

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

South Louisiana Electric Cooperative Association)	Docket Nos. RC13-4-000 and RC13-4-001
)	
)	

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

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. §§ 385.212 and 385.213 (2013), the North American Electric Reliability Corporation (“NERC”) hereby submits this limited Answer to the South Louisiana Electric Cooperative Association’s (“SLECA”) response filed September 6, 2013 in the above-captioned proceeding.¹ SLECA’s Answer inaccurately characterizes the issues raised in NERC’s August 19, 2013 Request for Rehearing as impermissible attempts to enter new evidence. Despite SLECA’s assertions to the contrary, NERC’s Request for Rehearing appropriately specified the errors in the Commission’s July 18 Order.² SLECA, rather than NERC, has raised new issues on rehearing by submitting, for the first time, a draft Bulk Electric System Definition Guidance Document (“Guidance Document”) that is not endorsed by NERC and is non-binding expressly by its terms as support for one of its positions. SLECA’s Answer merely rehashes arguments previously made in this proceeding that obfuscate rather than clarify the issues at hand. Moreover, it raises new evidence on rehearing and should be rejected.

¹ See Motion to Respond and Limited Response of the South Louisiana Electric Cooperative Association to NERC Request for Rehearing, filed Sept. 6, 2013 (“SLECA Answer”).

² South Louisiana Electric Cooperative Association, 144 FERC ¶ 61,050 (2013) (“July 18 Order”).

I. Motion for Leave to Answer

The Commission's Rules of Practice and Procedure generally do not permit answers such as SLECA's Answer to NERC's Request for Rehearing. Nevertheless, the Commission has made exception to this general rule when it determines the Answer provides the Commission with information that assists it in its decision making process.³ SLECA's Answer fails to meet this standard as it contains statements that are inaccurate and misleading and it fails to provide information that will inform the Commission's decision making. SLECA's motion for leave to Answer should be denied and its Answer should be rejected.

If, however, the Commission accepts SLECA's Answer, it should also accept the instant response as several of the arguments in SLECA's Answer, in particular those substantiated by the Guidance Document,⁴ were not raised in SLECA's prior filings. Therefore, this represents NERC's first opportunity to respond to those arguments, to correct the record, and to help clarify the issues before the Commission.

II. Answer

a. The Issues Raised by NERC on Rehearing Are Not An Impermissible Submission of New Evidence

Citing Rule 713, SLECA asserts that NERC's Rehearing Request improperly raises new arguments and presents new evidence.⁵ SLECA's assertions are simply incorrect and

³ See *San Diego Gas & Electric Co. 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 [the Commission in its] decision-making process"); *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*, 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*, 117 FERC ¶ 61,091, at P 18 (2006) (same); *North American Electric Reliability Corporation*, 119 FERC ¶ 61,248, at P 6 (2007); *North American Electric Reliability Corporation*, 127 FERC ¶ 61,209 at P 5 (2009).

⁴ As discussed in greater detail below and contrary to SLECA's assertions, the October 3, 2012 Bulk Electric Transmission System Guidance Document is not endorsed by NERC and is a product of the Definition of Bulk Electric System Standard Drafting Team.

⁵ See SLECA Answer at 3.

mischaracterize NERC's Rehearing Request. For instance, SLECA asserts that the diagram attached to NERC's rehearing request is new evidence. NERC contends, to the contrary, that the diagram does not rise to the level of new evidence; rather, it is a pictorial depiction of NERC's view of the SLECA and Louisiana Generating, L.L.C. ("LaGen") facilities, a view that NERC has articulated consistently throughout the proceeding. As demonstrated below, the NERC Board of Trustees Compliance Committee ("NERC BOTCC") Decision and NERC's Protest of the SLECA appeal are replete with descriptions of the SLECA facilities and associated Landry interconnection that are completely consistent with the confidential one line diagram.

The one line diagram clearly illustrates the following core element of NERC's position in this case: "SLECA's interconnection at Landry directly connects with the [Bulk Electric System ("BES")] because it connects with LaGen's 115 kV transmission network facilities. The interface interconnection arrangement at the Landry station is included in the BES as it permits through flow and contains all elements that are greater than 100 kV in a networked configuration."⁶ This position was similarly articulated in the NERC BOTCC decision where the NERC BOTCC held: "SLECA takes service at greater than 100 kV and its distribution facilities (and its load) are directly connected to the LaGen 115 kV system, which is part of the BES." The NERC BOTCC decision went on to state the following with respect to SLECA's facilities depicted in Diagram No. 6: "That diagram shows SLECA's facilities directly connected to LaGen's 115 kV bus."

NERC included the additional diagram to provide the Commission with a more clear illustration of the Landry interconnection as SLECA's interconnection at Landry is a central issue in this case. NERC insists, as it did in its Protest, that it has not misinterpreted Diagram

⁶ See NERC's Motion to Intervene, Protest and Comment at 9, filed Mar. 18, 2013 ("NERC Protest").

No. 6; rather, SLECA has misrepresented the nature of the interconnection.⁷ It is also relevant for the Commission to consider that NERC did not rely heavily on the confidential, one line diagram. The diagram was referenced only three times in NERC's Rehearing Request and additional support was provided in each instance.⁸ In the first instance, NERC referenced the diagram to illustrate that SLECA is directly connected to LaGen's 115 kV system which is part of the Bulk Power System ("BPS"). This is a statement asserted by NERC throughout the BOTCC Decision and NERC's Protest of the SLECA Appeal.⁹ In the second instance, the diagram was cited as evidence that the Commission misapprehended the nature and scope of LaGen's facilities which led to an incorrect determination as to SLECA's registration. This statement was in direct response to the Commission's July 18 Order; however, NERC's Protest raised concerns that SLECA was confusing the record and misconstruing the nature of its facilities.¹⁰ Finally, in the third instance, NERC cited the one line diagram and the previously filed Revised Diagram No. 6 to demonstrate that the LaGen Landry substation is fed from two separate 230 kV substations, Raceland and Terrebonne. This statement similarly ties back to the Commission's July 18 Order and the finding that "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."¹¹

Furthermore, Commission acceptance of the one-line diagram attached to the NERC Request for Rehearing is appropriate because it provides the most accurate and complete depiction of the facilities. The diagram confirms the basic configuration of the substation

⁷ See NERC Protest at 10-11.

⁸ See NERC Request for Rehearing at 4, n. 11, and 14.

⁹ See BOTCC Decision at 9; see also NERC Protest at 2, 6, 9-11.

¹⁰ See NERC Protest at 10-11.

¹¹ See July 18 Order at P 29.

facilities, transformers, and connections within the BES with one important clarification – the 115 kV circuit breaker positions on the low side of the two 230-115 kV transformers reflected in the earlier diagram have been only recently confirmed by the owners of the Landry substation assets as not being presently installed. Thus, the dashed line representations of these circuit breakers in SLECA’s Revised Diagram No. 6 actually reflect future placeholder positions where circuit breakers would be installed at some future date, but the dashed line representations do not represent the configuration. This is important in considering the protection scheme interactions between 230 kV circuit switchers on the through-path in the Landry substation and the 115 kV circuit switchers owned by SLECA.

A central theme of SLECA’s Answer is that NERC’s Request for Rehearing includes new and impermissible evidence relating to the configuration at the Landry substation.¹² SLECA’s assertion is incorrect. NERC’s arguments on rehearing are not new. NERC’s Rehearing Request substantiates the arguments NERC raised in its prior motion and in the NERC Board of Trustees Decision. Similarly, NERC’s arguments regarding the point of interconnection, networked configuration of the facilities and open switch element are not new, they support prior claims.¹³ SLECA’s claim that NERC has raised new arguments on rehearing suggests that NERC does not have the opportunity to clarify or refine its arguments on rehearing.

As a general matter, the Commission discourages parties from raising identical issues and arguments on rehearing.¹⁴ To assert that NERC does not have the opportunity to clarify or refine

¹² See SLECA Answer at 4.

¹³ See NERC’s Motion to Intervene, Protest and Comment at 9-11, filed March 18, 2013.

¹⁴ See *Northern Natural Gas Co.*, 87 FERC ¶ 61,272 (1999) (where the Commission denied rehearing on all of the arguments that were raised previously by the party but granted rehearing in the instance where the parties presented new information).

an argument on rehearing contravenes Commission precedent.¹⁵ If followed to its natural conclusion, SLECA's contention that NERC cannot substantiate prior claims, would result in the submission of requests for rehearing that simply incorporate by reference the filings made prior to the Commission's final order.¹⁶ On the contrary, the Commission expects parties on rehearing to specify the errors in a final order and to make arguments relevant to those specifications of error.

NERC urges the Commission to exercise its discretion to accept the diagram as it accurately illustrates NERC's prior arguments and was provided in direct response to the Commission's findings in the July 18 Order. The Commission has previously allowed such exceptions to its general prohibition when circumstances so warrant.¹⁷ An exception in the instant case would be appropriate because the diagram will aid the Commission in its effort to obtain accurate information about the configuration at Landry which is critical to reaching a sound resolution. Moreover, SLECA does not dispute the content of the diagram;¹⁸ therefore, its acceptance should be non-controversial.

¹⁵ *Id.*; see also *San Diego Gas & Electric Co.*, 139 FERC ¶ 61,212 (2012), *State of Connecticut*, 118 FERC ¶61,205 (2007), *Removal of Outdated Regulations Pertaining to the Sales of Natural Gas Production*, 69 FERC ¶ 61,342 (1994), *Pacific Gas Transmission Co.*, 62 FERC ¶ 61,243 at 62,604-05 (1993).

¹⁶ See *ExxonMobil Chemical Co.*, 112 FERC ¶ 61,255 at P 10 (2005) (where the Commission rejected a rehearing request that simply incorporated by reference prior filings stating "our Rules of Practice and Procedure require that a request for rehearing 'state concisely the alleged error in the final decision or order' and 'set forth the matters relied upon by the party requesting rehearing....' These requirements are not satisfied by incorporating by reference a previously filed pleading. Such practice neither informs the Commission which arguments from the referenced pleading are relevant to the request for rehearing *nor indicates how the arguments may have changed in light of our final order.*"). Emphasis added.

¹⁷ See *PJM Interconnection LLC*, 107 FERC ¶ 61,105 (2004) (where the Commission allowed a party to include an affidavit attached to its Request for Rehearing that was not available to the Commission or parties at the time the Commission issued its final order in the proceeding), *order on reh'g*, 108 FERC ¶ 61,187 (2004), *Algonquin Gas Transmission Company*, 93 FERC ¶61,163 at n. 2 (2000) (where the Commission allowed a party to submit supporting affidavits with its request for rehearing without the need to reopen the record in the proceeding), *PSI Energy Inc.*, 52 FERC ¶61,260 at 61,965 (1990) (where the Commission allowed new information to be presented in a rehearing request), *CP National Corp.*, 49 FERC ¶61,309 (1989).

¹⁸ See SLECA Answer at 3.

b. SLECA's Answer Improperly Restates Prior Arguments and Should be Rejected

SLECA's Answer makes several arguments that repeat almost verbatim the arguments raised by SLECA previously and should not be permitted under the guise of "aiding the Commission's deliberations." SLECA's arguments regarding the nature and configuration of the Landry and LaGen facilities are simply not correct and, if accepted, would confuse the record rather than clarify it. NERC is providing the instant response to SLECA's arguments as they demonstrate SLECA's fundamental misunderstanding of NERC's Rules of Procedure and merit response.

First, SLECA's statement that the Landry facility is served by a single 230 kV source which is "the single Entergy transmission line that runs between Entergy's Terrebone and Raceland substations" is incorrect.¹⁹ In fact, SLECA's argument reflects a remarkable gap in understanding the nature of and the operation of the BES in the region. Contrary to SLECA's statements, the two substations to which SLECA refers are part of the 230 kV BES network in this part of the system that serves the southern portion of Louisiana, and each of the referenced substations are part of the network supply in the area. The 230 kV line operates as a part of a network arrangement comprised of numerous 230 kV lines in the area. Thus, the fact that there is only a single 230 kV line crossing Landry station, does not convey the network character of the 230 kV lines in the area. In fact, both Terrebone and Raceland are part of a 230 kV network supply largely fed from generation supplies connected to Waterford and other major bulk system substations, and each of the two referenced substations also supplies an area 115 kV network. There simply is no dispute that Landry is connected to networked 230 kV transmission facilities that are part of the BES.

¹⁹ See SLECA Answer at 4.

Secondly, SLECA misunderstands or confuses the configuration of the supply at Landry by claiming that NERC itself defined the Landry configuration to be a single point of connection, excluded from registration.²⁰ This is not correct, and reflects a misunderstanding or confusion about the network supply in the area. In fact, the 230 kV network path of power flow passes directly through the Landry substation bus at 230 kV, through switches and bus work located therein. Thus, any disruption or change in the flows on that bus segment necessarily affects the network flows in the area, and accordingly the Landry station represents a network portion of the BES.

Finally, SLECA asserts that the Landry and LaGen facilities are not BES facilities and that the presence of a long term contract under which SLECA arranges for bulk supply to each of its multiple delivery points, totaling over 120 MVA, actually supports that position. To the contrary, SLECA's proposition that its power purchase agreements in some way support the view that it should not be registered is simply wrong. These agreements prove that SLECA receives power from LaGen's BES facilities and the through-flow character of the Landry configuration establishes the BES character of the facilities.

NERC notes, for the record, that through an inadvertent oversight, it incorrectly identified certain LaGen circuit switches and that SLECA correctly identified the circuit switchers as 7229 and 7224. However, SLECA incorrectly concludes and states that these circuit switchers are not part of the BES. As described above, the Landry 230 kV bus is actually part of the path that power flows through in this portion of the network, so not only is the 230 kV line a networked transmission facility that runs from Terrebonne to Raceland, but the power flow path actually runs directly through the Landry Substation 230 kV bus. Therefore, disturbances or protection

²⁰ *Id.*

scheme operation/mis-operation of these devices serves to disrupt a significant network path in the area, which represents an important rationale for including this portion of the 230 kV supply as an element of the BES.

LaGen as the asset owner of the facilities recently confirmed the diagram attached to NERC's Request for Rehearing as an accurate depiction of the actual elements presently installed in the substation. SLECA relied on Diagram No. 6 to support its assertion that its assets do not have any electrical interaction or function with regard to the 230 kV BES facilities and that the differential protection scheme was entirely configured within LaGen's assets at Landry. However, the LaGen one line diagram depicts the accurate reflection of the assets presently installed within Landry and demonstrates that there are no breakers on the low side. Thus, the protection schemes within Landry substation involve SLECA's 115 kV circuit breakers as an integral part of the protection schemes within LaGen's Landry facilities and the 230 kV circuit switchers located therein. The 230 kV bus at Landry is part of the through flow path of the networked 230 kV system, power flows necessarily through the Landry substation bus and unquestionably, SLECA's assets are integral to the reliable operation of the networked system and supply.

While SLECA's circuit switchers [671 and 672] do serve to protect the radial distribution elements downstream of the Landry station, they are not BES elements and they serve radial distribution load. However, these same circuit switchers are also tied into the protection scheme which operates in concert with the LaGen 230 kV circuit switchers [7229 and 7224] which are 230 kV BES elements due to their importance in the through path of network power flow through Landry station. Any operation or mis-operation can lead to an interruption of the network flows, and thereby cause disruption of the network supply in the area, which is

important in concluding the BES character of the entire 230 kV assets located within Landry station.

The fact that the Landry station bus provides the sole through-flow path for 230 kV power in this portion of the grid is critical to its determination as a BES element. Moreover, the presence of the 230 kV circuit switchers, with protection schemes tied to the SLECA circuit switchers, raise the potential for protection scheme operation or mis-operation that could cause disruption of the network supply flows. Thus, the configuration of the area 230 kV and 115 kV network supply, the Landry 230 kV station, the through-flow function of the 230 kV components, the presence of the 230 kV circuit switchers, and the interconnection of the protection schemes between 230 kV and 115 kV devices, supports the conclusion that SLECA is directly connected to BES elements and was properly registered as a Distribution Provider and Load Serving Entity.

c. The BES Definition Guidance Document Attached To SLECA's Answer Is Impermissible New Evidence And Should Be Rejected

SLECA's submission of the draft Guidance Document is impermissible and should be rejected. Despite SLECA's insistence to the contrary, the Guidance Document is not a NERC publication. Rather, it is a publication of the Definition of Bulk Electric System Standard Drafting Team ("DBES SDT") which is composed of members of industry. The DBES SDT, like all Standards Drafting Teams, is charged with drafting a Reliability Standard. However all of the work of Standard Drafting Teams is subject to the oversight of the NERC Standards Committee and ultimately, the NERC Board. In fact, on the first page of the Guidance Document is the following disclaimer: "This document is not an official position of NERC and will not be binding on enforcement decisions of the NERC Compliance Program. This guidance reflects the professional opinion of the DBES SDT, given in good faith for illustrative purposes

only.” In addition to the fact that the Guidance Document is not an official NERC publication, the draft cited by SLECA and attached to its answer is not even a final draft. Phase II of the BES development process is underway and the draft guidance is currently being updated and is expected to be revised further at the conclusion of the Standards Drafting Team process. The guidance document is merely illustrative at a given stage of the drafting team process as indicated throughout the document and is not and should not be viewed as being dispositive of NERC’s position.

III. CONCLUSION

Wherefore, for the foregoing reasons, NERC respectfully requests that the Commission reject SLECA’s September 6 Answer or, in the alternative, accept this answer for the reasons specified herein.

Submitted,

/s/ Rebecca J. Michael

Charles A. Berardesco
Senior Vice President and General Counsel
Rebecca J. Michael
Associate General Counsel
Meredith M. Jolivert
Senior Counsel
North American Electric Reliability
Corporation
1325 G Street, N.W., Suite 600
Washington, D.C. 20005
(202) 400-3000
(202) 644-8099– facsimile

*Counsel for North American Electric
Reliability Corporation*

September 23, 2013

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 23rd day of September, 2013.

/s/ Meredith M. Jolivert

Meredith M. Jolivert
*Attorney for North American
Electric Reliability Corporation*