

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

**North American Electric
Reliability Corporation**

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)

Docket No. RD24-5-000

**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 April 4, 2024 Answer of the North American Electric Reliability Corporation (“NERC”)³ submitted in this proceeding initiated by NERC’s February 16, 2024 petition for approval of proposed Reliability Standard EOP-012-2.⁴

In this Limited Answer, the IRC addresses the following:

- The policy implications for the Commission should it accept NERC’s argument that a generator should be able to avoid compliance with the cold weather Reliability Standard based on the generator’s assertion that compliance would be too costly; and

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. IESO joins this filing, while AESO does not. 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.*, Motion for Leave to Answer and Answer of the North American Electric Reliability Corporation, Docket No. RD24-5-000 (Apr. 4, 2024) (hereafter, the “NERC Answer”).

⁴ *N. Am. Elec. Reliability Corp.*, Petition of the North American Electric Reliability Corporation, Docket No. RD24-5-000 (Feb. 16, 2024) (hereafter, the “NERC Petition”).

- Whether the need to approve a Reliability Standard outweighs the Commission’s responsibility to ensure that the proposed Reliability Standard and its specific terms are just and reasonable as required by Section 215 of the Federal Power Act.⁵

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,⁶ the Commission routinely permits such answers when the answer provides useful and relevant information that will assist the Commission in its decision-making process,⁷ corrects factual inaccuracies and clarifies the issues,⁸ assures a complete record in the proceeding,⁹ provides information helpful to the disposition of an issue,¹⁰ or permits the issues to be narrowed.¹¹

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

⁵ 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.”).

⁶ 18 C.F.R. § 385.213(a)(2).

⁷ 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).

⁸ See, e.g., *Entergy Servs. Inc.*, 126 FERC ¶ 61,227 (2009).

⁹ 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 . . .”).

¹⁰ See, e.g., *CNG Transmission Corp.*, 89 FERC ¶ 61,100, 61,287, n.11 (1999).

¹¹ 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).

II. LIMITED ANSWER

A. *IRC Answer to NERC's Response to the IRC's Concern Regarding the Proposed Reliability Standard's Exceptions to Compliance for Generators that Self-Determine that the Costs of Compliance Are Too High.*

i. IRC Proposal

In its Protest,¹² the IRC raised numerous concerns regarding NERC's proposed definition of "Generator Cold Weather Constraint," arguing that the term as proposed was "subjective, unclear, and unauditible."¹³ The IRC pointed to, among other things, one of NERC's proposed criteria that would be used to determine whether a constraint exists—namely, whether freeze protection measures "could not have been implemented at a reasonable cost consistent with good business practices, reliability, or safety," as further modified by the statement that "[a] cost may be deemed 'unreasonable' when implementation of selected freeze protection measure(s) are uneconomical to the extent that they would require prohibitively expensive modifications or significant expenditures on equipment with minimal remaining life."¹⁴ The IRC also explained how the definition, as proposed, would allow Generator Owners to declare a Generator Cold Weather Constraint simply by asserting that implementing a given freeze protection measure would constitute a "prohibitively expensive modification[]" or a "significant expenditure[]," and that the affected facility has "minimal remaining life."¹⁵

¹² *N. Am. Elec. Reliability Corp.*, Protest of the ISO/RTO Council, Docket No. RD24-5-000 (Mar. 21, 2024) (hereafter, the "IRC Protest").

¹³ *Id.* at 6.

¹⁴ *Id.* at 7.

¹⁵ *Id.*

Accordingly, the IRC proposed that the Commission direct NERC to revise the constraint definition by removing cost-based constraints from the Reliability Standard entirely.¹⁶ To underscore the continued importance of cost recovery, the IRC encouraged the Commission to indicate its intention to allow for cost recovery and direct its Office of Energy Market Regulation to survey those markets within its jurisdiction to determine whether there are sufficient vehicles for cost recovery of winterization costs.¹⁷

ii. NERC Answer and IRC Response

The proposed Reliability Standard's broad and subjective exception allowing generators to avoid compliance if the generator deems the costs of compliance "unreasonable" or "uneconomic" should raise significant concerns for the Commission. The IRC noted that cost recovery of compliance measures *is* vitally important, but the Commission should address cost recovery pursuant to its ratemaking authority under Sections 205 and 206.¹⁸ NERC's Answer claims that such a broad compliance exception needs to be included in the Reliability Standard to avoid an outcome in which "fewer generators [choose] to operate in cold weather due to prohibitive costs or technical inability to meet the operational capability requirements of the proposed standard."¹⁹ For the reasons outlined below, the IRC urges the Commission to consider the problematic precedent it would create if it were to adopt NERC's argument. Specifically, this precedent would

¹⁶ *Id.* at 12.

¹⁷ *Id.*

¹⁸ Moreover, and as discussed in the IRC Protest, the IRC supports a constraint process that can be invoked on a unit-specific basis to address issues of technical feasibility. This is an area that falls squarely under NERC's expertise of ensuring the effective and efficient reduction of risks to the reliability and security of the grid. *See* IRC Protest at 8.

¹⁹ NERC Answer at 8. The IRC did not object to the Cold Weather Constraint exception for "technical inability" of the unit to meet the requirements of the Standard. As a result, the IRC is unclear why NERC is charging that the IRC is somehow ignoring the need for an exception if the generator does not have the "technical ability" to meet the standard.

hinder efforts to ensure effective compliance with this particular Reliability Standard and would potentially encourage the inclusion of broad, open-ended cost exceptions in future Reliability Standards.

By way of analogy, adopting NERC's argument would be akin to determining that the public interest in personal mobility is more important than the safety benefits of ensuring that all automobiles are equipped with functional headlights and taillights, thereby allowing automobile owners to avoid installing this critical safety equipment if they determine that the associated costs would be too high. In the case of the cold weather Reliability Standard, accepting the rationale that NERC offers in its Answer would create an exception to compliance that the Commission should be reluctant to embrace.²⁰

To be clear, the proposed Reliability Standard *already* contains specific provisions to ensure that unreasonable measures are not required for purposes of compliance. These include:

1. an express statement that “acceptable practices, methods or technologies generally implemented by the electric industry in areas that experience similar winter climate conditions” are sufficient;²¹ and
2. language allowing for use of the Generator Cold Weather Constraint exception to avoid generators having to undertake actions that “were not broadly implemented at generating units for comparable unit types in regions that experience similar winter climate conditions to provide reasonable assurance of efficacy.”²²

²⁰ A unit that cannot operate during peak winter conditions because it has not been adequately winterized provides no reliability value during those periods.

²¹ See proposed definition of Generator Cold Weather Constraint (“Freeze protection measures are not intended to be limited to optimum practices, methods, or technologies, but are also intended to include acceptable practices, methods, or technologies generally implemented by the electric industry in areas that experience similar winter climate conditions.”). As discussed below, IRC is also concerned that the phrase “generally implemented” is not sufficiently clear.

²² *Id.* (“Criteria used to determine a constraint include practices, methods, or technologies which, given the exercise of reasonable judgment in light of the facts known at the time the decision to declare the constraint was made: . . . were not broadly implemented at generating units for comparable unit types in regions that experience similar winter climate conditions to provide reasonable assurance of efficacy.”).

Given these allowable exceptions to compliance, it is neither necessary nor appropriate to include an exception in the Reliability Standard based on generators' subjective determinations that their compliance costs are "uneconomical," "prohibitively expensive" or involve "significant expenditures" on equipment (and then charge NERC with analyzing and policing these determinations).

In short, the Commission faces a policy choice—whether to adopt exceptions to compliance based on generator assertions of excessive costs or else whether to apply its Section 205 and 206 authority to ensure just and reasonable rates. Although the cost exception that NERC has proposed is written solely in the context of costs, to determine if a particular expenditure is truly "uneconomic," a thorough analysis also has to look at forecasts of future energy and capacity revenues that the unit is expected to receive as well as the owner's overall required rate of return for that facility. Analyzing individual forecasts of future costs, forward curves, and future market prices, is clearly outside of NERC's core mission as assigned to the ERO by Congress through Section 215 of the Federal Power Act and underscores the 'slippery slope' the Commission would be embarking upon if it rejects the IRC Protest.

In addition, as the IRC noted, an exception allowing generators to self-certify that the costs of compliance are "unreasonable" is hardly "clear and unambiguous" so that it could be meaningfully audited on an objective basis.²³

²³ Although NERC claims that the standard drafting team "defined the high bar entities must meet for establishing a cost as unreasonable" (NERC Answer at 9), the NERC Answer provides no citation or support in the record for this statement, nor can the IRC find any clear, auditable "high bar" in the proposed Reliability Standard. Rather, subjective terms like "uneconomical," "prohibitively expensive" and "significant expenditures" are used, each of which can be interpreted by generators in many different ways.

Notably, in its Comments, the Electric Power Supply Association (“EPSA”) argues that a cost exception is beyond the Commission’s jurisdiction in the context of a Section 215 proceeding.

EPSA states in its Answer:²⁴

“The issue of cost recovery is not jurisdictional to NERC’s development or implementation of the Freeze Protection Standard, that is clearly and squarely within FERC’s purview.”²⁵

While EPSA agrees that cost recovery is beyond the scope of the instant proceeding to approve the NERC standard submitted, it is not beyond the Commission’s purview to address the compensation gap on its own initiative.”²⁶

Moreover, EPSA outlines a resolution of this issue that is virtually identical to the IRC’s proposal to ensure that cost recovery issues are addressed without creating an exception in the standard itself. Specifically, EPSA states:

EPSA respectfully requests that the Commission survey the markets within its jurisdiction to determine whether there are sufficient vehicles for cost recovery should NERC’s Freeze Protection Standards be approved. If there is a determination that any market does not have sufficient cost recovery pathways in place, the Commission should take action to remedy these issues ahead of the time generators would need to take action in order to meet the effective date of the proposed standard.”²⁷

The Transmission Access Policy Study Group acknowledges the same point:

(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

²⁴ *N. Am. Elec. Reliability Corp.*, Motion for Leave to Answer and Answer of the Electric Power Supply Association, Docket No. RD24-5-000 (Apr. 1, 2024) (hereafter, the “EPSA Answer”).

²⁵ *Id.* at 2.

²⁶ *Id.* at 4.

²⁷ *Id.* at 5.

market structures do not provide generators an adequate opportunity to recover compliance costs.”²⁸

For these reasons, the Commission should underscore its intent to address cost issues in the manner that the IRC proposes (which includes enunciating a clear policy and surveying jurisdictional entities as to the availability of adequate cost recovery mechanisms) rather than including an exception in the Reliability Standard itself.

B. IRC Answer to NERC’s Response to the IRC Protest Seeking that the Constraint Definition Focus on Effective Facility Performance Instead of General Industry Practice.

i. IRC Proposal

In its Protest, the IRC noted that the discussion of freeze protection measures in the Generator Cold Weather Constraint definition creates additional ambiguity that provides far too much discretion to entities required to comply with the proposed Reliability Standard.²⁹ As a result, the IRC explained that the language in the proposed Reliability Standard provides insufficient guidance and guardrails concerning the Generator Owner’s exercise of discretion to determine whether freeze protection measures are available for its equipment when evaluating whether a basis exists to declare a constraint.³⁰ The IRC also observed that the proposed definition does not provide sufficient guidance on how widely a freeze protection technology must be deployed before it will be considered a “generally implemented” technology.³¹

Accordingly, the IRC urged the Commission to reject the proposed language and direct NERC to revise the language so that it is clear that freeze protection measures are “intended to

²⁸ *N. Am. Elec. Reliability Corp.*, Motion for Leave to Answer and Answer of the Transmission Access Policy Study Group at 1-2, Docket No. RD24-5-000 (Apr. 5, 2024) (hereafter, the “TAPS Answer”).

²⁹ IRC Protest at 13.

³⁰ *Id.*

³¹ *Id.* at 14.

include practices, methods, or technologies that would reasonably be expected to result in effective facility performance while operating at the Extreme Cold Weather Temperature (ECWT).”³²

ii. NERC Answer and IRC Response

In its response to the IRC’s Protest, NERC claims that the IRC’s position would “requir[e] the widespread implementation of novel solutions or solutions not yet proven to be effective in similar climate conditions.”³³ NERC incorrectly states the IRC’s position. The IRC proposed to require measures that “would **reasonably** be expected to result in effective facility performance” while operating at the ECWT.³⁴ Technologies that have not been proven to work would not reasonably be expected to result in effective performance. Moreover, NERC has provided insufficient support for the Commission to find that NERC’s proposed language in the Generator Cold Weather Constraint definition, which is far more vague than revisions proposed by the IRC, is just and reasonable. In addition, NERC’s proposal requires the additional hurdle of “generally implemented,” that will serve to slow the adoption process for new technologies, as contrasted with the reasonable outcome approach proposed by the IRC.

C. IRC Answer to NERC’s Response to IRC Proposal to Encourage Early Best Efforts Compliance.

i. IRC Proposal

In its Protest, the IRC noted that the extended compliance deadlines in the proposed Reliability Standard do not work to encourage generators to implement immediate and near-term actions that can reasonably be undertaken in the short term prior to the upcoming winter season.

³² *Id.* at 15.

³³ NERC Answer at 14.

³⁴ IRC Protest at 15 (emphasis added).

Accordingly, the IRC proposed that the Commission direct NERC to revise the proposed Reliability Standard to include a requirement that Generator Owners “document the generator’s best efforts to promptly implement all immediate and near-term actions that it can reasonably undertake prior to the next upcoming winter season to winterize the generating unit(s) to operate at its calculated Extreme Cold Weather Temperature.”³⁵

ii. NERC Answer and IRC Response

NERC agrees that “entities should implement corrective actions as soon as possible” and “strongly encourages” such actions,³⁶ but then incongruously argues that the IRC proposal lacks “clarity and auditability” and a “clearly defined reliability goal.”³⁷ The IRC submits that requiring Generator Owners to implement actions that can reasonably be undertaken prior to the next winter season is no less clear and auditable than the primary weatherization requirements in Requirements R2 and R3, which broadly mandate that generators “[i]mplement freeze protection measures to protect Generator Cold Weather Critical Components” that meet the required temperature and wind specifications. The only incremental requirement the IRC proposes is a determination of what measures can reasonably be undertaken before the next winter season and reasonable action taken in pursuit of those measures. While the required actions will differ from facility to facility, that standard is not unclear or unauditable for that reason—after all, the ECWT that applies in Requirements R2 and R3 will differ from facility to facility. Furthermore, by definition, promoting the operation of the generation supply during extreme cold temperatures during the upcoming winter season by requiring the owners of these facilities to take reasonable steps and best efforts is a “clearly defined reliability goal.”

³⁵ *Id.* at 26.

³⁶ NERC Answer at 21.

³⁷ *Id.* at 22.

D. IRC Answer to NERC's Response to IRC Request for Annual Inspections to Occur within Three Months of the Upcoming Winter Season.

i. IRC Protest

In its Protest, the IRC noted the importance of conducting inspection and maintenance activities in advance of the winter season.³⁸ To address these concerns, the IRC proposed that the Commission direct NERC to revise the standard to require inspections and maintenance of all generating units on at least an annual basis and always within three months of the upcoming winter season.³⁹

ii. NERC Answer and IRC Response

NERC fails to provide a sufficient basis for the Commission to find that the absence of a specified pre-winter season inspection is just and reasonable. NERC simply:

- states that the standard “*does not need to prescribe in detail the timing of the required annual inspections*,”⁴⁰
- encourages the IRC to submit a Standards Authorization Request;⁴¹ and
- concludes in a summary fashion that “*it is not necessary to revisit this aspect of the standard now.*”⁴²

The Commission should direct NERC to revise the standard to require inspections and maintenance of all generating units to occur on at least an annual basis and always within three months of the upcoming winter season.

³⁸ IRC Protest at 31

³⁹ *Id.* at 31-32.

⁴⁰ NERC Answer at 26.

⁴¹ *Id.* at 7.

⁴² *Id.* at 27.

E. IRC Answer to NERC's Comments on the IRC's Proposed 120-Day Compliance Period.

i. IRC Proposal

In its Protest, the IRC proposed that the Commission direct NERC to submit a revised version of EOP-012-2 to the Commission that addresses the specific issues raised by the IRC by no later than 120 days from the date of the Commission's order.⁴³

ii. NERC Answer and IRC Response

NERC's concern is that it is important to have generators move forward as quickly as possible with implementing effective winterization.⁴⁴ The IRC shares this concern. The IRC's Protest is squarely premised on making sure that the compliance requirements are clear so that they can be implemented quickly and effectively by limiting later disputes that will inevitably occur given the vague language surrounding exceptions to compliance and timelines noted above.

Moreover, although NERC claims that the IRC's requested changes were *made "without regard to the substantial delay in implementation that would be required for entities to implement these new or significantly revised requirements"*⁴⁵ it is precisely for this reason that the IRC proposed that the Commission speak clearly as to its expectation in its Remand Order and set a short 120-day period for compliance.⁴⁶

NERC's argument underscores the IRC's initial concern—namely that the desire for “getting it done” has clouded the need to “get it done right” and in a timely manner. As noted in the IRC Protest, the IRC asks that the Commission not let this “need for speed” argument sideline

⁴³ IRC Protest at 4.

⁴⁴ See NERC Answer at 27-28.

⁴⁵ *Id.* at 27.

⁴⁶ Given NERC's concern about timing, the IRC would be quite comfortable with a shorter compliance period for NERC to make a compliance filing in response to specific Commission directives.

its statutory responsibility to ensure that proposed Reliability Standards are just and reasonable, or trump the need for adoption of a clear and effective Reliability Standard that can provide meaningful guidance to the industry at the outset.

As the Commission deliberates, the IRC hopes that the information provided herein clarifies the record on this important Reliability Standard.

III. CONCLUSION

In accordance with the foregoing, the IRC respectfully requests that the Commission accept this Limited Answer into the record in this proceeding.

Respectfully submitted,

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April 16, 2024

CERTIFICATE OF SERVICE

I hereby certify that I have this 16th day of April, 2024 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/ Jesse Jacobs

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