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

DIRECT ENERGY SERVICES, LLC)	Docket Nos. RC07-4-000
SEMPRA ENERGY SOLUTIONS, LLC)	RC07-6-000
STRATEGIC ENERGY, L.L.C.)	RC07-7-000
)	(not consolidated)

**MOTION TO INTERVENE AND COMMENTS
OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.214 (2007), the North American Electric Reliability Corporation (“NERC”) hereby moves to intervene and submits these comments in the above-referenced proceedings.

I. BACKGROUND

On September 11, 2007, Direct Energy Services, LLC (“Direct Energy”) filed an appeal of the August 21, 2007 decision rendered by NERC’s Board of Trustees Compliance Committee (the Committee) to include Direct Energy on the NERC Compliance Registry within the ReliabilityFirst Corporation (“RFC”) for the function of Load-Serving Entity (LSE). On that same day, Sempra Energy Solutions, LLC (“Sempra”) filed an appeal of the August 21, 2007 decision rendered by the Committee to include Sempra on the NERC Compliance Registry within RFC for the function of LSE. In addition, Strategic Energy, L.L.C. (“Strategic Energy”) filed an appeal of the August 21, 2007 decision rendered by the Committee to include Strategic Energy on the NERC Compliance Registry within RFC for the function of LSE.

On September 17, 2007, the Commission issued notices of these three filings and established October 11, 2007 as the due date for the filing of interventions, protests and comments. On September 26, 2007, the Commission directed its staff to convene a staff-led technical conference for the purpose of further exploring the issues raised in these proceedings and to provide an adequate record for the Commission to make a determination on these matters.

On October 9, 2007, the Commission issued a notice of technical conference to be held on October 12, 2007. In the same notice, the Commission also extended the time for submitting interventions, comments and protests to and including October 29, 2007, to coincide with the newly established due date for comments in response to issues raised at the technical conference. On October 12, 2007, NERC, RFC, Direct Energy, Sempra and Strategic Energy participated in the technical conference held by Commission staff.

II. NOTICES AND COMMUNICATIONS

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

Rick Sergel
President and Chief Executive Officer
David N. Cook*
Vice President and General Counsel
North American Electric Reliability Corporation
116-390 Village Boulevard
Princeton, NJ 08540-5721
(609) 452-8060
(609) 452-9550 – facsimile
david.cook@nerc.net

Rebecca J. Michael*
Attorney
North American Electric Reliability Corporation
1120 G Street, N.W.
Suite 990
Washington, D.C. 20005-3801
(202) 393-3998
(202) 393-3995 – facsimile
rebecca.michael@nerc.net

*Persons to be included on the Commission's official service list.

III. MOTION TO INTERVENE

NERC was formed to serve as the electric reliability organization (“ERO”) authorized by Section 215 of the Federal Power Act. NERC was certified as the ERO by the Commission’s Order issued July 20, 2006, in Docket No. RR06-1-000.¹ NERC’s mission is to improve the reliability and security of the bulk power system in North America. To achieve that, NERC develops and enforces Reliability Standards; monitors the bulk power system; assesses future adequacy; audits owners, operators, and users for preparedness; and educates and trains industry personnel. NERC is a self-regulatory organization that relies on the diverse and collective expertise of industry participants. As the ERO, NERC is subject to audit by the Commission and governmental authorities in Canada.

On June 18, 2007, the NERC Reliability Standards became mandatory and enforceable in the United States for all owners, operators, and users of the bulk power system. NERC has delegated the responsibility to the Regional Entities to identify the organizations subject to inclusion on the NERC Compliance Registry. NERC provides notice of registration to all organizations included on the NERC Compliance Registry.

Section 500 of the NERC Rules of Procedure sets forth the process for an entity to challenge its inclusion on the NERC Compliance Registry. The NERC Board of Trustees Compliance Committee issues a decision on such appeals. Once that decision has been rendered, an entity may file an appeal with the Commission.

Because the instant appeal has been filed with the Commission, NERC has a substantial and direct interest in the Commission decision in this proceeding. No other

¹*Order Certifying North American Electric Reliability Corporation as the Electric Reliability Organization and Ordering Compliance Filing*, 116 FERC ¶ 61,062 (2006).

party can adequately represent NERC's interest. Therefore, it is in the public interest to permit this intervention.

IV. COMMENTS

NERC has reviewed and supports the comments submitted by RFC in these proceedings. In addition, NERC wishes to address the specific issue raised by Commission staff, Direct Energy, Sempra and Strategic Energy at the staff-led technical conference regarding the need for certainty as to which Reliability Standards apply to retail power marketer LSEs that do not own assets but that do serve retail end-use customer load.

In Order No. 693, the Commission directed NERC to ensure clarity in the registration process for assigning responsibility for Reliability Standards.² The Commission further directed NERC to ensure 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.³

In accordance with the Commission's directives, the NERC registration, audit and compliance processes recognize the importance of working with the Regional Entities and the registered entities to determine which functions and which Reliability Standards apply on a case-by-case basis. The joint registration organization ("JRO") process and the registration criteria "exception clauses" (which allow written agreements to transfer responsibility for compliance with applicable Reliability Standards) are outgrowths of the work done to meet the Commission's directives.

² *Mandatory Reliability Standards for the Bulk-Power System*, FERC Stats. & Regs. ¶ 31,242 at P 145 (2007) (Order No. 693), *order on reh'g*, 120 FERC ¶ 61,053 (2007) (Order No. 693-A).

³ *Id.*

NERC agrees that it is important for these three entities, as well as NERC, RFC and FERC, to know which of the LSE Reliability Standards apply. The same is true for other registered entities beyond merely the LSE registration process. NERC also agrees that not all of the Reliability Standards apply in the case of LSEs that do not own assets. Again, the same may be true for other registered entities who serve other functions. Importantly, there are existing processes in place to address these issues, as evidenced by the JRO process, the exception clauses and even the Committee's decisions.

As to each of the three instant appeals, the Committee's decision expressly recognized that not all of the LSE standards would apply to LSEs that do not own assets. Rather, the Committee identified a short list of Reliability Standards, based on information provided by RFC, that were applicable to LSEs that do not own assets. The Committee's decisions also recognized the importance of allowing the Regional Entity to work with the registered entities to determine which Reliability Standards are applicable in a given situation. This approach is both appropriate and necessary because of differences in corporate structures, agreements and assets possessed by various organizations, even between and among registered entities including LSEs. NERC and the Regional Entities are prepared to work with registered entities to develop such lists.

Following the staff-led technical conference, NERC and RFC once again reviewed the list of LSE Reliability Standards. NERC and RFC have further refined the list and have identified approximately eleven Reliability Standards that apply to LSEs that do not own assets. These eleven Reliability Standards comprise those standards that are not performed by others with respect to the specific loads at issue and that do not require ownership of assets. In its comments, RFC provides a detailed basis as to the

applicability of each of these Reliability Standards. Even as to the eleven applicable Reliability Standards, Direct Energy, Sempra and Strategic Energy are permitted to enter into agreements with third parties to comply with applicable Reliability Standards.

However, because no other entity is responsible for complying with these Reliability Standards with respect to the retail power marketers' retail load, there is no redundancy in coverage. To the contrary, by holding the retail power marketers who serve retail load accountable for applicable Reliability Standards, no gap in coverage occurs.

For the reasons set forth herein and in RFC's comments, the Commission should affirm the Committee's decisions finding that Direct Energy, Sempra and Strategic Energy are LSEs. The Commission should further find that the eleven Reliability Standards identified by NERC and RFC apply to Direct Energy, Sempra and Strategic Energy as LSEs that do not own assets.

V. CONCLUSION

Wherefore, in view of the foregoing, NERC respectfully requests that it be permitted to intervene with all the rights that attend to such status and that the Commission issue an order consistent with the comments set forth in RFC's comments as well as the comments herein.

Rick Sergel
President and Chief Executive Officer
David N. Cook
Vice President and General Counsel
North American Electric Reliability Corporation
116-390 Village Boulevard
Princeton, NJ 08540-5721
(609) 452-8060
(609) 452-9550 – facsimile
david.cook@nerc.net

Respectfully submitted,

/s/ Rebecca J. Michael
Rebecca J. Michael
Attorney
North American Electric Reliability
Corporation
1120 G Street, N.W.
Suite 990
Washington, D.C. 20005-3801
(202) 393-3998
(202) 393-3955 – facsimile
rebecca.michael@nerc.net

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 29th day of October, 2007.

/s/ Rebecca J. Michael

Rebecca J. Michael

*Attorney for North American Electric
Reliability Corporation*