

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

**North American Electric
Reliability Corporation**

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Docket No. RD23-1-000

**COMMENTS OF THE ELECTRIC POWER SUPPLY ASSOCIATION
AND THE PJM POWER PROVIDERS GROUP**

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or the “Commission”),¹ the Electric Power Supply Association (“EPSA”)² and The PJM Power Providers Group (“P3”)³ respectfully submit these comments on the North American Reliability Corporation’s (“NERC”) Petition for Approval of Proposed Reliability Standards EOP-011-3 AND EOP-012-1 (“Petition”)⁴ which was filed with the Commission on October 28, 2022. EPSA and P3 support approval of proposed Reliability Standard EOP-011-3 (Emergency Operations). However, EPSA and P3 urge the Commission to remand Reliability Standard EOP-012-1 (Extreme Cold Weather Preparedness and Operations) (“Proposed Standard”) and direct NERC to revise portions of

¹ 18 C.F.R. § 385.211 (2022).

² 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. EPSA submitted a doc-less motion to intervene in this proceeding on November 16, 2022.

³ P3 is a non-profit organization dedicated to advancing federal, state and regional policies that promote properly designed and well-functioning electricity markets in the PJM Interconnection, L.L.C. (“PJM”) region. Combined, P3 members own over 67,000 MWs of generation assets and produce enough power to supply over 50 million homes in the PJM region covering 13 states and the District of Columbia. For more information on P3, visit www.p3powergroup.com. The comments contained in this filing represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue. P3 submitted a doc-less motion to intervene in this proceeding on December 1, 2022.

⁴ North American Electric Reliability Corporation, *Petition for Approval of Proposed Reliability Standards EOP-011-3 and EOP-012-1*, Docket RD23-1-000 (October 28, 2022) (“Petition”).

this standard pursuant to Federal Power Act ("FPA") Section 215 as discussed herein. This approach will ensure that the suite of final standards adequately and lawfully improves the reliability of the Bulk Power System ("BPS"), including in extreme cold weather conditions.

EPSA and P3 agree it is reasonable and prudent for NERC to continue to enhance reliability standards to prepare the BPS for extreme cold weather as recent events demonstrate that heretofore unexpected weather events can impact the nation's energy system to varying degrees across regions. EPSA and P3 members were active participants in NERC's standard development stakeholder process with the aim of achieving these types of improvements to address current circumstances. However, EPSA and P3 believe that Proposed Standard EOP-012-1 should be remanded to NERC for removal of Requirements 1 and 2 ("R1" and "R2"), with a directive that NERC instead require Balancing Authorities ("BAs") to ensure sufficient quantities of weather resilient generation are available. EPSA also requests that FERC ensure that competitive generators are able to recover any costs that are prudently incurred in compliance with the final standards.

I. COMMENTS

A. EPSA and P3 Support Standard EOP-011-3 and Most Requirements Included in Standard EOP-012-1

In its Petition, NERC details how, over the last decade, several notable events have demonstrated the substantial impacts that extreme cold weather conditions can have on the reliability of the Bulk-Power System. As NERC points out, extreme cold weather was a major factor in BPS events in 2011, 2014, 2018, and 2021.⁵ Following publication of the

⁵ FERC and NERC, *Staff Report on Outages and Curtailments During the Southwest Cold Weather Event of February 1-5, 2011: Causes and Recommendations* (Aug. 2011), p. 4; NERC, *Polar Vortex Review* (Sep. 2014) (reviewing generator outages during the January 2014 polar vortex weather event); FERC and NERC Staff, *The South Central United States Cold Weather Bulk Electric System Event of January 17, 2018* (Jul. 2019) ("FERC/NERC Staff Report"); FERC, NERC, and Regional Entity Staff Report: *The February 2021 Cold Weather Outages in Texas and the South Central United States* (Nov. 2021) ("2021 Joint Inquiry Report").

FERC/NERC Staff Report in July 2019 that identified the causes of the January 7, 2018 cold weather event that affected the South Central United States, NERC undertook an extensive effort to implement new cold weather standards.⁶ The Commission approved the first set of such Reliability Standards – EOP-011-2, IRO-010-4, and TOP-003-5 (“2021 Cold Weather Standards”) – in August of 2021,⁷ which EPSA supported.⁸ As EPSA stated in comments on the 2021 Cold Weather Standards, these measures were “developed in NERC’s evidence-based and targeted stakeholder process and achieve the necessary balance between establishing mandatory steps to improve generator readiness for cold weather conditions and offering the flexibility needed to allow generators to prepare for the specific factors they face.”⁹

EPSA and P3 support approval of proposed Standard EOP-011-3 and support portions of proposed Standard EOP-012-1. In particular, NERC’s Standard Drafting Team (“SDT”) has, with slight modification, transferred Requirement R7 of EOP-011-1 to Requirement R3 of the Proposed Standard. EPSA and P3 support Requirement R3 of the Proposed Standard which will require Generation Owners (“GOs”) to implement and maintain cold weather preparedness plans that document their Generator Cold Weather Critical Components and operating parameters, address freeze protection measures, and provide for annual inspection and maintenance for these measures.

The SDT also created Requirements R6 and R7 to be included in the Proposed Standard in order to require GOs and Generator Operators (“GOP”) to develop Corrective

⁶ North American Electric Reliability Corporation, *Petition for Approval of Proposed Reliability Standards EOP-011-2, IRO-010-4, and TOP-003-5 and Request for Expedited Action*, Docket RD21-5-000, (July 17, 2021), p. 11.

⁷ *Order Approving Cold Weather Reliability Standards*, Docket RD21-5-000, (Aug 24, 2021) (“2021 Cold Weather Standards”).

⁸ *Motion to Intervene and Comments of the Electric Power Supply Association*, Docket RD21-5-000, (July 29, 2021). P3 did not intervene in this proceeding.

⁹ *Id.*

Action Plans (“CAP”) if their generator has a failure due to freezing above the Extreme Cold Weather Temperature (“ECWT”). Combined, these requirements ensure that failures are tracked and addressed. These requirements are particularly important since the 2021 Joint Inquiry Report concluded that over 80% of the freeze-related generation failures in February 2021 occurred at temperatures *above* a unit’s stated ambient design temperature.¹⁰ If the threshold to create a CAP were simply set at a generator’s equipment limits, which EPSA and P3 would support, there is strong evidence that such a threshold would significantly mitigate the impacts of a future severe winter storm.

B. Requirements R1 and R2 of EOP-012-1 Establish Directives Beyond the Scope of Federal Power Act Section 215

While Requirements R3 – R7 of EOP-012-1 represent a useful step forward, Requirements R1 and R2 present operational and legal concerns which warrant their rejection as proposed. At a high level, these two requirements break with NERC’s practice of not placing equipment expansion requirements directly on generating units. Additionally, in R1 and R2, NERC proposes to require generators to meet reliability standards that differ by unit vintage. Requirement R1 addresses new generation units which must implement measures to permit operation for at least twelve continuous hours at the determined ECWT. Requirement R2 addresses existing generation units by requiring retrofits which allow for one continuous hour of operation at the determined ECWT for those resources.¹¹

These proposed requirements present legal infirmities as they fall outside of the scope of Section 215 of the Federal Power Act. Critically, the Proposed Standard does not comport with Section 215(a)(3) which provides that Reliability Standards only extend to the *operation* of existing facilities. Section 215(a)(3) defines a Reliability Standard as:

¹⁰ Joint Inquiry Report, p. 17.

¹¹ Petition, p. 35.

a requirement, approved by the Commission under this section, to provide for *reliable operation* of the bulk-power system. The term includes *requirements for the operation of existing bulk-power system facilities*, including cybersecurity protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.¹²

Additionally, Section 215(a)(4), defines “reliable operation” as:

operating the elements of the bulk-power system *within equipment and electric system thermal, voltage, and stability limits* so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements.¹³

While this section does allow for NERC to mandate modifications to mitigate “sudden disturbances” and “unanticipated failures,”¹⁴ the language of the section is very clear that a Reliability Standard may only cover “the *operation*”¹⁵ of existing facilities, where such operation shall only be “*within*”¹⁶ equipment limits exclusively for the purpose of mitigating “sudden disturbances” and “unanticipated failures.”¹⁷ Thus, Section 215(a)(3) and Section 215(a)(4) both make clear that Congress did not intend for FPA Section 215 to permit a Reliability Standard that requires GOs to make physical modifications to their existing facilities in the manner that NERC has outlined.

NERC has suggested¹⁸ that the only limiting clause in Section 215(a)(3) is the prohibition against “any requirement to enlarge such facilities or to construct new

¹² 16 U.S.C. § 824o(a)(3) (2018) (emphasis added).

¹³ 16 U.S.C. § 824o(a)(4) (2018) (emphasis added).

¹⁴ FPA 215(a)(4).

¹⁵ 16 U.S.C. § 824o(a)(3) (2018) (emphasis added).

¹⁶ 16 U.S.C. § 824o(a)(4) (2018) (emphasis added).

¹⁷ *Id.*

¹⁸ See, e.g., Petition, Exhibit F, Complete Record of Development (“Exhibit F”), NERC, *Consideration of Comments Project 2021-07 Extreme Cold Weather Grid Operations, Preparedness, and Coordination*, at 1 (noting that the Drafting Team “received multiple comments regarding the authority of FERC and NERC to make

transmission capacity or generation capacity,”¹⁹ – i.e., impacting a generator’s nameplate capacity. However, when taken to its logical extreme, this interpretation would mean that a Reliability Standard could require a GO to rebuild its entire facility from the ground up, as long as the nameplate generation capacity of the new facility is the same as the old one. A more logical interpretation of the statute would be to read the prohibition against “any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity” as applying only in cases where the Reliability Standard is addressing “the design of planned additions or modifications to such facilities”²⁰

Clearly, NERC can order some modifications to ensure that facilities operate as *expected*, as it has in requiring physical barriers, Information Technology/Operational Technology hardware, etc. And while EPSA and P3 would support Requirements R6 and R7 of the Proposed Standard, which require existing resources to undertake physical modifications provided in a CAP if a GO has a failure *above* its facility’s *existing stated* equipment limits, that is not what NERC is doing here. Instead, the Proposed Standard, as currently drafted, goes far beyond such measures by requiring modifications which *change* a resource’s equipment limits. Importantly, retaining Requirements R6 and R7 that address existing resources’ ability to operate based on their stated equipment limits – without expanding those limits – is within NERC’s authority to mitigate “unanticipated failures”²¹ and would improve cold weather reliability.

some of the recommendations as standard revisions. Recommendation 1f was of concern and the language around ‘design new or retrofit existing generating units’ solicited multiple entity responses.”); *id.*, NERC, *Summary Response to Comments Project 2021-07 Extreme Cold Weather Grid Operations, Preparedness, and Coordination*, at 1 (Aug. 2022) (“The Standard Drafting Team received several comments regarding the consistency of the proposed generator freeze protection retrofit requirement in proposed EOP-012-1 with Section 215 of the Federal Power Act or NERC’s Market Principles” (citations omitted)).

¹⁹ 16 U.S.C. § 824o(a)(3) (2018).

²⁰ *Id.*

²¹ 16 U.S.C. § 824o(a)(4) (2018).

C. Exemptions Included in Requirements R1 and R2 of EOP-012-1 Undermine the Newly Proposed Standard and Demonstrate Its Infirmities

Proposed Standard EOP-012-1 also contains exemptions that create substantial ambiguity as to the intent of the standard, likely undercut the efficacy of the standard, create confusion regarding how GOs can comply, and adversely affect competition. According to NERC's Petition, the SDT "recognized that technical, commercial, or operational constraints may exist that prevent a new generating unit from implementing freeze protection measures that provide capability to operate for 12 continuous hours at its calculated Extreme Cold Weather Temperature."²² In such cases, "the Generator Owner would be required to explain in a declaration these constraint(s) and how it precludes the ability to implement freeze protection measures providing the required capability." This implies that new generation can potentially avoid being subject to Requirement R1.

Existing resources may possibly avail themselves of a functionally equivalent exemption, although the process to claim the exemption differs. Requirement R2 requires GOs of existing resources that cannot comply with the Proposed Standard to develop a CAP.²³ However, Requirement R7 appears to reverse the requirement of R2 and provide GOs the opportunity to "explain in a declaration why corrective actions are not being implemented due to any technical, commercial, or operational constraints as defined by the Generator Owner."²⁴ In an attempt to clarify the exemption in the stakeholder process, the SDT offered explanations that potential retirement or avoided participation in the winter months are commercial concerns that may justify an exemption.²⁵ These concerns directly impact the

²² Petition, p. 35.

²³ *Id.*, p. 36.

²⁴ *Id.*, p. 43.

²⁵ *Id.*, p. 44.

costs incurred by generating resources which compete against each other in the ISO/RTO markets but remain vague, at best, as to how, when, or if they may be utilized.

While these exemptions seem intended to offer some flexibility to individual resources, this approach is misguided and violates statutory authority by interfering with competition.²⁶ The Commission reiterated this standard in Order No. 672, affirming that consistent with FPA Section 215, “the Commission itself will give special attention to the effect of a proposed Reliability Standard on competition.”²⁷ The proposed exemptions – particularly the ill-defined commercial exemption – clearly impact the application of the Proposed Standard with little clear direction or support. One obvious result of these exemptions is that some generators may avoid costs incurred by others with whom they compete without a clear basis for the difference. Further, the exemptions may endanger the effectiveness of the Proposed Standard by creating a gap that nullifies the ability of the new standard to improve extreme cold weather operations sufficiently. While it is possible the exemptions have been included to protect a standard which could otherwise violate the agencies’ statutory authority, their inclusion does not cure that ill nor does it provide for a just and reasonable standard that is in the public interest.

The negative impact on competition is, in fact, amplified by the ambiguity in how these exemptions will be applied. Neither the Petition nor the Proposed Standard specifies what types of “technical, commercial, or operational constraints” will be deemed to be acceptable

²⁶ 16 U.S.C. § 824o(d)(2) - The Commission may approve, by rule or order, a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission shall give due weight to the technical expertise of the Electric Reliability Organization with respect to the content of a proposed standard or modification to a reliability standard and to the technical expertise of a regional entity organized on an Interconnection-wide basis with respect to a reliability standard to be applicable within that Interconnection, *but shall not defer with respect to the effect of a standard on competition.* (Emphasis added.)

²⁷ Federal Energy Regulatory Commission, *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Docket RM05-30-000, (February 3, 2006), P 332.

reasons to avoid the required freeze protection measures or CAP.²⁸ Such confusion could complicate enforcement of Requirements R1 and R2, as oversight will likely vary from region to region and potentially auditor to auditor. Inconsistent enforcement could adversely impact competition by subjecting different units to different standards. The confusion and lack of clarity surrounding the exemption process injects ambiguity into the entire process which hampers the proposed standard requirements and underscores the concerns raised by R1 and R2 which the exemptions attempt to resolve to no effect.

D. Requirements R1 and R2 of EOP-012-1 Should Be Remanded and the Proposed Standard Revised to Address Legal and Operational Infirmities

While EPSA and P3 believe that Requirements R1 and R2 as drafted will not achieve the desired outcome and violate the Federal Power Act, the requirements to ensure weather resilient generation sufficiency can be appropriately modified and implemented. Given their potential legal infirmities, in lieu of Requirements R1 and R2, the Commission should direct NERC to work with and through the BAs to ensure that they have sufficient weather resilient supplies based on region-specific needs. This could be achieved by setting binding objectives for BAs, which will percolate down to appropriate requirements on a GO basis, but also allow for flexibility in achieving the national standard objective.

Under this paradigm, a BA would have to demonstrate that it has sufficient weather resilient supply to meet an extreme cold weather event. Ideally, the BAs would set the required parameters and necessary attributes, which may encompass attributes in addition to weatherization, and procure what they need. This would help to ensure that each region had the necessary generation to keep the lights on during an extreme cold weather event while offering the flexibility needed to acknowledge and address its particular circumstances. The

²⁸ Petition, p. 44 (stating that “the absence of commercially viable technical solutions may be one such constraint” preventing Generator Owners from taking otherwise required actions).

Commission's approach to frequency response offers helpful precedent for this approach. In Order 794, the Commission approved NERC Reliability Standard BAL-003-1, which requires each BA to achieve an annual Frequency Response Measure that is equal to or more negative than its Frequency Response Obligation.²⁹ The standard sets an objective obligation which a BA will meet with a level of flexibility that best serves its part of the overall BPS. Clearly, a similar paradigm could be developed and approved in the instant matter, with the BAs being required to meet extreme cold weather criteria.

Accordingly, given the legal issues presented by Requirements R1 and R2, as well as substantial ambiguity and a lack of flexibility, EPSA and P3 respectfully request that the Commission remand the Proposed Standard to NERC for removal of these Requirements and direct NERC to establish a process to direct the BAs to ensure cold weather resiliency.

E. The Commission Should Ensure That Competitive Generators Can Recover Costs Imposed by the New Standard

Should the Proposed Standard be approved – especially if Requirements R1 and R2 are left in place in some form – GOs could face significant costs. While vertically integrated generators are able to pass these costs directly to their captive ratepayers, competitive generators have no such mechanism. In addition, competitive generators have often been denied the ability to include NERC-related costs in their market offers, even when those costs have been mandated and thus allow for no discretion. Given the prescriptive nature of these costs, there is a limited ability to harness the power of competitive markets which incent finding innovative solutions or investments to lower operating costs. Section 219 of the FPA

²⁹ Federal Energy Regulatory Commission, *Frequency Response and Frequency Bias Setting Reliability Standard*, Docket RM13-11-000, Order No. 794, 146 FERC ¶ 61,024, (January 16, 2014).

stipulates that entities are entitled to recover prudently incurred costs associated with meeting reliability standards.³⁰

Given the importance of the issues at hand, it is critical that the Commission allow competitive generators to make capacity market offers that take into account reasonable costs incurred in implementing the Proposed Standard. Failure to do so could actually have negative impacts on cold weather reliability, as some generators may face staggering compliance costs that result in their premature retirement or lack of participation as cold weather capacity resources.³¹ This is an unacceptable – and avoidable – outcome. To the extent the Commission acts on the suggestion that the Commission direct NERC to work through the BAs to meet cold weather reliability obligations, this cost recovery issue could be addressed through the BAs if they procure the supply sufficient to meet an extreme cold weather event. Generators would recover the cost of addressing extreme cold weather risks through payments for the capabilities that BAs procure.

Alternatively, the Commission has other avenues that should be pursued concurrently to the approval of the proposed standards. In this circumstance, the Commission could issue a Federal Power Act Section 206 Show Cause order to ensure that each ISO and RTO has a cost recovery mechanism in place. This would allow ISOs/RTOs which do allow for cost recovery through market offers to demonstrate that they comply with the directives of FPA

³⁰ Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 1261 *et seq.*, 119 Stat. 594 (2005). In the Energy Policy Act of 2005, Congress directed the Commission to “allow recovery of . . . all prudently incurred costs necessary to comply with mandatory reliability standards issued pursuant to section 215” of the Federal Power Act.

³¹ EPSA notes that inclusion of these costs in capacity offers does not address the cost recovery issue for resources that do not clear the capacity market.

Section 219. In certain cases, the Commission may be required to direct an ISO or RTO to revise its Tariff to allow mandated reliability costs to be included in market offers.³²

The Commission could also establish a proceeding to direct the creation of a formula rate to allow recovery of these costs, similar to the cost recovery mechanism put in place in the ISO New England Critical Infrastructure Protection Interconnection Reliability Operating Limits (“CIP IROL”) proceeding.³³ Whether or not the Commission opts for such a mechanism, the CIP IROL Proceeding demonstrates the necessity that any cost recovery mechanism be put in place ahead of the implementation of a Reliability Standard in order to allow affected parties to make the necessary filings in time to fully recover their prudently incurred compliance costs. In the CIP IROL proceeding, while the Commission accepted tariff modifications filed by ISO-NE allowing certain GOs to make filings under Section 205 of the FPA to recover their costs in accordance with NERC’s Reliability Standards and the newly established formula rate, the Commission also found that such owners would be permitted to “recover only those costs incurred on or after the effective date of the relevant individual FPA section 205 filing.”³⁴ The latter ruling had the effect of rendering many (if not all) prudently incurred costs unrecoverable – an untenable outcome in relation to any matter, but acutely so in the instant proceeding, given the costs that may come into play for GOs.

As issues of cost recovery arise and reliability standards appear likely to be promulgated with greater frequency, EPSA and P3 urge the Commission to initiate a

³² To address the instant proposed standards in the most timely manner, EPSA requests that the Commission (1) exercise its authority under Section 206 of the FPA and order RTOs and ISOs to modify their tariffs to permit Generator Owners to recover their costs for complying with EOP-012-1, effective prior to the enforcement date of the Reliability Standard; and, (2) clarify that all Generator Owners, including those in RTO/ISO regions, are entitled to make filings under Section 205 of the FPA to recover their costs for complying with EOP-012-1, and that the relevant RTO or ISO will be required to compensate the Generator Owner for those costs accepted by the Commission.

³³ ISO New England Inc., *Order Accepting Proposed Rate Schedule*, Dockets ER20-739-000 and ER20-739-001, (May 26, 2020).

³⁴ *Id.* at P 27.

proceeding to address the broader question of how competitive generators will recover the costs of meeting reliability standards,³⁵ consistent with the statutory mandate set forth in Section 219 of the FPA. Given the extreme weather challenges that NERC is and will be addressing, EPISA and P3 request that the Commission act expeditiously to address this cost recovery issue to ensure that these reliability standards can be implemented without significant delay.³⁶

³⁵ See also, FERC Notice of Proposed Rulemaking, *Internal Network Security Monitoring for High and Medium Impact Bulk Electric System Cyber Systems*, Comments of the Electric Power Supply Association, Docket RM22-3-000, (March 28, 2022), p. 5.

³⁶ See, *Comments of the ISO/RTO Council*, Docket RD23-1-000, (December 8, 2022). In their comments, the ISO/RTO Council (“IRC”) representing all six regional system operators highlights the need for asset owners to have a pathway to cost recovery. “The IRC also recognizes that asset owners are concerned about the costs related to the proposed Reliability Standard (both the actual capital expenditures and the compliance costs). The IRC acknowledges the cost impacts and believes that asset owners should have a path to cost recovery. This is an important regulatory issue that should be considered, accounting for existing tariff provisions,” p. 11.

II. CONCLUSION

Wherefore, EPSA and P3 respectfully request that the Commission remand the Proposed Standard to NERC and direct NERC to replace Requirements R1 and R2 with a standard that places the requirements of obtaining weather resilient supply on the BAs. EPSA and P3 also request that the Commission ensure that competitive generators have an opportunity to recover their prudently incurred costs associated with complying with any final standards.

Respectfully submitted,

On behalf of the Electric Power Supply Association:

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Dated: December 8, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically served the foregoing document on each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

Dated at Washington, DC, this 8th day of December 2022.

/s/ Bill Zuretti

Bill Zuretti
Electric Power Supply Association