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

U.S. DEPARTMENT OF ENERGY) **Docket No. RC08-5-001**
PORTSMOUTH/PADUCAH PROJECT OFFICE)

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213, the North American Electric Reliability Corporation (“NERC”) hereby moves for leave to answer and answers the comments submitted by the United States Department of Energy Portsmouth/Paducah Project Office (“DOE/PPPO”) in the above-referenced proceeding.

I. PROCEDURAL HISTORY

On July 21, 2008, the Commission issued an “Order on Appeal of Electric Reliability Organization Compliance Registry Determination” to NERC¹ involving DOE/PPPO. In the July 21 Order, the Commission upheld the registration of DOE/PPPO as a Transmission Owner, Transmission Operator and Distribution Provider in the ReliabilityFirst Corporation’s (“ReliabilityFirst”) region. In addition, the Commission remanded to NERC for further consideration the issue whether DOE/PPPO was properly registered as a Load-Serving Entity (“LSE”).²

¹ *U.S. Department of Energy, Portsmouth/Paducah Project Office*, 124 FERC ¶ 61,072 (2008) (July 21 Order).

² *Id.* at PP 39-40, 59-60.

On October 6, 2008, NERC submitted the Board of Trustees Compliance Committee (“BOTCC”) decision on remand in response to the July 21 Order.³ The NERC BOTCC affirmed the decision to retain DOE/PPPO’s registration as an LSE on the NERC Compliance Registry. The NERC BOTCC has rendered this decision based on information provided by ReliabilityFirst, DOE/PPPO and Ohio Valley Electric Corporation (“OVEC”).

On November 5, 2008, DOE/PPPO submitted comments in response to NERC’s October 6 filing.⁴ By this filing NERC requests leave to file this Answer to limited issues raise in DOE/PPPO’s untimely intervention and comments.

II. NOTICES AND COMMUNICATIONS

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

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³ *North American Electric Reliability Corporation*, “NERC Board of Trustees Compliance Committee Decision on Remand,” *Docket No. RC08-5-001*, (October 6, 2008).

⁴ *North American Electric Reliability Corporation*, “Comments in Response to North American Electric Reliability Corporation’s October 6, 2008 Submittal in the above Captioned Case; Protective Motion to Intervene,” (DOE/PPPO Comments), *Docket No. RC08-5-001* (November 5, 2008).

III. MOTION FOR LEAVE TO FILE ANSWER

The Commission's rules permit the filing of answers to motions in which parties seek substantive relief. The Commission's rules generally do not permit the filing of answers to protests, unless otherwise permitted by the Commission.⁵ However, the Commission has granted motions for leave to file such answers if they will clarify issues in dispute, ensure a complete and accurate record or otherwise provide information to assist the Commission in its decision-making process.⁶ NERC's Answer is limited and will clarify certain concerns raised in DOE/PPPO's comments. In addition, this Answer will provide information that will assist the Commission in its decision-making process. Accordingly NERC requests permission to submit this Answer.

IV. ANSWER

At issue in this phase of the proceeding is whether DOE/PPPO is properly registered as an LSE in the ReliabilityFirst region. To recap, the NERC *Statement of Compliance Registry Criteria* ("*Registry Criteria*") states an LSE is an entity that "[s]ecures energy and transmission service (and related interconnected operations services) to serve the electrical demand and energy requirements of its end-use customers."

⁵ See 18 C.F.R. §385.213(a)(2).

⁶ *San Diego Gas & Electric v. Sellers of Energy and Ancillary Services*, 108 FERC ¶ 61,219, at P 14, n. 7 (2004) (answer was accepted as it "provided information that assisted [FERC in its] decision-making process"); see also *Michigan Electric Transmission Co.*, 106 FERC ¶ 61,064, at P 3 (2004) (the permitted answer "provides information that clarifies the issues"); *North American Electric Reliability Corporation, Order Certifying NERC as the Electric Reliability Organization and Ordering Compliance Filing*, 116 FERC ¶ 61,062, at P 24 (2006) (reply comments of NERC and others accepted "because they have provided information that assisted us in our decision-making process"); *North American Electric Reliability Corporation, Order Conditionally Accepting 2007 Business Plan and Budget of the North American Electric Reliability Corporation, Approving Assessments to Fund Budgets and Ordering Compliance Filings*, 117 FERC ¶ 61,091, at P 18 (2006) (same); *North American Electric Reliability Corporation*, 119 FERC ¶ 61,248 (2007) at P 6 (same).

1. DOE/PPPO meets the *Registry Criteria* requirements to be an LSE.

Significantly, in its comments on NERC's compliance filing, DOE/PPPO acknowledges that it supplies electricity to the contractors at the site: "*DOE-PPPO supplies electricity to its contractors to secure energy for the Government's needs at the site.*"⁷ In addition, DOE/PPPO concedes that the contractors are "third parties."⁸

However, DOE/PPPO asserts that the federal contractors at site are not end-use customers, because they receive the power at no cost or charge under the federal contracts. DOE/PPPO further asserts that, under the federal contracts, it is the end-use customer, not the contractors that are engaged in for-profit activities on its site. Yet, nothing in the NERC Rules of Procedure, the NERC *Registry Criteria* or the NERC Reliability Standards requires that the end-use customer "pay" for electrical energy it receives. Rather, the NERC *Registry Criteria* focuses simply on the act of "securing" energy and transmission service, which DOE/PPPO admits it does. The contractors are third party entities that are "consuming" electric energy secured and supplied by DOE/PPPO and they are "not reselling" such electric energy. By definition, the third party contractors are, in fact, end-use customers of the electric energy secured and supplied by DOE/PPPO as that term is well understood in the energy industry. While an end-use customer consumes the electric energy, there is no requirement that such entity also purchase the electric energy. Even though DOE/PPPO may be a customer for other purposes under the federal contracts, it does not change the fact that DOE/PPPO meets the criteria for registration as a user, owner or operator of the Bulk Power System that is

⁷ DOE/PPPO Comments at 2 (emphasis added).

⁸ *Id.* at 1 n.1.

supplying electric energy to an end-use customer and therefore qualifies for registration as an LSE for compliance with the NERC Reliability Standards.

2. DOE/PPPO admits that it secures energy for third parties.

According to DOE/PPPO:

Additionally, even assuming *arguendo* that DOE is an LSE, NERC fails to explain why it has singled-out DOE-PPPO as the entity that secures energy and transmission service for the Portsmouth site (i.e., the LSE), when there are numerous other entities that could be said to qualify as such an entity. The United States Enrichment Corporation could be said to be LSE by securing electricity for its own end-use customer, namely, for USEC Inc.'s (a separate corporation from the United States Enrichment Corporation) operation of the American Centrifuge Plant. The Ohio Valley Electric Corporation (OVEC) could be said to be an LSE by securing energy and transmission service for the Portsmouth site, pursuant to OVEC's power agreement with DOE-PPPO. Finally, the entity with which OVEC subsequently contracts to provide such power to the Portsmouth site could be considered a LSE as well. NERC fails to explain why it has singled-out DOE-PPPO as the LSE and why these other entities should not be considered LSE in addition to, or in lieu of DOE's designation. As such, NERC's analysis is arbitrary and inadequate.⁹

DOE/PPPO's position is expressly refuted by its own statements in its comments.

As noted above, DOE/PPPO admits that it is supplying and securing energy at its site that is being used by the third party contractors as NERC and Reliability *First* have found.

NERC has not, as DOE/PPPO suggests, singled DOE/PPPO out. In reaching the instant decision and the prior decision, NERC considered whether any other entities, including USEC or OVEC, could or should be the LSE for the third party contractors. However, as discussed in the underlying decisions, NERC determined that DOE/PPPO is properly registered as the LSE. NERC's position is supported by DOE/PPPO's recently filed comments, to which this answer responds, in which DOE/PPPO admits that it

⁹ *Id.* at 2-3.

supplies and secures energy for the third party contractors pursuant to its contracts with those entities.

With respect to DOE/PPPO's concern that all federal agencies may be required to be registered as an LSE, NERC notes that the instant proceeding relates to one entity's appeal of its registration based on the facts and circumstances of this entity. There are many types of agreements and arrangements in place in which entities are registered for given functions subject to the *Registry Criteria*. Accordingly, contrary to DOE/PPPO's position, it does not necessarily follow that if DOE/PPPO is registered as an LSE then all other federal agencies at all federal installations also must be registered as LSEs. Organization registration continues to be an on-going dynamic process, as recognized by the Commission's orders, and registration decisions are based on specific facts and circumstances when applying the criteria.

V. CONCLUSION

The North American Electric Reliability Corporation respectfully requests that the Commission accept this Answer and issue an order consistent with the comments set forth herein.

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Respectfully submitted,

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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 20th day of November, 2008.

/s/ Rebecca J. Michael
Rebecca J. Michael

*Attorney for North American Electric
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