

123 FERC ¶ 61,016
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Direct Energy Services, LLC	Docket Nos. RC07-4-002
Sempra Energy Solutions, LLC	RC07-6-002
Strategic Energy, L.L.C.	RC07-7-002

ORDER ON COMPLIANCE FILING

(Issued April 4, 2008)

1. On March 4, 2008, the North American Electric Reliability Corporation (NERC) submitted a compliance filing in response to a December 20, 2007 Order,¹ in which the Commission reversed a NERC decision to register three retail power marketers to comply with Reliability Standards applicable load serving entities (LSEs) and directed NERC to submit a plan describing how it would address a possible “reliability gap” that NERC asserted would result if the LSEs were not registered. NERC’s compliance filing includes a short-term plan and a long-term plan to address the potential reliability gap. NERC states that, pursuant to the short-term plan, NERC would develop relevant revisions to the NERC Statement of Compliance Registry Criteria (Registry Criteria)² and submit the revisions for NERC board of trustee’s approval at a May 6, 2008 meeting. As discussed below, the Commission accepts the procedural aspects of NERC’s plan. The Commission will address the substantive proposal when fully developed and explained pursuant to future filings contemplated by NERC’s plan.

Background

2. On September 11, 2007, Direct Energy Services, LLC (Direct), Sempra Energy Solutions LLC (Sempra) and Strategic Energy, L.L.C. (Strategic), each filed with the Commission an appeal of a determination by NERC that each of them was properly registered as a load-serving entity (LSE) by ReliabilityFirst Corporation, a Commission-approved Regional Entity. Direct, Sempra and Strategic, which are authorized by the

¹ *Direct Energy Services, LLC*, 121 FERC ¶ 61,274 (2007) (December 20 Order).

² *See Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 92-95 (2007), *order on reh’g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007) (approving NERC Registry Criteria).

Commission to sell energy at market-based rates, each assented to its registration as a purchasing-selling entity, but each objected to its registration as an LSE. In the December 20 Order, the Commission granted the appeals and reversed NERC's determinations, finding that the registration of the retail marketers as LSEs was not supported by the record or NERC's registry criteria, and would result in inconsistent practices among the Regional Entities. As mentioned above, the Commission also directed NERC to submit a plan describing how it would address a possible "reliability gap" that NERC asserted would result if the retail marketers were not registered as LSEs.³

3. On March 4, 2008, NERC submitted its compliance filing proposing a two-step process to address the potential reliability gap. In the short term, NERC proposes to develop, through an open comment process, revisions to its Registry Criteria to define "Non-Asset Owning LSEs" as a subset of LSEs and specify the Reliability Standards applicable to that "subset." NERC states that the NERC Board of Trustees will consider the revisions at its May 2008 meeting.

4. In the longer-term, NERC proposes to determine the changes necessary to terms and requirements in Reliability Standards to address the issues surrounding the accountability for loads served by retail marketers or suppliers and process them through execution of NERC's three-year Reliability Standards Development Plan. NERC proposes to begin the implementation of the longer-term solution with a LSE and compliance workshop in April 2008 to identify and address issues. NERC will include the results of the workshop and other feedback into NERC's ongoing Reliability Standards work plan and revise the Reliability Standards and definitions as appropriate.

Public Notice, Interventions and Comments

5. Notice of NERC's March 4, 2008 filing was published in the *Federal Register*, 73 Fed. Reg. 14,241 (2008), with interventions and protests due on or before March 25, 2008. American Public Power Association and Hess Corp. (Hess) filed timely motions to intervene. Pepco Energy Services, Inc. (Pepco) filed a timely motion to intervene and comments. Direct, Sempra, Dominion Retail, Inc., Hess, and Reliant Energy, Inc. (Joint Respondents) and Integrys Energy Services, Inc. (Integrys) filed protests. Electric Power Supply Association (EPSA) and PPL Energy Plus, LLC (PPL) filed comments. Strategic filed an answer and request for a technical conference.

6. Strategic claims that NERC's plan will result in retail power marketers being registered in the immediate future for compliance with a long list of Reliability Standards which will then be narrowed pursuant to a three-year process. Strategic claims that this is inconsistent with the intent of the Commission's December 20 Order and asks the

³ December 20 Order at P 50.

Commission to convene a technical conference in an effort to resolve the issues raised in this proceeding.

7. Joint Respondents, EPSA, Pepco, and PPL raise concerns that NERC has not provided for sufficient stakeholder input into the short-term changes it proposes.⁴ They generally ask the Commission to direct NERC to provide more time for stakeholder input before its plan is voted on by the Board. Strategic notes that NERC posted its proposed revised Registry Criteria on March 12, 2008, and NERC seeks comment by April 10, 2008.

8. Several commenters, including EPSA and Pepco, assert that NERC's March 4 filing fails to identify current reliability gaps and, therefore, does not comply with the December 20 Order. Pepco claims that the March 4 filing assumes a reliability gap exists, without specifically identifying any specific gap. Therefore, EPSA and Pepco suggest that NERC be directed to use its stakeholder process to identify reliability gaps and design specific remedies for any reliability gaps identified. Pepco suggests that following a more thorough stakeholder process, NERC should make a revised compliance filing.

9. EPSA states that, while it supports NERC's proposed collaboration with stakeholders to make appropriate revisions regarding retail marketers, EPSA is concerned that the narrow scope of issues set forth in its compliance filing is overly limited and does not allow room to address compliance registry issues beyond those concerning retail marketers. EPSA asks the Commission to direct NERC to broaden the scope of its stakeholder process, including that NERC develop a process for identifying reliability gaps.

Discussion

10. The Commission accepts NERC's procedural plan for addressing how it would address a possible "reliability gap." The Commission finds acceptable NERC's proposal for a two-step process to immediately develop a short-term solution, and a lengthier process to develop a long-term solution. Further, the Commission disagrees with the commenters' contention that NERC has not provided adequate time for stakeholder input in developing a short-term solution. As noted above, NERC posted proposed revisions to the Registry Criteria on March 12, 2008, NERC seeks stakeholder comment by April 10, 2008, and anticipates that the NERC board of trustees will consider the proposal at its May 2008 meeting. Further, NERC's plan is appropriately limited to addressing the

⁴ Commenters also raise concerns regarding the substance of NERC's short-term and long-term proposals to address the potential reliability gap. These concerns are beyond the scope of the current proceeding.

potential reliability gap that NERC asserted would result if retail power marketers were not registered as LSEs, as discussed in the December 20 Order.⁵

11. While we accept the procedural aspects of NERC's plan, we will not pre-judge the substance of NERC's proposal. Rather, the Commission will address NERC's short-term and long-term substantive proposals when fully developed and explained pursuant to future filings contemplated by NERC's plan. Likewise, the Commission will not address at this time substantive comments regarding NERC's proposal. Rather, such concerns are beyond the scope of the immediate filing and should, in the first instance, be raised with NERC. Thus, the Commission disagrees with commenters that NERC's compliance filing is deficient because, e.g., it does not address the possible reliability gap or the Reliability Standards with which retail marketers should comply. Rather, the Commission expects NERC to address these matters in its filing following the stakeholder process.

The Commission orders:

NERC's March 4, 2008 compliance filing is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵ December 20 Order at P 50.