

**PRIVILEGED AND CONFIDENTIAL ATTACHMENT A  
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**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**South Louisiana Electric Cooperative Association** )  
 ) **Docket No. RC13-4-000**  
 )

**REQUEST FOR REHEARING  
OF THE NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION**

The North American Electric Reliability Corporation (“NERC”) hereby submits this Request for Rehearing of the Commission’s July 18, 2013 Order<sup>1</sup> in this proceeding, pursuant to Section 313 of the Federal Power Act (“FPA”)<sup>2</sup> and 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”).<sup>3</sup> In the July 18 Order, the Commission granted the registration appeal of South Louisiana Electric Cooperative Association (“SLECA”) thereby reversing a decision by the NERC Board of Trustees Compliance Committee (“BOTCC”) that upheld SLECA’s registration as a Distribution Provider (“DP”) and Load-Serving Entity (“LSE”) in the SERC Reliability Corporation (“SERC”) Regional Entity footprint. The Commission also directed NERC to remove SLECA from the NERC Compliance Registry.

Rule 501.1.4 of the NERC Rules of Procedure provides that, “[f]or all geographical or electrical areas of the bulk power system [(“BPS”)], 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

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<sup>1</sup> *South Louisiana Electric Cooperative Association*, 144 FERC ¶ 61,050 (2013)(“July 18 Order”).

<sup>2</sup> FPA Section 313(a), 16 U.S.C. § 8251(a).

<sup>3</sup> 18 C.F.R. § 385.713 (2013).

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reliability standards to the fullest extent practical, and (2) there is no unnecessary duplication of such coverage or of required oversight of such coverage.” The NERC Compliance Registry lists entities that are subject to, and obligated to comply with, mandatory and enforceable Reliability Standards in accordance with Appendix 5B to the NERC Rules of Procedure. NERC understands the importance of, and its responsibility in, ensuring that users, owners and operators of the BPS are properly registered to avoid registration and reliability gaps.

NERC properly applied the plain language of the NERC Registry Criteria in upholding SLECA’s registration as a DP and LSE. NERC’s analysis was a straightforward application of the existing Commission-approved criteria. The July 18 Order erroneously concluded that SLECA’s load was not directly connected to the BPS, even though the applicable NERC Registry Criteria defines BPS as greater than 100 kV and SLECA’s facilities are connected at multiple substation locations to Louisiana Generating, L.L.C.’s (“LaGen’s”) BPS facilities at greater than 100 kV. Moreover, while irrelevant to registration of SLECA as a DP and LSE, the July 18 Order also erred in concluding that LaGen’s facilities are not transmission under the definition of Bulk Electric System (“BES”). The July 18 Order also erred because it failed to consider that SLECA is a user of the BPS and, therefore, SLECA should be registered on the NERC Compliance Registry and subject to applicable Reliability Standards. The July 18 Order’s determinations were unsupported and unjustified and must be reversed.

As a result of the July 18 Order, no entity is serving as a DP or LSE with respect to SLECA’s load at issue in this proceeding, with the result that no entity is subject to compliance with mandatory and enforceable Reliability Standards applicable to a DP and LSE at SLECA. Additionally, the July 18 Order will have resounding negative effects on registration and the application of the newly approved definition of BES that will go into effect in 2014.

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Specifically, the July 18 Order undermines the 100 kV bright-line threshold that the Commission has established for purposes of the revised BES definition.

As discussed in greater detail below, rehearing of the July 18 Order should be granted because the Commission erred on technical, legal and policy grounds. The July 18 Order was technically flawed for three reasons: (1) the July 18 Order ignored the plain language of the NERC Registry Criteria; (2) the July 18 Order improperly expanded the registration criteria without due process, justification or record support; and (3) most notably, the July 18 Order reached the wrong technical conclusion regarding LaGen's Landry substation. The July 18 Order is legally invalid as it directly contravenes FPA Section 215, as well as applicable rules, regulations, orders and prior precedent. As a result, the Commission's actions were arbitrary and capricious and the Commission must grant rehearing and reverse its decision.

As a policy matter, the July 18 Order undermines the importance of NERC's responsibility to ensure reliability of the BPS. The NERC Registry Criteria is used to determine who is subject to, and obligated to comply with, mandatory and enforceable Reliability Standards. NERC's registration criteria require all DPs and LSEs above a threshold MW load to be registered. The fact that SLECA's facilities are not BES is irrelevant. The fact that LaGen's facilities are BPS was improperly ignored. FPA Section 215 and implementing regulations not only require that BPS owners and operators are subject to registration, but also that BPS users are jurisdictional and subject to registration. Notably, there are only limited requirements that apply to DP and LSE, such as forecasting future load and supporting bulk system reliability actions, but the requirements are necessary and appropriate to ensure reliable operation of the BPS. For these reasons, rehearing is warranted.

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**I. BACKGROUND**

The July 18 Order stems from SLECA's request to be removed from the NERC Compliance Registry. In May 2008, SLECA voluntarily registered as a DP and LSE in the SERC footprint. SLECA is directly connected to LaGen at multiple substation locations greater than 100 kV.<sup>4</sup> At Landry, this is illustrated in the simplified Revised Landry Diagram No. 6, included in the record in this proceeding and relied on by the Commission in the July 18 Order and the attached Confidential one line diagrams set forth in Attachment A hereto.<sup>5</sup> The network character is established by the multiple substation delivery points at greater than 100 kV, and, in particular, it is established at the Landry substation by dual points of connection through the two transformers and the integrated and interwoven protection schemes. Notably, Revised Landry Diagram No. 6 shows two parallel 230-115 kV transformers connecting LaGen's 230 kV bus to SLECA's facilities. SLECA is directly connected to LaGen's 115 kV bus. LaGen's facilities can deliver power from Entergy's 230 kV transmission lines through one or both of LaGen's 230-115 kV transformers to SLECA's load through LaGen's 115 kV line. LaGen is included on the NERC Compliance Registry as a Transmission Owner. LaGen provides power and energy to SLECA under a long term power purchase agreement; SLECA in turn resells that power and energy to its end-use customers. Because neither SLECA nor LaGen own or operate generation at Landry, SLECA necessarily is a user of the BPS to obtain energy to serve its load.

On August 23, 2011, SLECA requested that SERC remove it from the NERC Compliance Registry, asserting that its facilities are radial and constitute a local distribution

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<sup>4</sup> See Appeal of South Louisiana Electric Cooperative Association of Decision of NERC Board of Trustees Compliance Committee and Request for Briefing Schedule at 1, filed Jan. 29, 2013 and supplemented on Feb. 14, 2013.

<sup>5</sup> See n.11 *infra*.

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system that, in SLECA's view, is not directly connected to the BES.<sup>6</sup> SERC denied SLECA's request on December 9, 2011, and SLECA appealed SERC's decision to NERC. On January 8, 2013, the BOTCC denied SLECA's appeal, finding that SLECA was properly registered as a DP and LSE.

SLECA appealed the BOTCC decision to the Commission. On July 18, 2013, the Commission granted SLECA's appeal.

**I. STATEMENT OF ISSUES AND SPECIFICATION OF ERRORS**

In accordance with 18 C.F.R. § 385.713(c)(1) and (2) (2013), NERC respectfully requests rehearing of the July 18 Order with respect to the following issues and specifications of error:

- the July 18 Order erred in concluding that, despite SLECA's facilities being interconnected to LaGen facilities at above 100 kV, SLECA was not directly connected to the BPS, in contravention of the law, 5 U.S.C. § 706(2)(C) (2012), and in violation of Section 215(a) of the FPA, 16 U.S.C. § 824o, and Part 39 of the Commission's regulations, 18 C.F.R. Part 39.
- the July 18 Order erred in misapplying the NERC Registry Criteria, in contravention of the law, 5 U.S.C. § 706(2)(C) (2012), and in violation of Section 215(a) of the FPA, 16 U.S.C. § 824o, and Part 39 of the Commission's regulations, 18 C.F.R. Part 39.
- the July 18 Order erred in ignoring the plain language of the Registry Criteria that defines the BPS as greater than 100 kV, in contravention of the law, 5 U.S.C. § 706(2)(C) (2012), and in violation of Section 215(a) of the FPA, 16 U.S.C. § 824o, and Part 39 of the Commission's regulations, 18 C.F.R. Part 39.
- the July 18 Order erred in applying new criteria without justification or support, in contravention of the law, 5 U.S.C. § 706(2)(C) (2012), and in violation of Section 215(a) of the FPA, 16 U.S.C. § 824o, and Part 39 of the Commission's regulations, 18 C.F.R. Part 39.
- the July 18 Order erred in misapprehending the nature and scope of LaGen's facilities leading to an incorrect determination as to SLECA's registration, in contravention of the law, 5 U.S.C. § 706(2)(C) (2012), and in violation of Section 215(a) of the FPA, 16 U.S.C. § 824o, and Part 39 of the Commission's regulations, 18 C.F.R. Part 39.

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<sup>6</sup> *Id.* at 2.

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- the July 18 Order erred by eviscerating the bright-line criteria envisioned in Order No. 743 and established in Order Nos. 773 and 773-A, in contravention of the law, 5 U.S.C. § 706(2)(C) (2012), and in violation of Section 215(a) of the FPA, 16 U.S.C. § 824o, and Part 39 of the Commission’s regulations, 18 C.F.R. Part 39.
- the July 18 Order erred by failing to recognize that SLECA is a user of the BPS and is obligated to register with NERC and SERC and should comply with applicable mandatory and enforceable Reliability Standards, in contravention of the law, 5 U.S.C. § 706(2)(C), and in violation of Section 215(a) of the FPA, 16 U.S.C. § 824o, and Part 39 of the Commission’s regulations, 18 C.F.R. Part 39.

The courts have frequently reiterated that an 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.’”<sup>7</sup> In addition, an agency must cogently explain why it has exercised its discretion in a given manner.<sup>8</sup> The Commission's failure to do so prevents a court from evaluating whether or not the agency engaged in reasoned decision-making.<sup>9</sup> Because the Commission’s July 18 Order is inconsistent with the applicable law, rules and regulations and unsupported by the facts in the record, it is arbitrary and capricious and the Commission should grant rehearing.

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<sup>7</sup> *PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194, 1198, 368 U.S. App. D.C. 97 (D.C. Cir. 2005) (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 103 S. Ct. 2856, 77 L. Ed. 2d 443 (1983)).

<sup>8</sup> *Motor Vehicle*, *supra*.

<sup>9</sup> *New York v. FERC*, 535 U.S. 1 (2002).

### **III. REQUEST FOR REHEARING**

#### **A. The July 18 Order Erred in Concluding that, Despite SLECA's Facilities Being Interconnected to LaGen Facilities at above 100 kV, SLECA was not Directly Connected to the BPS.**

##### **1. The July 18 Order misapplied the NERC Registry Criteria.**

The July 18 Order found that NERC had not adequately supported the registration of SLECA as a DP and LSE based on the registry thresholds set forth in NERC's Registry Criteria. To the contrary, it is the July 18 Order that erred in applying the NERC Registry Criteria. The July 18 Order found, and it was not disputed, that the load served by SLECA is greater than 25 MW<sup>10</sup> and that SLECA's facilities are directly connected at multiple substation locations all of which are greater than 100 kV to LaGen's facilities. In particular, the July 18 Order improperly concluded that SLECA should not be registered because NERC had not demonstrated SLECA was directly connected to the BPS. The July 18 Order did so by: (1) ignoring the plain language of the Registry Criteria; (2) improperly expanding the criteria without justification or support in determining SLECA should not be registered; and (3) misapprehending the nature and scope of LaGen's facilities leading to an incorrect determination as to SLECA's registration.<sup>11</sup>

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<sup>10</sup> July 18 Order at P 27 ("There is no dispute in the record that SLECA serves a peak load greater than 25 MW."). *See also* July 18 Order at P 19 n.24.

<sup>11</sup> Attached is the one line diagram for the Landry substation, which is being filed non-publicly, as well as letter correspondence regarding it, which were in the underlying proceeding before NERC. Also included is a one line diagram received from LaGen that reflects the current configuration of the Landry substation equipment. The attachment to the letter correspondence is being omitted because it was included as an attachment to the July 18 Order. Information in the attachment includes confidential information as defined by the Commission's regulations at 18 C.F.R. Part 388 and orders, as well as NERC Rules of Procedure. This includes non-public information related to Registered Entity sensitive business information and confidential information regarding critical energy infrastructure. In accordance with the Commission's Rules of Practice and Procedure, 18 C.F.R. § 388.112, a non-public version of the information redacted from the public filing is being provided under separate cover. Accordingly, NERC requests that the confidential, non-public information be provided special treatment in accordance with the above regulation.

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**a. The July 18 Order ignored the plain language of the Registry  
Criteria that defined the BPS as greater than 100 kV.**

Of relevance here, the threshold criteria for the registration of a LSE are that the entity has a peak load of greater than 25 MW and is directly connected to the “Bulk Power (>100 kV) System.”<sup>12</sup> The threshold criteria for the registration of a DP on the NERC Compliance Registry are that the entity serves greater than 25 MW of peak load, and that it is directly connected to the BPS.<sup>13</sup> Section III of the Registry Criteria, which governs registration of DPs and LSEs, expressly defines the BPS as greater than 100 kV. Therefore, the NERC Registry Criteria makes clear that an entity is directly connected to the BPS when it is directly connected to facilities at greater than 100 kV.

The July 18 Order properly acknowledged that serving peak load greater than 25 MW and being directly connected to the BPS are the only two factors relevant to the determination of whether SLECA should be registered as a DP and LSE.<sup>14</sup> In the instant case, the July 18 Order found that: (1) it was undisputed that SLECA serves 119.3 MW of load, which is a peak load greater than 25 MW; and (2) SLECA’s facilities are directly interconnected at multiple substation locations to LaGen’s facilities at 115 kV.<sup>15</sup> Because the threshold requirements for registration as a DP and LSE were met, the July 18 Order’s review should have ended in support of upholding the registration. However, the July 18 Order erred in concluding that the threshold test requires not only a demonstration that an entity is connected at or above 100 kV, but also some other demonstration in support of the fact that it is connected to the BPS. This requirement

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<sup>12</sup> See NERC Registry Criteria Appendix 5B at Section III.

<sup>13</sup> *Id.*

<sup>14</sup> July 18 Order at P 27.

<sup>15</sup> *Id.*



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for an additional demonstration is not set out in the Registration Criteria, is not necessary, and is not consistent with long-standing Commission precedent.

In *Direct Energy Services, LLC*, cited in the July 18 Order, the Commission recognized that the Registry Criteria “do not speak in terms of load being ‘served through’ the Bulk-Power System but, rather, requires a ‘direct connection’ to the Bulk-Power System.”<sup>16</sup> For example, in evaluating registration of LSEs in another context, the Commission noted:

in registering generator owners and operators, NERC applies the phrase “directly connected to the Bulk-Power System” to generators connected to a transmission line with voltage of 100 kV or above.[] The owner or operator of a generating unit connected at a voltage of less than 100 kV would not be registered unless justified pursuant to another provision of the Registry Criteria.[]<sup>17</sup>

The same analysis of whether SLECA is connected to a transmission line with voltage of 100 kV or above applies here with respect to registering SLECA as a DP and LSE. It is undisputed that SLECA is connected at 100 kV at Landry. The July 18 Order erroneously concluded that the Landry substation is not BPS and LaGen’s facilities are not transmission. As discussed more fully below, LaGen is transmission under the definition of BPS, and it is transmission under the definition of BES. Because the July 18 Order failed to properly apply the Registry Criteria, it should be reversed and SLECA should remain registered.

**b. The July 18 Order erred in applying new criteria without justification or support.**

The July 18 Order stated that NERC failed to demonstrate that SLECA is directly connected to networked transmission facilities.<sup>18</sup> The July 18 Order further held that NERC did not explain how LaGen’s facilities could deliver power from SLECA to the BES, or experience

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<sup>16</sup> 121 FERC ¶ 61,274, at PP 36-38 (2007).

<sup>17</sup> *Id.* at P 37.

<sup>18</sup> *See* July 18 Order at P 29.

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networked flow,<sup>19</sup> and that NERC did not provide evidence to support the position that SLECA’s circuit switchers were “designed, installed, and operated for the protection of the Bulk Power System.”<sup>20</sup>

The July 18 Order invented a new criterion for DP and LSE registration, namely, that NERC must show the “facilities could deliver power from SLECA to the bulk electric system, or experience networked flows.” (July 18 Order at P 28.) That criterion does not exist in the NERC Registry Criteria and is a red herring.

As to each of these issues, the July 18 Order erred in holding that NERC must separately support its position that SLECA is directly connected to the BPS, separate and apart from meeting the requirement that SLECA’s facilities are directly connected at multiple substation locations to LaGen’s facilities at greater than 100 kV. There is no requirement in the Registry Criteria that NERC make such a determination. The July 18 Order’s departure from the plain language is unsupported and inconsistent with the NERC Registry Criteria and prior precedent established in other registration appeals, such as *Direct Energy* cited above. Notably, LaGen’s facilities at issue are utilized to transmit power and energy to SLECA; therefore, they necessarily are transmission facilities.

Moreover, the July 18 Order’s findings contravene FPA Section 215(a)(1) and should be reversed because they go well beyond the statutory definition of BPS to unreasonably restrict what constitutes BPS facilities to those that include elements such as bidirectional flow and looped capability. The FPA does not specify what factors must be considered in evaluating whether a facility is a BPS element, rather it defines BPS broadly. Specifically, FPA Section 215(a)(1) defines BPS as: “(A) facilities and control systems necessary for operating an

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<sup>19</sup> *Id.* at P 28.

<sup>20</sup> *Id.* at P 31.

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interconnected electric energy transmission network (or any portion thereof); and (B) electric energy from generation facilities needed to maintain transmission system reliability.”<sup>21</sup> NERC established that SLECA’s facilities are necessary for operating an interconnected electric energy transmission network (or a portion thereof). In the instant case, the network character is established by the multiple substation connections of SLECA at LaGen at over 100 kV, as well as the dual points of connection and the interwoven protection schemes at Landry. Because the NERC Registry Criteria threshold requirements were met, as well as the Section 215 definition of BPS, nothing further was required. This is consistent with the Commission’s prior finding in *New Harquahala* that no further analysis was required as to what constituted integrated transmission elements where it was established that the entity met the NERC Registry Criteria thresholds and was needed for reliable operation of the grid.<sup>22</sup>

Moreover, the currently effective definition of BES, set forth in the NERC Registry Criteria, does not require that SLECA’s facilities have bidirectional flow or looped capability. It states:

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.

BPS is defined in the NERC Registry Criteria as greater than 100 kV. Here, there are two transmission sources and multiple substation delivery points from SLECA’s facilities to LaGen’s facilities at greater than 100 kV; therefore, the exception for radial transmission facilities serving only load with one transmission source is inapplicable. Moreover, as explained

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<sup>21</sup> 16 U.S.C. § 824o(a)(1) (2013).

<sup>22</sup> *New Harquahala Generating Company, LLC*, 123 FERC ¶ 61,173 (2008) (“New Harquahala”).

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in greater detail below, the network character is established by the dual points of connection at Landry and the interwoven protection schemes.

Imposing additional criteria beyond those required by the NERC Registry Criteria and the FPA is arbitrary and capricious and contrary to law. Accordingly, the Commission should grant rehearing.

**c. The July 18 Order erred in misapprehending the nature and scope of LaGen's facilities leading to an incorrect determination as to SLECA's registration.**

The Commission erred in finding that the facilities did not operate in a networked fashion and the circuit switchers did not exist to protect the BPS. Indeed, the record clearly establishes that the facilities are operated in a network fashion and the circuit switchers are in place to protect the BPS, as NERC maintained.

According to the July 18 Order:

although revised Landry Diagram No. 6 shows two parallel 230-115 kV transformers connecting LaGen's 230 kV bus to SLECA's facilities, the record does not support that these transformers are operated in a networked fashion. Rather, revised Landry Diagram No. 6 indicates that a normally open switch prevents bi-directional or looped flows from occurring on these facilities. Accordingly, NERC has not adequately demonstrated that SLECA is directly connected to networked transmission facilities.<sup>23</sup>

The July 18 Order's analysis of the impact of the normally open switch in this scenario was flawed. The July 18 Order acknowledged that the Landry Diagram No. 6 has two points of interconnection with transformers. Indeed, at Landry, there are two different point of connection at the 230 kV system. The Landry substation is fed at 230 kV from two different sources at Raceland and Terrebonne, which are part of the overall bulk transmission network. The network

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<sup>23</sup> See July 18 Order at P 29.

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character is established by the dual points of connection and the interwoven protection schemes.

It is not established by the position of the switch.

The position of the switch on these facilities is dictated by the facility operator and can be changed. Radial lines traditionally have one point of interconnection that serves load. The facilities at the Landry substation, however, have two points of interconnection from SLECA to LaGen designed to operate with, a dual path of supply. As a result of the two interconnections, the LaGen facilities do not qualify for the BES definition exception that a radial line serving load from one transmission source generally does not meet the currently effective BES definition.

With respect to the configuration at the Landry substation at issue in this case, the protection scheme is, in fact, directly connected to the BPS:

- 1) the 230 kV side switching devices owned by LaGen are circuit switchers, and they are set with differential [to the SLECA 115 kV devices] and over-current to trip both sides [230 kV 7219 and 7222] and [115kV 672, 671 owned by SLECA] for faults internal to the zone of protection;
- 2) there is no 230 kV breaker failure scheme at Landry; rather, if there is a failure of either circuit switcher to clear, then remote 230 kV terminals (located on the Entergy system) trip and the high side SLECA 115 kV breakers [115kV 672, 671] also trip to clear;
- 3) there are no high speed ground switches at Landry; these are motor-operated line switches with Kirk key interlocks to interrupt line charging current only; and
- 4) the Under Frequency Load Shedding scheme is attached to the Landry 230 kV breakers, so that for an Under Frequency event, both circuit switchers trip, dumping all SLECA load.

This differential protection scheme is in place because there is no low-side breaker on the LaGen substation. Therefore, SLECA's facilities are integrated with the circuit switchers on the 230 kV side. Essentially, the only breaker for the SLECA system is a BPS element. This is further evidenced by the Under Frequency Load Shedding scheme for the SLECA system, which

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is attached to the Landry 230 kV breakers. As the system is configured, if there is an Under Frequency event on the BPS, both circuit switchers trip, dumping all SLECA load.

Overall, this demonstrates that SLECA's connection to the BPS is integral to protecting and operating the assets at Landry both at the 230kV interconnection and at the 115kV interconnection. The July 18 Order's singular focus on the normally open switch position on the LaGen 115 kV bus ignored the remainder of the protection scheme at the Landry substation. By treating the presence of that one switch as dispositive of whether SLECA is directly connected to the BPS, the July 18 Order reached the wrong technical conclusion regarding SLECA's interconnection to the BPS. That oversimplification also led to the July 18 Order's erroneous conclusion regarding the need for SLECA's registration as a DP and LSE. As shown in the attached Confidential one line diagrams, LaGen's Landry substation is clearly transmission under either the BPS or BES. In fact, the LaGen Landry substation is fed from two separate 230 kV substations, Raceland and Terrebonne, to which SLECA is interconnected.

The July 18 Order further erred in finding that, although LaGen is registered as a Transmission Owner, NERC had not identified whether LaGen was registered on the basis of the facilities at the Landry substation or other transmission facilities, nor had NERC sufficiently explained why these particular facilities constitute BES transmission facilities.<sup>24</sup>

As the BOTCC decision recognized, and NERC's filings in this docket reiterate, SLECA's facilities are connected to LaGen's 115 kV transmission facilities with a voltage of more than 100 kV, over which LaGen delivers power to SLECA. The BOTCC decision found that LaGen's 115 kV facilities were part of the BES and the BPS. It did so by application of the definition of the BES in the Registry Criteria and BPS also as defined in the Registry Criteria.

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<sup>24</sup> *Id.* at n.35.

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The July 18 Order's statements in footnote 35 are directly contradicted by the many statements of NERC cited by the Commission that LaGen's facilities at Landry were transmission facilities and not radial facilities.<sup>25</sup>

Because the order is contrary to applicable law, rules and regulations, the Commission should grant rehearing and reverse the July 18 Order.

**B. The July 18 Order erred by eviscerating the bright-line criteria envisioned by Order No. 743 and established in Order Nos. 773 and 773-A.**

The July 18 Order's decision not to abide by the 100 kV threshold established in Appendix 5B to the Rules of Procedure contradicts previous decisions made by the Commission regarding the validity and importance of this threshold. For example, in Order No. 743, the Commission determined that the best way to address its concerns with regard to the BES definition was to "eliminate regional discretion in the ERO's current definition, maintain the bright-line threshold that includes all facilities operated at or above 100 kV except defined radial facilities, and adopt an exemption process and criteria for removing from the bulk electric system facilities that are not necessary for operating the interconnected transmission network."<sup>26</sup> The Commission went on to specifically articulate its reasoning in establishing the bright-line threshold, stating that "[i]t is important to note that the Commission is not proposing to change the threshold value already contained in the definition, but rather seeks to eliminate the ambiguity created by the current characterization of that threshold as a general guideline."<sup>27</sup>

In Order No. 743-A, the Commission reaffirmed these determinations, and made three important clarifications. First, the Commission clarified that the specific issue NERC was

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<sup>25</sup> See, e.g., *id.* at PP 19 and 29.

<sup>26</sup> *Revisions to Electric Reliability Organization Definition of Bulk Electric System*, Order No. 743, 133 FERC ¶ 61,150 at P 30 (2010).

<sup>27</sup> *Id.*

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directed to rectify in Order No. 743 was the discretion the Regional Entities had under the existing definition of BES to define the BES in their regions without any oversight from the Commission or NERC.<sup>28</sup> Second, the Commission clarified that the 100 kV bright-line threshold was a “first step or proxy” for determining which facilities should be included in the BES (specifically, which facilities should be classified as local distribution and which should be classified as transmission).<sup>29</sup> Third, the Commission clarified that language in Order No. 743<sup>30</sup> referring to where the “line” between transmission and local distribution lies “was intended to grant discretion to the [Electric Reliability Organization (“ERO”)], as the entity with technical expertise, to develop criteria to determine how to differentiate between local distribution and transmission facilities in an objective, consistent, and transparent manner.”<sup>31</sup>

The Commission reiterated the utility and importance of the 100 kV bright-line threshold in Order No. 773, determining that the modified definition of BES approved in that order was “just, reasonable, not unduly discriminatory or preferential, and in the public interest.”<sup>32</sup> Regarding the bright-line 100 kV distinction, the Commission stated that “the core definition eliminates the provision that allows broad regional discretion, and establishes a 100 kV bright-line threshold for determining, *in the first instance*, those elements and facilities that are included

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<sup>28</sup> *Revisions to Electric Reliability Organization Definition of Bulk Electric System*, Order 743-A, 134 FERC ¶ 61,210 at P 11 (2011).

<sup>29</sup> *Id.* at PP 40, 67.

<sup>30</sup> “Determining where the line between “transmission” and “local distribution” lies, which includes an inquiry into which lower voltage “transmission” facilities are necessary to operate the interconnected transmission system, should be part of the exemption process the ERO develops.” Order 743 at P 37.

<sup>31</sup> Order No. 743-A at P 68.

<sup>32</sup> *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, 141 FERC ¶ 61,236, Order No. 773 at P 38 (2012).



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in the bulk electric system.”<sup>33</sup> The Commission found that the 100 kV bright-line test specifically addresses the concerns raised by the Commission in Order No. 743.

We also find that NERC’s definition satisfies the Commission’s technical concerns in Order No. 743 *through the use of a bright-line 100 kV threshold*, with specific inclusions and exclusions within the definition, for identifying bulk electric system elements and the establishment of an exception process for facilities that are not necessary for operating the interconnected transmission network.<sup>34</sup>

Finally, in Order 773-A, the Commission specifically rejected requests by stakeholders to overturn or reject the 100 kV bright-line test. While the Commission explained that the 100 kV bright-line test was not the sole, exclusive criterion used in assessing whether or not a facility is “used in local distribution,” and reserved for itself the ability to make the final determination with regard to this distinction through the petition process, it was nonetheless an essential first element in the requisite analysis. “Thus, because application of the 100 kV threshold is the first step in the process of determining whether an element is part of the bulk electric system, we reject the argument that the definition will sweep in all elements above 100 kV in a manner inconsistent with the Commission’s jurisdiction.”<sup>35</sup>

Here, LaGen is registered as a Transmission Owner with respect to its Landry facilities. LaGen has not petitioned the Commission for a determination that its facilities are local distribution. LaGen also has not accepted compliance responsibility as a DP and LSE on behalf of SLECA; to the contrary, LaGen advised SLECA in 2008 that SLECA should register as the DP and LSE.<sup>36</sup>

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<sup>33</sup> *Id.* at P 39 (*emphasis added*).

<sup>34</sup> *Id.* at P 40 (*emphasis added*).

<sup>35</sup> *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, 143 FERC ¶ 61,053, Order 773-A, at P 22 (2013).

<sup>36</sup> *See* Appeal of South Louisiana Electric Cooperative Association of Decision of NERC Board of Trustees Compliance Committee and Request for Briefing Schedule at 1, filed Jan. 29, 2013.

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Because the July 18 Order’s decision essentially eviscerates the 100 kV bright-line criterion for determining BES facilities, established in Order No. 773 and Order No. 773-A, rehearing of the decision should be granted.

**C. The July 18 Order erred by failing to consider whether SLECA is a user of the BPS in concluding that SLECA was not properly registered on the NERC compliance registry.**

The July 18 Order is inconsistent with Section 215 of the FPA, which provides that “[a]ll users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.”<sup>37</sup> In addition, it is contrary to the Commission’s regulations that direct all users, owners, and operators of the BPS to register with NERC.<sup>38</sup> SLECA’s facilities themselves do not need to be bulk power system facilities in order to register SLECA as a DP and LSE. The July 18 Order recognized that SLECA buys power from LaGen and sells that power to SLECA’s customers.<sup>39</sup> SLECA receives that power from LaGen’s bulk electric system facilities, in the specific fact pattern analyzed in the July 18 Order, from the Landry substation.

As the Commission held in Order No. 693, “... it is important to have as much certainty and stability as possible regarding which users, owners and operators of the Bulk-Power System must comply with mandatory and enforceable Reliability Standards.”<sup>40</sup> The Commission also has recognized that: “NERC, as the ERO, has developed an approach to accomplish this through its compliance registry process.”<sup>41</sup> Ultimately, in Order No. 693, the Commission ruled that the

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<sup>37</sup> 16 U.S.C. §824o(b)(1) (2013).

<sup>38</sup> 18 C.F.R. § 39.2(c).

<sup>39</sup> July 18 Order at P 10.

<sup>40</sup> Order No. 693 at P 92 (quoting the ERO Certification Order (at P 689), “The Commission has previously found NERC’s compliance registry process to be a reasonable means ‘to ensure that the proper entities are registered and that each knows which Commission-approved Reliability Standard(s) are applicable to it.’”).

<sup>41</sup> *Id.*

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NERC compliance registry process should be used to identify users, owners and operators of the BPS that must comply with Reliability Standards.<sup>42</sup>

In Order No. 693, as directed by Congress, the Commission also took the important step of approving the first set of mandatory Reliability Standards within the United States. This marked a departure from the electric industry's reliance on voluntary compliance with NERC Reliability Standards.<sup>43</sup> The Commission's approval of mandatory Reliability Standards was informed by the August 14, 2003 blackout, which affected an estimated 50 million people and 61,800 megawatts of electric load.<sup>44</sup> The August 14, 2003 blackout was caused, in part, by entities acting in violation of NERC's then-effective voluntary Reliability Standards. Thus, to help prevent future blackouts, EAct 2005 and Section 215 of the FPA were enacted to make Reliability Standards mandatory and enforceable.<sup>45</sup>

Accordingly, Reliability Standards help to ensure the reliability of the grid. If an entity is included in the NERC Compliance Registry, and is subject to Reliability Standards, then it is one of the entities that help ensure reliability. The NERC functional model identifies specific roles for such entities. If entities are not registered for identified roles, there can be a gap in reliability. The NERC Registry Criteria is used by NERC to identify candidates for NERC registration – which includes users, owners, and operators of the BPS – in accordance with Section 215 of the FPA. DPs and LSEs are users of the BPS.

The NERC *Statement of Compliance Registry Criteria* emphasizes the operational importance and role of an LSE, describing an LSE as being responsible for: “Secur[ing] energy

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<sup>42</sup> *Id.* at P 115.

<sup>43</sup> Order No. 693 at P 21.

<sup>44</sup> *Id.* at P 22.

<sup>45</sup> *Id.*

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and Transmission Service (and related Interconnected Operations Services) to serve the electrical demand and energy requirements of its end-use customers.” A DP, in turn, is defined in the Registry Criteria as the “entity that provides and operates the “wires” between the transmission system and the end-use customer.”<sup>46</sup>

DPs and LSEs provide needed operational data and other data for coordination. Ahead of time, DPs coordinate with Transmission Planners on transmission expansion, coordinate system restoration plans with the Transmission Operators, coordinate with End-use Customers and LSEs to identify new facility connection needs, develop interconnection agreements with Transmission Owners on a facility basis, provide operational data to Transmission Operator, coordinate with Load-Serving Entities to identify critical loads that are to be precluded from load shedding where avoidable.

In real time, DPs implement voltage reduction and shed load as directed by the Transmission Operator or Balancing Authority and implement system restoration plans as coordinated by the Transmission Operator.

DPs and LSEs have the potential to affect the BPS whether or not they supply power to the BPS. SLECA, in particular, has shed load to help preserve the reliable operation of the BPS.<sup>47</sup> This is one of many instances where a DP or LSE has had to curtail load to preserve reliability.

In its ERO certification proceeding, NERC proposed the following definition:

User of the Bulk-Power System means any entity that sells, purchases, or transmits electric power directly over the [BPS], or that maintains

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<sup>46</sup> See NERC Registry Criteria Appendix 5B at Section II.

<sup>47</sup> SPP Reliability Coordinator, *Acadiana Load Shed Event: Report to Entergy-Regional State Committee*, MISO, March 17, 2011, [https://www.misoenergy.org/\\_layouts/MISO/ECM/Redirect.aspx?ID=140405](https://www.misoenergy.org/_layouts/MISO/ECM/Redirect.aspx?ID=140405); See also [http://www.sleca.com/news\\_letters/110301.pdf](http://www.sleca.com/news_letters/110301.pdf) (“SLECA had to shed 8 megawatts of load on December 27, 2010 due to a transmission failure between Richard and Scott, LA.”).

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facilities or controls systems that are part of the [BPS], or that is a system operator. The term excludes customers that receive service at retail that do not otherwise sell, purchase, or transmit power over the [BPS] or own, operate or maintain, control or operate facilities or systems that are part of the [BPS].<sup>48</sup>

While the Commission declined to accept the NERC-proposed definition, the Commission generally recognized that it is a critical jurisdictional term and that an entity “directly connected to the [BPS] selling, purchasing, or transmitting electric energy over the [BPS] is a User of the [BPS].”<sup>49</sup> The Commission also noted that, with regard to the NERC-proposed definition, a concern:

[T]hat a large industrial customer that receives electric energy directly from the Bulk-Power System may not be defined as a user of the Bulk-Power System, even though it may directly affect the reliability of the Bulk-Power System. We conclude that the precise scope of the term “User of the Bulk-Power System,” and thus the extent of persons subject to the Reliability Standards, would be best considered in the context of our review of those Standards, taking into account the views of the ERO and others.<sup>50</sup>

In *New Harquahala*,<sup>51</sup> the Commission considered whether a reliability gap could result if New Harquahala was not properly registered. Specifically, the Commission found in *New Harquahala* that if reliability requirements, including coordination of protection systems, operations and maintenance and properly trained and certified staff, are not provided, a reliability gap would exist for New Harquahala’s interconnection facilities.<sup>52</sup> Similarly, in *Cedar Creek*

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<sup>48</sup> *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, 71 FR 8,662, at P79 (2006).

<sup>49</sup> Order No. 672 at PP 98-99.

<sup>50</sup> *Id.*

<sup>51</sup> *See New Harquahala.*

<sup>52</sup> *Id.* at P 52.

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*and Milford*, the Commission found that compliance with certain Reliability Standards was necessary to prevent a reliability gap.<sup>53</sup> The same is true here.

The Commission has long held that there should be no gaps in NERC registration.<sup>54</sup> Under the Registry Criteria, a DP provides and operates the “wires” between the transmission system and the end-use customer.<sup>55</sup> In the instant case, no other entity provides wires between the transmission system and the end-use customer at the SLECA facility, and no other entity, such as LaGen, has agreed to accept compliance responsibility for wires at the SLECA facility. Moreover, not only is SLECA a user of the BPS for purposes of DP and LSE registration, SLECA owns no generation and LaGen has no generation at Landry. SLECA necessarily “uses” the BPS to secure the energy and generation it needs to serve its load. Because it has not transferred these obligations to a third party by written agreement, it is necessary and appropriate for SLECA to comply with Reliability Standards applicable to a DP and LSE. Otherwise, no entity will be subject to compliance with Reliability Standards applicable to a DP and LSE for SLECA’s facilities. Consequently, a reliability gap would occur.

At present, SLECA is required to comply with the following Reliability Standards, and prospectively no one will be required to comply with them as a result of the July 18 Order:

- Event Reporting (**EOP-004-1 and EOP-004-2**)
- Reliability Coordinator Data Specification and Collection (**IRO-010-1a**)
- Capacity Benefit Margin (**MOD-004-1**)
- Aggregated Actual and Forecast Demands and Net Energy for Load (**MOD-017-0.1**)
- Treatment of Nonmember Demand Data and How Uncertainties are Addressed in the Forecasts of Demand and Net Energy for Load (**MOD-018-0**)

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<sup>53</sup> See *Cedar Creek Wind Energy, LLC and Milford Wind Corridor Phase I, LLC*, 135 FERC ¶ 61,241 at P 63 (2011); *order denying reh’g and partially granting clarification*, 137 FERC ¶ 61,141 (2011) (“Cedar Creek and Milford”).

<sup>54</sup> See, generally, *New Harquahala*; see also *Cedar Creek and Milford*.

<sup>55</sup> NERC Statement of Compliance Registry Criteria (Appendix 5B of NERC Rules of Procedure) at p. 6.

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- Reporting of Interruptible Demands and Direct Control Load Management (“DCLM”) (**MOD-019-0.1**)
- Providing Interruptible Demands and DCLM Data (**MOD-020-0**)
- Documentation of the Accounting Methodology for the Effects of Demand-Side Management in Demand and Energy Forecasts (**MOD-021-1**)
- Analysis and Mitigation of Transmission and Generation Protection System Misoperations (**PRC-004-2a**)
- Transmission and Generation Protection System Maintenance and Testing (**PRC-005-1b**)
- Reliability Responsibilities and Authorities (**TOP-001-1a**)
- Normal Operations Planning (**TOP-002-2.1b**)

As the Commission held in prior registration appeals, if adequate reliability requirements, including coordination of protection systems and operations and maintenance are not provided or required for SLECA, there will be a reliability risk for a significant portion of the BPS in SERC.<sup>56</sup> Just as the Commission posited in *New Harquahala*, there could be an event that could have an adverse impact on reliability beyond SLECA, if the protection relays or protection systems on the SLECA system are not coordinated with those on the transmission network facilities in the area.

The combined effect of deregistering LSEs and DPs, such as SLECA, over time, could cause a gap in NERC registration and compromise reliability of the bulk system. Indeed, many of the DPs and LSEs that are registered on the NERC Compliance Registry are in rural areas where the BAs, TOPs and RCs for the region typically have little visibility into the available generation or constraints without the reporting and communications required by mandatory and enforceable Reliability Standards. The net effect of the July 18 Order will be to narrowly circumscribe the wide area view that exists today, in direct contravention of the very purpose of FPA Section 215. Since the issuance of the July 18 Order, eight registered entities have

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<sup>56</sup> See, e.g., *New Harquahala*.

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contacted NERC to request removal from the NERC Compliance Registry. As a result, it is imperative to reverse the July 18 Order.

**V. CONCLUSION**

Wherefore, for the foregoing reasons, NERC respectfully requests that Commission grant the requested rehearing based on the errors identified herein.

Respectfully submitted,

/s/ Rebecca J. Michael

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**August 19, 2013**



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**CERTIFICATE OF SERVICE**

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

Dated at Washington, D.C. this 19<sup>th</sup> day of August, 2013.

*/s/ Meredith M. Jolivert*

Meredith M. Jolivert  
*Attorney for North American  
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**ATTACHMENT A**

ONE LINE DIAGRAM AND LETTER CORRESPONDENCE (WITH REVISED  
DIAGRAM 6 OMITTED BECAUSE IT WAS ATTACHED TO THE JULY 18 ORDER)

ONE LINE DIAGRAM FROM LAGEN