

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability
Corporation

Docket No. RD24-5-000

**MOTION FOR LEAVE TO ANSWER AND
LIMITED ANSWER OF THE TRANSMISSION
ACCESS POLICY STUDY GROUP**

Pursuant to Rules 212 and 213(a)(3) of the Federal Energy Regulatory Commission’s (“FERC” or the “Commission”) Rules of Practice and Procedure,¹ the Transmission Access Policy Study Group (“TAPS”)² submits this Motion for Leave to Answer and Limited Answer to the April 16, 2024 reply comments filed by the ISO/RTO Council (“IRC”)³ in this proceeding.

I. MOTION FOR LEAVE TO ANSWER

Rule 213(a)(2)⁴ of the Commission’s Rules generally prohibits answers to protests. The Commission, however, has accepted otherwise impermissible answers that provide information that assists the Commission in its decision-making process.⁵ TAPS submits this limited answer to clarify its position in response to the IRC’s misinterpretation of that position. TAPS therefore respectfully requests that the Commission grant its motion for leave to submit this limited answer.⁶

¹ 18 C.F.R. §§ 385.212 and 385.213(a)(3).

² TAPS filed a motion for leave to intervene out of time in this proceeding on March 26, 2024.

³ Motion for Leave to Answer and Limited Answer of the ISO/RTO Council (Apr. 16, 2024), eLibrary No. 20240416-5069 (“IRC Answer”).

⁴ 18 C.F.R. § 385.213(a)(2).

⁵ See, e.g., *N. Am. Elec. Reliability Corp.*, 182 FERC ¶ 61,094 P 33, *reh’g denied*, 183 FERC ¶ 61,222 (2023).

⁶ TAPS does not respond in this limited answer to every claim made in the IRC Answer, but this silence

II. LIMITED ANSWER

The IRC quotes⁷ TAPS's April 5, 2024 Answer, which stated:

[C]onsistent with its determination in the context of EOP-012-1, the Commission should find that cost recovery is beyond the scope of this proceeding and reiterate that generators, ISOs and others may submit appropriate filings under sections 205 and 206 of the Federal Power Act to the extent they believe existing rates and market structures do not provide generators an adequate opportunity to recover compliance costs.

The IRC inexplicably characterizes TAPS's statement that cost *recovery* is beyond the *scope* of this proceeding as demonstrating that TAPS "acknowledges the . . . point"⁸ that "a [reliability standard that includes a] cost *exception* is beyond the Commission's *jurisdiction* in the context of a Section 215 proceeding."⁹ Relying on TAPS's statement (among other things), the IRC urges the Commission to address cost issues by "enunciating a clear policy and surveying jurisdictional entities as to the availability of adequate cost recovery mechanisms" rather than approving the inclusion of cost-based constraints in the definition of Generator Cold Weather Constraint.¹⁰

should not be construed as concurrence with any of the IRC's positions. For example, we question the IRC's claim that "[a] unit that cannot operate during peak winter conditions because it has not been adequately winterized provides no reliability value during those periods." IRC Answer at 5 n.20. A unit that has been winterized to operate down to -20 degrees rather than its Extreme Cold Weather Temperature of -21 degrees provides far more winter reliability benefit than one that ceases winter operations altogether because the cost of achieving the final degree of winterization is prohibitive. As noted in NERC's April 4 Answer (at 9), a generator that has declared a Generator Cold Weather Constraint is "still required to implement other reasonable corrective actions that may improve their operational capability, even if not to the full extent required by the standard." Motion for Leave to Answer and Answer of the North American Electric Reliability Corporation to the Protest of the ISO/RTO Council at 9 (Apr. 4, 2024), eLibrary No. 20240404-5093 ("NERC April 4 Answer").

⁷ IRC Answer at 7-8 (*quoting* Motion for Leave to Answer and Answer of the Transmission Access Policy Study Group at 1-2 (Apr. 5, 2024), eLibrary No. 20240405-5235 ("TAPS April 5 Answer")).

⁸ *Id.* at 7.

⁹ *Id.* (emphasis added).

¹⁰ *Id.* at 8.

While TAPS believes that the quoted text and the balance of our April 5 Answer¹¹ are entirely clear, we emphasize, to avoid any doubt, that the quoted text simply reiterates the Commission's previous determinations that the scope of a proceeding like this one does not include generator recovery of compliance costs through Commission-jurisdictional rates and that cost recovery should instead be addressed via appropriate filings under Sections 205 and 206 by generators or the members of the IRC. TAPS certainly did not state, and does not believe, that Section 215 somehow bars the Commission from approving a reliability standard that recognizes that the cost to fully comply with the standard with respect to a particular generating unit may be so exorbitant that ratepayer dollars would be better spent elsewhere. Nor should the Commission accept the IRC's invitation to prejudge the outcome of future Sections 205 and 206 filings to allow for cost-based recovery of compliance costs in the context of market-based rates. IRC members should not be permitted to use this proceeding to shirk their responsibility to make appropriate demonstrations to change their tariffs if they believe changes are warranted.

CONCLUSION

For the foregoing reasons and those set out in NERC's Petition, NERC's April 4 Answer, and TAPS's April 5 Answer, the Commission should find that EOP-012-2 meets its directives; reiterate its previous determination that recovery of Reliability Standard compliance costs is outside the scope of a petition for approval of a Reliability Standard; and once again find that generators and other utilities, including members of the IRC, are

¹¹ See, in particular, TAPS April 5 Answer at 1-2, 7-9.

free to make appropriate filings under sections 205 and 206 of the Federal Power Act if they believe that their existing rates and market mechanisms do not offer an opportunity to recover the costs of compliance with EOP-012-2.

Respectfully submitted,

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April 22, 2024

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 22nd day of April, 2024.

/s/ Rebecca J. Baldwin

Rebecca J. Baldwin

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