

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

DIRECT ENERGY SERVICES, LLC)	Docket Nos. RC07-4-003
SEMPRA ENERGY SOLUTIONS, LLC)	RC07-6-003
STRATEGIC ENERGY, L.L.C.)	RC07-7-003

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

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September 17, 2008

I. INTRODUCTION

Pursuant to Rules 211, 212 and 214 of the Federal Energy Regulatory Commission's (Commission or FERC) Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, 385.212 and 385.214, the North American Electric Reliability Corporation (NERC) hereby moves to answer and submits these comments in the above-referenced proceeding.

On July 31, 2008, NERC submitted its compliance filing¹ in response to the Commission's December 20, 2007 Order² and April 4, 2008 Order in the captioned proceeding.³ Of relevance here, the Commission's April 4 Order accepted the procedural aspects of NERC's short-term⁴ and longer-term⁵ plans to address the reliability gap that would result if there is no Load-Serving Entity (LSE) registered on behalf of end-use customer load served by retail power marketers and deferred action on the substantive provisions, pending further submissions by NERC.

On or about September 2, 2008, five entities (or sets of entities)⁶ filed interventions, protests and/or comments and two additional entities⁷ submitted filings out of time (collectively,

¹ *Compliance Filing of the North American Electric Reliability Corporation in Response to the December 20, 2007 Order*, Docket Nos. RC07-4-003, *et al.* (July 31, 2008).

² *Direct Energy Services, LLC, et al.*, 121 FERC ¶ 61,274 (2007) ("December 20 Order"). Paragraphs 2-14 of the December 20 Order set forth relevant procedural history leading up to its issuance. In its March 4, 2008 Compliance Filing, NERC provided additional detailed background, which is incorporated by reference here. Compliance Filing of the North American Electric Reliability Corporation in Response to December 20, 2007 Order, Docket Nos. RC07-4-000, RC07-6-000 and RC07-7-000. (March 4, 2008).

³ *Direct Energy Services, LLC, et al.*, 123 FERC ¶ 61,016 (2008) ("April 4 Order").

⁴ Under NERC's short-term plan, NERC stated that "Using a posting and open comment process, NERC will revise the registration criteria to define "Non-Asset Owning LSEs" as a subset of Load Serving Entities and will specify the reliability standards applicable to that subset. The NERC Board of Trustees will then consider the revisions at its May [7] 2008 meeting." *Compliance Filing of the North American Electric Reliability Corporation in Response to December 20, 2007 Order*, Docket Nos. RC07-4-002, RC07-6-002 and RC07-7-002 (filed March 4, 2008) at 3.

⁵ Under NERC's longer-term plan, NERC stated that "NERC will determine the changes necessary to terms and requirements in reliability standards to address the issues surrounding accountability for loads served by retail marketers/suppliers and process them through execution of the three-year *Reliability Standards Development Plan*." *Id.* at 4.

⁶ Comments of Baltimore Gas and Electric Company, Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. ("BGE" "CCG" and "CNE"); Consumers Energy Company's Protest of and Comments on Compliance Filing ("Consumers Energy"); Comments of the Detroit Edison Company ("Detroit

these are referred to herein as intervenors). By this filing, NERC requests leave to file this Answer to address certain limited issues raised in the intervenors' comments in order to ensure a full accurate and adequate record is before the Commission.

II. NOTICES AND COMMUNICATIONS

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

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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.⁸ 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

Edison"); Direct Energy Services, LLC and Strategic Energy, L.L.C. on the North American Electric Reliability Corporation's July 31, 2008 Compliance Filing ("Direct Energy" and "Strategic Energy"); and Protest of Exelon Corporation ("Exelon" which owns Commonwealth Edison Company and PECO Energy Company).

⁷ Protest of CenterPoint Energy Houston Electric, LLC ("CenterPoint") and Protest of Oncor Electric Delivery Company LLC Regarding Compliance Filing of the North American Electric Reliability Corporation in Response to December 20, 2007 Order ("Oncor").

⁸ See 18 C.F.R. §385.213(a)(2).

process.⁹ NERC's Answer is limited and will clarify certain concerns raised in the intervenors' 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

Seven sets of comments were submitted on behalf of eleven entities:

Two of the eleven, Direct Energy and Strategic Energy, filed comments in support of NERC's July 31 compliance filing.

Five of the eleven that filed protests or comments opposing the compliance filing already are registered as LSEs (as well as Distribution Providers (DPs)) and are currently subject to the LSE Reliability Standards. These include Commonwealth Edison Company and PECO Energy Company (submitted by Exelon Corporation), Detroit Edison, Consumers Energy and Baltimore Gas and Electric Company.

Two more intervenors, Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, are currently registered only as Purchasing-Selling Entities (PSEs) and/or Generator Operator (GOPs) and are not, at this time, subject to the DP proposal set forth in NERC's compliance filing or the longer term plan as discussed in NERC's May 14, 2008 status report.

The remaining two of eleven, CenterPoint and Oncor, are in the Electric Reliability Council of Texas (ERCOT) Region and currently subject to about 90 percent of the Reliability

⁹ *San Diego Gas & Electric v. Sellers of Energy and Ancillary Services*, 108 FERC ¶ 61,219, at P14, 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 decisionmaking 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).

Standards applicable to LSEs, based on their registration as a DP, Transmission Owner (TO) and Transmission Provider (TP). Based on the short-term proposal they could now be subject to eight additional Reliability Standards, unless agreements exist or are entered into with third parties to assume such responsibility or justify a concurrent registration proposal. These eight Reliability Standards are:

- BAL-005-0, Requirements R.1 and R.1.3 (generally requires ensuring that all generation, transmission and load operating within an interconnection to be included within the metered boundaries of a Balancing Authority (BA) area);
- CIP-001-1, Requirements R. 1-4 (generally requires procedures for reporting and communicating sabotage);
- EOP-002-2, Requirement R. 9.1 (deficient LSE to request the Reliability Coordinator (RC) to initiate an Energy Emergency Alert);
- EOP-004-1, Requirements R. 2, 3 and R. 3.1-3.4 (generally governing reporting of disturbances);
- IRO-001-1, Requirement R. 8 (generally requiring compliance with RC directives unless unable to do so);
- IRO-005-1, Requirement R. 13 (RC must ensure the LSE (and others) operate in such a way to prevent a (System Operating Limit) (SOL) or (Interconnection Reliability Operating Limit (IROL) violation);
- MOD-017-0, Requirements R. 1 and R. 1.1-1.4 (generally requiring reporting of certain actual and forecast demands in megawatt (MW) and Net Energy for Load in Gigawatt hour (GWh)); and
- TOP-002-2, Requirements R. 3 and R. 18 (generally requiring coordination of operations with the Host BA and Transmission Service Provider (TSP) and use of uniform line identifiers when referring to transmission facilities of an interconnected network).

Below, NERC addresses certain limited comments and objections raised by the intervenors.

A. NERC's Compliance Filing Reflects Industry Feedback, Closes the Gap and is Consistent with NERC's May 14 Status Report.

At the heart of this proceeding is who should comply with the LSE Reliability Standards pending the implementation of a longer-term solution for end-use customer loads served by retail power marketers. NERC agrees that retail power marketers meet the definition of an LSE because they secure energy and transmission service for their end-use load customers. NERC's

proposal does not alter obligations of the intervenors or any other third parties as to who is responsible for securing energy and transmission service. Significantly, many DPs are registered as LSEs on behalf of end-use load and generally are the provider of last resort for loads even in some retail access states, although NERC understands that this is not the case in Texas.

Throughout the course of the captioned proceedings, retail power marketers argued that they lack the infrastructure and have inferior information to that of the DPs where the load is actually connected, which retail power marketers claimed are necessary to be held accountable for NERC's mandatory and enforceable LSE Reliability Standards. Interestingly, other market participants also suggested that the retail power marketers lack such infrastructure assets and/or capabilities.

In the instant comments, DPs, which also are registered as LSEs, object to serving as LSEs for the end-use loads served by retail power marketers, in part, on the grounds that under retail access programs retail power marketers have responsibility for their own end-use loads, have information regarding that load and therefore should be held accountable for applicable LSE Reliability Standards for their end-use load. Yet, there can be no dispute that DPs provide the wires over which even the retail power marketer load is served and do, in fact, have both the infrastructure and access to information to enable them to comply with the LSE Reliability Standards.

In the Commission's December 20 Order, the Commission determined that retail power marketers did not meet the existing LSE criteria and directed NERC to propose a solution to close the resulting reliability gap. Subsequently, NERC held a technical conference and posted for comment a new sub-category of LSEs to be included in the NERC *Statement of Compliance Registry Criteria* – the non-asset owning LSE – which was intended to apply to retail power

marketers. Based on comments NERC received, NERC thereafter posted for comment an alternative proposal – registration of DPs as LSEs pending implementation of a longer-term solution to require DPs to assume responsibility for the applicable LSE Reliability Standards. NERC notified the Commission of these developments and explained its rationale for registering DPs in its May 14 status report submitted in the captioned proceeding.

To the extent DPs providing wires service for retail power marketers also are registered as LSEs, NERC does not find compelling arguments that they lack the ability to comply with LSE Reliability Standards for all end-use load on their wires. Prior to state retail access programs, such DPs were the LSEs for that load. Even today, those DPs generally are providers of last resort and must plan their system taking into consideration all load served over their wires, including the retail access load. For those limited Reliability Standards that may require information from retail power marketers, the DPs have existing mechanisms that may allow them to require retail power marketers to provide such information as part of service agreements. In addition, DPs can seek to enter into Joint Registration Organization agreements (JROs) to address compliance responsibility. If JRO discussions reach an impasse, DPs can request concurrent registration.

B. Reliability Standard Revisions Are Properly Addressed in the Longer-Term Plan.

Importantly, NERC recognizes that a longer-term solution is required. Towards this end, NERC took into consideration industry comments in its May 14 status report that DPs ultimately should assume responsibility for the LSE Reliability Standards. NERC acknowledges that changes to recognize legal obligations and obstacles may be required and can and should necessarily be addressed in that process. Calls to immediately eliminate the LSE functional category and LSE Reliability Standards are premature and should be rejected. A thorough

review of the requirements under the LSE Reliability Standards will be undertaken in the standards process and that process is the proper forum to address the intervenor comments.

C. NERC Supports Immediate Joint and Concurrent Registrations Where Necessary.

Because of the market structure and legal framework in ERCOT (and perhaps other organized markets with independent system operators and regional transmission organizations), NERC also recognizes that concurrent or joint registrations may be needed immediately. NERC is committed to work with Regional Entities to ensure there is no gap and no overlap in coverage with respect to compliance with LSE Reliability Standards. Indeed, NERC's compliance filing expressly recognizes and provides for this fact.

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.

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 17th day of September, 2008.

/s/ Rebecca J. Michael
Rebecca J. Michael

*Attorney for North American Electric
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