

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

U.S. Department of Energy,
Portsmouth/Paducah Project Office

Docket No. RC08-5-____

**COMPLIANCE FILING OF THE NORTH AMERICAN ELECTRIC RELIABILITY
CORPORATION**

The North American Electric Reliability Corporation (“NERC”) hereby submits a filing in compliance with the order issued by the Federal Energy Regulatory Commission (“FERC” or “Commission”) on April 19, 2012 in this proceeding (the “April 19 Order”).¹ In the April 19 Order, among other things, FERC directed NERC to either register the Ohio Valley Electric Corporation (“OVEC”) as a load-serving entity (“LSE”) or, within 90 days of the date of this order, submit a filing explaining why OVEC should not be registered for the load-serving entity function.²

In the instant filing, NERC explains that it has not registered OVEC for the LSE function, at this time, because: (a) as discussed in NERC’s request for rehearing and clarification of the April 19 Order, another entity, DOE PPPO meets the criteria for registration as the LSE and (b) no significant gap in reliability will result from a delay in registering an entity as the LSE in this case while NERC’s request for rehearing and clarification is pending before the Commission. NERC also requests that it be allowed to continue to defer registration of OVEC as an LSE in this case until thirty days after a Commission order on NERC’s request for rehearing and clarification of the April 19 Order, as appropriate.

¹ *U.S. Department of Energy, Portsmouth/Paducah Project Office*, 139 FERC ¶ 61,054 (2012). NERC has deactivated the LSE function registration for the U.S. Department of Energy, Portsmouth/Paducah Project Office (“DOE PPPO”), in accordance with the April 19 Order.

² April 19 Order at P 1.

I. BACKGROUND

The April 19 Order granted an appeal filed by DOE PPPO of a decision by the Compliance Committee of the NERC Board of Trustees to confirm the registration of DOE PPPO as an LSE. FERC found that DOE PPPO should not be registered as an LSE under the NERC Statement of Compliance Registry Criteria (“Registry Criteria”).³ In the April 19 Order the Commission also stated that it believes that OVEC, which sells energy to DOE PPPO pursuant to a retail sales tariff, is the appropriate entity to register as the LSE.⁴

On May 21, 2012, NERC requested rehearing and clarification of the April 19 Order. NERC argued that the Commission erred in applying the Registry Criteria, and in particular section III.a.4, to the facts of this case and finding that DOE PPPO was not properly registered as an LSE. Specifically, NERC argued that the Commission erred in failing to find that DOE PPPO, as the Distribution Provider (“DP”), was the LSE given that DOE PPPO had not transferred such responsibilities to a third party, such as OVEC. NERC also argued that the Commission erred in failing to explain how the ownership and operation of distribution facilities by DOE PPPO affected the Commission’s determination in light of the Commission’s prior precedent indicating that a DP will be registered as the LSE for all load directly connected to its distribution facilities absent a written agreement transferring this responsibility to a third party that has been registered for the LSE function.⁵

³ The Registry Criteria is Appendix 5B to the NERC Rules of Procedure.

⁴ April 19 Order at P 1.

⁵ See *Direct Energy Services, LLC, et. al.*, 125 FERC ¶ 61,057 (2008). NERC also has requested clarification and, in the alternative, rehearing, in the instant docket, including the broader issue of compensation of LSEs, which is not relevant to this Compliance Filing.

II. COMPLIANCE FILING

The Registry Criteria provides that an LSE is an entity that “[s]ecures energy and Transmission Service (and related Interconnected Operations Services) to serve the electrical demand and energy requirements of its end-use customers.”⁶ Section III(a) of the Registry Criteria provides that an entity identified as an LSE pursuant to this definition should be excluded from the Compliance Registry if it does not meet additional criteria, including as follows:

- The LSE’s peak load is greater than 25 MW and is directly connected to the bulk power system (“BPS”) (section III.a.1);
- *Distribution Providers registered under the criteria in section III.b.1 or III.b.2 will be registered as an LSE for all load directly connected to their distribution facilities, unless responsibility for compliance with the relevant standards has been transferred by written agreement to another entity that has registered for the appropriate function* (section III.a.4).

As explained in NERC’s request for rehearing and clarification, there is no dispute that the DOE PPPO load is greater than 25 MW and is directly connected to the 345 kV network.⁷ In addition, DOE PPPO is a registered DP and its DP registration was upheld by the Commission.⁸ The record does not indicate, and DOE PPPO has not asserted, that DOE PPPO transferred any responsibilities for compliance with any Reliability Standards by written agreement as contemplated in the Compliance Registry. In addition, the Commission has previously found appropriate that a DP be registered as the LSE for all load directly connected to its distribution

⁶ See section II of the Registry Criteria.

⁷ DOE PPPO May 13, 2008 Appeal at 2-3 (“DOE PPPO Appeal”).

⁸ *U.S. Department of Energy, Portsmouth/Paducah Project Office*, 124 FERC ¶ 61,072 (2008) at P 39.

facilities.⁹ As the DP associated with the relevant load, DOE PPPO should be registered also as the LSE. Therefore, DOE PPPO meets the relevant criteria for registration as an LSE.

In the request for rehearing and clarification, NERC also explained that OVEC's role as a seller of power to DOE PPPO under a month-to-month retail contract is comparable to that of a power marketer rather than to an LSE. The request for rehearing and clarification explains that OVEC provides power to DOE PPPO via month-to-month contracts under which OVEC purchases a block of power in the wholesale market sufficient to meet DOE PPPO's peak demand with required reserves.¹⁰ DOE PPPO is the entity responsible for the determination of its own load profile, and the pricing at which it purchases services.¹¹

Therefore, NERC does not believe that it is appropriate to register OVEC as the LSE in this case until the Commission has had an opportunity to consider NERC's request for rehearing and clarification. NERC requests that it be allowed to continue to defer registration of OVEC as an LSE in this case until thirty days after an order of the Commission on the NERC request for rehearing and clarification of the April 19 Order, as appropriate. In support of this request, NERC submits that it carefully considered the scope of Reliability Standards that would apply to the LSE function in this case and determined that the majority of those Reliability Standards already apply to DOE PPPO as a result of DOE PPPO's registration as a Transmission Owner, Transmission Operator and DP, which were upheld by the Commission. The majority of the remaining ten standards, applicable to the LSE function that are not also applicable to DOE

⁹ *Direct Energy Services, LLC, et al.*, 125 FERC ¶ 61,057 (2008) at P 24 (approving revisions to the Compliance Registry to "have registered distribution providers also register as the LSE for all load directly connected to their distribution facilities").

¹⁰ DOE PPPO Appeal at 3. See also DOE PPPO's September 5, 2008 Response to NERC's request for information, submitted as Attachment C to NERC's October 6, 2008 Compliance Filing.

¹¹ June 12, 2008 Motion to Intervene and Comments of ReliabilityFirst Corporation at 8 and Attachment A (ReliabilityFirst Assessment of DOE Registration Appeal).

PPPO's registration,¹² relate primarily to the provision of information, which NERC can obtain under its Rules of Procedure or the Commission's regulations and communications that are currently being made through OVEC as the Balancing Authority in which the load resides. Moreover, it would be inappropriate, in these circumstances, to subject OVEC to the administrative burden of compliance with a number of additional standards pending a final resolution of this matter.

III. CONCLUSION

In view of the foregoing, NERC requests that the Commission accepts this Compliance Filing and allow NERC to continue to defer registration of OVEC as an LSE in this case until thirty days after the Commission rules on NERC's request for rehearing and clarification of the April 19 Order, as appropriate.

¹² These Reliability Standards are: BAL-005-0.1b R1.3; EOP-002-3 R9/9.1; MOD-004-1 R3/3.1/3.2/10; MOD-017-0.1 R1/1.1/1.2/1.3/1.4; MOD-018-0 R1/1.1/1.2/1.3/2; MOD-019-0.1 R1; MOD-020-0 R1; MOD-021-1 R1/2/3; TOP-002-2b R3; VAR-001-2 R5.

Respectfully submitted,

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Dated: July 18, 2012

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 18th day of July, 2012.

/s/ Rebecca J. Michael

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