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

**VERSION 4 CRITICAL INFRASTRUCTURE) Docket No. RM11-11-000
PROTECTION RELIABILITY STANDARDS)**

**REPLY COMMENTS OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING**

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December 5, 2011

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**MOTION FOR LEAVE TO FILE REPLY COMMENTS AND REPLY COMMENTS OF
THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or the “Commission”), the North American Electric Reliability Corporation (“NERC”) hereby moves for leave to file reply comments and submits these reply comments in the above-captioned proceeding.

I. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to:

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II. MOTION FOR LEAVE TO FILE REPLY COMMENTS

NERC respectfully moves for leave to file reply comments in the above-captioned docket. NERC has an interest in the subject of the Notice of Proposed Rulemaking (“NOPR”) issued in this docket on September 15, 2011 pursuant to Section 215 (d)(2) of the Federal Power Act (“FPA”), wherein the Commission proposed to approve the CIP Version 4 Reliability Standards, which were submitted by NERC for approval on February 10, 2011.

The Associated Electric Cooperative, Inc. (“Associated Electric”), Basin Electric Power Cooperative (“Basin Electric”), and Tri-State Generation and Transmission Association, Inc. (“Tri-State”) (collectively, the “G&T Cooperatives”) filed comments in response to the NOPR, asserting that NERC no longer appears to have intended that the CIP Version 4 standards go into effect in advance of the CIP Version 5 standards.¹ Based on this assertion, the G&T Cooperatives requested that the Commission issue an order approving the CIP Version 4 standards for guidance purposes only, but delay implementation so that Version 4 will be superseded by the CIP Version 5 standards.² NERC hereby provides these reply comments to correct the G&T Cooperatives’ misunderstanding of NERC’s position.

NERC submits that the acceptance of these reply comments will assist the Commission in its decision-making process by clarifying the issues under consideration, helping to develop a complete and accurate record, and correcting the misunderstanding contained in the comments filed by the G&T Cooperatives. While the Commission’s rules generally do not permit the filing of reply comments unless otherwise permitted by the Commission,³ the Commission has granted motions to leave to file such responses if they will clarify issues in dispute, ensure a complete and accurate record, or otherwise provide information to assist the Commission in its decision-making process.⁴ NERC’s Reply Comments will help clarify certain matters regarding

¹ *North American Electric Reliability Corporation*, Joint Comments of Associated Electric Cooperative, Basin Electric Power Cooperative, and Tri-State Generation and Transmission Association, Docket No. RM11-11-000, November 21, 2011 at p. 3 (“G&T NOPR Comments”).

² *Id.* at p.3.

³ See 18 C.F.R. §385.213(a)(2) (2010).

⁴ *San Diego Gas & Electric v. Sellers of Energy and Ancillary Services*, 108 FERC ¶ 61,219, at P14, n. 7 (2004) (answer was accepted as it “provided information that assisted [FERC in its] decision-making process”); see also *Michigan Electric Transmission Co.*, 106 FERC ¶ 61,064, at P 3 (2004) (the permitted answer “provides information that clarifies the issues”); *North American Electric Reliability Corporation, Order Certifying NERC as the Electric Reliability Organization and Ordering Compliance Filing*, 116 FERC ¶ 61,062, at P 24 (2006) (reply comments of NERC and others accepted “because they have provided information that assisted us in our decision making process”); *North American Electric Reliability Corporation, Order Conditionally Accepting 2007 Business Plan and Budget of the North American Electric Reliability Corporation, Approving Assessments to Fund Budgets and*

implementation of the CIP Version 4 Reliability Standards now before the Commission in this docket. Therefore, NERC respectfully requests permission to submit these Reply Comments.

III. REPLY COMMENTS

The G&T Cooperatives suggest that NERC no longer appears to have intended that the CIP Version 4 standards should go into effect in advance of Version 5. As a basis for the suggestion, the G&T Cooperatives mistakenly link together NERC's statement that the CIP Version 4 standards were to be an interim measure setting up bright-line criteria for identifying assets to be subject to the CIP standards and NERC's posting for public comment of the CIP Version 5 Implementation Plan on November 7, 2011. The G&T Cooperatives assert that NERC never intended that Version 4 was to become effective.⁵

That assertion is wrong. NERC continues to request that the Commission approve CIP Version 4 to be effective as proposed. As noted in NERC's CIP NOPR Comments, NERC is aware of concerns from some in the industry that implementation of the CIP Version 4 standards may be so close in time to implementation of the CIP Version 5 standards that it could create difficulties for industry participants to implement both versions of the standards. For this reason, the CIP Version 5 standard drafting team is assessing in the proposed CIP Version 5 Implementation Plan whether there is an opportunity to suggest an extension of Version 3 until Version 5 can be implemented, thereby eliminating the need for implementation of Version 4. However, until CIP Version 5 and an appropriate implementation plan is fully vetted and approved by the industry, the NERC Board of Trustees, and FERC, there is no basis to determine at this juncture that the CIP Version 4 standards should not be implemented.

Ordering Compliance Filings, 117 FERC ¶ 61,091, at P 18 (2006) (same); *North American Electric Reliability Corporation*, 119 FERC ¶ 61,248 (2007) at P 6 (same).

⁵ G&T NOPR Comments at pp. 4-5.

Assuming a favorable industry ballot and NERC Board of Trustees approval, NERC anticipates filing the CIP Version 5 standards by the third quarter of 2012. Many factors could delay this schedule, thus requiring FERC to carefully consider whether the arguments that implementation of CIP Version 4 and CIP Version 5 are too close in time merit a delay in implementation of CIP Version 4. For example, the development schedule for the CIP Version 5 standards depends on the timing of the formal postings, the number of comments received, and the number of changes that may need to be made to the language in the standards as a result of these comments. Ultimately a favorable outcome on the proposed standards is in the hands of the registered ballot body which will, in turn, affect the final delivery of the proposed CIP Version 5 standards to FERC for approval.

Because NERC cannot predict the time it will take to reach industry consensus on the CIP Version 5 standards, and because the timing necessary for FERC to approve the CIP version 5 standards is uncertain, NERC purposefully did not state or suggest that its intention was that the CIP Version 4 standards should never go into effect. In fact, NERC specifically stated in its NOPR comments that the “suggestion [to delay implementation of Version 4] is not being made now, and it could be considered only if the industry moves promptly on Version 5.”⁶ NERC additionally stated that “[i]f Version 5 is not approved by the industry, filed by NERC, and approved by the Commission within that anticipated schedule, or reasonably thereafter, it is unlikely that Version 3 could be extended in a manner that eliminates the need for implementation of Version 4.”⁷

⁶ *Version 4 Critical Infrastructure Protection Reliability Standards*, Comments of the North American Electric Reliability Corporation in Response to Notice of Proposed Rulemaking, Docket No. RM11-11-000, November 21, 2011, p. 10 (“NERC CIP NOPR Comments”).

⁷ *Id.*

NERC has stated that Commission approval of the proposed CIP Version 4 standards, will help eliminate ambiguity in the identification of Critical Assets. The “bright-line” criteria for the identification of Critical Assets that will replace the currently-effective CIP Version 3 standards, which allow Critical Assets to be determined based on an entity’s risk-based assessment methodology, is a substantial improvement to the CIP standards. For these reasons, NERC states in its NOPR comments that it agrees with FERC’s proposal to approve the proposed Implementation Plan for the CIP Version 4 Reliability Standards as filed. Should it be determined through the development of the CIP Version 5 standards that implementation of the CIP Version 4 and CIP Version 5 standards close in time creates a burden on registered entities, NERC will re-evaluate and address implementation options as a part of the CIP Version 5 filing with FERC.

IV. CONCLUSION

For the foregoing reasons, NERC respectfully requests that the Commission grant this motion for leave to file reply comments, consider its comments herein, and approve the proposed CIP Version 4 Reliability Standards based on the filings submitted by NERC in this proceeding.

Respectfully submitted,

/s/ Holly A. Hawkins

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 5th day of December, 2011.

/s/ Holly A. Hawkins
Holly A. Hawkins
*Attorney for North American Electric
Reliability Corporation*