

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

Secure-the-Grid Coalition

)

Docket No. EL23-69-000

**JOINT PROTEST OF
THE AMERICAN PUBLIC POWER ASSOCIATION,
THE EDISON ELECTRIC INSTITUTE,
THE LARGE PUBLIC POWER COUNCIL,
THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION, AND
THE TRANSMISSION ACCESS POLICY STUDY GROUP**

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”)¹ and the Commission’s May 23, 2023, Notice of Filing, the American Public Power Association, Edison Electric Institute, Large Public Power Council, National Rural Electric Cooperative Association, and Transmission Access Policy Study Group (together, the “Joint Trade Associations”)² hereby protest the May 15, 2023, petition for rulemaking (“Petition”) submitted by the Secure-the-Grid Coalition (“Coalition”) in the above-captioned docket.

As discussed below, the Petition does not satisfy the minimum requirements for a request for a FERC directive to the North American Electric Reliability Corporation (“NERC”)³ to develop new or modified Reliability Standards. Even if the Commission were to conclude that the Petition may provide some basis to revisit the requirements of Critical Infrastructure Protection (“CIP”) Reliability Standard CIP-014-3, the Coalition’s requests for relief would be duplicative of the ongoing efforts by the Commission and NERC in connection with Docket No.

¹ 18 C.F.R. § 385.211 (2023).

² Each of the Joint Trade Associations is separately filing a doc-less motion to intervene in this docket.

³ NERC is currently the Commission-certified Electric Reliability Organization (“ERO”) under section 215 of the Federal Power Act (“FPA”), 16 U.S.C. § 824o.

RD23-2, and any requested directive to NERC is, at best, premature. For these reasons, the Commission should dismiss the Petition.

I. THE PETITION

Citing recent public discourse regarding the physical security of electric grid components,⁴ the Coalition suggests that the Commission should direct NERC to modify how the Reliability Standards identify “critical infrastructure” for purposes of applying Reliability Standard CIP-014-003. Specifically, the Petition urges the Commission to order NERC:

to set an enhanced standard to be used in the determination of critical infrastructure that would be subjected to evaluation through the use of most recently updated engineering models used in operations for the purpose of determining which assets, if damaged, permanently destroyed, or otherwise rendered inoperable, would lead to uncontrolled separation, cascading outages or instability.⁵

According to the Coalition, this step is a prerequisite to considering any reform or expansion of CIP-014.⁶

The Petition further asks the Commission to direct NERC to adopt “a more prudent new metric” for physical security risk assessments performed under CIP-014-003.⁷ The Joint Trade Associations understand this request to refer to the threat assessment that registered entities are required to perform under Requirement R4 of CIP-014-3.⁸ The proposed new metric, the

⁴ Petition at 2-4. The Coalition points to media reports, the discussion at the February 21, 2023, meeting of the Joint Federal-State Task Force on Electric Transmission (“Task Force”), and to the February 2023 criminal complaint focusing on an alleged plot to disrupt electric service in Baltimore, Maryland by means of a physical attack on an electrical substation.

⁵ *Id.* at 1; *see also id.* at 7.

⁶ *See id.* at 6 (arguing that “we cannot seriously consider reformation or expansion of CIP-014-003 without first considering the electric assets that can, if damaged, permanently destroyed, or otherwise rendered inoperable, lead to uncontrolled separation, cascading outages or instability.”).

⁷ *See id.* at 4.

⁸ Reliability Standard CIP-014-3, Requirement R4.

Coalition argues, “should incorporate real-world factors that pertain to the risks associated with physical sabotage,” including: “(1) known vulnerabilities, (2) attacker capabilities, (3) and attacker intentions.”⁹

The Petition asks the Commission to issue an order to NERC directing the filing of Reliability Standards, “with a deadline of no more than 90 days for submission of a proposed standard.”¹⁰

II. PROTEST

A. The Petition Does Not Satisfy the Minimum Requirements for a Request Seeking a Directive to NERC

The Petition fails to meet the minimum requirements under FPA section 215(d)(5)¹¹ and section 39.5(f)¹² of the Commission’s regulations, which govern requests for the Commission to issue a directive to NERC for a new or modified reliability standard. The Coalition filed the Petition pursuant to Commission Rule 207(a)(4), arguing that the filing asks the Commission to issue a rule of general applicability.¹³ Section 215 of FPA and the Commission’s regulations are clear, however, that a request for a Commission order directing NERC to submit a new or modified reliability standard must be made through a “complaint.”¹⁴ This requirement is more

⁹ Petition at 4.

¹⁰ *Id.* at 2.

¹¹ 16 U.S.C. § 824o(d)(5) (providing that “[t]he Commission, upon its own motion or upon complaint, may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.”).

¹² 18 C.F.R. § 39.5(f) (2023) (providing that “[t]he Commission may, upon its own motion or a complaint, order the Electric Reliability Organization to submit a proposed Reliability Standard or modification to a Reliability Standard that addresses a specific matter if the Commission considers such a new or modified Reliability Standard appropriate to carry out section 215 of the Federal Power Act.”).

¹³ Petition at 1-2 (citing 18 C.F.R. § 385.207(a)(4) (2023)).

¹⁴ 16 U.S.C. § 824o(d)(5); 18 C.F.R. § 39.5(f) (2023); *see also Rules Concerning Certification of the Elec. Reliability Org.; and Procedures for the Establishment, Approval, and Enforcement of Elec. Reliability Standards*, Order No. 672, 114 FERC ¶ 61,104 at P 417, *order on reh’g*, Order No. 672-A, 114 FERC ¶ 61,328 (2006)

than semantical; the Commission’s rules and precedent establish specific requirements for complaints, including those that ask the Commission to direct NERC to modify the Reliability Standards.¹⁵ For example, in addition to the requirements of Commission Rule 206,¹⁶ the Commission has indicated that complaints seeking changes to the Reliability Standards must establish that the “allegations support a new or modified Reliability Standard”¹⁷ and, consistent with FPA section 215(d)(5), complainants must explain “how any such new or modified Reliability Standard is appropriate to carry out section 215 of the FPA.”¹⁸ The Commission also stated in Order No. 672 that, before filing a complaint, entities seeking new or modified Reliability Standards should first approach NERC with a request to initiate a new Reliability Standard,¹⁹ a step the Coalition appears to have omitted. Because the Petition does not satisfy these complaint requirements, it should be dismissed.

Even if the Commission opts to treat the Petition as a complaint under FPA section 215(d)(5) and section 39.5(f) of the Commission’s regulations, the Petition fails to satisfy the minimum requirements for a directive to NERC.

The Commission approved CIP-014 in Order No. 802 as just, reasonable, not unduly discriminatory or preferential, and in the public interest (subject to one required modification).²⁰

(explaining that “[t]he Commission may direct the ERO to propose a new Reliability Standard in response to a complaint.”).

¹⁵ See, e.g., 18 C.F.R. § 385.206 (2023).

¹⁶ *Id.*

¹⁷ *Complaint of George R. Cotter Seeking Modifications to Critical Infrastructure Sec. Standards*, 181 FERC ¶ 61,202 at P 21 (2022); see also *Complaint of Michael Mabee Related to Reliability Standards*, 175 FERC ¶ 61,163 at PP 14-15 (2021).

¹⁸ *Complaint of George R. Cotter Seeking Modifications to Critical Infrastructure Sec. Standards*, 181 FERC ¶ 61,202 at P 21.

¹⁹ Order No. 672 at P 417.

²⁰ *Physical Sec. Reliability Standard*, Order No. 802, 149 FERC ¶ 61,140 at P 18 (2014), *reh’g denied*, 151 FERC ¶ 61,066 (2015); see also *N. Am. Elec. Reliability Corp.*, Docket RD15-4-000 (2015) (delegated order) (approving

The Petition does not provide a sufficient basis to revisit that determination.²¹ As FERC noted in Order No. 802, “[t]he purpose of Reliability Standard CIP-014-1 is to enhance physical security measures *for the most critical Bulk-Power System facilities* and thereby lessen the overall vulnerability of the Bulk-Power System facilities against physical attacks.”²² Reliability Standard CIP-014 implements this purpose while limiting its application to certain categories of facilities,²³ and then requiring an individualized risk assessment to determine whether any particular facility in one of those categories is “critical.”²⁴ The Petition suggests that the Commission should direct NERC to revisit the Commission-approved scope of CIP-014’s applicability. But there is nothing to support the allegations of alleged deficiencies in CIP-014, nor is the Coalition’s proposed remedy adequately supported.

The Coalition asserts that the sixth Task Force meeting and NERC’s April 14, 2023, report on CIP-014 in Docket No. RD23-2 (“NERC Report”) “indicated to Petitioner that an amendment is prudent and required, at this time, to enhance what is determined to be Critical Infrastructure under the Physical Security Standard CIP-014-003.”²⁵ But this conclusory observation falls far short of establishing a basis for revising the applicability of CIP-014-003. The Petition points to no particular observations or findings from the Task Force or the NERC

Reliability Standard CIP-014-2); *N. Am. Elec. Reliability Corp.*, 179 FERC ¶ 61,187 (2022) (approving Reliability Standard CIP-014-3).

²¹ See, e.g., *Complaint of Michael Mabee Related to Critical Infrastructure Reliability Standard*, 171 FERC ¶ 61,205 at P 11 (2020) (denying complaint seeking changes to CIP-014 because “[t]he Complaint provides no new information to justify revisiting [the approval of CIP-014 in Order No. 802] or to exercise our authority under section 215(d)(5) of the FPA to direct modifications to the Physical Security Reliability Standard.”).

²² Order No. 802 at P 1 (emphasis added).

²³ Specifically, CIP-014-3 identifies four categories of applicable transmission facilities: (1) facilities operated at 500 kV or higher; (2) facilities operated between 200 kV and 499 kV that meet specified substation configurations; (3) facilities identified as critical to the derivation of Interconnection Reliability Operating Limits; and (4) facilities identified as essential to meeting Nuclear Plant Interface Requirements. CIP-014-3, Section 4 (Applicability).

²⁴ Reliability Standard CIP-014-3, Requirement R1.

²⁵ Petition at 5.

Report that support its request.²⁶ Indeed, NERC concluded that the existing applicability criteria of CIP-014 are “broad enough to capture the subset of applicable facilities that TOs should identify as ‘critical’ pursuant to the Requirement R1 risks assessment.”²⁷

The Petition likewise fails to adequately identify sufficient grounds for finding that the Commission-approved CIP-014 requirements for conducting threat assessments are unreasonable or inconsistent with FPA section 215. The Petition’s support for this request is the bare assertion that “[b]ased on the increasing frequency and sophistication of attacks against electric grid infrastructure, and the growing evidence that there is a persistent intent to conduct such attacks from domestic anarchist and extremist groups and foreign adversaries, a more prudent new metric is now required for these ‘Risk Assessments.’”²⁸ As the Joint Trade Associations observed in their recent comments in Docket No. RD23-2-001, their members are acutely aware of the physical threats posed to the grid, and of the importance of effective protective measures.²⁹ Notwithstanding an uptick in physical security events in recent years, however, simply pointing to a number of recent events does not establish the need for the Commission to direct changes to the threat assessment requirements of CIP-014. Indeed, while the Commission is presumably

²⁶ The Petition highlights one Task Force meeting quote from NERC President and CEO Jim Robb referencing an observed increase in ballistic activity and intent to harm infrastructure over the last several years, Petition at 3, but the Petition does not explain how this observation supports the need to expand the applicability of CIP-014. The Coalition acknowledges, in fact, that the Task Force’s discussion also indicated that the “majority of these historical cases did not result in prolonged outages.”

²⁷ NERC Report at 12; *see also id.* at 17 (concluding that “there are no current studies that indicate an expansion of the Applicability criteria will identify additional stations that would qualify as ‘critical substations’ under the Requirement R1 risk assessment.”).

²⁸ Petition at 4.

²⁹ *N. Am. Elec. Reliability Corp.*, Docket Nos. RD23-2-001, *et al.*, Comments of the American Public Power Association, *et al.* at 3 (May 15, 2023).

well aware of these recent developments, it did not include the threat assessment requirements of CIP-014, Requirement R4 in the matters it asked NERC to address in the NERC Report.³⁰

Nor does the Petition explain in any meaningful way what it wants by asking the Commission to direct NERC to “incorporate real-world factors that pertain to the risks associated with physical sabotage”³¹ or how doing so would reduce security risks. The Coalition argues that the threat assessment should account for “(1) known vulnerabilities, (2) attacker capabilities, (3) and attacker intentions.”³² But CIP-014-3 already requires registered entities to account for specific facility vulnerabilities,³³ and consideration of attacker capabilities and intentions is currently addressed through the requirement that the threat assessment consider intelligence or threat warnings provided by the Electricity Information Sharing and Analysis Center (“E-ISAC”) and government agencies.³⁴ It is further unclear how individual registered entities could identify, let alone assess, attacker intentions and capabilities by means *other than* through information-sharing by the E-ISAC and/or government partners.³⁵

³⁰ See *N. Am. Elec. Reliability Corp.*, 181 FERC ¶ 61,230 at PP 7-8 (2022).

³¹ Petition at 4.

³² *Id.*

³³ See Reliability Standard CIP-014, Requirement R4 (requiring registered entities to “conduct an evaluation of the potential threats and vulnerabilities of a physical attack to each of their respective Transmission station(s), Transmission substation(s), and primary control center(s) identified in Requirement R1 and verified according to Requirement R2.”).

³⁴ See *id.* (requiring registered entities to consider “[i]ntelligence or threat warnings received from sources such as law enforcement, the Electric Reliability Organization (ERO), the Electricity Sector Information Sharing and Analysis Center (ES-ISAC), U.S. federal and/or Canadian governmental agencies, or their successors.”).

³⁵ See, e.g., Reliability Standard CIP-014-3, Guidelines and Technical Basis for Requirement R4 (observing that “[i]n order to effectively conduct a threat and vulnerability assessment, the asset owner may be the best source to determine specific site vulnerabilities, *but current and evolving threats may best be determined by others in the intelligence or law enforcement communities*” (emphasis added)).

B. The Petition Seeks Relief that Could Interfere with Ongoing FERC and NERC Initiatives

To the extent any credence is given the concerns in the Petition, any serious consideration would be duplicative of, and could interfere with, the ongoing efforts by the Commission and NERC in connection with Docket No. RD23-2.³⁶

As the Petition acknowledges,³⁷ the Commission currently is considering the NERC Report in Docket No. RD23-2, having directed NERC to file its conclusions with respect to a number of issues relating to the adequacy of CIP-014.³⁸ The Commission and NERC also recently announced that they would convene a joint technical conference “to discuss physical security of the Bulk-Power System, including the adequacy of existing physical security controls, challenges, and solutions.”³⁹ The Joint Trade Associations’ understanding is that the technical conference will address a number of specific issues relating to the applicability of CIP-014, given that the NERC Report recommended such a technical conference “to, among other things, identify the type of substation configurations that should be studied to determine whether any additional substations should be included in the Applicability criteria [of CIP-014].”⁴⁰ The NERC Report observed, moreover, that the “technical conference would also help establish data needs for conducting those studies.”⁴¹ NERC also plans to initiate a Reliability Standard development project to address inconsistent approaches to performing the risk assessment by

³⁶ See, e.g., *Complaint of Michael Mabee Related to Critical Infrastructure Reliability Standards*, 173 FERC ¶ 61,010 at P 15 (denying a complaint seeking changes to the CIP Reliability Standards on the grounds that “the relief sought therein is either unsupported or premature given current proceedings before the Commission and projects within NERC.”).

³⁷ See Petition at 5.

³⁸ See *N. Am. Elec. Reliability Corp.*, 181 FERC ¶ 61,230.

³⁹ *N. Am. Elec. Reliability Corp.*, Docket No. RD23-2-000, Notice of Joint Technical Conference (May 30, 2023).

⁴⁰ NERC Report at 4.

⁴¹ *Id.*

registered entities.⁴² Thus, the NERC Report and related technical conference already address the current scope of CIP-014's applicability and any reasonable and risk-based need to expand that scope.

With respect to the Coalition's apparent concerns with CIP-014's current requirements for physical security threat assessments, the Joint Trade Associations observe that the NERC Report also proposed that the joint FERC-NERC technical conference should explore whether a particular combination of reliability, resiliency, and security measures could be effective in mitigating the impact of physical security attacks, and further analysis of these issues may be germane to the issues raised by the Coalition.⁴³

For these reasons, any directive responding to the Coalition's Petition would be at best premature, and at worst duplicative and disruptive of the announced technical conference in Docket No. RD23-2, and NERC's intention to develop a Reliability Standard development project to clarify risk assessments under CIP-014.

III. CONCLUSION

The Joint Trade Associations respectfully urge the Commission to dismiss the Petition. The filing improperly seeks a Commission directive to NERC under Commission Rule 207(a)(4). Even if the Commission treats the Petition as a complaint under FPA section 215, the Coalition has not met the minimum requirements to support consideration of a directive to NERC in this proceeding. Finally, even if the Commission concludes that the Petition identifies

⁴² *Id.* at 5, 24.

⁴³ NERC details the issues to be included in the conference as including: (1) the objective of any minimum level of protections, risk to be mitigated and industry resources necessary to meet such minimum requirements; (2) the case for expanding the use of planning studies to include coordinated attacks, applicable study criteria and a corrective action plans; (3) the case for enhancing Operational Planning Assessments to include loss of assets from coordinated attacks; (4) the case for enhancing TP and TO requirements to ensure spare equipment pool strategies and are adaptive and in-synch with the need for wide area coverage; and (5) whether RCs should develop and train to readiness scenarios reflecting a physical security incident. *Id.* at 30-31.

potentially valid concerns with CIP-014-003, the Commission should nonetheless dismiss the Petition as requesting relief that is duplicative of ongoing FERC and NERC efforts with respect to CIP-014 and the physical security of the BPS.

Respectfully submitted,

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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 at Arlington, Virginia, this 13th day of June, 2023.

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