

I. 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

Larry D. Grimm, CEO
Susan D. Vincent*
Director, Legal Affairs
Texas Regional Entity
7620 Metro Center Drive
Austin, Texas 78744
Telephone: (512) 225-7078
Facsimile: (512) 225-7021
Email: susan.vincent@texasre.org

Rebecca J. Michael*
Assistant General Counsel
Holly A. Hawkins
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

* Persons to be included on the Commission's service list are indicated with an asterisk. NERC respectfully requests waiver of the Commission's regulations to permit more than two persons on the service list.

II. BACKGROUND

On July 11, 2008, Constellation filed an appeal of the May 22, 2008 decision of NERC's Board of Trustees Compliance Committee ("BOTCC") to include Constellation on the NERC Compliance Registry within the Texas RE Region for the function of Generator Operator ("GOP"). After opportunity for intervention and protest, the Commission issued an Order on November 20, 2008 remanding the appeal decision concerning the inclusion of Constellation on NERC's Compliance Registry to NERC for further consideration.³ The Commission noted that while that matter was remanded, it would keep Constellation on the NERC Compliance Registry

³ *Constellation Energy Commodities Group, Inc.*, 125 FERC ¶ 61,205 (2008) ("November 20 Order").

as a Generator Operator;⁴ however, the Commission encouraged the Parties to seek a voluntary resolution of the matters at issue in this proceeding.⁵ The Commission ordered NERC to supplement the record in this proceeding within sixty (60) days from the date of the Order (January 19, 2009).

NERC filed two Unopposed Motions for Extensions of Time on January 15, 2009,⁶ and on February 18, 2009,⁷ and notified the Commission in both that the Parties to the proceeding were actively engaged in settlement discussions to resolve the dispute. FERC granted both requested extensions of time, and ordered a Compliance filing to be made in accordance with the Commission's November 20, 2008 Order.⁸ NERC filed a Settlement Agreement between Constellation and the Texas RE on April 21, 2009, which fully resolved the issues regarding Constellation's registration on the NERC Compliance Registry as a GOP.

III. COMMENTS

NERC and Texas RE hereby provide these comments in support of the Settlement Agreement that fully resolves the underlying registration dispute at issue in this proceeding. Significantly, Constellation and Texas RE have reached an agreement to resolve all issues relating to Constellation's GOP registration dispute and Constellation has committed to withdrawing its registration appeal, with prejudice, following Commission approval of the Settlement Agreement.

⁴ *Id.* at P 32.

⁵ *Id.*

⁶ *Constellation Energy Commodities Group, Inc.*, Unopposed Motion for an Extension of Time of the North American Electric Reliability Corporation, Docket No. RC08-7-000, dated January 15, 2009.

⁷ *Constellation Energy Commodities Group, Inc.*, North American Electric Reliability Corporation's Settlement Status Report and Unopposed Motion for Extension of Time in Docket No. RC08-7-000, dated February 18, 2009.

⁸ *Constellation Energy Commodities Group, Inc.*, Notice of Extension of Time, Docket No. RC08-7-000, dated January 16, 2009; *Constellation Energy Commodities Group, Inc.*, Notice of Extension of Time, Docket No. RC08-7-000, dated February 19, 2009.

First, on October 1, 2008, Constellation and Power Resources Limited (“PRL”) entered into a Joint Registration Organization arrangement for the GOP function with respect to the PRL facility at issue in the dispute. As set forth in the Settlement Agreement, Constellation and PRL agreed to have the JRO retroactively effective as of January 8, 2008.⁹ The JRO is publicly available on NERC’s website at http://www.nerc.com/files/JRO00019_TRE_REPORT20090429_Standards%20list.pdf and includes all applicable GOP Reliability Standard Requirements that have been approved by the Commission, thereby leaving no gaps or overlaps in reliability.¹⁰

Second, On August 2, 2007, Texas RE notified Constellation that it was required to certify compliance with the actively monitored standards applicable to a GOP.¹¹ Specifically, Texas RE notified Constellation that it was required to certify compliance with actively monitored Reliability Standards CIP-001-1, EOP-009-0, IRO-001-1, IRO-004-1, and TOP 003-0 for 2007 by October 1, 2007.¹²

On August 31, 2007, Constellation responded to Texas RE’s request explaining that Constellation was not in a position to respond to the self-certification request.¹³ On September 27, 2007, Constellation provided a self-certification to Texas RE which included “not

⁹ See Settlement Agreement at P 45.

¹⁰ We note that the JRO excludes five requirements that are deemed not applicable to PRL or Constellation for the following reasons: (1) with respect to VAR-002-1, R 3.2, PRL conducted a through review of its operating facility which did not result in the identification of any other reactive power resources in addition to those that would be covered by R 3.1; therefore R 3.2 is not applicable to the PRL Generating Facility; (2) with respect to VAR-002-1, R 5.1, PRL is the owner of its transformer taps and has possession of the OEM specifications, which are currently being used. The Transmission Operator has not provided PRL with specifications as it relates to transformer taps, therefore R 5.1 is not applicable to the PRL Generating Facility; (3) IRO-005-2 R9 and R17 only apply to the Reliability Coordinator, and therefore are not applicable to either PRL or Constellation; (4) NUC-001-1 applies only to nuclear facilities; and (5) TOP-002-2, R 14.2 was retired before the JRO went into effect.

¹¹ See Settlement Agreement . at P 8.

¹² *Id.* at P 8.

¹³ *Id.* at P 9.

applicable” responses to the GOP functions, indicating that the GOP functions did not apply to Constellation.¹⁴

Thereafter, Constellation and PRL engaged in various conferences in attempt to resolve the various issues relating to the GOP function for the PRL Facility as a result of the NERC’s remand of Constellation’s registration appeal, including discussions between Constellation and Texas RE regarding Constellation’s self-certification for 2007.¹⁵ On January 18, 2008, Texas RE formally notified Constellation’s Chief Executive Officer that Constellation’s self-certification submittal was inadequate.¹⁶ In response, Constellation submitted a self-certification in which it stated that it did not and could not comply with the applicable Reliability Standards.¹⁷

On February 18, 2008, Texas RE issued an Initial Notice of Alleged Violation (“INOV”) to Constellation, alleging Constellation’s violations of the applicable Reliability Standards, as a result of the responses supplied by Constellation to the self-certification form.¹⁸ Texas RE sent additional notice to Constellation on September 5, 2008 requesting Constellation to provide, by September 12, 2008, either: (a) a proposed Mitigation Plan¹⁹ to correct the alleged violations, or (b) a description of how such alleged violations set forth in the INOV had been corrected by Constellation.²⁰

Constellation submitted, on October 7, 2008, documentation to Texas RE showing a detailed compilation of evidence demonstrating compliance from June 18, 2007, including procedures, Black Start testing forms, test results, data submittals and other relevant

¹⁴ *Id.* at P 10.

¹⁵ Settlement Agreement at P 12.

¹⁶ *Id.* at P 15.

¹⁷ *Id.* at P 16.

¹⁸ *Id.* at P 17.

¹⁹ This Mitigation Plan would more accurately be described as a Request for Information rather than a Mitigation Plan because no action was required on the part of Constellation to come into compliance either retroactively or prospectively; it was simply a request by Texas RE to Constellation for the documentation to assess whether Constellation was in fact compliant or not with the applicable GOP Reliability Standard Requirements.

²⁰ Settlement Agreement at P 24.

documents.²¹ Additionally, at Texas RE's request, Constellation submitted additional information, including a revised Self-Certification for 2007 certifying compliance with all Applicable Standards from June 18, 2007 to December 31, 2007, and a detailed compilation of evidence demonstrating compliance with the applicable Standards, which was designated as a Mitigation Plan, dated December 18, 2008. As a result, Texas RE determined, on February 24, 2009, that Constellation submitted sufficient information to enable Texas RE to evaluate whether Constellation was in compliance with the Reliability Standards applicable to a GOP as of June 18, 2007.²² Constellation's Mitigation Plan and Texas RE's verification are attached to NERC's April 21, 2009 Settlement Agreement filing. Based upon its review of the evidence submitted by Constellation in October and December 2008, as well as information supplied by PRL,²³ Texas RE determined that Constellation was in full compliance with all applicable Reliability Standards since June 18, 2007.²⁴

Notably, as set forth in the Settlement Agreement, Constellation submitted information that demonstrated it was compliant with all applicable Reliability Standards Requirements since June 18, 2007 and certified such compliance as evidenced by the Settlement Agreement and the attached certification.²⁵ Constellation explained that there was confusion on its part arising from the communications with Texas RE with regard to the manner in which Constellation was expected to meet its obligations during the initial self-certification process.²⁶ As a result of Texas RE's ultimate determination, after review of the evidence submittals by Constellation, as well as PRL, that Constellation was in full compliance with the Reliability Standards as of June

²¹ *Id.* at PP 25 and 29.

²² *Id.* at P 29. Again, the use of the term Mitigation Plan is a misnomer because this submittal was basically sent in response to a request for additional information from Texas RE.

²³ Settlement Agreement at P 34.

²⁴ *Id.* at PP 29 and 30.

²⁵ *Id.* at Attachment 2.

²⁶ *Id.* at P 35.

18, 2007, Texas RE agreed in the Settlement Agreement to rescind the INOV issued to Constellation on February 18, 2008, upon Commission approval of the Settlement Agreement, because there was no violation of any Reliability Standard Requirements by Constellation.²⁷ In the Settlement Agreement, Constellation agreed to a payment amount of \$5,000 to be paid to Texas RE to settle and resolve all issues described in the Settlement Agreement.²⁸

²⁷ *Id.* at P 44.

²⁸ *Id.* at P 41. In addition, as set forth in the Settlement Agreement, Constellation will provide NERC compliance instructions to its employees involved in the self-certification process. Settlement Agreement at Paragraph 40.

IV. CONCLUSION

For the foregoing reasons, NERC and Texas RE respectfully requests that the Settlement Agreement be promptly approved.

Respectfully submitted,

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

/s/ Rebecca J. Michael
Rebecca J. Michael
Assistant General Counsel
Holly A. Hawkins
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
holly.hawkins@nerc.net

/s/ Susan D. Vincent
Susan D. Vincent*
Director. Legal Affairs
Texas Regional Entity
7620 Metro Center Drive
Austin, Texas 78744
Telephone: (512) 225-7078
Facsimile: (512) 225-7021
Email: susan.vincent@texasre.org

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 12th day of May, 2009.

/s/ Holly A. Hawkins

Holly A. Hawkins

*Attorney for North American Electric
Reliability Corporation*