⁹

2. There Is No Basis to Merge QSE and GOP Obligations.

NERC,⁶⁰ like TRE before it,⁶¹ makes much of the fact that a QSE is the single point of contact for communication of information under the ERCOT Protocols. But even if a QSE has certain communications responsibilities for

⁵⁸*SEPA Remand*, 122 FERC ¶ 61,140, at P 22.

⁵⁹ Order No. 693 at PP 107, 141 (clarifying that the Commission "did not intend to change existing contracts, impose new organizational structures or otherwise affect existing agreements that set forth the responsibilities of various entities.").

⁶⁰Decision at 16.

⁶¹*See, e.g.*, TRE March 7, 2008 Response at 26, 27.

market operations under the ERCOT Protocols and a GOP has certain communication responsibilities under the NERC Reliability Standards, and while the type of information communicated may be similar under the ERCOT Protocols and GOP Requirements, it simply does not follow that a QSE should be registered as a GOP.

a. Constellation Does Not Have the Ability or the Authority To Create Required Information or To Initiate Communications, Only PRL Does

In the Constellation Response to TRE Assessment, Constellation demonstrated that even with respect to those Requirements that included a communications role, e.g., those that require the GOP to communicate certain information about the generation facility and its related equipment to various Responsible Entities, Constellation was not responsible for such GOP Requirements.⁶²

Information under such Requirements includes, among other things, providing reports on disturbances or unusual occurrences, failures of equipment, information regarding facility status, operating conditions that could require changes in the protection systems of others, planned and unplanned outages,

⁶²Indeed, in the Constellation Response to TRE Assessment, Constellation provided a Requirement-by-Requirement analysis of why it should not be responsible for each GOP Requirement, and provided similar analysis in the Constellation February 14, 2008 letter at 7–12, and the Constellation March 25, 2008 Response at 17.

availability, test results, and notification to the RC or TOP of inability to comply with reliability directives.

TRE argues that, because a QSE must notify ERCOT of an unplanned change in PRL Facility status under the ERCOT Protocols, it follows that Constellation must be responsible as a GOP.⁶³ Again, Constellation is only the communicator of information. Constellation is able to communicate information to the ERCOT ISO only because PRL has first determined the operating and availability status of units or related equipment, such as automatic voltage regulators, and communicated that information to Constellation. Only PRL has the ability to make such determinations, to produce the information, and to initiate the communication of information. ERCOT's own Operating Guide (Section 3.1.4.5), as cited by TRE, recognizes that "Generation Entities shall notify their QSE, who in turn will promptly notify the ERCOT Control Area Authority by telephone of the circumstances, when a voltage regulator or stabilizer is unavailable. . . ."⁶⁴ This does not mean that Constellation is responsible under the GOP Requirements. **If PRL does not provide Constellation with the requisite information, Constellation cannot communicate it.** TRE's argument

⁶³TRE Assessment at 11.

⁶⁴ERCOT Operating Guide § 3.1.4.5 (cited in TRE Assessment, Attachment 2, at 5, Attachment 3, at 4–5).

that Constellation has the power to require and obtain the necessary information from its corresponding generation resource⁶⁵ simply is not true, and notably neither TRE nor NERC has provided any support for their conclusion in this regard.

TRE acknowledges that PRL is central to ensuring performance of all GOP Reliability Standards when it concedes that a “substantial portion of the information” to be conveyed under the Reliability Standards “is available to Constellation only with PRL’s cooperation.”⁶⁶ Yet TRE, based on the limited communications tasks that Constellation may perform for PRL under certain GOP Requirements, would require Constellation to register as GOP with responsibility for ensuring compliance with at least twenty-one GOP Requirements⁶⁷ (and could, as a matter of enforcement, attempt to hold Constellation responsible under a concurrent GOP registration).

Communication tasks that Constellation performs as QSE, and which arguably overlap certain tasks that are required of a GOP, involve only limited aspects of certain GOP Requirements. For example, under Reliability Standard CIP-001-1 (Sabotage Reporting), Constellation could provide only a limited

⁶⁵TRE Assessment at 13, 14.

⁶⁶TRE March 7, 2008 Response at 25.

⁶⁷*See*, Constellation March 25, 2008 Response at 17–18; Constellation February 14, 2008 Letter at 6 n.18.

communication facilitation service under Requirement 2, which requires that a GOP “shall have procedures for the communication of information concerning sabotage events on its facilities and multi-site sabotage affecting larger portions of the Interconnection.”⁶⁸ Requirement 2 operates in tandem with (a) Requirement 1, which requires a GOP to have procedures for the recognition of and for making their operating personnel aware of sabotage events on its facilities and multi-site sabotage affecting the Interconnection; (b) Requirement 3, which requires a GOP to provide its operating personnel with sabotage response guidelines, including personnel to contact to report such events; and (c) Requirement 4, which requires each GOP to establish communications contacts as applicable with appropriate law enforcement agencies.

Requirement 2 does not operate in a vacuum; it addresses only a portion of the communications element of a set of related procedures to deal with potential sabotage events. Only PRL, as the operator of the PRL Facility, has the ability to establish procedures to ensure identification and communication of sabotage events that occur at the PRL Facility or that become known to PRL’s operating personnel, and only PRL has the ability to initiate the communication of such information to relevant entities. Moreover, even with respect to

⁶⁸TRE March 7, 2008 Response at 37.

Requirement 2, Constellation could only potentially facilitate a communication that PRL initiates in the first instance.

An appropriate analysis of CIP-001-1 would conclude that only PRL can be held responsible for ensuring performance of the Reliability Standard and each Requirement thereunder. The fact that PRL develops procedures under Requirement 2, which, in turn, provide that PRL will utilize its QSE arrangement to communicate this information to the ERCOT ISO on its behalf does not elevate Constellation to the role of GOP, joint GOP or co-GOP. And should the Commission uphold the concurrent registration, it will only create confusion as to precisely where, within the many sub-tasks of Requirement 2, PRL's responsibility ends and Constellation's begins. Reliability cannot be ensured, and can only be weakened, by introducing this unnecessary confusion into NERC's registration, compliance and enforcement program.

As demonstrated, Constellation clearly is only an intermediary in the communications path between the PRL Facility and ERCOT ISO under the ERCOT Protocols. Having engaged a QSE as a communications intermediary for market operations does not amount to PRL having the inability to ensure that these GOP Requirements are met. Importantly, the substantive basis for all communications required under the GOP Requirements is completely dependent on PRL's action in transferring accurate and required information (both verbal

and data transmissions) to the communications facilitator to pass on, or on PRL's action in receiving and acting upon information relayed by the communications facilitator to PRL. Constellation can only relay information. It cannot be held responsible under the GOP Reliability Standards for ensuring that PRL creates the required information, initiates communications, or acts on communications from ERCOT ISO. Neither NERC, TRE nor PRL dispute that PRL's substantive performance is fundamental to ensuring that all of the GOP Requirements are satisfied.

b. Constellation Has No Ability or Authority To Act on Communications Received From Responsible Entities in the Registry

TRE argues that Constellation receives communications from other parties responsible under the Reliability Standards.⁶⁹ Even if, in its role as QSE under the ERCOT Protocols, Constellation would receive these types of communications, this does not mean that Constellation is responsible for such Reliability Standards. The purpose of the Reliability Standards is to ensure that the entity with operational authority takes actions in response to information necessary to operate reliably. Constellation has no ability or authority to effect any change in operations of the PRL Facility as a result of such communications. Thus, it is clear that PRL—the entity with the ability to effect necessary

⁶⁹See, e.g., TRE March 7, 2008 Response at 36.

changes—must be held responsible for GOP Requirements that may involve a communications function, even though it may delegate the task (but not the responsibility) to a third party serving as the communications interface with other Responsible Entities, such as ERCOT ISO.

c. NERC’s Conclusion That Constellation Is the Only Entity that Can Communicate with ERCOT ISO Is Without Merit

TRE claims that Constellation and PRL need to be jointly registered because, “without the coordinated activities of Constellation and PRL under the terms of their MP Agreements and Tolling Agreement, the GOP function could not be performed.”⁷⁰ TRE further contends that, given that Constellation is QSE, “[l]iterally none of the communications” functions can be performed by anyone but Constellation acting as QSE and, as “an essential link in the process, Constellation must be a GOP.”⁷¹ NERC, without citing any support for its conclusion, echoes TRE’s assertions when it states that Constellation “is the only entity that can communicate with the BA, RC and TOP with respect to [the PRL Facility], in the absence of certain emergency conditions.”⁷²

⁷⁰*Id.* at 15.

⁷¹*Id.* at 23; *see also* TRE Assessment at 6, 13 (suggesting that the ERCOT ISO lacks the ability to receive information required under the Reliability Standards directly from anyone other than a QSE).

⁷²Decision at 16.

NERC's unsupported conclusion clearly is wrong. The conclusion is belied by the simple fact that not every QSE has been registered as a GOP in ERCOT.⁷³ Moreover, a simple review of the NERC Reliability Standards and the ERCOT Protocols demonstrates that PRL is capable of and has the authority under the Reliability Standards to communicate with ERCOT ISO.

PRL is registered as GO in the Registry and a registered Resource under the ERCOT Protocols. As a GO, PRL is *obligated* to communicate with the ERCOT ISO or TRE, as applicable, in the role of Regional Entity ("RE"), TOP, Transmission Provider, and RC. For example, as GO, PRL must:

1. provide documentation of blackstart test results under EOP-009, R2;
2. provide documentation concerning its facility ratings to the RC, TOP, Transmission Planner and Planning Authority under FAC-008-1, R2;
3. provide equipment characteristics, system data and existing and future interchange schedules to RE in compliance with modeling requirements under MOD-010 and MOD-012;
4. document its protective systems testing and special protection systems programs program to the RE under PRC-005 and PRC-017;
5. provide data concerning its special protective systems to the RE under PRC-016;
6. maintain and report to RE upon request data on Disturbance Monitoring Equipment under PRC-018; and

⁷³For example, Constellation serves as QSE for the generation facility owned and operated by Wolf Hollow in ERCOT, but Wolf Hollow is registered as sole GOP.

7. provide to its TO and TOP information on reactive equipment under VAR-002.

Even within the ERCOT Protocols, PRL has direct communication channels and responsibilities as a registered Resource within the ERCOT ISO. For example, ERCOT communicates directly with the Generation Resource (here, PRL) when requesting a change in operational modes.⁷⁴ In addition, Protocol § 8.2.4 provides that the Resource (PRL), may remove equipment when there is a forced outage, and that the Resource is responsible for notifying ERCOT of the outage: “[T]he Resource Entity . . . may remove the affected equipment from service immediately and must immediately notify ERCOT of its action.”⁷⁵ Thus, NERC’s and TRE’s argument that communications between PRL and ERCOT ISO are impossible are completely without merit.

⁷⁴Operating Guide § 2.2.4; ERCOT Protocols § 6.5.7.2(4) (noting that Generation Resource must operate in voltage control mode unless ERCOT specifically directs it to operate in manual mode). *See also* ERCOT Protocols § 5.9.1.2 (requiring Generation Entity to immediately report the change in the status of the Resource to ERCOT and the QSE); Operating Guide § 3.1.4.1 (requiring all generators to communicate a trip, high reactive loading or reactive oscillations on generation units to the QSE, transmission operator and ERCOT), § 3.1.4.6 (requiring Generation Resources to provide ERCOT with operating characteristics of any unit’s equipment protective relay system or controls that may respond to temporary excursions in voltage with actions that could lead to tripping of the generating unit), § 8.2 (requiring the owner to coordinate outages required for maintenance with ERCOT).

⁷⁵TRE Assessment, Attachment 3, at 7 (citing Protocol § 8.2.4).

In sum, as is the case with respect to CIP-001-1, discussed above, PRL has the substantive responsibility for every GOP Requirement and, at most, Constellation can only facilitate communications on behalf of PRL. Only PRL has the ability to make required determinations, produce information, to initiate communications, and to act upon communications. TRE repeatedly concludes that Constellation is able to ensure PRL's compliance in this regard, but it provides no support for that conclusion because it is untrue.⁷⁶ NERC buys into TRE's conclusion, completely ignoring Constellation's support that it has no such authority.⁷⁷

Registration as a GOP must rest with the entity that has the ability to actually ensure compliance with the GOP Requirements, not the entity that has been hired to provide a communications service with respect to market operations. Constellation comprehensively addressed each and every Reliability Standard, Requirement and Functional Model relationship in the Constellation Response to TRE Assessment and provided similar analysis in the Constellation February 14, 2008 Letter, and the Constellation March 25, 2008 Response. Constellation will not repeat those here because the discussion above describes the situation with sufficient clarity—PRL may be able to rely on Constellation

⁷⁶See TRE March 7, 2008 Response at 28.

⁷⁷See Decision at 16.

performing certain communication tasks to ensure PRL's compliance with PRL's GOP responsibilities (assuming the appropriate contractual arrangements can be executed), but this does not make Constellation responsible under the GOP Requirements. Clearly, as between PRL and Constellation, the responsibility for each GOP Requirement must lie with PRL, and failure to register PRL as sole GOP for each and every Requirement will lead to confusion. Moreover, NERC failed to address any of Constellation's discussion in this regard, resulting in an arbitrary and capricious Decision.

C. Constellation Has Not Agreed Under a Contract To Take on Any GOP Obligations or To Be Registered as GOP with Respect to the PRL Facility

NERC found that “[w]ith respect to operational matters . . . while PRL physically operates the facility, it does so pursuant to directives of [Constellation],”⁷⁸ and concluded that the Tolling Agreement and the MP Agreement “clearly delineate the responsibilities and tasks performed by the parties.”⁷⁹ But NERC drew this conclusion without a single citation to or quotation from either agreement, other than stating that Constellation agreed in the Tolling Agreement to be the QSE for the PRL Facility under the ERCOT

⁷⁸*Id.*

⁷⁹*Id.* at 17.

Protocols.⁸⁰ Nor does NERC explain how “there is sufficient clarity between the parties’ responsibilities”⁸¹ with the parties’ responsibilities with respect to the Reliability Standards. Moreover, while NERC agrees that PRL physically operates the PRL Facility,⁸² it is patently untrue that PRL does so at Constellation’s direction.

The following analysis will show that (1) PRL has retained full operational control of the PRL Facility; (2) PRL does not operate the PRL Facility at Constellation’s direction; and (3) neither the Tolling Agreement nor the MP Agreement transferred to Constellation any responsibilities under the GOP Requirements.

1. The Tolling Agreement Does Not Transfer Any GOP Obligations to Constellation

The Tolling Agreement specifically states that PRL is the entity that “operate[s] and maintain[s]” the PRL Facility and such responsibility requires it to ensure that the PRL Facility is operated and maintained in accordance with prudent industry practice, which includes, among other things, compliance with

⁸⁰*Id.* at 16–17.

⁸¹*Id.* at 17.

⁸²*Id.* at 16.

reliability standards applicable in ERCOT.⁸³ Accordingly, the Tolling Agreement clearly demonstrates that PRL has retained, rather than transferred to Constellation, all operator responsibilities under NERC's Reliability Standards including those as the GOP. NERC, TRE and PRL cannot ignore or dismiss the plain language of the Tolling Agreement that unambiguously shows that PRL contractually has committed to be the operator of the PRL Facility.

As the operator, PRL is the entity that makes, and is responsible for enforcing, decisions that control and affect the overall operations of the PRL Facility including satisfaction of NERC's Reliability Standards. PRL, not Constellation, is responsible for developing, implementing and enforcing policies

⁸³Tolling Agreement, Section 7.2(a). The Tolling Agreement defines "Prudent Industry Practice" as follows:

"Prudent Industry Practice" means any of the practices, methods, techniques, standards and acts required or approved from time to time by a significant portion of the electric power industry in the geographic region covered by ERCOT, or any of the practices, methods, techniques, standards, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with the Applicable Requirements, good business practices, reliability, safety, environmental protection, and expedition. "Prudent Industry Practice" is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be practices, methods or acts generally accepted from time to time in the geographic region covered by ERCOT.

Tolling Agreement, Section 1.1.

and protocols necessary to ensure that the PRL Facility's capability to produce power and its actual operations comply with all of the contractual, technical, regulatory and other legal requirements applicable to the ownership and operation of the PRL Facility. Such responsibilities include garnering, controlling and directing the financial, technical and personnel resources needed to fulfill these requirements. While PRL may delegate certain tasks to people or companies, PRL is the one ultimately responsible to ensure that the tasks are completed in accordance with applicable requirements. In short, PRL has relationships with key people and entities with respect to the overall business and operations of the PRL Facility that Constellation does not have or control.

In drawing its conclusion that Constellation should be registered as a GOP, NERC fails to acknowledge or discuss Constellation's references to Section 7.2(a) of the Tolling Agreement,⁸⁴ presumably because this critical, overriding contractual provision demonstrates that PRL is the entity that has retained all responsibility for ensuring compliance with the GOP Requirements for the PRL Facility, thus showing that PRL must be the sole GOP for the PRL Facility. Acknowledging or directly addressing this contractual fact would destroy the

⁸⁴See Decision at 16, 17; see also Constellation Response to TRE Assessment at 7–8; Constellation March 25, 2008 Response at 11–12.

flawed arguments that NERC advances to support its concurrent registration of Constellation as GOP.

Moreover, such contractual commitment by PRL refutes NERC's conclusion that PRL physically operates the PRL Facility "pursuant to the directives of [Constellation],"—a conclusion for which NERC cites no support.⁸⁵

Other provisions of the Tolling Agreement further demonstrate the pervasive dominion and operational control that PRL has over the PRL Facility and its ability to provide capacity, energy and ancillary services:

- PRL determines the annual planned outages for the PRL Facility, which do not have to be approved by Constellation unless an outage is planned during the June through September period.⁸⁶ While PRL is required to consult with Constellation on such planned outages, PRL is not required to accommodate Constellation's requests for changes if PRL determines that they would adversely affect PRL, the PRL Facility, the PRL Facility operator (which is not Constellation) or would otherwise be inconsistent with prudent industry practice, which, as previously noted, embraces the NERC Reliability Standards.⁸⁷
- As discussed further below, PRL determines the PRL Facility's daily availability to provide energy and ancillary services.⁸⁸
- PRL controls the amount of Automatic Generation Control ("AGC") that the PRL Facility is capable of achieving. While Constellation relies on tests conducted by PRL to determine the

⁸⁵See Decision at 16.

⁸⁶Tolling Agreement, Section 7.5.

⁸⁷Tolling Agreement, Exhibit D; *see also supra* note 83.

⁸⁸Tolling Agreement, Section 4.2(b)–(d).

amount of AGC that the PRL Facility is capable of achieving, if the PRL Facility fails to achieve certain levels of AGC, then the PRL Facility is derated until PRL takes appropriate actions to correct the problem.⁸⁹ Constellation does not have the authority to direct or control remedial actions for an AGC shortfall; such decision is within PRL's control. If PRL continues to fail to achieve AGC baselines under the Tolling Agreement, Constellation's only remedy is an adjustment to the price it pays for capacity.⁹⁰

- PRL is responsible for operating and maintaining the PRL Facility in a manner that will optimize the provision of ancillary services.⁹¹
- PRL must maintain all regulatory and environmental permits and approvals required to operate the PRL Facility.⁹²
- PRL is the party to a blackstart service agreement it has executed with ERCOT; PRL is responsible for that agreement and blackstart services are governed by that contract.⁹³
- PRL is the party to the electric interconnection agreement with Oncor Electric Delivery Company ("Oncor"); PRL is responsible for the performance of that agreement and interconnection services of the PRL Facility are governed by that contract.⁹⁴

By contrast, Constellation's limited power purchase rights and fuel supply obligations under the Tolling Agreement do not constitute the types of control a GOP would need to perform its responsibilities under the GOP Reliability

⁸⁹Tolling Agreement, Section 5.8.

⁹⁰Tolling Agreement, Section 5.8(c).

⁹¹Tolling Agreement, Section 7.2(e).

⁹²Tolling Agreement, Sections 6.1(h), 7.2(a).

⁹³Tolling Agreement, Section 7.2(e).

⁹⁴Tolling Agreement, Exhibit I.

Standards. While TRE makes much of Constellation's scheduling rights,⁹⁵ the notion that Constellation has unfettered control over the PRL Facility by reason of its energy scheduling rights and fuel supply obligations is not in any way supported under the Tolling Agreement.

Under the Tolling Agreement, Constellation is entitled to the capacity, energy and ancillary services produced by the PRL Facility, but its ability to schedule power from the PRL Facility is subject to various limitations. PRL's operational management of the PRL Facility's capabilities (to receive fuel and produce power) and availability is the crucial factor that determines whether and how much capacity, energy and ancillary services are available from the PRL Facility to be purchased or scheduled for dispatch by Constellation.

It is PRL, not Constellation, that determines the PRL Facility's daily availability to provide energy and ancillary services.⁹⁶ Therefore, the amount of energy and ancillary services from the PRL Facility that Constellation can decide to schedule at any given time is driven by PRL's overall operation and

⁹⁵See, e.g., TRE March 7, 2008 Response at 22, 31.

⁹⁶Tolling Agreement, Section 4.2.

management of the PRL Facility to maintain its capability and availability to produce such products.⁹⁷

For example, if PRL determines that the PRL Facility is not available because of outages, deratings or other legal, regulatory or technical operational constraints contemplated under the Tolling Agreement, the amount of energy and ancillary services that Constellation can schedule to buy under these circumstances is reduced.⁹⁸ Constellation does not determine or control such PRL Facility constraints and it cannot disregard them in its dispatch requests. Moreover, PRL is not required to comply with a proposed schedule for energy proffered by Constellation if PRL determines that the PRL Facility is suffering from constraints (e.g., outages or deratings) set forth in the contract.⁹⁹ Further, while Constellation may request changes to an energy schedule in accordance with applicable ERCOT ISO requirements, PRL does not have to agree to the change if such changes are not within the PRL Facility's operating constraints and the scheduling protocols set forth in the Tolling Agreement.¹⁰⁰

⁹⁷The fact that Constellation is responsible for paying scheduling fees, if any, for scheduling energy is part of the commercial bargain it made to buy energy available from the PRL Facility and is not, in and of itself, control over the PRL Facility.

⁹⁸Tolling Agreement, Section 4.2(a).

⁹⁹Tolling Agreement, Section 4.2(c).

¹⁰⁰Tolling Agreement, Section 4.2(b).

These are typical commercial terms that are included in any agreement that provides unit contingent power, i.e., energy may be scheduled only when the unit is available; outages are coordinated under a reasonable efforts standard so that the unit is more likely to be available during periods that are of the most value to the purchaser; and buyers are provided with information to monitor *force majeure* events which may affect pricing terms tied to unit availability under the power sale agreement. None of these provisions shows that PRL has transferred to Constellation, pursuant to the Tolling Agreement, operational or directional control and ultimate responsibility for ensuring compliance with all GOP Reliability Standards. NERC failed to address any of the issues regarding the Tolling Agreement raised by Constellation,¹⁰¹ and failed to cite any provision of the Tolling Agreement, yet in some secret way was able to conclude that PRL operates the PRL Facility at the direction of Constellation. A thorough reading of the Tolling Agreement refutes NERC's baseless conclusion.

2. The MP Agreement Between the ERCOT ISO and Constellation Does Not Transfer GOP Responsibilities from PRL to Constellation

The Commission also should reject NERC's finding that Constellation must be registered as GOP because it entered into a MP Agreement with ERCOT

¹⁰¹Summarizing Constellation's arguments in this regard does not equate to addressing the argument.

to become a registered QSE in ERCOT.¹⁰² The MP Agreement simply binds Constellation to adhere to ERCOT Protocols.¹⁰³ The ERCOT Protocols are not the GOP Reliability Standards and the MP Agreement neither addresses the NERC Reliability Standards nor obliges Constellation to take responsibility for compliance with them. The MP Agreement between Constellation and ERCOT does not amend, or trump, the terms of the Tolling Agreement; it only implements the limited QSE responsibilities for ERCOT Protocol matters under the Tolling Agreement between Constellation and PRL under which PRL retains responsibility for operating the PRL Facility and complying with all reliability standards.

¹⁰²Decision at 16, 17.

¹⁰³In this respect, the MP Agreement is no different than the similar agreements that are used in other regions, such as the Delegation of Authority (“DOA”) form used in the PJM Interconnection, L.L.C. (“PJM”) to designate a single point of contact for PJM’s communications with generating units. However, in no other region has the Regional Entity suggested that the entity that provides these communications services should be registered as GOP. Thus, while Constellation has executed DOA agreements for generators in PJM, ReliabilityFirst Corporation has not registered Constellation as a GOP with respect to such generators by virtue of the DOA agreements, and to the best of our knowledge, they have registered the generator owner as GOP. This further supports the flaws in TRE’s reasoning that the communications gatekeeper must be registered as GOP, and also evidences a lack of consistency among regions in registration determinations. See Section VII for a full discussion of NERC’s obligation to ensure consistency in registration decisions.

VII. NERC'S DECISION IS INCONSISTENT WITH ITS REGISTRATIONS IN OTHER REGIONS.

Section 501.3.3.1 of NERC's Rules of Procedure requires that NERC ensure "consistency . . . and comparability of outcomes within each regional entity's . . . registration program and among all of the programs." In addition, the Commission requires that NERC "assure consistency among the regions to which it [NERC] has delegated duties and functions."¹⁰⁴ The Commission has made clear "that the registration process should provide consistency across the regions, unless a persuasive reason is articulated for such differences."¹⁰⁵ NERC has failed to do so here. The entirety of NERC's analysis as to why Constellation should be registered as a GOP turns on a conclusion that a generation facility's communications interface with an ISO for market operations should be designated as GOP.¹⁰⁶

Other ISOs/RTOs also require a single communications interface (e.g., CAISO, ISO-NE, PJM), but Regional Entities for these other ISOs/RTOs (e.g., ReliabilityFirst Corporation and Northeast Power Coordinating Council) have

¹⁰⁴*North American Electric Reliability Council*, 119 FERC ¶ 61,060, at P 119 (2007).

¹⁰⁵*Direct Energy Services, LLC*, 121 FERC ¶ 61,274, at P 43 (2007); *See, e.g., North American Electric Reliability Corporation*, 116 FERC ¶ 61,062, at PP 313, 350 (2006) (finding that uniformity among Regional Entity programs is important to provide fairness).

¹⁰⁶Decision at 16.

not adopted this simplistic, and erroneous, assumption in their registration practices. In these other regions, Constellation also purchases power under arrangements similar to the Tolling Agreement and, among other things, communicates information provided by the generation owner to the relevant ISO. Such other regions have not required Constellation to register as a GOP and even TRE has not registered all QSEs as GOPs.¹⁰⁷ Thus, by taking this inconsistent approach to the application of the GOP Reliability Standards to entities providing a communications interface to an ISO/RTO, NERC has failed to abide by FERC's consistency requirement and its own Rules of Procedure.

Despite Constellation fully supporting its argument as to NERC's inconsistent approach, NERC summarily dismisses the argument by stating that Constellation "has failed to demonstrate that other Regions have a regulatory framework similar to ERCOT in which a QSE must act on behalf of a Resource."¹⁰⁸ This turns the burden of ensuring consistency on its head. It is NERC that is required to ensure consistency and it is NERC that has failed to demonstrate any distinguishing feature of a communications interface in ERCOT ISO compared to a communications interface in any other ISO. Instead, NERC

¹⁰⁷For example, Constellation serves as QSE for the generation facility owned and operated by Wolf Hollow in ERCOT, but Wolf Hollow is registered as sole GOP.

¹⁰⁸Decision at 18.

adopts, without any analysis or investigation, TRE's claim that ERCOT Protocols are somehow unique. This conclusion is at odds with Constellation's experience in other markets, like PJM (which, like ERCOT ISO, is a BA, TOP and RC), which do in fact implement similar communications methods for purposes of market operations but where the Regional Entities have not registered those communications agents as GOPs. As throughout its Decision, NERC failed in any way to address Constellation's discussion in this regard. The Commission has admonished NERC that it must explain its decisions;¹⁰⁹ NERC has failed to do so here. Therefore, to ensure consistency among regions, the Commission should direct NERC to remove Constellation from the Registry as a GOP as to the PRL Facility.

¹⁰⁹*Mosaic*, 121 FERC ¶ 61,058, at P 1.

[BEGIN CONFIDENTIAL INFORMATION, which has been removed from
the public version of this document—

[REDACTED]

110 [REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED] END

CONFIDENTIAL INFORMATION]

113 [REDACTED]

114 [REDACTED]

IX. CONTACT INFORMATION

Constellation respectfully requests that all correspondence and other communications concerning this appeal be directed to the following persons:¹¹⁵

Deborah A. Carpentier
Patricia Alexander
Dickstein Shapiro LLP
1825 Eye Street NW
Washington, DC 20006-5403
Tel: 202.420.2288
Fax: 202.420.2201
carpentierd@dicksteinshapiro.com
alexanderp@dicksteinshapiro.com

Donna M. Sauter
Senior Counsel
Constellation Energy Group, Inc.
750 East Pratt Street
17th Floor
Baltimore, MD 21202
Tel: 410.470.3149
mindisauter@constellation.com

¹¹⁵Constellation respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) to permit the designation of more than two persons for service in this proceeding.

X. CONCLUSION

For the reasons set forth above, Constellation requests that the Commission grant Constellation's appeal, and direct NERC to remove Constellation from the Registry as a GOP as to the PRL Facility in the TRE region.

/s/ Donna M. Sauter
Donna M. Sauter
Senior Counsel
Constellation Energy Group, Inc.
750 East Pratt Street
17th Floor
Baltimore, MD 21202

Patricia M. Alexander
Energy Industry Advisor
Dickstein Shapiro LLP
1825 Eye Street, NW
Washington, DC 20006-5403

Deborah A. Carpentier
Dickstein Shapiro LLP
1825 Eye Street, NW
Washington, DC 20006-5403

July 11, 2008

**Attorneys for
Constellation Energy Commodities Group, Inc.**

Attachment A

NERC Appeal

111 Market Place
Suite 500
Baltimore, Maryland 21202
410.468.3500
410.468.3540 Fax



May 4, 2007

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

Mr. David Hilt
Vice President and Director of Compliance
North American Electric Reliability Corporation
116-390 Village Boulevard
Princeton, NJ 08540

Dear Mr. Hilt:

Constellation Energy Commodities Group, Inc. ("CCG") received your April 10, 2007 letter indicating CCG's functional category registration for the ERCOT region on April 13, 2007 ("Notice"). In accordance with the instructions in the Notice, CCG hereby formally challenges its functional category listing in the ERCOT regional entity. Specifically, ERCOT has registered CCG as a Generation Operator ("GOP") and rejected CCG's registration as Purchasing-Selling Entity ("PSE"). CCG believes, based on its review of the relevant criteria, that it should be registered only as a PSE.

Protest

CCG has obtained several Qualified Scheduling Entity or "QSE" designations within ERCOT, each of which is qualified according to various ERCOT Protocols with different "Level" assignments. Two of CCG's QSEs are "Level 4 QSEs," qualified to schedule Ancillary Services, among other things. During the NERC registration process, ERCOT informed CCG that ERCOT had made an across-the-board determination that any entity that has a "Level 4" QSE designation should be registered as a GOP, regardless of whether or not the QSE actually operates generation facilities. Thus, at ERCOT's direction, CCG submitted a request to be registered as a GOP, and also requested registration as a PSE (see attached registration). ERCOT has accepted CCG's GOP registration but has rejected its PSE registration.

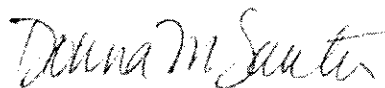
However, CCG does not believe it was appropriate for ERCOT to require registration as a GOP. CCG currently does not own any generation facilities within the ERCOT region. Moreover, while CCG does, pursuant to contracts, provide certain communication services to two unaffiliated generation facilities in the region, it does not operate the facilities. Rather, CCG has determined that the generation facilities perform the majority of the functions outlined in the NERC Standards applicable to GOPs. For example, EOP-004-1 R2 requires GOPs to "promptly analyze Bulk Electric System disturbances on its system or facilities." However, CCG does not own or operate the equipment required to comply with this requirement. Nor does CCG have

Mr. David Hilt
May 4, 2007
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control of this type of equipment on behalf of the relevant generation facilities. Similarly, PRC-001-1 R1 requires GOPs to "be familiar with the purpose and limitations of protection system schemes applied in [the relevant] area." Again, CCG does not have control of this type of equipment on behalf of the relevant generation facilities. Rather, the facility owners operate and control this equipment. As a final example, VAR-002-1 R1 requires GOPs to "operate each generator connected to the interconnected transmission system in the automatic voltage control mode (automatic voltage regulator in service and controlling voltage) unless the Generator Operator has notified the Transmission Operator." CCG does not have control of this type of equipment on behalf of the relevant generation facilities. Moreover, and by way of comparison, in other regions (Reliability First Corporation and Northeast Power Coordinating Council) where CCG performs similar communications services for selected generators it is not registering as a GOP.

Therefore, based on CCG's analysis of the Standards applicable to GOPs, CCG does not believe it should be registered as a GOP in ERCOT. As a result, CCG requests that it be registered as a PSE, rather than a GOP. CCG intends to work with ERCOT to resolve this issue, and has shared its concerns regarding this issue with ERCOT on several occasions. However, in order to protect its rights, CCG is filing this formal protest within the 21 day period prescribed in the Notice.

Sincerely,



Donna M. Sauter
Senior Counsel
Constellation Energy Group, Inc.

cc: Craig Lawrence, NERC
Tony Shiekhi, ERCOT
Stuart Rubenstein, CCG
Stephen Knapp, CCG
Donald Schopp, CCG

Knapp, Steve

From: Knapp, Steve
Sent: Wednesday, February 28, 2007 8:23 PM
To: 'Tony Shiekhi'; 'Jeff Whitmer'
Cc: 'Grimm, Larry'; Sauter, Mindi; Schopp, Donald; Knapp, Steve
Subject: Constellation Energy Commodities Group, Inc. NERC Registration and Certification Form - Entity Classification Request

Importance: High
Sensitivity: Confidential

Attachments: Attachment 1-B Organization Registration Form for Constellation Energy Commodities Group 20070228.doc

TO: Mr. Tony Shiekhi
Reliability Engineer

Mr. Jeff Whitmer
Sr. Reliability Analyst

Gentlemen:

Constellation Energy Commodities Group, Inc. would like to request the following entity classifications to be registered with NERC's Registration and Certification Program by the Texas Regional Entity, (formally ERCOT Compliance).

Constellation Energy Commodities Group, Inc.

- **Generator Operator**
- **Purchasing-Selling Entity**

Constellation requests these classifications for the following reasons. Constellation currently has two QSEs qualified as Level 4 QSEs and three QSEs qualified as both Level 1 and Level 2 QSEs. As you are aware, by Protocol definition, a Level 4 QSE is a full service QSE qualified to provide Ancillary Services. Level 1 and Level 2 QSEs schedule Bilateral Services only. Constellation is registered with NERC TSIN and has an approved PSE Name allowing Constellation to schedule across the DC Ties. Attached please find NERC's Attachment 1-B Registration and Certification Form with Constellation registration information. If you should have any questions, please do not hesitate to contact me.

Thank You

Stephen C. Knapp
Director, Operations Management



Attachment 1-B
Organization Re...

Stephen C. Knapp
Director, Operations Management
Constellation Energy Commodities Group, Inc.
111 Market Place, Suite 500
Baltimore, Maryland 21202
(410) 468-3606 (Office)
443-286-6785 (Cell Phone)
steve.knapp@constellation.com

Attachment 1-B

Registration and Certification Form

Organization (Legal Name): Constellation Energy Commodities Group, Inc.
Other Name:
Corporate Address: 111 Market Place, Suite 500
City: Baltimore State: MD Zip Code: 21202
Current date and time: 02/27/2007 16:00 EST
Last date/time Updated: 02/21/2006 13:45 EST

Contact Person: Donald Schopp
Title: Associate
Phone #: 410-470-2339 Fax #: 410-468-3419 E-mail: donald.schopp@constellation.com
Mailing Address: (same as Corporate Address)

Authorized Entity Officer Information
Name: Stuart Rubenstein
Title: Chief Operating Officer
Phone #: 410-468-3430 Fax #: 410-468-3540 E-mail: stuart.rubenstein@constellation.com
Mailing Address: (same as Corporate Address)

Currently registered as:

<input type="checkbox"/> Transmission Operator	Current NERC acronym (If assigned)
<input type="checkbox"/> Reliability Coordinator	Current NERC acronym (If assigned)
<input type="checkbox"/> Balancing Authority	Current NERC acronym (If assigned)
<input type="checkbox"/> Planning Authority	Current NERC acronym (If assigned)
<input type="checkbox"/> Transmission Planner	Current NERC acronym (If assigned)
<input type="checkbox"/> Transmission Service Provider	Current NERC acronym (If assigned)
<input type="checkbox"/> Transmission Owner	Current NERC acronym (If assigned)
<input type="checkbox"/> Resource Planner	Current NERC acronym (If assigned)
<input type="checkbox"/> Distribution Provider	Current NERC acronym (If assigned)
<input type="checkbox"/> Generator Owner	Current NERC acronym (If assigned)
<input type="checkbox"/> Generator Operator	Current NERC acronym (If assigned)
<input type="checkbox"/> Load Serving Entity	Current NERC acronym (If assigned)
<input type="checkbox"/> Purchasing-Selling Entity	Current NERC acronym (If assigned)
<input type="checkbox"/> Regional Reliability Organization	Current NERC acronym (If assigned)
<input type="checkbox"/> Reserve Sharing Group	
<input type="checkbox"/> None	

Seeking registration as an:	
<input type="checkbox"/> Reliability Coordinator	<input type="checkbox"/> Transmission Operator
<input type="checkbox"/> Balancing Authority	<input type="checkbox"/> Planning Authority
<input type="checkbox"/> Transmission Planner	<input type="checkbox"/> Transmission Service Provider
<input type="checkbox"/> Transmission Owner	<input type="checkbox"/> Resource Planner
<input type="checkbox"/> Distribution Provider	<input type="checkbox"/> Generator Owner
<input checked="" type="checkbox"/> Generator Operator	<input type="checkbox"/> Load Serving Entity
<input checked="" type="checkbox"/> Purchasing-Selling Entity	<input type="checkbox"/> Regional Reliability Organization
<input type="checkbox"/> Reserve Sharing Group	
Region Affiliation:	
If operating across multiple regions please list all: WECC, MRO, SPP, ERCOT, FRCC, SERC, RFC, NPCC	

Comments pertinent to this registration:

Registered in Spring 2005

Attachment B
June 14, 2007 Constellation
Supplement

111 Market Place
Suite 500
Baltimore, Maryland 21202



June 14, 2007

VIA EMAIL AND OVERNIGHT MAIL

TO: Mr. Anthony Shiekhi, P.E.
Compliance Reliability Engineer
ERCOT Texas Regional Entity
7620 Metro Center Drive
Austin, Texas 78744

RE: ERCOT Texas Regional Entity designation of Constellation Energy Commodities Group, Inc. as a Generator Operator

Dear Mr. Shiekhi:

On May 4, 2007, Constellation Energy Commodities Group, Inc. ("CCG") appealed the North American Electric Reliability Corporation's ("NERC") registration of CCG as Generator Operator ("GOP") in ERCOT, as set forth on Attachment A. NERC's registration of CCG as a GOP arises from ERCOT Texas Regional Entity's ("TRE") determination that each Level 3 and Level 4 Qualified Scheduling Entity ("QSE") should be required to register as a GOP, without regard to whether the QSE owns or operates generation facilities. CCG is writing this letter to ensure that TRE understands that, while CCG is a Level 3 and 4 QSE, CCG neither owns nor operates any generation facilities in ERCOT and, because it does not have the ability or authority to operate generation facilities, CCG is unable to comply with standards that are applicable to GOPs. CCG requests that TRE reconsider its determination that CCG be registered as a GOP and withdraw its recommendation to NERC that CCG be registered as a GOP in ERCOT. CCG also requests that TRE take these actions promptly so that NERC will be able to grant CCG's protest prior to June 18, 2007, when FERC-approved Reliability Standards take effect.

CCG supports standards that enhance reliability of the bulk power system. However, the application of such standards must be effective in identifying the entities that are Generator Operators, as defined under NERC requirements, and consistently applied in all regions. As discussed more fully below, requiring CCG to register as a GOP in ERCOT is ineffective in ensuring that the entities that operate generation facilities are subject to applicable Reliability Standards and inconsistent with the application of NERC standards in other regions.

Mr. Anthony Shickhi, P.E.
 June 14, 2007
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CCG does not meet the criteria of the NERC Functional Model for GOP

TRE's classification of Level 3 and Level 4 QSEs that own no physical assets connected to the bulk power system as GOPs contradicts the very clear definition of the GOP in the NERC Reliability Functional Model (Version 3), Function Definitions and Responsible Entities. The GOP definition states that a GOP operates generating unit(s) to provide real and reactive power.

The GOP tasks are defined as:

1. Formulate daily generation plan.
2. Report operating and availability status of units and related equipment, such as automatic voltage regulators.
3. Develop annual maintenance plan for generating units and perform the day-to-day generator maintenance.
4. Operate generators to provide real and reactive power or reliability-related services per contracts or arrangements.
5. Monitor the status of generation plant protective relaying systems and transmission line protective relaying systems on the transmission lines connecting the generation plant to the transmission system.

The GOP definition and tasks clearly apply to the entity that physically operates a generation facility ("Physical Operator") and do not apply to an entity which has entered into a contract to purchase the output of and/or request the scheduling of the generation facility (the "Power Purchaser"). Below is a further illustration of the distinction between the Physical Operator and CCG, as Power Purchaser, with respect to those facilities in ERCOT for which CCG is a Level 3 or 4 QSE, related to each of the tasks listed in the NERC Functional Model:

1. Formulate daily generation plan: CCG has no authority or ability to formulate the daily generation plan and does not formulate such a plan. The Physical Operator determines the daily availability of the generation resource and in turn communicates that availability to Power Purchaser. Power Purchaser then relays this availability to the ERCOT Independent System Operator ("ERCOT ISO") through the ERCOT ISO's Resource Plan interface on behalf of the Physical Operator.
2. Report operating and availability status of units and related equipment, such as automatic voltage regulators: CCG has no ability to determine the operating and availability status of units or related equipment, such as automatic voltage regulators. Only the Physical Operator has the ability to make such determinations. The Physical Operator will notify the Power Purchaser with respect to certain equipment and control status changes as they apply to the generation resource and, the Power Purchaser may relay such information to the ERCOT ISO or applicable transmission provider.
3. Develop annual maintenance plan for generating units and perform the day-to-day generator maintenance: CCG has no authority or ability to develop an annual maintenance plan for generation resources or to perform day-to-day generation maintenance. The Physical Operator develops the annual maintenance plan for the

Mr. Anthony Shiekhi, P.E.

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generation resource with respect to scheduling, cost, equipment, and manpower, taking into account, among other things, its contractual obligations with respect to outage schedules. The Physical Operator also maintains and manages the daily operation of the generation resource. The Power Purchaser relays the annual maintenance plan, on behalf of the Physical Operator, in accordance with the Physical Operator's plan, using the ERCOT ISO's Outage Scheduler.

4. Operate generators to provide real and reactive power or reliability-related services per contracts or arrangements: CCG has no authority or ability to operate generation facilities to provide real and reactive power. The Physical Operator solely maintains and manages the daily operation and providing real and reactive power. The Power Purchaser has the ability to request that the Physical Operator schedule energy and ancillary services to the extent permitted under the parties' power sales agreement and the Physical Operator then notifies the Power Purchaser whether the Physical Operator will operate the plant to meet those schedules. However, these contractual arrangements do not convey to the Power Purchaser any authority or ability to operate the generation facilities.
5. Monitor the status of generation plant protective relaying systems and transmission line protective relaying systems on the transmission lines connecting the generation plant to the transmission system: CCG has no ability or authority to monitor the status of protective systems. The Physical Operator solely maintains and manages the operation associated with running the generation resource.

As described above, while CCG relays certain information provided by the Physical Operator to the ERCOT ISO, that information reflects the determinations of the Physical Operator and does not convey to CCG the ability or authority to operate the facilities or to compile the relevant information independently. Because CCG, as Power Purchaser, meets none of the criteria set forth in the NERC Functional Model, it should not be registered as a GOP.

Because CCG is not the Physical Operator, it is unable to comply with the applicable Reliability Standards

During the NERC registration process, the TRE informed CCG that the TRE had made an across-the-board determination that any entity that has a "Level 4" QSE designation should be registered as a GOP, regardless of whether or not the QSE actually operates generation facilities. Thus, at TRE's direction, CCG submitted a request to be registered as a GOP, and also requested registration as a PSE. The TRE then accepted CCG's GOP registration but rejected its PSE registration.

However, as noted on the attached protest submitted to NERC, CCG does not believe it was appropriate for the TRE to require CCG to register as a GOP. CCG currently does not own any generation facilities within the ERCOT region, and is not the Physical Operator for any such facilities. While CCG does, pursuant to contracts, relay certain information from the Physical Operator to the ERCOT ISO for generation facilities in the region that are owned by nonaffiliates, it does not operate the facilities. Rather, CCG has determined that the Physical

Mr. Anthony Shiekhi, P.E.

June 14, 2007

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Operator of the generation facilities perform the functions outlined in the NERC Standards applicable to GOPs. For example, EOP-004-1 R2 requires GOPs to “promptly analyze Bulk Electric System disturbances on its system or facilities.” However, CCG does not own or operate the equipment required to comply with this requirement, and has no authority or ability to monitor such equipment. Similarly, PRC-001-1 R1 requires GOPs to “be familiar with the purpose and limitations of protection system schemes applied in [the relevant] area.” Again, CCG has no authority or ability to obtain information on protection schemes in the area. As a final example, VAR-002-1 R1 requires GOPs to “operate each generator connected to the interconnected transmission system in the automatic voltage control mode (automatic voltage regulator in service and controlling voltage) unless the Generator Operator has notified the Transmission Operator.” CCG does not have any control over this type of equipment located at the relevant generation facilities and has no authority or ability to monitor the Physical Operator’s compliance with this requirement.

NERC’s registration of CCG as a GOP clearly is erroneous and inconsistent with the practices in other regions

As set forth above, only the Physical Operator of a generation facility has the ability to comply with the applicable Reliability Standards. CCG, as a Power Purchaser, has no authority or ability to perform the actions required under those standards. To the extent that CCG, as QSE, relays information to the ERCOT ISO of the type that a GOP may be required to provide under Reliability Standards, CCG does so only on behalf of the Physical Operator. Accordingly, NERC’s registration of CCG as a GOP clearly is erroneous. Finally, TRE has suggested that these concerns can be resolved by completing forms that allocate responsibility for Reliability Standards among multiple entities, as noted on the e-mail included as Attachment B. However, because CCG has no ability or authority to comply with any of the relevant standards, these forms do not provide a means to resolve this issue. The only solution is for NERC to grant CCG’s protest and to take whatever steps it believes are necessary to ensure that the Physical Operator is registered as GOP.

Finally, CCG notes that this registration also is inconsistent with the practice of other regions (e.g., Reliability First Corporation and Northeast Power Coordinating Council) where CCG purchases power under similar agreements and, among other things, relays information provided by the Physical Operator to the relevant ISO, but which have not required that CCG register as GOP.

Mr. Anthony Shiekhi, P.E.

June 14, 2007

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CCG would like to continue an open dialogue with the TRE to work for a mutually acceptable resolution to this issue. CCG understands the importance for adherence by market participants to the NERC Reliability Standards, and to that end, CCG will work to ensure safe and reliable system operation. CCG's commitment to reliability, however, does not overcome the fact that, because it does not operate generation facilities in ERCOT, it is not capable of complying with applicable Reliability Standards.

Regards,



Donna M. Sauter

Senior Counsel

Constellation Energy Group, Inc.

cc: David Hilt
Stuart Rubenstein
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Attachment A to the Constellation's June 14, 2007 Supplemental Letter to TRE, which is a copy of Constellation's May 4, 2007 NERC Appeal, has been removed because a copy of Constellation's May 4, 2007 NERC Appeal is included in Attachment A to Constellation's July 11, 2008 Appeal to FERC.

Attachment C

TRE Assessment



Entity in Appeal: Constellation
Energy Commodities Group, Inc.

REGIONAL ASSESSMENT
RESPONSE TO REGISTRATION APPEAL

Date: 10/03/2007
Region: ERCOT
Registered Function in question: GOP, PSE

EXECUTIVE SUMMARY

Constellation Is a Generator Operator Under NERC Reliability Functional Model—Version 3 and All Other Applicable Authorities.

Constellation's registration as a GOP is correct. A proper application of the facts to the pertinent functions and relationships requires that NERC maintain Constellation's registration of as a GOP:

1. FERC has approved rules under which users, owners, and operators of the "Bulk-Power System within the United States" are required to register (or be registered) with NERC and the Texas RE in accordance with NERC's rules. As FERC has confirmed, an entity can be registered as a responsible entity, even if it is not directly responsible for completing the task or fostering the interrelationships relative to other Responsible Entities. FERC and NERC rules and policy require the registration of the entity responsible for ensuring that all tasks within a function are completed, even where others may actually perform the task or handle the relationships for or with the registered entity. There must be clarity in assignment and no gaps or unnecessary redundancies with regard to the entity or entities responsible for compliance with the requirements of each relevant Reliability Standard.
2. The NERC Registry Criteria are to the same effect, providing for the registration of any user, owner, or operator that is "material to the reliability of the bulk-power system." Although the NERC Registry Criteria provide detailed circumstances in which an otherwise qualifying Responsible Entity may escape responsibility, no exemption is applicable here. Constellation does not meaningfully dispute that the generation resources under its control as an ERCOT "Qualified Scheduling Entity" meet the criteria NERC has set out for exclusion. Nor does Constellation contend that the control of the pertinent Bulk-Power System assets has been transferred to another operator, such as a Joint Registration Organization. Rather, if anything, Constellation's agreement with its resource, PRL/CEG, and its agreement with the ERCOT-ISO to be a QSE constitute agreements contemplated in the NERC Registry Criteria for the registration and reliability responsibility to be transferred *to* Constellation.
3. The NERC Reliability Functional Model—Version 3 "defines the set of Functions that must be performed to ensure the reliability of the bulk electric system. Each Function consists of a set of reliability Tasks. The Model assigns each Function to a Responsible Entity, that is, the *entity responsible for ensuring the Function is performed*. The Model also defines the interrelationships between that Responsible Entity and other Responsible Entities (responsible for performing other Functions)." Here, it is very clear that Constellation's role as QSE and as a party contracted with a resource makes it the entity

responsible for ensuring that the GOP Function is performed and the applicable reliability standards are met.

In addition, Texas RE provides the following extensions of the analysis:

1. Attachment 1, entitled Outline of Rules and Standards Requiring Registration, lays out the FERC Part 39 Rules, the NERC Rules of Procedure, the NERC Compliance Registry Criteria, the NERC Reliability Functional Model—Version 3 (and NERC Reliability Functional Model Technical Document—Version 3), and FERC policy that requires registration of Constellation as a GOP.
2. Attachment 2, entitled “TRE Constellation NERC Model GOP Tasks,” is a tabular comparison of the GOP tasks under the NERC Model correlated with the designated responsible entity type, the ERCOT practice, and quotations from relevant ERCOT protocols and operating guides that govern the activities of a QSE giving rise to the GOP registration.
3. Attachment 3, entitled “TRE Constellation NERC Model GOP Responsibilities/Relationships,” is a tabular comparison of the GOP functional relationships under the NERC model correlated with the designated responsible entity type, the ERCOT practice, and quotations from relevant ERCOT protocols and operating guides that govern the activities of a QSE giving rise to the GOP registration.

NERC should confirm Constellation’s registration as a GOP.

Texas RE Accepts Constellation’s Offer of Voluntary, Additional Registration as a Purchasing-Selling Entity (“PSE”) Under NERC Reliability Functional Model—Version 3.

Although Texas RE continues to contend that Constellation should be registered as a GOP, it is entirely appropriate for certain users, operators, or owners of Bulk Power System assets to be registered in more than one capacity. Texas RE agrees that Constellation should be registered as a PSE.

STATEMENT OF THE APPEAL

On or about May 4, 2007, Constellation Energy Commodities Group, Inc. (“Constellation”) filed its letter appealing Texas Regional Entity’s (“Texas RE”) registration of Constellation as a Generator Operator (“GOP”) in the North American Electric Reliability Corporation (“NERC”) Compliance Registry for the Texas RE Region (the “Dispute Letter”). Constellation contended that rather than be registered as a GOP, it should be registered as a Purchasing-Selling Entity (“PSE”). Constellation has supplemented its Dispute Letter with further argument via a letter addressed to Tony Shiekhi, Texas RE Compliance Engineer, dated June 14, 2007 (“Supplemental Letter”).

Constellation acknowledges in its Dispute Letter that it has obtained several “Qualified Scheduling Entity” or “QSE” designations within ERCOT. Constellation argues, however, that in its role as a QSE, it neither owns nor physically operates the generation resources it controls, it does not directly perform the reliability tasks or handle the interrelationships for which a GOP is responsible, and it cannot, therefore, be held to the reliability standards associated with a GOP. In short, Constellation contends that its registration as a GOP should be rescinded and a PSE registration should be adopted in its place.

RULE

Pursuant to section 215 of the Federal Power Act, 16 U.S.C. §824o, FERC has jurisdiction over NERC as the Electric Reliability Organization (“ERO”), Texas RE as NERC’s delegee, and all users, owners, and operators of the bulk-power system.¹ Pursuant to section 215, FERC has certified NERC as the ERO and authorized NERC to enter into a delegation agreement with Texas RE with respect to registration of users, owners, and operators and to enforcement of reliability standards.²

18 C.F.R. §39.2(c) states that “[e]ach user, owner and operator of the Bulk-Power System within the United States (other than Alaska and Hawaii) shall register with the Electric Reliability Organization and the Regional Entity for each region with which it uses, owns, or operates Bulk-Power System facilities, *in such manner as prescribed in the Rules of the Electric Reliability Organization and each applicable Regional Entity.*”³

Further, Rule 501.1 of NERC’s *Rules of Procedure* states that 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 have no material impact on the bulk-power system.

The relevant provisions of the foregoing authorities, together with the pertinent provisions of the *Statement of Compliance Registry Criteria (Rev. 3.0)*, Sections I, II, and III, and the *Reliability Functional Model—Version 3*, are set forth and discussed in Attachment 1 to this Response, entitled “Rules and Standards Requiring Registration.”

STATEMENT OF FACTS

As is set out in its Dispute Letter and Supplemental Letter, Constellation has obtained QSE designations within the ERCOT region, permitting it to represent “Load Serving Entities” (“LSEs”) and “Resource Entities.” Constellation’s QSE designations include both Level 3 designations, which permit it to perform inter-QSE trades and represent both LSEs and Resource Entities, and Level 4 designations, which enable it to perform all the functions of a Level 3 QSE, and to schedule “ancillary services” and perform other market and operational functions, all as is more particularly described in the ERCOT Protocols and Operating Guides. Constellation contends that it does not own or operate physical assets connected with the Bulk Power System, but has contracted with, among other persons, a Resource Entity known as Power Resources, Ltd. (“PRL”)/CE Generation, LLC (“CEG”) that owns physical assets for the generation of power. Constellation admits to performing the functions of a Level 3 and Level 4 QSE, but denies physically operating the PRL/CEG generation facilities. Constellation also claims that it does not “own or operate” or “control” certain unspecified equipment it contends is necessary to carry out “Generator Operator” (“GOP”) “Tasks” or interrelationships.⁴

On or about July 13, 2007, PRL/CEG, supporting Constellation’s registration as GOP, provided additional factual information that is helpful in determining the question of Constellation’s registration as a GOP (the “PRL/CEG Letter”). PRL/CEG stated that PRL “holds legal title to the Power Resources generating facility in Big Spring, Texas.”⁵ PRL and CEG also stated,

¹ See 16 U.S.C. §824o(b); see also Part 39 Rules, adopted under *In the matter of Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Docket No. RM05-30-000, Order No. 672, 114 FERC ¶61,104 (Issued February 3, 2006) (Order No. 672 or, where FERC’s rules are referenced, Part 39 Rules).

² See Order No. 672 and 18 C.F.R. §§39.8 (delegation) and 39.7 (enforcement).

³ *Id.* (emphasis added).

⁴ Dispute Letter at 1-2; Supplemental Letter at 1-4.

⁵ PRL/CEG Letter at 1.

however, that in January of 2007, Constellation entered a “tolling agreement” under the terms of which Constellation “purchases all of the capability of the project, including electric generation capacity, thermal energy, and electric energy.” Pursuant to the contract, Constellation “exercises complete contractual control” of the facilities, purchases and sees to the delivery of all fuel consumed at the plant, and “exclusively handles” the relationships relating to the facilities in the provision of power.⁶

Contrary to Constellation’s complaints, PRL/CEG contends, Constellation *does* exercise the kinds of control over the generation facilities that make it eligible to be a GOP under the NERC Reliability Functional Model—Version 3 (“NERC Model”). Not only does Constellation have complete contractual control over scheduling the output of the plants, Constellation is also the exclusive and direct communicator of reliability-oriented information to the Balancing Authority (“BA”), the Transmission Operator (“TOP”), and the Reliability Coordinator (“RC”), roles that ERCOT-ISO fills in the ERCOT region.

REGIONAL ENTITY RESPONSE

Contrary to Constellation’s complaints, it and other QSEs are a comfortable fit for GOP designation based upon the definitions, tasks, and relationships described in the NERC Model. Constellation clearly is responsible for the performance of the Reliability Tasks and maintenance of the relationships characteristic of an entity to be registered as a GOP, and its registration as such should be upheld.

Moreover, this is particularly true for Constellation under the facts set forth in its Dispute Letter and Supplemental Letter, and in the PRL/CEG Letter.

The overwhelming majority of tasks and functions attributable to a GOP are captured in the duties and obligations of a QSE, such as Constellation. And, where there is no perfect fit, Constellation in its role as QSE—and under its contract with the generation resource, PRL—has the exclusive ability to demand that its generation resource perform the task or engage in activities relative to the pertinent relationships.

At bottom, the question of whom to register rests upon who is responsible for the asset made the basis of the relevant reliability standards. Because Constellation, a Level 3 or Level 4 QSE for the relevant generation facilities, has the authority arising out of contracts and QSE status to require that generator resource operations occur in a manner that fulfils the requisite reliability functions, to obtain the information necessary to determine compliance, and the obligation under ERCOT protocols and operating guides to communicate with ERCOT-ISO the relevant information, it is clear that Constellation is the correct entity to be registered as GOP. Constellation’s registration as GOP should be confirmed.

A. Constellation Is a “Qualified Scheduling Entity” in ERCOT.

As Constellation has pointed out, it is a QSE under ERCOT protocols. Under ERCOT protocols, a QSE is “[a] Market Participant that is qualified by ERCOT in accordance with Section 16, Registration and Qualification of Market Participants, to submit Balanced Schedules and Ancillary Services bids and settle payments with ERCOT.”⁷ And, Constellation is not merely a QSE. As Constellation has admitted, it is a Level 3 or Level 4 QSE.

⁶ *Id.*

⁷ *Id.* at 2-24.

Importantly, QSE applicants must have certain qualifications or attributes to take on the various levels of QSE qualification. The ERCOT Qualification Guide states:

Levels of QSE Qualification

For administrative purposes ERCOT classifies QSEs in four (4) service levels. This is to ensure qualification commensurate with the types of services each QSE expects to perform in the market.

- Level 1** Qualified to perform Inter-QSE trades only; does not have direct representation of Load Serving Entities or Resource Entities.
- Level 2** Qualified to represent Load serving Entities; does not have direct representation of Resource Entities; may also perform level 1 activity.
- Level 3** Qualified to represent Load Serving Entities and/or Resource Entities without providing Ancillary Services; may also perform level 1 and 2 activities.
- Level 4** Qualified to represent Load Serving Entities and/or Resource Entities and provide Ancillary Services; may also perform level 1, 2 and 3 activities.⁸

In its role as Level 3 or Level 4 QSE, Constellation fits the definition and functions of a GOP under virtually every applicable rule or standard.

B. All Applicable Federal Standards Support Constellation's Registration as a GOP.

1. FERC's Part 39 Rules and Orders and NERC's Rules Lay the Foundation for Registrations.

As is set out in greater detail in Attachment 1, FERC has approved rules under which users, owners, and operators of the "Bulk-Power System within the United States" are required to register (or be registered) with NERC and the Texas RE in accordance with NERC's rules. Specifically, 18 C.F.R. §39.2(c) provides, "Each user, owner and operator of the Bulk-Power System within the United States (other than Alaska and Hawaii) *shall register* with the Electric Reliability Organization and Regional Entity *for each region within which it uses, owns or operates Bulk-Power System facilities*, in such manner as prescribed in the Rules of the Electric Reliability Organization and each applicable Regional Entity."⁹

As the Commission put it, "[T]here is a difference between being assigned to perform a task and being responsible for completing the task. The organization that registers with NERC to perform a function will be the responsible entity and, while it may delegate the performance of that task to another, it may not delegate its responsibility for ensuring the task is completed. . . . [NERC and Texas RE are to] assure that there is clarity in the assigning responsibility and that there are no gaps or unnecessary redundancies with regard to the entity or entities responsible for compliance with the Requirements of each relevant Reliability Standard."¹⁰

NERC has expressed the same policies. As is set forth in NERC *Rules of Procedure*, §501.1.4, "For all geographical or electrical areas of the bulk power system, the registration process shall ensure that (1) no areas are lacking any entities to perform the duties and tasks identified in and

⁸ See ERCOT QSE Qualification Guide <http://www.ercot.com/services/rq/qse/index.html>).

⁹ *Id.* (emphasis added).

¹⁰ *In the matter of Mandatory Reliability Standards for the Bulk Power System*, Docket No. RM06-16-000, Order No. 693 at ¶145 (Issued March 16, 2007)

required by the reliability standards to the fullest extent practical, and (2) there is no duplication of such coverage or of required oversight of such coverage.”¹¹

Constellation clearly is responsible for the “use” or “operation” of material bulk-power system facilities as a Level 3 or Level 4 QSE. And, if Constellation is not assigned the tasks or relationships, as we explain below, there is a serious question of whether *anyone* would perform them. FERC and NERC Rules and policy, therefore, require Constellation’s registration.

2. NERC Registry Criteria Require Constellation’s Registration as a GOP

Again, as is set out in greater detail in Attachment 1, NERC has expressed similar policies in its Registry Criteria. Specifically, NERC has said, “NERC and [Texas RE] have the obligation to identify and register all entities that meet the criteria for inclusion in the compliance registry . . .”¹² Constellation does not in any meaningful way dispute that the generation resources under its control meet the criteria NERC has set out for exclusion (*see Attachment 1* for a detailed explication of the criteria). Nor does Constellation contend that the control of the assets has been transferred to another operator, such as a Joint Registration Organization (JRO). Specifically, under the NERC Registry Criteria:

- (a) There can be little question but that a QSE is “material to the reliability of the bulk-power system.”¹³
- (b) Likewise, as is demonstrated in the main body of the argument, above, a Level 3 or Level 4 QSE unquestionably “uses” or “operates” elements of the bulk-power system, and the specific facilities under Constellation’s control do not fall below any regulatory minimums for exclusion under Section I of the NERC Registry Criteria.
- (c) Constellation as QSE fits the definition of GOP set forth in Section II of the NERC Registry Criteria, particularly as illuminated in the NERC Model and the NERC Model Technical Document.
- (d) Section III states, in effect, that the “physical” operator that Constellation wishes to tag “*will not be registered [based upon statistical qualifying criteria] if responsibilities for compliance with approved NERC reliability standards or associated requirements . . . have been transferred by written agreement to another entity that has registered for the appropriate function for the transferred responsibilities*”—which is the exact effect of Constellation’s “tolling agreement” with PRL/CEG and its QSE agreement with ERCOT-ISO. If PRL/CEG would otherwise be subjected to the registration, it may not be registered because Constellation has been transferred responsibility for the function.¹⁴

¹¹ NERC *Rules of Procedure*, §501.1.4 (approved in *In the matter of North American Electric Reliability Corporation*, Docket No. RR06-1-003, Order on Compliance Filing, 118 FERC ¶61,030 (Issued January 18, 2007)).

¹² NERC Statement of Compliance Registry Criteria (Rev. 3) at 1 (02/06/2007) (NERC Registry Criteria).

¹³ NERC Registry Criteria at 3.

¹⁴ *Id.* (emphasis in original).

3. The NERC Reliability Functional Model—Version 3 Identifies the Characteristics That Confirm Constellation as a GOP

a. The Definition of “GOP” in the NERC Reliability Functional Model—Version 3 Correlates With Constellation’s Role as QSE

Constellation correctly states the NERC Model definition of “GOP” in the Supplemental Letter as one who “[o]perates generating unit(s) to provide real and reactive power.”¹⁵ Constellation contends that it does not have sufficient “physical” or operational control over the generation facilities to qualify as GOP. Constellation fails to recognize, however, that the NERC Model is supported by the *NERC Reliability Functional Model Technical Document—Version 3* (February 13, 2007)(NERC Model Technical Document), which states, in connection with its clarification of the GOP role, that a Generator Owner—the “physical operator” on which Constellation seeks to place responsibility for the GOP functions—“may also . . . designate a separate organization to perform the Generator Operator service.”¹⁶ This is what a resource does in contracting with a Level 3 or Level 4 QSE, as is the case here.

Constellation also fails to recognize, consistently with the NERC Model Technical Document, that the verb “operates” captures a broader scope of activities than the function of the person who physically flips the switches (so to speak) to start or regulate generation. For instance, in Black’s Law Dictionary, the term “operate” means not only “[t]o perform a function[] or operation,” it also means to “produce an effect.”¹⁷ In non-legal nomenclature, the term “operate” also means in Webster’s II, “[t]o control or direct the functioning of[,] . . . to conduct the affairs of[, . . . or . . . t]o bring about or effect.”¹⁸ These common definitions squarely describe what a QSE, and particularly a Level 3 or Level 4 QSE, does through its contracting and communications roles.¹⁹

Using Constellation’s rationale, it could be improper even to hold the corporate, physical manager of the generator—the “physical operator” in Constellation’s nomenclature—responsible for GOP duties. It is not the shareholders, directors, officers, or even the management of the “physical operator” after all, who have the power to physically manipulate the switches, to read the gauges, to call up or compile the pertinent information, or to transmit the reports of relevant activities. Instead, it is the lower level “operators” who make the physical functions occur. The persons performing the management or financial roles of the so-called “physical operator” may be able to *compel* the employees to perform these duties by withholding pay or threatening workplace discipline, but they have no power to physically compel the activities to occur.

Constellation’s argument underestimates the power of the contract to compel functions to occur in a manner that would satisfy reliability standards. Constellation holds the “managerial,” QSE role with respect to its resource entities in the ERCOT Bulk-Power System. Constellation is “responsible for ensuring” that the reliability standards applicable to a GOP are met, as the NERC Model provides (*see Attachment 1* for greater detail on the applicable sections from the NERC Model).

¹⁵ NERC Model at 46.

¹⁶ *Id.* at 19.

¹⁷ Black’s Law Dictionary at 984 (5th ed. 1979).

¹⁸ Webster’s II, New College Dictionary, at 767 (1995).

¹⁹ *See below*, description of QSE’s roles under its agreement with ERCOT-ISO and under ERCOT—ISO Protocols and Guides.

b. Constellation’s Agreement With ERCOT to be a QSE and Its Obligation to Follow ERCOT Protocols Correlate Well With Federal Criteria.

i. ERCOT/Constellation Agreement. As a condition of being permitted to hold the status of QSE, Constellation has signed and is bound by the terms of an Agreement with ERCOT (the “Constellation Agreement” or “Agreement”). Pursuant to Section 5 of the Agreement, Constellation agrees that it, as “[p]articipant[,] shall comply with, and be bound by, all ERCOT Protocols as they pertain to operation as a Qualified Scheduling Entity.”²⁰

In contrast, “resources,” including “generator resources,” that are not also QSEs, do not contract with or even communicate with ERCOT-ISO, but must reach agreement with a QSE to represent them with respect to its interaction with the market and the ERCOT interconnection. While a resource can be its own QSE, there is no suggestion in Constellation’s Dispute Letter that the generation resources it represents are performing QSE functions. Here, the QSE role is filled by Constellation, and the resource role is filled by PRL—but under Constellation’s contractual control.

ii. The Protocols. Within ERCOT, various market participants are assigned tasks under protocols. The ERCOT protocols are the result of a collaborative process conducted with and among all segments of market participants. Compliance with ERCOT protocols is tracked and infractions are enforced administratively under Texas law. A reading of the individual protocols relating to the interaction of a QSE with a generation resource is essential to a determination of whether a QSE possesses the attributes required of a GOP. It is clear that a Level 3 or Level 4 QSE has the attributes of a GOP.

For instance, under Section 16.2.1 of the Protocols, Constellation must meet certain standards to be permitted the status of QSE.²¹ Specifically, the Protocols provide:

To become and remain registered and qualified as a QSE, an Entity must:

- (1) Execute a Standard Form Market Participant Agreement;
- (2) *Demonstrate to ERCOT’s reasonable satisfaction that the Entity is capable of performing the functions of a QSE;*
- (3) *Demonstrate to ERCOT’s reasonable satisfaction that the Entity is capable of complying with the requirements of all ERCOT Protocols and guidelines;*
- (4) Satisfy ERCOT’s creditworthiness requirements as set forth in this Section;
- (5) *Comply with the backup plan requirements outlined in the ERCOT Operating Guides;* and
- (6) Be generally able to pay its debts as they come due. ERCOT may request evidence of compliance with this qualification only if ERCOT reasonably believes that a QSE is failing to comply with it.²²

Moreover, under Protocol 16.6.2, a QSE must have certain qualifications to become and to continue as a QSE:

To meet the minimum requirements for qualification by ERCOT a QSE must:

- (1) Submit an application for qualification, including any applicable fee;

²⁰ *Id.*

²¹ *Id.*

²² *Id.* (emphasis added).

- (2) Execute any required agreements relating to use of the ERCOT network, software and systems;
- (3) *Designate a representative who shall be responsible for operational communications and who shall have sufficient authority to commit and bind the QSE and Entities it represents;*
- (4) *Maintain a twenty-four (24) hour, seven (7) day per week scheduling center with qualified personnel for the purposes of communicating with ERCOT for scheduling purposes and for deploying the QSE's Ancillary Services in Real Time. These personnel shall be responsible for operational communications and shall have sufficient authority to commit and bind the QSE;*
- (5) Be financially responsible for payment of settlement charges for those Entities it represents as set forth in Sections 6, 7 and 9 of these Protocols;
- (6) *Demonstrate a working functional interface with the ERCOT System and all required ERCOT computer systems;*
- (7) *Comply with the backup plan requirements outlined in the ERCOT Operating Guides;*
- (8) Provide all necessary bank account information and arrange for Fed-Wire System transfers for two-way confirmation; and
- (9) Allow ERCOT, upon reasonable notice, to conduct a site visit for verification of provided information.²³

Each of the emphasized standards and qualifications relates to functions attributable to a GOP under the NERC Model. None applies to a resource that is not also a QSE. Further, under Protocol 16.5.2.2, a QSE accepts responsibility for compliance with all of its resources' scheduling and settlement transactions, as provided in the protocols.²⁴

Importantly, under ERCOT protocols, the QSE is responsible for the management of the resources and all communications between generation resources and ERCOT-ISO. In pertinent part, examples of these roles under the Protocols include the following:

- Protocol 8.2, entitled "Communications Regarding Resource Facility and Transmission Facility Outages," subsection 8.2.1, entitled "Single Point of Contact," requires a "Resource Entity [to] designate its QSE as its Single Point of Contact."²⁵
- Protocol 8.4.1, entitled "Resources Outage Plan," provides that "[w]hen ERCOT accepts a Maintenance Outage, ERCOT will coordinate the timing of the appropriate course of action within the Resource specified timeframe. The QSE will notify ERCOT verbally of the Outage and coordinate the time."²⁶
- Protocol 8.4.7, entitled "Outage Returning Early," provides that "[a] Resource that completes a scheduled Outage early may resume operation without ERCOT acceptance; however, the Resource's QSE shall notify the ERCOT Shift Supervisor verbally of the early return prior to resuming service. In the event of such an early return, the Resource

²³ *Id.* (emphasis added).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

or QSE must notify ERCOT of the early return as much in advance as practicable . . .”²⁷

- Protocol 6.10, entitled “Ancillary Service Qualification, Testing and Performance Standards” requires at subsection 6.10.1 that “QSEs providing Ancillary Services shall meet qualification criteria and performance measures to operate satisfactorily with ERCOT.”²⁸

Resource entities, including generation owners, may not communicate with ERCOT for *any* of these reliability-related purposes. The QSE, such as Constellation, takes up this responsibility when it is approved as a QSE.

c. The NERC Model Provides the Proper Framework for Analysis.

As the NERC Model introduces it, “[t]he Model defines the set of Functions that must be performed to ensure the reliability of the bulk electric system. Each Function consists of a set of reliability Tasks. The Model assigns each Function to a Responsible Entity, that is, the *entity responsible for ensuring the Function is performed*. The Model also defines the interrelationships between that Responsible Entity and other Responsible Entities (responsible for performing other Functions).”²⁹ Importantly, NERC does not classify Responsible Entities by what Tasks they physically perform themselves or relationships they maintain. Instead, NERC classifies users, owners, and operators of the Bulk Power System through an examination of the Tasks the performance of which, and interrelationships the maintenance of which, each category of Responsible Entity is “responsible for ensuring.”³⁰ Thus, whether a Registered Entity actually does the work of a Task or relationship is irrelevant; instead, the NERC Model requires that the party with power to *require* a Task be performed or relationship maintained be held accountable as the registrant. As is shown in the next two sections, Constellation as QSE is responsible for the bulk of the work attributable to a GOP.

i. Constellation’s Obligations as a Level 3 or Level 4 QSE Map Well With the Tasks Defining a GOP Under the NERC Model. While the match is not 100%, it is clear that a QSE—and particularly a Level 3 or Level 4 QSE—is the best entity in the ERCOT system to be named GOP under the terms of the NERC Model. Specifically, there is a close match between the “Tasks” enumerated in the NERC Model for a GOP and the tasks that a QSE is required to perform under ERCOT Protocols and Operating Guides and that Constellation is required to do under its Tolling Agreement with the GO, PRL/CEG.

For instance, a GOP is charged under the NERC model with “formulat[ing a] daily generation plan.”³¹ ERCOT Protocol §4.4.15 requires each QSE to present ERCOT with a generation “resource plan” at 4:00 p.m. each day. The QSE’s obligations fit the NERC Model task³²:

Each QSE that represents a Resource will present a Resource Plan to ERCOT at 1600. These Resources may be specific Generation Resources and/or [Loads acting as a Resource (]LaaRs[)]. The Resource Plan capacity should be sufficient to accommodate the combined quantity of energy and Ancillary Services scheduled by that QSE from the Resources that the QSE represents. The Resource Plan shall indicate the availability of

²⁷ *Id.* (And, of course, the *only* mode of communication of a notice that a resource can use is its QSE.)

²⁸ *Id.*

²⁹ *Id.* at 7 (emphasis added).

³⁰ See NERC Model at 7; NERC Model Technical Document at 26.

³¹ NERC Model at 46.

³² We do not translate all of the acronyms embedded in these quotes of Protocols or Operating Guides. The meanings of the acronyms may be found at <http://www.ercot.com/mktrules/protocols/current.html> “Definitions and Acronyms.”

the Resources represented by the QSE, including a lead-time status code, and the planned operating level of each Resource, for each hour of the Operating Day. The Resource Plan shall indicate the HOL and LOL, and HSL and LSL by Resource. A Resource may be listed as unavailable to ERCOT if the Resource's capacity has been committed to markets in regions outside of ERCOT. ERCOT shall use other Resource Dispatch options to maintain system reliability prior to Dispatching a Generation Resource below its LOL. ERCOT shall request Qualifying Facilities (QF), hydro units, and/or nuclear to operate below their LOL only after other Resource Dispatch options have been exhausted.

QSEs shall use best efforts, consistent with Good Utility Practice, to continually update their Resource Plans to reflect the current and anticipated operating conditions of the Resources. ERCOT will monitor the performance of QSEs with respect to the submission of accurate Resource Plans in accordance with the measures established in Section 4.10, Resource Plan Performance Metrics. ERCOT will work with individual QSEs as necessary to improve the individual QSE performance.³³

In addition, the NERC Model provides that a GOP must "[r]eport operating and availability status of units and related equipment, such as automatic voltage regulators."³⁴ ERCOT Protocol §5.5.1, applicable to QSEs, is to the same effect:

The QSE will notify ERCOT of an unplanned change in Resource status as soon as practicable following the change. The QSE representing the Resource will report any changes in Resource status to ERCOT in the Resource Plan by the beginning of the next hour following the change in status.

- (1) When the operating mode of a Generation Resource required to provide VSS's [Automatic Voltage Regulator (AVR)] or PSS is changed while the unit is operating, the QSE shall promptly inform ERCOT. The QSE shall also supply AVR or PSS status logs to ERCOT upon request.
- (2) Any short-term inability of a Generation Resource required to provide VSS to meet its reactive capability requirements shall be immediately reported to ERCOT and the TSP.³⁵

Similar obligations are imposed upon the QSE under Protocol §6.5.7.2. And, generation resources (GOs in NERC nomenclature) are *obligated* to provide information through their associated QSEs, including information about the unavailability of voltage regulators. Operating Guide §3.1.4.5 provides:

Generator Automatic Voltage Regulators and power system stabilizers will be kept in service whenever possible. Generation Entities shall notify their QSE, who in turn will promptly notify the ERCOT Control Area Authority by telephone of the circumstances, when a voltage regulator or stabilizer is unavailable due to maintenance or failure and when it is returned to normal operation.

Unit AVR and PSS modeling information required in the ERCOT Planning Criteria shall be determined from actual unit testing described in the Operating Guides. Within thirty (30) days of ERCOT's request, the results of the latest test performed shall be supplied to ERCOT and the TSP.³⁶

³³ *Id.*

³⁴ *Id.* at 46.

³⁵ *Id.*

³⁶ *Id.*

Other NERC Model tasks coincide with QSE responsibilities:

- One NERC Task provides, "Report operating and availability status of units and related equipment, such as automatic voltage regulators."³⁷ Because this Function is in actuality the communication of status information from the resource through the QSE to ERCOT, the QSE should be listed as "responsible."³⁸
- Another NERC Task provides, "develop annual maintenance plan . . .," and the same reasoning holds. While the generation resource no doubt offers the QSE a plan, it is up to the QSE to accept or reject it based upon the contractual relationship regarding the operation of the resource and the contractual obligations the resource and the QSE may have to provide the power generated by the resource into ERCOT. By no means may the plan be prepared without the QSE's input or concurrence, nor may it be communicated to ERCOT without the involvement of the QSE.

The coincidence of QSE responsibilities with GOP Tasks is particularly true in Constellation's role as a QSE under its Tolling Agreement with the resource. As CEG characterizes it, under the protocols applicable to a QSE and under its agreements with the resource, Constellation "is primarily responsible [for] maintaining relationships and communicating with third parties regarding the output and operations of the facility."³⁹

The same analysis holds true for each Task under the NERC Model Generation Operation Function, except for the task relating to the development of an annual maintenance plan and the performance of day-to-day maintenance; these functions are carried out by the "resource entity" under ERCOT Protocols.⁴⁰ At the same time, because of a QSE's responsibilities, it is highly unlikely that a resource will develop an annual maintenance plan—with scheduled outages and the like—without consulting with the QSE and taking its direction. And, these same Protocols direct that ERCOT receive notification of maintenance through the QSEs.⁴¹

Included with this response as Attachment 2 is a tabular analysis of NERC Model GOP Tasks and ERCOT Protocols and Operating Guide sections referenced therein. This analysis shows that for virtually every GOP-assigned Task, a QSE is appropriately charged with responsibility.⁴²

ii. Constellation's Relationships With Resources (GOs) and Its Obligations as a Level 3 or Level 4 QSE to Both GOs and ERCOT-ISO Map Well With the Relationships Attributable to a GOP Under the NERC Model. NERC's description of the relationships a GOP is generally responsible for maintaining with other Registered Entities closely corresponds with the functions performed by QSEs (and Level 3 or 4 QSEs, in particular). For instance, the first functional relationship of a GOP is that it is to "[p]rovide[] generation commitment plans to the Balancing Authority ("BA").⁴³ As is shown in Attachment 3, Protocol §4.4.15 provides that a QSE will present a "Resource Plan"—defined in ERCOT Protocols as "[a] plan provided by a QSE to ERCOT indicating the forecast state of Generation Resources or individual Loads each acting as a Resource, including information on availability, limits and forecast generation or Load of each Resource," ERCOT Protocols, Section 2, Definitions and Acronyms—to ERCOT

³⁷ NERC Model at 47.

³⁸ See Protocol §5.5.1.

³⁹ CEG Letter at 3.

⁴⁰ See, e.g., Protocol §8.1.3.2, Operating Guide §3.1.4.

⁴¹ See PR 8.2.

⁴² See Attachment 2 hereto; see also NERC Model at 46; CEG Letter at 2 (citing to the Constellation/PRL "tolling agreement" where the tasks relate to GOP functions, also referenced in Attachment 2, where applicable).

⁴³ NERC Model at 47.

each day by 4:00 p.m. Only a QSE may perform this function. Resources, generation facility owners, may not communicate this information to ERCOT-ISO. Constellation as QSE clearly must.

The second GOP relationship is that the GOP “[p]rovide[the] Balancing Authority and Transmission Operator with requested amount of reliability-related services.”⁴⁴ Again, in the ERCOT region, a QSE is responsible for all coordination activities between the generation resource and ERCOT-ISO, which occupies and is registered as both Balancing Authority and Transmission Operator for all of the ERCOT-ISO geographic area. The ERCOT Protocols, including Protocol §6.3.2, require that QSEs maintain these kinds of relationships and provide this type of information.⁴⁵

The third GOP relationship is that the GOP “[p]rovide[] operating and availability status of generating units to [the] Balancing Authority and Transmission Operator for reliability analysis.”⁴⁶ In addition to the ERCOT Protocols described above that govern the communications relationship of the parties, Protocol §5.5.1 specifically charges the QSE with notifying ERCOT of the requisite conditions. While it is generally true that the QSE will obtain the necessary information from its corresponding generation resource, there is *no* communications role for the resource, except to communicate with the QSE. Under the Protocols and under its contract, Constellation has the power to require and obtain the information necessary to fulfill the reliability relationships described. The generation resource does not.

As is shown in Attachment 3, the same analysis holds true for every GOP relationship, with the possible exception of “[o]perat[ing] generators to provide real and reactive power or reliability-related services per contracts or arrangements.”⁴⁷ Yet even here, it is the QSE that is responsible to the grid for that function, even if the power is actually, physically generated by the generation resource. It is entirely consistent to make the QSE such as Constellation responsible for the relationship, even if some parts of it involve the relay of power via contract or arrangement, rather than physically.

The same is true for other NERC Model relationships.⁴⁸ And, again, this is particularly true in Constellation’s role as a QSE under its Tolling Agreement with the resource. As CEG characterizes it, under the protocols applicable to a QSE and under its agreements with the resource, Constellation “is primarily responsible [for] maintaining relationships and communicating with third parties regarding the output and operations of the facility.”⁴⁹

C. Constellation’s Analysis of Approved Reliability Standards Fails to Erase Its Responsibility for the Functions as QSE and GOP.

Constellation purports to analyze a handful of the NERC Standards applicable to GOPs, claiming that because its hands are not on the boiler valve, so to speak, it cannot be the entity responsible for the GOP Reliability Standards. Again, Constellation is incorrect.

For instance, Constellation suggests that it cannot be held responsible for EOP-004-1 R2, because it cannot “promptly analyze Bulk Electric System disturbances on its system or

⁴⁴ NERC Model at 47.

⁴⁵ See Attachment 3.

⁴⁶ NERC Model at 47.

⁴⁷ NERC Model at 47.

⁴⁸ See Attachment 3.

⁴⁹ CEG Letter at 3.

facilities.”⁵⁰ Constellation complains that it “does not own or operate the equipment required to comply with this requirement.”⁵¹ Constellation also claims that it does not “control” the equipment needed for compliance. Based upon its voluntarily undertaken obligations as a QSE and under its contracts with PRL, this is simply wrong.

EOP-004-1 R2 provides the input needed for other EOP-004-1 requirements, including the preparation of reports, such as the “preliminary written report to its Regional Reliability Organization [(RRO)] and NERC.”⁵² In the course of performing the responsibilities captured under R1 and R2, employees of, more than likely, the GO will be responsible for ensuring that the necessary data has been collected, depending upon its responsibilities under contract to the GOP/QSE. Either an employee of the GO or of the GOP/QSE—or both—may be responsible for the statistical analysis, and yet another employee may be responsible for comparison of the data with the regulatory standard. Still another employee could be responsible for writing the report, still another for proofreading the report, and still another for approving the report. Finally, someone has to mail or email the report to the RRO and NERC.⁵³

Using Constellation’s “logic,” *no one* could be compelled to submit the information in conformity with R2 (and related requirements) because no one human is responsible for every item of work or has possession at its genesis of all of the information that is required to perform a task. And, no business could be made responsible for the performance of the responsibilities under the standard because no one business does everything within the function. Under FERC and NERC policy, this is nonsense. While FERC and NERC policies express a desire to avoid redundancy in responsibility, they also seek to avoid gaps in reliability coverage for Bulk Power System assets.⁵⁴

Moreover, where Constellation and the QSE status are concerned, Constellation *is* the best choice for the office of GOP. While it may be true that Constellation must rely on information obtained from its GO coordinates, it and only it is responsible in the ERCOT system as QSE for obtaining, maintaining, and transmitting that type of information to ERCOT. And, more, even if it were not so as a result of the regulatory operations associated with being a QSE, it would be so based upon Constellation’s powers and duties under its Tolling Agreement with PRL. Only Constellation combines the power to demand the assembly of the information and to require or perform its analysis with the authority to communicate the information to, *e.g.*, ERCOT-ISO.

In addition, Constellation suggests that it cannot possibly execute the requirements of PRC-001-1 R1, which provides that a GOP “be familiar with the purpose and limitations of protection system schemes applied in its area,”⁵⁵ because it does not have “control of this type of equipment.”⁵⁶ But this requirement is about information, not equipment. R1 here, like EOP-004-1 R2, has downstream impacts on information reporting to other Responsible Entities, none of which care about who physically assembled the spreadsheet, so long as the information is accurate, complete, and timely. Constellation has the power to require PRL as its corresponding resource to provide it with all of the information it requires about the workings of the plant to know the “purpose and limitations” of the system protections affecting the generator and to

⁵⁰ Dispute Letter at 1.

⁵¹ *Id.*

⁵² Standard EOP-004-1—Disturbance Reporting at 1 of 13.

⁵³ ERCOT OG 3.1.3.4 makes it clear that the QSE has responsibility for providing DOE disturbance reports. This corresponds to R3 of the same NERC standard.

⁵⁴ *See* Attachment 1.

⁵⁵ *Id.*

⁵⁶ Dispute Letter at 2.

enable the reporting of that information as it may be needed under other requirements.

Finally, Constellation contends that it cannot comply with VAR-002-1 R1, because Constellation “does not have any control over [automatic voltage control] equipment on behalf of the relevant generation facilities.”⁵⁷ Again, this requirement is about control and supervision, not physically flipping switches or reading dials. As we have pointed out above, only Constellation brings together the power to demand that PRL operate as required, to require the continuation of the condition, and to communicate the information to, *e.g.*, ERCOT-ISO.

It is certainly possible that there are standards that a QSE registered as GOP cannot ensure are performed reliably, but Constellation has not identified one.

REGION’S CONCLUSION/RECOMMENDATION:

Constellation is properly included in the NERC Compliance Registry as a GOP and may be included as a PSE. The appeal filed May 4, 2007, should be denied.

DENIED BY: **Texas Regional Entity,
 a division of Electric Reliability Council of Texas**

By: _____
 Larry Grimm
 Acting Chief Compliance Officer

October 3, 2007

⁵⁷ Dispute Letter at 4.

ATTACHMENT 1

INDEX: OUTLINE OF RULES AND STANDARDS REQUIRING REGISTRATION

- A. Part 39—Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards.**
- B. NERC's *Rules of Procedure*, Section 501.**
- C. NERC Compliance Registry Criteria.**
- D. The NERC Reliability Functional Model—Version 3.**
- E. FERC Policy on Registration of Responsible Entities.**

Rules and Standards Requiring Registration

Texas RE's registration of Constellation as a GOP is required by the standards set forth in FERC's Part 39 Rules, the NERC Rules of Procedure, the NERC Statement of Compliance Registry Criteria (Revision 3), and the NERC Reliability Functional Model—Version 3, as well as by FERC policy and industry standards.

- A. Part 39—Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards. FERC has approved rules under which users, owners, and operators of the “Bulk-Power System within the United States” are required to register (or be registered) with NERC and the Texas RE in accordance with NERC's rules. Specifically, 18 C.F.R. §39 provides, in pertinent part:

§39.1 Definitions.

As used in this part:

Bulk-Power System means facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof), and electric energy from generating facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy.

* * *

Interconnection means a geographic area in which the operation of Bulk-Power System components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain Reliable Operation of the facilities within their control.

* * *

Reliable Operation means operating the elements of the Bulk-Power System within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a Cyber security Incident, or unanticipated failure of system elements.

* * *

§39.2 Jurisdiction and applicability.

* * *

- (b) All entities subject to the Commission's reliability jurisdiction under paragraph (a) of this section shall comply with applicable Reliability Standards, the Commission's regulations, and applicable Electric Reliability Organization and Regional Entity Rules made effective under this part.
- (c) Each user, owner and operator of the Bulk-Power System within the United States (other than Alaska and Hawaii) *shall register* with the

Electric Reliability Organization and Regional Entity *for each region within which it uses, owns or operates Bulk-Power System facilities*, in such manner as prescribed in the Rules of the Electric Reliability Organization and each applicable Regional Entity.

Id. (emphasis added).

As is clear from the discussion above, Constellation clearly “uses” or “operates” material bulk-power system facilities as a Level 3 or Level 4 QSE. FERC Rules, therefore, require Constellation’s registration.

- B. NERC’s Rules of Procedure, Section 501. Rule 501 of the NERC *Rules of Procedure* states that “[a]n 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 have no material impact on the bulk-power system.*” *Id.* (emphasis added). Section 501 provides, in pertinent part:

1. **Compliance Registry** — NERC shall establish and maintain a compliance registry of the bulk power system owners, operators, and users that are subject to approved reliability standards.

* * *

- 1.2 NERC and regional entities assisting NERC in the development of the compliance registry shall consider the following factors in determining which organizations should be placed in the registry:

1.2.1 *Owners and operators of bulk power system facilities will generally be included in the registry;*

1.2.2 *As identified by regional reliability organizations, electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher will be considered part of the bulk power system;*

* * *

1.2.5 *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 have no material impact on the bulk power system;*

1.2.6 *Notwithstanding the other considerations in the 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;*

* * *

- 1.4 *For all geographical or electrical areas of the bulk power system, the registration process shall ensure that (1) no areas are lacking any 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 duplication of such coverage or of required oversight of such coverage.*

* * *

NERC *Rules of Procedure*, §501 (approved in *In the matter of North American Electric Reliability Corporation*, Docket No. RR06-1-003, Order on Compliance Filing, 118 FERC ¶61,030 (Issued January 18, 2007) (emphasis added). Constellation, in its role as QSE and in its contract with PRL, clearly fits the Rule 501 criteria.

- C. NERC Compliance Registry Criteria. As NERC states it, “NERC and [Texas RE] have the obligation to identify and register all entities that meet the criteria for inclusion in the compliance registry . . .” NERC Statement of Compliance Registry Criteria (Rev. 3) at 1 (02/06/2007) (NERC Registry Criteria).

1. NERC has identified two principles it believes are key to the entity selection process:

“[a]. There needs to be consistency between regions and across the continent with respect to which entities are registered, and; (sic)

“[b]. *Any entity reasonably deemed material to the reliability of the bulk power system will be registered, irrespective of other considerations.*”

NERC Registry Criteria at 3 (emphasis added).

2. In *Section I* of the NERC Registry Criteria, NERC has identified the rule for registration and has stated that for purposed of determining whether an “entity is an owner, operator, or user of the bulk-power system, and hence a candidate for registration,” the following standard will apply:

Entities that use, own or operate elements of the bulk electric system as established by NERC’s approved definition of bulk electric system below are (i) owners, operators, and users of the bulk power system and (ii) candidates for registration:

“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.”

Id. at 3-4 (emphasis in original).

3. In *Section II*, NERC defines the relevant potential registrants, as follows:
- a. “Generator Operator” (GOP) is the “[e]ntity that operates the generating unit(s) and performs the functions of supplying energy and interconnected operations services.”
 - b. “Purchasing-Selling Entity” (PSE) is “[t]he entity that purchases or sells and takes title to energy, capacity, and interconnected operations services. PSE may be affiliated or unaffiliated merchants and may or may not own generating facilities.”

NERC Registry Criteria at 4-5.

4. In *Section III*, pertaining to entities that might suggest that they are immaterial to the bulk-power system, NERC provides that entities otherwise identified as being subject to registration as a GO, a GOP, a TO, or a TOP under *Sections I and II*, are to be excluded from the registration list, *unless* they meet one or more of the criteria in *Section III* of the NERC Registry Criteria. *Id.* at 6. *Section III* provides for registration of an entity as a GOP, if it meets at least one of the following criteria:

III(c) Generator Owner/Operator:

- III.c.1 Individual generating until > 20 MVA (gross nameplate rating) and is directly connected to the bulk power system, or;
- III.c.2 Generating plants/facility > 75 MVA (gross aggregate nameplate rating) or when the entity has responsibility for any facility consisting of one or more units that are connected to the bulk power system at a common bus with total generation above 75 MVA gross nameplate rating, or;
- III.c.3 Any generator, regardless of size, that is blackstart until material to and designated as part of a transmission operator entity’s restoration plan, or;
- III.c.4 Any generator, regardless of size, that is material to the reliability of the bulk power system.

[Exclusions:

A generator owner/operator will not be registered based on these criteria if responsibilities for compliance with approved NERC reliability standards or associated requirements including reporting have been transferred by written agreement to another entity that has registered for the appropriate function for the transferred responsibilities, such as a load-serving entity, G&T cooperative or joint action agency as described in Section IV below.

As a general matter, a customer-owned or operated generator/generation that serves all or part of retail load with electric energy on the customer's side of the retail meter may be excluded as a candidate for registration based on these criteria if (i) the net capacity provided to the bulk power system does not exceed the criteria above or the Regional Entity otherwise determines the generator is not material to the bulk power system and (ii) standby, back-up and maintenance power services are provided to the generator or to the retail load pursuant to a binding obligation with another generator owner/operator or under terms approved by the local regulatory authority or the Federal Energy Regulatory Commission, as applicable.]

NERC Registry Criteria at 7.

5. Constellation does not in any meaningful way dispute that the generation resources under its control meet the criteria NERC has set out. Nor does Constellation contend that the control of the assets has been transferred to another operator, such as a Joint Registration Organization (JRO). Specifically:
 - (a) There can be little question but that a QSE is “material to the reliability of the bulk-power system.” NERC Registry Criteria at 3.
 - (b) Likewise, as is demonstrated in the main body of the argument, above, a Level 3 or Level 4 QSE unquestionably “uses” or “operates” elements of the bulk-power system, and the specific facilities under Constellation’s control do not fall below any regulatory minimums for exclusion under Section I of the NERC Registry Criteria.
 - (c) Constellation as QSE fits the definition of GOP set forth in Section II of the NERC Registry Criteria, particularly as illuminated in the NERC Model and the NERC Model Technical Document.
 - (d) Section III states, in effect, that the “physical” operator that Constellation wishes to tag “*will not be registered [based upon statistical qualifying criteria] if responsibilities for compliance with approved NERC reliability standards or associated requirements . . . have been transferred by written agreement to another entity that has registered for the appropriate function for the transferred responsibilities*”—which is the exact effect of Constellation’s “tolling agreement” with PRL/CEG and its QSE agreement with ERCOT-ISO. *Id.* (emphasis in original). If PRL/CEG would otherwise be responsible, it may not be registered because Constellation has been transferred responsibility for the function.

D. The NERC Reliability Functional Model—Version 3.

1. As NERC sets forth in the Reliability Functional Model—Version 3,

Individual organizations register, and were required become certified, as Responsible Entities for all Functions for which they have responsibility.

NERC, through its compliance monitoring and enforcement programs, holds each organization accountable for complying with all reliability requirements in standards assigned to the Responsible Entities that the organization has registered for.

In short, the Model provides a framework by defining the Responsible Entities, which serve as a common thread that links standards requirements to the individual organization that must meet (sic) them and to NERC which monitors and enforces the meeting of these requirements.

* * *

An organization may perform more than one Function and register as the corresponding Responsible Entities, but must recognize that some Functions require the organization and its personnel to be certified to perform that Function.

An organization identified as a Responsible Entity is accountable for all Tasks within the Function. While the organization may agree to split or delegate Tasks of the Function, NERC will require that one, and only one, organization be the Responsible Entity, ensuring all of the Tasks of the Function are performed.

Assignment of responsible (sic) Entities is based on the individual transmission, generator and customer equipment assets that collectively constitute the Bulk Electric System. Each Bulk System asset must have one Reliability coordinator, one Balancing Authority, one Transmission Operator, etc.

See NERC Reliability Functional Model—Version 3 (NERC Reliability Functional Model—Version 3) at 7; In the matter of Mandatory Reliability Standards for the Bulk Power System, Docket No. RM06-16-000, Order No. 693 (Issued March 16, 2007); In the matter of Mandatory Reliability Standards for the Bulk Power System, Docket No. RM06-16-001, Order No. 693-A (Issued July 19, 2007).

2. Under the NERC Reliability Functional Model, “Responsible Entities” are registered and assigned responsibilities based upon “Tasks” within each “Function.” *Id.* at 10.
3. That is, a “Responsible Entity” is “an organization that is responsible for carrying out the Tasks within a Function.” A “Function” is “[a] set of Tasks so closely related to one another that separating those Tasks, by assigning them to different organizations, would threaten to impair the

integrity of the Function.” “Tasks,” in turn, are “elements that make up a [F]unction.” *Id.*

4. Under the Functional Model, a GOP “[o]perates generating unit(s) to provide real and reactive power.”¹

¹ Function – Generator Operation

Definition

Operates generating unit(s) to provide real and reactive power.

Tasks

1. Formulate daily generation plan.
2. Report operating and availability status of units and related equipment, such as automatic voltage regulators.
3. Develop annual maintenance plan for generating units and performs the day-to-day generator maintenance.
4. Operate generators to provide real and reactive power or reliability-related services per contracts or arrangements.
5. Monitor the status of generation plant protective relaying systems and transmission line protective relaying systems on the transmission lines connecting the generation plant to the transmission system.

Responsible Entity – Generator Operator

Relationships with Other Responsible Entities

Ahead of Time

1. Provides generation commitment plans to the Balancing Authority.
2. Provides Balancing Authority and Transmission Operator with requested amount of reliability-related services.
3. Provides operating and availability status of generating units to Balancing Authority and Transmission Operator for reliability analysis.
4. Reports annual maintenance plan for generating units to Reliability Coordinator, Balancing Authority and Transmission Operator.
5. Reports status of automatic voltage regulators to Transmission Operators.
6. Provides operational data to Reliability Coordinator.
7. Revised generation maintenance plans per directive of Reliability Coordinator.
8. Receives reliability analyses from Reliability Coordinator.
9. Receives notice from Purchasing-Selling Entity if interchange transaction approved or denied.
10. Receives reliability alerts from Reliability Coordinator.
11. Receives notification of transmission system problems from Transmission Operator.

Real Time

12. Provides real-time operating information to the Transmissions Operator and the required Balancing Authority.

5. As is demonstrated in the main body of this Response and in Attachment 2 and in Attachment 3, Constellation is in the best position to ensure that the tasks are reliably performed and the relationships maintained.

E. FERC Policy on Registration of Responsible Entities.

As FERC has stated, there can be no gaps in the registration of Responsible Entities for bulk-power system assets:

144. Consistent with our above explanation, *we agree with NPCC that there is a difference between being assigned to perform a task and being responsible for completing the task.* The organization that registers with NERC to perform a function *will be the responsible entity and, while it may delegate the performance of that task to another, it may not delegate its responsibility for ensuring the task is completed.*
145. Accordingly, *the Commission directs that the ERO, in registering RTOs, ISOs and pooled resource organizations (or, indeed in registering any entity), assure that there is clarity in the assigning responsibility and that there are no gaps or unnecessary redundancies with regard to the entity or entities responsible for compliance with the Requirements of each relevant Reliability Standard.* Accordingly, although the Commission is not requiring NERC to amend the Functional Model, *we believe our concerns can be addressed by having the ERO, through its compliance registry process, ensure that each user, owner and operator of the Bulk-Power System is registered for each Requirement in the Reliability Standards that relate to transmission owners to assure there are no gaps in coverage of the type discussed here.*

Order 693 at ¶¶144-45 (emphasis added).

13. Adjusts real and reactive power as directed by the Balancing Authority and Transmission Operator.

ATTACHMENT 2

TEXAS REGIONAL ENTITY CONSTELLATION NERC MODEL GOP TASKS

TASK	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
<i>GENERATOR OPERATION</i>			
Tasks			
Formulate daily generation plan.	QSE	QSE submits Resource Plan	<p>PR-4.4.15</p> <p>Each QSE that represents a Resource will present a Resource Plan to ERCOT at 1600. These Resources may be specific Generation Resources and/or LaaRs. The Resource Plan capacity should be sufficient to accommodate the combined quantity of energy and Ancillary Services scheduled by that QSE from the Resources that the QSE represents. The Resource Plan shall indicate the availability of the Resources represented by the QSE, including a lead-time status code, and the planned operating level of each Resource, for each hour of the Operating Day. The Resource Plan shall indicate the HOL and LOL, and HSL and LSL by Resource. A Resource may be listed as unavailable to ERCOT if the Resource's capacity has been committed to markets in regions outside of ERCOT. ERCOT shall use other Resource Dispatch options to maintain system reliability prior to Dispatching a Generation Resource below its LOL. ERCOT shall request Qualifying Facilities (QF), hydro units, and/or nuclear to operate below their LOL only after other Resource Dispatch options have been exhausted.</p> <p>QSEs shall use best efforts, consistent with Good Utility Practice, to continually update their Resource Plans to reflect the current and anticipated operating conditions of the Resources. ERCOT will monitor the performance of QSEs with respect to the submission of accurate Resource Plans in accordance with the measures established in Section 4.10,</p>

TASK	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p>Resource Plan Performance Metrics. ERCOT will work with individual QSEs as necessary to improve the individual QSE performance.</p> <p>PR-8.2--Communications Regarding Resource Facility and Transmission Facility Outages</p> <p>PR-8.2.1--Single Point of Contact</p> <p>All communications concerning Planned Outage or Maintenance Outage shall be between ERCOT and the designated "Single Point of Contact" for each TSP or Resource Entity. The TSP or Resource Entity shall identify, in its initial request or response, the Single Point of Contact, along with primary and alternate means of communication. The Resource Entity or Transmission Entity shall submit a Notice of Change of Information (NCI) form when changes occur in a Single Point of Contact. This identification will be confirmed in all communications with ERCOT regarding Planned Outage or Maintenance Outage requests.</p> <p>The Single Point of Contact must be either a person or a position available seven (7) days per week and twenty-four (24) hours per day for each Resource Entity and TSP. The Resource Entity shall designate its QSE as its Single Point of Contact. The Single Point of Contact for the TSP shall be designated in accordance with the ERCOT Operating Guides.</p> <p>PR-8.2.2--Method of Communication</p> <p>Communication between ERCOT and TSPs or Resource Entities shall be accomplished according to ERCOT procedures in compliance with these Protocols. All submissions, changes, approvals, rejections, and withdrawals regarding Outages shall be processed through the ERCOT Outage Scheduler on the ERCOT MIS, except for Forced Outages and Maintenance Outages, which shall be communicated to ERCOT immediately by voice communication and subsequently</p>

TASK	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			entered into the Outage Scheduler.
Report operating and availability status of units and related equipment, such as automatic voltage regulators.	QSE	QSE notifies ERCOT	<p>PR-5.5.1</p> <p>The QSE will notify ERCOT of an unplanned change in Resource status as soon as practicable following the change. The QSE representing the Resource will report any changes in Resource status to ERCOT in the Resource Plan by the beginning of the next hour following the change in status.</p> <p>(1) When the operating mode of a Generation Resource required to provide VSS's AVR or PSS is changed while the unit is operating, the QSE shall promptly inform ERCOT. The QSE shall also supply AVR or PSS status logs to ERCOT upon request.</p> <p>(2) Any short-term inability of a Generation Resource required to provide VSS to meet its reactive capability requirements shall be immediately reported to ERCOT and the TSP.</p> <p>PR-6.5.7.2</p> <p>(1) QSE Generation Resources required to provide VSS are expected to have and maintain Reactive Power capability at least equal to the Reactive Power capability requirements specified in these Protocols and the Operating Guides.</p> <p>(2) Each QSE's Generation Resource providing VSS is expected to be compliant with the Operating Guides for response to transient voltage disturbance.</p> <p>(3) Each Generation Resource providing VSS must meet technical requirements specified in Section 6.10, Ancillary Service Qualification, Testing and Performance Standards.</p> <p>(4) Each QSE's Generation Resource providing VSS shall operate with the unit's Automatic Voltage Regulator (AVR) set to regulate</p>

TASK	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p>generator terminal voltage in the voltage control mode unless specifically directed to operate in manual mode by ERCOT, or when the unit is going On- or Off- line. If the QSE changes the mode, other than under ERCOT direction, then the QSE shall promptly inform ERCOT. Any QSE-controlled power system stabilizers will be kept in service unless specifically permitted to operate otherwise by ERCOT. QSEs' control centers will monitor the status of their regulators and stabilizers, and shall report abnormal status changes to ERCOT.</p> <p>(5) QSEs shall meet, within established tolerances, and respond to changes in the Voltage Profile established by ERCOT subject to the stated QSE Reactive Power and actual power operating characteristic limits and voltage limits.</p> <p>(6) The reactive capability required must be maintained at all times the plant is On-line.</p> <p>(7) QSE shall advise ERCOT Operations whenever their Generation Resources are not operating at a power factor level as specified in the Operating Guides. Upon such notice, ERCOT Operations, in conjunction with the appropriate TSP, shall investigate the situation with the goal of restoring the reported unit's operation to within the specified power factor range. Actions that ERCOT may take include the addition or removal of transmission reactive devices to/from service or a request to another Generator Resource within electrical proximity for the production of leading or lagging VARS (as appropriate) so as to equitably share the need for voltage support among Generation Resources. Requests arising within the context of this subsection may not result in the operation of a Generation</p>

TASK	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p>Resource outside of the specified reactive operating range. Accordingly, Generation Resources are expected to voluntarily comply with these requests. Nothing in this subsection is meant to supersede ERCOT's Dispatch authority in the event of emergency operations.</p> <p>See PR-8.2</p> <p>OG-3.1.4.5—[Generation Entities shall notify their QSE, who will notify ERCOT, when a voltage regulator is unavailable]</p> <p>Generator Automatic Voltage Regulators and power system stabilizers will be kept in service whenever possible. Generation Entities shall notify their QSE, who in turn will promptly notify the ERCOT Control Area Authority by telephone of the circumstances, when a voltage regulator or stabilizer is unavailable due to maintenance or failure and when it is returned to normal operation.</p> <p>Unit AVR and PSS modeling information required in the ERCOT Planning Criteria shall be determined from actual unit testing described in the Operating Guides. Within thirty (30) days of ERCOT's request, the results of the latest test performed shall be supplied to ERCOT and the TSP.</p>
<p>Develop annual maintenance plan for generating units and perform the day-to-day generator maintenance.</p>	<p>Resource</p>	<p>QSE forwards annual plan to ERCOT</p>	<p>PR-6.10.2—[QSE will identify generation resource to be tested during season.]</p> <p>QSEs shall provide ERCOT a list identifying each Generation Resource unit that is expected to operate more than one hundred sixty eight (168) hours in a Season as a provider of energy and/or Ancillary Services. ERCOT shall evaluate, during each Season of expected operation, the Net Dependable Capability of each unit expected to operate more than one</p>

TASK	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p>that season, except for any Generation Resources used solely for energy services and whose capacity is less than ten (10) MW. Prior to the beginning of each Season, QSEs shall identify the Generation Resources to be tested during the Season and the specific week of the test if known. This schedule may be modified by the QSE (including retests) during the Season. QSEs not identifying a specific week for a Generation Resource unit test must test the unit within the first one hundred sixty eight (168) hours of run time during the Season or operate with a Net Dependable Capability equal to the highest integrated hourly MWh output demonstrated during the first one hundred sixty eight (168) hours of run time. QSEs do not have to bring units On-line or shut down solely for the purpose of the seasonal verification. Any unit for which the QSE desires qualification to provide Ancillary Services shall have its Net Dependable Capability verified prior to providing services using the Generation Resource unit even if it fits the less than one hundred sixty eight (168) hour or small capacity exception. The capability of hydro units operating in the synchronous condenser fast response mode to provide hydro Responsive Reserve shall be evaluated by Season.</p> <p>Load acting as a Resource to provide Ancillary Services shall have its telemetry attributes verified by ERCOT annually. In addition, once every two (2) years, any LaaR providing Responsive Reserve Service shall test the under frequency relay or the output from the solid-state switch, whichever applies, for correct operation. However, if the Load's performance has been verified through response to an actual event, the data from the event can be used to meet the annual telemetry verification requirement for that year and/or the biennial relay testing requirement.</p> <p>Specific Loads to be used for the first</p>

TASK	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p>time as a Resource to provide Responsive Reserve, Non-Spinning Reserve or Replacement Reserve must be correctly evaluated prior to their provisional qualification to provide Ancillary Services. During the provisional qualification period, ERCOT shall conduct a qualification test of each LaaR consisting of an actual Load interruption. If a LaaR passes the qualification test during the provisional qualification period, ERCOT shall consider the LaaR qualified to provide Responsive Reserve, Non-Spinning Reserve or Replacement Reserve. ERCOT shall develop a standard test procedure for the qualification test required under this subsection.</p> <p>QSEs shall be responsible for qualifying any Load desiring to have the QSE represent it to provide Balancing Up Load (BUL) Service.</p> <div style="border: 1px solid black; padding: 5px;"> <p><i>[PRR484: Add the following to the end of the above paragraph ("QSEs shall be responsible for qualifying...Balancing Up Load (BUL) Service. ") upon system implementation:]</i></p> <p>Loads controlled under a qualified DLC program may be qualified as a group.</p> <ol style="list-style-type: none"> 1. Loads controlled under a qualified DLC program may be qualified as a group. </div> <p>The QSE shall nominate to ERCOT, at least annually, that it is representing an amount of BUL for which it wishes to be qualified to provide. At a time selected by ERCOT, the ERCOT operator will notify the QSE that it wants to verify the QSE's ability to provide ERCOT with the appropriate signal simulating that it has initiated an ERCOT requested BUL reduction. The QSE Operator will immediately simulate the initiation of the reduction</p>

TASK	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p>appropriate signal representing some amount of Load to be qualified to provide BUL Resources. Once ERCOT has verified that it has received an appropriate Load reduction signal from the QSE and has successfully completed the BUL registration process, the QSE will be qualified to provide BUL Resources. Any changes to the BUL portfolio will require subsequent updates to the registration process. For NOIEs representing specific Loads qualified as BULs that are located behind the NOIE Settlement Meter points, the NOIE shall provide an alternative unique descriptor of the qualified BUL Load for ERCOT's records.</p> <p>Generation Resources and Loads acting as Resources shall be evaluated at least annually by ERCOT for:</p> <ol style="list-style-type: none"> (1) Correct operation of telemetry of the breakers controlling the Resource; (2) Correct mapping of QSE-provided telemetry of Ancillary Service energy to the appropriate energy Settlement Meter; (3) Data rate update requirements; and (4) Any other required telemetry attributes. <p>In addition, a LaaR that is used to provide Responsive Reserve Service will be subject to an actual interruption test at a date and time determined by ERCOT and known only to ERCOT and the affected TDSP, at least once in every three hundred and sixty five (365) day period to verify ability to respond to an ERCOT Dispatch Instruction. To successfully pass this test, the LaaR must deploy at least 95% of its scheduled Load within ten (10) minutes of the receipt of the ERCOT Dispatch Instruction by the LaaR's QSE. If a LaaR has responded to an actual ERCOT Dispatch Instruction with at least a 95%</p>

TASK	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p>reduction in its Load within ten (10) minutes in the applicable calendar year, ERCOT will use that response in lieu of another actual interruption test. QSEs may request to have individual LaaRs aggregated for the purposes of actual interruption tests. All performance evaluations will apply on an individual Resource basis.</p> <p>All Generation Resources and Loads acting as a Resource shall meet all requirements specified in the Operating Guides for proper response to system frequency. ERCOT may reduce the amount a Resource may contribute toward Ancillary Services if it finds unsatisfactory performance of the Resource as defined in these Protocols and the Operating Guides.</p> <p>Qualification of a Resource, including a Load acting as a Resource or an EILS Resource, shall remain valid for such Resource in the event of a change of QSE for the Resource, provided that the new QSE demonstrates to ERCOT's reasonable satisfaction that the new QSE has adequate communications and control capability for the Resource.</p> <p>See PR-8.2</p> <p>PR-8.1.3.2</p> <p>Resource Entities must provide ERCOT a written Planned Outage and Maintenance Outage program for the next twelve (12) months, in an ERCOT provided format updated for a rolling twelve (12) month period. Planned Outage and Maintenance Outage scheduling data for Resource Facilities shall be kept current. Updates shall identify any changes to previously proposed Planned Outages or Maintenance Outages and any additional Planned Outages or Maintenance Outage anticipated over the next twelve (12) months.</p> <p>OG-3.1.4</p> <p>This Section defines the minimum requirements for the integration of generation facilities greater than 10</p>

TASK	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p>MW into the ERCOT System.</p> <p>A generation facility shall be defined as any individual generating unit at a plant location that supplies energy to the ERCOT System.</p> <p>Each generation facility shall meet the following general requirements in order to integrate into the ERCOT System.</p> <p>Physically located in the ERCOT Control Area,</p> <p>Represented by a QSE represented PGC, or directly by a QSE.</p> <p>A QSE shall be the reporting Entity for a PGC and shall communicate with both ERCOT Control Area Authority and the TDSP maintaining the PGCs connection.</p> <p>The QSE reporting for a PGC or a generation facility shall provide the following telemeter quantities for generation facilities greater than 10 MW to ERCOT Control Area Authority:</p> <ul style="list-style-type: none"> Generator megawatts, Generator megavars, Generator energy (megawatt-hours), Substation equipment status, and Voltage where the facility connects to the Transmission Grid. <p>The directly connected TDSP may obtain any required data from ERCOT.</p> <p>These quantities are fully described in Operating Guide 2.</p> <p>The PGCs reporting QSE shall provide a separate, dedicated and reliable communications voice channel to each of ERCOT Control Area Authority and the directly connected TDSP and reliable data communications to both ERCOT Control Area Authority and the directly-connected TDSP.</p> <p>The PGCs reporting QSE shall, as a minimum, provide adequate modeling information, as follows:</p> <ul style="list-style-type: none"> Machine impedance and

TASK	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p>characteristics,</p> <p>Excitation system data, governor system constants,</p> <p>Transformer impedance, and</p> <p>Other relevant information.</p> <p>This information is necessary to support ERCOT and TDSP's ability to perform operational and planning studies such as:</p> <ul style="list-style-type: none"> Transient and Dynamic Stability Short Circuit Load Flow Reliability Evaluations <p>When in operation, the generation facility greater than 10 MW shall be staffed or monitored 24 hours per day, by personnel capable of making operating decisions and possessing the ability to control the generation facility output when requested by the representing QSE or the directly connected TDSP during Black Start procedures.</p> <p>The generation facility shall perform maintenance, start-up, and operation in a reliable and safe manner consistent with Good Utility Practices.</p> <p>The generation facility shall implement the following in a reliable and safe manner and in accordance with the switching procedure of the directly connected TDSP:</p> <p>Synchronizing of the generation to the ERCOT System,</p> <p>Transmission switchyard switching or clearances.</p> <p>The operation of a generation facility shall conform to the requirements of ERCOT or NERC Operating Criteria, Guide, or Standard.</p> <p>The generating facility licensed by a federal regulatory agency shall, through its QSE representative, provide any applicable grid interconnection and performance</p>

TASK	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE				
			<p>licensing requirements to ERCOT and the TDSP to which the licensee is connected.</p> <p>The TDSP is obligated to incorporate any such licensing requirements into its planning and operations, and the ERCOT Control Area authority shall support such requirements. Both ERCOT and the TDSP will create necessary procedures for satisfying these requirements. Such procedures will include provisions to notify the facility licensee through its QSE of any requirements that cannot be satisfied.</p> <p>Any proposal for revision of this Operating Guide and the procedures incorporating the licensee requirements that would diminish the obligation or ability of ERCOT or the TDSP to support these requirements shall be provided to the licensee through its QSE to afford it an opportunity for review and response. Any such proposal that is approved, as a result of which the licensee is required to implement changes to meet its license requirements or to seek amendment to its license, shall become effective no sooner than 6 months following the approval.</p> <p>OG-3.1.4.1 –PGC Data Reporting</p> <p>The PGC's reporting QSE shall provide the following information to ERCOT Control Area Authority at the times specified:</p> <table border="1" data-bbox="1013 1444 1484 1848"> <thead> <tr> <th data-bbox="1013 1444 1187 1503">TIME</th> <th data-bbox="1187 1444 1484 1503">INFORMATION</th> </tr> </thead> <tbody> <tr> <td data-bbox="1013 1503 1187 1848">Every 10 Seconds</td> <td data-bbox="1187 1503 1484 1848"> <ul style="list-style-type: none"> ➤ Generation net MW output ➤ Generation net MVAR ➤ Status of switching devices in switchyard ➤ Generating unit breaker status ➤ Generating unit </td> </tr> </tbody> </table>	TIME	INFORMATION	Every 10 Seconds	<ul style="list-style-type: none"> ➤ Generation net MW output ➤ Generation net MVAR ➤ Status of switching devices in switchyard ➤ Generating unit breaker status ➤ Generating unit
TIME	INFORMATION						
Every 10 Seconds	<ul style="list-style-type: none"> ➤ Generation net MW output ➤ Generation net MVAR ➤ Status of switching devices in switchyard ➤ Generating unit breaker status ➤ Generating unit 						

TASK	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE	
				High Operating Limit ➤ Generating unit Low Operating Limit
			Daily	➤ Planned unit status, ➤ Planned unit capability (both hourly and daily), ➤ Fuel limitations. The reporting Entity will promptly report this condition to ERCOT Control Area Authority.
			Annually	➤ Seasonal capability where applicable, ➤ Planned maintenance schedules. This information shall be updated when it changes.
			Upon Request	➤ Fuel capability as described in Section 6.2.7, Unit Alternative Fuel Capability Operating Guide Form, in conjunction with an Operating Condition Notice, Alert, Advisory, or Emergency Notice.
Each generator at a generation facility shall have an automatic speed governor in service while the generator is on line. Testing and regulation performance of the speed governor shall be in accordance with Operating Guide				

TASK	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p>Section 3, Operational Interfaces. The generator is required to notify the ERCOT Control Area Authority, through its QSE, if the operation of speed governors is impaired.</p> <p>Each generation facility providing an Ancillary Service shall provide output consistent with the requirements of that Ancillary Service and ERCOT instructions.</p> <p>In the event of an ERCOT declared Emergency, ERCOT may require the QSE to notify the generation facility through the reporting Entity and require it to increase or decrease generation or change voltage and reactive requirements in accordance with the Protocols. The generation facility shall use its best efforts in meeting these required output levels in order that the ERCOT System can maintain safe and reliable operation.</p> <p>It is the responsibility of all generators to carry an operational share of reactive support to insure adequate and safe Voltage Profiles are maintained in all areas of ERCOT. To accomplish this, the following requirements shall apply to each generation facility.</p> <ul style="list-style-type: none"> • Each generation facility shall have Automatic Voltage Regulators and power system stabilizers in service as defined in Section 3.1.4.5, Automatic Voltage Regulators and Power System Stabilizers, below. • The generation facility shall be designed and operated consistent with its obligations to supply Voltage Ancillary Service as required in the ERCOT Protocols and ERCOT Control Area Authority Procedures. • ERCOT has the right and obligation to Dispatch the reactive output (VARS) of each generation facility within its design capability to maintain adequate transmission voltage in ERCOT. • ERCOT and the TSP shall be notified of any equipment changes

TASK	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p>that affect the reactive capability of an operating generating unit no less than 60 days prior to implementation of the changes, and any such changes that decrease the reactive capability of the generating unit below the required level must be approved by ERCOT prior to implementation.</p> <ul style="list-style-type: none"> • High reactive loading or reactive oscillations on generation units should be communicated to the QSE, the transmission operator, and ERCOT as soon as practicable. • The tripping off line of a generating unit due to voltage or reactive problems should be reported to ERCOT, the transmission operator, and the QSE as soon as practicable.
Operate generators to provide real and reactive power or reliability-related services per contracts or arrangements.	QSE	QSE contracts; Resource generates	<p>PR-6.3.2-- (1) Unless contracted otherwise, and with the exception of Balancing Energy decremental bids as described in Section 4, Scheduling, of these Protocols, Resources capable of providing Ancillary Services are not required to provide those Resources or to submit bids to ERCOT, provided, however, Resources shall honor bids submitted to ERCOT for Ancillary Services under these Protocols and shall, use reasonable efforts to provide Ancillary Services in accordance with applicable emergency procedures in these Protocols and in the Operating Guides.</p> <p>(2) Ancillary Service providers shall provide and deploy, as directed by ERCOT, the Ancillary Service(s) that they have agreed to provide.</p> <p>(3) QSEs may specify Self-Arranged Ancillary Services in accordance with the Day-Ahead Scheduling as described in Section 4.4, Day Ahead Scheduling Process.</p>

TASK	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p data-bbox="1040 338 1484 491"><i>[PIP106: Current design does not provide for DLC Profiles. When DLC Profiles are implemented add this item (4) to section 6.3.2]</i></p> <p data-bbox="1040 520 1468 779">(4) QSEs that have Direct Load Control programs as described in Section 18.7.2, Load Profiling of ESI IDs Under Direct Load Control, will notify ERCOT immediately of any deployment of the program. This applies solely to QSEs using Load Profiling for Settlement.</p> <p data-bbox="1019 827 1159 854">See PR-8.2</p>
Monitor the status of generation plant protective relaying systems and transmission line protective relaying systems on the transmission lines connecting the generation plant to the transmission system.	QSE	Resource monitors generation plant protective relay systems; TDSP monitors transmission line protective relaying systems; QSE relays information to ERCOT	See PR-8.2

ATTACHMENT 3

TEXAS REGIONAL ENTITY CONSTELLATION NERC MODEL GOP RESPONSIBILITIES/RELATIONSHIPS

RESPONSIBILITY/ RELATIONSHIP	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
<i>GENERATOR OPERATION</i>			
Relationships			
Provides generation commitment plans to the Balancing Authority.	QSE	QSE submits Resource Plans	<p>PR-4.4.15--QSE Resource Plans</p> <p>Each QSE that represents a Resource will present a Resource Plan to ERCOT at 1600. These Resources may be specific Generation Resources and/or LaaRs. The Resource Plan capacity should be sufficient to accommodate the combined quantity of energy and Ancillary Services scheduled by that QSE from the Resources that the QSE represents. The Resource Plan shall indicate the availability of the Resources represented by the QSE, including a lead-time status code, and the planned operating level of each Resource, for each hour of the Operating Day. The Resource Plan shall indicate the HOL and LOL, and HSL and LSL by Resource. A Resource may be listed as unavailable to ERCOT if the Resource's capacity has been committed to markets in regions outside of ERCOT. ERCOT shall use other Resource Dispatch options to maintain system reliability prior to Dispatching a Generation Resource below its LOL. ERCOT shall request Qualifying Facilities (QF), hydro units, and/or nuclear to operate below their LOL only after other Resource Dispatch options have been exhausted.</p> <p>QSEs shall use best efforts, consistent with Good Utility Practice, to continually update their Resource Plans to reflect the current and anticipated operating conditions of the Resources. ERCOT will monitor the performance of QSEs with respect to the submission of accurate Resource Plans in accordance with the measures established in Section 4.10, Resource Plan Performance Metrics. ERCOT will work with individual QSEs as necessary to improve the individual QSE performance.</p>
Provides Balancing Authority and Transmission Operator with requested amount of reliability-related services.	QSE	QSE directs portfolio	<p>PR-6.3.2--Qualified Scheduling Entity Responsibilities</p> <p>(1) Unless contracted otherwise, and with the exception of Balancing Energy decremental bids as described in Section 4, Scheduling, of these Protocols, Resources capable of providing Ancillary Services are not required to provide those Resources or to submit bids to ERCOT, provided, however, Resources shall honor bids submitted to ERCOT for Ancillary Services under these Protocols and shall, use reasonable efforts to provide Ancillary Services in accordance with applicable emergency procedures in these Protocols and in the Operating Guides.</p>

RESPONSIBILITY/ RELATIONSHIP	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p>(2) Ancillary Service providers shall provide and deploy, as directed by ERCOT, the Ancillary Service(s) that they have agreed to provide.</p> <p>(3) QSEs may specify Self-Arranged Ancillary Services in accordance with the Day-Ahead Scheduling as described in Section 4.4, Day Ahead Scheduling Process.</p> <p>[PIP106: Current design does not provide for DLC Profiles. When DLC Profiles are implemented add this item (4) to section 6.3.2]</p> <p>(4) QSEs that have Direct Load Control programs as described in Section 18.7.2, Load Profiling of ESI IDs Under Direct Load Control, will notify ERCOT immediately of any deployment of the program. This applies solely to QSEs using Load Profiling for Settlement.</p>
Provides operating and availability status of generating units to Balancing Authority and Transmission Operator for reliability analysis.	QSE	QSE reports to ERCOT	<p>PR-5.5.1--Change in Resource Status</p> <p>The QSE will notify ERCOT of an unplanned change in Resource status as soon as practicable following the change. The QSE representing the Resource will report any changes in Resource status to ERCOT in the Resource Plan by the beginning of the next hour following the change in status.</p> <p>(1) When the operating mode of a Generation Resource required to provide VSS's AVR or PSS is changed while the unit is operating, the QSE shall promptly inform ERCOT. The QSE shall also supply AVR or PSS status logs to ERCOT upon request.</p> <p>(2) Any short-term inability of a Generation Resource required to provide VSS to meet its reactive capability requirements shall be immediately reported to ERCOT and the TSP.</p> <p>PR-8.1.3.2--Resources</p> <p>Resource Entities must provide ERCOT a written Planned Outage and Maintenance Outage program for the next twelve (12) months, in an ERCOT provided format updated for a rolling twelve (12) month period. Planned Outage and Maintenance Outage scheduling data for Resource Facilities shall be kept current. Updates shall identify any changes to previously proposed Planned Outages or Maintenance Outages and any additional Planned Outages or Maintenance Outage anticipated over the next twelve (12) months.</p> <p>PR-8.2--Communications Regarding Resource Facility and Transmission Facility Outages</p> <p>PR-8.2.1--Single Point of Contact</p>

RESPONSIBILITY/ RELATIONSHIP	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p>All communications concerning Planned Outage or Maintenance Outage shall be between ERCOT and the designated "Single Point of Contact" for each TSP or Resource Entity. The TSP or Resource Entity shall identify, in its initial request or response, the Single Point of Contact, along with primary and alternate means of communication. The Resource Entity or Transmission Entity shall submit a Notice of Change of Information (NCI) form when changes occur in a Single Point of Contact. This identification will be confirmed in all communications with ERCOT regarding Planned Outage or Maintenance Outage requests.</p> <p>The Single Point of Contact must be either a person or a position available seven (7) days per week and twenty-four (24) hours per day for each Resource Entity and TSP. The Resource Entity shall designate its QSE as its Single Point of Contact. The Single Point of Contact for the TSP shall be designated in accordance with the ERCOT Operating Guides.</p> <p>PR-8.2.2--Method of Communication</p> <p>Communication between ERCOT and TSPs or Resource Entities shall be accomplished according to ERCOT procedures in compliance with these Protocols. All submissions, changes, approvals, rejections, and withdrawals regarding Outages shall be processed through the ERCOT Outage Scheduler on the ERCOT MIS, except for Forced Outages and Maintenance Outages, which shall be communicated to ERCOT immediately by voice communication and subsequently entered into the Outage Scheduler.</p>

RELATIONSHIP/ FUNCTION	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE										
<p>Reports annual maintenance plan for generating units to Reliability Coordinator, Balancing Authority and Transmission Operator.</p>	<p>QSE</p>	<p>QSE typically does this for Resource</p>	<p>OG-3.1.4.1-- PGC Data Reporting</p> <p>The PGC's reporting QSE shall provide the following information to ERCOT Control Area Authority at the times specified:</p> <table border="1" data-bbox="932 485 1510 1839"> <thead> <tr> <th data-bbox="932 485 1183 548">TIME</th> <th data-bbox="1183 485 1510 548">INFORMATION</th> </tr> </thead> <tbody> <tr> <td data-bbox="932 548 1183 989"> <p>Every 10 seconds</p> </td> <td data-bbox="1183 548 1510 989"> <ul style="list-style-type: none"> ➤ Generation net MW output; ➤ Generation net MVAR; ➤ Status of switching devices in switchyard; ➤ Generating unit breaker status; ➤ Generating unit High Operating Limit; ➤ Generating unit Low Operating Limit; </td> </tr> <tr> <td data-bbox="932 989 1183 1283"> <p>Daily</p> </td> <td data-bbox="1183 989 1510 1283"> <ul style="list-style-type: none"> ➤ Planned unit status; ➤ Planned unit capability (both hourly and daily); ➤ Fuel limitations. <p>The reporting Entity will promptly report this condition to ERCOT Control Area Authority</p> </td> </tr> <tr> <td data-bbox="932 1283 1183 1514"> <p>Annually</p> </td> <td data-bbox="1183 1283 1510 1514"> <ul style="list-style-type: none"> ➤ Seasonal capability where applicable; ➤ Planned maintenance schedules. <p>This information shall be updated when it changes.</p> </td> </tr> <tr> <td data-bbox="932 1514 1183 1839"> <p>Upon request</p> </td> <td data-bbox="1183 1514 1510 1839"> <ul style="list-style-type: none"> ➤ Fuel capability as described in Section 6.2.7, Unit Alternative Fuel Capability Operating Guide Form, in conjunction with an Operating Condition Notice, Alert, Advisory, or Emergency Notice, </td> </tr> </tbody> </table>	TIME	INFORMATION	<p>Every 10 seconds</p>	<ul style="list-style-type: none"> ➤ Generation net MW output; ➤ Generation net MVAR; ➤ Status of switching devices in switchyard; ➤ Generating unit breaker status; ➤ Generating unit High Operating Limit; ➤ Generating unit Low Operating Limit; 	<p>Daily</p>	<ul style="list-style-type: none"> ➤ Planned unit status; ➤ Planned unit capability (both hourly and daily); ➤ Fuel limitations. <p>The reporting Entity will promptly report this condition to ERCOT Control Area Authority</p>	<p>Annually</p>	<ul style="list-style-type: none"> ➤ Seasonal capability where applicable; ➤ Planned maintenance schedules. <p>This information shall be updated when it changes.</p>	<p>Upon request</p>	<ul style="list-style-type: none"> ➤ Fuel capability as described in Section 6.2.7, Unit Alternative Fuel Capability Operating Guide Form, in conjunction with an Operating Condition Notice, Alert, Advisory, or Emergency Notice,
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<p>Upon request</p>	<ul style="list-style-type: none"> ➤ Fuel capability as described in Section 6.2.7, Unit Alternative Fuel Capability Operating Guide Form, in conjunction with an Operating Condition Notice, Alert, Advisory, or Emergency Notice, 												

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			<p>Each generator at a generation facility shall have an automatic speed governor in service while the generator is on line. Testing and regulation performance of the speed governor shall be in accordance with Operating Guide Section 3, Operational Interfaces. The generator is required to notify the ERCOT Control Area Authority, through its QSE, if the operation of speed governors is impaired.</p> <p>Each generation facility providing an Ancillary Service shall provide output consistent with the requirements of that Ancillary Service and ERCOT instructions.</p> <p>In the event of an ERCOT declared Emergency, ERCOT may require the QSE to notify the generation facility through the reporting Entity and require it to increase or decrease generation or change voltage and reactive requirements in accordance with the Protocols. The generation facility shall use its best efforts in meeting these required output levels in order that the ERCOT System can maintain safe and reliable operation.</p> <p>It is the responsibility of all generators to carry an operational share of reactive support to insure adequate and safe Voltage Profiles are maintained in all areas of ERCOT. To accomplish this, the following requirements shall apply to each generation facility.</p> <ul style="list-style-type: none"> • Each generation facility shall have Automatic Voltage Regulators and power system stabilizers in service as defined in Section 3.1.4.5, Automatic Voltage Regulators and Power System Stabilizers, below. • The generation facility shall be designed and operated consistent with its obligations to supply Voltage Ancillary Service as required in the ERCOT Protocols and ERCOT Control Area Authority Procedures. • ERCOT has the right and obligation to Dispatch the reactive output (VARS) of each generation facility within its design capability to maintain adequate transmission voltage in ERCOT. • ERCOT and the TSP shall be notified of any equipment changes that affect the

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			<p>reactive capability of an operating generating unit no less than 60 days prior to implementation of the changes, and any such changes that decrease the reactive capability of the generating unit below the required level must be approved by ERCOT prior to implementation.</p> <ul style="list-style-type: none"> • High reactive loading or reactive oscillations on generation units should be communicated to the QSE, the transmission operator, and ERCOT as soon as practicable. • The tripping off line of a generating unit due to voltage or reactive problems should be reported to ERCOT, the transmission operator, and the QSE as soon as practicable. <p>REFERENCE: PROTOCOL SECTION 6.10.2, GENERAL CAPACITY TESTING REQUIREMENTS (IN PART)</p> <p><i>QSEs shall provide ERCOT a list identifying each Generation Resource unit that is expected to operate more than one hundred sixty eight (168) hours in a Season as a provider of energy and/or Ancillary Services. ERCOT shall evaluate, during each Season of expected operation, the Net Dependable Capability of each unit expected to operate more than one hundred sixty eight (168) hours during that Season, except for any Generation Resources used solely for energy services and whose capacity is less than ten (10) MW. Prior to the beginning of each Season, QSEs shall identify the Generation Resources to be tested during the Season and the specific week of the test if known. This schedule may be modified by the QSE (including retests) during the Season. QSEs not identifying a specific week for a Generation Resource unit test must test the unit within the first one hundred sixty eight (168) hours of run time during the Season or operate with a Net Dependable Capability equal to the highest integrated hourly MWh output demonstrated during the first one hundred sixty eight (168) hours of run time. QSEs do not have to bring units On-line or shut down solely for the purpose of the seasonal verification. Any unit for which the QSE desires qualification to provide Ancillary Services shall have its Net Dependable Capability verified prior to providing services</i></p>

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			<p><i>using the Generation Resource unit even if it fits the less than one hundred sixty eight (168) hour or small capacity exception. The capability of hydro units operating in the synchronous condenser fast response mode to provide hydro Responsive Reserve shall be evaluated by Season.</i></p> <p><i>Load acting as a Resource to provide Ancillary Services shall have its telemetry attributes verified by ERCOT annually. In addition, once every two (2) years, any LaaR providing Responsive Reserve Service shall test the under frequency relay or the output from the solid-state switch, whichever applies, for correct operation. However, if the Load's performance has been verified through response to an actual event, the data from the event can be used to meet the annual telemetry verification requirement for that year and/or the biennial relay testing requirement...</i></p>
<p>Reports status of automatic voltage regulators to Transmission Operators.</p>	<p>QSE</p>	<p>QSE reports to ERCOT</p>	<p>PR-5.5.1--Changes in Resource Status</p> <p>The QSE will notify ERCOT of an unplanned change in Resource status as soon as practicable following the change. The QSE representing the Resource will report any changes in Resource status to ERCOT in the Resource Plan by the beginning of the next hour following the change in status.</p> <p>(1) When the operating mode of a Generation Resource required to provide VSS's AVR or PSS is changed while the unit is operating, the QSE shall promptly inform ERCOT. The QSE shall also supply AVR or PSS status logs to ERCOT upon request.</p> <p>(2) Any short-term inability of a Generation Resource required to provide VSS to meet its reactive capability requirements shall be immediately reported to ERCOT and the TSP.</p> <p>OG-3.1.4.5--Automatic Voltage Regulations and Power System Stabilizers</p> <p>Generator Automatic Voltage Regulators and power system stabilizers will be kept in service whenever possible. Generation Entities shall notify their QSE, who in turn will promptly notify the ERCOT Control Area Authority by telephone of the circumstances, when a voltage regulator</p>

RELATIONSHIP/ FUNCTION	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p>or stabilizer is unavailable due to maintenance or failure and when it is returned to normal operation.</p> <p>Unit AVR and PSS modeling information required in the ERCOT Planning Criteria shall be determined from actual unit testing described in the Operating Guides. Within thirty (30) days of ERCOT's request, the results of the latest test performed shall be supplied to ERCOT and the TSP.</p> <p>See also PR-8.2--Communications Regarding Resource Facility and Transmission Facility Outages</p> <p>See also PR-8.2.1--Single Point of Contact</p> <p>All communications concerning Planned Outage or Maintenance Outage shall be between ERCOT and the designated "Single Point of Contact" for each TSP or Resource Entity. The TSP or Resource Entity shall identify, in its initial request or response, the Single Point of Contact, along with primary and alternate means of communication. The Resource Entity or Transmission Entity shall submit a Notice of Change of Information (NCI) form when changes occur in a Single Point of Contact. This identification will be confirmed in all communications with ERCOT regarding Planned Outage or Maintenance Outage requests.</p> <p>The Single Point of Contact must be either a person or a position available seven (7) days per week and twenty-four (24) hours per day for each Resource Entity and TSP. The Resource Entity shall designate its QSE as its Single Point of Contact. The Single Point of Contact for the TSP shall be designated in accordance with the ERCOT Operating Guides.</p> <p>See also PR-8.2.2--Method of Communication</p> <p>Communication between ERCOT and TSPs or Resource Entities shall be accomplished according to ERCOT procedures in compliance with these Protocols. All submissions, changes, approvals, rejections, and withdrawals regarding Outages shall be processed through the ERCOT Outage Scheduler on the ERCOT MIS, except for Forced Outages and Maintenance Outages, which shall be communicated to ERCOT immediately by voice communication and subsequently entered into the Outage Scheduler.</p>

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Provides operational data to Reliability Coordinator	QSE	QSE communicates to ERCOT	<p>PR-12.4.4.1-- ERCOT Power Operations</p> <p><i>12.4.4.1.1 QSE, Resource and TDSP Responsibilities</i></p> <p>QSEs, Resources and TDSPs are required to provide power operation data to ERCOT including, but not limited to:</p> <ol style="list-style-type: none"> (1) Real time generation data from QSEs; (2) Planned Outage information from Resources; (3) Network data used by any TDSP's control center, including: <ol style="list-style-type: none"> (a) Breaker and line switch status of all ERCOT Transmission Grid devices; (b) Line flow MW and MVAR; (c) Breaker, switches connected to all Resources; (d) Transmission Facility Voltages; and (e) Transformer MW, MVAR and TAP. (4) Real time generation and Load acting as a Resource meter data from QSEs; (5) Real time Generation meter splitting signal from QSEs; (6) Planned Transmission Outage information from TDSP; (7) Network transmission data (model and constraints) from TDSP; (8) Resource Plans from QSE; and (9) Dynamic Schedules from QSEs; <p>Real Time data will be provided to ERCOT at the same scan rate as the TDSP or QSE obtains the data from telemetry.</p> <p>See also PR-8.2--Communications Regarding Resource Facility and Transmission Facility Outages</p> <p>See also PR-8.2.1--Single Point of Contact</p> <p>All communications concerning Planned Outage or Maintenance Outage shall be between ERCOT and the designated "Single Point of Contact" for each TSP or Resource Entity. The TSP or Resource Entity shall identify, in its initial</p>

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			<p>request or response, the Single Point of Contact, along with primary and alternate means of communication. The Resource Entity or Transmission Entity shall submit a Notice of Change of Information (NCI) form when changes occur in a Single Point of Contact. This identification will be confirmed in all communications with ERCOT regarding Planned Outage or Maintenance Outage requests.</p> <p>The Single Point of Contact must be either a person or a position available seven (7) days per week and twenty-four (24) hours per day for each Resource Entity and TSP. The Resource Entity shall designate its QSE as its Single Point of Contact. The Single Point of Contact for the TSP shall be designated in accordance with the ERCOT Operating Guides.</p> <p>See also PR-8.2.2--Method of Communication</p> <p>Communication between ERCOT and TSPs or Resource Entities shall be accomplished according to ERCOT procedures in compliance with these Protocols. All submissions, changes, approvals, rejections, and withdrawals regarding Outages shall be processed through the ERCOT Outage Scheduler on the ERCOT MIS, except for Forced Outages and Maintenance Outages, which shall be communicated to ERCOT immediately by voice communication and subsequently entered into the Outage Scheduler.</p>
Revised generation maintenance plans per directive of Reliability Coordinator.	QSE	ERCOT directs Resources to change	<p>PR-8.2.4-- Management of Transmission Forced Outages or Maintenance Outages</p> <p>In the event of a Forced Outage, the Resource Entity or TSP may remove the affected equipment from service immediately and must immediately notify ERCOT of its action. Forced Outages may require ERCOT to review and/or withdraw approval of previously approved or accepted, as applicable Planned Outage or Maintenance Outage schedules to ensure reliability.</p> <p>For Maintenance Outages, the Resource Entity or TSP shall notify ERCOT of any Resource or Transmission Facility Maintenance Outage according to the Maintenance Outage Levels defined in Section 2, Definitions and Acronyms. ERCOT will coordinate the removal of Facilities from service within the defined timeframes as specified by the TSP or Resource Entity in its Notification to ERCOT.</p>

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			<p>ERCOT may require supporting information describing Forced Outages and Maintenance Outages. ERCOT may reconsider and withdraw approvals of other previously approved Transmission or Reliability Resource Outages as a result of Forced Outages or Maintenance Outages, if necessary, in ERCOT's determination to protect system reliability. When ERCOT accepts a Maintenance Outage, ERCOT shall coordinate timing of the appropriate course of action as specified in Section 8.3.8, Information for Inclusion in Transmission Facility Outage Requests, and Section 8.4.1, Resources Outage Plan.</p> <p>Removal of Resource or Transmission Facilities from service under Maintenance Outages shall be coordinated with ERCOT. To minimize harmful impacts to the system in urgent situations, the equipment may be removed immediately from service, provided Notice is given immediately, by the Resource Entity or TSP, to ERCOT of such action.</p>
Receives reliability analyses from Reliability Coordinator.	QSE	ERCOT informs QSE	<p>See also PR-8.2--Communications Regarding Resource Facility and Transmission Facility Outages</p> <p>See also PR-8.2.1--Single Point of Contact</p> <p>All communications concerning Planned Outage or Maintenance Outage shall be between ERCOT and the designated "Single Point of Contact" for each TSP or Resource Entity. The TSP or Resource Entity shall identify, in its initial request or response, the Single Point of Contact, along with primary and alternate means of communication. The Resource Entity or Transmission Entity shall submit a Notice of Change of Information (NCI) form when changes occur in a Single Point of Contact. This identification will be confirmed in all communications with ERCOT regarding Planned Outage or Maintenance Outage requests.</p> <p>The Single Point of Contact must be either a person or a position available seven (7) days per week and twenty-four (24) hours per day for each Resource Entity and TSP. The Resource Entity shall designate its QSE as its Single Point of Contact. The Single Point of Contact for the TSP shall be designated in accordance with the ERCOT Operating Guides.</p>

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			<p>See also PR-8.2.2--Method of Communication</p> <p>Communication between ERCOT and TSPs or Resource Entities shall be accomplished according to ERCOT procedures in compliance with these Protocols. All submissions, changes, approvals, rejections, and withdrawals regarding Outages shall be processed through the ERCOT Outage Scheduler on the ERCOT MIS, except for Forced Outages and Maintenance Outages, which shall be communicated to ERCOT immediately by voice communication and subsequently entered into the Outage Scheduler.</p> <p>Section 2.1 of the Operating Guide states:</p> <ul style="list-style-type: none"> ➤ Provide appropriate operational information to individual QSEs and TOs. ➤ Provide relevant operational information to Market Participants (MPs) over the ERCOT Market Information System (MIS). ➤ Collect and maintain Control Area Authority operational data required by the PUCT and the NERC. ➤ Receive reports from TOs and QSEs and forward them to DOE and/or NERC as required. ➤ Submit Reliability Coordinator reports to DOE and/or NERC as required. ➤ Record and report accumulated time error
Receives notice from Purchasing-Selling Entity if interchange transaction approved or denied.	QSE	QSE receives notice	<p>PR-4.4.18.2--Linkage of Schedules with Interconnected Non-ERCO Control Area Schedules</p> <p>ERCOT will match the Supply and Obligation schedules submitted by the QSEs with interconnected non-ERCOT Control Area schedules obtained through the NERC Scheduling Process to confirm schedules and perform checkouts with adjacent interconnected non-ERCOT Control Areas. Entities submitting NERC tags for DC Tie schedules must identify the appropriate ERCOT QSE on the NERC tag. ERCOT will determine the linkage between interconnected non-ERCOT Control Area schedules and Supply and Obligation schedules submitted by QSEs. QSE schedules creating an ERCOT export across a DC Tie are an Obligation. QSE schedules creating an ERCOT import across a DC Tie are a Supply. If the interconnected non-ERCOT Control Area schedule exceeds the QSE schedule to or from the DC Tie, ERCOT will deny</p>

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			the interconnected non-ERCOT Control Area schedule with the applicable interconnected non-ERCOT Control Area(s). If any QSE's Supply or Obligation schedule indicated as being received or delivered to or from a DC Tie does not match the non-ERCOT Area schedule(s) as confirmed or linked by ERCOT, ERCOT shall settle those imbalances according to Section 6.8.1.13, Resource Imbalance and/or Section 6.9.5.2, Settlement For Balancing Energy for Load Imbalances.
Receives reliability alerts from Reliability Coordinator.	QSE	QSE receives notices	<p>PR-5.6.5--Alert</p> <p>ERCOT will issue an Alert when ERCOT determines:</p> <ol style="list-style-type: none"> (1) That conditions have developed such that additional Ancillary Services are needed in the Operating Period; (2) That market Congestion Management techniques specified in these Protocols will not be adequate to resolve transmission problems; or (3) Forced Outages or other abnormal operating conditions occur which require operations outside first contingency security limits as defined in the ERCOT Operating Guides; (4) That there are insufficient AS bids. <p>ERCOT will post the Alert electronically and will notify all TDSPs and QSEs via the Messaging System of the posted Alert(s).</p> <p>ERCOT must issue an Alert before acquiring Emergency Short Supply Regulation Services, Emergency Short Supply Responsive Reserve Services or Emergency Short Supply Non-Spinning Reserve Services. With the issuance of an Alert pursuant to item (1) or (4) above, ERCOT may exercise its authority to immediately procure the following services from existing bids:</p> <ol style="list-style-type: none"> (1) Regulation Services; (2) Responsive Reserve Services; and (3) Non-Spinning Reserve Services. <p>Emergency Short Supply Regulation Services, Emergency Short Supply Responsive Reserve Services or Emergency Short Supply Non-Spinning Reserve Services will be procured if</p>

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			<p>there is insufficient availability of bids for any of the listed Ancillary Services.</p> <p>ERCOT will post the Alert electronically on the MIS and will notify all TDSPs and QSEs via the Messaging System of the posted Alert(s).</p> <p>Corrective actions identified by ERCOT shall be communicated through Dispatch Instructions to TDSPs and/or QSEs required to implement the corrective action. Each QSE shall immediately notify the Market Participants that it represents of such Alert. To minimize the effects on the ERCOT System, all TDSPs will identify and prepare to implement actions, including restoring outaged lines as appropriate and preparing for Load shedding. ERCOT may instruct TDSPs to reconfigure ERCOT System elements as necessary to improve the reliability of the ERCOT System. On notification of an Alert, each QSE and TDSP will prepare for an emergency in case conditions worsen. ERCOT may require information from QSEs representing Resources regarding their fuel capabilities. Requests for this type of information shall be for a time period of no more than seven (7) days from the date of the request. The specific information which may be requested shall be defined in the Operating Guides. QSEs representing Resources shall provide the requested information in a timely manner, as defined by ERCOT at the time of the request.</p> <p>OG-4.2.3--Alert</p> <p><i>REFERENCE: PROTOCOL SECTION 5.6.5, ALERT</i></p> <p><i>ERCOT will issue an Alert when ERCOT determines:</i></p> <ul style="list-style-type: none"> <i>(1) That conditions have developed such that additional Ancillary Services are needed in the Operating Period;</i> <i>(2) That market Congestion Management techniques specified in these Protocols will not be adequate to resolve transmission problems; or</i> <i>(3) Forced Outages or other abnormal operating conditions occur which require operations outside first contingency security limits as defined in the ERCOT Operating Guides;</i>

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			<p>(4) That there are insufficient AS bids.</p> <p>ERCOT will post the Alert electronically and will notify all TDSPs and QSEs via the Messaging System of the posted Alert(s).</p> <p>ERCOT must issue an Alert before acquiring Emergency Short Supply Regulation Services, Emergency Short Supply Responsive Reserve Services or Emergency Short Supply Non-Spinning Reserve Services. With the issuance of an Alert pursuant to item (1) or (4) above, ERCOT may exercise its authority to immediately procure the following services from existing bids:</p> <ul style="list-style-type: none"> (1) Regulation Services; (2) Responsive Reserve Services; and (3) Non-Spinning Reserve Services. <p>Emergency Short Supply Regulation Services, Emergency Short Supply Responsive Reserve Services or Emergency Short Supply Non-Spinning Reserve Services will be procured if there is insufficient availability of bids for any of the listed Ancillary Services.</p> <p>ERCOT will post the Alert electronically on the MIS and will notify all TDSPs and QSEs via the Messaging System of the posted Alert(s).</p> <p>Corrective actions identified by ERCOT shall be communicated through Dispatch Instructions to TDSPs and/or QSEs required to implement the corrective action. Each QSE shall immediately notify the Market Participants that it represents of such Alert. To minimize the effects on the ERCOT System, all TDSPs will identify and prepare to implement actions, including restoring outaged lines as appropriate and preparing for Load shedding. ERCOT may instruct TDSPs to reconfigure ERCOT System elements as necessary to improve the reliability of the ERCOT System. On notification of an Alert, each QSE and TDSP will prepare for an emergency in case conditions worsen. ERCOT may require information from QSEs representing Resources regarding their fuel capabilities. Requests for this type of information shall be for a time period of no more than seven (7) days</p>

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			<p><i>from the date of the request. The specific information which may be requested shall be defined in the Operating Guides. QSEs representing Resources shall provide the requested information in a timely manner, as defined by ERCOT at the time of the request.</i></p> <p>An Alert may be issued by ERCOT when it recognizes that conditions have developed such that an insecure operating state exists or is imminent.</p> <p>With the issuance of an Alert, ERCOT may exercise its authority to ask for a quick bid response that precludes the QSEs having sufficient time to Self-Arrange additional Ancillary Services (Regulation Services, Responsive Reserve Services, and Non-Spinning Reserve Services). These additional Ancillary Services bids must be submitted by the market promptly in compliance with the Scheduling Protocol (within 15 minutes).</p> <p>An Alert may also be issued by ERCOT when it recognizes that market Congestion Management techniques specified in these protocols will not be adequate to resolve transmission problems.</p> <p>Alerts will be issued by ERCOT when Forced Outages or other abnormal operating conditions occur which require operations outside first contingency security limits. ERCOT will notify all TOs and QSEs and will post the Alert. TOs should notify their represented TDSPs. QSEs should notify appropriate resources and REPs. Identified corrective actions shall be implemented. To minimize the effects on the ERCOT System, all TDSPs will identify and prepare to implement actions, including restoring outaged lines as appropriate and preparation for Load shedding. ERCOT may instruct reconfiguration of ERCOT System elements by TDSPs necessary to improve the reliability of ERCOT as a whole. On notification of an Alert, each QSE and TDSP will prepare for an Emergency in case conditions worsen.</p> <p>See also PR-8.2--Communications Regarding Resource Facility and Transmission Facility Outages</p>

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			<p>See also PR-8.2.1--Single Point of Contact</p> <p>All communications concerning Planned Outage or Maintenance Outage shall be between ERCOT and the designated "Single Point of Contact" for each TSP or Resource Entity. The TSP or Resource Entity shall identify, in its initial request or response, the Single Point of Contact, along with primary and alternate means of communication. The Resource Entity or Transmission Entity shall submit a Notice of Change of Information (NCI) form when changes occur in a Single Point of Contact. This identification will be confirmed in all communications with ERCOT regarding Planned Outage or Maintenance Outage requests.</p> <p>The Single Point of Contact must be either a person or a position available seven (7) days per week and twenty-four (24) hours per day for each Resource Entity and TSP. The Resource Entity shall designate its QSE as its Single Point of Contact. The Single Point of Contact for the TSP shall be designated in accordance with the ERCOT Operating Guides.</p> <p>See also PR-8.2.2--Method of Communication</p> <p>Communication between ERCOT and TSPs or Resource Entities shall be accomplished according to ERCOT procedures in compliance with these Protocols. All submissions, changes, approvals, rejections, and withdrawals regarding Outages shall be processed through the ERCOT Outage Scheduler on the ERCOT MIS, except for Forced Outages and Maintenance Outages, which shall be communicated to ERCOT immediately by voice communication and subsequently entered into the Outage Scheduler.</p>
Receives notification of transmission system problems from Transmission Operator.	QSE	QSE receives notification	<p>PR-5.5.2-- Changes in Transmission Facility Status</p> <p>The TDSP will notify ERCOT of any changes in status of Transmission Facility elements as provided and clarified in the ERCOT procedures. The TDSP will notify ERCOT of any other Transmission Facility status as soon as practicable following the change. In addition, any short-term inability to meet minimum TSP or DSP reactive requirements shall be immediately reported to ERCOT by way of the TSP.</p>

RELATIONSHIP/ FUNCTION	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
Provides real-time operating information to the Transmission Operator and the required Balancing Authority.	QSE	QSE provides to ERCOT	<p>PR-12.4.4.1--ERCOT Power Operations</p> <p>12.4.4.1.1 QSE, Resource and TDSP Responsibilities</p> <p>QSEs, Resources and TDSPs are required to provide power operation data to ERCOT including, but not limited to:</p> <ul style="list-style-type: none"> (1) Real time generation data from QSEs; (2) Planned Outage information from Resources; (3) Network data used by any TDSP's control center, including: <ul style="list-style-type: none"> (a) Breaker and line switch status of all ERCOT Transmission Grid devices; (b) Line flow MW and MVAR; (c) Breaker, switches connected to all Resources; (d) Transmission Facility Voltages; and (e) Transformer MW, MVAR and TAP. (4) Real time generation and Load acting as a Resource meter data from QSEs; (5) Real time Generation meter splitting signal from QSEs; (6) Planned Transmission Outage information from TDSP; (7) Network transmission data (model and constraints) from TDSP; (8) Resource Plans from QSE; and (9) Dynamic Schedules from QSEs; <p>Real Time data will be provided to ERCOT at the same scan rate as the TDSP or QSE obtains the data from telemetry.</p> <p>PR-6.5.1.1--Requirement for Operating Period Data for System Reliability and Ancillary Service Provision</p> <p>Operating Period data will be used by ERCOT to monitor the reliability of the ERCOT System in Real Time, monitor compliance with Ancillary Service Obligations, perform historical analysis, and predict the short-term reliability of the ERCOT System using network analysis software.</p>

RELATIONSHIP/ FUNCTION	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p>such Operating Period data from ERCOT or from QSEs.</p> <p>(1) A QSE representing a Generation Entity that has Generation Resources connected to a TDSP shall provide the following Real Time data to ERCOT for each individual generating unit at a Generation Resource plant location and ERCOT will make the data available to the Generation Resource's host TDSP (at TDSP expense):</p> <ul style="list-style-type: none"> (a) Gross and net real power, or <ul style="list-style-type: none"> Gross real power at the generator terminal and unit auxiliary load real power, or Net real power at the EPS meter and unit auxiliary load real power. (b) Gross reactive power at the generator terminal (c) Status of switching devices in the plant switchyard not monitored by the TDSP affecting flows on the ERCOT System; (d) Frequency Bias of Portfolio Generation Resources under QSE operation; (e) Any data mutually agreed by ERCOT and the QSE to adequately manage system reliability and monitor Ancillary Service Obligations; (f) Generator breaker status; (g) High Operating Limit; and (h) Low Operating Limit. <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>[PRR590: Add items (i) and (j) upon system implementation:]</p> <ul style="list-style-type: none"> (i) AGC status; and (j) Ramp rate. </div> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>[PRR307: Revise Section 6.5.1.1(1) and 6.5.1.1(1)(f) as follows when system change implemented.]</p> <p>(1) A QSE representing a Generation Entity or a Competitive Retailer that has Resources connected to a TDSP shall provide the following Real Time data to ERCOT for each individual generating unit or LaaR capable of controllably reducing or increasing</p> </div>

RELATIONSHIP/ FUNCTION	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p>consumption under Dispatch control (similar to AGC) and that immediately respond proportionally to frequency changes (similar to generator governor action) at a Resource plant location and ERCOT will make</p> <p>the data available to the Resource's host TDSP (at TDSP expense):</p> <p>(f) Resources breaker status;</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><i>[PRR590: Add paragraph (2) and renumber subsequent paragraphs upon system implementation:]</i></p> <p>(2) A QSE representing Uncontrollable Renewable Resources is exempt from the requirements of Section 6.5.1.1(1)(i) and (j).</p> </div> <p>(2) Any QSE providing Responsive Reserve and/or Regulation must provide for communications equipment to receive ERCOT telemetered control deployments of service power.</p> <p>(3) Any QSE providing Regulation Service must provide appropriate Real Time feedback signals to report the control actions allocated to the QSEs Resources.</p> <p>(4) Any QSE that represents a provider of Responsive Reserve, Non-Spinning Reserve, or Replacement Reserve using interruptible Load as a Resource (LaaR) shall provide separate telemetry of the real power consumption of each interruptible Load providing the above Ancillary Services, the LaaR response to Dispatch Instructions for each LaaR, and the status of the breaker controlling that interruptible Load. If interruptible Load is used as a Responsive Reserve Resource, the status of the high-set under frequency relay will also be telemetered.</p> <p>(5) Any QSE that represents a qualified provider of Balancing Up Load (BUL) need not provide telemetry but rather shall provide an estimate in Real Time representing the real power interrupted in response to the deployment of Balancing Up Load.</p> <p>(6) Real Time data for reliability purposes must</p>

RELATIONSHIP/ FUNCTION	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p>be accurate to within three percent (3%). This telemetry may be provided from relaying accuracy instrumentation transformers.</p> <div style="border: 1px solid black; padding: 5px;"> <p>[PRR590: Add paragraph (7) upon system implementation:]</p> <p>(7) A QSE representing a combined cycle plant may aggregate the AGC and ramp rate SCADA points for the individual units at a plant location into two distinct SCADA points (AGC and ramp rate) if the plant is configured to operate as such, i.e. gas turbine(s) and steam turbine(s) are controlled in aggregate from an AGC perspective.</p> </div> <p>OG-3.1.3.1--Operating Obligations</p> <p>REFERENCE: PROTOCOL SECTION 4.3.4, OPERATIONS OF THE QUALIFIED SCHEDULING ENTITY</p> <p>Scheduling Center Requirement. A QSE shall maintain a 24-hour, seven-day-per-week scheduling center with qualified personnel for the purposes of communicating with ERCOT for scheduling purposes and for deploying the QSE's Ancillary Services in Real Time.</p> <p>QSE Representative. Each QSE shall, for the duration of the Scheduling Process and settlement period for which the QSE has submitted schedules to ERCOT, designate a representative who shall be responsible for operational communications and who shall have sufficient authority to commit and bind the QSE.</p> <p>A QSE shall maintain a 24-hour, seven-day-per-week scheduling center with qualified personnel for the purposes of communicating with ERCOT for scheduling purposes and for deploying the QSE's Ancillary Services in Real Time. Each QSE shall provide the ERCOT Control Area Authority (CAA) with its written backup control plan to continue operation in the event the QSE's scheduling center becomes inoperable.</p> <p>Each backup control plan shall be reviewed and updated annually and shall meet the following minimum requirements:</p> <ul style="list-style-type: none"> ➤ Description of actions to be taken by QSE personnel to avoid placing a prolonged burden on ERCOT and

RELATIONSHIP/ FUNCTION	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p>other Market Participants.</p> <ul style="list-style-type: none"> ➤ Description of specific functions and responsibilities to be performed to continue operations from an alternate location. ➤ Includes procedures and responsibilities for maintaining basic voice communications capabilities with ERCOT. ➤ Includes procedures for backup control function testing and the training of personnel. <p>As an option, the backup control plan may include arrangements made with another entity to provide the minimum backup control functions in the event the QSE's primary functions are interrupted.</p> <p>Each QSE shall, for the duration of the Scheduling Process and settlement period for which the QSE has submitted schedules to ERCOT, designate an individual who shall be responsible for operational communications and who shall have sufficient authority to commit and bind the QSE.</p> <p>For connectivity requirements for backup sites, refer to Section 8.3.1.1, QSE Use of Domain Name Service (DNS) or ERCOT Web-Based Front Page for Site Failover.</p> <p>REFERENCE: PROTOCOL SECTION 6.5.1.1, REQUIREMENT FOR OPERATING PERIOD DATA FOR SYSTEM RELIABILITY AND ANCILLARY SERVICE PROVISION</p> <p><i>Operating Period data will be used by ERCOT to monitor the reliability of the ERCOT System in Real Time, monitor compliance with Ancillary Service Obligations, perform historical analysis, and predict the short-term reliability of the ERCOT System using network analysis software. Each TDSP, at its own expense, may obtain such Operating Period data from ERCOT or from QSEs.</i></p> <p><i>(1) A QSE representing a Generation Entity that has Generation Resources connected to a</i></p>

RELATIONSHIP/ FUNCTION	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p><i>TDSP shall provide the following Real Time data to ERCOT for each individual generating unit at a Generation Resource plant location and ERCOT will make the data available to the Generation Resource's host TDSP (at TDSP expense):</i></p> <ul style="list-style-type: none"> (a) <i>Gross and net real power, or Gross real power at the generator terminal and unit auxiliary load real power, or Net real power at the EPS meter and unit auxiliary load real power.</i> (b) <i>Gross reactive power at the generator terminal</i> (c) <i>Status of switching devices in the plant switchyard not monitored by the TDSP affecting flows on the ERCOT System;</i> (d) <i>Frequency Bias of Portfolio Generation Resources under QSE operation;</i> (e) <i>Any data mutually agreed by ERCOT and the QSE to adequately manage system reliability and monitor Ancillary Service Obligations;</i> (f) <i>Generator breaker status;</i> (g) <i>High Operating Limit; and</i> (h) <i>Low Operating Limit.</i> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>[PRR590: Add items (i) and (j) upon system implementation:]</p> <ul style="list-style-type: none"> (i) <i>AGC status; and</i> (j) <i>Ramp rate.</i> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>[PRR307: Revise Section 6.5.1.1(1) and 6.5.1.1(1)(f) as follows when system change implemented.]</p> <p>(1) <i>A QSE representing a Generation Entity or a Competitive Retailer that has Resources connected to a TDSP shall provide the following Real Time data to ERCOT for each individual generating unit or LaaR capable of controllably reducing or increasing consumption under Dispatch control (similar to AGC) and that immediately respond proportionally to frequency changes (similar to generator governor action) at a Resource plant location and ERCOT will make the data</i></p> </div>

RELATIONSHIP/ FUNCTION	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<div data-bbox="943 646 1500 869" style="border: 1px solid black; padding: 5px;"> <p>[PRR590: Add paragraph (2) and renumber subsequent paragraphs upon system implementation:]</p> <p>(2) A QSE representing Uncontrollable Renewable Resources is exempt from the requirements of Section 6.5.1.1(1)(i) and (j).</p> </div> <p>(2) Any QSE providing Responsive Reserve and/or Regulation must provide for communications equipment to receive ERCOT telemetered control deployments of service power.</p> <p>(3) Any QSE providing Regulation Service must provide appropriate Real Time feedback signals to report the control actions allocated to the QSEs Resources.</p> <p>(4) Any QSE that represents a provider of Responsive Reserve, Non-Spinning Reserve, or Replacement Reserve using interruptible Load as a Resource shall provide separate telemetry of the real power consumption of each interruptible Load providing the above Ancillary Services, the LaaR response to Dispatch Instructions for each LaaR, and the status of the breaker controlling that interruptible Load. If interruptible Load is used as a Responsive Reserve Resource, the status of the high-set under frequency relay will also be telemetered.</p> <p>(5) Any QSE that represents a qualified provider of Balancing Up Load (BUL) need not provide telemetry but rather shall provide an estimate in Real Time representing the real power interrupted in response to the deployment of Balancing Up Load.</p> <p>(6) Real Time data for reliability purposes must be accurate to within three percent (3%). This telemetry may be provided from relaying</p>

RELATIONSHIP/ FUNCTION	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p><i>accuracy instrumentation transformers.</i></p> <p>[PRR590: Add paragraph (7) upon system implementation:]</p> <p><i>(7) A QSE representing a combined cycle plant may aggregate the AGC and ramp rate SCADA points for the individual units at a plant location into two distinct SCADA points (AGC and ramp rate) if the plant is configured to operate as such, i.e. gas turbine(s) and steam turbine(s) are controlled in aggregate from an AGC perspective.</i></p>
Adjusts real and reactive power as directed by the Balancing Authority and Transmission Operator.	QSE	ERCOT may order, typically local TDSP provides direction to QSE or Resource	<p>PR-6.5.7.2--QSE Responsibilities</p> <p>(1) QSE Generation Resources required to provide VSS are expected to have and maintain Reactive Power capability at least equal to the Reactive Power capability requirements specified in these Protocols and the Operating Guides.</p> <p>(2) Each QSE's Generation Resource providing VSS is expected to be compliant with the Operating Guides for response to transient voltage disturbance.</p> <p>(3) Each Generation Resource providing VSS must meet technical requirements specified in Section 6.10, Ancillary Service Qualification, Testing and Performance Standards.</p> <p>(4) Each QSE's Generation Resource providing VSS shall operate with the unit's Automatic Voltage Regulator (AVR) set to regulate generator terminal voltage in the voltage control mode unless specifically directed to operate in manual mode by ERCOT, or when the unit is going On- or Off- line. If the QSE changes the mode, other than under ERCOT direction, then the QSE shall promptly inform ERCOT. Any QSE-controlled power system stabilizers will be kept in service unless specifically permitted to operate otherwise by ERCOT. QSEs' control centers will monitor the status of their regulators and stabilizers, and shall report abnormal status changes to ERCOT.</p> <p>(5) QSEs shall meet, within established tolerances, and respond to changes in the Voltage Profile established by ERCOT subject to the stated QSE Reactive Power and actual power operating characteristic limits and</p>

RELATIONSHIP/ FUNCTION	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p>voltage limits.</p> <p>(6) The reactive capability required must be maintained at all times the plant is On-line.</p> <p>(7) QSE shall advise ERCOT Operations whenever their Generation Resources are not operating at a power factor level as specified in the Operating Guides. Upon such notice, ERCOT Operations, in conjunction with the appropriate TSP, shall investigate the situation with the goal of restoring the reported unit's operation to within the specified power factor range. Actions that ERCOT may take include the addition or removal of transmission reactive devices to/from service or a request to another Generator Resource within electrical proximity for the production of leading or lagging VARS (as appropriate) so as to equitably share the need for voltage support among Generation Resources. Requests arising within the context of this subsection may not result in the operation of a Generation Resource outside of the specified reactive operating range. Accordingly, Generation Resources are expected to voluntarily comply with these requests. Nothing in this subsection is meant to supersede ERCOT's Dispatch authority in the event of emergency operations.</p> <p>OG-3.1.5--Transmission and/or Distribution Service Providers</p> <p>REFERENCE: PROTOCOL SECTION 5.5.2, CHANGES IN TRANSMISSION FACILITY STATUS</p> <p><i>The TDSP will notify ERCOT of any changes in status of Transmission Facility elements as provided and clarified in the ERCOT procedures. The TDSP will notify ERCOT of any other Transmission Facility status as soon as practicable following the change. In addition, any short-term inability to meet minimum TSP or DSP reactive requirements shall be immediately reported to ERCOT by way of the TSP.</i></p> <p>REFERENCE: PROTOCOL SECTION 6.4.2, DETERMINATION OF ERCOT CONTROL AREA REQUIREMENTS (IN PART)</p> <p>(6) <i>Voltage Support: ERCOT in coordination with the TDSPs shall conduct studies to determine the normally desired Voltage Profile for all Voltage Support busses in the ERCOT System</i></p>

RELATIONSHIP/ FUNCTION	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p>and shall post all Voltage Profiles on the Market Information System. ERCOT may temporarily modify its requirements based on Current System Conditions. ERCOT shall determine the amount of Voltage Support Service needed to provide sufficient reactive capacity in appropriate locations to provide ERCOT System security as specified in the Operating Guides...</p> <p>REFERENCE: PROTOCOL 6.5.7.1, GENERATION RESOURCES REQUIRED TO PROVIDE VSS INSTALLED REACTIVE CAPABILITY (IN PART)</p> <p>(1) Generation Resources required to provide VSS must be capable of producing a defined quantity of Reactive Power at rated capability (MW) to maintain a Voltage Profile established by ERCOT. This quantity of Reactive Power is the Unit Reactive Limit (URL).</p> <p>(2) Generation Resources required to provide VSS except as noted below in items (3) or (4), shall have and maintain a URL which has an over-excited (lagging) power factor capability of ninety-five hundredths (0.95) or less and an under-excited (leading) power factor capability of ninety-five hundredths (0.95) or less, both determined at the generating unit's maximum net power to be supplied to the transmission grid and at the transmission system Voltage Profile established by ERCOT, and both measured at the point of interconnection to the TDSP...</p> <p>REFERENCE: PROTOCOL 6.5.7.2, QSE RESPONSIBILITIES (IN PART)</p> <p>(1) QSE Generation Resources required to provide VSS are expected to have and maintain Reactive Power capability at least equal to the Reactive Power capability requirements specified in these Protocols and the Operating Guides...</p> <p>(5) QSEs shall meet, within established tolerances, and respond to changes in the Voltage Profile established by ERCOT subject to the stated QSE Reactive Power and actual power operating characteristic limits and voltage limits...</p>

RELATIONSHIP/ FUNCTION	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p>REFERENCE: PROTOCOL SECTION 6.5.7.3, ERCOT RESPONSIBILITIES (IN PART)</p> <p>(1) ERCOT, in coordination with the TDSPs, shall establish, and update as necessary, Voltage Profiles at points of interconnection of Generation Resources required to provide VSS to maintain system voltages within established limits...</p> <p>(3) ERCOT, in coordination with the TDSPs, shall deploy static Reactive Power Resources as required to continuously maintain dynamic Reactive Reserves from QSEs, both leading and lagging, adequate to meet ERCOT System requirements...</p> <p>REFERENCE: PROTOCOL SECTION 6.7.6, DEPLOYMENT OF VOLTAGE SUPPORT SERVICE (IN PART)</p> <p>(2) ERCOT and TDSPs shall develop operating procedures specifying Voltage Profiles of transmission controlled reactive Resources to minimize the dependence on generation-supplied reactive Resources. For Generation Resources required to provide VSS, step-up transformer tap settings will be managed to maximize the use of the ERCOT System for all Market Participants while maintaining adequate reliability...</p> <p>ERCOT and TDSPs shall operate the ERCOT Interconnected System in compliance with Good Utility Practice and NERC and ERCOT standards, policies, guidelines and operating procedures.</p> <p>TDSPs monitoring system conditions shall notify ERCOT when Transmission Facility Elements reach safe operating limits as soon as practicable, if these Transmission Facility Elements will affect the ERCOT system.</p> <p>A TDSP shall notify ERCOT Control Area Authority of any changes in their transmission facility status within 10 seconds of the change of status.</p> <p>TDSPs shall follow ERCOT instructions related to ERCOT responsibilities:</p>

RELATIONSHIP/ FUNCTION	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE				
			<ul style="list-style-type: none"> • Performing the physical operation of the ERCOT Transmission Grid, including circuit breakers, switches, voltage control equipment, protective relays, metering and load shedding equipment; • Directing changes in the operation of transmission voltage control equipment; • TDSPs will maintain voltage set points established by ERCOT utilizing static reactive devices. TDSPs, under the direction of ERCOT, will coordinate TDSP static device switching with QSE dynamic reactive device operation. Static reactive devices will be brought on line before predicted daily maximum load growth or dynamic reactive resources reach operating limits. Static reactive devices will be taken off line during daily load decline and before dynamic reactive resources reach operating limits. ERCOT will coordinate Automatic Voltage Regulator, dynamic and static reactive device outages to ensure adequate reactive reserves are maintained • Taking those additional actions required to prevent an imminent Emergency Condition or to restore the ERCOT Transmission Grid to a secure state in the event of an ERCOT System Emergency. <p>Each TDSP, at its own expense, may obtain Operating Period data from ERCOT (See Section 2.3.1, above).</p> <p>OG-3.1.4.1--PGC Data Reporting</p> <p>The PGC's reporting QSE shall provide the following information to ERCOT Control Area Authority at the times specified:</p> <table border="1" data-bbox="922 1499 1516 1860"> <thead> <tr> <th data-bbox="922 1499 1122 1549">TIME</th> <th data-bbox="1122 1499 1516 1549">INFORMATION</th> </tr> </thead> <tbody> <tr> <td data-bbox="922 1549 1122 1860">Every 10 seconds</td> <td data-bbox="1122 1549 1516 1860"> <ul style="list-style-type: none"> ➤ Generation net MW output ➤ Generation net MVAR ➤ Status of switching devices in switchyard ➤ Generating unit breaker status ➤ Generating unit High Operating Limit </td> </tr> </tbody> </table>	TIME	INFORMATION	Every 10 seconds	<ul style="list-style-type: none"> ➤ Generation net MW output ➤ Generation net MVAR ➤ Status of switching devices in switchyard ➤ Generating unit breaker status ➤ Generating unit High Operating Limit
TIME	INFORMATION						
Every 10 seconds	<ul style="list-style-type: none"> ➤ Generation net MW output ➤ Generation net MVAR ➤ Status of switching devices in switchyard ➤ Generating unit breaker status ➤ Generating unit High Operating Limit 						

RELATIONSHIP/ FUNCTION	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<ul style="list-style-type: none"> ➤ Generating unit Low Operating Limit
			<p>Daily</p> <ul style="list-style-type: none"> ➤ Planned unit status, ➤ Planned unit capability (both hourly and daily), ➤ Fuel limitations. <p>The reporting Entity will promptly report this condition to ERCOT Control Area Authority</p>
			<p>Annually</p> <ul style="list-style-type: none"> ➤ Seasonal capability where applicable, ➤ Planned maintenance schedules. <p>This information shall be updated when it changes.</p>
			<p>Upon request</p> <ul style="list-style-type: none"> ➤ Fuel capability as described in Section 6.2.7, Unit Alternative Fuel Capability Operating Guide Form, in conjunction with an Operating Condition Notice, Alert, Advisory, or Emergency Notice,
			<p>Each generator at a generation facility shall have an automatic speed governor in service while the generator is on line. Testing and regulation performance of the speed governor shall be in accordance with Operating Guide Section 3, Operational Interfaces. The generator is required to notify the ERCOT Control Area Authority, through its QSE, if the operation of speed governors is impaired.</p> <p>Each generation facility providing an Ancillary Service shall provide output consistent with the requirements of that Ancillary Service and ERCOT instructions.</p> <p>In the event of an ERCOT declared Emergency, ERCOT may require the QSE to notify the generation facility through the reporting Entity and require it to increase or decrease generation or change voltage and reactive</p>

RELATIONSHIP/ FUNCTION	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p>requirements in accordance with the Protocols. The generation facility shall use its best efforts in meeting these required output levels in order that the ERCOT System can maintain safe and reliable operation.</p> <p>It is the responsibility of all generators to carry an operational share of reactive support to insure adequate and safe Voltage Profiles are maintained in all areas of ERCOT. To accomplish this, the following requirements shall apply to each generation facility.</p> <ul style="list-style-type: none"> • Each generation facility shall have Automatic Voltage Regulators and power system stabilizers in service as defined in Section 3.1.4.5, Automatic Voltage Regulators and Power System Stabilizers, below. • The generation facility shall be designed and operated consistent with its obligations to supply Voltage Ancillary Service as required in the ERCOT Protocols and ERCOT Control Area Authority Procedures. • ERCOT has the right and obligation to Dispatch the reactive output (VARs) of each generation facility within its design capability to maintain adequate transmission voltage in ERCOT. • ERCOT and the TSP shall be notified of any equipment changes that affect the reactive capability of an operating generating unit no less than 60 days prior to implementation of the changes, and any such changes that decrease the reactive capability of the generating unit below the required level must be approved by ERCOT prior to implementation. • High reactive loading or reactive oscillations on generation units should be communicated to the QSE, the transmission operator, and ERCOT as soon as practicable. • The tripping off line of a generating unit due to voltage or reactive problems should be reported to ERCOT, the transmission operator, and the QSE as soon as practicable. <p>REFERENCE: PROTOCOL SECTION 6.10.2, GENERAL CAPACITY TESTING REQUIREMENTS (IN PART)</p>

RELATIONSHIP/ FUNCTION	RESPONSIBLE ENTITY	ERCOT PRACTICE	PR/OG REFERENCE
			<p><i>QSEs shall provide ERCOT a list identifying each Generation Resource unit that is expected to operate more than one hundred sixty eight (168) hours in a Season as a provider of energy and/or Ancillary Services. ERCOT shall evaluate, during each Season of expected operation, the Net Dependable Capability of each unit expected to operate more than one hundred sixty eight (168) hours during that Season, except for any Generation Resources used solely for energy services and whose capacity is less than ten (10) MW. Prior to the beginning of each Season, QSEs shall identify the Generation Resources to be tested during the Season and the specific week of the test if known. This schedule may be modified by the QSE (including retests) during the Season. QSEs not identifying a specific week for a Generation Resource unit test must test the unit within the first one hundred sixty eight (168) hours of run time during the Season or operate with a Net Dependable Capability equal to the highest integrated hourly MWh output demonstrated during the first one hundred sixty eight (168) hours of run time. QSEs do not have to bring units On-line or shut down solely for the purpose of the seasonal verification. Any unit for which the QSE desires qualification to provide Ancillary Services shall have its Net Dependable Capability verified prior to providing services using the Generation Resource unit even if it fits the less than one hundred sixty eight (168) hour or small capacity exception. The capability of hydro units operating in the synchronous condenser fast response mode to provide hydro Responsive Reserve shall be evaluated by Season.</i></p> <p><i>Load acting as a Resource to provide Ancillary Services shall have its telemetry attributes verified by ERCOT annually. In addition, once every two (2) years, any LaaR providing Responsive Reserve Service shall test the under frequency relay or the output from the solid-state switch, whichever applies, for correct operation. However, if the Load's performance has been verified through response to an actual event, the data from the event can be used to meet the annual telemetry verification requirement for that year and/or the biennial relay testing requirement...</i></p>

Attachment D
Constellation Response to TRE
Assessment

111 Market Place
Suite 500
Baltimore, Maryland 21202



October 19, 2007

David W. Hilt
Vice President and Director of Compliance
North American Electric Reliability Corporation
116-390 Village Boulevard
Princeton, NJ 08540-5721

**Re: Response of Constellation Energy Commodities Group, Inc. ("Constellation")
to Texas Regional Entity's Response to Registration Appeal**

Dear Mr. Hilt:

On May 4, 2007, Constellation Energy Commodities Group, Inc. ("Constellation") appealed, as set forth in Attachment A ("Appeal") the North American Electric Reliability Corporation's ("NERC") registration of Constellation as Generator Operator ("GOP") in the Texas Regional Entity ("TRE") region, with respect to Power Resources, Ltd.'s ("PRL") generating facilities located in Howard County, Texas ("Project"). In the Appeal, Constellation demonstrated that it should not be the GOP. On Friday, October 5, 2007, Constellation received, in response to the Appeal, TRE's assessment of Constellation's registration as a GOP for the Project in the TRE region ("Assessment").

By this letter, Constellation hereby responds to the Assessment. As demonstrated herein, NERC erred in registering Constellation as the GOP for the Project. Therefore, Constellation requests that NERC remove Constellation from the NERC Compliance Registry ("Registry") as a GOP with respect to the Project. NERC should instead register PRL as GOP with respect to the Project.

Having not been initially advised by NERC of any opportunity to respond to TRE's Assessment, Constellation contacted NERC to request such an opportunity.

David W. Hilt
October 19, 2007
Page 2 of 31

Constellation was advised, as discussed further in Section VIII, that Constellation could have until October 19, 2007 to respond to TRE's 72-page Assessment.¹

Due to the late notice provided to Constellation as to substance of TRE's Assessment (i.e., October 5) and the time required for Constellation to prepare a response to the extensive materials included in that Assessment, NERC's Board of Trustees Compliance Committee ("Compliance Committee") will not receive this response until shortly before the Compliance Committee's meeting on October 21, 2007, during which the Compliance Committee will consider the Appeal. However, Constellation requests that the Compliance Committee carefully review and consider this response before completing its deliberations.²

I. EXECUTIVE SUMMARY OF CONSTELLATION'S RESPONSE TO TRE'S ASSESSMENT

TRE's recommendation to NERC that Constellation be registered as a GOP for the Project (and, therefore, NERC's registration of Constellation as a GOP) is fundamentally flawed because it rests on two key, but inaccurate, determinations. If left to stand, such registration will create a gap and weaken reliability because it will allow PRL, the entity that has the actual authority and ability to ensure compliance with the Reliability Standards associated with GOP registration ("GOP Reliability Standards"), to escape responsibility. At the same time, it will foist upon Constellation the responsibility for complying with the GOP Reliability Standards, even though it has no ability or authority to comply or to compel compliance with such requirements. If NERC upholds TRE's determination, it will fail in its mission of ensuring reliable operation of the Bulk-Power System ("BPS").

First, TRE concludes that, although Constellation neither owns nor physically operates the Project and does not directly perform the reliability tasks, Constellation has complete contractual control over the Project and has the authority to compel PRL to take all actions necessary to ensure compliance with the GOP Reliability Standards

¹Representatives of Constellation were advised of the response time through telephone conferences with Ms. R. Michael of NERC on October 5 and 11, 2007.

²*Mosaic Fertilizer, LLC*, 121 FERC ¶ 61,058, at P 34 (2007) (finding that NERC must adequately demonstrate why entities are registered, and must adequately address the arguments made by registered entities as to why they are not properly registered).

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under its agreement with PRL to purchase power from PRL (“Tolling Agreement”). TRE’s conclusion is wrong.

- The Tolling Agreement plainly states that PRL “operates and maintains” the Project, and has retained authority and responsibility for compliance with ERCOT reliability standards, which include the GOP Reliability Standards. Constellation, on the other hand, has the right to schedule and purchase capacity, energy and ancillary services produced by the Project—but such rights are limited to the Project’s availability, which is determined by PRL.
- The Tolling Agreement also does not give Constellation any authority to compel PRL to take actions required to comply with the GOP Reliability Standards. As the owner and operator of the Project, PRL is responsible for developing, implementing and enforcing policies and protocols necessary to ensure that the Project’s capability to produce power and its actual physical operations comply with all of the contractual, technical, regulatory and other legal requirements applicable to the ownership and operation of the Project.
- TRE and NERC cannot ignore or dismiss the plain language of the Tolling Agreement that unambiguously shows that PRL has retained the responsibility to be the operator of the Project for GOP purposes and the authority, dominion and control over the business and physical operations of the Project that is necessary to ensure compliance with the GOP Reliability Standards.³ The Tolling Agreement does not transfer such responsibilities to Constellation.
- In short, Constellation lacks authority over PRL and the Project to ensure performance of the GOP Reliability Standards, including those that require the GOP to (i) operate, test, or monitor the generating facility, (ii) provide information or reports to other Responsible Entities (as defined by NERC), (iii) establish procedures for the operation of the Project, or (iv) coordinate operation of the Project with other Responsible Entities.

³A comprehensive analysis of the Tolling Agreement is provided in Section III.

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Second, TRE has adopted a blanket rule that a Level 4 Qualified Scheduling Entity ("QSE") under the ERCOT Independent System Operator's ("ERCOT ISO") market and transmission service rules that ERCOT ISO administers ("ERCOT Protocols" or "Protocols") is, by definition, a GOP. TRE supports this blanket rule based on its view that the tasks performed by a QSE with respect to the Protocols are similar to a few elements contained in the description of GOP tasks and relationships in the NERC Reliability Functional Model, Version 3 ("Model"). TRE is wrong again.

- As TRE itself acknowledges in the Assessment, the ERCOT Protocols are different from the Reliability Standards approved by the Federal Energy Regulatory Commission ("FERC").
- Neither the Tolling Agreement nor Constellation's assumption of QSE obligations for the Project under the ERCOT Protocols shift to Constellation responsibility for compliance with GOP Reliability Standards.
- TRE erroneously concludes that because Constellation is the communications intermediary with ERCOT ISO for ERCOT Protocol purposes, such conduit role elevates Constellation to GOP.
- There is much more to satisfaction of the GOP Reliability Standards than the communication of information. GOP responsibilities include overall management of the actual operations and maintenance of the Project and relevant procedures consistent with the GOP Reliability Standards, which also drive the content of relevant reports and communications required to be submitted under the GOP Reliability Standards.
- A careful review of each of the Model and the GOP Reliability Standards demonstrates the error in TRE's logic.⁴ NERC obligations must rest with the entity that has the authority and ability to actually ensure the performance of the GOP Reliability Standards, not the entity that is providing a communications service. Any overlap in communication topics between GOP Reliability Standards and ERCOT Protocols cannot

⁴A comprehensive review of the Model and GOP Reliability Standards is provided in Sections V and VI.

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serve as the basis for assigning to Constellation, as the Project QSE, the obligation to satisfy the GOP Reliability Standards.

- TRE's attempted convergence of QSE responsibilities under the ERCOT Protocols and GOP responsibilities under FERC-approved Reliability Standards fails completely, and reflects a results-oriented disregard of the facts. TRE apparently concluded that it would prefer to hold one entity responsible for two roles—satisfaction of QSE requirements under ERCOT Protocols and satisfaction of GOP requirements under NERC Reliability Standards—and so it adopted the blanket rule that a QSE will be a GOP, without consideration as to how the QSE could possibly ensure compliance. However, convenience is not a criteria for registration.

In short, Constellation has no ability or authority, contractually or otherwise, to ensure the Project's compliance with the GOP Reliability Standards. PRL is the entity that should be registered as the Project's GOP. If NERC does not de-register Constellation and replace PRL as the Project's GOP, NERC is essentially weakening reliability by giving PRL—the entity that should be registered as GOP—license to ignore the GOP Reliability Standards.

In addition, no other Regional Entity has adopted a blanket rule registering ISO/RTO communications interfaces as GOPs. Should NERC deny Constellation's Appeal, this inconsistent approach to the application of the GOP Reliability Standards would result in a failure by NERC to abide by FERC's consistency requirement and NERC's own Rules of Procedure.

Thus, to ensure that no gap is created that will jeopardize reliability and to ensure consistency among regions, NERC must grant the Appeal and remove Constellation from the Registry as a GOP in the TRE region, and replace it with PRL.

II. ADDITIONAL FACTUAL BACKGROUND

The Assessment provides a general description of the background leading up to this Appeal. However, there are a few additional important points that bear notice. Constellation filed its Appeal with NERC in May 4, 2007. Having heard nothing from either NERC or TRE, and faced with the obligation to comply with Reliability Standards for which it could not comply or risk severe penalty, on June 14, 2007, Constellation submitted to TRE a supplemental letter further discussing the inappropriateness of the

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GOP registration and Constellation's actual inability to comply with the GOP Reliability Standards ("Supplemental Letter," included as Attachment B).⁵ Constellation's efforts to engage TRE fell on deaf ears. In fact, the only communication that Constellation received from TRE with respect to its Supplemental Letter was a suggestion that Constellation execute joint registration forms to allocate responsibilities between Constellation and PRL. These forms require execution by both parties. PRL has been unwilling to discuss with Constellation PRL's responsibilities under the GOP Reliability Standards.

It was not until October 5, 2007, when Constellation received a copy of TRE's 72-page Assessment, that Constellation had the benefit of TRE's position. Until that time, the only basis that TRE had provided to Constellation for the GOP registration was a conclusory statement that TRE had determined that all Level 4 QSEs would be designated as GOPs. TRE states that it received information from PRL supporting the registration of Constellation as GOP on July 13, 2007 ("PRL Letter"). However, neither TRE nor PRL shared that information with Constellation prior to the Assessment, nor did TRE request any additional information from Constellation in an effort to confirm information it had received from PRL. Consequently, Constellation was not provided an opportunity to respond to the PRL Letter prior to the issuance of the Assessment. It was not until October 11, 2007, following Constellation's written request, that TRE provided Constellation with a copy of the PRL Letter (i.e., six days after Constellation learned of the letter's existence and requested a copy).⁶

III. CONSTELLATION NEITHER OWNS NOR OPERATES GENERATION IN ERCOT, AND HAS NOT AGREED UNDER A CONTRACT TO TAKE ON ANY GOP OBLIGATIONS OR BE REGISTERED AS GOP

TRE based many of its assertions of Constellation's GOP status on an erroneous interpretation of the Tolling Agreement. Its conclusions on the Tolling Agreement rely on the statements made in the PRL Letter and TRE's speculation on the way the Tolling

⁵Constellation provided a copy of the Supplemental Letter to PRL on June 14, 2007.

⁶PRL also did not share the letter with Constellation, even though the letter purported to respond to Constellation's Appeal and Supplemental Letter, copies of which Constellation provided to PRL on June 14, 2007.

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Agreement works.⁷ Either way, it is entirely inappropriate for a governing authority to foist significant legal obligations (with concomitant penalty exposure) upon an entity without a complete and accurate assessment of the facts.

TRE generally contends, based on conclusory statements of PRL, that pursuant to the Tolling Agreement, Constellation “exercises complete contractual control” of the Project and “‘exclusively handles’ the relationships relating to the facilities in the provision of power.”⁸ Relying in part on PRL’s statements, TRE concluded (without seeing the agreement) that the Tolling Agreement shows that Constellation exclusively exercises the kinds of control over the Project to make it, rather than PRL, the entity that should be registered as the GOP for the Project under NERC’s Reliability Standards.⁹ TRE argues that along with Constellation’s QSE agreement with ERCOT ISO, the Tolling Agreement transfers the GOP responsibilities from PRL to Constellation.¹⁰

TRE erred in concluding that the Tolling Agreement evidences that Constellation is the operator of the Project for purposes of being the GOP under NERC’s Reliability Standards. The opposite is, in fact, true. As explained below, the Tolling Agreement shows that it is PRL, not Constellation, that should be registered as the GOP.

PRL conveniently omits mentioning in the PRL Letter that the Tolling Agreement specifically states that PRL is the entity that “operate[s] and maintain[s]” the Project and such responsibility requires it to ensure that the Project is operated and maintained in accordance with prudent industry practice, which includes, among other things, compliance with reliability standards applicable in ERCOT.¹¹ Accordingly, the Tolling Agreement clearly demonstrates that PRL has retained, rather than transferred to Constellation, all operator responsibilities under NERC’s Reliability Standards including those as the GOP. NERC, TRE and PRL cannot ignore or dismiss the plain language of the Tolling Agreement that unambiguously shows that PRL contractually

⁷See Assessment at 5 (quoting PRL Letter). As noted above, Constellation was not given the opportunity to review or respond to the PRL Letter until October 11, 2007.

⁸Assessment at 4 (quoting PRL Letter at 1), 12, 13 (at pp.12, TRE attributes statement to “CEG”, but it is PRL who makes the statement in the PRL Letter).

⁹Assessment at 4.

¹⁰Assessment at 6.

¹¹Tolling Agreement, Section 7.2(a).

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has committed to be the operator of the Project. Such contractual commitment by PRL refutes TRE's conclusions that the Tolling Agreement transfers to Constellation complete control of the Project or the authority to direct or ensure, as a GOP, compliance with the GOP Reliability Standards.¹²

As the operator, PRL is the entity that makes, and is responsible for enforcing, decisions that control and affect the overall operations of the Project including satisfaction of NERC's Reliability Standards. PRL, not Constellation, is responsible for developing, implementing and enforcing policies and protocols necessary to ensure that the Project's capability to produce power and its actual operations comply with all of the contractual, technical, regulatory and other legal requirements applicable to the ownership and operation of the Project. Such responsibilities include garnering, controlling and directing the financial, technical and personnel resources needed to fulfill these requirements. While PRL may delegate certain tasks to people or companies, PRL is the one ultimately responsible to ensure that the tasks are completed in accordance with applicable requirements. In short, PRL has relationships with key people and entities with respect to the overall business and operations of the Project that Constellation does not have or control.

TRE defines the term "operate" to mean "to produce an effect" and to "control or direct the functioning of[,] . . . to conduct the affairs of[,] . . . or . . . t]o bring about or effect."¹³ PRL's rights and duties as operator of the Project under the Tolling Agreement and the relationships and people it hires, directs or controls to assist PRL in its operator role, cause PRL to fall squarely within TRE's definition of an operator.

Other provisions of the Tolling Agreement further demonstrate the pervasive dominion and operational control that PRL has over the Project and its ability to provide capacity, energy and ancillary services:

- PRL determines the annual planned outages for the Project, which do not have to be approved by Constellation unless an outage is planned during the June through September period.¹⁴ While PRL is required to consult with Constellation on such planned outages, PRL is not required to

¹²See Assessment at 6.

¹³Assessment at 7.

¹⁴Tolling Agreement, Section 7.5

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accommodate Constellation's requests for changes if PRL determines that they would adversely affect PRL, the Project, the Project operator (which is not Constellation) or would otherwise be inconsistent with prudent industry practice, which embraces the NERC Reliability Standards.¹⁵

- As discussed further below, PRL determines the Project's daily availability to provide energy and ancillary services.¹⁶
- PRL controls the amount of AGC that the Project is capable of achieving. While Constellation relies on tests conducted by PRL to determine the amount of AGC that the Project is capable of achieving, if the Project fails to achieve certain levels of AGC, then the Project is derated until PRL takes appropriate actions to correct the problem.¹⁷ Constellation does not have the authority to direct or control remedial actions for an AGC shortfall; such decision is within PRL's control. If PRL continues to fail to achieve AGC baselines under the Tolling Agreement, Constellation's only remedy is an adjustment to the price it pays for capacity.¹⁸
- PRL is responsible for operating and maintaining the Project in a manner that will optimize the provision of ancillary services.¹⁹
- PRL must maintain all regulatory and environmental permits and approvals required to operate the Project.²⁰
- PRL is the party to a blackstart service agreement it has executed with ERCOT; PRL is responsible for that agreement and blackstart services are governed by that contract.²¹

¹⁵Tolling Agreement, Exhibit D.

¹⁶Tolling Agreement, Section 4.2(b)-(d).

¹⁷Tolling Agreement, Section 5.8.

¹⁸Tolling Agreement, Section 5.8(c).

¹⁹Tolling Agreement, Section 7.2(e).

²⁰Tolling Agreement, Sections 6.1(h), 7.2(a).

²¹Tolling Agreement, Section 7.2(e).

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- PRL is the party to the electric interconnection agreement with Oncor Electric Delivery Company (“Oncor”); PRL is responsible for the performance of that agreement and interconnection services of the Project are governed by that contract.²²

By contrast, Constellation’s limited power purchase rights and fuel supply obligations under the Tolling Agreement do not constitute the types of control a GOP would need to perform its responsibilities under the GOP Reliability Standards. While Constellation is entitled to the capacity, energy and ancillary services produced by the Project, its ability to schedule power from the Project is subject to various limitations under the Tolling Agreement. The amount of capacity, energy and ancillary services that the Project is capable of providing is based in large part on PRL’s actions with respect to operating and maintaining the Project and its capability to receive fuel and produce power in the quantities requested by Constellation. As noted above, PRL, not Constellation, determines the Project’s daily availability to provide energy and ancillary services. Therefore, the amount of energy and ancillary services from the Project that Constellation can decide to schedule at any given time is driven by PRL’s overall operation and management of the Project to maintain its capability and availability to produce such products.²³

For example, if PRL determines that the Project is not available because of outages, deratings or other legal, regulatory or technical operational constraints contemplated under the Tolling Agreement, the amount of energy and ancillary services that Constellation can schedule to buy under these circumstances is reduced.²⁴ Constellation does not determine or control such Project constraints and it cannot disregard them in its dispatch decisions. Moreover, PRL is not required to comply with a proposed schedule for energy proffered by Constellation if PRL determines that the Project is suffering from constraints (e.g., outages or deratings) set forth in the contract.²⁵ Further, while Constellation may request changes to an energy schedule in

²²The interconnection agreement is attached to the Tolling Agreement as Exhibit I.

²³The fact that Constellation is responsible for paying scheduling fees, if any, for scheduling energy is part of the commercial bargain it made to buy energy available from the Project and is not, in and of itself, control over the Project.

²⁴Tolling Agreement, Section 4.2.

²⁵*Id.*

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accordance with applicable ERCOT ISO requirements, PRL does not have to agree to the change if such changes are not within the Project's operating constraints and the scheduling protocols set forth in the Tolling Agreement.²⁶

In short, the notion that Constellation has unfettered control over the Project by reason of its energy scheduling rights and fuel supply obligations is not in any way supported by the Tolling Agreement. PRL's operational management of the Project's capabilities and availability is the crucial factor that determines whether and how much capacity, energy and ancillary services are available from the Project to be purchased or scheduled for dispatch by Constellation.

Finally, Constellation's and PRL's understanding under the Tolling Agreement that Constellation will be the QSE for the Project is not an agreement between the parties that Constellation is or will be the GOP under NERC's Reliability Standards. Under the Tolling Agreement, PRL has delegated to Constellation, and Constellation has agreed to be, the QSE for the Project, not the GOP.²⁷ QSE is defined in the Tolling Agreement by reference to the "ERCOT Protocols." ERCOT Protocols are defined in the Tolling Agreement as operating protocols promulgated by the ERCOT ISO and approved by the Texas Public Utility Commission ("PUCT").²⁸ The ERCOT ISO is defined in the Tolling Agreement as the entity carrying out the independent system operator functions as designated by the PUCT.²⁹

Nothing in the QSE provisions of the Tolling Agreement, however, expands Constellation's QSE obligations to include being the GOP for the Project under NERC's

²⁶Tolling Agreement, Section 4.2(b).

²⁷Tolling Agreement, Section 4.2 (g). PRL recognizes in the Tolling Agreement that Constellation's ability to perform its QSE functions properly is dependent on PRL actions with respect to the Project. For example, PRL is required to indemnify Constellation for any costs, charges, penalties or liabilities Constellation incurs in its capacity as a QSE where PRL negligently or willfully prevents Constellation from fulfilling its obligations as a QSE for the Project or fails to operate the Project in accordance with the Tolling Agreement or applicable schedule for ancillary services or energy. Tolling Agreement, Section 4.2(h).

²⁸Tolling Agreement, Section 1.1.

²⁹*Id.*

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Reliability Standards. The QSE provisions in the Tolling Agreement are narrowly drawn. They clearly limit Constellation's QSE obligations to the requirements found in the ERCOT Protocols developed and administered by the ERCOT ISO and approved by the PUCT. They do not refer to the FERC-approved NERC Reliability Standards, which are administered by NERC and TRE, nor can the contract definition of ERCOT Protocols be interpreted to include such Reliability Standards. As TRE recognizes, the NERC Reliability Standards that TRE administers are a different set of rules from the PUCT-approved ERCOT Protocols administered by ERCOT ISO.³⁰ Since the Tolling Agreement only addresses Constellation's QSE responsibilities under the ERCOT Protocols, these provisions show that the Tolling Agreement does not constitute a contractual arrangement between Constellation and PRL for Constellation as QSE under the ERCOT Protocols to also be the GOP under the Reliability Standards. Moreover, neither NERC nor TRE has the authority to modify the Tolling Agreement and force Constellation to take over PRL's obligations under the Reliability Standards.³¹

For all of the reasons described above, PRL has retained for itself under the Tolling Agreement the GOP obligation for the Project and has neither transferred this function or the authority to perform or enforce those functions to Constellation.

IV. PERFORMANCE OF QSE COMMUNICATIONS RESPONSIBILITIES UNDER ERCOT PROTOCOLS DOES NOT MAKE CONSTELLATION RESPONSIBLE FOR GOP RELIABILITY STANDARDS

TRE makes much of the fact that a QSE is the single point of contact for communication of information under the ERCOT Protocols, even suggesting that, if the QSE is not designated as the GOP, there would be no means for anyone else to assume GOP obligations.³² TRE's logic is twisted. Even to the extent that a QSE has certain communications responsibilities under the ERCOT Protocols and a GOP has certain communication responsibilities under the NERC Reliability Standards, it simply does not follow that a QSE should be registered as a GOP. Moreover, Constellation's

³⁰See, e.g., Assessment at 4, 10.

³¹*Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 Fed. Reg. 16416, at P141 (April 4, 2007) (clarifying that the Commission "did not intend to change existing contracts, impose new organizational structures or otherwise affect existing agreements that set forth the responsibilities of various entities.").

³²Assessment at 6.

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agreement with ERCOT to be a QSE does not constitute an agreement that PRL's registration and reliability responsibilities under the GOP Reliability Standards are transferred to Constellation, despite TRE's remarks to the contrary.³³

First, the ERCOT Protocols are PUCT-approved rules established by the ERCOT ISO for purposes of administering its markets and providing transmission services to its customers. They are not FERC-approved NERC Reliability Standards. Constellation's assumption of QSE obligations for the Project under the ERCOT Protocols does not, and cannot, shift to it responsibility for compliance with GOP Reliability Standards. Moreover, TRE's presumption that the requirements imposed on a QSE are the same as the requirements imposed on a GOP is not accurate.

Second, while the NERC Reliability Standards may involve communication elements,³⁴ there is much more to satisfying the GOP Reliability Standards than the communication of information, including actually operating the generating facilities and performing day-to-day maintenance on such facilities. Constellation has no ability or authority to perform such activities or to compel performance of such activities by PRL. As set forth in Section III, under the Tolling Agreement, PRL retains, and did not transfer to Constellation, all operator responsibility.

Third, as to those elements of the GOP Reliability Standards that do involve communication, while the type of information communicated may, in a few circumstances, be similar under the ERCOT Protocols and GOP Reliability Standards, this overlap in communication topics cannot serve as the basis for assigning the obligation to satisfy NERC's GOP Reliability Standards to the QSE. Put simply, the fact that two entities, QSE and GOP, have certain communication responsibilities that are similar under two separate authorities is no reason to merge QSE and GOP obligations, as if there were a single governing authority for both. NERC obligations must rest with the entity that has the ability to actually meet the GOP Reliability Standards, not the entity that is providing a communications service.

Fourth, contrary to TRE's assertions, there would be no gap in GOP responsibility simply because PRL is not itself a QSE. QSE and GOP responsibilities are independent, and NERC is capable of compelling PRL to comply with the GOP

³³See Assessment at 1.

³⁴See, e.g., Assessment at 9.

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requirements by registering it as a GOP and subjecting it to penalties for failure to comply. While PRL may elect via a separately negotiated agreement to rely on the communications services provided by its QSE with respect to ERCOT Protocols to also satisfy the communication aspects of the GOP Reliability Standards for which PRL is responsible, it will retain ultimate responsibility to ensure that the standards are met. Assignment of responsibility for GOP Reliability Standards based solely on a determination as to who is the final communications interface with the ERCOT ISO, and without considering which entity has the actual ability to perform in compliance with the Reliability Standards and initiate the communication in the first instance, creates a true gap, and can only weaken reliability.³⁵

Finally, TRE concedes that Constellation is not capable of satisfying the Reliability Standards and that, in order to ensure compliance, it must compel PRL to do so on its behalf.³⁶ TRE has it backwards—it should register PRL as the GOP because it is the entity that can perform (or compel performance of) the requirements. As discussed in Section III, Constellation has no authority under the Tolling Agreement or otherwise to compel PRL to take any actions with respect to compliance with Reliability Standards. TRE attempts to trivialize this essential point by asserting that Constellation contends that no one could be compelled to comply because no single individual or individual company is responsible for performing every element that comprises a reliability task.³⁷ This completely misrepresents Constellation's position. The issue is not who performs the tasks, but who is responsible and held accountable for ensuring that these tasks are performed. As noted in Section III, under the Tolling Agreement, PRL has retained responsibility for GOP tasks, and remains accountable for their performance, even in circumstances where it may contract with another party to assist it in performing those tasks.

Accordingly, it is TRE's logic that collapses once this fundamental error is corrected. What is obvious from the analysis is that TRE's approach was results oriented. TRE apparently concluded that it would prefer to continue to hold one entity responsible for two roles—satisfaction of QSE requirements under ERCOT Protocols

³⁵Moreover, Constellation is a Level 4 QSE for Wolf Hollow I, LP; yet Wolf Hollow was permitted to register as the GOP in the TRE region.

³⁶Assessment at 12, 13.

³⁷Assessment at 6, 7, 14.

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and satisfaction of GOP requirements under NERC Reliability Standards—and so it adopted the blanket rule that a QSE will be a GOP without consideration as to how the QSE could possibly ensure compliance. Convenience is not a criteria for registration.

V. CONSTELLATION’S REGISTRATION AS A GOP IS INCONSISTENT WITH THE NERC REGISTRY CRITERIA AND THE FUNCTIONAL MODEL

NERC’s registration of Constellation, which owns no physical assets connected to the BPS in ERCOT, as a GOP contradicts the definition of GOP in the *Registry Criteria*,³⁸ despite TRE’s arguments to the contrary. NERC’s *Registry Criteria* provides that a GOP is the “entity that operates generating unit(s) and performs the functions of supplying energy and interconnected operations services.”³⁹ This definition clearly applies to the entity that is responsible for directing and controlling the physical operations of a generation facility and does not apply to an entity that has entered into a contract to purchase the output of and/or request the scheduling of the generation facility. Constellation understands that certain types contractual arrangements may, depending on their terms, support the transfer of GOP responsibility, e.g., an operation and maintenance (“O&M”) agreement with a third party that does, in fact, transfer GOP operational authority to a third party. However, as noted in Section III, the Tolling Agreement is not such an agreement, and PRL has, as a matter of contract, retained operational authority and all GOP responsibilities.

While the Commission has made clear that the NERC Reliability Functional Model, Version 3 (“Model”) is an evolving guidance document that is not the ultimate determinant for applicability of Reliability Standards,⁴⁰ because Constellation’s Supplemental Letter and TRE’s Assessment focus on the Model, Constellation will demonstrate that the Model also provides no basis for Constellation to register as GOP.

The Model defines a GOP as “operat[ing] generating unit(s) to provide real and reactive power.”⁴¹ As with the *Registry* definition, this clearly applies to PRL. Thus, based on these definitions alone, Constellation should not be registered as GOP in the

³⁸NERC, Statement of Compliance Registry Criteria (Revision 3.1) (“*Registry Criteria*”).

³⁹*Registry Criteria* at 4.

⁴⁰Order No. 693 at P 127.

⁴¹Model at 39.

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TRE region. In addition, Constellation below presents why it should not be made responsible as GOP for each and every "Task" and "Relationship" described in the Model relating to GOP status.

Task 4: Operate generators to provide real and reactive power or reliability-related services per contracts or arrangements.

Relationship 2: Provides Balancing Authority ("BA") and Transmission Operator ("TOP") with requested amount of reliability-related services.

Relationship 13: Adjusts real and reactive power as directed by the BA and TOP,

Under the Tolling Agreement, Constellation has no authority or ability to operate the Project to provide real and reactive power, nor does it have the power to compel such performance by PRL. PRL is the entity that maintains and manages the daily operation and provision of real and reactive power from the Project in accordance with its contract commitments and NERC Reliability Standards. Constellation, as the power purchaser under the Tolling Agreement has the ability to request that PRL schedule energy and ancillary service for sale to Constellation, but only to the extent permitted under the Tolling Agreement and subject to the Project's capabilities and other constraints set forth in the Tolling Agreement. As set forth in Section III, these contractual arrangements do not convey to Constellation any authority or ability to operate the generation facilities.

TRE provides little analysis of Task 4, discussing it only in Attachment 2 of the Assessment. There, it states that the QSE should be responsible for Task 4. Further, TRE cryptically states that "QSE contracts; Resource generates." Here, PRL is the registered "Resource" in ERCOT.⁴² TRE points to provisions in the ERCOT Protocols that obligate a Resource (here, PRL) to honor bids for ancillary services and note that QSEs may specify Self-Arranged Ancillary Services.⁴³ TRE provides no explanation as to how these references support its conclusion that Constellation as a QSE is responsible for operating the Project—on their face, these provisions do not support TRE's conclusion.

⁴²Assessment at 8.

⁴³ERCOT Protocol § 6.3.2.

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In its discussion of the Relationships, TRE acknowledges that Constellation does not operate the Project,⁴⁴ but nevertheless states, without providing any support for its conclusion:

[y]et even here, it is the QSE that is responsible to the grid for that function, even if the power is actually, physically generated by the generation resource. It is entirely consistent to make the QSE such as Constellation responsible for the relationship, even if some parts of it involve the relay of power via contract or arrangement rather than physically.⁴⁵

This “rationale” is without merit and could seriously jeopardize reliability. Here, TRE acknowledges that Constellation cannot physically operate the Project, and as discussed in Section III, the Tolling Agreement does not contractually transfer operational control to Constellation.

This lack of reasoned explanation demonstrates that instead of ensuring reliability, registering Constellation as a GOP will weaken reliability because Constellation has no ability or authority to ensure compliance. For example, under Reliability Standard EOP-009-0, a GOP is obligated to test its blackstart equipment and provide documentation of tests to TRE and NERC. Because Constellation has no authority to compel PRL to conduct these tests or provide test results, if Constellation is designated as GOP, TRE and NERC will be unable to enforce EOP-009-0 with respect to the Project. Similarly, under PRC-001, a GOP must coordinate all new protective systems and protective systems changes with its TOP and BA. Because Constellation has no authority to compel PRL to coordinate with the TOP or BA in these circumstances, and indeed, Constellation will not be privy to PRL’s operational decisions with respect to protective systems, if Constellation is designated as GOP, TRE and NERC will be unable to enforce PRC-001 with respect to the Project.

Therefore, in continuing its registration of Constellation as a GOP, NERC is essentially giving to PRL—the entity that should be registered as GOP—license to ignore the GOP Reliability Standards. Therefore, NERC has created a gap in reliability

⁴⁴Assessment at 13.

⁴⁵Assessment at 13.

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compliance, and will fail in its primary mission of ensuring reliable operation of the BPS.

Task 5: Monitor the status of generation plant protective relaying systems and transmission line protective relaying systems on the transmission lines connecting the generation plant to the transmission system.

TRE completely ignores this task except in Attachment 2 of its Assessment.⁴⁶ There, TRE clearly states the "Resource [i.e., PRL] monitors generation plant protective relay systems" yet concludes that the QSE is responsible for Task 5 *because* it "relays information to ERCOT,"⁴⁷ a conclusion that appears to be based on the fact that ERCOT Protocol 8.2 provides that a QSE is the single point of contact for the Resource. However, Task 5 is all about monitoring protective relays, *not* communication of the information that results from such monitoring.

This again is a prime example of how NERC's registration of Constellation as GOP will weaken reliability because, as TRE recognizes, Constellation is not responsible for monitoring the status of protective systems, even under the ERCOT Protocols, let alone under the GOP Reliability Standards. If NERC continues to register Constellation as the GOP for the Project, it will fail in its fundamental mission to protect the reliability of the BPS because the truly responsible entity will escape the obligation to comply with the GOP Reliability Standards.

Task 3: Develop annual maintenance plan for generating units and perform the day-to-day generator maintenance.

Relationship 4: Reports annual maintenance plan for generating units to Reliability Coordinator ("RC"), BA and TOP.

Relationship 7: Revises generation maintenance plans per directive of RC.

Without any supporting evidence, TRE asserts:

While the generation resource no doubt offers the QSE a plan, it is up to the QSE to accept or reject it based upon the contractual relationship regarding the operation of the resource and the contractual obligations the resource and the QSE may have to provide power generated by the

⁴⁶See Assessment, Attachment 2, at 16.

⁴⁷*Id.*

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resource into ERCOT. By no means may the plan be prepared without the QSE's input or concurrence. . . .⁴⁸

As set forth in Section III, TRE is wrong. Under the Tolling Agreement, PRL develops the annual maintenance plan for the Project taking into account its own considerations as to scheduling, cost, equipment, and manpower. Under the Tolling Agreement, PRL must seek Constellation's approval only if it proposes to plan an outage during the summer period. While PRL is required to consult with Constellation on planned outages, PRL is not required to accommodate Constellation's requests for changes if PRL determines that it would adversely affect PRL, the Project, the Project operator (which is not Constellation) or would otherwise be inconsistent with prudent utility practice.⁴⁹

PRL also manages the daily operation of the Project. TRE clearly acknowledges that PRL develops the annual maintenance plan and maintains and manages the daily operation of the Project.⁵⁰ Constellation, as QSE under the ERCOT Protocols, simply relays the annual maintenance plan, on behalf of PRL, in accordance with PRL's plan, using the ERCOT ISO's Outage Scheduler. Designating Constellation as GOP in these circumstances turns the notion of responsibility and accountability on its head.

In support of its position that Constellation is responsible for Relationship 7, TRE states that the QSE is responsible and that the ERCOT practice is that "ERCOT directs Resources to Change."⁵¹ As support, it cites Protocol § 8.2.4, which recognizes that it is the Resource, here PRL,⁵² that may remove equipment when there is a forced outage, and that it is the Resource that is responsible for notifying ERCOT of the outage. "[T]he Resource Entity . . . may remove the affected equipment from service immediately and must immediately notify ERCOT of its action."⁵³ Indeed, TRE's cited provisions do not

⁴⁸Assessment at 12.

⁴⁹See Tolling Agreement, Section 7.5.

⁵⁰Assessment at 12.

⁵¹Assessment, Attachment 3, at 7–8.

⁵²Assessment at 8.

⁵³Assessment, Attachment 3, at 7 (citing Protocol § 8.2.4).

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even mention a QSE. Thus, TRE's own discussion provides no support for its conclusion.

Moreover, TRE is completely silent on how it expects a QSE to ensure performance of day-to-day maintenance—a task that TRE acknowledges belongs to PRL.⁵⁴ Even in its lengthy “tabular analysis” in Attachment 2 of its Assessment, TRE ignores the performance part of Task 3, stating only that the ERCOT practice is that the QSE forwards the annual plan to ERCOT.⁵⁵ Indeed, the ERCOT Operating Guide that TRE uses to support Constellation's registration as GOP states that “the generation facility shall perform maintenance, start-up, and operation in a reliable and safe manner consistent with Good Utility Practice.”⁵⁶ Constellation has no authority to perform maintenance or to compel PRL to perform maintenance. As explained in Section III, under the Tolling Agreement PRL is the entity that “operates and maintains” the Project and is responsible for compelling its employees or O&M service providers to perform such tasks. Thus, apparently, even TRE could not come up with any link—no matter how strained—that Constellation should be responsible for performing maintenance because there simply is no link. Instead, TRE has created a huge gap that could jeopardize reliability, and provides no explanation as to how it expects Constellation to perform this function.

Task 1: Formulate daily generation plan.

Relationship 1: Provides generation commitment plans to the BA.

TRE argues that because Constellation as a QSE must present ERCOT with a generation resource plan under the ERCOT Protocols, Constellation is responsible for “formulat[ing a] daily generation plan.”⁵⁷ Communication of a daily generation plan and formulation of a generation plan are two very different activities. PRL determines the daily availability of the Project and in turn communicates that availability to Constellation. Constellation then has the opportunity to request that PRL operate the Project to produce and deliver energy to Constellation to the extent permitted under the Tolling Agreement. While Constellation's option to schedule energy in accordance with

⁵⁴Assessment at 12.

⁵⁵Assessment, Attachment 2, at 5.

⁵⁶Assessment, Attachment 2, at 11.

⁵⁷Assessment at 10–11 (citing Model); Assessment, Attachment 3, at 1.

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the Tolling Agreement will indeed influence the daily generation plan, TRE reaches too far in suggesting that this places responsibility for formulating the plan on Constellation. All generator schedules are influenced by a customer's request to schedule energy in accordance with its purchase agreement, but all power purchase customers are not designated as GOPs on this basis. It is PRL that ultimately drives the formulation of the daily generation plan based on its sole determination as to the Project's availability and acceptance of Constellation's requests to schedule energy.

Task 2: Report operating and availability status of units and related equipment, such as automatic voltage regulators.

Relationship 3: Provides operating and availability status of generating units to BA and TOP for reliability analysis.

Relationship 5: Reports status of automatic voltage regulators to TOP.

Relationship 6: Provides operational data to Reliability Coordinator ("RC")

Relationship 12: Provides real-time operating information to the TOP and the required BA.

TRE argues that, because a QSE must notify ERCOT of an unplanned change in Project status under the ERCOT Protocols, it follows that Constellation must be responsible as a GOP.⁵⁸ Again, Constellation is only the communicator of information. Constellation is able to communicate information to the ERCOT ISO only because PRL has first determined the operating and availability status of units or related equipment, such as automatic voltage regulators, and communicated that information to Constellation. Only PRL has the ability to make such determinations, to produce the information, and to initiate the communication of information. ERCOT's own Operating Guide (Section 3.1.4.5), as cited by TRE, recognizes that "Generation Entities shall notify their QSE, who in turn will promptly notify the ERCOT Control Area Authority by telephone of the circumstances, when a voltage regulator or stabilizer is unavailable. . . ."⁵⁹ This does not mean that Constellation is responsible for the Tasks and Relationships under the NERC Model. If PRL does not provide Constellation with the requisite information, Constellation cannot communicate it. TRE's argument that

⁵⁸Assessment at 11.

⁵⁹ERCOT Operating Guide § 3.1.4.5 (cited by TRE in Assessment, Attachment 2, at 5, Attachment 3, at 4-5).

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Constellation has the power to require and obtain the necessary information from its corresponding generation resource,⁶⁰ simply is not true.

As noted earlier, TRE places great emphasis on the fact that, under ERCOT Protocols, the QSE is the single point of contact with the ERCOT ISO with respect to the resource to which it provides QSE services. However, Constellation clearly is only an intermediary in the communications path between the Project and ERCOT, even under the ERCOT Protocols. It relays information that it receives from PRL. It cannot be held responsible under the GOP Reliability Standards for ensuring that PRL creates the required information and initiates communications.

TRE also suggests that the ERCOT ISO lacks the ability to receive the information required under the Reliability Standards directly from anyone other than the QSE.⁶¹ TRE states that Constellation "'exclusively handles' the relationships relating to the [Project] in the provision of power."⁶² TRE's suggestion that communications between PRL and the ERCOT ISO cannot take place outside the QSE context is clearly inaccurate.

PRL is registered as Generation Owner ("GO") in the Registry and a registered Resource under the ERCOT Protocols. As a GO, PRL is obligated to communicate with the ERCOT ISO, in its role as Regional Entity ("RE"), TOP, Transmission Provider, and RC. For example, as GO, PRL must:

1. provide documentation of blackstart test results under EOP-009, R2;
2. provide documentation concerning its facility ratings to the RC, TOP, Transmission Planner and Planning Authority under FAC-008-1, R2.;
3. provide equipment characteristics, system data and existing and future interchange schedules to RE in compliance with modeling requirements under MOD-010 and MOD-012;
4. report gross and net real and reactive power generating capability to RE under MOD-024 and MOD-025;

⁶⁰Assessment at 13, 14

⁶¹Assessment at 13.

⁶²Assessment at 4, 12, 13 (quoting PRL Letter at 1).

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5. document its protective systems testing and special protection systems programs program to the RE under PRC-005 and PRC-017;
6. provide data concerning its special protective systems to the RE under PRC-016;
7. maintain and report to RE upon request data on Disturbance Monitoring Equipment under PRC-018; and
8. provide to its TO and TOP information on reactive equipment under VAR-002.

Even within the ERCOT Protocols, PRL has direct communication channels and responsibilities as a registered Resource within the ERCOT ISO. For example, ERCOT communicates directly with the Generation Resource (here, PRL) when requesting a change in operational modes.⁶³ In addition, Protocol § 8.2.4 provides that the Resource (PRL),⁶⁴ may remove equipment when there is a forced outage, and that the Resource is responsible for notifying ERCOT of the outage: “[T]he Resource Entity . . . may remove the affected equipment from service immediately and must immediately notify ERCOT of its action.”⁶⁵ Finally, Constellation understands that PRL has communications and relationships with the Transmission and/or Distribution Service Provider (“TDSP” as defined in ERCOT Protocols), in this case, Oncor. For example, the TDSP must provide notice to PRL relative to maintenance, inspection, testing or calibration of metering equipment.⁶⁶

Thus, TRE’s argument that it, in its role as RE, TO, BA or RC, is incapable of receiving communications from PRL if it were a GOP, and its argument that Constellation exclusively handles the relationships relating to the facilities are without merit.

⁶³Operating Guide § 2.2.4; Protocol § 6.5.7.2(4) (noting that Generation Resource must operate in voltage control mode unless ERCOT specifically directs it to operate in manual mode).

⁶⁴Assessment at 8.

⁶⁵Assessment, Attachment 3, at 7 (citing Protocol § 8.2.4).

⁶⁶Generation Interconnection Agreement § 4.4 (D); Tolling Agreement, Section 4.5(b); Protocols § 10.6.2.

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- Relationship 8:** Receives reliability analyses from RC.
Relationship 9: Receives notice from Purchasing-Selling Entity (“PSE”) if interchange transaction approved or denied.
Relationship 10: Receives reliability alerts from RC.
Relationship 11: Receives notification of transmission system problems from TOP.

Each of these Relationships involves the receipt of certain communications from other parties under the Reliability Standards. Even if, in its role as QSE under the ERCOT Protocols, Constellation would receive these types of communications, this does not mean that Constellation is responsible for these relationships under the GOP Reliability Standards. Moreover, even if Constellation were responsible for receiving each type of communication, the purpose of such communications is to ensure that the entity with operational authority has the information necessary to operate reliably. Constellation has no ability or authority to effect any change in operations of the Project as a result of such communications. Thus, it is clear that PRL—the entity with the ability to effect necessary changes—must be held responsible for these Relationships, even though it could arrange to have a third party serve as the communications interface with the RC, TOP or PSE to complete the requirements.

In summary, while Constellation relays certain information provided by PRL to the ERCOT ISO under the ERCOT Protocols, that information reflects the determinations of PRL and does not convey to Constellation the ability or authority to operate the facilities or to compile the relevant information independently. Thus Constellation not only does not meet the definition of a GOP (entity that operates generating unit(s) and performs the functions of supplying energy and interconnected operations services), it also meets none of the criteria set forth in the Model. Accordingly, it should not be registered as a GOP.

VI. CONSTELLATION CANNOT COMPLY WITH THE NERC RELIABILITY STANDARDS APPLICABLE TO GOPS

The inapplicability of the Model to Constellation as a GOP is borne out in the Reliability Standards, as well. Included in Attachment C, hereto, is an analysis of why each and every currently effective requirement applicable to a GOP is not applicable to Constellation and, therefore, why Constellation should not be registered as a GOP. A summary of that analysis is provided below.

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A. Constellation Cannot Comply with the GOP Reliability Standards That Require Specific Operation of the Project

Applicable Requirements:

BAL-005-1, R1	IRO-001-1, R8	TOP-001-1, R6	VAR-002-1, R2
BAL-005-1, R.1.1	PRC-001-1, R1	TOP-001-1, R7	VAR-002-1, R2.1
EOP-004-1, R2	PRC-001-1, R2.1	TOP-002-2, R13	VAR-002-1, R2.2
EOP-009-0, R1	TOP-001-1, R3	VAR-002-1, R1	

Each of the listed “Applicable Requirements” require the GOP to control the operations of, or test, the generating facility or certain equipment in the generating facility. For example:

- EOP-004-1, R2 requires GOPs to promptly analyze disturbances on its system or facilities.
- EOP-009-0, R1 requires the GOP to test each blackstart unit.
- IRO-001-1, R8 and TOP-001-1, R3 require the GOP to comply with RC or TOP directives relative to generation redispatch, mitigation of critical conditions and emergency conditions.
- PRC-001-1, R2.1 requires the GOP to take corrective action when a protective relay or equipment failure reduces system reliability.
- TOP-001-1, R6 requires the GOP to render emergency assistance when requested during an emergency.
- TOP-002-2, R13 requires the GOP to perform generating real and reactive capability verification.
- The VAR-002-1 requirements require the GOP to operate each generator connected to the interconnected transmission system in automatic voltage control mode, to maintain generation voltage or reactive power output, and to modify voltage when directed to do so.

Constellation does not have any control over, nor does it have any ability to perform these requirements. As noted in Section III, Constellation also has no ability

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under its Tolling Agreement to compel PRL to perform these requirements. The only means available for TRE and NERC to enforce compliance with these Applicable Requirements is to register PRL as the GOP.⁶⁷

With respect to EOP-004-01, R2, and as noted earlier, TRE completely misrepresents Constellation's position by characterizing it as contending that no one could be compelled to comply because no single individual or individual company is responsible for performing every element that comprises a reliability task.⁶⁸ This is not Constellation's position; rather, the issue is not which individual or company performs the tasks, but who has the ability to direct the appropriate individual or company to perform the task and who is responsible and held accountable for ensuring that the tasks are performed. Here, that authority and responsibility rests with PRL.

TRE also argues that VAR-002-1, R1 "is about control and supervision."⁶⁹ Constellation agrees. The ability and authority to control and supervise reactive power operations lies with PRL, not Constellation. As fully discussed in Sections III and IV, Constellation does *not* have "the power to demand the assembly of the information," the authority "to require or perform its analysis," the authority "to demand that PRL operate as required,"⁷⁰ or the obligation or authority to communicate any information under the NERC Reliability Standards.

TRE argues that PRC-001-1, R1 "is about information, not equipment."⁷¹ TRE is wrong. PRC-001-1, R1 is about equipment, and having sufficient control and knowledge of the equipment to comply with the various requirements of PRC-001-1. Here, Constellation does not control the equipment, does not analyze the equipment, and does not monitor the equipment. PRL is responsible for these tasks, and this is precisely why PRL should be registered as GOP. Contrary to TRE's assertion, Constellation does not have the "power to require PRL as its corresponding resource to

⁶⁷A requirement-by-requirement analysis of each of applicable requirements discussed in this section is set forth in Attachment C.

⁶⁸Assessment at 14.

⁶⁹Assessment at 15.

⁷⁰Assessment at 14, 15.

⁷¹Assessment at 14.

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provide it with all of the information it requires about the workings of the plant to know the 'purpose and limitations' of the system protections affecting the generator."⁷²

B. Constellation Cannot Comply with the GOP Reliability Standards That Require Communication of Information to Responsible Entities Because Constellation Cannot Be Held Accountable To Have Knowledge of Such Information and It Cannot Compel Provision of Necessary Information

Applicable Requirements:

COM-002-2, R1	TOP-001-1, R3, R7.1, R7.3
EOP-004-1, R3, R3.1, R3.2, R3.3, R3.4	TOP-002-2, R14, R14.1, R14.2, R15, R18
EOP-009-0, R2	TOP-003-0, R1, R1.1, R1.3
IRO-004-1, R4	TOP-006-1, R1.1
PRC-001-1, R2, R5.1	VAR-002-1, R3, R3.1, R3.2, R5.1

Each of the listed "Applicable Requirements" require the GOP to communicate various information about the generation facility and its related equipment to various Responsible Entities, including the RE and NERC. Such information includes, among other things, providing reports on disturbances or unusual occurrences, failures of equipment, information regarding facility status, operating conditions that could require changes in the protection systems of others, planned and unplanned outages, availability, test results, and notification to the RC or TOP of inability to comply with reliability directives.

As noted earlier, while Constellation communicates certain information relative to the Project to ERCOT ISO as a QSE under the ERCOT Protocols, it has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards. This is an important distinction. The fact that there is some overlap in the information that Constellation, as QSE, typically receives from PRL and passes on to ERCOT ISO, and the information that may be required to be provided under GOP Reliability Standards cannot serve as the basis for making Constellation accountable for ensuring that this information is developed and communicated under the Reliability Standards. TRE disregards this important distinction when it cavalierly concludes that the overlap in communication topics provides a basis to assign

⁷²Assessment at 14.

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responsibility for GOP Reliability Standards to the final link in the communications chain under ERCOT Protocols.⁷³

Moreover, NERC obligations must rest with the entity that has the ability to actually meet the GOP Reliability Standards, not the entity that is providing a communications service. Constellation is able to communicate information to the ERCOT ISO only when PRL provides it the required information. Only PRL has the ability to make required determinations, produce information and to initiate communications. TRE's conclusion is not founded in fact or law and must be rejected.⁷⁴

C. Constellation Cannot Comply with the GOP Reliability Standards That Require Development of Procedures for or Coordination of Operation of Generation Facility or Related Equipment With Others

Applicable Requirements:

CIP-001-1, R1	CIP-001-1, R2	CIP-001-1, R3	CIP-001-1, R4
PRC-001-1, R3	PRC-001-1, R3.1	PRC-001-1, R5	TOP-002-2, R3
TOP-003-0, R2	TOP-003-0, R3		

Each of these Applicable Requirements require a GOP to establish procedures relative to (1) sabotage events on the generating facilities or related equipment and procedures for communicating sabotage events to operating personnel, (2) providing operating personnel with guidelines for sabotage response, (3) developing reporting procedures, and (4) coordinating with other Responsible Entities any changes in facilities (e.g., protection or systems) that may affect others, operations, and outages.

Under the Tolling Agreement, Constellation has no authority or ability to independently obtain information on the Project and related equipment that would be necessary to establish procedures and coordinate changes in facilities. Even if it were to attempt to develop procedures, it has no ability or authority to require PRL to

⁷³Assessment at 14.

⁷⁴A requirement-by-requirement analysis of each of the requirements discussed in this section is set forth in Attachment C.

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implement such procedures. Accordingly, Constellation cannot perform these Applicable Requirements with respect to the Project.⁷⁵

VII. THE INCONSISTENCY AMONG REGIONAL ENTITIES REQUIRES THAT NERC REMOVE CONSTELLATION'S GOP REGISTRATION FROM THE REGISTRY

Constellation supports Reliability Standards that enhance reliability of the BPS. However, the application of such standards must be effective in identifying the entities that are GOPs, as defined under NERC requirements, and consistently applied in all regions. As discussed more fully elsewhere in this document, requiring Constellation to register as a GOP in TRE is ineffective in ensuring that the entities that operate generation facilities are subject to applicable Reliability Standards and inconsistent with the application of the Reliability Standards in other regions.

Section 501.3.3.1 of NERC's Rules of Procedure requires that NERC ensure "consistency . . . and comparability of outcomes within each regional entity's . . . registration program and among all of the programs." In addition, FERC requires that NERC "assure consistency among the regions to which [NERC] has delegated duties and functions."⁷⁶ Here, NERC's registration of Constellation as a GOP in TRE is inconsistent with the practice of other regions (e.g., ReliabilityFirst Corporation and Northeast Power Coordinating Council) where Constellation purchases power under similar arrangements and, among other things, relays information provided by the generation owner to the relevant ISO, but which have not required Constellation to register as a GOP.

Also, the factor upon which the entirety of PRL's analysis turns—that a generation facility's communications interface with the ISO should be designated as GOP—is similar to other ISOs/RTOs that also require a single communications interface (e.g., CAISO, ISO-NE, PJM), but Regional Entities for these other ISOs/RTOs have not adopted this simplistic, and erroneous, assumption in their registration practices. Should NERC deny Constellation's Appeal, this inconsistent approach to the application of the GOP Reliability Standards to entities providing a communications interface to an ISO/RTO would be a failure by NERC to abide by FERC's consistency

⁷⁵A requirement-by-requirement analysis of each of the requirements discussed in this section is set forth in Attachment C.

⁷⁶*North American Electric Reliability Council*, 119 FERC ¶ 61,060, at P 119 (2007).

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requirement and its own Rules of Procedure. Therefore, to ensure consistency among regions, NERC should remove Constellation from the Registry as a GOP.

VIII. NERC'S APPEALS PROCEDURES LACK REASONABLE PROCESS

Constellation is disturbed that after five months of waiting for some progress on its Appeal that, without advance notice as to the timing of action on its Appeal, it received the 72-page Assessment from TRE on the Friday before a holiday weekend, only to find out that it has a maximum of approximately nine business days (deadline Friday, October 19) to respond, and even that timing was viewed as an extension by NERC.⁷⁷ Constellation also was advised that, although it would be provided a short extension until October 19 to file its response, its Appeal was on the agenda for the Compliance Committee to discuss on Sunday, October 21, 2007, and that the Compliance Committee would have Constellation's Appeal and TRE's Assessment prior to Constellation's submission of its response on October 19th.⁷⁸

While Constellation wants its Appeal decided by the Compliance Committee as soon as possible, it also wants the Compliance Committee to have a fair and complete understanding of the issues. The rush imposed on Constellation to respond to arguments it had never seen before is unfair, especially considering that TRE had *five months* to develop and prepare its Assessment. Moreover, providing Constellation's response document to Compliance Committee members on a Friday before a Sunday meeting gives them precious little time to review such response and make a fully informed decision.

Constellation does not believe that NERC or FERC envisioned that information exchanged between TRE and affected entities on these important issues in resolving registration issues would be limited to a brief opportunity to review an analysis

⁷⁷By telephone conference between Constellation representatives and R. Michael of NERC on October 5, 2007, Ms. Michael informed Constellation that NERC's unpublished procedure is to give the registered entity 10 days to respond to the RE's assessments—under this timing, Constellation's response would have been due on October 15, giving Constellation less than 5 business days to prepare and submit a response to a 72-page document filled with arguments that had never before been shared with Constellation.

⁷⁸Telephone conference with R. Michael of NERC on October 11, 2007.

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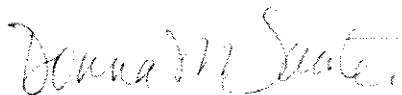
provided a week or so prior to the NERC hearing. This process clearly provides insufficient notice and no opportunity for a meaningful understanding of each party's positions, and places great burdens on affected entities that have to scramble to develop a response when the information is provided at the last minute.

Given this situation, Constellation requests that the Compliance Committee carefully review and consider this response before completing its deliberations.⁷⁹

IX. CONCLUSION

For the reasons discussed above, NERC should remove Constellation from the Registry as a GOP.

Respectfully submitted,



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⁷⁹*Mosaic Fertilizer, LLC*, 121 FERC ¶ 61,058, at P 34 (2007) (finding that NERC must adequately demonstrate why entities are registered, and must adequately address the arguments made by registered entities as to why they are not properly registered).

Attachment A

Constellation's May 4, 2007 Appeal

Attachment A to the Constellation Response to TRE Assessment, which is a copy of Constellation's May 4, 2007 NERC Appeal, has been removed because a copy of the NERC Appeal is included in Attachment A to Constellation's July 11, 2008 Appeal to FERC.

Attachment B

Constellation's June 14, 2007 Supplemental Letter to TRE

Attachment B to the Constellation Response to TRE Assessment, which is a copy of Constellation's June 14, 2007 Supplemental Letter to TRE, has been removed because a copy of the June 14, 2007 Supplemental Letter to TRE is included in Attachment B to Constellation's July 11, 2008 Appeal to FERC.

Attachment C

Analysis of GOP Reliability Standards

**NERC Reliability Standards
Matrix of GOP Requirements**

Standard Number	Req. No.	Text of Requirement	Violation Risk Factors	Reasons Why Constellation Should Not Be Registered as a GOP
BAL-005-1	R1.	All generation, transmission, and load operating within an Interconnection must be included within the metered boundaries of a Balancing Authority Area.	<blank>	Constellation has no authority—contractual or otherwise—to ensure that the Project is located within the metered boundaries of a BA, nor does it have any contractual authority to compel PRL to do so. The only means available for TRE and NERC to ensure compliance with this requirement is to register PRL as the GOP.
BAL-005-1	R1.1.	Each Generator Operator with generation facilities operating in an Interconnection shall ensure that those generation facilities are included within the metered boundaries of a Balancing Authority Area.	LOWER	Constellation has no authority—contractual or otherwise—to ensure that the Project is located within the metered boundaries of a BA, nor does it have any contractual authority to compel PRL to do so. The only means available for TRE and NERC to ensure compliance with this requirement is to register PRL as the GOP.
CIP-001-1	R1.	Each Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator, and Load-Serving Entity shall have procedures for the recognition of and for making their operating personnel aware of sabotage events on its facilities and multi-site sabotage affecting larger portions of the Interconnection.	MEDIUM	Constellation has no authority to identify sabotage events that may occur at the Project or to establish procedures for dealing with sabotage events at the Project, nor does it have the authority under the Tolling Agreement to compel PRL to provide the information to Constellation or to establish procedures of any type. Even if Constellation attempted to develop such procedures, it has no authority to compel PRL or PRL's personnel to implement such procedures.
CIP-001-1	R2.	Each Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator, and Load-Serving Entity shall have procedures for the communication of information concerning sabotage events to appropriate parties in the Interconnection.	MEDIUM	Constellation has no authority to establish procedures for dealing with sabotage events at the Project, nor does it have the authority under the Tolling Agreement to compel PRL to provide the information to Constellation or to establish procedures of any type. Even if Constellation attempted to develop such procedures, it has no authority to compel PRL or PRL's personnel to implement such procedures.
CIP-001-1	R3.	Each Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator, and Load-Serving Entity shall provide its operating personnel with sabotage response guidelines, including personnel to contact, for reporting disturbances due to sabotage events.	MEDIUM	First, Constellation does not operate the Project, therefore, it has no operating personnel. Second, Constellation has no authority to establish any procedures that govern the conduct of PRL's operating personnel, nor does it have the authority to provide the operating employees of PRL with such guidelines. Third, Constellation has no authority under the Tolling Agreement to compel PRL to comply with this requirement.

**NERC Reliability Standards
Matrix of GOP Requirements**

Standard Number	Req. No.	Text of Requirement	Violation Risk Factors	Reasons Why Constellation Should Not Be Registered as a GOP
CIP-001-1	R4.	Each Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator, and Load-Serving Entity shall establish communications contacts, as applicable, with local Federal Bureau of Investigation (FBI) or Royal Canadian Mounted Police (RCMP) officials and develop reporting procedures as appropriate to their circumstances.	MEDIUM	Constellation has no contractual obligation under the Tolling Agreement to establish communications contacts under the GOP Reliability Standards. Constellation has no authority to establish procedures for dealing with sabotage events at the Project, nor does it have the authority under the Tolling Agreement to compel PRL to provide the information to Constellation or to establish procedures of any type. Even if Constellation attempted to develop such procedures, it has no authority to compel PRL or PRL's personnel to implement such procedures.
COM-002-2	R1.	Each Transmission Operator, Balancing Authority, and Generator Operator shall have communications (voice and data links) with appropriate Reliability Coordinators, Balancing Authorities, and Transmission Operators. Such communications shall be staffed and available for addressing a real-time emergency condition.	HIGH	While Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation is not responsible for communications under the GOP Reliability Standards because it has not entered into any agreements that shift the responsibility for such communications from PRL to Constellation. If PRL chooses to ensure full compliance with this GOP requirement by contracting with a third party to relay the necessary information under the Reliability Standards, it needs to make arrangements to do so.
EOP-004-1	R2.	A Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator or Load-Serving Entity shall promptly analyze Bulk Electric System disturbances on its system or facilities.	MEDIUM	Constellation does not have control over, nor does it have any authority to monitor, the generating facility or the type of equipment located at the generating facility addressed in this requirement. Moreover, Constellation has no authority under the Tolling Agreement to determine if a disturbance event has occurred with respect to the generating facility. While Constellation may learn from PRL that a unit has shut down or ramped down, it will not know the reason for the unavailability, nor does Constellation have the ability or authority to analyze such disturbance. Finally, Constellation has no authority under the Tolling Agreement to compel PRL to comply with this requirement. The only means available for TRE and NERC to ensure compliance with this requirement is to register PRL as the GOP.

**NERC Reliability Standards
Matrix of GOP Requirements**

Standard Number	Req. No.	Text of Requirement	Violation Risk Factors	Reasons Why Constellation Should Not Be Registered as a GOP
EOP-004-1	R3.	A Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator or Load-Serving Entity experiencing a reportable incident shall provide a preliminary written report to its Regional Reliability Organization and NERC.	LOWER	Constellation has no authority to identify a reportable incident or to prepare a report regarding such incident, nor can it compel PRL to prepare the required report. In addition, while Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards, nor can it compel PRL to communicate the required information to Responsible Entities.
EOP-004-1	R3.1.	The affected Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator or Load-Serving Entity shall submit within 24 hours of the disturbance or unusual occurrence either a copy of the report submitted to DOE, or, if no DOE report is required, a copy of the NERC Interconnection Reliability Operating Limit and Preliminary Disturbance Report form. Events that are not identified until some time after they occur shall be reported within 24 hours of being recognized.	LOWER	Constellation has no authority to identify a disturbance or unusual occurrence or to prepare a report regarding such incident. While Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards. Finally, Constellation cannot compel PRL to comply with this requirement.
EOP-004-1	R3.2.	Applicable reporting forms are provided in Attachments 022-1 and 022-2.	<blank>	Constellation has no authority to identify a disturbance or unusual occurrence or to prepare a report regarding such incident. While Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards. Finally, Constellation cannot compel PRL to comply with this requirement.

**NERC Reliability Standards
Matrix of GOP Requirements**

Standard Number	Req. No.	Text of Requirement	Violation Risk Factors	Reasons Why Constellation Should Not Be Registered as a GOP
EOP-004-1	R3.3.	Under certain adverse conditions, e.g., severe weather, it may not be possible to assess the damage caused by a disturbance and issue a written Interconnection Reliability Operating Limit and Preliminary Disturbance Report within 24 hours. In such cases, the affected Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator, or Load-Serving Entity shall promptly notify its Regional Reliability Organization(s) and NERC, and verbally provide as much information as is available at that time. The affected Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator, or Load-Serving Entity shall then provide timely, periodic verbal updates until adequate information is available to issue a written Preliminary Disturbance Report.	LOWER	Constellation has no authority to identify or assess damage resulting from a disturbance or to prepare a report regarding such disturbances. While Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards. Finally, Constellation cannot compel PRL to comply with this requirement.
EOP-004-1	R3.4.	If, in the judgment of the Regional Reliability Organization, after consultation with the Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator, or Load-Serving Entity in which a disturbance occurred, a final report is required, the affected Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator, or Load-Serving Entity shall prepare this report within 60 days. As a minimum, the final report shall have a discussion of the events and its cause, the conclusions reached, and recommendations to prevent recurrence of this type of event. The report shall be subject to Regional Reliability Organization approval.	LOWER	Constellation has no authority to identify a disturbance or unusual occurrence or to prepare a report regarding such incident. While Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards. Finally, Constellation cannot compel PRL to comply with this requirement.

**NERC Reliability Standards
Matrix of GOP Requirements**

Standard Number	Req. No.	Text of Requirement	Violation Risk Factors	Reasons Why Constellation Should Not Be Registered as a GOP
EOP-009-0	R1.	The Generator Operator of each blackstart generating unit shall test the startup and operation of each system blackstart generating unit identified in the BCP as required in the Regional BCP (Reliability Standard EOP-007-0_R1). Testing records shall include the dates of the tests, the duration of the tests, and an indication of whether the tests met Regional BCP requirements.	MEDIUM	Constellation has no authority to test the startup and operation of blackstart units, nor does it have any authority to compel PRL to do so under the Tolling Agreement or otherwise. Only PRL, as the operator of the Project, has the ability and authority to comply or to compel compliance with this requirement.
EOP-009-0	R2.	The Generator Owner or Generator Operator shall provide documentation of the test results of the startup and operation of each blackstart generating unit to the Regional Reliability Organizations and upon request to NERC.	LOWER	Constellation has no authority to test the startup and operation of blackstart units or prepare a report regarding the results of such tests. Only PRL, as operator of the Project, has the ability to do so, but Constellation has no authority to compel PRL to comply with this requirement. In addition, while Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards. While PRL is registered as a GO in TRE and already is obligated to comply with this requirement, Constellation cannot compel PRL to take action to ensure compliance with this requirement.

**NERC Reliability Standards
Matrix of GOP Requirements**

Standard Number	Req. No.	Text of Requirement	Violation Risk Factors	Reasons Why Constellation Should Not Be Registered as a GOP
IRO-001-1	R8.	Transmission Operators, Balancing Authorities, Generator Operators, Transmission Service Providers, Load-Serving Entities, and Purchasing-Selling Entities shall comply with Reliability Coordinator directives unless such actions would violate safety, equipment, or regulatory or statutory requirements. Under these circumstances, the Transmission Operator, Balancing Authority, Generator Operator, Transmission Service Provider, Load-Serving Entity, or Purchasing-Selling Entity shall immediately inform the Reliability Coordinator of the inability to perform the directive so that the Reliability Coordinator may implement alternate remedial actions.	HIGH	Constellation does not have control over the operations of the Project, nor does it have any authority to compel performance by PRL to comply with directives of the RC. In addition, while Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards. The only means available for TRE and NERC to ensure compliance with this requirement is to register PRL as the GOP.
IRO-004-1	R4.	Each Transmission Operator, Balancing Authority, Transmission Owner, Generator Owner, Generator Operator, and Load-Serving Entity in the Reliability Coordinator Area shall provide information required for system studies, such as critical facility status, Load, generation, operating reserve projections, and known Interchange Transactions. This information shall be available by 1200 Central Standard Time for the Eastern Interconnection and 1200 Pacific Standard Time for the Western Interconnection.	HIGH	Constellation has no ability to obtain the required information or to compel PRL to obtain and provide this information. While Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards. While PRL, as GO, already must comply with this requirement, Constellation cannot compel PRL to take action to ensure compliance with this requirement.
PRC-001-1	R1.	Each Transmission Operator, Balancing Authority, and Generator Operator shall be familiar with the purpose and limitations of protection system schemes applied in its area.	HIGH	Constellation does not have control of this type of equipment at the Project. PRL operates and controls this equipment. Constellation has no authority to compel PRL to comply with this requirement.

**NERC Reliability Standards
Matrix of GOP Requirements**

Standard Number	Req. No.	Text of Requirement	Violation Risk Factors	Reasons Why Constellation Should Not Be Registered as a GOP
PRC-001-1	R2.	Each Generator Operator and Transmission Operator shall notify reliability entities of relay or equipment failures as follows:	HIGH	Constellation has no authority to identify such failures and no authority to compel PRL to provide this information. In addition, while Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards.
PRC-001-1	R2.1.	If a protective relay or equipment failure reduces system reliability, the Generator Operator shall notify its Transmission Operator and Host Balancing Authority. The Generator Operator shall take corrective action as soon as possible.	HIGH	Constellation has no authority to identify such failures and no authority to compel PRL to provide this information. In addition, while Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards. Further, Constellation has no ability or authority to take any corrective action because it does not operate the Project.
PRC-001-1	R3.	A Generator Operator or Transmission Operator shall coordinate new protective systems and changes as follows.	<blank>	Constellation has no authority to obtain information on the Project and related equipment that would be necessary to be able to coordinate changes in facilities. Further, Constellation has no authority to compel PRL to comply with this requirement.
PRC-001-1	R3.1.	Each Generator Operator shall coordinate all new protective systems and all protective system changes with its Transmission Operator and Host Balancing Authority.	HIGH	Constellation has no authority to obtain information on the Project and related equipment that would be necessary to be able to coordinate changes in facilities. Further, Constellation has no authority to compel PRL to comply with this requirement.
PRC-001-1	R5.	A Generator Operator or Transmission Operator shall coordinate changes in generation, transmission, load or operating conditions that could require changes in the protection systems of others:	HIGH	Constellation has no authority to obtain information on the Project and related equipment that would be necessary to be able to coordinate changes in facilities. Further, Constellation has no authority to compel PRL to comply with this requirement.

**NERC Reliability Standards
Matrix of GOP Requirements**

Standard Number	Req. No.	Text of Requirement	Violation Risk Factors	Reasons Why Constellation Should Not Be Registered as a GOP
PRC-001-1	R5.1.	Each Generator Operator shall notify its Transmission Operator in advance of changes in generation or operating conditions that could require changes in the Transmission Operator's protection systems.	HIGH	Constellation has no authority to identify a changes in generation or operating conditions that could require changes in the TOP's protection systems. In addition, while Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards. Finally, Constellation has no authority to compel PRL to comply with this requirement.
TOP-001-1	R3.	Each Transmission Operator, Balancing Authority, and Generator Operator shall comply with reliability directives issued by the Reliability Coordinator, and each Balancing Authority and Generator Operator shall comply with reliability directives issued by the Transmission Operator, unless such actions would violate safety, equipment, regulatory or statutory requirements. Under these circumstances the Transmission Operator, Balancing Authority, or Generator Operator shall immediately inform the Reliability Coordinator or Transmission Operator of the inability to perform the directive so that the Reliability Coordinator or Transmission Operator can implement alternate remedial actions.	HIGH	Constellation has no ability or authority to comply with reliability directives issued by the RC on behalf of PRL and the Project because it does not control Project operations. Constellation also has no authority to compel PRL to comply with such directives. Further, while Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards. Thus, the only means available for TRE and NERC to ensure compliance with this requirement is to register PRL as the GOP.
TOP-001-1	R6.	Each Transmission Operator, Balancing Authority, and Generator Operator shall render all available emergency assistance to others as requested, provided that the requesting entity has implemented its comparable emergency procedures, unless such actions would violate safety, equipment, or regulatory or statutory requirements.	HIGH	Because it does not operate the project, Constellation has no ability or authority to render emergency assistance to others with respect to operation of the Project, nor to make determinations as to whether rendering such assistance would violate safety, equipment, or regulatory or statutory requirements.

**NERC Reliability Standards
Matrix of GOP Requirements**

Standard Number	Req. No.	Text of Requirement	Violation Risk Factors	Reasons Why Constellation Should Not Be Registered as a GOP
TOP-001-1	R7.	Each Transmission Operator and Generator Operator shall not remove Bulk Electric System facilities from service if removing those facilities would burden neighboring systems unless:	HIGH	Constellation has no ability or authority to remove BPS facilities from service because it does not have control over the Project, nor does it have the authority to ensure that PRL remove (or not remove) such facilities from service.
TOP-001-1	R7.1.	For a generator outage, the Generator Operator shall notify and coordinate with the Transmission Operator. The Transmission Operator shall notify the Reliability Coordinator and other affected Transmission Operators, and coordinate the impact of removing the Bulk Electric System facility.	HIGH	While Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols and enters outage data in ERCOT ISO systems when provided to it by PRL, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards. Further, Constellation cannot compel PRL to comply with this requirement. Finally, because it does not operate the Project, Constellation does not have control over the generation facility and does not have adequate authority to coordinate with other Responsible Entities.
TOP-001-1	R7.3.	When time does not permit such notifications and coordination, or when immediate action is required to prevent a hazard to the public, lengthy customer service interruption, or damage to facilities, the Generator Operator shall notify the Transmission Operator, and the Transmission Operator shall notify its Reliability Coordinator and adjacent Transmission Operators, at the earliest possible time.	HIGH	Because it does not operate the Project, Constellation has no ability or authority to identify the need for such immediate action. Moreover, while Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards. Finally, Constellation has no authority to compel PRL to comply with this requirement.
TOP-002-2	R3.	Each Load-Serving Entity and Generator Operator shall coordinate (where confidentiality agreements allow) its current-day, next-day, and seasonal operations with its Host Balancing Authority and Transmission Service Provider. Each Balancing Authority and Transmission Service Provider shall coordinate its current-day, next-day, and seasonal operations with its Transmission Operator.	MEDIUM	While Constellation communicates daily schedules to ERCOT ISO based on PRL's determination of Project availability, Constellation has no ability or authority to determine the operations of the Project that would be necessary to coordinate same with others. Constellation also has no authority to compel PRL to comply with this requirement.

**NERC Reliability Standards
Matrix of GOP Requirements**

Standard Number	Req. No.	Text of Requirement	Violation Risk Factors	Reasons Why Constellation Should Not Be Registered as a GOP
TOP-002-2	R13.	At the request of the Balancing Authority or Transmission Operator, a Generator Operator shall perform generating real and reactive capability verification that shall include, among other variables, weather, ambient air and water conditions, and fuel quality and quantity, and provide the results to the Balancing Authority or Transmission Operator operating personnel as requested.	MEDIUM	Constellation has no ability or authority to perform such verification because it does not operate the Project. Constellation also has no authority to compel PRL to perform such verification. In addition, while Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards.
TOP-002-2	R14.	Generator Operators shall, without any intentional time delay, notify their Balancing Authority and Transmission Operator of changes in capabilities and characteristics including but not limited to:	MEDIUM	Because it does not operate the Project, Constellation has no ability or authority to identify the need for such immediate action. Moreover, while Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards. Finally, Constellation has no authority to compel PRL to comply with this requirement.
TOP-002-2	R14.1.	Changes in real output capabilities (Effective August 1, 2007).	MEDIUM	Because it does not operate the Project, Constellation has no ability or authority to identify the need for such immediate action. Moreover, while Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards. Finally, Constellation has no authority to compel PRL to comply with this requirement.

**NERC Reliability Standards
Matrix of GOP Requirements**

Standard Number	Req. No.	Text of Requirement	Violation Risk Factors	Reasons Why Constellation Should Not Be Registered as a GOP
TOP-002-2	R14.2.	Automatic Voltage Regulator status and mode setting. (Retired August 1, 2007)	LOWER	Because it does not operate the Project, Constellation has no ability or authority to identify the need for such immediate action. Moreover, while Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards. Finally, Constellation has no authority to compel PRL to comply with this requirement.
TOP-002-2	R15.	Generation Operators shall, at the request of the Balancing Authority or Transmission Operator, provide a forecast of expected real power output to assist in operations planning (e.g., a seven-day forecast of real output).	LOWER	While Constellation communicates forecasts to ERCOT ISO, those forecasts are based on PRL's determination as to plant availability and approval of schedules. Constellation has no authority to develop the required forecast because it does not operate the Project. Constellation has no authority to compel PRL to comply with this requirement.
TOP-002-2	R18.	Neighboring Balancing Authorities, Transmission Operators, Generator Operators, Transmission Service Providers, and Load-Serving Entities shall use uniform line identifiers when referring to transmission facilities of an interconnected network.	MEDIUM	The requirement appears to apply to conventions in the various reporting obligations associated with the other requirements of TOP-002-0. Because it does not operate the Project, Constellation has no authority to identify changes in the operating characteristics of the Project. Therefore, Constellation will have no knowledge as to when such events would occur in order to prepare such notifications. Moreover, while Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards, nor can it compel PRL to comply with this requirement.

**NERC Reliability Standards
Matrix of GOP Requirements**

Standard Number	Req. No.	Text of Requirement	Violation Risk Factors	Reasons Why Constellation Should Not Be Registered as a GOP
TOP-003-0	R.1.	Generator Operators and Transmission Operators shall provide planned outage information.	<blank>	Because it does not operate the Project, Constellation has no authority to identify changes in the operating characteristics of the Project. Therefore, Constellation will have no knowledge as to when such events would occur in order to prepare such notifications. Constellation also has no authority to compel PRL to comply with this requirement. In addition, while Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards.
TOP-003-0	R.1.1.	Each Generator Operator shall provide outage information daily to its Transmission Operator for scheduled generator outages planned for the next day (any foreseen outage of a generator greater than 50 MW). The Transmission Operator shall establish the outage reporting requirements.	MEDIUM	While Constellation relays outage information to the ERCOT ISO, because it does not operate the Project, Constellation has no ability or authority to identify changes in the operating characteristics of the Project. Therefore, Constellation will have no knowledge as to when such events would occur in order to prepare such notifications. Constellation also has no authority to compel PRL to comply with this requirement. In addition, while Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards.
TOP-003-1	R.1.3.	Such information shall be available by 1200 Central Standard Time for the Eastern Interconnection and 1200 Pacific Standard Time for the Western Interconnection.		Because it does not operate the Project, Constellation has no authority to identify changes in the operating characteristics of the Project. Therefore, Constellation will have no knowledge as to when such events would occur in order to prepare such notifications. Constellation has no authority to compel PRL to comply with this requirement. In addition, while Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards.

**NERC Reliability Standards
Matrix of GOP Requirements**

Standard Number	Req. No.	Text of Requirement	Violation Risk Factors	Reasons Why Constellation Should Not Be Registered as a GOP
TOP-003-0	R2.	Each Transmission Operator, Balancing Authority, and Generator Operator shall plan and coordinate scheduled outages of system voltage regulating equipment, such as automatic voltage regulators on generators, supplementary excitation control, synchronous condensers, shunt and series capacitors, reactors, etc., among affected Balancing Authorities and Transmission Operators as required.	MEDIUM	Because it does not operate the Project, Constellation has no ability or authority (under the Tolling Agreement) to independently obtain information on the Project and related equipment that would be necessary to be able to plan and coordinate changes in facilities.
TOP-003-0	R3.	Each Transmission Operator, Balancing Authority, and Generator Operator shall plan and coordinate scheduled outages of telemetering and control equipment and associated communication channels between the affected areas.	MEDIUM	PRL provides to Constellation planned schedules for telemetering and control equipment outages. Constellation has no authority or ability to independently obtain information on the generating facility and related equipment that would be necessary to be able to coordinate changes in facilities.
TOP-006-1	R1.1.	Each Generator Operator shall inform its Host Balancing Authority and the Transmission Operator of all generation resources available for use.	MEDIUM	While Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards. Constellation also has no authority to compel PRL to comply with this requirement.
VAR-002-1	R1.	The Generator Operator shall operate each generator connected to the interconnected transmission system in the automatic voltage control mode (automatic voltage regulator in service and controlling voltage) unless the Generator Operator has notified the Transmission Operator.	MEDIUM	Constellation has no ability or authority to operate the Project. Constellation also has no authority to compel PRL to comply with this requirement. While Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards for the Project.
VAR-002-1	R2.	Unless exempted by the Transmission Operator, each Generator Operator shall maintain the generator voltage or Reactive Power output (within applicable Facility Ratings. [1] as directed by the Transmission Operator	MEDIUM	Constellation has no ability or authority to operate the Project. Constellation also has no authority to compel PRL to comply with this requirement.

**NERC Reliability Standards
Matrix of GOP Requirements**

Standard Number	Req. No.	Text of Requirement	Violation Risk Factors	Reasons Why Constellation Should Not Be Registered as a GOP
VAR-002-1	R2.1.	When a generator's automatic voltage regulator is out of service, the Generator Operator shall use an alternative method to control the generator voltage and reactive output to meet the voltage or Reactive Power schedule directed by the Transmission Operator.	MEDIUM	Constellation has no ability or authority to operate the Project. Constellation also has no authority to compel PRL to comply with this requirement.
VAR-002-1	R2.2.	When directed to modify voltage, the Generator Operator shall comply or provide an explanation of why the schedule cannot be met.	MEDIUM	Constellation has no ability or authority to operate the Project. Constellation also has no authority to compel PRL to comply with this requirement.
VAR-002-1	R3.	Each Generator Operator shall notify its associated Transmission Operator as soon as practical, but within 30 minutes of any of the following:	MEDIUM	Constellation has no ability or authority to operate the generating facilities. Constellation also has no authority to compel PRL to comply and, thus, no means to obtain the requisite information independently to make the required notifications. Moreover, while Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards for the Project or PRL.
VAR-002-1	R3.1.	A status or capability change on any generator Reactive Power resource, including the status of each automatic voltage regulator and power system stabilizer and the expected duration of the change in status or capability.	MEDIUM	Constellation has no ability or authority to operate the generating facilities. Constellation also has no authority to compel PRL to comply and, thus, no means to obtain the requisite information independently to make the required notifications. While Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards for the Project or PRL.

**NERC Reliability Standards
Matrix of GOP Requirements**

Standard Number	Req. No.	Text of Requirement	Violation Risk Factors	Reasons Why Constellation Should Not Be Registered as a GOP
VAR-002-1	R3.2.	A status or capability change on any other Reactive Power resources under the Generator Operator's control and the expected duration of the change in status or capability.	MEDIUM	Constellation has no ability or authority to operate the generating facilities. Constellation also has no authority to compel PRL to comply and, thus, no means to obtain the requisite information independently to make the required notifications. While Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards for the Project or PRL.
VAR-002-1	R5.1.	If the Generator Operator can't comply with the Transmission Operator's specifications, the Generator Operator shall notify the Transmission Operator and shall provide the technical justification.	LOWER	Constellation has no ability or authority to operate the generating facilities. Constellation also has no authority to compel PRL to comply and, thus, no means to obtain the requisite information independently to make the required notifications. While Constellation acts as a communications interface between PRL and the ERCOT ISO under the ERCOT Protocols, Constellation has not contractually taken on the responsibility to communicate any information as a GOP under the Reliability Standards for the Project or PRL.

Attachment E

BOTCC Remand



**Constellation Energy Commodities
Group, Inc.
(CCG)
RA070005**

**Board of Trustees Compliance Committee
Decision to Remand Appeal of Constellation Energy Commodities Group, Inc.
to Texas Regional Entity
(Issued October 22, 2007)**

Statement of Appeal

On May 4, 2007, Constellation Energy Commodities Group, Inc (CCG) filed an appeal of its inclusion by the Texas Regional Entity (TRE) on the NERC Compliance Registry within the Electric Reliability Council of Texas, Inc. (ERCOT) region for the function of generator operator (GOP). CCG submitted a supplemental letter in support of its appeal to TRE, dated June 14, 2007 (Supplemental Letter).

Procedures

On October 3, 2007, TRE provided its detailed basis for including CCG on the NERC Compliance Registry (TRE Assessment). On October 19, 2007, CCG provided its response to TRE's Assessment (CCG's Response). On October 21, 2007, the NERC Board of Trustees Compliance Committee considered the appeal filed by CCG, TRE's Assessment and CCG's Response, in accordance with the provisions of Rule 501 of NERC's *Rules of Procedure*.

Statement of Facts

TRE states that it registered CCG for the functions of GOP within its footprint on the basis of section 215 of the Federal Power Act (16 U.S.C. §824o), the Commission's regulations at 18 C.F.R. Section 39.2(c), Rule 501.1 of NERC's *Rules of Procedure*, NERC's *Statement of Compliance Registry Criteria (Rev. 3.1)*, Sections I, II, and III, and the *Reliability Functional Model—Version 3*. TRE also based its decision, in part, on a letter from Power Resources, Ltd. ("PRL")/CE Generation, LLC ("CEG"), which is the generator owner. PRL/CEG states that CCG, under the terms of a tolling agreement, 'exercises complete contractual control' of the [PRL generating facilities in Howard County, Texas], purchases and sees to the delivery of all fuel consumed at the plant, and 'exclusively handles' the relationships relating to the facilities in the provision of power."¹

In its appeal, CCG seeks to exempt itself as a GOP on the NERC Compliance Registry by claiming that it does not own, operator or control generation facilities. CCG contends that PRL should be the GOP.² CCG contends that TRE's Assessment is based on two fundamental flaws.³ First, CCG asserts that TRE's Assessment improperly concludes that, although CCG does not own or operate the PRL facilities, it has complete contractual control and authority to compel PRL to take actions to ensure compliance with GOP Reliability Standards.⁴ CCG states that, under the tolling agreement, PRL "operate[s] and maintain[s]" the Project and such responsibility requires to ensure it to ensure that the Project is operated and maintained in

¹ TRE Assessment at 4.

² CCG Response at 1.

³ *Id.* at 2.

⁴ *Id.*

accordance with prudent industry practice, which includes, among other things, compliance with reliability standards applicable in ERCOT.⁵ Second, CCG asserts that TRE improperly determined that a Level 4 Qualified Scheduling Entity under the ERCOT ISO market and transmission rules that ERCOT ISO administers is, by definition, a GOP.⁶ However, CCG acknowledges that a QSE has certain communications responsibilities which are similar to the GOP Reliability Standards.⁷

Analysis

The Compliance Committee has reviewed CCG's May 4 appeal, June 14 Supplemental Letter and October 19 Response to TRE's Assessment, as well as PRL's July 13 letter and TRE's October 3 Assessment. Based upon the Committee's review, it appears that NERC's Joint Registration Organization (JRO) process may provide an appropriate solution to resolve the issues raised in CCG's appeal. PRL and CCG each point to the other as the entity responsible for compliance with the NERC Generator Operator Reliability Standards. The point of the NERC Statement of Registration Criteria is to ensure that parties responsible for compliance with the Reliability Standards are registered and that no gaps exist. The JRO process provides a mechanism to allow TRE, PRL and CCG to determine the subset of requirements applicable to PRL and CCG, respectively.

Conclusion

The NERC Board of Trustees Compliance Committee remands CCG's appeal to TRE to work with PRL and CCG to resolve these issues. The Compliance Committee directs TRE to submit a report to NERC and the Compliance Committee, with copies to PRL and CCG, addressing these issues, within 45 days of issuance of this decision.

Because the Compliance Committee has not acted on the merits of the appeal, the appeal provisions specified in Rule 501 of NERC's Rules of Procedure do not apply. Once the NERC Board of Trustees Compliance Committee issues a decision on the merits of CCG's appeal, CCG has the right to file an appeal of such ruling with the Federal Energy Regulatory Commission, in accordance with 18 C.F.R. Part 385, within 21 days of the issuance of this decision, as specified in Rule 501.1.3.4 of NERC's *Rules of Procedure*.

By the Board of Trustees Compliance Committee

⁵ *Id.* at 3.

⁶ *Id.* at 4.

⁷ *Id.* at 13.

Attachment F TRE Notification

From: Shiekhi, Tony A. [mailto:Tony.Shiekhi@texasre.org]
Sent: Monday, January 21, 2008 10:25 AM
To: Dave.Hilt@nerc.net
Cc: Grimm, Larry; Henry, Mark; Craig.Lawrence@nerc.net; Vincent, Susan; Sauter, Mindi; Steve.larsen@calenergy.com; Schopp, Donald; Rubenstein, Stuart; jerry.baker@calenergy.com; David.Brown@klgates.com
Subject: Texas RE- Constellation Energy Commodities Group, Inc (CCG)- NERC Case # RA070005 appeal status
Importance: High

Dear Mr. Hilt,

The NERC Board of Trustees Compliance Committee ("BOTCC") remanded Constellation Energy Commodities Group, Inc (CCG) appeal (NERC Case # RA070005) to Texas Regional Entity ("Texas RE ") to work with Power Resources, Ltd. ("PRL") and CCG to resolve CCG's issues regarding its registration as a NERC GOP in the ERCOT region.

As the BOTCC suggested in its Order of Remand, the duties and responsibilities of CCG and PRL appear to fit a joint registration. Texas RE, therefore, has worked with both entities in an attempt to reach an agreement. No settlement was achieved by the parties.

Nevertheless, the information that Texas RE has obtained indicates that both CCG and PRL each perform certain GOP Reliability Standard Requirements. Accordingly, Texas RE registered PRL as an additional GOP on January 8, 2008, while maintaining CCG's registration as GOP for the same generation resources.

PRL received the registration notification from NERC on Monday, January 14, 2008. As you know, PRL has 21 days to appeal this registration.

We do not know whether PRL intends to appeal its registration as GOP. In the interest of economy, Texas RE suggests that, if PRL chooses to appeal this registration, it would be most efficient to have both appeals addressed in a consolidated proceeding. To permit BOTCC's consolidated consideration of the appeals, Texas RE hereby requests that the appeal of CCG be abated until March 7, 2008.

Thank you for your consideration,

X A "Tony" Shiekhi PE
Texas RE - Compliance Engineer
Office: (512) 225-7131
Fax: (512) 225-7165
Email: tony.shiekhi@texasre.org

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Attachment G
Constellation February 14, 2008 Letter

111 Market Place
Suite 500
Baltimore, Maryland 21202



February 14, 2008

David W. Hilt
Vice President and Director of Compliance
North American Electric Reliability Corporation
116-390 Village Boulevard
Princeton, NJ 08540-5721

Re: Response of Constellation Energy Commodities Group, Inc. to Texas Regional Entity's Request that the Constellation's May 4 Appeal Be Abated and Objection to Any Form of Joint Registration - RA070005

Dear Mr. Hilt:

On January 21, 2008, Texas Regional Entity ("TRE") notified the North American Electric Reliability Corporation ("NERC") of its belief that Constellation Energy Commodities Group, Inc. ("Constellation") and Power Resources, Ltd. ("PRL") should each be registered as the generator operator as defined in NERC's rules ("GOP") for the generating facility owned and operated by PRL in Howard County, Texas ("Project"). In such notice, TRE stated that the duties and responsibilities of Constellation and PRL appear to fit a joint registration and, because no settlement was reached by the parties on Constellation's pending appeal to NERC of its improper registration as GOP for the Project,¹ TRE had registered PRL as a "additional GOP" while maintaining Constellation's registration as GOP for the same generation resource.² In its January 21 correspondence, TRE requested that NERC not act on the Constellation Appeal until

¹ On October 22, 2007, the Board of Trustees Compliance Committee ("BOTCC") remanded to TRE the appeal that Constellation filed on May 4, 2007, as supplemented, of NERC's registration of Constellation as GOP for PRL's Project (the "Constellation Appeal"). *Decision to Remand May 4 Appeal of Constellation Energy Commodities Group, Inc. to Texas Regional Entity, RA070005* (Oct. 22, 2007) ("Remand Decision").

² Email from Tony Shiekhi to David Hilt, included as Attachment A.

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Page 2

March 7, 2008, to accommodate review of a potential separate appeal which PRL might, if it so chooses, submit to NERC contesting TRE's registration of PRL as a GOP for the Project.³

As set forth in detail herein, Constellation objects to any form of registration, joint or otherwise, that would require it to be a GOP for the Project for the following reasons.

- As Constellation has maintained throughout the proceedings before TRE and NERC, PRL is the only entity that should be registered as GOP for the Project. PRL has sole responsibility for operation of the Project with respect to compliance with thirteen (13) GOP Reliability Standards and the numerous attendant specific requirements defined under each such standard ("Requirements").⁴
- In these circumstances, NERC cannot use its joint registration procedures to compel Constellation to be responsible for one or more Requirements under GOP Reliability Standards. NERC's Rules of Procedure ("NERC Rules") and FERC's underlying orders provide that, while Constellation may voluntarily agree to accept responsibility for Reliability Standards or Requirements that would otherwise be PRL's responsibility, they do not permit TRE or NERC to impose GOP status on Constellation through a joint registration.
- FERC also has made clear that it was not its intent that joint registration would result in a change in existing contracts, agreements, or other understandings as to who is responsible for a particular function under a Reliability Standard. As demonstrated in the October 19 Response, Constellation has no existing agreements or understandings that require it to be a GOP for the project or that give it the authority or ability to undertake such role. Thus, joint registration of Constellation as a GOP would be inconsistent with the parties' existing agreements.

³ *Id.* Constellation presumes that TRE's request, in its January 21st submittal to NERC, to "abate" the pending Constellation Appeal is actually a request to hold it in abeyance. Constellation opposes this request, as noted below.

⁴ See Constellation's Appeal submitted on May 4, 2007 and Constellation's response submitted to NERC on October 19, 2007 ("October 19 Response") to TRE's October 3, 2007 assessment of Constellation's registration as GOP with respect to the project ("TRE Assessment").

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- Joint registration is inappropriate with respect to the Project. The operations of the Project require that a single entity, PRL, be responsible for each Requirement under the GOP Reliability Standards. As Constellation demonstrated in the October 19 Response, Constellation does not have the ability, contractual or otherwise, to ensure the Project's compliance with any Requirement, nor any authority or ability to compel PRL's compliance.
- TRE improperly conflates communications services that Constellation currently provides with respect to market rules with a different set of communications that are required under FERC-approved GOP Reliability Standards. Based on this faulty premise, TRE attempts to single out Requirements involving communications activities as applicable to Constellation under a joint registration arrangement. As described in detail below, while Constellation may be able to facilitate PRL's communications with respect to its compliance with certain Requirements under the GOP Reliability Standards, such service would not elevate Constellation to the status of GOP with respect to those Requirements.

Accordingly, Constellation requests that NERC deny TRE's request to hold Constellation's appeal in abeyance and act expeditiously to grant the Constellation Appeal and remove Constellation from the NERC registry as GOP for the Project.

A. Background

As noted above, NERC's BOTCC remanded to TRE the Constellation Appeal of NERC's registration of Constellation as GOP for PRL's Project. The Remand Decision noted that TRE had based its decision, in part, on a letter from PRL which alleged that, under the terms of a tolling agreement between PRL and Constellation ("Tolling Agreement"), Constellation exercised complete contractual control over the facility.⁵ The Remand Decision also noted that, in Constellation's October 19, 2007 response to the TRE Assessment, Constellation had challenged that conclusion and stated that, under the Tolling Agreement, PRL operates and maintains the Project and has retained all obligations and responsibility to ensure that the Project complies with GOP Reliability Standards applicable in ERCOT.⁶ The Remand Decision directed TRE to

⁵ Remand Decision at 1.

⁶ *Id.* at 1-2.

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work with PRL and Constellation to determine if the joint registration process provides a mechanism that would allow TRE, PRL and CCG to determine a subset of Requirements applicable to PRL and Constellation, respectively.⁷

Subsequently, Constellation engaged in discussions with PRL and TRE in an attempt to resolve issues surrounding the improper registration of Constellation as GOP. Those efforts did not lead to a settlement of the GOP issues, and on January 14, 2008, NERC registered PRL as GOP for the Project, but did not remove Constellation from the GOP registry.

B. Neither Sole Nor Joint GOP Registration of Constellation Is Appropriate Under NERC's Rules

As demonstrated in the Constellation Appeal and the October 19 Response, Constellation should not be registered as the GOP for the Project, and PRL should be the sole GOP. The analysis in those documents demonstrates that sole or joint GOP registration is inappropriate for Constellation. Moreover, as explained below, NERC's rules on joint registration procedures do not permit NERC to force Constellation to be a joint GOP. Nor do the rules contemplate concurrent registration of two entities as GOP.

NERC's joint registration procedures were developed to accommodate circumstances where members of an organization wanted to delegate responsibility for the applicable Reliability Standards and/or Requirements to the organization.⁸ However, NERC's rules also accommodate the circumstance where two entities might enter into a bilateral agreement to allocate responsibility for Reliability Standards and/or Requirements. Specifically, NERC's joint registration procedures provide that an entity, designated as the JRO, may accept the reliability functions for a "related entity" which is "an entity whose operations in relation to the operation of the JRO make it feasible for the JRO to accept responsibility for reliability functions for which the related entity would otherwise be responsible."⁹ Under NERC's procedures, any delegation of responsibility to a JRO must be supported by the written agreement of the parties, and cannot be imposed on a JRO and related entity by NERC or TRE.¹⁰ In fact,

⁷ *Id.* at 2.

⁸ NERC Rules of Procedure ("NERC Rules"), § 501.1.2.7 ("a generation or transmission cooperative, a joint-action agency" or another organization may be registered "in lieu of each of the JRO's members")

⁹ *Id.*

¹⁰ NERC Rules, § 507.2

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FERC made it absolutely clear that it would approve joint registration procedures “which permit (but do not require) an organization . . . to accept compliance responsibility on behalf of its members [i.e., related entity].”¹¹ FERC explained that the joint registration option “will provide flexibility and *will not require an entity to assume responsibility where it is not possible to do so.*”¹²

Accordingly, joint registration arrangements are voluntary, and neither TRE nor NERC can require Constellation to enter into a joint registration arrangement with PRL. Moreover, TRE cannot circumvent that requirement by registering two parties as GOP for the same Requirements. The NERC Rules provide the registration process shall ensure that “there is no duplication” in coverage of areas of the bulk power system.¹³ This is consistent with the Commission’s admonition that the joint registration process should not result in any overlaps of responsibility.¹⁴

TRE’s position on joint registration also is inconsistent with FERC’s orders, which emphasized that in allowing the joint registration option, “our intent is not to change existing contracts, agreements or other understandings as to who is responsible for a particular function under a Reliability Standard.”¹⁵ As demonstrated in the October 19 Response, the Tolling Agreement plainly states that PRL “operates and maintains” the Project and has retained authority and responsibility for compliance with ERCOT reliability standards. Constellation has no authority or obligation under the Tolling Agreement or any other agreement to compel PRL to take actions required to comply with the GOP Reliability Standards.¹⁶

Accordingly, consistent with NERC Rules and FERC’s underlying orders, NERC cannot require that Constellation enter into a joint registration arrangement with PRL and cannot disregard the parties’ existing arrangements under which all responsibility for operation in accordance with GOP reliability standards resides with PRL.

¹¹ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 107 (2007).

¹² *Id.* at P 108 (emphasis added).

¹³ NERC Rules, § 501.1.4.

¹⁴ Order No. 693 at P 107.

¹⁵ *Id.*

¹⁶ A comprehensive analysis of the Tolling Agreement is included in the October 19 Response at 6-12.

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C. Joint Registration Is Not Feasible With Respect To The Project

Joint registration requires that a single entity, either the JRO or the related entity, accept responsibility for a Reliability Standard, in its entirety, or for a specific Requirement within a Reliability Standard, in its entirety.¹⁷ Constellation included as Attachment C of its October 19 Response a detailed analysis of every Requirement under each GOP Reliability Standard demonstrating that it has no authority or obligation – contractual or otherwise – to ensure compliance with the Requirement. However, in the table included hereto at Attachment B (the “TRE Table”), TRE appears to express a view that Constellation should accept responsibility under a joint registration arrangement for 21 of the 48 Requirements that are established under the GOP Reliability Standards.¹⁸

For example, under Reliability Standard CIP-001-1 (Sabotage Reporting) Requirement 2, a GOP “shall have procedures for the communication of information concerning sabotage events on its facilities and multi-site sabotage affecting larger portions of the Interconnection.” Requirement 2 operates in tandem with Requirement 1 which requires a GOP to have procedures for the recognition of and for making their operating personnel aware of sabotage events on its facilities and multi-site sabotage affecting the Interconnection; Requirement 3 which requires a GOP to provide its operating personnel with sabotage response guidelines, including personnel to contact to report such events; and Requirement 4 which requires each GOP to establish communications contacts as applicable with appropriate law enforcement agencies.

¹⁷ NERC Rules §501.1.27.

¹⁸ The TRE Table was provided to Constellation as part of the discussions between Constellation, PRL and TRE attempting to settle the GOP registration issue. The TRE Table is based on information that Constellation initially developed, then modified as part of the settlement discussions with PRL. Constellation’s goal in compiling this information was to identify opportunities where Constellation might be able to facilitate certain communications that PRL, as GOP, was required to undertake to comply with the GOP Reliability Standards. TRE, without Constellation’s approval or agreement, added the column labeled “Responsible for Ensuring Compliance” and entered “Buyer” (i.e., Constellation) as the responsible entity for 21 of the Requirements. While Constellation has not agreed that it has GOP responsibilities, the very limited nature of the communications facilitation role that Constellation had identified in its discussions with PRL is borne out in the descriptions in the TRE Table column labeled (“Buyer Functions”) for these 21 Requirements. Constellation at all times made clear that, to the extent the parties were to agree on an arrangement for Constellation to provide communications facilitation services to assist PRL in meeting its GOP obligations, the parties would first enter into an appropriate agreement.

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As noted in the TRE Table, Constellation identified a potential opportunity to facilitate PRL's compliance with Requirement 2, i.e., to facilitate communications of a sabotage event, identified by and communicated to Constellation by PRL, to the Balancing Authority ("BA"). Based on the potential for this limited communications facilitation role, TRE would assign GOP responsibility for the entire Requirement to Constellation. However, Requirement 2 does not operate in a vacuum; it addresses only the communications element of a set of related procedures to deal with potential sabotage events. Only PRL, as the operator of the facility, has the ability to establish procedures to ensure identification and communication of sabotage events that occur at the facility or that become known to PRL's operating personnel, and only PRL has the ability to initiate the communication of such information to relevant entities. Moreover, even with respect to Requirement 2, Constellation could only potentially facilitate a communication that PRL initiates in the first instance. In short, Constellation's willingness to consider an arrangement to facilitate communication between PRL and the BA would not provide Constellation with any authority or ability to establish PRL's procedures, to compel PRL to comply with such procedures, or to ensure that all required communications are initiated.

Below Constellation further demonstrates that TRE's suggestion that Constellation should be assigned responsibility for the other 20 Requirements listed on the TRE Table is equally faulty.

1. COM-002-2 – Communications and Coordination, Requirement 1

Under COM-002-2, Requirement 1, a GOP shall have communications (voice and data links) with appropriate Reliability Coordinators ("RCs"), BAs, and Transmission Operators ("TOPs"), staffed and available for addressing a real-time emergency condition.

Only PRL has the ability to ensure that the Project has communications links staffed and available for addressing a real-time emergency condition.

2. IRO-001-1 – Reliability Coordination – Responsibilities and Authorities, Requirement 8

Under IRO-001-1, Requirement 8, a GOP shall comply with RC directives unless such actions would violate safety, equipment, or regulatory or statutory requirements, and in such circumstances, the GOP must inform the RC of the inability to perform the directive.

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Only PRL has the ability to comply with RC directives with respect to the Project's operations, and only PRL has the ability to determine if compliance with such directives would violate safety, equipment, or regulatory or statutory requirements.¹⁹ Only PRL has the ability to initiate the communication of such information to relevant entities.

3. IRO-004-1, Reliability Coordination – Operations Planning, Requirement 4

Under IRO-004-1, Requirement 4, a GOP shall provide information to the RC required for system studies, such as critical facility status by 12:00 Central Time. The relevant GOP information to be provided by a GOP is plant availability and estimated capacity.

Only PRL has the ability to determine plant availability and estimated capacity, and only PRL has the ability to initiate the communication of such information to relevant entities.

4. PRC-001-1, System Protection and Coordination, Requirements 2 and 2.1

Under PRC-001-1, Requirements 2 and 2.1, a GOP shall notify the TOP and BA reliability if a protective relay or equipment failure reduces system reliability, and shall take corrective action as soon as possible.

Only PRL has the ability to determine if there has been a protective relay or equipment failure, to assess whether such failure reduces system reliability, and to take corrective action, only PRL has the ability to initiate the communication of such information to relevant entities.

5. TOP-001-1, Reliability Responsibilities and Authorities, Requirements 3, 6, 7, 7.1, and 7.3

Under TOP-001-1, Requirements 3, 6, 7, 7.1 and 7.3, a GOP shall comply with reliability directives issued by the TOP or BA, unless such actions would violate safety, equipment, regulatory or statutory requirements, and inform the TOP or BA of any inability to perform the directive; shall render all available emergency assistance to

¹⁹ This Requirement also applies Purchasing-Selling Entities ("PSE"). Accordingly, Constellation has an independent obligation to comply with such RC directives with respect to its PSE activities.

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others requested; shall not remove its facilities from service if it would burden neighboring systems except that generation outages shall be coordinated with the TOP and when immediate action is required and time does not permit notification or coordination, such notice shall be provided at the earliest possible time.

Only PRL has the ability to comply with reliability directives and to determine whether such actions would violate safety, equipment, regulatory or statutory requirements; to determine if removing facilities from service would burden neighboring systems; to coordinate generation outages with the TOP; and to determine when immediate action prevents such coordination. Only PRL has the ability to initiate the communication of such information to relevant entities.

6. TOP-002-2, Normal Operations Planning, Requirements 3, 13, 14, 14.2, and 15; TOP-003-0, Planned Outage Coordination, Requirements 1, 1.1, and 1.3; TOP-006-1, Monitoring System Conditions, Requirement 1.1

Under TOP-002-2, Requirements 3, 13, 14, 14.2 and 15, a GOP shall coordinate its current-day, next-day, and seasonal operations with its BA and Transmission Service Provider ("TSP"); perform real and reactive capability verification at the request of BA or TOP and provide results as requested; notify BA and TOP of changes in capabilities and characteristics, including changes in real output capabilities; upon request, provide a forecast of expected real power output to the BA or TOP. Under TOP-003-0, Requirements 1, 1.1 and 1.3, a GOP shall provide planned outage information daily to the TOP for scheduled generator outages planned for the next day by 12:00 Central Time. Under TOP-006-1, Requirement 1.1, a GOP shall inform its BA and TOP of all generation resources available for use.

Only PRL has the ability to determine current-day, next-day and seasonal operations; perform real and reactive capability verification; to determine if there are changes in capabilities and characteristics; to provide a forecast of the real output, to determine next-day planned outage information, and to determine generation availability. Only PRL has the ability to initiate the communication of such information to relevant entities.

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7. VAR-002-1, Generator Operations for Maintaining Network Voltage Schedules, Requirement 3.2

Under VAR-002-1, Requirement 3.2, a GOP shall notify the TOP as soon as practicable, but within 30 minutes, of a status or capability change on any reactive resources other than a generator reactive resources under the GOP's control and the expected duration of the change in status or capability.

Only PRL has the ability to determine the status of, or changes in status of, reactive resources, and only PRL has the ability to initiate the communication of such information to relevant entities.

D. TRE Continues To Conflate Communications With Respect to Market Rules And Communications With Respect to Reliability Standards

The apparent reason for TRE's focus on these 21 Requirements as somehow applicable to Constellation instead of PRL is that they each involve the communication of information. As noted in the October 19 Response, TRE has previously taken the position that because Constellation, in its role as Qualified Scheduling Entity ("QSE") under the ERCOT ISO's market rules ("ERCOT Protocols"), communicates certain market information related to Constellation's purchases from the Project, Constellation should be responsible for all GOP Reliability Standards. TRE appears now to have applied that same logic in concluding that Constellation, as part of a joint registration arrangement, should be responsible for any GOP Requirement that involves communications. As set forth in the October 19 Response, TRE's conflation of Constellation's activities as a QSE with respect to ERCOT Protocols and the responsibilities of a GOP under NERC's Reliability Standards is erroneous because:

- As TRE itself acknowledges in the TRE Assessment it provided NERC with respect to the Constellation Appeal,²⁰ the ERCOT Protocols are different from the Reliability Standards approved by the FERC.
- Neither the Tolling Agreement nor Constellation's assumption of QSE obligations for the Project under the ERCOT Protocols shift to Constellation responsibility for compliance with GOP Reliability Standards.

²⁰ TRE Assessment at 10-13 (attempting to map QSE obligations under ERCOT Protocols and GOP obligations under NERC Reliability Standards).

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- TRE erroneously concludes that because Constellation is the communications intermediary with ERCOT ISO for ERCOT Protocol purposes, such conduit role elevates Constellation to GOP.
- It is essential to recognize that communication can take place only if the communicator has the relevant information in the first place. GOP responsibilities include overall management of the actual operations and maintenance of the Project and relevant procedures consistent with the GOP Reliability Standards, which also drive the content of relevant reports and communications required to be submitted under the GOP Reliability Standards. Only PRL has the ability and authority to accept these responsibilities.
- NERC obligations must rest with the entity that has the authority and ability to actually ensure compliance with the GOP Reliability Standards, not the entity that may provide an intermediary communications service. Any overlap in communication topics between GOP Reliability Standards and ERCOT Protocols cannot serve as the basis for assigning to Constellation, as the Project QSE, the obligation to satisfy the GOP Reliability Standards or some of the Requirements under those standards.

In short, Constellation has no obligation, ability or authority, contractually or otherwise, to ensure that the Project complies with the GOP Reliability Standards, including those that may include communication elements.

PRL might find it efficient to take advantage of Constellation's existing communications link and procedures with the ERCOT ISO (established solely for the purpose of selling power purchased from PRL into the ERCOT markets pursuant to ERCOT Protocols) to facilitate portions of PRL's communications obligations under the GOP Reliability Standards, such as forwarding PRL-initiated sabotage reports to the BA under CIP-001-1; transmitting RC directives and PRL's response to such directives under IRO-001-1; or forwarding information about plant status under IRO-004-1, PRC-001-1, TOP-001-1 and other Reliability Standards. However, Constellation has not entered into any agreement with PRL to provide such a communication service with respect to its GOP Reliability Standards. Even if Constellation were to consider entering into such an arrangement, Constellation's role would be limited to simply facilitating PRL's compliance with the Requirements, and Constellation would not be elevated to GOP with respect to such Requirements. Constellation consistently has

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indicated its willingness to negotiate a mutually acceptable arrangement to facilitate such communications for PRL, but there is nothing in the Tolling Agreement or its QSE arrangements that obligates Constellation to facilitate communication of information related to PRL's compliance with GOP Reliability Standards, or to assume any responsibility for compliance with such standards.

E. Conclusion

PRL has sole responsibility for operation of the Project in compliance with the GOP Reliability Standards and should be registered as the sole GOP. The Constellation Appeal should be granted expeditiously, and Constellation removed from the registry as a GOP for the Project. As discussed above, NERC's joint registration procedures do not provide a basis for any different result. In sum, Constellation is opposed to any form of registration that would require it to be a GOP for the Project.

Respectfully submitted,



Donna M. Sauter

Attorney for

Constellation Energy Commodities Group, Inc.

cc: Craig Lawrence, NERC
Tony Shiekhi, TRE
Stuart Rubenstein, Constellation
Stephen Knapp, Constellation
Donald Schopp, Constellation

ATTACHMENT A

From: Shiekhi, Tony A. [mailto:Tony.Shiekhi@texasre.org]
Sent: Monday, January 21, 2008 10:25 AM
To: Dave.Hilt@nerc.net
Cc: Grimm, Larry; Henry, Mark; Craig.Lawrence@nerc.net; Vincent, Susan; Sauter, Mindi; Steve.larsen@calenergy.com; Schopp, Donald; Rubenstein, Stuart; jerry.baker@calenergy.com; David.Brown@klgates.com
Subject: Texas RE- Constellation Energy Commodities Group, Inc (CCG)- NERC Case # RA070005 appeal status
Importance: High

Dear Mr. Hilt,

The NERC Board of Trustees Compliance Committee ("BOTCC") remanded Constellation Energy Commodities Group, Inc (CCG) appeal (NERC Case # RA070005) to Texas Regional Entity ("Texas RE") to work with Power Resources, Ltd. ("PRL") and CCG to resolve CCG's issues regarding its registration as a NERC GOP in the ERCOT region.

As the BOTCC suggested in its Order of Remand, the duties and responsibilities of CCG and PRL appear to fit a joint registration. Texas RE, therefore, has worked with both entities in an attempt to reach an agreement. No settlement was achieved by the parties.

Nevertheless, the information that Texas RE has obtained indicates that both CCG and PRL each perform certain GOP Reliability Standard Requirements. Accordingly, Texas RE registered PRL as an additional GOP on January 8, 2008, while maintaining CCG's registration as GOP for the same generation resources.

PRL received the registration notification from NERC on Monday, January 14, 2008. As you know, PRL has 21 days to appeal this registration.

We do not know whether PRL intends to appeal its registration as GOP. In the interest of economy, Texas RE suggests that, if PRL chooses to appeal this registration, it would be most efficient to have both appeals addressed in a consolidated proceeding. To permit BOTCC's consolidated consideration of the appeals, Texas RE hereby requests that the appeal of CCG be abated until March 7, 2008.

Thank you for your consideration,

Tony Shiekhi, Inc.
Texas RE - Compliance Engineer
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ATTACHMENT B

Schedule 1

As of January 3, 2008

Line Number	NERC Standard Title	NERC Standard Number	NERC Requirement Number	NERC Requirement	Responsible for Ensuring Compliance (Buyer/Seller)	Seller Functions	Buyer Functions
1	Automatic Generation Control	BAL-005-0	R1	All generation, transmission, and load operating within an interconnection must be included within the metered boundaries of a Balancing Authority Area.	Seller	See R1.1.	NA
2	Automatic Generation Control	BAL-005-0	R1.1	Each Generator Operator with generation facilities operating in an interconnection shall ensure that those generation facilities are included within the metered boundaries of a Balancing Authority Area.	Seller	Seller shall verify that the Project is included within the metered boundary of the Balancing Authority Area as defined by Seller's interconnection agreement.	NA
3	Sabotage Reporting	CIP-001-1	R1	Each Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator, and Load Serving Entity shall have procedures for the recognition of and for making their operating personnel aware of sabotage events on its facilities and multi site sabotage affecting larger portions of the interconnection.	Seller	Seller shall have a procedure for the recognition of and for making their operating personnel aware of sabotage events within the boundaries of Seller's physical plant.	NA
4	Sabotage Reporting	CIP-001-1	R2	Each Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator, and Load Serving Entity shall have procedures for the communication of information concerning sabotage events to appropriate parties in the interconnection.	Buyer	Seller's sabotage procedure shall have instructions for communicating information concerning sabotage events to plant and company management, federal authorities and Buyer. Seller shall communicate information concerning sabotage events to the Reliability Coordinator or its designated agent and/or the Buyer. Seller's sabotage procedure shall provide its operating personnel with sabotage response guidelines, including personnel to contact for reporting disturbances due to sabotage events.	The Buyer shall facilitate voice communications of a sabotage event reported by Seller to the Balancing Authority.
5	Sabotage Reporting	CIP-001-1	R3	Each Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator, and Load Serving Entity shall provide its operating personnel with sabotage response guidelines, including personnel to contact, for reporting disturbances due to sabotage events.	Seller	Seller shall establish communication contact with the local office of the Federal Bureau of Investigation (FBI) and develop and maintain a reporting procedure in the event of sabotage events within the boundaries of Seller's physical plant.	NA
6	Sabotage Reporting	CIP-001-1	R4	Each Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator, and Load Serving Entity shall establish communications contacts, as applicable, with local Federal Bureau of Investigation (FBI) or Royal Canadian Mounted Police (RCMP) officials and develop reporting procedures as appropriate to their circumstances.	Seller	Seller has documentation in place that describes the Seller's voice and data link systems. Seller's control room is staffed 24 hours a day, 7 days a week. Seller has contact information for appropriate contacts of Buyer and Transmission Owner.	Buyer has documentation in place that describes the Buyer's voice and data link systems. Buyer's dispatch desk is staffed 24 hours a day, 7 days a week. Buyer shall facilitate voice communication with the Balancing Authority.
7	Communications and Coordination	COM-002-2	R1	Each Transmission Operator, Balancing Authority, and Generator Operator shall have communications (voice and data links) with appropriate Reliability Coordinators, Balancing Authorities, and Transmission Operators. Such communications shall be staffed and available for addressing a real-time emergency condition.	Buyer		
8	Disturbance Reporting	EOP-004-1	R2	A Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator or Load Serving Entity shall promptly analyze Bulk Electric System disturbances on its system or facilities.	Seller	Seller shall promptly analyze disturbances on Seller generating equipment and facilities.	NA
9	Disturbance Reporting	EOP-004-1	R3	A Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator or Load Serving Entity experiencing a reportable incident shall provide a preliminary written report to its Regional Reliability Organization and NERC.	Seller	Seller shall provide verbal and written communication regarding analysis of events affecting generation to Buyer. Verbal communications shall be recorded in the control room log. Seller shall provide available data as requested by the appropriate authority to assist in investigation of Bulk Electric System disturbances.	NA
10	Disturbance Reporting	EOP-004-1	R3.1	The affected Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator or Load Serving Entity shall submit within 24 hours of the disturbance or unusual occurrence either a copy of the report submitted to DOE, or, if no DOE report is required, a copy of the NERC Interconnection Reliability Operating Limit and Preliminary Disturbance Report form. Events that are not identified until some time after they occur shall be reported within 24 hours of being recognized.	Seller	Seller shall provide verbal and written communication regarding analysis of events affecting generation to Buyer. Verbal communications shall be recorded in the control room log. Seller shall provide available data as requested by the appropriate authority to assist in investigation of Bulk Electric System disturbances.	NA

Schedule 1

Line Number	NERC Standard Title	NERC Standard Number	NERC Requirement Number	NERC Requirement	Responsible for Ensuring Compliance (Buyer/Seller)	Seller Functions	Buyer Functions
11	Disturbance Reporting	EOP-004-1	R3.3	Under certain adverse conditions, e.g., severe weather, it may not be possible to assess the damage caused by a disturbance and issue a written Interconnection Reliability Operating Limit and Preliminary Disturbance Report within 24 hours. In such cases, the affected Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator, or Load Serving Entity shall promptly notify its Regional Reliability Organization(s) and NERC, and verbally provide as much information as is available at that time. The affected Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator, or Load Serving Entity shall then provide timely, periodic verbal updates until adequate information is available to issue a written Preliminary Disturbance Report.	Seller	Seller shall provide verbal and written communication regarding analysis of events affecting generation to Buyer. Verbal communications shall be recorded in the control room log. Seller shall provide available data as requested by the appropriate authority to assist in investigation of Bulk Electric System disturbances.	NA
12	Disturbance Reporting	EOP-004-1	R3.4	If, in the judgment of the Regional Reliability Organization, after consultation with the Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator, or Load Serving Entity in which a disturbance occurred, a final report is required, the affected Reliability Coordinator, Balancing Authority, Transmission Operator, Generator Operator, or Load Serving Entity shall prepare this report within 60 days. As a minimum, the final report shall have a discussion of the events and its cause, the conclusions reached, and recommendations to prevent recurrence of this type of event. The report shall be subject to Regional Reliability Organization approval.	Seller	Seller shall provide verbal and written communication regarding analysis of events affecting generation to Buyer. Verbal communications shall be recorded in the control room log. Seller shall provide available data as requested by the appropriate authority to assist in investigation of Bulk Electric System disturbances.	NA
13	Documentation of Blackstart Generating Unit Test Results	EOP-009-0	R1	The Generator Operator of each blackstart generating unit shall test the startup and operation of each system blackstart generating unit identified in the BCP as required in the Regional BCP (Reliability Standard EOP-007-0, R1). Testing records shall include the dates of the tests, the duration of the tests, and an indication of whether the tests met Regional BCP requirements.	Seller	Seller, as applicable, shall test the startup and operation of each system blackstart generating unit identified in the BCP as required in the Regional BCP (Reliability Standard EOP-007-0, R1). Testing records shall include the dates of the tests, the duration of the tests, and an indication of whether the tests met Regional BCP requirements.	NA
14	Documentation of Blackstart Generating Unit Test Results	EOP-009-0	R2	The Generator Owner or Generator Operator shall provide documentation of the test results of the startup and operation of each blackstart generating unit to the Regional Reliability Organizations and upon request to NERC.	Seller	Seller, as applicable, shall provide documentation of the test results of the startup and operation of each blackstart generating unit to Buyer.	NA
15	Reliability Coordination and Authorities	IFO-001-1	R8	Transmission Operators, Balancing Authorities, Generator Operators, Transmission Service Providers, Load Serving Entities, and Purchasing-Selling Entities shall comply with Reliability Coordinator directives unless such actions would violate safety, equipment, or regulatory or statutory requirements. Under these circumstances, the Transmission Operator, Balancing Authority, Generator Operator, Transmission Service Provider, Load Serving Entity, or Purchasing-Selling Entity shall immediately inform the Reliability Coordinator of the inability to perform the directive so that the Reliability Coordinator may implement alternate remedial actions.	Buyer	Seller shall comply with directives of Reliability Coordinator or designated agents and/or Buyer without delay. Seller shall communicate any inability to comply and the reason to Buyer. Seller shall log such communications in the control room log book.	Buyer shall facilitate communication of Reliability Coordinator directives to Seller. Buyer shall facilitate communication to the Reliability Coordinator, through direct communication with the Balancing Authority, in the event the Seller cannot perform a Reliability Coordinator directive.
16	Reliability Coordination - Operations Planning	IFO-004-1	R4	Each Transmission Operator, Balancing Authority, Transmission Owner, Generator Owner, Generator Operator, and Load Serving Entity in the Reliability Coordinator Area shall provide information required for system studies, such as critical facility status, Load, generation, operating reserve projections, and known interchange Transactions. This information shall be available by 1200 Central Standard Time for the Eastern Interconnection and 1200 Pacific Standard Time for the Western Interconnection.	Buyer	Seller shall provide plant availability and estimated capacity to Buyer daily by 0800 Central Prevailing Time.	Buyer shall facilitate transmission of Seller's plant availability and estimated capacity as required to the Reliability Coordinator by 1200 Central Standard Time.

Schedule 1

Line Number	NERC Standard Title	NERC Standard Number	NERC Requirement Number	NERC Requirement	Responsible for Ensuring Compliance (Buyer/Seller)	Seller Functions	Buyer Functions
17	System Protection Coordination	PRC-001-1	R1	Each Transmission Operator, Balancing Authority, and Generator Operator shall be familiar with the purpose and limitations of protection system schemes applied in its area. Each Generator Operator and Transmission Operator shall notify reliability entities of relay or equipment failures as follows:	Seller	Seller shall be familiar with the purpose and limitations of the protection system scheme applied in its area.	NA
18	System Protection Coordination	PRC-001-1	R2	If a protective relay or equipment failure reduces system reliability, the Generator Operator shall notify its Transmission Operator and Host Balancing Authority. The Generator Operator shall take corrective action as soon as possible.	Buyer	See R2.1	See R2.1
19	System Protection Coordination	PRC-001-1	R2.1	A Generator Operator or Transmission Operator shall coordinate new protective systems and changes as follows:	Buyer	Seller shall notify the Transmission Operator or designated agent of any protective relay failures, known impact and actions being taken equipment failure occurred that could reduce system reliability, the to correct the condition. Seller shall take action to correct the relay. Buyer shall immediately notify the Balancing Authority.	
20	System Protection Coordination	PRC-001-1	R3	Each Generator Operator or Transmission Operator shall coordinate new protective systems and changes as follows:	Seller	See R3.1	NA
21	System Protection Coordination	PRC-001-1	R3.1	Each Generator Operator shall coordinate all new protective systems and all protective system changes with its Transmission Operator and Host Balancing Authority.	Seller	Seller shall notify the Transmission Operator or designated agent of any proposed protective system changes.	NA
22	System Protection Coordination	PRC-001-1	R3	A Generator Operator or Transmission Operator shall coordinate changes in generation, transmission, load or operating conditions that could require changes in the protection systems of others:	Seller	See R5.1	NA
23	System Protection Coordination	PRC-001-1	R5.1	Each Generator Operator shall notify its Transmission Operator in advance of changes in generation or operating conditions that could require changes in the Transmission Operator's protection systems.	Seller	Seller shall inform the Transmission Operator or designated agent of potential changes in the Transmission Operator's protection systems. Seller shall notify Buyer in advance of such condition(s) if possible.	NA
24	Reliability Responsibilities and Authorities	TOP-001-1	R3	Each Transmission Operator, Balancing Authority, and Generator Operator shall comply with reliability directives issued by the Reliability Coordinator, and each Balancing Authority and Generator Operator shall comply with reliability directives issued by the Transmission Operator, unless such actions would violate safety, equipment, regulatory or statutory requirements. Under these circumstances the Transmission Operator, Balancing Authority or Generator Operator shall immediately inform the Reliability Coordinator or Transmission Operator of the inability to perform the directive so that the Reliability Coordinator or Transmission Operator can implement alternate remedial actions.	Buyer	Seller shall perform actions as directed by Reliability Coordinator or designated agent and/or Buyer unless such actions would violate safety, equipment, regulatory or statutory requirements. Seller shall immediately inform Buyer if Seller cannot comply and the reason for same. All such communication shall be logged in the control room log.	Buyer shall immediately communicate reliability directives issued by the Reliability Coordinator to the Seller. If the Seller informs the Buyer of the inability to perform a reliability directive, the Buyer shall immediately notify the Reliability Coordinator, through direct communication with the Balancing Authority, of the Seller's inability to perform the reliability directive.
25	Reliability Responsibilities and Authorities	TOP-001-1	R6	Each Transmission Operator, Balancing Authority, and Generator Operator shall render all available emergency assistance to others as requested, provided that the requesting entity has implemented its comparable emergency procedures, unless such actions would violate safety, equipment, or regulatory or statutory requirements.	Buyer	Seller shall render all available emergency assistance as directed by Reliability Coordinator or designated agent and/or Buyer unless such actions would violate safety, equipment, regulatory or statutory requirements. Seller will immediately inform Buyer if Seller cannot comply and the reason for same. All such communication shall be logged in the control room log.	Buyer shall immediately communicate reliability directives issued by the Reliability Coordinator to the Seller. If the Seller informs the Buyer of the inability to perform a reliability directive, the Buyer shall immediately notify the Reliability Coordinator, through direct communication with the Balancing Authority, of the Seller's inability to perform the reliability directive.
26	Reliability Responsibilities and Authorities	TOP-001-1	R7	Each Transmission Operator and Generator Operator shall not remove Bulk Electric System facilities from service if removing those facilities would burden neighboring systems unless:	Buyer	See R7.1	See R7.1
27	Reliability Responsibilities and Authorities	TOP-001-1	R7.1	For a generator outage, the Generator Operator shall notify and coordinate with the Transmission Operator. The Transmission Operator shall notify the Reliability Coordinator and other affected Transmission Operators, and coordinate the impact of removing the Bulk Electric System facility.	Buyer	For a generator outage, Seller shall notify Buyer as far in advance as possible. This notification shall be a phone call followed by e-mail or letter.	If the Seller notifies the Buyer to schedule a generator outage, the Buyer shall help coordinate the generator outage request with the Transmission Operator, through direct communication with the Balancing Authority, and communicate the agreed upon outage schedule back to the Seller.

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Line Number	NERC Standard Title	NERC Standard Number	NERC Requirement Number				
NERC Requirement							
		Responsible for Ensuring Compliance (Buyer/Seller)	Seller Functions				
		Buyer Functions	Buyer Functions				
28	Reliability Responsibilities and Authorities	TOP-001-1	R1.3	When time does not permit such notifications and coordination, or when immediate action is required to prevent a hazard to the public, lengthy customer service interruption, or damage to facilities, the Generator Operator shall notify the Transmission Coordinator and adjacent Transmission Operators, at the earliest possible time.	Buyer	Seller shall notify Buyer at the earliest possible time if Seller generation must be taken out of service immediately such that time does not permit notifications and coordination, or when immediate action is required to prevent a hazard to the public, lengthy customer service interruption, or damage to facilities. All communications and circumstances surrounding the loss shall be logged in the control room log.	If the Seller immediately removes a generator from service without prior notice to the Buyer, the Buyer shall confirm the generator plant status with the Seller and then provide the plant status information to the Transmission Operator, through direct voice communication with the Balancing Authority, at the earliest possible time.
29	Normal Operations Planning	TOP-002-2	R3	Each Load Serving Entity and Generator Operator shall coordinate (where confidentiality agreements allow) its current-day, next-day, and seasonal operations with its Host Balancing Authority and Transmission Service Provider. Each Balancing Authority and Transmission Service Provider shall coordinate its current-day, next-day, and seasonal operations with its Transmission Operator.	Buyer	Seller shall inform Buyer of current day, next day and any applicable seasonal operations plans.	If the Seller advises the Buyer of the Seller's current-day, next-day and seasonal plant operations plan, the Buyer shall facilitate the coordination of the Seller's operations plans with its host Balancing Authority and Transmission Service Provider, through direct communication with the Balancing Authority.
30	Normal Operations Planning	TOP-002-2	R13	At the request of the Balancing Authority or Transmission Operator, a Generator Operator shall perform generating real and reactive capability verification that shall include, among other variables, weather, ambient air and water conditions, and fuel quality and quantity, and provide the results to the Balancing Authority or Transmission Operator operating personnel as requested.	Buyer	At the request of Transmission Operator (or designated agent of Transmission Operator) or Buyer, Seller shall perform generating real and reactive capability verification that shall include, among other variables, weather, ambient air and water conditions, and fuel quality and quantity, and provide the results to Buyer as requested.	The Buyer shall coordinate real and reactive capability verifications as requested or required by Balancing Authorities and Transmission Operators. The Buyer shall provide the results, when they are prepared and made available by the Seller, to the Balancing Authority or Transmission Operator, through direct communication with the Balancing Authority, as requested.
31	Normal Operations Planning	TOP-002-2	R14	Generator Operators shall, without any intentional time delay, notify their Balancing Authority and Transmission Operator of changes in capabilities and characteristics including but not limited to:	Buyer	See R14.1.	See R14.1.
32	Normal Operations Planning	TOP-002-2	R14.1	Changes in real output capabilities. (Effective August 1, 2007)	Buyer	Seller shall, without any intentional time delay, notify Buyer of changes in real output capability. Such communications shall be logged in the control room log.	If the Seller reports changes in real output capabilities to the Buyer, the Buyer shall report these changes to the Balancing Authority and Balancing Authority, through direct communication with the Balancing Authority without any intentional delay.
33	Normal Operations Planning	TOP-002-2	R15	Generator Operators shall, at the request of the Balancing Authority or Transmission Operator, provide a forecast of expected real power output to assist in operations planning (e.g., a seven-day forecast of real output).	Buyer	Seller shall, at the request of the Balancing Authority, Transmission Operator or designated agent and/or the Buyer, provide a forecast of expected real power output to assist in operations planning (e.g., a seven-day forecast of real output).	If the Buyer receives a request from a Balancing Authority or Transmission Operator for a forecast of expected real power output to assist in operations planning (e.g., a seven-day forecast of real output), Buyer shall communicate the request to the Seller. When the Seller completes the forecast data, the Buyer shall submit the forecast data to the Balancing Authority or Transmission Operator, through direct communication with the Balancing Authority, as requested.
34	Normal Operations Planning	TOP-002-2	R18	Neighboring Balancing Authorities, Transmission Operators, Generator Operators, Transmission Service Providers and Load Serving Entities shall use uniform line identifiers when referring to interconnection facilities of an interconnected network.	Seller	Seller shall use uniform line identifiers when referring to Transmission facilities of an interconnected network.	NA
35	Planned Outage Coordination	TOP-003-0	R1	Generator Operators and Transmission Operators shall provide planned outage information.	Buyer	See R1.1 and R1.3.	See R1.1 and R1.3.
36	Planned Outage Coordination	TOP-003-0	R1.1	Each Generator Operator shall provide outage information daily to its Transmission Operator for scheduled generator outages planned for the next day (any unforeseen outage of a generator greater than 50 MW). The Transmission Operator shall establish the outage reporting requirements.	Buyer	Seller shall provide outage information daily to Buyer for scheduled generator outages planned for the next day.	If the Seller provides next day outage information for their resources to the Buyer, the Buyer shall submit the next day outage information to the Transmission Operator, through direct communication with the Balancing Authority, daily by 1200 Central Standard Time.
37	Planned Outage Coordination	TOP-003-0	R1.3	Such information shall be available by 1200 Central Standard Time for the Eastern Interconnection and 1200 Pacific Standard Time for the Western Interconnection.	Buyer	Seller shall provide outage information to Buyer by 1100 Central Prevailing Time for the Eastern Interconnection.	If the Seller provides next day outage information for their resources to the Buyer, the Buyer shall submit the next day outage information to the Transmission Operator, through direct communication with the Balancing Authority, daily by 1200 Central Standard Time.

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Line Number	NERC Standard Title	NERC Standard Number	NERC Requirement Number	NERC Requirement	Responsible for Ensuring Compliance (Buyer/Seller)	Seller Functions	Buyer Functions
38	Planned Outage Coordination	TOP-003-0	R2	Each Transmission Operator, Balancing Authority, and Generator Operator shall plan and coordinate scheduled outages of system voltage regulating equipment, such as automatic voltage regulators on generators, supplementary excitation control, synchronous condensers, shunt and series capacitors, reactors, etc., among affected Balancing Authorities and Transmission Operators as required.	Seller	Seller shall communicate requests for scheduled outages of generator voltage regulating equipment, such as automatic voltage regulators or power system stabilizers on generators to Transmission Operator or designated agent.	If the Seller requests a scheduled outage on the automatic voltage regulator on its generator to the Buyer, the Buyer shall submit the outage request to the Balancing Authority.
39	Planned Outage Coordination	TOP-003-0	R3	Each Transmission Operator, Balancing Authority, and Generator Operator shall plan and coordinate scheduled outages of teleprotecting and control equipment and associated communication channels between the affected areas.	Seller	Seller shall communicate requests for scheduled outages of teleprotecting and control equipment and associated communication channels to Transmission Operator or designated agent.	NA
40	Monitoring System Conditions	TOP-006-1	R1.1	Each Generator Operator shall inform its Host Balancing Authority and the Transmission Operator of all generation resources available for use.	Buyer	Seller shall inform Buyer of all generation resources available for use.	If the Seller provides the Buyer with availability information for the Seller's resources, the Buyer shall submit the availability information to the host Balancing Authority and Transmission Operator, through direct communication with the Balancing Authority.
41	Generator Operations for Maintaining Network Voltage Schedules	VAR-002-1	R1	The Generator Operator shall operate each generator connected to the interconnected transmission system in the automatic voltage control mode (automatic voltage regulator in service and controlling voltage) unless the Generator Operator has notified the Transmission Operator.	Seller	Seller shall operate each generator connected to the interconnected transmission system in the automatic voltage control mode (automatic voltage regulator in service and controlling voltage) unless Seller has notified Transmission Operator or designated agent.	If the Seller notifies the Buyer that the Seller's automatic voltage regulator on its generator is not in service, the Buyer shall notify the Balancing Authority.
42	Generator Operations for Maintaining Network Voltage Schedules	VAR-002-1	R2	Unless exempted by the Transmission Operator, each Generator Operator shall maintain the generator voltage or Reactive Power output (within applicable facility Ratings -- when a Generator is operating in manual control, reactive power capability may change based on stability considerations and this will lead to a change in the associated facility Ratings.) as directed by the Transmission Operator.	Seller	Unless notified of exemption by the Transmission Operator or designated agent, Seller shall maintain the generator voltage or Reactive Power output (within applicable Project Ratings -- when a Generator is operating in manual control, reactive power capability may change based on stability considerations and this will lead to a change in the associated Project Ratings.) as directed by the Transmission Operator or designated agent within the limits of the Interconnection Agreement.	NA
43	Generator Operations for Maintaining Network Voltage Schedules	VAR-002-1	R2.1	When a generator's automatic voltage regulator is out of service, the Generator Operator shall use an alternative method to control the generator voltage and reactive output to meet the voltage or Reactive Power schedule directed by the Transmission Operator.	Seller	When a Seller generator's automatic voltage regulator is out of service, Seller shall use an alternative method to control the generator voltage and reactive output to meet the voltage or Reactive Power schedule directed by the Transmission Operator or designated agent. Such operation shall be recorded in the control room log.	NA
44	Generator Operations for Maintaining Network Voltage Schedules	VAR-002-1	R2.2	When directed to modify voltage, the Generator Operator shall comply or provide an explanation of why the schedule cannot be met.	Seller	When directed to modify voltage, Seller shall comply or provide an explanation of why the schedule cannot be met. Such communications shall be recorded in the control room log.	NA
45	Generator Operations for Maintaining Network Voltage Schedules	VAR-002-1	R3	Each Generator Operator shall notify its associated Transmission Operator as soon as practical, but within 30 minutes of any of the following:	Seller	See R3.1. and R3.2	NA
46	Generator Operations for Maintaining Network Voltage Schedules	VAR-002-1	R3.1	A status or capability change on any generator Reactive Power resource, including the status of each automatic voltage regulator and power system stabilizer and the expected duration of the change in status or capability.	Seller	A status or capability change on any generator Reactive Power resource, including the status of each automatic voltage regulator and power system stabilizer and the expected duration of the change in status or capability.	If the Seller notifies the Buyer of a change in status of the Seller's automatic voltage regulator on its generator or its reactive capability, the Buyer shall notify the Balancing Authority.
47	Generator Operations for Maintaining Network Voltage Schedules	VAR-002-1	R3.2	A status or capability change on any other Reactive Power resources under the Generator Operator's control and the expected duration of the change in status or capability.	Buyer	NA	NA
48	Generator Operations for Maintaining Network Voltage Schedules	VAR-002-1	R3.1	If the Generator Operator can't comply with the Transmission Operator's specifications, the Generator Operator shall notify the Transmission Operator and shall provide the technical justification. (NOTE: step-up transformer tap changer settings)	Seller	If Seller can't comply with the Transmission Operator or designated agent's specifications, Seller shall notify the Transmission Operator or designated agent and shall provide the technical justification. (NOTE: step-up transformer tap changer settings)	NA

Attachment H
TRE March 7, 2008 Response



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March 7, 2008

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RE: Texas Regional Entity ("Texas RE"), an independent division of Electric Reliability Council of Texas, Inc. ("ERCOT"), Filing:

1. **Request for Consolidation of NERC Entity Registration Appeals of:**
 - (a) **Constellation Energy Commodities Group, Inc. ("Constellation") (May 4, 2007) – RA070005 ("Constellation Appeal"); and**
 - (b) **Power Resources, Ltd. ("PRL") – RA080001 ("PRL Appeal"); and**
2. **Response to:**
 - (a) **Constellation Response of October 19, 2007 ("Constellation Response");**
 - (b) **PRL NERC Entity Registration Appeal of February 1, 2008 ("PRL Appeal");**
 - (c) **Constellation Supplemental Response Objecting to Joint Registration of February 14, 2008 ("Constellation Joint Registration Objection"); and**
 - (d) **PRL Supplemental Filing of February 15, 2008 ("PRL Supplement").**

Dear Mr. Hilt:

Texas RE respectfully requests that, for the reasons set forth below, NERC consolidate the Constellation Appeal and the PRL Appeal for determination and that, upon final consideration, NERC confirm the concurrent Generator Operator ("GOP") registrations of Constellation and PRL for the relevant generation resources (the "Project"). Texas RE agrees with NERC's suggestion in its remand of the Constellation Appeal that the Joint Registration Organization ("JRO") process would be the best solution in this case. However, Constellation and PRL have not reached

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any agreement to form a JRO or joint registration, and the NERC Rules of Procedure ("NERC Rules") do not appear to allow Texas RE to compel a JRO. NERC should, therefore affirm the concurrent registration to ensure that there is no gap in responsibility within the GOP function.

I. OVERVIEW AND EXECUTIVE SUMMARY.

A. NERC Should Consolidate the Constellation and PRL Appeals

Constellation argues in the Constellation Appeal, Constellation Response, and Constellation Joint Registration Objection (collectively, "Constellation Filings") that it does not have the ability or authority to comply with or to compel PRL's compliance with the requirements of the NERC Reliability Standards ("Reliability Standards") relevant to GOPs, because it has neither contractual nor physical control of the PRL generation assets for the Project. PRL argues in the PRL Appeal and PRL Supplement (collectively, "PRL Filings") that Constellation does have such authority and, under existing contracts, PRL does not have the ability or authority to perform certain duties required for compliance with at least a portion of the relevant Reliability Standards. Constellation and PRL's irreconcilable positions require consideration in tandem to avoid potentially inconsistent decisions and resulting, but FERC-forbidden, reliability gaps. NERC should, therefore, consolidate the appeals of Constellation and PRL.

B. NERC Should Uphold the Concurrent GOP Registration of Constellation and PRL

As discussed in detail below, the facts Constellation and PRL present, the NERC Reliability Functional Model - Version 3 ("Functional Model"), the NERC Registry Criteria, the contracts signed by Constellation and PRL, the NERC Rules of Procedure, the applicable Reliability Standards, and applicable FERC orders, all support the registration of both Constellation and PRL for the GOP function. Constellation and PRL have not, to date, reached an agreement establishing a JRO or joint registration. Accordingly, Texas RE concurrently registered both entities for the GOP function for the relevant generation facilities.

The commercial relationship between Constellation and PRL is largely governed by a Tolling Agreement. Although each company makes arguments based upon its terms, neither Constellation nor PRL has provided Texas RE or NERC with a copy of the agreement.

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Even without full knowledge of the terms of the Tolling Agreement, however, much is known about the roles of Constellation and PRL in the generation, sale, and purchase of electricity. This is because, in addition to the Tolling Agreement, Constellation and PRL each signed a Standard Form Market Participant Agreement ("MP Agreement") with ERCOT ISO (the sole Reliability Coordinator ("RC"), Balancing Authority ("BA"), and Transmission Operator ("TOP") for the ERCOT Region). The MP Agreements state in pertinent part that Constellation and PRL understand and have agreed to comply with the ERCOT Protocols and Operating Guides ("ERCOT Protocols") for their operations in the ERCOT region. Specifically, Constellation agreed to be registered and responsible as a Qualified Scheduling Entity ("QSE"),¹ and PRL agreed to be registered and responsible as a Resource Entity ("Resource").² The parties also agreed that Constellation would be designated as PRL's QSE.

As analyzed in Attachment A hereto (and as detailed on Attachment 2 and Attachment 3 to the October 3, 2007 Regional Entity Response to Registration Appeal (the "Texas RE Assessment")), the duties Constellation and PRL agreed to assume under the ERCOT Protocols correlate with the Tasks and Responsibilities that characterize a GOP under the Functional Model.³ In large part, the NERC Reliability Standard Requirements applicable to a GOP coincide with duties and responsibilities Constellation and PRL have assumed and are already performing under the MP Agreements and ERCOT Protocols.

For instance, the ERCOT Protocols require the QSE representing a Resource to be primarily responsible for performance of real time tasks and communications with ERCOT ISO. The ERCOT Protocols require each Resource to designate the QSE with

¹ Qualified Scheduling Entity: A Market Participant that is qualified by ERCOT in accordance with Section 16, Registration and Qualification of Market Participants, to submit Balanced Schedules and Ancillary Services bids and settle payments with ERCOT. *ERCOT Protocols Section 2, Definitions and Acronyms.*

² Resource Entity - A Market Participant registered that owns or controls a Resource. Resources are Facilities capable of providing electrical energy or Load capable of reducing or increasing the need for electrical energy or providing Ancillary Services to the ERCOT System, as described in Section 6, Ancillary Services. This includes Generation Resources, Loads acting as Resources and Emergency Interruptible Load Service Resources. *ERCOT Protocols Section 2, Definitions and Acronyms.*

³ NERC Reliability Functional Model, page 7. Attachment A maps each relevant ERCOT Protocol duty to a corresponding Task or Relationship under the GOP Function and associates each with "the entity responsible for ensuring the Function is performed."

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which it contracts as the Resource's "Single Point of Contact" with ERCOT ISO, and QSEs (such as Constellation) representing Resources are required to provide daily generating resource plans and updates to ERCOT and be responsible for compliance with these generating resource plans. In addition, as a Resource, PRL is required to properly operate and maintain the physical assets of the Project and provide planned outage, forced outage, and maintenance information to ERCOT. With limited exceptions, it is Constellation's responsibility to ensure that ERCOT gets this information.

As noted in Attachment A, a review of (1) Constellation's duties under its MP Agreement and the incorporated ERCOT Protocols and (2) the duties Constellation acknowledges as contained in the Tolling Agreement clearly shows that the duties Constellation has agreed to assume by contract fit squarely within the scope of activities contemplated for GOP Tasks 1, 2, 3, 4, and 5 and Relationships 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, and 13. Applying the same methodology to the duties PRL has assumed, it is clear that PRL is responsible for ensuring performance of the duties of GOP Task 5 and Relationship 7. While it appears that neither Constellation nor PRL has every single obligation of a GOP, each is responsible for essential elements of the GOP function.

Again, as NERC has suggested, the relationship between Constellation and PRL may be the type best addressed by the establishment of a JRO; however, in absence of such an agreement, the concurrent registration is appropriate. As set forth in Order 693,⁴ the Federal Energy Regulatory Commission ("FERC") contemplated concurrent registrations in circumstances similar to the one at issue. Specifically, FERC considered the pooled resource scenario, which is comparable to the ERCOT ISO/QSE/Resource relationship, in the FERC rulemaking in which the NERC rules pertaining to certain registration issues were adopted. In FERC's discussion of the Functional Model in the ISO, RTO and other pooled resource context, the Commission directed that, in determining whom to register, the Regional Entity and NERC should ensure that "there [is] neither unintended redundancy nor gaps for responsibilities within a function."⁵ The Commission further suggested, "One approach could be that the RTO, ISO or other pooled resource registers as the

⁴ *In the matter of Mandatory Reliability Standards for the Bulk-Power System*, RM06-16-000, 118 FERC ¶61,218, Order No. 693 (Issued March 16, 2007) ("Order 693").

⁵ *Id.* at ¶142 (emphasis added).

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transmission operator pursuant to the NERC compliance registry process, and, while retaining ultimate responsibility, assigns specific tasks to be performed by what are sometimes known as local control centers or other relevant organizations.”⁶

In the similar ERCOT-ISO/QSE/Resource relationship, the QSE assigns specific tasks to each of its Resources, but the QSE remains responsible to ERCOT ISO for the Resources’ proper performance of the majority of these tasks. Constellation contends that its duties under the MP Agreement and ERCOT Protocols are somehow distinct from its duties under the NERC framework. However, eligibility for registration for a NERC function simply follows an entity’s actual performance of tasks and acceptance of responsibilities that are within the scope of the function. Here, the tasks and responsibilities Constellation accepted willingly under the MP Agreement and ERCOT Protocols correspond substantially with the obligations of a GOP under the Functional Model and NERC Standards.

Constellation asks NERC to turn a blind eye to the duties it has undertaken contractually (including its agreement to comply with the ERCOT Protocols) when evaluating it under the NERC Functional Model, claiming that these contractual obligations are unrelated to or exclusive of the obligations placed upon it under NERC Rules. In fact, Constellation’s distinctions are beside the point. The fact that Constellation’s activities will also be governed by the ERCOT Protocols is no reason to exclude them from consideration in the NERC registration process.

In comments FERC quoted favorably in Order 693, NERC has explained its procedures where the parties refuse to enter a JRO or joint registration that is justified by their relationships:

[E]ach “central” organization should be able to register as being responsible for compliance for itself and collectively on behalf of its members. Each member within a central organization may separately register to be accountable for a particular reliability function defined by the standards. *Under NERC’s proposal, if the central organization and a member organization cannot agree that one organization or the other is responsible, or if the parties agree that the responsibilities for a particular reliability function should be split, then NERC would register both entities concurrently. NERC and the Regional Entities will then have the authority to find either organization or both accountable for a*

⁶ *Id.* at ¶143

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*violation of a Reliability Standard, based on the facts of the case and the circumstances surrounding the violation.*⁷

In the absence of an agreement between the parties to establish a JRO, the level of responsibility and activities Constellation and PRL acknowledge requires both Constellation and PRL to be registered as GOP, either separately or jointly for responsibilities allocated between them. A reliability gap will be formed if NERC does not either recognize and affirm Texas RE's concurrent registration of Constellation and PRL or, as requested below, order that the parties enter into a JRO or joint registration. If Constellation and PRL are concurrently registered, any open questions regarding the assignment of responsibility will be sorted out in the enforcement process.

C. Alternatively, NERC Should Jointly Register Constellation and PRL

In Order 693, FERC suggested that, particularly in pooled resource situations, entities were authorized under NERC Rules to enter into joint registrations.⁸ FERC was explicit in having NERC's rules provide the flexibility to permit the functional entities who under contract and through their relationships actually share among themselves the obligation to perform Requirements under NERC Reliability Standards to decide among themselves which among them is to be responsible for each task and which entity will be liable for failures to comply.⁹

Order 693, in authorizing negotiated and cooperative outcomes, however, may not be interpreted to permit parties to *create* a reliability gap by refusing to clarify their relationships and ensuring that all Requirements of all applicable Reliability Standards are covered. In the end, both parties need not be explicitly "responsible" for performance of each Task or Requirement, provided that they have assigned among themselves the duty to perform - *and have assigned the responsibility to ensure performance of* - each Task,¹⁰ just as Constellation and PRL have done in the ISO context by agreeing to perform under the ERCOT Protocols.

⁷ *Id.* at ¶103 (emphasis added).

⁸ *Id.* at 143.

⁹ *Id.* at ¶143.

¹⁰ *Id.* at ¶144.

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A reliability gap will be formed if NERC does not either recognize and affirm Texas RE's concurrent registration of Constellation and PRL, or alternatively, order that the parties establish a JRO or joint registration. NERC should uphold its obligation to ensure that there are no gaps within the GOP function.¹¹

II. INTRODUCTION.

A. Registration, Remand, Negotiations, and Further Registrations.

Texas RE registered Constellation as a GOP responsible entity for the ERCOT region because of its role in the operation of generator resources owned by PRL. Constellation thereafter appealed its registration to NERC.

After review of information submitted by Constellation, PRL, and Texas RE, on October 22, 2007, the NERC Board of Trustees Compliance Committee ("BOTCC") remanded Constellation's appeal of its registration as a GOP for certain generation resources within the ERCOT footprint. BOTCC stated, in pertinent part, that in remanding Constellation's appeal to the Texas RE, Texas RE was "to work with PRL and [Constellation] to resolve [the pending] issues" and to report back to BOTCC with the parties' solution. BOTCC noted that:

Based upon the Committee's review, it appears that NERC's Joint Registration Organization (JRO) process may provide an appropriate solution to resolve the issues raised in [Constellation]'s appeal. PRL and [Constellation] each point to the other as the entity responsible for compliance with the NERC Generator Operator Reliability Standards. The point of the NERC Statement of Registration Criteria is to ensure that parties responsible for compliance with the Reliability Standards are registered and that no gaps exist. The JRO process provides a mechanism to allow T[exas] RE, PRL and [Constellation] to determine the subset of requirements applicable to PRL and [Constellation], respectively.

Taking up BOTCC's charge, Texas RE encouraged and facilitated negotiations between PRL and Constellation toward the end of obtaining an agreement to establish an express JRO relationship and a joint registration as GOP. Consistently with BOTCC's directions, Texas RE's goal in facilitating discussions between PRL

¹¹ *Id.* at ¶142.

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and Constellation was to ensure that when the process was completed, there would be no gaps in the performance of the Requirements under each applicable NERC (or region-specific) Reliability Standard, and to minimize the overlap in coverage without permitting a gap.

PRL and Constellation conducted negotiations in good faith but did not agree to establish a JRO or reach any other written agreement for the division of compliance responsibility.

On January 8, 2008, when discussions between PRL and Constellation appeared to be at impasse and based upon facts that had been made more apparent in the exchanges of information following the remand, Texas RE registered PRL as an additional GOP for the resources made the basis of Constellation's registration as GOP and in issue in Constellation's appeal. Texas RE did not, however, remove Constellation's GOP registration from the NERC Registry. Instead, there are now two, concurrent responsible entities registered as GOPs for the relevant generation resources. PRL received NERC's notice of its GOP registration on January 14, 2008.¹²

Texas RE sent its final post-remand report to NERC on January 14, 2008, confirming that, contrary to the BOTCC's suggestion, PRL and Constellation had not agreed to a JRO arrangement satisfying NERC Rules 501 and 507. Although as of January 21, 2008, Constellation had taken no action to obtain the BOTCC's further consideration of its remanded appeal, in the interest of administrative economy (and in anticipation that Constellation would, in fact, press its points on appeal to the BOTCC), Texas RE sent NERC a request for the abatement of the Constellation appeal until March 7, 2008, to permit PRL the opportunity to appeal its registration by February 4, 2008 (or to eliminate the prospect) and to permit Texas RE to file a consolidated response to the two appeals, if filed ("Texas RE January 21 Letter").

On February 1, 2008, PRL filed an appeal of its registration as GOP for the relevant resources (the "PRL Appeal"). After PRL filed its appeal, on February 14, 2008, Constellation filed a response to Texas RE's January 21 Letter, objecting to any abatement of its registration appeal and objecting to any form of joint registration ("Constellation Joint Registration Objection").

¹² Under NERC rules, PRL had until 21 days after January 14, 2008, or until February 4, 2008, to file an appeal of its registration as GOP.

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Finally, on February 15, 2008, PRL filed a supplemental response providing information about its contractual relationship with Constellation under the Tolling Agreement and about its operations in relation to Constellation.

As of the filing of this Request for Consolidation and Response, this controversy is now ripe for a determination.

B. Texas RE's Request for Affirmation of Separate, Complete Registrations of PRL and Constellation as GOPs.

1. Summary of Constellation and PRL Arguments.

The main theme of the Constellation Filings is that because Constellation does not physically perform some or all of the reliability work for the PRL generation resources, and because it claims an inability to compel PRL to perform any Requirement, it cannot and should not be registered as GOP. Constellation largely "supports" its theme with arguments that rely upon the alleged content of the energy purchase contract existing between PRL and Constellation (the "Tolling Agreement"). Constellation also gives a nod to its obligations as a "qualified scheduling entity" or "QSE" undertaken pursuant to its registration and its MP Agreement executed under ERCOT Protocols, but Constellation generally contends that these agreements require it to provide little more than non-essential, non-reliability-affecting, communications services and do not require it to perform NERC Reliability Standards Requirements or GOP Tasks.

PRL's principal arguments, stated in support of Constellation's registration in its letter of July 13, 2007 (the "PRL Letter") and reiterated and expounded upon in the PRL Appeal and PRL Supplement, are largely the opposite of Constellation's. The PRL Letter, on which Texas RE relied in large part for its statements in its October 3, 2007, Assessment regarding Constellation's and PRL's respective roles under the Tolling Agreement, essentially argues that Constellation was the true operator of the relevant generation resources that PRL owns by virtue of its contractual authority to control them by issuing commands to PRL.¹³

In its Appeal, PRL claims significant limitations in its ability to perform certain GOP Reliability Standard Requirements in connection with the relevant facilities because

¹³ Importantly, neither PRL nor Constellation has provided Texas RE or the BOTCC anything more than its own interpretation of the Tolling Agreement.

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there exists "a very real split in operational responsibilities and binding contractual obligations between PRL and Constellation[.]" PRL contends that because of Constellation's operational-command role under the Tolling Agreement and because of its communications-gatekeeper role as a QSE in the ERCOT system, Constellation actually performs a number of tasks that are Requirements under NERC Reliability Standards and should continue to be registered as GOP.

2. Proposed Consolidation and Affirmation of Concurrent Registration.

Texas RE's primary goal in the Constellation and PRL appeals is to obtain coverage of all Requirements of all applicable Reliability Standards without a gap. If the appeals of Constellation and PRL are determined independently, there is a substantial risk that the BOTCC's decision will leave at least some Requirements without a responsible GOP.¹⁴ NERC should, therefore, grant Texas RE's request for consolidated consideration of these appeals.

As noted in the Texas RE response to Constellation's Appeal (filed October 5, 2007, the "Texas RE Assessment"), while Constellation attempts to minimize its role in the performance of GOP-related Reliability Standards, many of the duties required of Constellation by its contractual relationships with PRL and ERCOT-ISO coincide with the obligations of the relevant Reliability Standards Requirements. Texas RE has registered PRL as a concurrent GOP, but because of FERC's charge that a Regional Entity must not permit a gap in reliability, Texas RE has not withdrawn Constellation's registration as GOP for those same generation resources.

There are significant disputes alleged by PRL and Constellation as to responsibility (perhaps more accurately, potential liability) under NERC Rules for their respective roles under their MP Agreements and the Tolling Agreement, but there is seemingly no dispute that *between* PRL and Constellation all requirements under all applicable Reliability Standards may be met. The Tolling Agreement and the MP Agreement (which obligates the parties to comply with the ERCOT Protocols) contractually

¹⁴ This is not to say that the registered GOP will not be liable under NERC Rules for penalties and the like for any failures to ensure that the Requirements of the GOP-related Reliability Standards are fulfilled, but if what Constellation and PRL assert is taken at face value, a real reliability gap will inevitably arise.

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establish the respective responsibilities of PRL and Constellation for every GOP-related standard.¹⁵

As BOTCC averred in the Remand Order, the most appropriate registration for the relevant generation resources is a NERC Rule-507 JRO and a joint registration by Constellation and PRL that identifies the specific responsibilities of each of the joint registrants; however, Texas RE does not read the NERC Rules or the NERC Registry Criteria to permit a Regional Entity to establish an involuntarily JRO or joint registration for responsible entities that have not expressly agreed to the arrangement. Accordingly, unless the BOTCC determines that a Regional Entity may, in fact, “involuntarily” register two de facto jointly responsible entities in a JRO and joint registration under the NERC Rules, the BOTCC should affirm PRL’s and Constellation’s separate and concurrent registrations as GOP for the PRL generation resources. As NERC commented and FERC affirmed, if the parties who should agree to a division of responsibility and a joint registration refuse to come to agreement on who is responsible or if the parties each contend that the responsibilities for a particular reliability function should be split, “then NERC would register both entities concurrently.”¹⁶ Having registered both, “NERC and the Regional Entities will then have the authority to find either organization or both accountable for a violation of a Reliability Standard, based on the facts of the case and the circumstances surrounding the violation.”¹⁷

The concurrent registration of PRL and Constellation as GOPs will not cause an overlap in responsibility that would create the FERC-prohibited “two sets of hands on the wheel.”¹⁸ As FERC has clarified, “[T]here is a difference between being assigned to perform a task and being responsible for completing the task.”¹⁹ The existing, agreed assignment of duties under the Tolling Agreement and the MP Agreements will ensure that the actual performance of the tasks is orderly and

¹⁵ See Attachment B, Constellation Joint Registration Objection.

¹⁶ *In the matter of Mandatory Reliability Standards for the Bulk Power System*, Docket No. RM06-16-000, Order No. 693 at ¶103 (Issued March 16, 2007); *In the matter of Mandatory Reliability Standards for the Bulk-Power System*, Docket No. RM06-16-003, Order on Joint Registration Organization Filing at ¶2 (Issued July 19, 2007) (“Joint Registration Order”).

¹⁷ *Id.*

¹⁸ *Id.* at ¶143.

¹⁹ *Id.* at ¶144.

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appropriate, with no *unnecessary* overlap that would be prohibited under FERC Orders. To register either PRL or Constellation but not both would inevitably leave FERC-forbidden *gaps*.

II. DISCUSSION.

A. Responses Applicable to Both Constellation and PRL.

1. **NERC Rules 501 and 507, The Basis for Which Was Approved Under FERC Order No. 693, Provide the Framework for BOTCC's Analysis.**
 - a. **NERC Rules 501 and 507 Provide a Basis for Concurrent Registration.**

NERC Rule 501 provides for the establishment of a Compliance Registry for all "owners, operators, and users that are subject to approved reliability standards."²⁰ The registry is to "set forth the identity and functions performed for each organization responsible for meeting requirements of the reliability standards including . . . generator operators [and] generator owners . . ."²¹ In developing the registry, NERC and the Regional Entities, including Texas RE, are generally to include owners and operators of bulk power system facilities,²² and to include any entity whose "actions or inactions could have a material impact on the bulk power system."²³

The NERC Rules also provide that an "organization" – considered in the context of the registration process a "Joint Registration Organization" or "JRO" – may be registered in lieu of each of the JRO's members being registered separately, or "a JRO and its members or related entities may enter into a written agreement as to which of them will be responsible for one or more reliability standards applicable to a particular function and/or for one or more requirements within particular

²⁰ NERC Rule 501.1, adopted under *In the matter of North American Electric Reliability Corp.*, Docket No. RR06-1-003, *Order on Compliance Filing*, 118 FERC ¶61,030 (Issued January 18, 2007). As amended under the Joint Registration Order, these rules will be referenced as "NERC Rule _____."

²¹ NERC Rule 501.1.1.

²² NERC Rule 501.1.2.1.

²³ NERC Rule 501.1.2.6.

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reliability standards applicable to a particular function and/or for one or more requirements within particular reliability standards . . .”²⁴

Under the NERC Rules, the goal is that “[f]or all geographical or electrical areas of the bulk power system, the registration process shall ensure that (1) no areas are lacking any 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 duplication of such coverage or of required oversight of such coverage.”²⁵

Under NERC Rule 507, the JRO registration process contemplates a group of potentially-registered entities proactively and expressly forming the JRO and designating responsibility for the performance of activities within the scope of the approved Reliability Standards and Requirements.²⁶ In the NERC JRO-registration process, a single entity “may register on behalf of one or more of its members or related entities for one or more functions as to which such members or related parties could otherwise be required to register, and thereby accept on behalf of such members or related entities all compliance responsibility, including reporting requirements, for all requirements of reliability standards applicable to the function or functions for which the JRO has registered on behalf of its members or related entities.”²⁷ If a JRO is to be implemented, the lead entity must provide information for enforcement—*i.e.*, “information . . . sufficient to identify whether the entity or its member(s) or related entities will be responsible for compliance with each provision of the [applicable] reliability standards.”²⁸

Importantly, Rule 507 provides that when pursuant to a contractual arrangement two or more owners, operators, or users of the Bulk Power System have divided responsibility for the tasks encompassed within a Reliability Standard or Requirement, the owners, operators, or users must document their division of responsibility for ensuring performance of the applicable reliability requirements and register jointly for the function.²⁹ Rule 507 also provides detailed procedures for

²⁴ NERC Rule 501.1.2.7.

²⁵ NERC Rule 501.1.4.

²⁶ NERC Rule 507.1.

²⁷ *Id.*

²⁸ *Id.*

²⁹ NERC Rule 507.2.

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the maintenance of the JRO and joint registration to ensure that no reliability gaps arise.

Here, where a joint registration or JRO among PRL and Constellation could ensure that all requirements are met and that no gaps form, the potential parties have refused to conclude an agreement.

b. The NERC Registry Criteria Calls for Constellation's and PRL's Concurrent Registration.

In accordance with Section 215 of the Federal Power Act, 16 U.S.C. §824o, the NERC Registry Criteria³⁰ oblige NERC and the Regional Entities to register “[a]ny entity reasonably deemed material to the reliability of the bulk power system . . . , irrespective of other considerations.”³¹ The Registry Criteria systematically identify as candidates for registration any organization that is “an owner, operator, or user of the bulk power system [(the “BPS”)].”³² Once an entity is determined to be an owner, operator, or user of the BPS, the Registry Criteria assign such entities to functional types defined in the NERC Reliability Functional Model, Functional Definitions and Responsible Entities (Version 3). Then, the Registry Criteria provide minimum qualifications that may provide a basis to exclude “small” or insignificant entities that meet the minimum requirements for registration, but are not, in fact, material to the BPS.³³

Applied to the facts in this matter, it is clear that the Registry Criteria require the registration of Constellation and PRL. First, in Section I of the NERC Registry Criteria, NERC has stated that for purposes of determining whether an “entity is an owner, operator, or user of the bulk-power system, and hence a candidate for registration,” the following standard will apply:

Entities that use, own or operate elements of the bulk electric system as established by NERC's approved definition of bulk electric system below are

³⁰ Statement of Compliance Registry Criteria (Revision 4.0).

³¹ *Id.* at 3

³² *Id.* 3-4.

³³ *Id.* 6-8.

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(i) owners, operators, and users of the bulk power system and (ii) candidates for registration:

“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.”³⁴

Constellation and PRL do not dispute the materiality of the Project to the BPS.

Second, NERC defines “Generator Operator” in Section II as the “[e]ntity that operates the generating unit(s) and performs the functions of supplying energy and interconnected operations services.”³⁵ While PRL and Constellation dispute loudly whether either or both “operate” the generation units or supply energy and related services, as we explain both in the Texas RE Assessment and below, it is clear that each carries a substantial operational role. Simply put, without the coordinated activities of Constellation and PRL under the terms of their MP Agreements and Tolling Agreement, the GOP function could not be performed.

Third, there is no basis for excluding either Constellation or PRL under Section III. Section III provides for registration of an entity as a GOP, if it meets *at least one* of the criteria contained in Section III(c)³⁶ Neither Constellation nor PRL contend that the Project may be excluded.

A faithful application of this analysis to Constellation and PRL as QSE and generation resource militates that each must be registered for all Requirements of all GOP Reliability Standards (unless they agree in writing to a division of the Requirements that establishes their division of labor and states which of them will

³⁴ *Id.* at 4 (emphasis in original)(footnote omitted).

³⁵ *Id.* at 4.

³⁶ *Id.* at 7-8.

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be responsible for ensuring that all Requirements are met). The Project is clearly material under these Standards.³⁷

c. The NERC Reliability Functional Model—Version 3 Establishes a Basis for Concurrent Registration.

As NERC has implemented the Reliability Functional Model—Version 3, there is an expectation that individual organizations register as Responsible Entities for all Functions for which they have responsibility. As NERC explained its framework:

NERC, through its compliance monitoring and enforcement programs, holds each organization accountable for complying with all reliability requirements in standards assigned to the Responsible Entities that the organization has registered for.

In short, the Model provides a framework by defining the Responsible Entities, which serve as a common thread that links standards requirements to the individual organization that must meet (sic) them and to NERC which monitors and enforces the meeting of these requirements.

* * *

An organization may perform more than one Function and register as the corresponding Responsible Entities, but must recognize that some Functions require the organization and its personnel to be certified to perform that Function.

³⁷ In its decision in *In the matter of Direct Energy Services, LLC*, Docket No. RC07-4-000, *Order on Electric Reliability Organization Registry Determinations*, 121 FERC ¶61,274 (Issued December 20, 2007), FERC determined that, under the terms of the NERC Registry Criteria pertaining to “load-serving entities” (“LSEs”), non-facilities-based LSEs are not themselves “directly connected” to the BPS and are not, therefore, subject to registration. However, FERC discussed the differences between non-facilities-based LSEs and non-facilities-based GOPs—including QSEs such as Constellation. In *Direct Energy*, FERC determined that because of the language of the NERC Registry Criteria for GOs and GOPs, the relevant analysis is not whether the entity itself is directly connected to the BPS, but whether the assets under the control of the entity are directly connected. While the NERC Registry Criteria for LSEs may call for an “entity” examination, the NERC Registry Criteria for GOPs requires an examination of the assets under control of the GOP entity. *Id.* at ¶¶37-39.

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An organization identified as a Responsible Entity is accountable for all Tasks within the Function. *While the organization may agree to split or delegate Tasks of the Function, NERC will require that one, and only one, organization be the Responsible Entity, ensuring all of the Tasks of the Function are performed.*

Assignment of responsible (sic) Entities is based on the individual transmission, generator and customer equipment assets that collectively constitute the Bulk Electric System. Each Bulk System asset must have one Reliability Coordinator, one Balancing Authority, one Transmission Operator, etc.³⁸

While the final version of the Functional Model Version 3 does not contain the foreword, introduction, or other articles of background, it expresses in its framework the same principles. That is, a Responsible Entity is *accountable* for all “tasks” within its “function,” although the entity may delegate or split the tasks among those who actually perform them in the industrial context of the Responsible Entity. Here, while neither Constellation nor PRL have expressly tied their agreements and activities under the MP Agreement or Tolling Agreement to the specific GOP tasks and functions—except, perhaps, by denying their own responsibility and alleging that their respective counterparts *are* responsible—the overall thrust of these agreements is to establish joint or several responsibility between Constellation and PRL for the complete function.³⁹

d. FERC Order 693, Approving the Functional Model and NERC Rules, Expressly Supports the Concurrent Registration.

In approving the Functional Model and the process of functional registration, FERC affirmed the principle that “nothing in the Functional Model requires one entity to be responsible for all of the tasks within a function, regardless of who actually

³⁸ See *NERC Reliability Functional Model – Version 3 Draft* prepared by the Functional Model Working Group at 7 (emphasis added); see also *In the matter of Mandatory Reliability Standards for the Bulk Power System*, Docket No. RM06-16-000, Order No. 693 (Issued March 16, 2007); *In the matter of Mandatory Reliability Standards for the Bulk Power System*, Docket No. RM06-16-001, Order No. 693-A (Issued July 19, 2007).

³⁹ See also *NERC Reliability Functional Model Technical Document, Version 3*, at 26-27.

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performs the task.”⁴⁰ But, the primary guiding principle for entity registration is that there should be neither unintended redundancy nor gaps for responsibilities within a function.⁴¹

FERC recognized that regulatory or contractual relationships sometimes required joint action for the performance of what later became Requirements of Reliability Standards. In Order 693, FERC said, “The NOPR proposed that ‘all control centers and organizations that are necessary for the actual implementation of the decisions or are needed for operation and maintenance made by the ISO or RTO or the pooled resource organizations are part of the transmission or generation operator function in the Functional Model.’”⁴² While FERC discusses these issues in Order 693 in the context of ISOs and RTOs in their interactions with TOPs and GOPs, FERC recognized that in “any organization that pools resources, decision-making and implementation are performed by separate groups,” and decisions may be made by one entity, while implementation is performed by another. As FERC put it,

The intent was to allow flexibility in identifying the actual user, owner or operator of the Bulk-Power System that would be responsible for complying with the Requirements in the Reliability Standards. One approach could be that the RTO, ISO or other pooled resource registers as the transmission operator pursuant to the NERC compliance registry process and, while retaining ultimate responsibility, assigns specific tasks to be performed by what are sometimes known as local control centers or other relevant organizations. Alternatively, the local control center operators could register together with the RTO, ISO or pooled resources as transmission operators clearly delineating their specific responsibilities with regard to the Requirements of particular Reliability Standards. Such joint registration must assure that there is no overlap between the decisionmaking and

⁴⁰ Order 693 at ¶¶131, 143.

⁴¹ *Id.* at ¶107.

⁴² *Id.* at ¶130. NERC Rules may be read to provide that the obligation to form or to register a JRO may arise out of the contractual relationships existing among the relevant parties (*e.g.*, tolling agreements, agreements giving rise to the parties’ regulatory capacities, etc.), even if their agreements do not specify the establishment of such an organization. FERC Order 693 seems to affirm this reading.

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implementation functions, i.e., that there are not two sets of hands on the wheel. Again, our intent is to ensure that there is neither redundancy nor gap in responsibility for compliance with the Requirements of a Reliability Standard, while allowing entities flexibility to determine how best to accomplish this goal.

.... Consistent with our above explanation, we agree with NPCC that there is a difference between being assigned to perform a task and being responsible for completing the task. The organization that registers with NERC to perform a function will be the responsible entity and, while it may delegate the performance of that task to another, it may not delegate its responsibility for ensuring the task is completed.⁴³

In comments quoted favorably by FERC in Order 693, NERC has explained its procedures for joint registration—and for concurrent registration in circumstances that would properly give rise to a joint registration, but have not because of the parties' inability to agree:

*[E]ach "central" organization should be able to register as being responsible for compliance for itself and collectively on behalf of its members. Each member within a central organization may separately register to be accountable for a particular reliability function defined by the standards. Under NERC's proposal, if the central organization and a member organization cannot agree that one organization or the other is responsible, or if the parties agree that the responsibilities for a particular reliability function should be split, then NERC would register both entities concurrently. NERC and the Regional Entities will then have the authority to find either organization or both accountable for a violation of a Reliability Standard, based on the facts of the case and the circumstances surrounding the violation.*⁴⁴

FERC determined these procedures to be "reasonable."⁴⁵ However, FERC also stated that "an organization is not required to assume compliance responsibility for

⁴³ *Id.* at ¶¶143-44.

⁴⁴ *Id.* at ¶103 (emphasis added).

⁴⁵ *Id.* at ¶107.

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its members for any reliability-related functions and all Reliability Standards. . . [A] member may separately register to be accountable for a particular reliability function so the responsibility for reliability functions can be split.”⁴⁶

NERC’s requirements, FERC stated, would “not require an entity to assume responsibility where it is not possible to do so.” In the end, however, there may be no gaps in the registration of Responsible Entities for bulk-power system assets:

Accordingly, the Commission directs that the ERO, in registering RTOs, ISOs and pooled resource organizations (or, indeed in registering any entity), assure that there is clarity in the assigning responsibility and that there are no gaps or unnecessary redundancies with regard to the entity or entities responsible for compliance with the Requirements of each relevant Reliability Standard. Accordingly, although the Commission is not requiring NERC to amend the Functional Model, we believe our concerns can be addressed by having the ERO, through its compliance registry process, ensure that each user, owner and operator of the Bulk-Power System is registered for each Requirement in the Reliability Standards . . . to assure there are no gaps in coverage of the type discussed here.⁴⁷

Again, although its specific comments were made in the context of, *e.g.*, a transmission organization, they are equally instructive in the process of generating and controlling the generation of power. It is clear from the comments of Constellation and PRL that there are bulk power system assets that can only be covered for the GOP function by either the establishment of a JRO and joint registration or concurrent registration of Constellation and PRL.

B. The Written Agreements Governing the Constellation/PRL Relationship Are Consistent With a Concurrent GOP Registration (or a Joint Registration)

Assignments of responsibility, FERC recognized, should not be “inconsistent with a Commission-approved regional transmission agreement, RTO tariff, or reliability

⁴⁶ *Id.* at ¶108.

⁴⁷ *Id.* at ¶145 (emphasis added).

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plan filed with NERC.” As the ISO/RTO Council stated in its comments to the rulemaking, the delegation of responsibilities to anyone other than a specifically registered entity “should take place in the context of ISO/RTO governing documents, operating agreements, tariffs and other arrangements with transmission owners and related stakeholders.”⁴⁸ Although somewhat different in context, the principle of assigning responsibility consistently with existing industry arrangements and standards is promoted through the concurrent registration of Constellation and PRL.

The relationship between Constellation and PRL (and to some extent, other NERC “registered entities” or ERCOT “market participants”) is governed by two sets of written obligations. The first, the Tolling Agreement between Constellation and PRL, is unknown to Texas RE, except for the parties’ incomplete and substantially differing interpretations on display in their submissions. The second, the undertaking each has made in accepting the terms of its respective agreements with ERCOT-ISO to become bound to the ERCOT Protocols, establishes agreed relationships between Constellation, PRL, ERCOT-ISO, and others. Together, these agreements give rise to an consensual division of the labor that is contemplated for a GOP within the NERC Functional Model.

1. The Tolling Agreement.

The Tolling Agreement as described by both PRL and Constellation (but not made available to either the Texas RE or NERC) supports a concurrent GOP registration. A complete discussion of the PRL contentions regarding the Tolling Agreement is contained in the Texas RE Assessment, the PRL Letter, and the PRL Appeal. In summary, PRL contends that the Tolling Agreement gives Constellation “complete contractual control” of the generation facilities themselves that is necessary for the performance of the GOP function.⁴⁹ According to PRL, Constellation “exclusively handles relationships with third parties, including with ERCOT ISO as the Balancing Authority, related to the output and operation of the facility.”⁵⁰ PRL also contends that the Tolling Agreement gives Constellation substantial control over the formulation and execution of the daily generation plan and the output of electricity,

⁴⁸ *Id.* at ¶¶ 138.

⁴⁹ *See* Texas RE Assessment at 3-4.

⁵⁰ PRL Letter at 1.

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knowledge of the performance of the facility, and control over maintenance outages and testing. PRL contends that it is obliged under the Tolling Agreement to comply with Constellation's instructions regarding operations.⁵¹

While Constellation disputes PRL's contentions regarding the terms of the Tolling Agreement, even what Constellation admits about the Tolling Agreement is sufficient to support a concurrent GOP registration. In Section III of its Response, Constellation argues that the Tolling Agreement limits its control over PRL and the generation resources. Again, Texas RE has not seen the Tolling Agreement and must balance the representations of PRL against the representations of Constellation. But, Texas RE has no more "speculat[ed]" about the workings of the Tolling Agreement based upon PRL's representations of its content than Constellation asks of BOTCC by presenting its own, unsubstantiated representations of its contents as expressed in the Constellation Response. Nor has Texas RE proffered the "notion that Constellation has unfettered control over the Project." Instead, Constellation's appeal of its registration as GOP of the PRL generation resources has revealed that there is clearly a dispute between PRL and Constellation as to the scope of the responsibilities meted out under the Tolling Agreement. It is clear, however, even under Constellation's explication of what it does and does not do under the Tolling Agreement that PRL and Constellation each conduct activities that are important in the GOP reliability context.

Based upon Constellation's representations, it would appear that the Tolling Agreement governs and perhaps limits Constellation's authority to require PRL to establish daily schedules, to schedule maintenance and repair outages, and other operational procedures to generate up to its capacity. It may well be true that Constellation does not control every Requirement for which the GOP function is obligated, leaving some to PRL. But, the correct way of looking at the Tolling-Agreement "Project constraints" Constellation describes is to acknowledge that—*except in the case of "outages, de-ratings or other legal, regulatory or technical operational constraints,"*⁵² PRL is obligated to produce power at Constellation's insistence and direction. Recasting other elements of Constellation's outline of the tasks under the Tolling Agreement for which it eschews responsibility reveals that in

⁵¹ *Id.* at 2-3.

⁵² Constellation Response at 10 of 31.

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routine or normal operational circumstances, Constellation in fact admits that it *does* have control; for instance:

- Constellation must be consulted on planned outages unless PRL determines that they would affect the Project adversely or would be inconsistent with prudent industry practice. Further, if an outage is planned during peak months, Constellation must approve.⁵³
- Constellation may schedule power with impunity – and PRL must operate to provide it – as long as PRL does not determine “that the Project is suffering from constraints (e.g., outages or deratings).”⁵⁴

Constellation also claims that the references to its QSE duties in the Tolling Agreement do not require it, as QSE, to perform GOP requirements. Again, while Texas RE has not seen the Tolling Agreement, it is hardly surprising that references in an agreement that apparently pre-dates the final approval of the NERC registry framework – including the registration of JROs and joint registrations – would fail to particularize such a role. At the same time, because of its role, rights, duties, and obligations under its MP Agreement and as expressed in PRL’s explication of the Tolling Agreement, Constellation is in the unique status of “gatekeeper” of communications between PRL as generation resource owner and ERCOT-ISO as BA, TOP, RC, IA, etc. Literally none of the communications (and certain other) functions Texas RE described in its Assessment can be performed by anyone but Constellation acting as QSE. As an essential link in the process, Constellation must be a GOP, even if Constellation and PRL may only ensure coverage by being concurrently registered.

Texas RE has never suggested that Constellation is necessarily the *only* choice or even a *better* solitary choice for all of the Reliability Standards and Requirements; Constellation is, however, an *essential* choice for ensuring compliance with certain requirements. Constellation’s arguments do not preclude – or even undermine – a concurrent registration.

⁵³ *Id.* at 8 of 31.

⁵⁴ *Id.* at 10 of 31.

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2. MP Agreements Require Compliance with ERCOT Protocols.

As we pointed out in the Texas RE Assessment, as a condition of being permitted to hold the status of QSE, Constellation has signed and is bound by the terms of a MP Agreement with ERCOT-ISO. Under that agreement, Constellation has agreed that it, as “[p]articipant[,] shall comply with, and be bound by, all ERCOT Protocols as they pertain to operation as a Qualified Scheduling Entity.”⁵⁵

In contrast, Resources, including “generator resources” like PRL that are not also QSEs, may not communicate with ERCOT ISO, except in very limited urgent or emergency situations. Under the ERCOT Protocols, an entity like PRL must reach agreement with a QSE to represent it with respect to its interaction with the market and the ERCOT ISO. While a Resource can be its own QSE, Constellation has made no argument that PRL performs QSE functions, and PRL is not registered as a QSE with ERCOT ISO. The QSE role is filled by Constellation, and the resource role is filled by PRL. Under both the acknowledged terms of the Tolling Agreement and the MP Agreements, Constellation controls access to the interconnection and the ISO.

a. Constellation’s Role as a QSE Encompasses Significant GOP Duties Within the Scope of the GOP Function.

Again, we will not repeat the Texas RE Assessment analysis of how Constellation’s role as a QSE relates to the duties of a GOP. Our explanation was both extensive and detailed.⁵⁶ Briefly, however, under the ERCOT Protocols, a QSE is “[a] Market Participant that is qualified by ERCOT in accordance with Section 16, Registration and Qualification of Market Participants, to submit Balanced Schedules and Ancillary Services bids and settle payments with ERCOT.” Constellation is a Level 4 QSE.

QSE applicants must have certain qualifications or attributes to take on the various levels of QSE qualification. The ERCOT Qualification Guide states:

⁵⁵ *Id.*

⁵⁶ See Texas RE Assessment at 4-13, Attachment 2, and Attachment 3.

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Levels of QSE Qualification

For administrative purposes ERCOT classifies QSEs in four (4) service levels. This is to ensure qualification commensurate with the types of services each QSE expects to perform in the market.

* * *

Level 4 Qualified to *represent* Load Serving Entities and/or *Resource Entities* and provide Ancillary Services; may also perform level 1, 2 and 3 activities.⁵⁷

In its role as a Level 4 QSE, Constellation *represents* PRL and provides “QSE support services,” including scheduling and settlement transactions and receiving and discussing dispatch instructions. As QSE, Constellation acts as PRL’s agent for communications with ERCOT-ISO. In its role as QSE, Constellation is also responsible to ERCOT ISO for compliance with the schedules it submits for PRL.

b. PRL, Too, Has Duties that Correspond With a GOP.

As Constellation points out, PRL also has GOP-oriented duties. A substantial portion of the information that Constellation is obliged to convey to ERCOT-ISO under either the ERCOT Protocols or under Requirements is available to Constellation only with PRL’s cooperation. And, while it has contractual authority over the output and availability of the generation units, Constellation can exercise that authority only jointly with PRL in the operation of the generating units.

c. PRL’s Recent Supplemental Filing Supports Constellation’s Registration, Even If It Does Not Support PRL’s Proposed Exemption From Registration.

Although the information was apparently submitted in connection with the PRL Appeal, rather than in the Constellation Appeal, PRL’s recent Supplemental Response focuses on “improved and secure communications channels” as a critical element in the analysis of which entities should be registered, particularly as GOP. Just as FERC referenced in Order 693 in discussing certain Reliability Standards

⁵⁷ ERCOT Qualification Guide,
http://www.ercot.com/services/rq/qse/QSE_Qualification_Guide.doc.

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Requirements the performance of which could, at least conceptually, get insufficient attention in the registration process and post-registration performance,⁵⁸ and as we explain in this section of the Texas RE Response, the issues PRL identifies are exactly the types of communications functions highlighted as generally within the scope of Constellation's duties in the Texas RE Assessment. If PRL's representations regarding the Tolling Agreement are accepted as true, then Constellation has and should be responsible for its role as a GOP in connection with the communication of facility capacity, scheduling, and outages. Constellation stands, as a matter of contract and ERCOT Protocols, as the principle communications link between PRL and ERCOT-ISO and others who perform essential Balancing Authority, Transmission Operator, and other NERC functional duties.

3. Specific Responses to Constellation's Claims.

We agree with Constellation on the following: "The issue is not who performs the tasks, but who is responsible and held accountable for ensuring that these tasks are performed."⁵⁹ Moreover, Constellation agrees with Texas RE that "certain types [of] contractual arrangements may, depending on their terms, support the transfer of GOP responsibility, e.g., an operation and maintenance ('O&M') agreement with a third party that does, in fact, transfer GOP operational authority to a third party."⁶⁰ And, there is a set of agreements that conceptually may cover all the requisite responsibilities (the ERCOT Protocols, by virtue of PRL and Constellation's execution of MP Agreements to be bound by them and the (invisible) Tolling Agreement). PRL and Constellation disagree over the *meaning* of this compact,⁶¹

⁵⁸ See *supra*, discussion of Order 693 at ¶¶142-44 and text accompanying note 74.

⁵⁹ Constellation Response at 14.

⁶⁰ *Id.* at 15.

⁶¹ Constellation nakedly states that "under the Tolling Agreement, PRL has retained responsibility for GOP tasks, and remains accountable for their performance, even in circumstances where it may contract with another party to assist it in performing those tasks." Constellation Response at 14. In contrast, PRL has stated that Constellation "exercises complete contractual control of the operations of the [PRL] facility and exclusively handles relationships with third parties, including with ERCOT as the Balancing Authority, related to the output and operation of the facility." PRL Letter at 1. At a certain level, Texas RE doesn't *care* who is responsible; the NERC rules permit parties that do everything and parties that do nothing (not to mention parties that do more than nothing, but less than everything) to divide both the physical work of ensuring compliance and the economic risk of a failure to comply in virtually any way they wish. Here, the parties simply disagree over the division and have left it to Texas RE and NERC to decide.

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leaving to Texas RE and NERC to sort out the controversy either now (based upon terms of the MP Agreements and incorporate ERCOT Protocols) or in enforcement proceedings.

Constellation suggests that we contend that it must be the GOP because it holds the status of QSE under ERCOT Protocols.⁶² Constellation mischaracterizes our rationale. First, we do not contend that because a QSE is the single point of contact for communications with ERCOT-ISO, there must, therefore, "be no means for anyone else to *assume* GOP obligations."⁶³ Ironically, by misrepresenting what we actually argue, Constellation has convicted itself: it is *precisely* because of Constellation's *assumption* of certain duties, both as QSE under its contract with ERCOT-ISO and under the Tolling Agreement, that it has voluntarily assumed obligations contemplated under NERC Reliability Standards to be those of a GOP (at least the majority of the GOP obligations).

Contrary to Constellation's arguments, at no time has Texas RE conflated the state-regulatory status of QSE with the federal-regulatory role of GOP.⁶⁴ It is simply that because of the tasks and duties required of a QSE under the agreements and obligations of the ERCOT system, only the QSE can take up the obligations of the GOP (again, at least certain GOP obligations). Texas RE does not presume that Constellation's obligations as "a QSE are the same as the requirements imposed on a GOP"⁶⁵. Texas RE merely explains that no GOP operating in the ERCOT region can perform its duties without being or having an agreement with a QSE for the performance of certain GOP Requirements.

Likewise, we agree that the Reliability Standards require more than communication for their completion.⁶⁶ But, Constellation is simply wrong when it says that "[it] has no ability or authority to perform such activities or to compel performance of such

In accordance with FERC directives, we have: both Constellation and PRL get 100% responsibility until they demonstrate through a JRO agreement or in the context of an enforcement proceeding a lesser responsibility.

⁶² Constellation Response at 12-13.

⁶³ *Id.* at 12.

⁶⁴ *See* Constellation Response at 13.

⁶⁵ *Id.*

⁶⁶ *Id.*

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activities by PRL.⁶⁷ Where communication between the GO or GOP and, *e.g.*, the Balancing Authority is required, *only* a QSE *may* perform that act in the ERCOT region. PRL simply cannot schedule or inject its power on the grid without the actions of Constellation, its QSE.

Constellation also says that “NERC obligations must rest with the entity that has the ability to actually meet the GOP Reliability Standards, not the entity that is providing a communications service.”⁶⁸ First, Constellation misstates the burden that FERC and NERC have placed upon the registered entity. It is not up to the registered entity to *do* anything; it is the registered entity’s responsibility to *ensure* that the Reliability Standards are met, regardless of who does the work.

Constellation both understates its role in its relationship with PRL and refuses to recognize that under the acknowledged terms of the Tolling Agreement and the clear terms of the MP Agreement, Constellation is obliged to perform—simply as a matter of the commercial relationship it has with PRL and its load serving entities—a number of duties to which the NERC Standards apply. It is not our argument, as Constellation characterizes it, that *because* the ERCOT Protocols apply to the work Constellation does that the comparable NERC Standards apply. Instead, we contend that because Constellation actually performs duties that are prescribed or governed by two sets of “regulations”—ERCOT Protocols and NERC Standards—Constellation is obligated to comply with both sets of rules.

4. Concurrent Registration Is Appropriate Where the Parties Cannot Agree to a Division of Labor Under a Joint Registration.

There is no express agreement between PRL and Constellation that follows the format of the NERC “Long Form” of joint registration (or Texas RE’s adaptation of it). Yet, it is clear that the governing written agreements provide the framework for a division of the reliability tasks to be completed. Each party has a role in accomplishing certain Requirements of each GOP-affecting Reliability Standard for the relevant generation resources. Apparently, neither PRL nor Constellation can perform every task individually.

⁶⁷ *Id.*

⁶⁸ *Id.*

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Although FERC's Order 693 discussion of this topic is more directed to the TOP context,⁶⁹ the quarrel between PRL and Constellation illustrates that anyplace there is an overlap of control, particularly in contract, there may be a need to require the parties to acknowledge and expressly divide their responsibility for ensuring compliance with NERC Standards. Texas RE prepared a form supplemental agreement that is based upon NERC's "long form" for a joint registration and is intended to allow parties such as PRL and Constellation to easily set forth their agreements as to responsibility for ensuring compliance – at the Requirements level. This chart, a copy of which is attached hereto as Attachment B is similar to that which Constellation included in the Constellation Objection to Joint Registration, and references every current NERC Reliability Standard to which a GOP would be responsible. Under the Attachment B agreement, PRL and Constellation would be required to agree on the division of responsibility each and every time that a new Reliability Standard or Requirement is approved.

Because of their seemingly symbiotic roles, the establishment of a JRO and the entry of a joint registration is the best solution. Yet, PRL and Constellation are unwilling to reach agreement on an express, written division of responsibility for ensuring that the requirements are met for the purpose of establishing a JRO and a joint registration.

Accordingly, the BOTCC should accept Texas RE's separate, concurrent registration of each as GOP for the relevant assets. This procedure is consistent with that which NERC espoused in comments to the NOPR that resulted in Order 693, that "if the central organization and a member organization cannot agree that one organization or the other is responsible, or if the parties agree that the responsibilities for a particular reliability function should be split, then NERC would register both entities concurrently. NERC and the Regional Entities will then have the authority to find either organization or both accountable for a violation of a Reliability Standard, based on the facts of the case and circumstances surrounding the violation."⁷⁰

⁶⁹ See *id.* at ¶¶130-145.

⁷⁰ Order 693 at ¶103 (emphasis added).

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C. Constellation May Be Registered Consistently With the NERC Registry Criteria and the Functional Model and Can Perform Many GOP Reliability Standard Requirements.

1. Replies to Arguments Raised in the Constellation October 19 Response.

Constellation attacks the Texas RE analysis of NERC Model Tasks under the premise that Texas RE has failed to fully analyze the relationship of PRL and Constellation under the Tolling Agreement.⁷¹ Texas RE certainly agrees that it has not analyzed the full contractual relationship between PRL and Constellation, because it has not been made privy to the full scope of the Tolling Agreement between PRL and Constellation and has only the parties' conflicting representations of what the Tolling Agreement says. However, the parties' agreements to the terms of the MP Agreements, which require compliance with the ERCOT Protocols, provide Texas RE with an analytical framework.

Based upon the MP Agreements, Texas RE is able to analyze the functions and tasks of a GOP with reference to Constellation and PRL.⁷² Despite its length and apparent detail, the Constellation Response fails to rebut the essential points of the Texas RE Assessment with its repeated refrain that it "cannot physically operate the Project."⁷³ Often seemingly characterizing itself as PRL's indifferent delivery boy, Constellation's argument generally fails to distance it from the essential role it holds in the performance of many GOP Reliability Standard Requirements. In sum, Constellation's arguments conflict with its obligations under its MP Agreement and do not persuade that PRL can perform the GOP role without the efforts of both PRL and Constellation.⁷⁴

⁷¹ Constellation Response at 16.

⁷² See Texas RE Assessment at 10-13, Attachment 2, Attachment 3.

⁷³ *Id.* at 17.

⁷⁴ Over and above the confusion that Constellation introduces by obfuscating its contractual authority over PRL's activities, Constellation also seriously misstates the separate roles of ERCOT-ISO and Texas RE in suggesting that "[a]s a GO, PRL is obligated to communicate with the ERCOT ISO, in its role as Regional Entity ("RE"), TOP, Transmission Provider, and RC." Constellation Response at 22. Contrary to Constellation's claim, Texas RE has no "role as . . . TO, BA or RC." Constellation Response at 23. These roles are filled by ERCOT-ISO only.

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In support of its claims, Constellation drags into its Response far more of the Reliability Standards Requirements than it did in its initial briefings (which Texas RE rebutted in the Texas RE Assessment). However, the reasons it says it cannot comply—not *ensure compliance*, as NERC Rules and FERC Orders require—are consistent, and rebuttable:

- Task 4:** Operate generators to provide real and reactive power or reliability-related services per contracts or arrangements.
- Relationship 2:** Provides Balancing Authority (“BA”) and Transmission Operator (“TOP”) with requested amount of reliability-related services.
- Relationship 13:** Adjusts real and reactive power as directed by the BA and TOP.

Focusing first on Task 4, Constellation admits that “as the power purchaser under the Tolling Agreement[, it] has the ability to request that PRL schedule energy and ancillary service for sale to Constellation, but only to the extent permitted under the Tolling Agreement and subject to the Project’s capabilities and other constraints set forth in the Tolling Agreement.”⁷⁵ Constellation follows this acknowledgement with a claim that it does not have any authority or ability to physically operate the generation facilities. Yet, even accepting its dubious claims under the Tolling Agreement, Constellation’s claim of impotence is derived of its failure to acknowledge its roles in controlling the “real . . . power” output under contract—except under exigent circumstances—as well as its unabridged and essential role in

That said, we have never contended that the GO must communicate with the Texas RE via the QSE. While it is somewhat metaphysical, federal law and NERC Rules recognize that Texas RE in some senses is “not ERCOT,” even if the two entities are corporately conjoined. Even ERCOT-ISO must “report” to Texas RE where required of it under its obligations as, *e.g.*, Balancing Authority. Communications to Texas RE simply are not the same as communications with ERCOT.

⁷⁵ Constellation Response at 16 of 31.

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communicating between the resource and the ISO to regulate real power, to obtain reactive power, and to coordinate the operation of the resource with the grid.⁷⁶

Constellation's more-specific examples are also unpersuasive of Constellation's claim that it should be freed from concurrent GOP responsibility:

- Constellation mischaracterizes EOP-009 R2. Contrary to Constellation's claim, R2 does not require that the GO communicate with Texas RE; in fact, it provides that *either* "the Generator Owner *or* Generator Operator shall provide documentation of the test results." (emphasis added). If Constellation, the QSE, is the GOP, the GO need not make this communication directly, but may make it through the GOP, exactly as Texas RE has suggested is the case here. While Constellation may not physically test the blackstart equipment, it has contractual authority and an essential role in ensuring that the source of the power it sells is performing the tests, in scheduling the tests, and in conveying the results of the tests to ERCOT-ISO. This is consistent with a concurrent registration.
- PRC-001 is all about coordination and communication, roles that Constellation not only must ensure are fulfilled, but that Constellation cannot in the ERCOT world delegate back to the resource. Again, all communications between the resource and ERCOT-ISO are handled by Constellation. This is consistent with a concurrent registration.

Task 5: Monitor the status of generation plant protective relaying systems and transmission line protective relaying systems on the transmission lines connecting the generation plant to the transmission system.

To parse the Functional Model finely enough to escape its meaning, Constellation disconnects Task 5 from its logical Relationships, such as:

Relationship 8: Receives reliability analyses from Reliability Coordinator.

⁷⁶ Constellation portrays itself as the benefactor of whatever power PRL is willing to sell it, whenever it is willing to sell it. If true, Constellation's customers must live in fear of what PRL may do on a whim.

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Relationship 11: Receives notification of transmission system problems from Transmission Operator.

Relationship 12: Provides real-time operating information to the Transmission Operator and the required Balancing Authority.

In doing so, Constellation fails to explain its real role in relation to the Task. Again ignoring the leading premise of the Texas RE Assessment, that while Constellation may not be the only possible choice as GOP, if there is to be a single GOP, Constellation is the best choice, Constellation again suggests that its role is immaterial to performance of a reliability task—and the relationships connected to it—that is largely dependent upon Constellation. When the telemetry PRL collects suggests a breakdown in the protective relaying systems, for instance, Constellation and ERCOT-ISO (as Balancing Authority and Transmission Operator, among other roles) are interested. While it may be true that telemetry is gauged at the generation units and switches, it is collected by and transmitted via Constellation. This role is essential to the performance of the Task and may not be delegated back to PRL.

Task 3: Develop annual maintenance plan for generating units and perform the day-to-day generator maintenance.

Relationship 4: Reports annual maintenance plan for generating units to Reliability Coordinator (“RC”), BA and TOP.

Relationship 7: Revises generation maintenance plans per directive of RC.

Again, Constellation claims no authority over the relevant Task and Relationships, and then admits that except in exigent circumstances, it *does* have control.⁷⁷ Though PRL undoubtedly has a substantial role in the management of the generation assets, it does so at the insistence Constellation (unless Constellation’s demand “would adversely affect PRL, the Project, the Project Operator . . . or would otherwise be inconsistent with prudent utility practice”). Constellation does have significant roles in the development, scheduling, and reporting of maintenance, even if it does not perform the maintenance itself.

⁷⁷ Constellation Response at 19 or 31.

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- Task 1:** Formulate daily generation plan.
- Relationship 1:** Provides generation commitment plans to the BA.
- Relationship 9:** Receives notice from Purchasing-Selling Entity if interchange transaction approved or denied.

Again minimizing its representative role in obtaining power from the generation resource and in communicating with ERCOT-ISO in its various state and federal roles, Constellation states that its contractual authority extends no further than “request[s].” This strains credulity. While again Texas RE is constrained by not having the text of the Tolling Agreement, it is clear under ERCOT Protocols and Operating Guides that *Constellation* has a crucial and non-delegable role in presenting, *e.g.*, a “resource plan” to the ISO for the operation of the generation units. While Texas RE acknowledges that this plan will require the cooperation and input of the generator owner, it is *Constellation’s* responsibility to present the plan. It is *Constellation* that is responsible under Protocols for updating, consistent with Good Utility Practice, the resource plans to reflect the current and anticipated operating conditions of the Resources. The Protocols also make *Constellation* responsible for the accuracy of what it presents—even if PRL fails in the preparation of the plan.⁷⁸ The Tolling Agreement does not stand alone; it is written in the ERCOT-ISO context and operates under a concurrent obligation to obey and perform under ERCOT Protocols and Operating Guides. The obligations that Constellation has assumed correspond with the NERC GOP Function and are non-delegable.

While Constellation’s role of QSE may not *equate to* its role as GOP, the duties required by the ERCOT Protocols and Operating Guides and the GOP Function Reliability Tasks and Relationships are often, as in this case, substantially the same. If, as it appears, Constellation *actually does or is responsible for* the Tasks or maintains the Relationships (or performs the Requirements), *it should be registered for them.*

- Task 2:** Report operating and availability status of units and related equipment, such as automatic voltage regulators.

⁷⁸ See ERCOT Protocol §4.4.15.

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- Relationship 3: Provides operating and availability status of generating units to BA and TOP for reliability analysis.**
- Relationship 5: Reports status of automatic voltage regulators to TOP.**
- Relationship 6: Provides operational data to Reliability Coordinator..**

Constellation acknowledges that this Task may not be performed and these Relationships may not be fulfilled without its participation, if only as delivery boy.⁷⁹ While Texas RE acknowledges, again, that PRL has an owner's responsibility to collect the information from its units, Constellation cannot evade its essential role in completing these duties.

Moreover, while Constellation contends that it has no role in the performance of ERCOT Protocol §8.2.4, or in the communication of information under certain scenarios. In fact, as discussed above and in Attachment A, in the ERCOT region, the QSE (Constellation) is the entity that must be the "Single Point of Contact" for the Resource (for communications with ERCOT ISO), per §8.2.1 of the ERCOT Protocols. Again, if Constellation is actually performing or is responsible for ensuring the relevant NERC Requirement duty is performed, it should be registered for the function.⁸⁰

- Relationship 8: Receives reliability analyses from RC.**

⁷⁹ Constellation Response at 21 of 31.

⁸⁰ Similarly, getting down into the details, Constellation misstates the obligation of the GOP under FAC-008-1 R2, stating that the GO must "provide documentation" to the RC, the TOP, the TP, and the PA. The GO is to *make such information available*, not to transmit it in any form of operational report, as we have suggested implicates Constellation in its QSE role. But more to the point, as is permitted in the NERC requirements, a GO can (and in ERCOT, must) make arrangements with its QSE to transmit such information to ERCOT-ISO.

And, on MOD-010, MOD-012, MOD-024, MOD-025, PRC-005, PRC-016, PRC-017, PRC-018, the communications are with Texas RE, not ERCOT-ISO. Even under the abbreviated terms of the Reliability Standard Requirements, it is only communications with respect to the TO or TOP under VAR-002 where the GO's communications *may* be made directly with ERCOT-ISO in one or more of its NERC-functional roles. Texas RE does not claim a 100% match in the application of the registration criteria, just a faithfulness to the obligation to avoid reliability gaps while minimizing the overlap.

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- Relationship 9: Receives notice from Purchasing-Selling Entity ("PSE") if interchange transaction approved or denied.**
- Relationship 10: Receives reliability alerts from RC.**
- Relationship 11: Receives notification of transmission system problems from TOP.**
- Relationship 12: Provides real-time operating information to the TOP and the required BA.**

Constellation acknowledges, as it must, that it has a gatekeeper role in obtaining GOP information under these relationships.⁸¹ While Constellation admittedly may not implement actions in the resource as a result of "analyses," "alerts," or notices from other Responsible Entities, it underplays its role in providing the information to, *e.g.*, the generator owner (PRL) and to using the analyses, reports, and notices in making its requests for real or reactive power from the GO. Constellation cannot escape this role and must be registered as GOP.

2. Replies to Additional Arguments in Constellation Joint Registration Objection.

Much of the ground covered by the Constellation Joint Registration Objection is a recapitulation of the Constellation Response, except formatted to respond specifically to the Reliability Standard Requirements it was assigned in the failed post-remand discussions (*e.g.*, Attachment B to the Constellation Joint Registration Objection). There are, however, a few Requirements discussed in the Constellation Joint Registration Objection that were not discussed in the Constellation Response. Texas RE's responses to these points follows. However, for each of these Requirements, Constellation implies that Texas RE attempted to "assign GOP

⁸¹ Although it vacillates, Constellation seems generally to accept that it is the conduit for the vast majority of communications between PRL and other responsible entities—it just disclaims responsibility for the relationships described in the Functional Model. For instance, Constellation says, "Even if, in its role as QSE under the ERCOT Protocols, Constellation would receive these types of communications, this does not mean that Constellation is responsible for these relationships under GOP Reliability Standards." Constellation Response at 24.

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Responsibility” to it.⁸² Constellation mischaracterizes Texas RE’s role in the JRO/joint registration discussions between Constellation and PRL.

Turning to Attachment B to the Constellation Joint Registration Objection, NERC BOTCC will see that the various Requirements were proposed to be divided between Constellation and PRL as “Buyer” and “Seller” based upon the view that one or the other was more responsible for the performance of the particular Requirement (even where they shared some elements of the work involved) While this recognition of the division of labor between the parties is helpful in effecting an agreement for a joint registration, NERC Rules and FERC Orders seem to require that even in a JRO/joint registration, one party must be “responsible for one or more Reliability Standards or requirements of Reliability Standards.”⁸³ As FERC put it in the Joint Registration Order (and Order 693 before it), under NERC Rules, “If a joint registration organization member retains any compliance responsibility, it must also be registered as a responsible entity.”⁸⁴ However, either the JRO or one joint registrant may accept compliance responsibility on behalf of other members of the JRO.⁸⁵ In combination, these rules seem to require either that one of the parties be assigned in writing in the context of a JRO/joint registration the duty to ensure compliance and to be responsible for any failures, or both parties must be registered with liability for any failures to be sorted out in enforcement.⁸⁶

Texas RE would also point out that Constellation’s objection to the application of the following Requirements to it as GOP (though a JRO/joint registration or concurrent registration) fails to persuade:

- **CIP-001-1 (Sabotage Reporting), Requirement 2.** A GOP “shall have procedures for the communication of information concerning sabotage events on its facilities and multi-site sabotage affecting larger portions of the Interconnection.” While it is true, as Constellation avers, that

⁸² See CIP-001-1 R. 2 (and others). Constellation Joint Registration Objection at 7.

⁸³ *In the matter of Mandatory Reliability Standards for the Bulk-Power System*, Docket No. RM06-16-003, Order on Joint Registration Organization Filing at 17 (Issued July 19, 2007) (“Joint Registration Order”).

⁸⁴ *Id.* at 21.

⁸⁵ See Joint Registration Order at ¶¶17, 20-24.

⁸⁶ See *id.* at ¶2 (citing Order 693).

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the communications to be performed under Requirement 2 must have substance, recipients, and follow-up provided under or pursuant to other CIP-001-1 Requirements, FERC has said that this is hardly a barrier to holding either of the co-registrants liable in an appropriate enforcement action, if they cannot agree to a division of labor and liability.⁸⁷ As FERC put it, where “both entities [are registered] concurrently . . . [.] NERC and the Regional Entities would then have the authority to find either organization or both accountable for a violation of a Reliability Standard, based upon the facts of the case and circumstances surrounding the violation.”⁸⁸

- **COM-002-2—Communications and Coordination; IRO-001-1—Reliability Coordination—Responsibilities and Authorities, Requirement 8; IRO-004-1, Reliability Coordination—Operations Planning, Requirement 4; TOP-001-1, Reliability Responsibilities and Authorities, Requirements 3, 6, 7, 7.1, and 7.3; TOP-002-2, Normal Operations Planning, Requirements 3, 13, 14, 14.2, and 15; TOP-003-0, Planned Outage Coordination, Requirements 1, 1.1, and 1.3; TOP-006-1, Monitoring System Conditions, Requirement 1.1** For each of these Requirements, Texas RE’s response—like Constellation’s allegations in the Joint Registration Objection—is substantially the same: each of these Requirements may be dependent upon PRL’s receipt of input from another entity, performance of plant activities, or development and provision of certain information; however, each also requires that information be communicated to, among others, Balancing Authorities or Transmission Operators—entities with which Constellation currently has an obligation to handle communications on behalf of PRL. Concurrent registration is entirely appropriate.

Again, while it is true that each of these Requirements was tentatively assigned to Constellation in the discussions regarding the construction of a JRO and a joint registration (*see* Attachment B to the Constellation Objection to Joint Registration, again), there was little or no discussion about any particular Requirement because Constellation considered its registration for any part of the GOP function—whether

⁸⁷ *Id.*

⁸⁸ *Id.*

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jointly, under a JRO, or concurrently – to be a non-starter. Constellation absolutely refused to participate in any discussion that could include a role for it as a GOP registrant, even for a single Requirement.

It may well be that the unseen evidence would suggest that Constellation could reasonably be registered as GOP for less than all Requirements. Because of Constellation's refusal to participate in a JRO/joint registration, Texas RE (and NERC) are left to sort out any failures of compliance on the part of one or the other concurrent registrants in the enforcement process.⁸⁹

D. Constellation Contends That it Cannot Comply With the GOP Reliability Standards, But the Issue Is Actually Ensuring Compliance.

Constellation contends that it is not physically in control of the generation resource and cannot, therefore, in the Constellation analysis, comply with the GOP Reliability Standards. Constellation contends that it does not analyze, test, or control the operations of any of the generating facilities.⁹⁰ Again, while we do not dispute that Constellation does not physically control the switches and knobs of the generation facilities, Constellation's analysis ignores the role of certain entities in being registered because they are in a position to ensure compliance, even where they do not themselves perform the work.

As Constellation again acknowledges, "the issue is not which individual or company performs the tasks, but who has the ability to direct the appropriate individual or company to perform the task and who is responsible and held accountable for ensuring that the tasks are performed."⁹¹ While Constellation says, "Not me," it does so without acknowledging that it indisputably has control over significant reliability tasks or functions that give rise to responsibility – and without

⁸⁹ A JRO could be established under which Constellation and PRL agree in writing that each will be required to perform certain Requirements or parts of Requirements, while PRL takes responsibility for ensuring all Requirements are met takes on liability for any failures to comply. This would leave Constellation potentially "unregistered," except as a member of the JRO, but would also leave PRL (or the JRO) financially responsible for the Reliability Standard liabilities of the JRO and its members (Constellation and PRL), unless the "uplift" of the financial impact of enforcement penalties was addressed in the JRO agreement.

⁹⁰ Constellation Response at 24.

⁹¹ *Id.* at 26.

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revealing contract language that shows it to be unable to compel the performance of reliability functions.

With respect to purely communications functions, Constellation admits its role as communicator under its ERCOT MP Agreement, but claims that this role is left behind in the NERC Reliability Standard context.⁹² In Constellation's view, PRL is obliged to communicate everything required in the NERC context. Yet, Constellation does not deny that *it actually performs* the communications in issue (it just says that the Tolling Agreement does not require it to do the work). Quite to the contrary of its argument, Constellation's Attachment C seemingly admits that Constellation in fact *does perform all* or a significant portion of the communications in issue—although Constellation's language is ambiguous enough to avoid full acknowledgement that Constellation ever performed the function, currently performs the function, or will in the future perform the function.

Constellation concludes this section in stating:

NERC obligations must rest with the entity that has the ability to actually meet the GOP Reliability Standards, not the entity that is providing a communications service. Constellation is able to communicate information to the ERCOT ISO only when PRL provides it the required information. Only PRL has the ability to make the required determinations, produce information and to initiate communications.⁹³

While it is true that there are requirements that can only be performed by the entity with its "hand on the switch," this is not the test that NERC has established for the assignment of NERC responsibility. Further, the MP Agreements hold Constellation responsible for not only making critical communications, but also with compliance in connection with the information communicated.

Finally in this section of its Response, Constellation disclaims an ability to comply with GOP Reliability Standards that require the development of certain procedures. Again making claims regarding the content of the Tolling Agreement and its inability to require its generation resource to do much of anything, Constellation

⁹² *Id.* at 27; *see also* Constellation Joint Registration Objection at 10-12.

⁹³ *Id.* at 28.

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concludes that it “cannot perform these Applicable Requirements with respect to the Project.”⁹⁴ Again, Texas RE does not contend that Constellation can or is obliged to do all of the underlying work that must enable compliance.

Constellation reiterates and refines many of these same arguments in the Constellation Joint Registration Objection. Constellation argues that Texas RE erroneously “conflates” Constellation’s role in performing communications and other tasks in the ERCOT Protocol and Operating Guide context into a similar role in connection with NERC Reliability Standards Requirements that are similar in nature. Constellation argues in several ways that the ERCOT requirements are simply different than the NERC Standards.⁹⁵

In a sense, Constellation is correct: the physical tasks, while similar in nature and even content, spring from different sets of rules that have different words in them, one set handed down from ERCOT-ISO, and one set issued under federal law. And, certainly, Constellation repeatedly eschews responsibility for the outcome of any NERC Reliability Standard Requirement. But, Constellation never quite says, “We don’t do the tasks set out in any of NERC Reliability Standard Requirements.” Instead, it soft-peddles the relationship with PRL in the performance of the Requirements by saying that “PRL might find it efficient to take advantage of Constellation’s existing communications link and procedures with the ERCOT ISO” to accomplish—with Constellation’s actual performance of certain tasks—the communications required under the GOP Reliability Standards.⁹⁶ Constellation’s denial of an “agreement” to perform these Requirements is belied by its active participation in their execution.

E. “Different” Is Not the Same as “Inconsistent”; Registration of Entities Such as Constellation is Required in ERCOT to Avoid Gaps in Responsibility for Reliability Standards and Requirements.

Although it provides many details in other sections of its Response, Constellation sparsely contends here that “NERC’s registration of Constellation as a GOP in T[exas] RE is inconsistent with the practice of other regions (*e.g.*, ReliabilityFirst Corporation and Northeast Power Coordinating Council) where Constellation

⁹⁴ *Id.* at 28-29.

⁹⁵ Constellation Joint Registration Objection at 10.

⁹⁶ *Id.* at 11.

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purchases power under similar arrangements and, among other things, relays information provided by the generation owner to the relevant ISO, but which have not required Constellation to register as a GOP.”⁹⁷ It may be true that Constellation provides similar services to its generator owners in other regions. It may also be true that other Regional Entities have not registered Constellation as a GOP in light of its performance of these similar functions.

It may also be true that the greater weight of the real work of reliability lies on the side of PRL and other GOs in the ERCOT region, under obligations to which Constellation agreed in the MP Agreement. Making this the centerpiece of each of its arguments, Constellation portrays its essential role as QSE in ERCOT as immaterial to the GOP function. In the end, however, Constellation fails to explain what entity will respond to the Reliability Standards and Requirements it does not deny can only be completed in the ERCOT region (or are, in fact, only being completed) by Constellation in its role as a QSE. Constellation does not explain why, for instance, if it is performing communications covered by Requirements under Reliability Standards—and perhaps is in the same position in which it finds itself in the ERCOT region as the only market participant who *can* perform the tasks—it should not be held accountable as a registered entity for the corresponding function of GOP.

This failure on the part of Constellation reveals that its protest, if granted, would leave a gap in performance and enforcement. While FERC has admonished NERC and the Regional Entities to avoid overlaps that provide more than “one pair of hands on the wheel,” it has flatly prohibited the institution of gaps in reliability responsibility. Because we have far less than perfect knowledge of other Regions’ procedures, much less the contractual arrangements between Constellation and its generation resources in ERCOT and in other Regions, we cannot explain why the other Regional Entities have not required at least a joint registration of Constellation with its GOs. We only know that failing to register Constellation in the Texas RE region (either separately or as part of a JRO), would leave a gap.

While this conundrum could easily be solved using a JRO with a joint registration and an agreed division of responsibility for the Reliability Standards and Requirements, Constellation’s refusal to agree that it will be responsible for ensuring the performance of certain Reliability Standard Requirements has required separate

⁹⁷ Constellation Response at 29 of 31.

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GOP registration for both PRL and Constellation. If NERC and FERC approve the institution of the gap that Constellation advocates, reliability may be affected.

F. PRL's Arguments Against Registration Fail to Provide a Basis for Its Removal From the Registry as a Concurrent Registrant With Constellation.

The PRL Appeal focuses upon what it claims it cannot do. The flaw in this approach is that, even if NERC accepts that there are certain GOP Reliability Standard Requirements that PRL cannot perform except by or through an arrangement with Constellation, there are many GOP Requirements that PRL does not deny doing and that PRL has not claimed are within the scope of Constellation's duties under the MP Agreements or the Tolling Agreement. This flaw reveals the very large gap in reliability that would result from NERC's failure to recognize and affirm PRL's registration as concurrent GOP with Constellation.

PRL complains that "[d]ue to the contractual and practical division of responsibilities between PRL and Constellation for operating the Facility, PRL cannot independently perform certain tasks required for compliance with a significant subset of the GOP reliability standards requirements."⁹⁸ PRL contends, as it has contended in multiple submissions both in connection with the Constellation Appeal and now its own, that Constellation, not PRL, is responsible in contract for the maintenance of certain relationships and the communication of certain information, particularly ERCOT-ISO, which is the relevant Balancing Authority and the Transmission Operator for the facility.⁹⁹ PRL's review of certain relevant Reliability Standards Requirements in its Appeal is for the most part a recapitulation of arguments that Texas RE, too, has made in support of Constellation's GOP registration.¹⁰⁰ That is, where "Buyer" is referenced in Attachment B to Constellation Joint Registration Objection (and as an attachment to the PRL Supplemental Response), Texas RE has argued that the Requirement is of a quality that Constellation, in its role under the Tolling Agreement (as we understand it) and under ERCOT Protocols and Operating Guides, is performing some essential

⁹⁸ PRL Appeal at 2.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 3-4. See also Texas RE Assessment at 6-15 (countering Constellation's arguments regarding its alleged lack of responsibility for NERC Tasks and Relationships for the GOP Function and related Reliability Standard Requirements).

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element of the task and should be responsible for ensuring its continued performance.

While these facts may disqualify PRL as a “sole” GOP registrant, it is not a barrier to a concurrent registration. As FERC has demanded, and as NERC Rules provide, there may be *no gaps* in the responsibility for performance of all applicable Tasks and Reliability Standards Requirements under each NERC Function. And, while concurrent registration of PRL with Constellation may introduce nominal redundancy in the GOP function for the applicable facilities, it does not produce “two hands on the wheel”; PRL and Constellation apparently concede that each has its own duties under the Tolling Agreement and the ERCOT Protocols—each simply complains that it can neither perform its counterpart’s duties, nor require its counterpart to perform. Any failure to perform a Reliability Standard Requirement with reference to the relevant facilities may be sorted out as between PRL and Constellation in an enforcement action.

PRL has expressed a preference for the establishment of a JRO or joint registration, and requests NERC to require the parties to enter “an arrangement in which the parties execute a Joint Registration Agreement that (1) clearly specifies the division of reliability standards compliance responsibility between PRL and Constellation; and (2) limits each party’s enforcement exposure to specific obligations assigned to each party.”¹⁰¹ As we have discussed above, however, this option appears to be precluded as an involuntary JRO registration device under the NERC Rules. Accordingly, NERC should affirm Texas RE’s concurrent registration of Constellation and PRL.

¹⁰¹ PRL Appeal at 5.

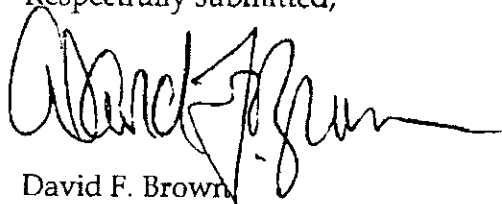
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III. CONCLUSION


As is set forth above, the relationship between Constellation and PRL would best be memorialized in the GOP context as a JRO or joint registration. In the apparent absence of a NERC Rule permitting the institution of an "involuntary" JRO, and with Constellation's and PRL's refusal to complete such an arrangement, Texas RE and NERC have only one clear, legally and factually supported option: Concurrent registration. Accordingly, NERC should consolidate the appeals of Constellation and PRL and affirm Texas RE's concurrent registration of both entities as GOPs.

Respectfully submitted,



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Attachment A

NERC GOP Requirement (by Task or Relationship)	Responsible Entity	ERCOT Requirement	ERCOT Protocol (PR)/ Operating Guide (OG) Reference
GENERATOR OPERATION			
Task 1 Formulate daily generation plan	QSE	<p>QSEs must submit schedules that identify Obligations and Supply and their associated Congestion Zones.</p> <p>QSE must submit Resource Plan to ERCOT QSE is responsible for accuracy of Resource Plan.</p> <p>QSE shall maintain a 24/7 scheduling center in order to deploy the QSE's Ancillary Services in Real Time.</p>	<p>PR-4.3.1--Functions and Activities</p> <p>PR-4.4.15 - QSE Resource Plan OG-3.1.3.2--Daily Resource Plan</p> <p>OG-3.1.3.1--Operating Obligations</p>
Relationship 1 Provides generation commitment plans to the Balancing Authority	QSE	<p>QSE must submit Resource Plan to ERCOT.</p> <p>QSE is responsible for accuracy of Resource Plan.</p> <p>ERCOT shall measure the performance of QSEs submitting status of specific Generation Resources and/or LaaRs through the Resource Plan.</p> <p>All communications concerning Planned Outage or Maintenance Outage shall be between ERCOT and the designated "Single Point of Contact" for each Resource Entity. The Single Point of Contact must be the QSE.</p> <p>QSE shall maintain a 24/7 scheduling center in order to deploy the QSE's Ancillary Services in Real Time.</p>	<p>PR-4.4.15--QSE Resource Plan also OG-3.1.3.2--Daily Resource Plan</p> <p>PR-4.10.1--Introduction and Calculation of QSE Scores</p> <p>PR-8.2--Communications Regarding Resource Facility and Transmission Facility Outages</p> <p>PR-8.2.1--Single Point of Contact</p> <p>OG-3.1.3.1--Operating Obligations</p>
Relationship 9 Receives notice from Purchasing-Selling Entity if interchange transaction approved or denied	QSE	ERCOT will confirm or deny the Supply and Obligation Schedules submitted by a QSE across a DC tie.	PR-4.4.18.2--Linkage of Schedules with Interconnected Non-ERCOT Control Area Schedules
Task 2 Report operating and availability status of units and related equipment, such as Automatic Voltage Regulators (AVR)	QSE	<p>QSE must notify ERCOT regarding availability and any change in status of generating units and related equipment, including AVRs.</p> <p>QSE shall advise ERCOT whenever its Resources are not operating at a power factor level as specified in the Operating Guides.</p> <p>QSE will relay information from its Resource to ERCOT when a voltage regulator or stabilizer is unavailable due to maintenance or failure and when it is returned to normal operation.</p>	<p>PR-5.5.1--Changes in Resource Status</p> <p>PR-6.5.7.2--QSE Responsibilities</p> <p>OG-3.1.4.5--Automatic Voltage Regulators and Power System Stabilizers</p>
Relationship 3 Provides operating and availability status of generating units to Balancing Authority and Transmission Operator for reliability analysis.	QSE	<p>QSE must notify ERCOT regarding operating and availability status of Resource generating units.</p> <p>All communications concerning Planned Outage or Maintenance Outage shall be between ERCOT and the designated "Single Point of Contact" for each Resource. The Resource's Single Point of Contact must be the QSE.</p> <p>Among other information, the QSE shall provide data on planned unit status, planned unit capability, fuel limitations, seasonal capability, and planned maintenance schedules to ERCOT.</p>	<p>PR-5.5.1--Changes in Resource Status</p> <p>PR-8.2.1--Single Point of Contact</p> <p>OG-3.1.4.1--PGC Data Reporting</p>

Attachment A

NERC GOP Requirement (by Task or Relationship)	Responsible Entity	ERCOT Requirement	ERCOT Protocol (PR) / Operating Guide (OG) Reference
GENERATOR OPERATION			
Relationship 5 Reports status of AVR's to Transmission Operators	QSE	<p>The QSE will notify ERCOT of an unplanned change in Resource status as soon as practicable following the change.</p> <p>All communications concerning Planned Outage or Maintenance Outage shall be between ERCOT and the designated "Single Point of Contact for each Resource Entity. The Single Point of Contact must be the QSE.</p> <p>Generation Entities shall notify their QSE, who will notify ERCOT, when a voltage regulator is unavailable and when it is returned to normal operation.</p> <p>Among other information, the QSE shall provide data on planned unit status, planned unit capability, fuel limitations, seasonal capability, and planned maintenance schedules to ERCOT.</p>	<p>PR-5.5.1--Changes in Resource Status</p> <p>PR-8.2.1--Single Point of Contact</p> <p>OG-3.1.4.5--Automatic Voltage Regulators and Power System Stabilizers</p> <p>OG-3.1.4.1--PGC Data Reporting</p>
Relationship 6 Provides operational data to Reliability Coordinator	QSE	<p>QSEs are required to provide real time generation data, LaaRs, Real time Generation meter splitting signal, Resource Plans, and Dynamic Schedules to ERCOT.</p> <p>QSEs are required to provide power operation data to ERCOT at the same scan rate as they obtain the data from telemetry.</p> <p>QSE shall advise ERCOT whenever its Resources are not operating at a power factor level as specified in the Operating Guides.</p>	<p>PR-12.4.4.1.1--QSE, Resource and TDSP Responsibilities</p> <p>PR-12.4.4.1.1--QSE, Resource and TDSP Responsibilities</p> <p>PR-6.5.7.2--QSE Responsibilities</p>
Task 3 Develop annual maintenance plan for generating units and perform the day-to-day generator maintenance	QSE	<p>QSE shall provide ERCOT a list identifying each Generation Resource unit that is expected to operate more than 168 hours in a Season as a provider of energy and/or Ancillary Services.</p> <p>QSE must provide ERCOT a written Planned Outage and Maintenance Outage program for the next twelve (12) months.</p> <p>QSE shall provide adequate modeling information in order to support ERCOT and TDSP's ability to perform operational and planning studies.</p>	<p>PR-6.10.2--General Capacity Testing Requirements</p> <p>PR-8.1--Outage Coordination</p> <p>OG-3.1.4--Power Generation Companies</p>
Relationship 4 Reports annual maintenance plan for generating units to Reliability Coordinator, Balancing Authority and Transmission Operator	QSE	<p>Among other information, the QSE shall provide data on planned unit status, planned unit capability, fuel limitations, seasonal capability, and planned maintenance schedules to ERCOT.</p> <p>QSE must provide ERCOT a written Planned Outage and Maintenance Outage program for the next twelve (12) months.</p>	<p>OG-3.1.4.1--Data Reporting</p> <p>PR-8.1--Outage Coordination</p> <p>PR-8.1.3.2--Resources</p>
Relationship 7 Revised generation maintenance plans per directive of Reliability Coordinator	Resource	<p>In the event of a Forced Outage, the Resource may remove the affected equipment from service immediately and must immediately notify ERCOT of its action.</p> <p>For Maintenance Outages, the Resource shall notify ERCOT of any Resource or Transmission Facility Maintenance Outage according to the Maintenance Outage Levels.</p>	<p>PR-8.2.4--Management of Transmission Forced Outages or Maintenance Outages</p>

Attachment A

NERC GOP Requirement (by Task or Relationship)	Responsible Entity	ERCOT Requirement	ERCOT Protocol (PR) / Operating Guide (OG) Reference
GENERATOR OPERATION			
Task 4 Operate generators to provide real and reactive power or reliability-related services per contracts or arrangements	QSE	<p>The QSE shall submit a Resource Plan to ERCOT, indicate the availability of the Resources represented by the QSE.</p> <p>ERCOT accepts Ancillary Service bids only from QSEs.</p> <p>QSEs shall, as directed by ERCOT, provide and deploy the Ancillary Service(s) that they have agreed to provide.</p> <p>Resource must contract with a QSE to represent and communicate for it.</p>	<p>PR-4.4.15--QSE Resource Plans</p> <p>PR-6.3.1--ERCOT Responsibilities</p> <p>PR-6.3.2--QSE Responsibilities</p> <p>OG-3.1.4--Power Generation Companies (PGC)</p>
Relationship 2 Provides Balancing Authority and Transmission Operator with requested amount of reliability-related services	QSE	<p>The QSE shall submit a Resource Plan to ERCOT, indicate the availability of the Resources represented by the QSE.</p>	<p>PR-4.4.15--QSE Resource Plans</p>
Relationship 6 Provides operational data to Reliability Coordinator	QSE	<p>ERCOT accepts Ancillary Service bids only from QSEs</p> <p>QSEs shall, as directed by ERCOT, provide and deploy the Ancillary Service(s) that they have agreed to provide.</p> <p>Among other information, the QSE shall provide data on planned unit status, planned unit capability, fuel limitations seasonal capability, and planned maintenance schedules to ERCOT.</p> <p>QSEs are required to provide power operation data to ERCOT at the same scan rate as they obtain the data from telemetry.</p>	<p>PR-6.3.1--ERCOT Responsibilities</p> <p>PR-6.3.2--QSE Responsibilities</p> <p>OG-3.1.4.1--Data Reporting</p> <p>PR-12.4.4.1.1--QSE, Resource and TDSP Responsibilities</p>
Relationship 8 Receives reliability analyses from Reliability Coordinator	QSE	<p>After receiving a Day Ahead Schedule from QSEs, ERCOT will validate the Schedule and notify affected QSEs of any invalid or mismatched schedules.</p> <p>ERCOT will review each Measurable Event, verifying the reasonableness of data. Data that is in question may be request from the QSE for comparison and/or individual Resource data may be retrieved from ERCOT's database.</p> <p>The coordinated scheduling of Voltage Profiles will be provided by ERCOT to the QSEs.</p>	<p>PR-4.1.1--Day Ahead Scheduling Process</p> <p>PR-5.9.2.1--ERCOT Required primary Frequency Control Response</p> <p>PR-6.1.7--Voltage Support</p>
Relationship 10 Receives reliability alerts from Reliability Coordinator	QSE	<p>ERCOT will issue an Operating Condition Notice (OCN) to inform all QSEs of a possible future need for more Resources due to conditions that could affect ERCOT System reliability.</p> <p>ERCOT must issue an Alert to all QSEs before acquiring emergency short supply and related reliability services.</p> <p>ERCOT may require the QSE to notify the Resource and require it to increase or decrease generation or change voltage and reactive requirements.</p> <p>The Advisory communicates existing constraints. ERCOT will notify QSEs of an advisory (communicating existing constraints), and QSEs will notify appropriate Resources and LSEs.</p> <p>ERCOT will post the Alert electronically and will notify all QSEs via the Messaging System of the posted Alert(s).</p>	<p>PR-5.6.3--Operating Condition Notice</p> <p>PR-5.6.5--Alert</p> <p>OG-4.2.2--Advisory</p> <p>OG-4.2.3--Alert</p>

Areas of Responsibilities under NERC Functional Model and ERCOT Protocols

Attachment A

NERC GOP Requirement (by Task or Relationship)	Responsible Entity	ERCOT Requirement	ERCOT Protocol (PR) / Operating Guide (OG) Reference
GENERATOR OPERATION			
Relationship 13 Adjusts real and reactive power as directed by the Balancing Authority and Transmission Operator	QSE	All Dispatch Instructions to Resources shall be directed to the QSE responsible for the affected Resource. Each QSE within the ERCOT System shall comply fully and promptly with valid Dispatch Instructions. QSEs shall meet, within established tolerances, and respond to changes in the Voltage Profile established by ERCOT subject to the stated QSE Reactive Power and actual power operating characteristic limits and voltage limits. <i>Reference PR-6.5.7.5</i>	PR-5.4.3--Dispatch Instruction Procedures PR-5.4.4--Compliance with Dispatch Instructions PR-6.5.7.5--QSE Responsibilities OG-3.1.5--Transmission and/or Distribution Service Providers
Task 5 Monitor the status of generation plant protective relaying systems and transmission line protective relaying systems on the transmission lines connecting the generation plant to the transmission system	QSE and Resource	All communications concerning Planned Outage or Maintenance Outage shall be between ERCOT and the designated "Single Point of Contact" for each Resource Entity. The Single Point of Contact must be the QSE. In the event of a Forced Outage, the Resource may remove the affected equipment from service immediately and must immediately notify ERCOT of its action. For Maintenance Outages, the Resource shall notify ERCOT of any Resource or Transmission Facility Maintenance Outage according to the Maintenance Outage Levels.	PR-8.2.1--Single Point of Contact PR-8.2.4--Management of Transmission Forced Outages or Maintenance Outages
Relationship 8 Receives reliability analyses from Reliability Coordinator	QSE	All communications concerning Planned Outage or Maintenance Outage shall be between ERCOT and the designated "Single Point of Contact" for each Resource Entity. The Single Point of Contact must be the QSE.	PR-8.2.1--Single Point of Contact
Relationship 11 Receives notification of transmission system problems from Transmission Operator	QSE	Each QSE shall comply fully and promptly with valid ERCOT ISO Dispatch Instructions.	PR-5.4.4--Compliance with Dispatch Instructions
Relationship 12 Provides real-time operating information to the Transmission Operator and the required Balancing Authority	QSE	QSE shall provide Real Time data to ERCOT for each individual generating unit at a Resource plant location. QSE shall advise ERCOT Operations whenever their Generation Resources are not operating at a power level as specified in the Operating Guides. QSEs are required to provide power operation data to ERCOT at the same scan rate as they obtain the data from telemetry. QSE shall maintain a 24/7 scheduling center in order to deploy the QSE's Ancillary Services in Real Time.	PR-6.5.1.1--Requirement for Operating Period Data for System Reliability and Ancillary Service Provision PR-6.5.7.2--QSE Responsibilities PR-12.4.4.1.1--QSE, Resource and TDSP Responsibilities OG-3.1.3.1--Operating Obligations



**North American Electric Reliability Corporation (NERC)
Reliability Standards Responsibility
Certification – ERCOT Region – Long Form**

[Each entity with an ownership interest or operating role in the below-referenced Resource/Generation Facilities must execute this Certification.]

1. Each registered entity undersigned below hereby acknowledges and certifies that for the NERC Function Type(s) set forth below, each has:
 - (a) The responsibility for ensuring compliance with; and
 - (b) Liability for failure to comply with
 Reliability standards promulgated by:
 - (a) North American Electric Reliability Corporation (NERC) acting pursuant to designation as the Electric Reliability Organization (ERO);
 - (b) Texas Regional Entity (Texas RE), under the Amended and Restated Delegation Agreement between NERC and Texas RE and approved by Federal Energy Regulatory Commission (FERC); or
 - (c) FERC;
 Pursuant to the Federal Power Act.¹ Each of the undersigned acknowledges and certifies that it will be responsible for the reliability standards applicable to the NERC Function Type set forth in each reliability standard.
2. The undersigned acknowledge and certify that they have designated individual responsibility for each NERC Reliability Standard and requirement as set forth in Attachment A.
3. The undersigned further agree that when NERC, FERC, or the Texas RE approves amended or additional reliability standards or requirements, the undersigned will:
 - (a) Undertake to confer regarding which of them should be named responsible for the amended or additional reliability standards or requirements; and
 - (b) Execute an amendment to this Long Form designating the responsible entity or responsible entities for the amended or additional reliability standards or requirements and deliver the fully executed Long Form to

¹ Subtitle A (Reliability Standards) of the Electricity Modernization Act of 2005, Title XII of the Energy Policy Act of 2005 (EPA), codified as section 215 of the Federal Power Act (FPA), 16 U.S.C. 824 *et seq.*



Texas RE at least ten (10) business days before the effective date of the amended or additional reliability standards or requirements.

4. The undersigned further agree that to the extent that NERC, FERC, or Texas RE approve additional or amended reliability standards or requirements, but the undersigned fail to execute and deliver to Texas RE an amendment to this Long Form reflecting responsibility for the additional or amended reliability standards or requirements, they shall be:
 - (a) Jointly responsible for ensuring compliance with the additional reliability standards or requirements;
 - (b) Jointly responsible for performing any Remedial Action Directive that may result from a failure of compliance;
 - (c) Jointly responsible for proposing and performing any mitigation plan that may be required; and
 - (c) Jointly and severally liable for any penalties resulting from the failure to comply;

Until such time as the undersigned provide Texas RE with an amended Long Form assigning responsibility for all additional or amended reliability standards or requirements, and Texas RE submits the revised registration to NERC for entry in the NERC Compliance Registry.

5. This Certification may be signed in multiple counter-parts.



NERC Long Form for NERC JRO

Resource/Generator Legal Name:			
NERC ID Number:			
Responsible Entity 1: (Entity's Legal Name)			
NERC ID Number:			
By: (Signature of Officer Responsible Entity)			
Printed Name			
Its: (Title)		Date:	



NERC Long Form for NERC JRO

Responsible Entity 2: (Entity's Legal Name)			
NERC ID Number:			
By: (Signature of Officer Responsible Entity)			
Printed Name			
Its: (Title)		Date:	



**TEXAS
REGIONAL
ENTITY**

An Independent Chapter of FERC

NERC Long Form for NERC JRO

Responsible Entity 3: (Entity's Legal Name)			
NERC ID Number:			
By: (Signature of Officer Responsible Entity)			
Printed Name			
Its: (Title)		Date:	



NERC Long Form for NERC JRO

Responsible Entity 4: (Entity's Legal Name)			
NERC ID Number:			
By: (Signature of Officer Responsible Entity)			
Printed Name			
Its: (Title)		Date:	



Attachment A

**PUBLIC VERSION
Confidential Information
Has Been Removed**

**Attachment I
Constellation March 25, 2008 Response**

111 Market Place
Suite 500
Baltimore, Maryland 21202



March 25, 2008

David W. Hilt
Vice President and Director of Compliance
North American Electric Reliability Corporation
116-390 Village Boulevard
Princeton, NJ 08540-5721

Re: Response of Constellation Energy Commodities Group, Inc. to Texas Regional Entity's Request for Consolidation of NERC Entity Registration Appeals and Responses to Filings by Constellation in RA070005 and Appeal by Power Resources, Ltd. in RA080001

Dear Mr. Hilt:

Constellation Energy Commodities Group, Inc. ("Constellation") is filing this response to the Texas Regional Entity's ("TRE") March 7, 2008 submittal ("TRE Response") to the North American Electric Reliability Corporation ("NERC") to clarify the record and respond to mischaracterizations of certain facts and law. The TRE Response (i) requests consolidation of Constellation's appeal, filed on May 4, 2007 (the "Constellation Appeal") of NERC's registration of Constellation as Generator Operator ("GOP") in the TRE region, with respect to Power Resources, Ltd.'s ("PRL") generating facilities located in Howard County, Texas ("Project"), with an appeal submitted by PRL on February 1, 2008 of NERC's registration of it as an additional GOP for the Project ("PRL Appeal"); and (ii) responds to various other submittals by the parties in this proceeding¹ and the NERC Board of Trustees Compliance Committee (the

¹ TRE responds to Constellation's October 19, 2007 Response ("October 19 Response") to TRE's October 3, 2007 Assessment of Constellation's registration as GOP for the Project ("TRE Assessment"); Constellation's February 14, 2008 Response ("February 14 Response") to TRE's January 21, 2008 Request that the Constellation Appeal be abated pending the potential filing of an appeal by PRL of its own

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“BOTCC”) decision on October 27, 2007 remanding the Constellation Appeal to TRE for further discussions by TRE, Constellation and PRL on the GOP matter.²

The TRE Response properly concludes that PRL should be a registered GOP for the Project, but TRE continues to erroneously conclude that Constellation also should be registered as a GOP. In the Constellation Appeal, as supplemented by the October 19 Response and the February 14 Response (“Constellation Responses”), although Constellation demonstrated that it should not be the GOP for the Project, the Remand Decision suggested that the voluntary joint registration organization (“JRO”) process under NERC’s Rules of Practice and Procedures (“NERC Rules”) might be a way to address the GOP issues and directed TRE to work with PRL and Constellation to determine if the GOP issues could be resolved in such manner. After the Remand Decision, and as a result of discussions among the parties, NERC registered PRL as a GOP for the Project on January 11, 2008. NERC, however, did not terminate Constellation’s registration as GOP for the Project.

Although TRE now has registered PRL as a GOP for the Project, the TRE Response employs a flawed analysis to justify its erroneous conclusion that PRL should not be the sole GOP and that Constellation should be registered concurrently as a joint GOP. The Constellation Responses comprehensively demonstrate that TRE erred in registering Constellation as GOP. The TRE Response fails to rebut the arguments and conclusions set forth in the Constellation Responses. Therefore, instead of repeating here the analysis and conclusions contained in those submittals to show the flaws in the TRE Response’s facts, analyses and conclusions on Constellation’s GOP status, Constellation incorporates the Constellation Responses herein and attaches them to this letter as Exhibits A and B. Constellation also addresses herein additional flawed arguments advanced in the TRE Response and in the PRL Appeal and PRL Supplement (collectively with PRL Appeal, “PRL Submittals”) in their desperate attempt to justify continued GOP status for Constellation.

For the reasons set forth herein and in the Constellation Responses, Constellation requests that NERC grant the Constellation Appeal and remove

registration as GOP (“TRE Abatement Request”); the PRL Appeal; and PRL’s February 15, 2008 Response (“PRL Supplement”) to NERC’s February 7, 2008 letter (“NERC February 7 Letter”).

² *Decision to Remand Appeal of Constellation Energy Commodities Group, Inc. to Texas Regional Entity*, RA070005 (Oct. 22, 2007) (“Remand Decision”).

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Constellation from the NERC Compliance Registry ("Registry") as a GOP with respect to the Project, effective May 4, 2007.

A. Executive Summary

TRE's recommendation that NERC register Constellation as concurrent GOP for the Project fails for the same reasons as its initial recommendation that Constellation be registered as sole GOP. At its core, TRE clings to its belief, formed prior to NERC's commencement of the initial registration process, that any entity that provides Level 4 Qualified Scheduling Entity ("QSE") services, i.e., serves as a communications agent for a generation project for purposes of the market and transmission service rules that the Electric Reliability Council of Texas ("ERCOT"), as the independent system operator for Texas ("ERCOT ISO") administers ("ERCOT Protocols"), also has assumed responsibility for ensuring compliance with the GOP Reliability Standards and for all of the specific requirements established for each standard ("Requirements" or "GOP Requirements") for the generating facility a QSE schedules.³ TRE reasons that (1) QSEs communicate certain information from and to a generating facility's operators, (2) under the GOP Requirements, there are certain subtasks that include communication of the same information, and (3) it therefore follows that the QSE has assumed responsibility for ensuring that such generating facility complies with all GOP Requirements (TRE's initial position) or at least for the twenty-one GOP Requirements that involve any communications aspects whatsoever.

TRE's logic is simple, but fundamentally flawed, and departs from the Federal Energy Regulatory Commission's ("FERC" or "Commission") requirements with respect to registration for the following reasons.

- ◆ The Commission has clearly stated that the delegation of performance of certain tasks is not the relevant inquiry for purposes of registration; responsibility for ensuring performance is.
 - While Constellation may perform some communications tasks for the Project as its QSE that incidentally overlap with communication sub-tasks

³ A QSE is a market participant that is qualified to submit balanced schedules and ancillary service bids and settlement payments with ERCOT. ERCOT Protocols, Section 2, Definitions and Acronyms.

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within some GOP Requirements, it serves as conduit for only a portion of those communications tasks because all GOP communications involve, and indeed begin or end, with the Project operator, PRL.

- Only PRL is capable of ensuring that the GOP Requirements are met, including those that require the communication of information. The fact that PRL relies on the services provided by Constellation, as QSE, to ensure compliance with PRL's requirements as GOP does not transfer responsibility for GOP compliance to Constellation.
- ◆ The Commission has cautioned that registration decisions cannot depart from existing contractual arrangements.
 - The power purchase agreement between Constellation and PRL ("Tolling Agreement") clearly establishes that PRL retains all responsibility for operating the Project and complying with the GOP Requirements. Constellation has provided a comprehensive assessment of the Tolling Agreement terms which demonstrates that PRL has retained all GOP responsibility.
 - To support its desired results, TRE relies on PRL's slanted description of the Tolling Agreement terms and discounts Constellation's comprehensive analysis. Neither PRL nor TRE has demonstrated that Constellation's assessment of the Tolling Agreement is inaccurate, and NERC must independently evaluate the contract terms. An independent evaluation will show that Constellation's assessment is accurate.
 - In the PRL Supplement, PRL reveals that its true motive in seeking to take advantage of TRE's bias

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for registering QSEs as GOPs is that PRL did not include in the Tolling Agreement any provisions that would allow it to pass its GOP compliance costs to Constellation. NERC must reject PRL's plea for protection based on so-called "economic considerations."

- The Standard Form Market Participant Agreement ("MPA") between Constellation and ERCOT addresses ERCOT Protocols only, and does not establish any requirements or obligations with respect to NERC Reliability Standards. The MPA between Constellation and ERCOT cannot, and does not, modify or trump the terms of the Tolling Agreement between Constellation and PRL.
- ◆ The Commission requires that registration decisions ensure that there are clear lines of responsibility and no overlap or redundancy.
 - TRE's proposal for concurrent registration will result in no clear line of responsibility and will create a total overlap and redundancy that can only weaken reliability.
 - There will be no gap in responsibility if PRL is registered as GOP, as demonstrated by TRE's own assessment, which shows that Constellation, as QSE, facilitates only certain communication sub-tasks and that only PRL may ensure that the GOP Requirements, including those involving communications, are performed.

Concurrent registration is not warranted here. Neither TRE nor PRL has demonstrated that GOP responsibility should lie with Constellation based either on an assessment of the limited communications service it provides PRL as QSE or as a matter of contract. Moreover, concurrent registration would be at odds with the Commission's

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expectation that NERC's registration determinations ensure clear lines of responsibility. Concurrent registration is an extreme measure that should be reserved for truly extraordinary circumstances. If adopted here, concurrent registration would weaken reliability and result in a morass of confusion and controversy as to where PRL's responsibility begins and ends.

Constellation takes its compliance responsibilities seriously, and has dedicated significant resources to establishing programs to comply with the NERC Reliability Standards nationwide. Constellation's opposition to registration as GOP for the Project does not depart from this commitment. However, the facts and law demonstrate that, contrary to TRE's wish, Constellation, as QSE under the ERCOT Protocols or any other contractual arrangement, has no authority or ability to ensure compliance by the Project with the GOP Requirements. Only PRL has the authority and ability to ensure compliance, and it should be registered as sole GOP.

B. Background

Constellation will not repeat the history of this proceeding, but as TRE acknowledges, its views on GOP registration have evolved over the last year. Initially, it was TRE's position that, as between PRL and Constellation, Constellation should be registered as sole GOP for the Project based solely on PRL's description of the "Tolling Agreement" and TRE's early determination that all entities designated as QSEs under the ERCOT Protocols should be registered as the GOPs for their associated resources.

Now, TRE concedes that Constellation cannot ensure compliance with the GOP Reliability Standards, or the specific Requirements thereunder ("Requirements" or "GOP Requirements") for the Project, and that PRL must be registered as a GOP.⁴ However, TRE continues to insist that Constellation must be registered as a joint GOP for some set of undefined responsibilities. Because Constellation has not entered into a JRO arrangement with PRL, TRE has registered both Constellation and PRL and states that their respective responsibilities under the GOP Reliability Standards will be sorted out as an enforcement matter.⁵

⁴ TRE Response at 43.

⁵ *Id.* at 6.

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TRE's cursory arguments in support of GOP registration for Constellation evidence its continuing results-oriented fixation to foist GOP status on Constellation by equating a QSE's scheduling activities with GOP responsibilities. TRE dedicates only four paragraphs of the forty-four page TRE Response in defense of its decision to register PRL, the generation owner and operator and obvious candidate for GOP.⁶ In defense of its decision to register Constellation as GOP on the sole basis that it provides market communications services to PRL, TRE provided NERC with its original seventy-two page TRE Assessment and now dedicates forty-two of its forty-four page TRE Response to the same goal.

The volume of rhetoric cannot overcome the fundamental flaws in TRE's position. The facts have not changed during the ten-plus months that have passed since Constellation filed the Constellation Appeal. Those facts demonstrate that Constellation has not assumed responsibility for compliance with GOP Reliability Standards and that PRL has retained all such responsibility.

C. Constellation's Ability to Perform Certain Communication Services on Behalf of PRL Does Not Equate to a Transfer of GOP Responsibility

TRE and Constellation agree that a fundamental guideline for GOP determinations is that it "is not who performs the tasks, but who is responsible and held accountable for ensuring that these tasks are performed."⁷ In other words, there is a difference between *responsibility for ensuring performance* of GOP Reliability Standards and the *actual performance* of the standards. As FERC has stated, the entity that is responsible for ensuring performance is the entity to be registered as GOP.⁸ In the TRE Response, TRE relies on FERC's illustration of this important point when FERC described the circumstances presented in regional transmission organizations ("RTOs") where the RTO is registered as the transmission operator ("TOP"), while other entities may actually perform activities that are relevant to the RTO's TOP compliance activities.⁹

⁶ *Id.* at 43-44.

⁷ *Id.* at 26.

⁸ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 144 (2007).

⁹ TRE Response at 18-19, citing Order No. 693 at PP 143-144.

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However, in applying these FERC principles to the Constellation/PRL circumstances, TRE turns this guidance on its head in concluding that, because Constellation, as the QSE under ERCOT Protocols, may perform certain communication tasks on behalf of PRL, Constellation has responsibility for ensuring performance of GOP Reliability Standards. Under TRE's application of this standard, Constellation, as communicator, must accept ultimate responsibility for ensuring performance of the GOP Reliability Standards and, in turn, Constellation can somehow (in some undefined or unproven way) be deemed to have delegated to and be able to enforce performance by PRL, the actual physical operator of the Project, of all of the actual tasks under the GOP Reliability Standards.¹⁰

As Constellation clearly laid out in the October 19 Response, the reverse is true.¹¹ As a matter of contract under the Tolling Agreement, and by reason of PRL's overall control over the operation of the Project, PRL retains all responsibility for reliable operation of the Project and, therefore, for ensuring that all GOP Reliability Standards are met. Constellation has no agreement with PRL or any other party, including its MPA with the ERCOT ISO, that confers it with such responsibility or the ability to compel PRL compliance. The fact that PRL may rely on Constellation's services as a QSE to facilitate communications between PRL and other entities in the ERCOT market with respect to the Project does not transfer responsibility to Constellation for ensuring that PRL meets the GOP Reliability Standards.

TRE appears to recognize this distinction when it notes that "because of its communications-gatekeeper role as a QSE in the ERCOT system, Constellation *actually performs* a number of tasks that are Requirements under the NERC Reliability Standards."¹² TRE acknowledges that, in submitting schedules with the ERCOT ISO as "QSE, Constellation acts as PRL's agent for communications."¹³ However, as FERC has clearly stated, delegation of performance of certain tasks is not the relevant inquiry for purposes of registration; responsibility is.¹⁴

¹⁰ *Id.* at 27-28.

¹¹ October 19 Response at 6-12.

¹² TRE Response at 10 (emphasis added).

¹³ *Id.* at 25.

¹⁴ Order No. 693 at P 144.

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Here, responsibility for ensuring compliance with all GOP Reliability Standards lies with PRL and PRL can clearly be the sole GOP. The fact that PRL might rely on the QSE communication service that Constellation provides for ERCOT Protocols purposes as a means for PRL to ensure its own compliance with GOP responsibilities does not elevate Constellation to a GOP for any of the GOP Reliability Standards.

D. Under the Tolling Agreement and MPA, PRL Retains Responsibility for GOP Reliability Standards

As explained below, FERC does not permit NERC to register entities in a manner inconsistent with the underlying contractual arrangements. Because Constellation demonstrates that the GOP responsibility resides solely with PRL under the Tolling Agreement and neither TRE nor PRL have demonstrated otherwise, NERC should grant the Constellation Appeal.

1. FERC Policy Does Not Permit Registration Decisions That Are Inconsistent With Contractual Requirements

FERC has emphasized another guiding principle on registration decisions: they cannot depart from existing contractual arrangements.¹⁵ As FERC stated in *Southeastern Power Administration*,¹⁶ NERC (and therefore TRE) cannot disregard contractual arrangements, and NERC (and therefore TRE) cannot rely on mere performance of tasks as the basis for registration, but must find a contractual basis for transfer of responsibility for ensuring compliance.¹⁷

TRE has not properly interpreted the Tolling Agreement in reaching its decision to register Constellation as GOP, and, therefore, has failed to adhere to FERC's guidance on the importance of honoring existing contractual arrangements. TRE acknowledges that the Tolling Agreement is important evidence for discerning who has GOP responsibility.¹⁸ TRE further notes that its evaluation has been hampered because neither party has provided a copy of the Tolling Agreement, and the parties'

¹⁵ *Id.* at P 107.

¹⁶ 122 FERC ¶ 61,140 (2008).

¹⁷ *Id.* at P 22.

¹⁸ TRE Response at 30.

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interpretations of the Tolling Agreement differ with respect to the allocation of responsibility for purposes of GOP Reliability Standards.¹⁹

Notwithstanding this admission, TRE improperly dealt with the parties' conflicting positions as to the terms of the Tolling Agreement by largely discounting Constellation's detailed explanation of specific contractual provisions and embracing PRL's unsupported assertions as to the contract terms in order to justify TRE's conclusion that Constellation should be a GOP. Thus, TRE takes as truth PRL's unsupported contentions that the Tolling Agreement "gives Constellation 'complete contractual control' of the generation facilities themselves that is necessary for the performance of the GOP function" and that, under the Tolling Agreement, PRL is obliged "to comply with Constellation's instructions regarding operations."²⁰ At the same time, TRE does not give any credence to Constellation's comprehensive assessment, in the October 19 Response,²¹ of Tolling Agreement terms that prove otherwise, after it admits "[r]ecasting" Constellation's arguments.²² Instead, TRE incorrectly claims that Constellation admits that it does have control because it must be consulted on planned outages and may schedule power "with impunity."²³ Constellation made no such admission and never indicated that the Tolling Agreement

¹⁹ *Id.* TRE never asked Constellation for a copy of the Tolling Agreement, yet complains in the TRE Response that it did not have a copy to support its analysis of the GOP issues. Because the TRE Response repeatedly noted that its conclusions may be incorrect because it did not have the Tolling Agreement, Constellation obtained PRL's consent to provide a copy to TRE and, earlier today, provided a copy to TRE and NERC, subject to the confidentiality restrictions set forth in Section 1500 of NERC Rules. A copy of the Tolling Agreement, excluding exhibits other than Exhibit D to the Tolling Agreement, also is included as Exhibit C hereto, and marked as confidential in accordance with Section 1500 of the NERC Rules. The remaining Tolling Agreement exhibits are not relevant to the registration appeal; however, Constellation will provide them at the request of TRE or NERC.

²⁰ TRE Response at 21-22. *See, e.g.*, TRE Response at 26 ("If PRL's representations regarding the Tolling Agreement are accepted as true, then Constellation has and should be responsible for its role as a GOP in connection with the communication of facility capacity, scheduling, and outages"); at 9 (relying on PRL's unsupported assertions that Constellation had contractual authority and control to issue commands to PRL); at 9-10 (relying on PRL's unsupported assertion that there are significant limitations on its ability to perform GOP Requirements based on the contractual split of responsibilities and contractual obligations); and at 10 (relying on PRL's unsupported assertions that that Constellation has an operational-command role and should be registered as GOP).

²¹ October 19 Response at 6-12.

²² TRE Response at 22-23.

²³ *Id.* at 22-23.

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allowed it to schedule power “with impunity.” As a result of TRE’s misinterpretation of the Tolling Agreement, TRE incorrectly concludes that the “overall thrust” of the Tolling Agreement is to establish joint or several responsibility for PRL and Constellation for GOP responsibilities.²⁴

TRE’s and PRL’s characterizations of the Tolling Agreement as allocating GOP responsibility to Constellation are not sustainable. First, while Constellation and PRL may have staked out differing positions with respect to the terms of the Tolling Agreement, only Constellation supported those claims with a specific analysis of the relevant contractual terms.²⁵ Constellation will not repeat here the extensive analysis of the Tolling Agreement it provided in the October 19 Response, and refers NERC to Section III of the October 19 Response to review. Second, the cursory attempt at an analysis of the Tolling Agreement contained in the TRE Response, the PRL Appeal and the PRL Supplement fails to demonstrate that Constellation agreed to be a GOP or that, as an improperly registered GOP, Constellation has the ability to ensure PRL or the Project’s compliance with GOP Reliability Standards.

Constellation has included as Exhibit C to this response a copy of the Tolling Agreement so that NERC can independently confirm Constellation’s analysis.

2. TRE Ignores Key Contractual Provisions in the Tolling Agreement That Demonstrate PRL Should Be Registered as the Sole GOP

PRL utterly fails to prove that Constellation’s analysis of the Tolling Agreement terms on the GOP issue is incorrect. PRL simply asserts that, under the Tolling Agreement, Constellation “assumes significant contractual and practical control of operations of the [Project],”²⁶ and TRE accepts this assertion without question. This contention is inconsistent with Section 7.2(a) of the Tolling Agreement under which PRL clearly retains the obligation to operate the Project in accordance with prudent

²⁴ *Id.* at 17.

²⁵ October 19 Response at 6-12.

²⁶ PRL Appeal at 2. The PRL Appeal is unpaginated, and, for ease of reference, Constellation added page numbers in the copy of the PRL Appeal included in Exhibit D, hereto.

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industry practice which includes, among other things, compliance with reliability standards applicable in ERCOT.²⁷

As Constellation demonstrated in the October 19 Response, as the operator, PRL is the entity that makes, and is responsible for enforcing, decisions that control and affect the overall operations of the Project, including ensuring satisfaction of NERC's Reliability Standards. PRL, not Constellation, is responsible for developing, implementing and enforcing policies and protocols necessary to ensure that the Project's capability to produce power and its actual operations comply with all of the contractual, technical, regulatory, reliability and other legal requirements applicable to the ownership and operation of the Project. Such responsibilities include garnering, controlling and directing the financial, technical and personnel resources needed to fulfill these requirements. While PRL may retain or employ other parties or companies to perform certain tasks, PRL is the entity ultimately responsible for ensuring that the tasks are completed in accordance with applicable requirements.

Neither TRE nor PRL acknowledge Constellation's reference to Section 7.2(a) of the Tolling Agreement, presumably because this critical, overriding contractual provision demonstrates that PRL is the entity that has retained all responsibility for ensuring compliance with the GOP Reliability Standards for the Project. Both TRE and PRL completely ignore this fundamental aspect of the Tolling Agreement because they cannot refute that this provision clearly shows that PRL must be the sole GOP for the Project. They choose not to acknowledge or directly address this contractual fact because to do so would completely destroy the flawed arguments that they nevertheless advance to support a sole, joint or concurrent registration of Constellation as GOP.

²⁷ Tolling Agreement, Section 7.2(a), and the definition of "Prudent Industry Practice" in Section 1.1 of the Tolling Agreement.

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3. Provisions of the Tolling Agreement Relied Upon by PRL Do Not Demonstrate That Constellation Should Be Registered as GOP

PRL, in the PRL Supplement and in response to the NERC February 7 Letter,²⁸ focuses on three discrete elements of the Tolling Agreement in an attempt to support its claims that Constellation controls the Project for GOP purposes. First, PRL points to Sections 4.2(a), (b) and (g) of the Tolling Agreement, which set forth the procedures that Constellation must follow to schedule energy under the Tolling Agreement and Constellation's agreement to provide QSE services. Second, PRL points to Exhibit D, which requires PRL to consult with Constellation on the schedule for planned outages and to "use reasonable efforts to accommodate [Constellation's] requests to adjust the schedule." Finally, PRL points to Section 11.1 of the Tolling Agreement, which requires PRL to provide notice and full details of a *force majeure* event.

None of these provisions support a conclusion that PRL has transferred to Constellation any of PRL's GOP responsibilities for the Project and, therefore, it is PRL's sole responsibility for ensuring compliance with all Reliability Standards applicable in ERCOT. Indeed, in the October 19 Response, Section III, Constellation addressed each of the Sections 4.2 and Exhibit D provisions and demonstrated that they did not confer to Constellation the ability to ensure compliance with GOP Requirements. The provisions cited by PRL further support Constellation's analysis because they are typical commercial terms that are included in any agreement that provides unit contingent power, i.e., energy may be scheduled only when the unit is available; outages are coordinated under a reasonable efforts standard so that the unit is more likely to be available during periods that are of the most value to the purchaser; and buyers are provided with information to monitor *force majeure* events which may affect pricing terms tied to unit availability under the power sale agreement. None of these provisions shows that PRL has transferred to Constellation, pursuant to the Tolling Agreement, overall operational control and ultimate responsibility for ensuring compliance with all GOP Reliability Standards.

²⁸ PRL submitted the PRL Appeal on February 1, 2008. On February 7, 2008, TRE sent PRL the TRE NERC February 7 Letter, and on February 15, 2008, PRL submitted the PRL Supplement which provided PRL's analysis of the Tolling Agreement and its request that NERC spare PRL from registration to mitigate the fact that the Tolling Agreement would not permit PRL to pass through to Constellation its GOP compliance costs. See Section D.4 below for further discussion of the economic consideration request.

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Also, in the PRL Appeal, PRL proffers a list of sub-tasks that comprise portions of certain GOP Requirements that it states it cannot perform or lacks the authority to perform.²⁹ A careful reading of this list reveals that the only thing PRL states that it does not perform alone is certain communications functions. However, PRL is responsible for ensuring performance of these functions by communicating to or receiving information from Constellation, the QSE. The fact that the QSE is the communications conduit does not amount to PRL having the inability to ensure that these GOP Requirements are met. Importantly, the substantive basis of all these communications is completely dependent on PRL's action in transferring accurate and required information (both verbal and data transmissions) to the QSE to pass on, or to receive and act upon, information relayed by the QSE to PRL. Neither PRL nor TRE dispute that PRL's substantive performance is fundamental to ensuring that all of the GOP Requirements are satisfied.

PRL also is in error when it states that Constellation controls the Project based on its control of the Automatic Generation Control System ("AGC").³⁰ As QSE, Constellation simply transmits data from ERCOT to PRL, i.e., the AGC setpoints that are established by ERCOT based on its dispatch determinations and transmitted by Constellation, as conduit only, directly to the Project. Moreover, as Constellation explained in the October 19 Response, PRL controls the amount of AGC that the Project is capable of achieving.³¹ Constellation does not have the authority to direct or control remedial actions for an AGC shortfall; such decision is within PRL's control. If PRL continues to fail to achieve AGC baselines under the Tolling Agreement, Constellation's only remedy is an adjustment to the price it pays for capacity.³² While Constellation relies on tests conducted by PRL to determine the amount of AGC that the Project is capable of achieving, if the Project fails to achieve certain levels of AGC, then the Project is derated until PRL takes appropriate actions to correct the problem.³³

²⁹ PRL Appeal at 3-4.

³⁰ *Id.* at 4.

³¹ October 19 Response at 19.

³² Tolling Agreement, § 5.8.

³³ *Id.*, § 5.8(c).

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4. NERC Must Reject PRL's Request That NERC Waive PRL's GOP Obligations Based on Economic Considerations

Importantly, PRL reveals in the PRL Supplement that its true motive for resisting GOP registration and supporting registration of Constellation as sole GOP or at least a joint GOP is that it does not want to incur costs associated with compliance.³⁴ PRL states that under the Tolling Agreement, PRL is not permitted to pass on to Constellation, as the power purchaser, the costs PRL may incur in complying with mandatory Reliability Standards. PRL notes that when the parties entered into the agreement, the mandatory standards were not in effect.³⁵ PRL argues that, because PRL cannot pass these costs on to Constellation under the Tolling Agreement, NERC should consider this an "economic factor[]" in its determination.³⁶

Constellation strongly opposes this request. NERC has no authority to register entities that do not meet its *Registry Criteria*³⁷ in order to protect other entities that are dissatisfied with the economic bargains they struck before the advent of mandatory reliability standards. PRL accepted change in law risks including those attendant with subsequent adoption of mandatory reliability rules,³⁸ and Constellation does not agree to accept such risks. NERC must register the entity that is responsible for ensuring compliance with the Reliability Standards, and here, under the Tolling Agreement, that entity clearly is PRL. NERC must dismiss PRL's plea for mercy based on economic factors that it agreed to in the Tolling Agreement but that it no longer likes. NERC cannot ignore that the contractual arrangements between PRL and Constellation clearly show that PRL has retained all the GOP responsibilities and Constellation has none. To ignore these contractual arrangements to accommodate PRL's economic motives would be an improper modification of the Tolling Agreement; NERC has no authority to modify contract terms.³⁹

³⁴ PRL Supplement at 2-3.

³⁵ *Id.* at 2.

³⁶ *Id.*

³⁷ Statement of Compliance Registry Criteria (Rev. 4.0, Sept. 25, 2007) ("*Registry Criteria*").

³⁸ Tolling Agreement § 12.2(b).

³⁹ Order No. 693 at P 107.

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5. The MPA Between the ERCOT ISO and Constellation Does Not Transfer GOP Responsibilities from PRL to Constellation

NERC also must reject TRE's suggestion that, regardless of the allocation of responsibility under the Tolling Agreement, Constellation must be registered as GOP because it entered into a MPA with ERCOT identifying itself as QSE for the Project. The MPA simply binds Constellation to adhere to ERCOT Protocols.⁴⁰ As Constellation explained in Sections III and IV of the October 19 Response, the ERCOT Protocols are not the GOP Reliability Standards and the MPA neither addresses the NERC Reliability Standards nor obliges Constellation to take responsibility for compliance with them. The MPA between Constellation and ERCOT does not amend, or trump, the terms of the Tolling Agreement; it only implements the limited QSE responsibilities for ERCOT Protocol matters under the Tolling Agreement between Constellation and PRL under which PRL retains responsibility for operating the Project and complying with all reliability standards.

E. There Will Be No Gap in Reliability If Constellation Is Not Co-Registered as GOP

TRE asserts that there will be a gap in reliability coverage if Constellation is not registered as a GOP for the Project. It bases this conclusion on the fact that communication tasks that Constellation performs as a QSE for ERCOT Protocol purposes overlap with communication sub-elements of certain GOP Requirements. However, the allegation of a gap in performance is at odds with TRE's conclusion that the relevant GOP-related communication activities will be performed by PRL's QSE.⁴¹ Because there will always be a QSE for the Project whether that is PRL, Constellation or

⁴⁰ In this respect, the MPA is no different than the similar agreements that are used in other regions, such as the Delegation of Authority ("DOA") form used in the PJM Interconnection, L.L.C. ("PJM") to designate a single point of contact for PJM's communications with generating units. However, in no other region has the Regional Entity suggested that the entity that provides these communications services should be registered as GOP. Thus, while Constellation has executed DOA agreements for generators in PJM (including the Cordova Energy Center, PRL's affiliate), ReliabilityFirst Corporation has, to the best of our knowledge, registered the generator owner as GOP. This further supports the flaws in TRE's reasoning that the communications gatekeeper must be registered as GOP, and also evidences a lack of consistency among regions in registration determinations. See Section VII of the October 19 Response for a full discussion of NERC's obligation to ensure consistency in registration decisions.

⁴¹ TRE Response at 23.

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some other third party, the activities will, as TRE admits, always be *performed*. This does not mean, however, that Constellation's performing the QSE tasks must be elevated to responsibility for GOP Requirements. As noted in Section C above, delegation of performance of certain tasks is not the relevant inquiry; responsibility for ensuring compliance is.

1. TRE's Own Assessment of the GOP Requirements Demonstrates That Constellation Should Not Be Registered as a GOP

In support of its claim of a potential gap, TRE points to a table ("TRE Table") that Constellation attached to its February 14 Response as Attachment B. The TRE Table was adapted by TRE from a table that Constellation and PRL jointly prepared for discussion purposes ("Original Table") to identify opportunities for Constellation to facilitate communications that PRL, as sole GOP, is required to undertake with respect to the GOP Reliability Standards. As Constellation explained in its February 14 Response, TRE modified the Original Table, without Constellation's approval or agreement, to include a column labeled "Responsible for Ensuring Compliance" and TRE entered "Buyer" (i.e., Constellation) as the responsible entity for twenty-one Requirements.⁴²

Importantly, even under the TRE Table, the substantive descriptions of activities set forth in the column "Buyer Functions" are clearly limited in scope and do not support TRE's conclusions that there has been a transfer of responsibility for the GOP Requirements from PRL to Constellation or that there will be a gap in such responsibility if Constellation is not co-registered. For example, Buyer Functions include the following activities: buyer shall "facilitate" voice communication events reported by PRL to the Balancing Authority; buyer shall "facilitate" communication of Reliability Coordinator directives to PRL and shall "facilitate" communication in the reverse direction as well; buyer shall "facilitate" transmittal of PRL's plant availability data to the extent that PRL provides buyer with such data; and "if the Seller reports to the Buyer" that there is a relay or equipment failure, buyer will "notify" the Balancing Authority. Similarly, although Constellation, as PRL's QSE communications agent, must install secure voice and data link systems and staff a twenty-four hour desk, this supports and facilitates PRL, as described as Seller's Function under the TRE Table, where it is also required to have secure voice and data link systems and staff a twenty-four hour desk to ensure performance of NERC GOP Requirements.

⁴² February 14 Response at 6 n.18.

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Thus, contrary to TRE's claim, while Constellation has never presented itself to TRE as an "indifferent delivery boy,"⁴³ it is true that, as QSE, Constellation provides only a delivery (i.e., communications) service to PRL with respect to the ERCOT Protocols. As is clearly evidenced from the TRE Table, Seller Functions describe all of the activities that are necessary to ensure compliance with GOP Reliability Standards, including initiating any communications to the ERCOT ISO and implementing any directives that are communicated to it under the GOP Reliability Standards.

TRE acknowledges that PRL is central to ensuring performance of all GOP Reliability Standards when it concedes that a "substantial portion of the information" to be conveyed under the Reliability Standards "is available to Constellation only with PRL's cooperation."⁴⁴ Yet, TRE, based on the limited communications sub-tasks that Constellation may perform for PRL under these GOP Requirements, would require Constellation to register as joint GOP with full responsibility for ensuring compliance with these twenty-one GOP Requirements (and, could, as a matter of enforcement, attempt to hold Constellation responsible under a concurrent GOP registration).

2. TRE Has Not Demonstrated That a Gap Will Occur If Constellation Is Not Registered as a GOP

As TRE demonstrates, there would be no gap if PRL were registered as the sole GOP because PRL would continue to employ a QSE and, in so doing, ensure that QSE communications tasks that overlap with subtasks under some of the GOP Requirements are performed. TRE has utterly failed to identify any gap that is created by removing Constellation from the Registry as co-GOP.

TRE claims that Constellation and PRL need to be jointly registered because, "without the coordinated activities of Constellation and PRL under the terms of their MP Agreements and Tolling Agreement, the GOP function could not be performed."⁴⁵ TRE contends that, given that Constellation is QSE, "[l]iterally none of the communications" functions can be performed by anyone but Constellation acting as QSE and, as "an essential link in the process, Constellation must be a GOP."⁴⁶ This

⁴³ TRE Response at 30.

⁴⁴ *Id.* at 25.

⁴⁵ *Id.* at 15.

⁴⁶ *Id.* at 23.

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conclusion is belied by the simple fact that not every QSE has been registered as a GOP in ERCOT.⁴⁷

As the Commission has noted, the only issue presented here is not who will *perform* the activities, but who is responsible for *ensuring that the tasks are performed*. Ultimately, TRE fails to address this central issue with respect to PRL's obligations under the Tolling Agreement as the operator of the Project and the entity with overall control for, among other things, ensuring compliance with reliability matters. In other words, "while it may delegate the performance of that task to another, it may not delegate its responsibility for ensuring that the task is completed."⁴⁸ Accordingly, to the extent that TRE is relying on PRL's delegation of performance of ERCOT market communications activities to Constellation as providing the means under which PRL will ensure performance of GOP Reliability Standards activities, this is not dispositive for purposes of registration because PRL has not transferred such responsibility to Constellation and Constellation has not accepted the transfer of such responsibility.

F. Involuntary Joint Registration or Concurrent Registration is Inconsistent with FERC Requirements

TRE acknowledges in various places in the TRE Response that neither it nor NERC can force parties into JRO or voluntary joint registration arrangements.⁴⁹ While TRE spends a lot of time trying to persuade NERC to compel the parties to enter into a joint registration agreement, in the end, TRE concedes that the JRO or joint registration process must be voluntary as between PRL and Constellation and cannot be compelled by NERC or TRE.⁵⁰ Therefore, NERC must deny TRE's request to compel Constellation to voluntarily assume GOP responsibility.

Alternatively, TRE requests that NERC uphold the concurrent registration of PRL and Constellation as the Project's co-GOPs and leave sorting out who is responsible for what to enforcement actions.⁵¹

⁴⁷ For example, Constellation serves as QSE for the generator owned and operated by Wolf Hollow in ERCOT, but Wolf Hollow is registered as sole GOP.

⁴⁸ Order No. 693 at P 144.

⁴⁹ *See, e.g.*, TRE Response at 11.

⁵⁰ *Id.*

⁵¹ *Id.* at 6.

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It is not at all clear that FERC authorized NERC to register two entities as GOP.⁵² However, to the extent that FERC arguably endorsed concurrent registration, the Commission clearly would have considered it to be an extreme step to be employed in truly extraordinary circumstances. The Commission's focus throughout the underlying orders was that NERC's registration processes ensure clear chains of responsibility.⁵³

In this case, concurrent registration is not consistent with FERC requirements and would have the very consequences that the FERC's requirements are intended to avoid. When parties agree to a JRO arrangement, one entity must take full responsibility for each Requirement in order to avoid confusion, lack of clarity, and potential gaps in coverage.⁵⁴

NERC must reject TRE's request to maintain Constellation as a co-GOP under a concurrent registration schedule. As Constellation has demonstrated, PRL alone must and can be the sole GOP with no gaps. By contrast, under a concurrent registration approach, there is no clarity as to the Requirements, or even the discrete tasks or sub-requirements, for which each entity is responsible. This portends nothing but confusion and controversy, and could endanger reliability. As demonstrated in the Constellation Responses and this response, there are no extraordinary circumstances presented here that warrant this extreme and dangerous measure.

1. The Limited Communications Services Provided By Constellation Do Not Support GOP Registration

As the TRE Table demonstrates, the communication tasks that Constellation performs as QSE, and which overlap certain tasks that are required of a GOP, involve only limited aspects of certain Requirements. For example, under Reliability Standard CIP-001-1 (Sabotage Reporting), the TRE Table identifies a limited communication

⁵² FERC described NERC's proposal, in the context of a central organization with related member organizations, to register both entities concurrently if they could not agree on a split of Requirements and neither registered. Order No. 693 at P 103. However, it never explicitly accepted this proposal. Moreover, in describing its determination on the issue of organization/member registration, FERC directed NERC to develop procedures "which permit (but do not require) an organization, such as a joint action agency, G&T cooperative or similar organization to accept compliance responsibility on behalf of its members." *Id.* at P 107. FERC emphasized that an entity should be not be required to assume responsibility "where it is not possible to do so." *Id.* at P 108.

⁵³ Order No. 693 at P 107.

⁵⁴ NERC Rules of Procedure, § 507.2.

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facilitation service by Constellation under Requirement 2, which requires that a GOP "shall have procedures for the communication of information concerning sabotage events on its facilities and multi-site sabotage affecting larger portions of the Interconnection."⁵⁵ Requirement 2 operates in tandem with Requirement 1, which requires a GOP to have procedures for the recognition of and for making their operating personnel aware of sabotage events on its facilities and multi-site sabotage affecting the Interconnection; Requirement 3, which requires a GOP to provide its operating personnel with sabotage response guidelines, including personnel to contact to report such events; and Requirement 4, which requires each GOP to establish communications contacts as applicable with appropriate law enforcement agencies.

As noted, the TRE Table identifies a very limited communications service to be provided by Constellation to facilitate PRL's compliance with Requirement 2, i.e., to facilitate communications of a sabotage event, identified by and communicated to Constellation by PRL, to the Balancing Authority ("BA"). However, Requirement 2 does not operate in a vacuum; it addresses only a portion of the communications element of a set of related procedures to deal with potential sabotage events. Only PRL, as the operator of the Project, has the ability to establish procedures to ensure identification and communication of sabotage events that occur at the Project or that become known to PRL's operating personnel, and only PRL has the ability to initiate the communication of such information to relevant entities. Moreover, even with respect to Requirement 2, Constellation could only potentially facilitate a communication that PRL initiates in the first instance.

An appropriate analysis of CIP-001-1 would conclude that only PRL can be held responsible for ensuring performance of the Reliability Standard and each Requirement thereunder. The fact that PRL develops procedures under Requirement 2, which, in turn, provide that PRL will utilize its QSE arrangement with Constellation to communicate this information to the ERCOT ISO on its behalf does not elevate Constellation to the role of GOP, joint GOP or co-GOP. And should NERC uphold the concurrent registration, it will only create confusion as to precisely where, within the many sub-tasks of Requirement 2, PRL's responsibility ends and Constellation's begins. Reliability cannot be ensured, and can only be weakened, by introducing this unnecessary confusion into NERC's registration, compliance and enforcement program.

⁵⁵ TRE Response at 37.

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As is the case above with respect to CIP-001-1, PRL has the substantive responsibility for every GOP Requirement and, on those occasions where there are Buyer's Functions identified on the TRE Table, they describe communication "*facilitation*" activities alone.⁵⁶ Clearly, as between PRL and Constellation, the GOP choice for each Requirement must be PRL, and failure to register PRL for every Requirement will leave a gap in coverage.

2. Constellation's Unwillingness to Enter Into a JRO Arrangement Is Not Unreasonable

TRE asserts that a JRO arrangement would ensure that all requirements are met and castigates the parties for failing to enter into such an arrangement.⁵⁷ Constellation does indeed object to entering into an agreement that would require it to accept responsibility for GOP Reliability Standards because it would transfer from PRL to Constellation obligations that Constellation is not contractually bound to undertake, and that it has no authority to perform or to ensure performance by PRL. This is not a trivial matter. The Tolling Agreement carefully defines the parties' obligations and responsibilities and does not transfer to Constellation responsibility for ensuring compliance with GOP Reliability Standards. All matters concerning operation of the Project and ensuring reliability are retained by PRL.

Constellation's agreement to provide QSE services does not in any way undermine or unravel the retention of responsibility by PRL of all matters related to operations and reliability.⁵⁸ Constellation is unwilling to accept obligations that are

⁵⁶ Constellation comprehensively addressed each and every Reliability Standard, Requirement and Functional Model relationship in the Constellation Responses and will not repeat those here because nothing in the TRE Response changes the facts that Constellation may be *performing* certain communication tasks that PRL may rely upon to ensure PRL's compliance with its GOP responsibilities.

⁵⁷ TRE Response at 38-39.

⁵⁸ While Constellation does not believe that an amendment to the Tolling Agreement is required for PRL to rely on the communications services Constellation provides as QSE to ensure performance of PRL's GOP responsibilities, Constellation is amenable to negotiating an amendment to the Tolling Agreement to clarify that it would provide communication facilitation services to PRL to support PRL's registration as sole GOP. This is an approach that Constellation has successfully implemented with other tolling parties that elect to have a single entity provide communications support services for both market operations and GOP responsibilities. However, to date, PRL and Constellation have been unable to negotiate such an amendment due largely to PRL's insistence that Constellation agree to be a joint GOP and take on

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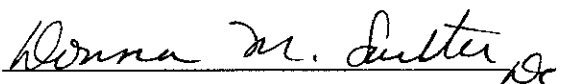
beyond Constellation's obligations in the existing Tolling Agreement and for which it cannot ensure compliance because it cannot compel PRL's performance. PRL's position simply seeks to take advantage of TRE's belief that QSEs should be registered as GOP to shift its own obligations to Constellation.

TRE's circumvention of the voluntary JRO process through a contrived concurrent registration similarly provides an opportunity for PRL to attempt to shift its responsibility to Constellation, albeit in a much more damaging manner, i.e., any time there is a violation of any Reliability Standard, PRL will be incented to persuade TRE, through the enforcement process, that Constellation should be held responsible instead of PRL. NERC should not allow TRE to create this unworkable framework. TRE has failed to demonstrate that its co-registration of Constellation is required or appropriate. NERC must resolve this controversy in accordance with Commission precedent and may not register Constellation as GOP.

II. CONCLUSION

For the reasons discussed above, NERC should grant the Constellation Appeal and remove Constellation from the Registry as a GOP.

Respectfully submitted,



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responsibility for the a 21 GOP Reliability Standards identified in the TRE Table simply because certain sub-tasks of those Requirements have a communications facet.

Exhibit A
Constellation October 19 Response

Exhibit A to the Constellation March 25, 2008 Response, which is a copy of the Constellation Response to TRE Assessment, has been removed because a copy of the Constellation Response to TRE Assessment is included in Attachment D to Constellation's July 11, 2008 Appeal to FERC.

Exhibit B
Constellation February 14 Response

Exhibit B to the Constellation March 25, 2008 Response, which is a copy of the Constellation February 14, 2008 Letter, has been removed because a copy of the Constellation February 14, 2008 Letter is included in Attachment G to Constellation's July 11, 2008 Appeal to FERC.

Exhibit C
Tolling Agreement

Exhibit C to the Constellation March 25, 2008 Response, which is a copy of the Tolling Agreement, has been removed because a copy of the Tolling Agreement is included in Confidential Attachment M to Constellation's July 11, 2008 Appeal to FERC.

**CONTAINS CONFIDENTIAL INFORMATION
DO NOT RELEASE**

**Exhibit D
PRL Appeal and PRL Supplement**

Exhibit D Contains Confidential Information that has been removed from this document.

**PUBLIC VERSION
Confidential Information
Has Been Removed**

**Attachment J
Decision
May 22, 2008**



Constellation Energy Commodities Group, Inc. (CCG)
RA070005
Power Resources, Ltd. (PRL)
RA080001

**Board of Trustees Compliance Committee
Public Version of Consolidated Decision
on Appeals of Compliance Registry Determinations
(Issued May 22, 2008)**

In this decision, the NERC Board of Trustees Compliance Committee affirms the decision of the Texas Regional Entity (Texas RE) to include both Constellation Energy Commodities Group, Inc (CCG) and Power Resources, Ltd. (PRL) on the NERC Compliance Registry as Generator Operators (GOPs).

Statement of Appeal

On May 4, 2007, CCG filed an appeal of its inclusion by the Texas RE on the NERC Compliance Registry within the Electric Reliability Council of Texas, Inc. (ERCOT) Region for the function of generator operator (GOP) with respect to Power Resources, Ltd.'s (PRL's) gas-fired combined cycle electrical generation facility located in Howard County, Texas (the Project). On February 1, 2008, PRL filed an appeal of its inclusion by Texas RE on the NERC Compliance Registry within the ERCOT Region for the function of GOP.

PRL and CCG are parties to a Tolling Agreement that governs PRL's sales and CCG's purchases of electric generation capacity, thermal energy and electric energy, including all ancillary products and services marketable in the ERCOT transmission area from the Project. PRL and CCG also have each signed a Standard Form Market Participant Agreement (MP Agreement) with ERCOT ISO. ERCOT ISO is the sole Reliability Coordinator (RC), Balancing Authority (BA) and Transmission Operator (TOP) for the ERCOT Region in the Texas RE footprint.

The MP Agreements obligate PRL and CCG to comply with ERCOT Protocols and Operating Guides (ERCOT Protocols) for their operations in the ERCOT Region. In its MP Agreement, CCG agreed to be registered and responsible as a Qualified Scheduling Entity (QSE),¹ and PRL agreed in its MP Agreement to be registered and responsible as a Resource Entity (Resource).² The parties also agreed that CCG would be PRL's QSE.³

¹ See Texas RE March 7, 2008 Response to CCG Response of October 19, 2007 (CCG October 19 Response) at 3. See also *id.* at n.1 ("Qualified Scheduling Entity: A Market Participant that is qualified by ERCOT in accordance with Section 16, Registration and Qualification of Market Participants, to submit Balanced Schedules and Ancillary Services bids and settle payments with ERCOT. *ERCOT Protocols Section 2, Definitions and Acronyms.*"). See also CCG February 28, 2007 e-mail Request for CCG to be Registered as a GOP and Purchasing-Selling Entity (PSE) in Texas RE.

² *Id.* at 3. See also *id.* at n.2. ("Resource Entity - A Market Participant registered that owns or controls a Resource. Resources are Facilities capable of providing electric energy or Load capable of reducing or increasing the need for electrical energy or providing Ancillary Services to the ERCOT System, as described in Section 6, Ancillary Services. This includes Generation Resources, Loads acting as Resources and Emergency Interruptible Load Service Resources. *ERCOT Protocols Section 2, Definitions and Acronyms.*").



Procedural History

On May 4, 2007, CCG filed an appeal of its GOP registration in the ERCOT Region (CCG Appeal). On June 14, 2007, CCG filed a supplement to its appeal (CCG Supplemental Appeal).

On October 3, 2007, Texas RE provided its detailed basis for including CCG on the NERC Compliance Registry (Texas RE October Assessment). On October 19, 2007, CCG provided its response to Texas RE's Assessment (CCG's Response).

On October 21, 2007, the NERC Board of Trustees Compliance Committee considered the appeal filed by CCG, Texas RE's Assessment and CCG's Response, in accordance with the provisions of Rule 501 of NERC's *Rules of Procedure*. On October 22, 2007, the NERC Board of Trustees Compliance Committee issued a decision remanding CCG's appeal back to Texas RE to work with PRL and CCG to resolve the registration dispute and to determine if a Joint Registration Organization (JRO) agreement would provide a suitable mechanism for resolution.

Subsequently, Texas RE also registered PRL as a GOP. Discussions between Texas RE, CCG and PRL ensued after the issuance of the decision on remand. However, CCG and PRL were unable to reach agreement on the development of a JRO. On January 21, 2008, Texas RE informed NERC that CCG and PRL each share GOP responsibilities and given their inability to reach agreement on the division of responsibilities and liabilities each should be registered as the GOP for the Project to avoid a gap in reliability.

On February 1, 2008, PRL filed an appeal of its GOP registration (PRL Appeal), and on February 15, PRL provided supplemental information in support of its appeal (PRL Supplemental Appeal). PRL opposes being solely registered as a GOP and concurrently registered with CCG as a GOP but expresses support for a JRO which clearly delineates and divides compliance responsibilities and liabilities between PRL and CCG.

On February 14, 2008, CCG responded to Texas RE's January notification objecting to any form of registration, joint or otherwise, that would require it to be a GOP for the Project. CCG also requested that NERC deny Texas RE's request to hold CCG's appeal in abeyance and act expeditiously to grant CCG's appeal and remove CCG from the NERC Compliance Registry as the GOP for the Project.

On March 7, 2008, Texas RE responded to the submittals of CCG and PRL and requested that NERC consolidate the CCG appeal and the PRL appeal for determination and that, upon final consideration, NERC confirm the concurrent GOP registrations of CCG and PRL for the Project (Texas RE March 7 Assessment).

³ CCG has several QSE designations within ERCOT. CCG Appeal at 1. Two of CCG's QSEs are Level 4 QSEs, which are full service QSEs qualified to provide Ancillary Services. CCG Appeal at February 28, 2001 e-mail. CCG also has three QSEs qualified as both Level 1 and Level 2 QSEs that schedule Bilateral Services only. *Id.*



Although Texas RE expressed its belief that a JRO would be the best solution in this case, Texas RE advised NERC that CCG and PRL have not been able to reach an agreement and the NERC *Rules of Procedure* do not allow Texas RE to compel a JRO. Therefore, Texas RE asserted that NERC should affirm the concurrent registration to ensure that there is no gap in responsibility within the GOP function.

On March 25, 2008, CCG responded to Texas RE's March 7 concurrent registration determination, objecting to Texas RE's assessment and urging NERC to grant CCG's appeal and remove CCG from the Compliance Registry (CCG March 25 Response). CCG expresses support for the development of a JRO whereby PRL is the sole GOP, although CCG would agree to perform communications services on behalf of PRL as it does as a QSE under the ERCOT Protocols. On March 25, 2008, PRL responded to Texas RE's March 7 assessment (PRL March 25 Response). PRL supported Texas RE's request for consolidation of the CCG and PRL appeals proceedings and stated that PRL is willing to enter into a properly structured JRO with several liability. However, PRL states that the present concurrent registration arrangement is an inappropriate solution and that NERC should consider, support, and if necessary, compel the parties to enter into an alternative JRO. In addition, PRL and CCG provided a confidential and redacted copy of the parties' Tolling Agreement.

On March 27, 2008, Texas RE responded to CCG's March 25 submittal stating that CCG should continue to be registered as the GOP, based upon the responsibilities and duties to which CCG agreed in the MP Agreement to operate in the ERCOT Region (Texas RE March 27 Response). In addition, Texas RE stated that PRL should also remain concurrently registered for the GOP function in order to avoid a reliability gap.

Texas RE did not provide an independent analysis of the redacted Tolling Agreement, which was provided to Texas RE and NERC after Texas RE's March 7 assessment had been submitted to NERC.

On May 5, 2008, the NERC Board of Trustees Compliance Committee considered the appeals filed by PRL and CCG, Texas RE's Assessments and PRL's and CCG's Responses, in accordance with the provisions of Rule 501 of NERC's *Rules of Procedure*.

Statement of Facts

Texas RE states that it registered PRL and CCG for the functions of GOP within its footprint on the basis of section 215 of the Federal Power Act (16 U.S.C. §824o), the Commission's regulations at 18 C.F.R. Section 39.2(c), Rule 501.1 of NERC's *Rules of Procedure*, NERC's *Statement of Compliance Registry Criteria (Rev. 4.0)*, Sections I, II, and III, and the *Reliability Functional Model—Version 3*, as well as the contracts signed by CCG and PRL, applicable Reliability Standards and Order No. 693.^{4,5} According to

⁴ See generally Texas RE October Assessment and Texas RE March 7 Assessment.



Texas RE, PRL and CCG each point to the other as responsible for performing certain of the requirements under the GOP Reliability Standards. To avoid a reliability gap, Texas RE determined it was appropriate, under Commission precedent, to concurrently register both entities in light of the fact that PRL and CCG have been unable to reach a JRO that delineates the compliance obligations of each entity with respect to the Project.⁶

Section II of the *Statement of Compliance Registry Criteria (Rev. 4.0)* defines a GOP as “[t]he entity that operates generating unit(s) and performs the functions of supplying energy and interconnected operations services.”

The provisions in the *Statement of Compliance Registry Criteria (Rev. 4.0)* that apply to this case are section III.c.1 “Individual generating unit >20 MVA (gross nameplate rating) and is directly connected to the bulk power system” and section III.c.4 “Any generator, regardless of size, that is material to the reliability of the bulk power system.” An exclusion to these criteria provides, in relevant part, that:

A generator owner/operator will not be registered based on these criteria if responsibilities for compliance with approved NERC reliability standards or associated requirements including reporting have been transferred by written agreement to another entity that has registered for the appropriate function for the transferred responsibilities, such as a load-serving entity, G&T cooperative or joint action agency as described in Sections 501 and 507 of the NERC Rules of Procedure.

The NERC *Rules of Procedure* sections 501.1.2.7,⁷ 507.2⁸ and 507.6⁹ state that, with respect to a Joint Registration Organization, the members must accept the reliability

⁵ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 FR 16,416 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242 (2007) at PP 103, 107, 143-145.

⁶ *Id.* at P 103.

⁷ Rules of Procedure 501.1.2.7 states: “(a) A generation or transmission cooperative, a joint-action agency or another organization (a Joint Registration Organization or JRO) may be registered, in lieu of each of the JRO’s members or related entities being registering individually, by the JRO accepting the reliability functions identified in Section 1.1 above, or (b) a JRO and its members or related entities may enter into a written agreement as to which of them will be responsible for one or more reliability standards applicable to a particular function and/or for one or more requirements within particular reliability standards applicable to a particular function and/or for one or more requirements within particular reliability standards, in either case in accordance with the provisions specified in Section 507 (each of (a) and (b), a “joint registration”).”

⁸ Rules of Procedure 507.2 states: “**Joint registration pursuant to written agreement.** Where a JRO and any of its members or related entities agree, in writing, upon a division of compliance responsibility among them for one or more reliability standard(s) applicable to a particular function, and/or for one or more requirements within particular reliability standard(s), both the JRO and such member(s) or related entity(ies) shall register as an organization responsible for that function. The JRO and its member(s) or related entity(ies) must have a written agreement that clearly specifies their respective responsibilities, which shall be submitted as part of the joint registration. Neither NERC nor the regional entity shall be parties to any such agreement between a JRO and its member or related entity(ies), nor shall NERC or the regional entity have responsibility for reviewing or approving any such agreement, other than to verify that the agreement provides for an allocation or assignment of responsibilities consistent with the joint registration.”



functions they will be responsible for, that the agreement must clearly specify the parties' responsibilities, and that annually the JRO shall provide to the Regional Entity a list that identifies the members or related entities and the functions for which the JRO has registered on behalf of the members.

PRL's Appeal

PRL claims sole and concurrent registration of PRL as the GOP for the Project is inappropriate, because PRL is unable to independently perform certain tasks required for compliance that arise under a significant subset of the GOP Reliability Standards. PRL asserts that, in the January 2007 Tolling Agreement, CCG assumed significant contractual and practical control of operations of the Facility.¹⁰ PRL states that CCG, under the terms of the Tolling Agreement, "exercises complete contractual control" of the [PRL generating facilities in Howard County, Texas], purchases and sees to the delivery of all fuel consumed at the plant, and "exclusively handles" the relationships relating to the facilities in the provision of power."¹¹

In addition, PRL asserts that CCG as PRL's QSE is responsible for communications with the ERCOT ISO, which is the sole TOP, BA and RC in the Texas RE Region. PRL states that, while its staff is physically located at the Project, CCG has sole control and authority for dispatching the Facility from a remote location.¹² In support of its arguments that CCG is the appropriate GOP for the facility, PRL listed what it called "key examples of critical tasks included in the GOP requirements that PRL is either unable to or lacks authority to perform."¹³ According to PRL, these include:

- **Generator Operator shall have communications (voice and data links) with appropriate Reliability Coordinators, Balancing Authorities, and Transmission Operators. Such communications shall be staffed and available for addressing a real-time emergency condition.** As the QSE for PRL, [CCG] is providing this service and facilitates all communications.
- **Generator Operators shall comply with Reliability Coordinator**

⁹ Rules of Procedure 507.6 states: "Annually following submission of a joint registration, the JRO shall provide the regional entity with a list, in a form specified by the regional entity, that identifies the members or related entities and the functions for which the JRO has registered on behalf of such members or related entities and for which the JRO assumes compliance responsibility. Additionally, a JRO shall provide a revised list of compliance responsibilities to the regional entity each time the JRO accepts additional compliance responsibilities for a member or related entity or for a new member or related entity and each time that any compliance reliability reverts from the JRO to a member or related entity. The regional entity shall promptly notify NERC of each such revision."

¹⁰ PRL Appeal at 2.

¹¹ Texas RE October Assessment at 4 (citing PRL/CEG July 13, 2007 Letter in response to CCG Appeal at 1).

¹² PRL Appeal at 3.

¹³ *Id.*



directives unless such actions would violate safety, equipment, or regulatory or statutory requirements. CCG facilitates the communication of Reliability Coordinator directives to PRL.

- **Generator Operator shall provide information required for system studies, such as critical facility status, load, generation, operating reserve projections, and known Interchange Transactions. This information shall be available by 1200 Central Standard Time for the Eastern Interconnection and 1200 Pacific Standard Time for the Western Interconnection.** CCG facilitates transmittal of PRL's plant availability and estimated capacity as required to the Reliability Coordinator by 12:00 Central Standard Time.
- **If a protective relay or equipment failure reduces system reliability, the Generator Operator shall notify its Transmission Operator and Host Balancing Authority. The Generator Operator shall take corrective action as soon as possible.** PRL provides CCG with all notices regarding system reliability, and equipment outages immediately upon occurrence.
- **For a generator outage, the Generator Operator shall notify and coordinate with the Transmission Operator. The Transmission Operator shall notify the Reliability Coordinator and other affected Transmission Operators, and coordinate the impact of removing the Bulk Electric System facility.** PRL notifies CCG of a scheduled generator outage, and CCG has the right to approve or disapprove any scheduled outage and coordinates the generator outage request with the Transmission Operator, through direct communication with the Balancing Authority, and communicate the agreed upon outage schedule back to PRL.
- **At the request of the Balancing Authority or Transmission Operator, a Generator Operator shall perform generating real and reactive capability verification that shall include, among other variables, weather, ambient air and water conditions, and fuel quality and quantity, and provide the results to the Balancing Authority or Transmission Operator operating personnel as requested.** CCG schedules all of these tests, providing fuel and generation schedules to PRL, so that PRL can conduct these tests on behalf of CCG. All test results are provided to CCG for submittal to the appropriate ERCOT entity.
- **Each Generator Operator shall provide outage information daily to its Transmission Operator for scheduled generator outages planned for the next day (any foreseen outage of a generator greater than 50**



MW). The Transmission Operator shall establish the outage reporting requirements. PRL provides CCG both verbal and written notification of all scheduled outages.

- **Each Generator Operator shall inform its Host Balancing Authority and the Transmission Operator of all generation resources available for use.** PRL provides CCG a daily schedule detailing unit availability. CCG returns the schedule to PRL indicating how and when the facility should be dispatched, including generation scheduled, ancillary services obligations, and shutdown times. When the facility is in operation CCG is provided with control of the Automatic Generation Control System which allows CCG to directly control the megawatt output of the PRL facility.¹⁴

In further support of its appeal, PRL states that the Tolling Agreement provides CCG alone with the contractual authority to perform certain tasks critical to GOP communications and reliability standards compliance.¹⁵ First, as a QSE, CCG provides services which generally include all communications with third parties regarding the capacity, outages, and scheduling of the facility.¹⁶ Second, with respect to Scheduling, while PRL provides a daily schedule of the plant's next day capabilities to CCG, CCG returns the schedule for the following day setting forth the quantity of energy that PRL is to deliver to CCG.¹⁷ CCG schedules the capacity with third parties, including the transmission provider, pursuant to ERCOT rules.¹⁸ Third, while PRL must provide written notice of planned outages for the year to CCG, PRL adjusts the schedule as required by CCG if possible.¹⁹ CCG communicates the planned outage information to third parties, and coordinates the planned outages with ERCOT.²⁰ Fourth, while PRL provides notice and full details of force majeure events to CCG, CCG provides such information to third parties.²¹

PRL requests that NERC take into consideration that the Tolling Agreement was developed and entered into prior to the implementation of the mandatory Reliability Standards obligations and did not contemplate the resultant compliance costs and responsibility.²² PRL states that it only receives a monthly fixed capacity payment from CCG; however, CCG, as the seller of the Facility's output, should assume responsibility for the costs of compliance with the reliability standards.²³

¹⁴ *Id.* at 3-4.

¹⁵ PRL Supplemental Appeal at 1.

¹⁶ *Id.*

¹⁷ *Id.* at 2.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.* at 2-3.



PRL objects to overlapping joint registration, because “NERC and TRE may hold either or both PRL and [CCG] responsible for the actions and duties of the other party, thereby exposing PRL and [CCG] to enforcement actions related to events solely in the control of the other party.”²⁴ PRL asserts this is unfair and contrary to the existing contracts between PRL and CCG.²⁵

However, PRL states that it is in favor of entering into a joint registration agreement with CCG. The joint registration agreement would have to clearly specify the division of reliability standards compliance responsibility between the parties and would have to limit each party’s enforcement exposure to specific obligations assigned to each party.²⁶ Additionally, PRL states that the execution of the agreement would be expressly contingent upon the Texas RE’s agreement and understanding that the parties will be individually liable for compliance only with those requirements designated to the individual party.²⁷ PRL includes a proposed Schedule 1 setting forth a division of responsibilities for consideration as part of a JRO.²⁸

CCG’s Appeal

CCG objects both to sole registration and co-registration of CCG as a GOP with respect to the Project on the grounds that it does not own, operate or control generation facilities. According to CCG, because it does not own or operate generation facilities in ERCOT and does not have the ability or authority to operate generation facilities, CCG is unable to comply with standards that apply to GOPs.²⁹ Rather, CCG asserts that “the generation facilities perform the majority of the functions outlined in the NERC Standards applicable to GOPs.”³⁰

However, CCG recognizes that, as PRL’s QSE, it has assumed certain communications service obligations on PRL’s behalf with respect to activities in the ERCOT Region.³¹ However, CCG asserts that the Tolling Agreement obligates PRL to act as the sole GOP. CCG asserts that its unwillingness to enter a JRO is not unreasonable and that it would be willing to enter into an amendment that makes clear that PRL is the sole GOP stating that:

While [CCG] does not believe that an amendment to the Tolling Agreement is required for PRL to rely on the communications services [CCG] provides as QSE to ensure performance of PRL’s GOP

²⁴ PRL Appeal at 4.

²⁵ *Id.* at 4-5.

²⁶ *Id.* at 2, 5.

²⁷ *Id.* at 2.

²⁸ PRL Supplemental Appeal at 3.

²⁹ *See, e.g.*, CCG June 14, 2007 Supplemental Appeal at 1, 3. CCG October Response at 2, 5.

³⁰ CCG Appeal at 1.

³¹ CCG admits that it provides certain communication services to two unaffiliated generation facilities in the region. CCG Appeal at 1. *See also* CCG Supplemental Appeal at 3.



responsibilities, [CCG] is amenable to negotiating an amendment to the Tolling Agreement to clarify that it would provide communication facilitation services to PRL to support PRL's registration as sole GOP. This is an approach that [CCG] has successfully implemented with other tolling parties that elect to have a single entity provide communications support services for both market operations and GOP responsibilities. However, to date, PRL and [CCG] have been unable to negotiate such an amendment due largely to PRL's insistence that [CCG] agree to be a joint GOP and take on responsibility for the [] 21 GOP Reliability Standards identified in the TRE Table simply because certain sub-tasks of those Requirements have a communications facet.³²

CCG also objects to its registration as a GOP stating that, in other Regions such as ReliabilityFirst and Northeast Power Coordinating Council, CCG performs similar communications services for selected generators but it has not been registered as a GOP.³³ Thus, CCG asserts that there is an inconsistency in registration among the Regions.

CCG further asserts that, in any event, it does not meet the criteria of the NERC Functional Model for GOP. CCG identifies the GOP tasks as: (1) Formulate daily generation plan; (2) Report operating and availability status of units and related equipment, such as automatic voltage regulators; (3) Develop annual maintenance plan for generating units and perform the day-to-day generator maintenance; (4) Operate generators to provide real and reactive power or reliability-related services per contracts or arrangements; and (5) Monitor the status of generator plant protective relaying systems and transmission line protective relaying systems on the transmission lines connecting the generation plant to the transmission system.³⁴

CCG explains that:

The GOP definition and tasks clearly apply to the entity that physically operates a generation facility ("Physical Operator") and do not apply to an entity which has entered into a contract to purchase the output of and/or request the scheduling of the generation facility (the "Power Purchaser"). Below is a further illustration of the distinction between the Physical Operator and CCG, as Power Purchaser, with respect to those facilities in ERCOT for which CCG is a Level 3 or 4 QSE, related to each of the tasks listed in the NERC Functional Model.

1. Formulate daily generation plan: CCG has no authority or ability to formulate the daily generation plan and does not formulate such a

³² CCG March Response to TRE's March 7 Response at 22-23 n.58.

³³ CCG Appeal at 2. CCG Supplemental Appeal at 1, 4. CCG October 19 Response at 29-30.

³⁴ CCG Supplemental Appeal at 2.



plan. The Physical Operator determines the daily availability of the generation resource and in turn communicates that availability to Power Purchaser. Power Purchaser then relays this availability to the ERCOT Independent System Operator ("ERCOT ISO") through the ERCOT ISO's Resource Plan interface on behalf of the Physical Operator.

2. Report operating and availability status of units and related equipment, such as automatic voltage regulators: CCG has no ability to determine the operating and availability status of units or related equipment, such as automatic voltage regulators. Only the Physical Operator has the ability to make such a determination. The Physical Operator will notify the Power Purchaser with respect to certain equipment and control status changes as they apply to the generation resource and, the Power Purchaser may relay such information to the ERCOT ISO or applicable transmission provider.
3. Develop annual maintenance plan for generating units and perform the day-to-day generator maintenance: CCG has no authority or ability to develop an annual maintenance plan for generation resources or to perform day-to-day generation maintenance. The Physical Operator develops the annual maintenance plan for the generation resource with respect to scheduling, cost, equipment, and manpower, taking into account, among other things, its contractual obligations with respect to outage schedules. The Physical Operator also maintains and manages the daily operation of the generation resource. The Power Purchase relays the annual maintenance plan, on behalf of the Physical Operator, in accordance with the Physical Operator's plan, using the ERCOT ISO's Outage Scheduler.
4. Operate generators to provide real and reactive power or reliability-related services per contracts or arrangements: CCG has no authority or ability to operate generation facilities to provide real and reactive power. The Physical Operator solely maintains and manages the daily operation and providing real and reactive power. The Power Purchaser has the ability to request that the Physical Operator schedule energy and ancillary services to the extent permitted under the parties' power sales agreement and the Physical Operator then notifies the Power Purchaser whether the Physical Operator will operate the plant to meet those schedules. However, these contractual arrangements do not convey to the Power Purchaser any authority or ability to operate the generation facilities.



5. Monitor the status of generation plant protective relaying systems and transmission line protective relaying systems on the transmission lines connecting the generation plant to the transmission system: CCG has no ability or authority to monitor the status of protective systems. The Physical Operator solely maintains and manages the operation associated with running the generation resource.³⁵

In its October 19, 2007 response to Texas RE's assessment, CCG contends that Texas RE's recommendation to register CCG as a GOP rested on two "fundamentally flawed" determinations.³⁶ First, CCG asserts that Texas RE erred in concluding that, although CCG does not own or physically operate the Project and does not directly perform reliability tasks, CCG has complete contractual control over the Project and has authority to compel PRL to take actions necessary to ensure compliance with the GOP Reliability Standards under the Tolling Agreement.³⁷ CCG states that, under the Tolling Agreement, PRL "operate[s] and maintain[s]" the Project and such responsibility requires PRL to ensure that the Project is operated and maintained in accordance with prudent industry practice, which CCG asserts includes, among other things, compliance with reliability standards applicable in ERCOT.³⁸ Second, CCG states that Texas RE improperly adopted a blanket rule that a Level 4 QSE under the ERCOT Protocols is a GOP for purposes of compliance with NERC Reliability Standards.³⁹

With respect to GOP Reliability Standards that require specific operation of the Project, CCG claims that it cannot comply with these requirements because it lacks control and the ability to perform or to compel PRL to perform such requirements.⁴⁰ With respect to GOP Reliability Standards that require communication of information to responsible entities, CCG states it should not be held accountable to have knowledge of information about the generation facility and its related equipment nor can it compel PRL to provide necessary information.⁴¹ While recognizing there is overlap in the communications relative to the Project as a QSE and the GOP Reliability Standards, CCG asserts it has not assumed contractual liability as a GOP.⁴² CCG states that, in any event, while it communicates information to ERCOT ISO and other entities, PRL must provide such information to CCG in the first instance.⁴³ With respect to GOP Reliability Standards that require development of procedures for or coordination of operation of generation facility or related equipment with others, CCG states that it has no authority or ability to independently obtain information on the Project and related equipment that would be

³⁵ CCG Supplemental Appeal at 2-3.

³⁶ CCG October Response at 2.

³⁷ *Id.* at 2-3.

³⁸ *Id.* at 7.

³⁹ *Id.* at 4.

⁴⁰ *Id.* at 25-27.

⁴¹ *Id.* at 27-28.

⁴² *Id.* at 24, 27.

⁴³ *Id.* at 28.



necessary to establish procedures and coordinate changes in facilities, nor does it have the ability or authority to compel PRL to do so.⁴⁴

In its March 25 response to Texas RE's March 7 submittal pursuant to the remand, CCG recognizes that it may be performing communications tasks that PRL may rely upon to ensure PRL's compliance with GOP Reliability Standards.⁴⁵ However, CCG continues to object to the involuntary joint or co-registration of PRL and CCG as GOPs for the Project as unfounded and contrary to FERC requirements.⁴⁶ CCG maintains that CCG's ability to perform certain limited communications services on behalf of PRL does not equate to a transfer of GOP responsibility.⁴⁷ CCG argues that FERC policy does not permit registration decisions that are inconsistent with contractual requirements.⁴⁸ CCG states that, under the Tolling Agreement and MP Agreement, PRL retains responsibility for GOP Reliability Standards.⁴⁹ CCG points to contractual provisions in the Tolling Agreement which CCG asserts make clear that PRL should be registered as the sole GOP.⁵⁰ CCG also claims that the MP Agreement also does not transfer GOP responsibilities from PRL to CCG.⁵¹ CCG contends that PRL's true motive is that it does not want to incur costs associated with compliance.⁵²

According to CCG, there will be no gap in reliability if CCG is not co-registered as a GOP for the Project⁵³ and TRE has not demonstrated that a gap will occur if CCG is not registered as a GOP.⁵⁴ To the contrary, CCG states that Texas RE's assessments support a finding that CCG should not be registered as a GOP.⁵⁵

Texas RE's Assessments

With respect to CCG's appeal, Texas RE included three attachments as part of its analysis of whether CCG should be registered as a GOP. These include: Attachment 1 that outlines the rules and standards supporting its determination that CCG be registered as a GOP; Attachment 2 that provides a tabular comparison of the GOP tasks under the NERC model correlated with the responsible entity, ERCOT practice, and quotations from relevant ERCOT protocols and operating guides; and Attachment 3 that provides a tabular comparison of the GOP functional relationship under the NERC model correlated with the designated responsible entity type, the ERCOT practice and quotations from relevant ERCOT protocols and operating guides.

⁴⁴ *Id.* at 28-29.

⁴⁵ CCG March 25 Response at n.56.

⁴⁶ *Id.* at 19-20.

⁴⁷ *Id.* at 7-9, 20-22.

⁴⁸ *Id.* at 9-11.

⁴⁹ *Id.* at 9.

⁵⁰ *Id.* at 11-12. *See also id.* at 13-14.

⁵¹ *Id.* at 16.

⁵² *Id.* at 15.

⁵³ *Id.* at 16-17.

⁵⁴ *Id.* at 18-19.

⁵⁵ *Id.* at 17-18.



According to Texas RE, the NERC Reliability Functional Model Version 3 identifies the characteristics that confirm CCG is a GOP.⁵⁶ The Functional Model recognizes that physical Generator Operator may designate a separate organization to perform the Generator Operator service.⁵⁷ Texas RE states that this is what a Resource does in contracting with a Level 3 or 4 QSE.⁵⁸ As to arguments that CCG does not physically “operate” the facility, Texas RE finds that CCG does “operate” the facility through its contracting and communication roles.⁵⁹

While recognizing that there is not a 100% match, Texas RE finds that a Level 3 or 4 QSE is the best entity to be named a GOP in ERCOT, because there is a close match of tasks performed by a QSE and a GOP.⁶⁰ Texas RE acknowledges that CCG may need to rely on information from PRL; however, only CCG is responsible in the ERCOT system as QSE for obtaining, maintaining and transmitting the requisite information to ERCOT.⁶¹ Indeed, this is precisely the type of obligation CCG has assumed under the Tolling Agreement. Texas RE responds to some examples proffered by CCG as to why it cannot be the GOP; however, Texas RE refutes each one finding that CCG as a QSE must perform the given task or is vested with authority to require the Resource to demand that PRL operate or provide information in accordance with its agreements.⁶²

On March 7, 2008, Texas RE submitted a further assessment in response to the PRL appeal and subsequent submittals of CCG. Texas RE recommended consolidation of the appeals and a finding that concurrent registration of PRL and CCG were appropriate to avoid a gap in reliability. While Texas RE expresses support for the development of a JRO to resolve the disputes, it acknowledges that the parties are at an impasse. Texas RE further notes that neither Texas RE nor NERC has the ability to direct an entity to enter into an agreement or a JRO to assume obligations on behalf of another, nor does the NERC *Statement of Compliance Registry Criteria (Rev. 4.0)* allow NERC or Texas RE to do so. Indeed, as Texas RE notes, in Order No. 693, the Commission declined to do so.⁶³

Based on the representations of PRL and CCG regarding the parties’ rights and responsibilities under the Tolling Agreement (which Texas RE did not have), Texas RE determined that concurrent registration of PRL and CCG was warranted. While PRL and CCG subsequently sent the Tolling Agreement to Texas RE, Texas RE did not perform an independent analysis of the contractual terms and conditions. Texas RE however did have copies of the MP Agreements executed by the parties, which also govern the parties’ relationship to one another and to the ERCOT ISO. Texas RE asserted that, while “neither [CCG] nor PRL has every single obligation of a GOP, each is responsible

⁵⁶ Texas RE October Assessment at 7.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 10-12.

⁶¹ *Id.* at 14.

⁶² *Id.* at 13-15.

⁶³ See Order No. 693 at P 107.



for essential elements of the GOP function."⁶⁴ In support, Texas RE relied on Commission precedent regarding concurrent or joint registration.⁶⁵

Texas RE did not find compelling CCG's claims that its QSE activities under the ERCOT Protocols were unrelated to or exclusive of obligations under NERC's rules. According to Texas RE:

[E]ligibility for registration for a NERC function simply follows an entity's actual performance of tasks and acceptance of responsibilities that are within the scope of the function. Here, the tasks and responsibilities [CCG] accepted willingly under the MP Agreement and ERCOT Protocols correspond substantially with the obligations of a GOP under the Functional Model and NERC Standards.

[CCG] asks NERC to turn a blind eye to the duties it has undertaken contractually (including its agreement to comply with ERCOT Protocols) when evaluating it under the NERC Functional Model, claiming that these contractual obligations are unrelated to or exclusive of the obligations placed upon it under NERC Rules. In fact, [CCG's] distinctions are beside the point. The fact that [CCG's] activities will also be performed by the ERCOT Protocols is no reason to exclude them from consideration in the NERC registration process.⁶⁶

Because both PRL and CCG claim that they have significant limitations to perform certain of the GOP reliability standard requirements, Texas RE states that it is appropriate to establish concurrent registration to prevent a gap in coverage of all requirements of all applicable Reliability Standards.⁶⁷ Texas RE states that there does not appear to be a dispute that between PRL and CCG all requirements of all applicable Reliability Standards are met. Indeed, without the coordinated activities of PRL and CCG, the GOP function could not be performed.⁶⁸ Because the assignments between the parties are governed by the MP Agreement and the Tolling Agreement, there is no concern of an overlap in responsibility or "two sets of hands on the wheel."⁶⁹

With respect to CCG's Regional inconsistency arguments, Texas RE finds that CCG has failed to explain why CCG (the only market participant that can perform certain tasks) should not be held accountable in the ERCOT Region.

As to PRL's claims that it should not be solely or concurrently registered, Texas RE notes that there are many tasks that PRL does not deny performing. Therefore, it would be

⁶⁴ Texas RE March 7 Assessment at 4.

⁶⁵ *Id.* at 5-6, 18-20, 29 (citing Order No. 693 at PP 103, 107, 143-145).

⁶⁶ *Id.* at 5.

⁶⁷ *Id.* at 10-12.

⁶⁸ *Id.* at 15.

⁶⁹ *Id.* at 11.



inappropriate to remove it from registration. While recognizing that sole registration of PRL may not be appropriate, Texas RE finds this is not a basis for removing PRL from concurrent registration.⁷⁰

In response to PRL's preference that a JRO be developed, Texas RE explains that it lacks authority to require parties to enter into an involuntary JRO.⁷¹

In Attachment A to its March 7 Assessment, Texas RE identifies areas of responsibilities under the NERC Functional Model and the ERCOT Protocols.

Analysis

The NERC Board of Trustees Compliance Committee has reviewed the CCG Appeal and CCG Supplemental Appeal, the PRL Appeal and PRL Supplemental Appeal, Texas RE's October 19 and March 7 Assessments, the CCG and PRL Responses to the Texas RE Assessments and Texas RE's March 27 Response.

Because the PRL and CCG appeals are so closely intertwined, the NERC Board of Trustees Compliance Committee has determined that consolidation of the appeals is appropriate and necessary to resolve the issues in dispute. As an initial matter, the parties were unable to reach a voluntary JRO that would have resolved the registration disputes. The NERC Board of Trustees Compliance Committee agrees with Texas RE and CCG that it lacks the authority to require the parties to enter into an involuntary JRO or to direct an entity to enter into an agreement to assume obligations on behalf of another. In Order No. 693, the Commission certainly declined to do so.⁷² Nonetheless, the NERC Board of Trustees Compliance Committee is vested with authority to review the appeals and supporting materials to determine the respective rights and responsibilities of the parties with respect to registration for compliance with NERC Reliability Standards.

Curiously, both PRL and CCG claim that the Tolling Agreement — to which each points in support of arguments that the other assumed the responsibilities for the GOP Reliability Standards — was developed and executed prior to the implementation of NERC's mandatory and enforceable Reliability Standards and each argues that it should not be held accountable for the costs of compliance (or non-compliance) with the GOP Reliability Standards. The NERC Board of Trustees Compliance Committee notes that, in fact, the Tolling Agreement was executed on January 11, 2007, well after the enactment of the Energy Policy Act of 2005, which set in motion the current state in the electric industry. Subsequently, on July 20, 2006, but prior to the execution of the Tolling Agreement, the Commission issued its ERO Certification Order, in which it approved NERC as the ERO and approved NERC's proposed Reliability Standard Development Process and Enforcement program, among other things. Also prior to execution of the Tolling Agreement, on October 20, 2006, the Commission issued a

⁷⁰ *Id.* at 43-44.

⁷¹ *Id.* at 44.

⁷² Order No. 693 at P 107.



Notice of Proposed Rulemaking on Mandatory Reliability Standards for the Bulk Power System, a number of which were approved and are in effect now.

Therefore, the NERC Board of Trustees Compliance Committee does not find persuasive the arguments, implicit or explicit, advanced by PRL and CCG that it could not be foreseen that the Tolling Agreement should address each entity's compliance responsibilities with respect to NERC's imminent mandatory and enforceable Reliability Standards. To the contrary, the NERC Board of Trustees Compliance Committee finds the opposite is true and that, in fact, the Tolling Agreement does address the parties' respective obligations.

As an initial matter, the regulatory framework in ERCOT is unique. A Resource, such as PRL, must contract with a QSE to engage in communications with the ERCOT ISO (the sole BA, RC and TOP in the Texas RE footprint), except in the event of certain emergency conditions. In the instant case, PRL has contracted with CCG to be its QSE, and CCG has voluntarily assumed the obligation to perform certain communications services and other activities for PRL. CCG does not dispute that certain of these communications services performed by CCG overlap or closely track what is required under the NERC GOP Reliability Standards nor does it dispute that PRL is relying upon it to perform these requirements under the NERC GOP Reliability Standards. Rather, CCG asserts that while it assumed the responsibility for such services under the ERCOT Protocols it did not do so under the NERC Reliability Standards. CCG offers to support an amendment to the Tolling Agreement to make clear that PRL is the sole GOP and alone is responsible for compliance and enforcement actions arising with respect to the GOP Reliability Standards. Yet, CCG does not dispute that it is performing the communications services that are required under the NERC GOP Reliability Standards, nor can it because as the QSE, CCG is the only entity that can communicate with the BA, RC and TOP with respect to PRL's facility, in the absence of certain emergency conditions.

With respect to operational matters, the NERC Board of Trustees Compliance Committee finds that both PRL and CCG have assumed obligations that require each of them to comply with GOP Reliability Standards. As the excerpts from the PRL and CCG pleadings make clear, while PRL physically operates the facility, it does so pursuant to directives of CCG.

[BEGIN CONFIDENTIAL INFORMATION]

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END

CONFIDENTIAL INFORMATION]

For the reasons noted above, the NERC Board of Trustees Compliance Committee finds that the MP Agreement and the Tolling Agreement do clearly delineate the responsibilities and tasks performed by the parties. The point of the NERC *Statement of Compliance Registry Criteria (Rev. 4.0)* is to ensure that parties responsible for compliance with the Reliability Standards are registered and that no gaps exist. Because PRL and CCG both assume responsibility for activities falling under the Reliability Standards that are applicable to GOP, it is appropriate that they both be registered. Otherwise, a gap in reliability of the bulk power system will occur.

This is consistent with the Commission's pronouncements in Order No. 693 as to the applicable procedures in the event that parties refuse to enter a JRO or joint registration:

[E]ach "central" organization should be able to register as being responsible for compliance for itself and collectively on behalf of its members. Each member within a central organization may separately register to be accountable for a particular reliability function defined by the standards. *Under NERC's proposal, if the central organization and a member organization cannot agree that one organization or the other is responsible, or if the parties agree that the responsibilities for a particular reliability function should be split, then NERC would register both entities concurrently. NERC and the Regional Entities will then have the authority to find either organization or both accountable for a violation of a Reliability Standard, based on the facts of the case and the circumstances surrounding the violation.*⁷⁵

The NERC Board of Trustees Compliance Committee finds that there is sufficient clarity between the parties' responsibilities as set forth in the MP Agreement and the Tolling Agreement so that the concurrent registration does not result in an unintended redundancy or a gap within a function.

With respect to another functional entity, the Commission had occasion to consider the issue of joint registration. As the Commission held:

⁷⁵ Order No. 693 at P 103 (emphasis added) (describing NERC's procedures) and P 107 (finding these procedures to be "reasonable").



The intent was to allow flexibility in identifying the actual user, owner or operator of the Bulk-Power System that would be responsible for complying with the Requirements in the Reliability Standards. One approach would be that the RTO, ISO or other pooled resource registers as the transmission operator pursuant to the NERC compliance registry process and, while retaining ultimate responsibility, assigns specific tasks to be performed by what are sometimes called local control centers or other relevant organizations. Alternatively, the local control center operators could register together with the RTO, ISO or pooled resources as transmission operators clearly delineating their specific responsibilities with regard to the Requirements of particular Reliability Standards. Such joint registration must assure that there is no overlap between the decisionmaking and implementation functions, *i.e.*, that there are not two sets of hands on the wheel. Again, our intent is to ensure that there is neither redundancy nor gap in responsibility for compliance with the Requirements of a Reliability Standard, while allowing entities flexibility to determine how best to accomplish this goal.

. . . Consistent with our above explanation, we agree with NPCC that there is a difference between being assigned to perform a task and being responsible for completing the task. The organization that registers with NERC to perform a function will be the responsible entity and, while it may delegate the performance of that task to another, it may not delegate its responsibility for ensuring the task is completed.⁷⁶

With respect to CCG's claims of inconsistency among the Regions, the NERC Board of Trustees Compliance Committee finds these are unfounded. CCG has failed to demonstrate that other Regions have a regulatory framework similar to ERCOT in which a QSE must act on behalf of a Resource. CCG also asserts that it has entered into different contractual arrangements with other parties as to who is the GOP. This suggests that there may be a reasonable basis for an otherwise perceived inconsistency.

As to due process, the NERC Board of Trustees Compliance Committee finds that CCG has had the opportunity to supplement, and has taken full advantage of supplementing, the record and to respond to pleadings submitted as to the pending PRL and CCG appeals. Thus, arguments that there has not been due process fall flat.

Conclusion

The NERC Board of Trustees Compliance Committee finds that both PRL and CCG are properly included on NERC's Compliance Registry as a GOP. Accordingly, the NERC Board of Trustees Compliance Committee denies PRL's appeal filed on February 1, 2008. PRL has the right to file an appeal of this ruling with the Federal Energy

⁷⁶ *Id.* at PP 143-144.



Regulatory Commission, in accordance with 18 C.F.R. Part 385, within 21 days of the issuance of this decision, as specified in Rule 501.1.3.4 of NERC's *Rules of Procedure*.

In addition, the NERC Board of Trustees Compliance Committee denies CCG's appeal filed on May 4, 2007. CCG has the right to file an appeal of this ruling with the Federal Energy Regulatory Commission, in accordance with 18 C.F.R. Part 385, within 21 days of the issuance of this decision, as specified in Rule 501.1.3.4 of NERC's *Rules of Procedure*.

By the Board of Trustees Compliance Committee

Attachment K
Constellation's June 2, 2008 Letter

DICKSTEINSHAPIROLLP

1825 Eye Street NW | Washington, DC 20006-5403
TEL (202) 420-2200 | FAX (202) 420-2201 | dicksteinshapiro.com

June 2, 2008

NERC Board of Trustees Compliance Committee ("BOTCC")
Rebecca J. Michael
1120 G Street, NW
Suite 990
Washington, DC 20005-3801

Re: Constellation Energy Commodities Group, Inc., RA070005; Power Resources, Ltd,
RA080001; *Request for Extension of Appeal Period*

Dear Ms. Michael and BOTCC:

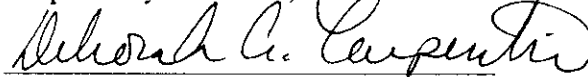
On May 22, 2008, the BOTCC issued a decision regarding the Generator Operator ("GOP") registrations of Constellation Energy Commodities Group, Inc. ("Constellation") and Power Resources, Ltd. ("PRL" and collectively with Constellation, the "Parties") with respect to PRL's generation facility located in Howard County, Texas in the referenced proceedings ("May 22 Decision"). As set forth in Rule 501.1.3.4 of NERC's Rules of Procedure, Parties have 21 days to appeal the May 22 Decision to the Federal Energy Regulatory Commission ("FERC" or "Commission"), making appeals due no later than June 12, 2008.

After the issuance of the May 22 Decision, Constellation approached PRL in an effort to settle outstanding issues regarding their respective GOP registrations. Since that time, the Parties have exchanged initial settlement options and are engaged in good faith negotiations in the hopes of reaching a settlement. Constellation believes that a settlement would be the best and most efficient resolution to the issues in the referenced proceedings, and that settlement could eliminate the need to pursue an appeal of the May 22 Decision at FERC. However, Constellation needs additional time to determine if settlement is possible.

Therefore, given the continued good faith negotiations in an effort to reach a settlement, Constellation requests that the BOTCC grant a 30-day extension of the time period set forth in Rule 501.1.3.4, and allow appeals of the May 22 Decision to be due by July 11, 2008, if necessary. Constellation has been authorized by PRL to advise the BOTCC that PRL does not oppose this request for extension of time.

Constellation requests that the BOTCC provide Constellation with a decision on this request for extension by June 4, 2008, so that there is sufficient time to prepare necessary appeals in time to file by June 12, 2008, if the extension request is denied.

Respectfully submitted,



Deborah A. Carpentier

Attorney for

Constellation Energy Commodities Group, Inc.

cc: David W. Hilt

Attachment L
NERC's June 6, 2008 Letter



Craig P. Lawrence
Manager of Organization
Registration and Certification

June 6, 2008

Deborah A. Carpentier
Dickstein Shapiro LLP
1825 Eye Street NW
Washington, DC 20006
CarpentierD@dicksteinshapiro.com

Gary D. Bachman
1050 Thomas Jefferson St. N.W.
Washington, D.C. 20007-3877
gdb@vnf.com

RE: Response to Request to Extend Deadline for Filing an Appeal with FERC

Dear Ms. Carpentier and Mr. Bachman:

The North American Electric Reliability Corporation Board of Trustees Compliance Committee (NERC BOTCC) has considered your June 22, 2008 "*Request for Extension of Appeal Period.*" In the absence of an extension, your appeal to the Federal Energy Regulatory Commission (FERC) regarding the May 22, 2008 NERC BOTCC decision would be due on June 12, 2008.

Upon consideration of your request and your representation that Constellation Energy Commodities Group, Inc. and Power Resources, Ltd. are engaged in negotiations in effort to resolve the appeals, your request is granted; conditioned, however, on the requirement that you provide e-mail updates to NERC at Craig.Lawrence@nerc.net on June 22, 2008, July 2, 2008 and July 11, 2008, regarding the status of your negotiations.

Additionally, to ensure there is no confusion with respect to Constellation's and PRL's rights and responsibilities during the pendency of your appeals, this letter confirms that Constellation and PRL will remain on the NERC Compliance Registry and will be responsible for compliance with the approved reliability standards during the pendency of the appeal for the functions for which they are registered.

Once the appeals process is concluded, if it is determined that an organization should not be included in the NERC Compliance Registry, it would not be subject to penalties or sanctions for violations that occurred during the pendency of the appeal. If it is determined that the organization should remain in the NERC Compliance Registry, such organization would be subject to applicable penalties or sanctions for any Reliability Standard violations.

116-390 Village Blvd.
Princeton, NJ 08540
609.452.8060 | www.nerc.com

Constellation Energy Commodities Group, Inc.
Power Resources, Ltd.
June 6, 2008

Accordingly, as noted above, because a registered entity is included in the NERC Compliance Registry, even though it has filed an appeal of that registry, it is subject to the NERC's and the Regional Entities' compliance and enforcement programs.

If you have any further questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig P. Lawrence". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Craig P. Lawrence

CC: Larry Grimm, Texas Regional Entity
Mark Henry, Texas Regional Entity
Tony Shiekhi, Texas Regional Entity
Stephen A. Larsen, President, CE Texas Resources, LLC

**PUBLIC VERSION
Confidential Information
Has Been Removed**

**Attachment M
Tolling Agreement
(Commercial Terms Redacted)**

Document Content(s)

FinalPublicAppeal.PDF.....1-345