

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

North American Electric Reliability Corp.)

Docket No. RR21-10-000

**MOTION TO INTERVENE AND COMMENTS OF
THE AMERICAN PUBLIC POWER ASSOCIATION,
THE LARGE PUBLIC POWER COUNCIL, AND
THE TRANSMISSION ACCESS POLICY STUDY GROUP**

Pursuant to the September 29, 2021 notice issued by the Federal Energy Regulatory Commission (“Commission” or “FERC”), the American Public Power Association (“APPA”), the Large Public Power Council (“LPPC”), and the Transmission Access Policy Study Group (“TAPS”) (collectively, the “Public Power Trade Associations”) hereby each move to intervene in the above-captioned docket and offer their joint comments in support of the Rules of Procedure (“ROP”) revisions filed by the North American Electric Reliability Corporation and the six Regional Entities (collectively, “NERC”).¹ The proposed ROP revisions reflect substantial input from industry, including the Public Power Trade Associations, and the resulting changes would appropriately implement NERC’s risk-based Compliance Monitoring and Enforcement Program (“CMEP”). The Public Power Trade Associations, therefore, urge the Commission to approve the ROP revisions pursuant to section 215(f) of the Federal Power Act (“FPA”).²

I. MOTION TO INTERVENE

APPA is the national service organization representing the interests of not-for-profit, state, municipal, and other locally owned electric utilities in the United States. More than 2,000

¹ *North American Electric Reliability Corp.*, Docket No. RR21-10-000, Petition of the North American Electric Reliability Corporation and the Regional Entities for Approval of Revisions to the NERC Rules of Procedure (Sept. 29, 2021) (“September 29 Filing”).

² 16 U.S.C. § 824o(f).

public power systems provide over 15 percent of all kilowatt-hours sales to ultimate customers and serve over 49 million people, doing business in every state except Hawaii. Over 250 public power utilities are registered entities subject to compliance with mandatory NERC Reliability Standards.

LPPC is the association of the 27 largest state-owned and municipal utilities in the nation. LPPC's members are located throughout the nation, both within and outside the boundaries of regional transmission organizations and independent system operators. The members comprise the larger, asset-owning utilities in the public power community, owning approximately 90 percent of the transmission assets owned by non-federal public power entities. LPPC members are also members of APPA.

TAPS is an association of transmission-dependent utilities ("TDUs") in 35 states promoting open and non-discriminatory transmission access.³ TAPS members have long recognized the importance of grid reliability. As TDUs, TAPS members are users of the Bulk Power System and are highly reliant on the reliability of facilities owned and operated by others for the transmission service required to meet TAPS members' loads. In addition, many TAPS members participate in the development of and are subject to compliance with NERC Reliability Standards.

The outcome of this proceeding will affect the Public Power Trade Associations' members and the customers they serve. The Public Power Trade Associations wish to intervene in this proceeding to represent the interests of these members as such interests may arise. The

³ See <https://www.tapsgroup.org>. David Geschwind, Southern Minnesota Municipal Power Agency, chairs the TAPS Board. Jane Cirrincione, Northern California Power Agency, is TAPS Vice Chair. Terry Huval is TAPS Executive Director.

Public Power Trade Associations submit that their participation in this proceeding is in the public interest, and each respectfully moves to intervene.

Communications regarding these proceedings should be directed to:

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II. COMMENTS

NERC's September 29 Filing proposes a suite of revisions to the NERC ROP governing the CMEP, the Personnel Certification and Credential Maintenance Program, and the Training and Education Program. The Public Power Trade Associations direct these comments to the proposed CMEP rule changes.

As NERC explains in its filing, the proposed revisions to the CMEP ROP are designed "to continue to enhance [NERC's] risk-based approach to monitoring and enforcing compliance with the NERC Reliability Standards and to enhance the ROP to add clarity and simplify unduly

burdensome administrative business practices.”⁴ The Public Power Trade Associations have long supported a risk-based approach to NERC’s CMEP, and the proposed revisions to the ROP are appropriately aimed at reducing unnecessary burdens on NERC and registered entities while enhancing the effectiveness of the risk-based CMEP approach.⁵

The ROP revisions included in the September 29 Filing were informed by substantial industry input.⁶ The Public Power Trade Associations submitted detailed comments on NERC’s initial draft ROP changes, expressing general support for improved risk-based compliance, while providing a number of proposed changes, clarifications, and questions.⁷ The Public Power Trade Associations appreciate NERC’s consideration of these comments, and the alterations made to the proposed ROP in response. While not incorporating every comment in full, NERC responded meaningfully to the issues raised by the Public Power Trade Associations. Such collaboration ultimately enhances the CMEP by minimizing disputes over the ROP, and by fostering confidence that industry perspectives on risk-based compliance are being heard.

Concerning the substance of the ROP revisions, the Public Power Trade Associations particularly wish to highlight the change reflected in revised ROP section 403.10 that would grant the relevant Compliance Enforcement Authority (“CEA”) discretion as to when to conduct compliance audits rather than requiring an audit every three years, regardless of reliability or security justification.⁸ The Public Power Trade Associations’ comments to NERC unanimously

⁴ September 29 Filing at 3.

⁵ *See id.* at 3-9.

⁶ *See id.* at 8-9 & Attach. 9.

⁷ *See id.* at Attach. 9. APPA and LPPC filed joint comments, and TAPS filed a separate set of comments.

⁸ *See id.* at 14-15. The change would apply to compliance audits for entities registered as Balancing Authorities, Reliability Coordinators, or Transmission Operators. *See id.*

endorsed this change as advancing the risk-based approach to CMEP,⁹ and we urge the Commission to accept NERC's proposed ROP revisions on this issue.

Public Power Trade Associations also specifically endorse NERC's proposed changes to the evidence retention period for compliance audits.¹⁰ Consistent with the recommendations of NERC's recently concluded Standards Efficiency Review initiative,¹¹ these revisions would ensure adequate evidence to support compliance reviews, while reducing registered entities' administrative burden and costs. This proposed change, as well as the other ROP revisions included in the September 29 Filing, comply with the requirements of FPA section 215(f) and should be approved.

III. CONCLUSION

For the reasons set forth above, the Public Power Trade Associations respectfully ask the Commission to: (1) permit each of them to intervene in this proceeding; and (2) approve NERC's proposed revisions to the ROP pursuant to FPA section 215(f).

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⁹ See *id.* at Attach. 9. NERC responded to industry concerns about potentially inadequate audit notice by proposing to provide registered entities with at least 270 days' notice of an upcoming compliance audit, in lieu of an Annual Audit Plan, and a detailed audit notice at least 90 days prior to the compliance audit. See *id.* at 9-10.

¹⁰ See *id.* at 11-12.

¹¹ NERC, Standard Efficiency Review Phase 2 Evidence Retention Team, *Evidence Retention White Paper: Analysis and Recommendations* (2019), https://www.nerc.com/pa/Stand/Standards%20Efficiency%20Review%20DL/SER_Evidence_Retention_White_Paper_02062020.pdf.

Respectfully submitted,

American Public Power Association

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October 20, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 20th day of October, 2021.

/s/ John E. McCaffrey
John E. McCaffrey