

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

**PETITION OF THE NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION FOR APPROVAL OF  
PROPOSED RELIABILITY STANDARDS EOP-011-3 AND  
EOP-012-1 AND REQUEST FOR EXPEDITED ACTION**

**DOCKET NO. RD23-1-000**

**MOTION TO ANSWER AND ANSWER OF  
THE COMPETITIVE GENERATORS**

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”)<sup>1</sup>, the New England Power Generators Association, Inc. (“NEPGA”), the Electric Power Supply Association (“EPSA”) and the PJM Power Providers Group (“P3”) (collectively, the “Competitive Generators”)<sup>2</sup> file this Motion to Answer and Answer to the Comments of the ISO/RTO Council.<sup>3</sup> The ISO/RTO Council asks the Commission to both approve the freeze protection and other related measures proposed by the North American Electric Reliability Organization (“NERC”) in this proceeding (“Proposed Standards”)<sup>4</sup> and direct NERC to make material changes to its proposal, including to the definition of the Extreme Cold Weather Temperature, the key variable upon which NERC bases the Proposed Standards. For support, the ISO/RTO Council shows in its comments the potential difference between the Extreme Cold Weather Temperature it proposes versus that proposed by NERC, but it does not establish why or

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<sup>1</sup> 18 C.F.R. §§ 385.212, 385.214 (2022).

<sup>2</sup> The comments expressed herein represent those of NEPGA, EPSA, and P3 as organizations, but not necessarily those of any particular member of these associations.

<sup>3</sup> Comments of the ISO/RTO Council, Docket No. RD23-1-000 (filed Dec. 8, 2022) (“IRC Comments”).

<sup>4</sup> Petition of the North American Electric Reliability Corporation for Approval of Proposed Reliability Standards EOP-011-3 and EOP-012-1 and Request for Expedited Action, at 29 – 50, Exh. A-2, Docket No. RD23-1-000 (filed Oct. 28, 2022) (the “NERC Petition”).

how the definition it proposes is just, reasonable and not unduly discriminatory, why the Commission should reject the definition proposed by NERC, nor the potential impact its proposed changes would have on Generator Owner actions and other jurisdictional markets that likewise would be subject to the Proposed Standards. Further, the relief the ISO/RTO Council asks for may create incentives that delay the realization of the reliability benefits the Proposed Standards are intended to bring, especially if a cost recovery market design or mechanism is not timely in effect.

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. In addition, regardless of any process that may follow, the Competitive Generators ask that the Commission direct each ISO/RTO to develop a cost recovery market design or mechanism for Commission acceptance and effect prior to the time by which a Generator Owner may prudently begin to incur any compliance costs. It is only in this way that a Generator Owner is certain to realize its right to cost recovery guaranteed by the Federal Power Act.

## **I. MOTION TO ANSWER**

Good cause exists to permit this Answer because it clarifies the record and law and responds to new arguments raised by the ISO/RTO Council in this proceeding. The ISO/RTO Council asks the Commission to direct changes to the Proposed Standards filed by NERC, which

standards will apply to the generators represented by the Competitive Generators. No party will be prejudiced were the Commission to accept this Answer. The Competitive Generators thus seek leave to file this brief Answer to further clarify the record in this proceeding.

## II. ANSWER

The ISO/RTO Council asks the Commission to accept the Proposed Standards “as drafted” and to direct NERC to file a revised version of the Proposed Standards by November 2023.<sup>5</sup> The revisions the ISO/RTO Council asks for would materially change the Proposed Standards, thus making efforts to comply with the Proposed Standards “as drafted” a potentially futile and misdirected effort. Accordingly, the Competitive Generators ask that if the Commission finds that the Proposed Standards require further changes, including a change to the definition of Extreme Cold Weather Temperature, that its directives do not put subject generators in the position of devoting resources to comply with a set of standards that may materially change within a year.

The ISO/RTO Council urges several changes to the Proposed Standards that “go to the heart of ensuring that the standard is effective in meeting the stated reliability goal.”<sup>6</sup> Primary among those proposed changes is to the definition of the Extreme Cold Weather Temperature.<sup>7</sup> The definition of Extreme Cold Weather Temperature indeed is at the heart of the Proposed Standards in that it dictates whether a Generator Owner must adopt freeze protections measures, what freeze protection measures it must adopt, and under what conditions it may experience a Generator Cold Weather Reliability Event (which in turn dictates further potential obligations,

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<sup>5</sup> IRC Comments at 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 4-9.

such as the development of a Corrective Action Plan).<sup>8</sup> The IRC recommends a change to the definition that would (by its account, over an array of PJM Interconnection temperature measure stations) reduce the Extreme Cold Weather Temperature by an average of 18 degrees Fahrenheit.<sup>9</sup> As an example, according to the ISO/RTO Council, an existing generating unit at Lexington Bluegrass Airport would be required to meet an Extreme Cold Weather Temperature of 1 degree Fahrenheit under the NERC Proposed Standards, and then later (if the Commission grants the ISO/RTO Council request for relief) required to meet an Extreme Cold Weather Temperature of negative 16 – 18 degrees Fahrenheit if NERC adopts (and FERC approves) one of the Extreme Cold Weather Temperature definitions proposed by the ISO/RTO Council.<sup>10</sup>

This change in definition could complicate or render relatively useless efforts already underway to comply with the Commission’s acceptance of the NERC Proposed Standard. The Commission convened a Technical Conference earlier this year on improving generator winter preparedness, with several presenters explaining the types of measures a generator may accordingly adopt.<sup>11</sup> A generator may install on a line or a pipe a certain thickness of insulation only, or may install heat tracing covered by a certain thickness of insulation.<sup>12</sup> The improvements a Generator Owner adopts will depend on the Extreme Cold Weather Temperature it must meet, beginning with an analysis of the temperature at which the pipe must perform without complications from low temperatures.<sup>13</sup> If the Commission were to grant the ISO/RTO Council

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<sup>8</sup> See, e.g., NERC Petition, Exh. A-2 at 4 (Requirement 2 providing that an existing generator must “add new or modify existing freeze protection measures as needed to provide the capability to operate for a period of not less than one (1) hour at the unit(s) Extreme Cold Weather Temperature.”).

<sup>9</sup> IRC Comments at 5-6.

<sup>10</sup> *Id.* at 6 (comparing the values in the first column calculated according to the Proposed Standards to the values shown in the third and fourth columns corresponding to the two ISO-RTO Council proposals).

<sup>11</sup> See, e.g., Improving Winter-Readiness of Generating Units, Mark Dittus, Black & Veatch, Docket No. AD22-4-000 (Apr. 28, 2022), available at: <https://www.ferc.gov/media/panel-2-mark-dittus-black-veatch>.

<sup>12</sup> *Id.* at 9.

<sup>13</sup> See *id.* at 7-9 (evaluating freeze protection measures based on an ambient temperature of 16 degrees Fahrenheit).

request for relief, the Generator Owner would be compelled to either: (1) incur compliance costs (based on approval of the Proposed Standards as filed), costly re-work costs (based on the future requirement) and an accounting charge for the undepreciated value of the initial work; or (2) delay the work until the Commission potentially approves a different standard. If there is a question (or likelihood) that the target temperature will change in the near future (or before the end of the useful lives for any newly installed freeze protection measures), the prudent action for a generator may be to take no immediate action on the Proposed Standards upon approval, and to wait instead until the definition of the Extreme Cold Weather Temperature is finalized pursuant to the subsequent NERC filing contemplated by the ISO/RTO Council later in 2023.<sup>14</sup>

NERC designed its Implementation Plan to give Generator Owners the time to comply with the Proposed Standards, in part based on an expectation that generators will use the lead-in period (*i.e.*, the time between Commission approval and the Effective Date) to begin compliance actions.<sup>15</sup> As NEPGA noted in its Comments, the record evidence shows that freeze protection measures, “may take several years to complete and may require extensive contractor support.”<sup>16</sup> Thus, even before a generator “can consider implementation of [freeze protection] measures” it must take costly and time-consuming action to comply.<sup>17</sup> Consequently, though a generator may wish to avail itself of the Implementation Plan by devoting resources to comply with the Proposed

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<sup>14</sup> See IRC Comments at 15 (explaining that it is “reasonable to presume” that the Implementation Plan could create risk and disincentives to expeditiously begin compliance actions).

<sup>15</sup> NERC Petition at 50 (“Under the proposed implementation plan, many of the protections provided by the proposed Reliability Standards would be in place beginning 18 months following regulatory approval,” *i.e.*, by the Effective Date).

<sup>16</sup> NERC Petition at 52, n. 84, *citing, e.g.*, Comments of Draft 1 Postings (Exh. F, Record of Development item 27) (comments of Duke Energy)).

<sup>17</sup> *Id.*

Standards soon after Commission approval, that would come with the significant risk of incurring ultimately futile costs if the Commission grants the ISO/RTO Council request for relief.

Though, as the ISO/RTO Council correctly notes, the Commission has before approved new reliability standards proposed by NERC with a concurrent direction to modify, clarify or revise those standards through a subsequent filing, the Extreme Cold Weather Temperature definitions the ISO/RTO Council proposes here would not merely clarify or modify the standard but materially change the standard and potentially the actions necessary to meet the standard. If granted, the ISO/RTO Council request for relief would establish one standard immediately with the potential for another materially different standard to come in the near future. The Commission has previously recognized the inefficiency of setting two different standards in a relatively short period of time in the context of NERC critical infrastructure protection (“CIP”) standards.<sup>18</sup> In Order No. 791 the Commission approved CIP V5 standards and a compliance deadline for High and Medium Impact Bulk Electric System Cyber Systems by April 1, 2016.<sup>19</sup> The Commission later issued Order No. 822, approving revisions to seven of the CIP standards in response to Order No. 791 with a compliance deadline of July 1, 2016.<sup>20</sup> Recognizing that “the separate implementation dates in short succession create unnecessary administrative burden with little or no commensurate benefit to reliability,” the Commission granted an extension of time on Order No. 791 compliance in order “to align” its effective date with that of Order No. 822.<sup>21</sup> The ISO-RTO Council request for relief would likewise create an unnecessary and inefficient cost and administrative burden, even more so than in the context of the CIP V5 standards in that the NERC

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<sup>18</sup> See *Order Granting Extension of Time*, 154 FERC ¶ 61,137 (2016) (granting extension of time to comply with one standard to align with the effective date of a subsequent and related CIP standard)

<sup>19</sup> *Id.* at P 2.

<sup>20</sup> *Id.* at P 3.

<sup>21</sup> *Id.* at P 9.

freeze protection standards likely call for capital investment in longer-life assets than those needed to comply with new CIP standards. The Commission should likewise avoid any relief in this case that would cause the same type of inefficiencies it previously has taken action to avoid.

As NEPGA offered in its Comments, the reliability improvements NERC seeks to achieve through its Proposed Standards can best and most expeditiously be met if Generator Owner rights to cost recovery are confirmed through market rules or a cost recovery mechanism in effect prior to the time by which Generator Owners begin to incur compliance costs – indeed that timing is absolutely necessary in order for a Generator Owner to fully realize its right to cost recovery.<sup>22</sup> Cost recovery certainty could largely (if not entirely) cure the disincentive caused by approving a reliability standard with the possibility of a material change to that standard one year forward. A failure to timely plan for and put into effect a cost recovery mechanism could create market distortions and have negative consequences for system reliability, such as the uneconomic retirement of resources efficiently supporting system reliability or the offering of reliability-must-run agreements to generators whose retirement would cause unacceptable reliability risks. To not prioritize a cost-recovery mechanism thus risks undermining the very winter reliability the Proposed Standards seek to improve upon and the wholesale markets through which New England meets its resource adequacy, energy, and reliability needs.

The ISO/RTO Council suggests that the wholesale markets may already allow Generator Owners to recover the costs to comply with the Proposed Standards.<sup>23</sup> The Competitive Generators ask that the Commission not rely on this suggestion with respect to the organized wholesale

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<sup>22</sup> Motion to Intervene and Comments of the New England Power Generators Association, Inc., at 4-6, Docket No. RD23-1-000 (filed Dec. 8, 2022) (“NEPGA Comments”).

<sup>23</sup> IRC Comments at 11 (“This is an important regulatory issue that should be considered, *accounting for existing tariff provisions.*” (emphasis added)); *see also* IRC Comments at 13-14 (discussing generator Tariff obligations and asking for clarification on how the Proposed Standards “are intended to interact with these external obligations.”).

electricity markets (or rate recovery schedules), in that there is nothing to suggest that, for one, the ISO-NE wholesale market rules would allow Generator Owners to recover the costs to comply with the Proposed Standards. If it is the case that these wholesale market cost recovery designs already exist, the ISO/RTOs or their Market Monitors should explain so expeditiously, or otherwise begin engaging with stakeholders on the best means by which Generator Owners can recover the cost of complying with the Proposed Standards. As NEPGA explained in its Comments, several generators were unable to recover new NERC standard compliance costs prior to the effective date of the commensurate cost mechanism, and again here urges the Commission to direct the ISO/RTOs to avoid that fate following approval of these or revised Proposed Standards.<sup>24</sup>

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<sup>24</sup> NEPGA Comments at 6; *see also Cogentrix Energy Power Mgm't, LLC and Vistra Corp. v. FERC*, 24 F.4<sup>th</sup> 677 (D.C. Cir. 2021) (affirming the Commission's application of the filed-rate doctrine and the rule against retroactive ratemaking to rate recovery mechanism as not arbitrary or capricious).



### III. CONCLUSION

The Competitive Generators ask the Commission to grant its Motion to Answer, avoid any directives that would create a disincentive to expeditiously begin compliance actions, and direct each jurisdictional ISO/RTO to begin developing a cost recovery design or mechanism for effect prior to the date by which Generator Owners begin to incur compliance costs.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the comments via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Cambridge, Massachusetts, December 20, 2022.

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