

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

<b>DIRECT ENERGY SERVICES, LLC</b>	)	<b>Docket Nos. RC07-4-000</b>
<b>SEMPRA ENERGY SOLUTIONS, LLC</b>	)	<b>RC07-6-000</b>
<b>STRATEGIC ENERGY, L.L.C.</b>	)	<b>RC07-7-000</b>

**COMPLIANCE FILING OF THE  
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
IN RESPONSE TO DECEMBER 20, 2007 ORDER**

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March 4, 2008

## I. INTRODUCTION

The North American Electric Reliability Corporation (“NERC”) hereby submits its compliance filing in response to the Commission’s December 20 Order in Docket Nos. RC07-004-000, RC07-6-000, and RC07-7-000.<sup>1</sup>

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

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<sup>1</sup>*Direct Energy Services, LLC, et al.*, 121 FERC ¶ 61,274 (2007) (“December 20 Order”). Paragraphs 2-14 of the December 20 Order set forth relevant procedural history leading up to its issuance.

newly established due date for comments in response to issues raised at the technical conference.

On October 12, 2007, NERC, RFC, Direct Energy, Sempra, Strategic Energy, and other interested parties participated in the technical conference held by Commission staff.

On December 20, 2007, the Commission issued its Order in these proceedings.

## **II. NOTICES AND COMMUNICATIONS**

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

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## **III. SPECIFIC RESPONSES TO DIRECTIVES IN DECEMBER 20, 2007 ORDER**

In the December 20 Order, the Commission reversed NERC's Compliance Registry decisions with respect to three load serving entities (Direct Energy, Sempra Energy and Strategic Energy) in the RFC footprint. The distinguishing feature of these three LSEs is that none owned physical assets. The Commission listed three reasons for its decision:<sup>2</sup>

- Registration is not supported by the registry criteria;
- The Commission perceived an inconsistent application of the registry criteria among the Regional Entities; and
- NERC and the Regional Entity failed to adequately identify the reliability standards for which retail marketers registered as LSEs would be responsible.

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<sup>2</sup> December 20 Order at PP 1 and 35.

Accordingly, the Commission directed that the three LSEs be removed from the NERC Compliance Registry. NERC has removed Direct Energy, Sempra Energy and Strategic Energy from the Compliance Registry, as directed.

The Commission also expressed concern about the potential reliability gap that might be caused by removing the LSEs from the registry and directed NERC to file a plan by March 4, 2008, to address the potential gap:

Both NERC and ReliabilityFirst assert that there will be a “reliability gap” if retail marketers are not registered as LSEs. Although NERC’s and ReliabilityFirst’s approach to registering retail marketers as LSEs is reversed, the Commission is concerned about the reliability gap that NERC and ReliabilityFirst claim will occur. NERC’s Functional Model was developed to assign the reliability functions that historically were performed by vertically integrated utilities to specific entities so that there would not be a gap or undue overlap in the responsibilities to provide for reliable operation. If retail marketers are not registered as LSEs, it still may be the case that they possess information relevant to the reliable operation of the Bulk-Power System that is not provided by other users, owners or operators.<sup>3</sup>

To avoid a possible gap, NERC must develop a consistent, uniform approach to ensure that appropriate Reliability Standards and Requirements are applied to retail marketers. While the appellants have suggested several approaches, such as developing a new functional category in the NERC Functional Model and revising the appropriate Reliability Standards, we leave to NERC’s discretion to propose an appropriate approach. To assure that the matter is addressed in a timely manner, we direct NERC to submit a plan, within 75 days of the date of this order, describing how it will address this issue.<sup>4</sup>

By this filing, NERC hereby submits its plan to address these issues. The NERC Board of Trustees approved this plan on February 28, 2008.

Specifically, NERC proposes a two-step process to address the potential gap:

- (1) Short-term: Using a posting and open comment process, NERC will revise the registration criteria to define “Non-Asset Owning LSEs” as a subset of Load Serving Entities and will specify the reliability standards applicable to that subset. The NERC Board of Trustees will then consider the revisions at its May 2008 meeting.

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<sup>3</sup> December 20 Order at P 49.

<sup>4</sup> *Id.* at P 50.

(2) Longer-term: NERC will determine the changes necessary to terms and requirements in reliability standards to address the issues surrounding accountability for loads served by retail marketers/suppliers and process them through execution of the three-year *Reliability Standards Development Plan*.

- a. Begin the implementation with a LSE and Compliance workshop in April 2008 to identify and highlight the issues;
- b. Include the results of the workshop and other feedback into NERC's ongoing standards work plan; and
- c. Revise the standards and definitions as appropriate.

### **Short-Term Step**

The first step is a short-term step to assure any potential reliability gap is closed. NERC will revise the *NERC Statement of Compliance Registry Criteria* to address the issue. Toward this end, NERC will develop, through an open comment process, a revision to the *NERC Statement of Compliance Registry Criteria* that will create a new subclass of Load-Serving Entities to include load-serving entities that do not own physical assets, such as the retail power marketers/suppliers. The proposal will also identify the reliability standards that would be applicable to the new subclass. The proposal for revised criteria, the industry comments, and any appropriate revisions to the proposal will then be considered at the May 2008 meeting of the Board of Trustees. Once approved, the revised criteria will be filed with the Commission for approval. This schedule will provide the opportunity for stakeholders to discuss the issues thoroughly.

NERC believes that adding such a subclass of registrants will ensure that there is no reliability gap.<sup>5</sup> Registration of this new subclass would not preclude such a registered entity

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<sup>5</sup> As the Commission found in the December 20 Order:

NERC defines "LSE" as an entity that "secures energy and transmission service (and related interconnected operating services) to serve the electrical demand and energy requirements of its end use customers."<sup>5</sup> This definition appears to be broad enough to include power marketers that serve retail customers. *Id.* at P 36.

from entering into agreements (either through direct agreements or as Joint Registration Organizations) with other third-party registered entities to perform any related compliance responsibilities on their behalf, as provided for in Rule 507 of NERC's Rules of Procedure and the NERC *Statement of Compliance Registry Criteria*. NERC believes such an approach will be the most expeditious solution to closing the gap.

### **Longer-Term Step**

The longer-term solution involves identifying changes to definitions and potentially requirements in reliability standards and revising the applicability sections of certain reliability standards. NERC proposes to begin the implementation of the longer term solution by conducting a LSE and Compliance workshop in April 2008, focused on these issues.<sup>6</sup> This LSE and Compliance workshop will enable NERC to obtain input from all interested parties regarding reliability standards, applicable functional entities, and associated compliance with the standards for loads served by retail power marketers/suppliers. This LSE and Compliance workshop will serve as a means to identify revisions to the Commission-approved NERC reliability standards that will be incorporated into NERC's three-year *Reliability Standards Development Plan* to address the issue of retail power marketers/suppliers and their registration as a Load-Serving Entity.

NERC submits that its two-step process is a reasonable means to address the potential reliability gap identified in the Commission's December 20 Order. The approach will ensure that the appropriate entities will be accountable for meeting the requirements necessary for the reliability of the bulk power system.

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<sup>6</sup> NERC will post the agenda and details for the workshop in the near future.

#### **IV. CONCLUSION**

For the reasons set forth above, the North American Electric Reliability Corporation respectfully requests that the Commission accept this filing in compliance with the December 20 Order in this proceeding, recognizing that NERC will make additional filings as outlined above to implement the plan.

Respectfully submitted,

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**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 4th day of March, 2008.

*/s/ Rebecca J. Michael*

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Rebecca J. Michael

*Attorney for North American Electric  
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Document Content(s)

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