

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

**North American Electric
Reliability Corporation**

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)

Docket No. RD23-1-000

**MOTION FOR LEAVE TO ANSWER AND LIMITED ANSWER
OF THE ISO/RTO COUNCIL**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“FERC” or the “Commission”) Rules of Practice and Procedure,¹ the ISO/RTO Council (“IRC”)² respectfully submits this Motion for Leave to Answer and Limited Answer (the “Limited Answer”) to the Reply Comments of the North American Electric Reliability Corporation (“NERC”)³ and the Motion to Answer and Answer of the Competitive Generators,⁴ submitted in this proceeding initiated by NERC’s October 28, 2022 Petition for approval of proposed Reliability Standards EOP-011-3 and EOP-012-1.⁵

¹ 18 C.F.R. §§ 385.212, 385.213.

² The IRC comprises the following independent system operators (“ISOs”) and regional transmission organization (“RTOs”): Alberta Electric System Operator (“AESO”); California Independent System Operator (“CAISO”); Electric Reliability Council of Texas, Inc. (“ERCOT”); the Independent Electricity System Operator of Ontario, Inc. (“IESO”); ISO New England Inc. (“ISO-NE”); Midcontinent Independent System Operator, Inc. (“MISO”); New York Independent System Operator, Inc. (“NYISO”); PJM Interconnection, L.L.C. (“PJM”); and Southwest Power Pool, Inc. (“SPP”). AESO and IESO are not subject to the Commission’s jurisdiction, but join in this filing. ERCOT joins this filing but wishes to note that generators operating in the ERCOT region are now subject to weatherization standards adopted by the Public Utility Commission of Texas (“PUCT”) (*See* 16 Tex. Admin. Code § 25.55). ERCOT will ultimately defer to the judgment of the PUCT and the Texas Legislature as to the appropriate weatherization standard in the ERCOT region.

³ *N. Am. Elec. Reliability Corp.*, Reply Comment of the North American Electric Reliability Corporation, Docket No. RD23-1-000 (Dec. 16, 2022) (hereafter, the “NERC Reply Comments.”).

⁴ *N. Am. Elec. Reliability Corp.*, Motion to Answer and Answer of the Competitive Generators, Docket No. RD23-1-000 (Dec. 20, 2022) (hereafter, the “Competitive Generators Answer”).

⁵ *N. Am. Elec. Reliability Corp.*, Petition of the North American Electric Reliability Corporation, Docket No. RD23-1-000 (Oct. 28, 2022) (hereafter, the “NERC Petition”).

The IRC reiterates the request made in its December 8, 2022 Comments,⁶ that the Commission issue an order:

- (i) approving EOP-011-3 and EOP-012-1 as drafted;
- (ii) invoking the Commission’s authority under Federal Power Act (“FPA”) section 215(d)(5)⁷ to direct NERC to revise EOP-012-1 to address the important considerations identified in the IRC Comments; and
- (iii) directing NERC to submit a revised version of EOP-012-1 to the Commission by no later than November 2023.⁸

I. MOTION FOR LEAVE TO ANSWER

While an answer to an answer or protest is not a matter of right under the Commission’s regulations,⁹ the Commission routinely permits such answers when the answer provides useful and relevant information that will assist the Commission in its decision-making process,¹⁰ corrects

⁶ *N. Am. Elec. Reliability Corp.*, Comments of the ISO/RTO Council, Docket No. RD23-1-000 (Dec. 8, 2022) (hereafter, the “IRC Comments.”).

⁷ 16 U.S.C. 824o(d)(5) (“The 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.”).

⁸ IRC Comments at 3.

⁹ 18 C.F.R. § 385.213(a)(2).

¹⁰ See, e.g., *Pioneer Transmission, LLC v. N. Ind. Pub. Serv. Co. and Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,057 at P 93 (2012); *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,285 (2010); *Sw. Power Pool, Inc.*, 131 FERC ¶ 61,252 at P 19 (2010), *reh’g denied*, 137 FERC ¶ 61,075 (2011) (accepting answers that “provided information that assisted us in our decision-making process”); *Duke Energy Ky., Inc.*, 122 FERC ¶ 61,182 at P 25 (2008) (accepting answers in proceeding that “provided information that assisted us in our decision-making process”); *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248 at P 26 (2008); *PJM Interconnection, L.L.C.*, 120 FERC ¶ 61,083 at P 23 (2007) (answer to protests permitted when it provides information to assist the Commission in its decision-making process).

factual inaccuracies and clarifies the issues,¹¹ assures a complete record in the proceeding,¹² provides information helpful to the disposition of an issue,¹³ or permits the issues to be narrowed.¹⁴

This Limited Answer satisfies each of these criteria, and accordingly the IRC respectfully requests that the Commission grant leave and accept this Limited Answer.

II. COMMENTS

In its December 8, 2022 Comments, the IRC described its significant concerns with proposed reliability standard EOP-012-1, and requested that the Commission issue an order:

- (iv) approving EOP-011-3 and EOP-012-1 as drafted;
- (v) invoking the Commission's authority under FPA section 215(d)(5)¹⁵ to direct NERC to revise EOP-012-1 to address the important considerations identified in the IRC Comments; and
- (vi) directing NERC to submit a revised version of EOP-012-1 to the Commission by no later than November 2023.¹⁶

In its Reply Comments, NERC acknowledges the IRC's concerns regarding certain elements of proposed reliability standard EOP-012-1, noting that in this docket "issues have been raised regarding the cold weather temperature criteria used in the proposed standard, the standard's

¹¹ See, e.g., *Entergy Servs. Inc.*, 126 FERC ¶ 61,227 (2009).

¹² See, e.g., *Pac. Interstate Transmission Co.*, 85 FERC ¶ 61,378 at P 62,443 (1998), *reh'g denied*, 89 FERC ¶ 61,246 (1999); *Morgan Stanley Capital Group, Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 93 FERC ¶ 61,017, 61,036 (2000) (accepting an answer that was "helpful in the development of the record . . .").

¹³ See, e.g., *CNG Transmission Corp.*, 89 FERC ¶ 61,100, 61,287, n.11 (1999).

¹⁴ See, e.g., *PJM Interconnection, L.L.C.*, 84 FERC ¶ 61,224, 62,078 (1998); *New Energy Ventures, Inc. v. S. Cal. Edison Co.*, 82 FERC ¶ 61,335, 62,323, n.1 (1998).

¹⁵ 16 U.S.C. 824o(d)(5) ("The 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.").

¹⁶ IRC Comments at 3.

recognition of commercial and other constraints that may prevent an entity from implementing freeze protection measures to provide the capability required by the proposed standard, clarification of the standard’s applicability, and concerns regarding winterization capability requirements.”¹⁷ Without raising any substantive concerns with the IRC’s specific issues, NERC nonetheless asks the Commission to approve EOP-012-1, as proposed, without setting forth any clear means regarding how the IRC’s concerns could expeditiously be addressed. Instead, NERC simply encourages the Commission to leave the concerns identified by the IRC to the “Phase II” standard development work, without any direction from the Commission.¹⁸ Conversely, the Competitive Generators argue for exactly the opposite—urging that the Commission remand the issues back to NERC for resolution, without any standard going into effect, should the Commission find merit in the IRC’s concerns.¹⁹

The IRC’s initial comments proposed that its concerns could be addressed using a process that the Commission has utilized many times before²⁰—namely accepting the standard as an

¹⁷ NERC Reply Comments at 11-12.

¹⁸ *Id.* at 12-13 (“As NERC noted in its petition, NERC is currently in the second phase of standard development work to address remaining recommendations from the February 2021 event report. This work is scheduled to complete by October 2023. The standard drafting team is presently considering many of the issues raised in the comments during the second phase of development, and NERC may propose further changes to enhance the clarity or effectiveness of the EOP-012 standard later in 2023. NERC encourages the commenters in this proceeding to continue participating in NERC’s open and balanced, consensus-driven standards development process so that their issues and concerns may be given full consideration in standards drafting.”).

¹⁹ Competitive Generators Answer at 2 (“The Competitive Generators thus respectfully ask that the Commission not direct NERC to make the changes to the Proposed Standards the ISO/RTO Council asks for based on the evidence offered in the ISO/RTO Council pleading. If the Commission finds that the changes proposed by the ISO/RTO Council have merit and directs NERC to further consider those changes through the NERC standards development process, the Competitive Generators further ask that the Commission opt not to approve the Proposed Standards at this time, but instead direct NERC to make a subsequent filing reflecting the outcome of any further deliberations at NERC on these standards.”).

²⁰ See IRC Comments at 3 (citing *e.g.*, *Mandatory Reliability Standards for the Bulk-Power Sys.*, 118 FERC ¶ 61,218, at P 1 (2007) (“Order No. 693”) (“Pursuant to section 215 of the Federal Power Act (FPA), the Commission approves 83 of 107 proposed Reliability Standards However, although we believe it is in the public interest to make these Reliability Standards mandatory and enforceable, we also find that much work remains to be done Therefore, pursuant to section 215(d)(5), we require the ERO to submit significant improvements to 56 of the 83 Reliability Standards that are being approved as mandatory and enforceable.”); *W. Elec. Coordinating Council Reg’l*

improvement over the status quo, but providing specific direction to NERC and its stakeholders as to issues the Commission believes need resolution, based on the Commission's analysis of the record. The IRC also noted that expeditious resolution of these issues, already discussed in the stakeholder community and documented in this record, would still allow for timely compliance, given that the current proposal allows five years for generator compliance with requirement R1.²¹ While the IRC has proposed a shorter, 36-month implementation period for R1, it would still provide more than sufficient time for implementation.

The IRC files this Limited Answer as NERC's proposed resolution that the Commission only assign these issues to the Phase II process without any Commission direction on the merits could forestall timely resolution of issues critical to Bulk Electric System ("BES") reliability. The IRC respectfully requests that the Commission, should it be inclined to assign these issues to additional work in Phase II of the stakeholder process, find the issues raised by the IRC have merit and direct they be resolved through changes to the proposed standard within one year. Otherwise, simply assigning these issues to Phase II without any direction from the Commission on the merits of the issues raised by the IRC would be an inefficient use of stakeholder time and resources, and

Reliability Standard Regarding Automatic Time Error Correction, 127 FERC ¶ 61,176, at P 1 (2009) ("Order No. 723") ("Pursuant to section 215 of the Federal Power Act (FPA), the Commission approves regional Reliability Standard BAL-004-WECC-01 (Automatic Time Error Correction), submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC). As a separate action, pursuant to section 215(d)(5) of the FPA, the Commission directs the Western Electricity Coordinating Council (WECC) to develop several modifications to the regional Reliability Standard."); *Transmission Relay Loadability Reliability Standard*, 130 FERC ¶ 61,221, at P 1 (2010) ("Order No. 733") ("Pursuant to section 215 of the Federal Power Act (FPA), the Commission approves the Transmission Relay Loadability Reliability Standard (PRC-023-1), developed by the North American Electric Reliability Corporation (NERC) in its capacity as the Electric Reliability Organization (ERO) In addition, pursuant to section 215(d)(5) of the FPA, the Commission directs the ERO to develop modifications to PRC-023-1 to address specific concerns identified by the Commission and sets specific deadlines for these modifications.").

²¹ The IRC noted its concerns that the proposed compliance period is too long and will actually discourage early compliance. See IRC Comments at 15-16.

not drive stakeholders to consensus, because the issues were already raised and documented by the IRC in the standard development process just completed.

The IRC members went on record at each opportunity in the NERC standard development process to raise these important concerns with EOP-012-1 as drafted, and proposed solutions to address its weaknesses. Each of those proposals was rejected, making it clear that, absent direction from the Commission, a simple assignment of the issues to Phase II will accomplish little. In the IRC's view, its proposed solutions go to the heart of ensuring the standard effectively meets the stated reliability goal, and are well documented (and not refuted) in this record.

Given the exigent need for a Reliability Standard like EOP-012-1, and its importance in enhancing the reliability and resilience of the BES, the IRC believes that Commission directives and guidance are essential to ensuring that these issues are addressed quickly, and entities can focus their resources on compliance.

Finally, clear Commission direction would address the very concerns the Competitive Generators raise regarding an extended process, and the risk they raise of separate and overlapping compliance requirements.²² The issues are well known and documented. Clear Commission direction would expedite addressing them and allow the proposed compliance period (which, for requirement R1, extends over five years) to still be met by generators' compliance plans. In short, the Competitive Generators' concerns are *exacerbated* by NERC's proposal, while clear Commission direction, given the record in this case, would allow for finalizing an effective reliability standard expeditiously.

²² Competitive Generators Answer at 3-8.

III. CONCLUSION

In accordance with the foregoing, the IRC respectfully requests that the Commission accept this Limited Answer and issue an order: (i) approving EOP-011-3 and EOP-012-1 as drafted; (ii) invoking the Commission's authority under FPA section 215(d)(5) to direct NERC to revise EOP-012-1 to address the important considerations identified by the IRC; and (iii) directing NERC to submit a revised version of EOP-012-1 to the Commission by no later than November 2023.

Respectfully submitted,

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December 23, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have this 23th day of December, 2022 caused a copy of the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Shir Keiser

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