

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability
Corp.

Docket No. RR23-4-000

**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 15, 2023 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 “Joint Commenters”) hereby each move to intervene in the above-captioned docket and offer joint comments on the Rules of Procedure (“ROP”) revisions filed by the North American Electric Reliability Corporation (“NERC”).¹

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 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. APPA utility members’ primary goal is providing customers in the communities they serve with reliable electric power and energy at the lowest reasonable

¹ Petition of the North American Electric Reliability Corporation for Approval of Revisions to the NERC Rules of Procedure Regarding Reliability Standards and Request for Expedited Action (Sept. 15, 2023) eLibrary No. 20230915-5151 (“Petition”).

cost, consistent with good environmental stewardship. This orientation aligns the interests of APPA-member electric utilities with the long-term interests of the residents and businesses in their communities. Approximately 240 public power utilities are registered entities subject to compliance with mandatory NERC Reliability Standards.

LPPC represents 28 of the largest state and municipally owned utilities in the nation. LPPC's members are located in 22 states throughout the nation and Puerto Rico, and operate 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 over 40,000 circuit miles of high-voltage transmission lines, representing approximately 90 percent of the transmission assets owned by non-federal public power entities.

The Transmission Access Policy Study Group ("TAPS") is an association of transmission-dependent utilities ("TDUs") in more than 35 states promoting open and non-discriminatory transmission access.² 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 Joint Commenters' members and the customers they serve. The Joint Commenters wish to intervene in this proceeding to

² Jane Cirrincione, Northern California Power Agency, is TAPS Chair. Dave Osburn, Oklahoma Municipal Power Authority, is Vice Chair. Terry Huval is TAPS Executive Director.

represent the interests of these members as such interests may arise. The Joint Commenters 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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<p>For TAPS: Terry J. Huval Executive Director TRANSMISSION ACCESS POLICY STUDY GROUP P.O. Box 60551 Lafayette, LA 70596 (337) 278-0306 thuval@tapsgroup.org</p> <p>Cynthia S. Bogorad Rebecca J. Baldwin SPIEGEL & MCDIARMID LLP 1875 Eye Street, NW, Suite 700 Washington, DC 20006 (202) 879-4000 cynthia.bogorad@spiegelmc.com rebecca.baldwin@spiegelmc.com</p>	

II. COMMENTS

NERC's September 15 Petition proposes changes to NERC's reliability standards development process intended to "improve NERC's ability to address urgent reliability

needs with appropriate agility,” while “maintain[ing] reasonable notice and opportunity for public comment, due process, openness, and balance of interests as required by Section 215 of the Federal Power Act.”³ Joint Commenters participated extensively in the NERC process leading to the submittal of the Petition, and in that setting emphasized the need to reduce inefficiencies without undermining the stakeholder process that, as NERC recognizes, is “foundational to NERC’s continued success as the ERO.”⁴

Joint Commenters appreciate that the new⁵ authority that would be invested in the NERC Board under proposed new Rule 322 and revised Rule 321 would be available only “in extraordinary circumstances, where the Board determines a directive is essential to provide for an adequate level of reliability for the Bulk Power System,” subject to the procedures set out in Rule 322.⁶ Because this new authority is limited to “extraordinary”⁷ circumstances in which, *inter alia*, “the reliability matter cannot be addressed adequately or in a timely manner through stakeholder-initiated projects or a project initiated by NERC Staff,”⁸ Joint Commenters are not opposing the proposed new

³ Petition at 1-2, *citing* 16 U.S.C. § 824o(c)(2)(d).

⁴ North Am. Elec. Reliability Corp., Consideration of Comments – ROP Section 300 Revisions at 17 (July 2023), <https://www.nerc.com/AboutNERC/RulesOfProcedure/ROP%20Consideration%20of%20Comments%20Standards%202023.pdf>.

⁵ As NERC states (Petition at 21), the Board’s “authority [under Rule 322] to direct the development of Reliability Standards would not replace any other authority that the Board may have under the Rules of Procedure or Bylaws with respect to NERC’s standard development program.” *See, e.g.*, North Am. Elec. Reliability Corp., App. 3A: Standard Processes Manual at 46, § 16 (Mar. 1, 2019) (“SPM”), https://www.nerc.com/AboutNERC/RulesOfProcedure/Appendix_3A_SPM_Clean_Mar2019.pdf (“The Standards Committee may waive any of the provisions contained in this manual . . . [w]here necessary to meet deadlines imposed by the NERC Board of Trustees”). Given that these options can be employed before a potential concern rises to the level of “extraordinary circumstances,” we expect that they will continue to be used to meet the Board’s needs in almost all cases.

⁶ Petition, Att. 1, Proposed Rule 322.

⁷ *Id.*

⁸ *Id.*, Proposed Rule 322.3.6.

Rule 322 and related changes to Rule 321. Joint Commenters agree with NERC’s description of circumstances that could require the use of Rule 322 as “unlikely and unusual.”⁹ And, crucially, the ERO community is taking further steps to reduce the risk of such extraordinary circumstances in ongoing discussion with NERC management to assist in creating efficiencies in the standards development process. Joint Commenters appreciate NERC staff’s continued engagement with stakeholders in the effort to improve the implementation of the standards process to achieve that goal.

Joint Commenters are similarly not opposing NERC’s proposal¹⁰ to eliminate the requirement set out in existing Rule 316 that NERC “seek and maintain accreditation of the NERC Reliability Standards development process by the American National Standards Institute [(“ANSI”)].”¹¹ While ANSI accreditation can provide a valuable check against erosion of the stakeholder process, the important thing is that NERC will retain a “framework that is generally based on the ANSI core principles, such as openness, lack of dominance, and consensus vote.”¹² The stakeholder process is a vital part of NERC’s value proposition; “[t]hrough stakeholder participation, NERC is able to accomplish much more to advance the reliability, resilience, and security of the grid than it could achieve on its own.”¹³

⁹ Petition at 18.

¹⁰ *Id.* at 13.

¹¹ North Am. Elec. Reliability Corp., Rules of Procedure at 16, Rule 316 (Aug. 25, 2022), https://www.nerc.com/AboutNERC/RulesOfProcedure/NERC%20ROP%20effective%2020220825_with%20appendicies.pdf.

¹² Petition at 16.

¹³ Enhancing NERC Standard Processes: NERC Staff Recommendations at 5 (Oct. 2022), attached as part of Att. 2-C to the Petition, *available at* https://www.nerc.com/pa/Stand/Standards%20Process%20Stakeholder%20Engagement%20Group%202022/Standard_Process_Improvements_White_Paper_10072022.pdf.

CONCLUSION

Joint Commenters respectfully ask the Commission to permit each of them to intervene in this proceeding, and to take into account their comments set forth above.

Respectfully submitted,

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*Attorneys for the Transmission
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October 6, 2023

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 on this 6th day of October, 2023.

/s/ Rebecca J. Baldwin

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