

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability
Corporation

Docket No. RR24-4-000

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

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure,¹ and the Commission’s November 8, 2024 Combined Notice of Filings #1,² the American Public Power Association (“APPA”), the Electric Power Supply Association (“EPSA”), the Large Public Power Council (“LPPC”), and the Transmission Access Policy Study Group (“TAPS”) (collectively, “Joint Commenters”) move to intervene and comment on the North American Electric Reliability Corporation’s (“NERC”) November 8, 2024 Supplemental Filing of the North American Electric Reliability Corporation to the Five-Year Electric Reliability Organization Performance Assessment Report in Accordance with 18 C.F.R. § 39.3(c) (“Supplemental Filing”).³ The Joint Commenters generally support NERC’s improvements to its Compliance Monitoring and Enforcement Program (“CMEP”), and highlight the importance of implementing them consistent with its existing Rules of Procedure, including its Standards Processes Manual (Appendix 3A).

¹ 18 C.F.R. §§ 385.212 and 385.214.

² Combined Notice of Filings #1 (Nov. 8, 2024), eLibrary No. 20241108-3035.

³ Supplemental Filing of the North American Electric Reliability Corporation to the Five-Year Electric Reliability Organization Performance Assessment Report in Accordance with 18 C.F.R. § 39.3(c) (Nov. 8, 2024), eLibrary No. 20241108-5040 (“Supplemental Filing”).

I. MOTION TO INTERVENE

APPA is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. Public power utilities are in every state except Hawaii. They collectively serve over 54 million people in 49 states and five U.S. territories, and account for 15 percent of all sales of electric energy (kilowatt-hours) to end-use consumers. Public power utilities are load-serving entities, with the primary goal of providing the communities they serve with safe, reliable electric service at the lowest reasonable cost, consistent with good environmental stewardship. This orientation aligns the interests of the utilities with the long-term interests of the residents and businesses in their communities.

EPSA represents competitive power suppliers and independent power producers that participate to varying degrees in all of the nation's independent system operator ("ISO") and regional transmission organization ("RTO") markets, as well as vertically integrated utility regions. All EPSA member companies are impacted by rules, regulations, and standards developed by NERC and approved by FERC pursuant to Federal Power Act Section 215.⁴

LPPC is an association of 29 of the nation's largest municipal and state-owned utilities, representing the larger, asset-owning members of the public power community and approximately 90% of the transmission assets owned by public power. Located throughout the nation, many of LPPC's members are transmission-owning members of

⁴ EPSA is the national trade association representing competitive power suppliers in the U.S. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. EPSA seeks to bring the benefits of competition to all power customers. This pleading represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

ISOs/RTOs, while others are considering membership in regions of the nation in which ISOs/RTOs and other organized markets are yet being developed.

TAPS is an association of transmission-dependent utilities (“TDUs”) in thirty-five states promoting open and non-discriminatory transmission access.⁵ TAPS members have long recognized the importance of grid reliability. As TDUs, TAPS members are users of the Bulk Power System (“BPS”) 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 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:⁶

⁵ See TAPS, *About Us*, <https://www.tapsgroup.org/about-us/> (last visited Nov. 19, 2024). Jane Cirrincione, Northern California Power Agency, is the TAPS Chair; Kevin Gaden, Illinois Municipal Electric Agency, is the Vice Chair. Tom Heller is TAPS’s Executive Director.

⁶ The Joint Commenters request that the Commission waive Rule 203(b)(3) of its Rules of Practice and Procedure, 18 C.F.R. § 385.203(b)(3), to allow each of the individuals listed below to be placed on the official FERC service list in order to avoid delays in receipt of notices and responses to pleadings.

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II. COMMENTS

NERC's Supplemental Filing describes three enhancements to its CMEP:⁷

- Introducing, where appropriate, a Potential Noncompliance abeyance period after a Reliability Standard becomes effective, the ERO Enterprise will be able to utilize the trends, themes, and recommendations learned from initial implementation of new standards prior to full Enforcement, which may include identification of beneficial revisions to the new standard.

⁷ Supplemental Filing at 10-11 (emphasis omitted).

...

- Enhancing enforcement efficiencies by streamlining the Compliance Exception (“CE”) process.

...

- Timely data collection from enforcement activities to report on trends, themes, and recommendations that can be used to inform the standards development process.

The Joint Commenters appreciate these three enhancements, which will make the CMEP more risk-based, efficient, and effective, and better inform NERC’s other processes. The Joint Commenters generally support NERC’s approach toward streamlining the CE process and timely collection and analysis of enforcement data, which are straightforward and positive.

The Joint Commenters also generally support NERC’s approach to “implement a Potential Noncompliance abeyance period for a specified amount of time after a new standard becomes enforceable that would allow NERC and the Regional Entities to develop insights from initial implementation of the standard . . . [and] further refine standards as needed.”⁸ As described by NERC, where it identifies a standard as subject to such abeyance period, Registered Entities will be expected “to implement the Reliability Standard by the effective date just as they would with Reliability Standards not subject to a Potential Noncompliance abeyance period,” but will not be deemed noncompliant for errors made in the implementation process so long as “the Registered Entity implemented the requirement in good faith.”⁹ This approach should help NERC, the Regional Entities, and industry to better implement and refine requirements while avoiding unnecessarily

⁸ *Id.* at 10.

⁹ *Id.* at 15.

penalizing industry's good faith efforts to comply with complex and novel standards. And it will be most effective in achieving its goals if implemented transparently and in close consultation with industry (including with respect to the selection of standards to which it is applied and the length of the abeyance period).

Significantly, NERC has rightly confined the scope of its Supplemental Filing by confirming that "no formal NERC Rules of Procedure changes are necessary for the ERO Enterprise to implement these enhancements."¹⁰ The Supplemental Filing also makes explicit that "NERC is not proposing in this supplemental filing to make any modifications to its Rules of Procedure, including Appendix 3A (Standard Processes Manual)."¹¹ NERC's Potential Noncompliance abeyance period approach should therefore be read consistently with that limitation.

For example, after describing NERC's role in analyzing data during the abeyance period and vetting with industry recommendations for clarifying ambiguous standards, the Supplemental Filing states: "[s]hould the recommendations ultimately lead to the need for further Reliability Standards revisions, the ERO Enterprise or a NERC standing committee would submit a Standard Authorization Request ("SAR")."¹² We appreciate NERC's commitment to actively engage with industry to further needed "consensus-building." To be consistent with NERC's Rules of Procedure, Appendix 3A, section 4.1,¹³ this statement must also accommodate the ability of other entities or individuals to

¹⁰ *Id.* at 5.

¹¹ *See id.* at 12 n.17.

¹² *Id.* at 16.

¹³ NERC Rules of Procedure ("NERC ROP"), App. 3A Standard Processes Manual § 4.1, https://www.nerc.com/AboutNERC/RulesOfProcedure/NERC%20ROP%20effective%2020240627_with%20appendicies_signed.pdf. ("Any entity or individual, including NERC committees or subgroups and

submit a SAR during this period, and have any such SAR treated comparably in terms of the availability of an informal comment period “due to existing industry vetting”¹⁴ as well as timing considerations.

Finally, we highlight that consistent with its Rules of Procedures, NERC’s Supplemental Filing rightly recognizes that the NERC Board of Trustees’ authority pursuant to Section 322 of the NERC Rules of Procedure is limited to “extraordinary circumstances.”¹⁵

CONCLUSION

The Commission should (1) grant each of the Joint Commenters’ motions to intervene in this proceeding; and (2) accept and consider NERC’s Supplemental Filing, taking into account the Joint Commenters’ comments.

NERC Staff, may propose the development of a new or modified Reliability Standard . . . by submitting a completed SAR to the NERC Reliability Standards Staff”).

¹⁴ Supplemental Filing at 16.

¹⁵*Id.* NERC ROP § 322 provides in pertinent part: “To meet NERC’s statutory responsibility under Section 215 of the Federal Power Act to develop Reliability Standards that provide for an adequate level of reliability for the Bulk Power System, the Board of Trustees shall have the authority to direct the development of a new or revised Reliability Standard. The Board of Trustees will only exercise this authority in extraordinary circumstances, where the Board determines a directive is essential to provide for an adequate level of reliability for the Bulk Power System consistent with Section 215 of the Federal Power Act.”

Respectfully submitted,

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November 22, 2024

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing motion 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 November, 2024.

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