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

Complaint of Michael Mabee) **Docket No. EL21-54-000**
Related to Reliability Standards)
)
)
)
)
)

**MOTION TO INTERVENE AND COMMENT OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION AND
TEXAS RELIABILITY ENTITY, INC.**

Derrick Davis
General Counsel & Corporate Secretary
Texas Reliability Entity, Inc.
805 Las Cimas Parkway, Suite 200
Austin, TX 78746
(512) 583-4900
derrick.davis@texasre.org

Edwin G. Kichline
Senior Counsel
Marisa Hecht
Counsel
North American Electric Reliability Corporation
1325 G Street, N.W., Suite 600
Washington, D.C. 20005
(202) 400-3000
(202) 644-8099 – facsimile
ed.kichline@nerc.net
marisa.hecht@nerc.net

Counsel for Texas Reliability Entity, Inc.

*Counsel for the North American Electric
Reliability Corporation*

April 5, 2021

TABLE OF CONTENTS

I. NOTICES AND COMMUNICATIONS 2

II. SUMMARY OF COMPLAINT 3

III. MOTION TO INTERVENE..... 3

IV. COMMENTS 5

 A. The Complaint should be dismissed because the Complaint fails to meet the minimum requirements of the FPA and the Commission’s regulations..... 6

 B. The Complaint should be dismissed because the requested relief is already underway.. 8

V. CONCLUSION..... 11

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

Complaint of Michael Mabee) **Docket No. EL21-54-000**
Related to Reliability Standards)
)
)
)
)
)

**MOTION TO INTERVENE AND COMMENT OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION AND
TEXAS RELIABILITY ENTITY, INC.**

Pursuant to Rules 206, 212, and 214 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure¹ and the Commission’s Notice of Complaint,² the North American Electric Reliability Corporation (“NERC”) and Texas Reliability Entity, Inc. (“Texas RE”) move to intervene and comment on the Complaint filed by Michael Mabee (“Complainant”) on March 1, 2021 in the above-captioned docket (“Complaint”).

The Complaint claims that the recent cold weather event³ in Texas that led to power outages demonstrates that either: (i) “[t]he mandatory [R]eliability [S]tandards were not followed”,⁴ or (ii) “[t]he mandatory [R]eliability [S]tandards were ineffective.”⁵ The Complaint requests the Commission (i) issue a public notice of the Complaint; (ii) direct NERC and Texas RE to conduct an investigation into whether Reliability Standards were followed by all entities

¹ 18 C.F.R. §§ 385.206, 385.212, and 385.214 (2021).

² Notice of Complaint, Docket No. EL21-54-000 (Mar. 4, 2021).

³ The cold weather event refers to the extreme arctic weather that affected the central part of the United States during the second week of February 2021, leading to power outages.

⁴ Complaint at 1.

⁵ *Id.*

registered with Texas RE who had involvement in the power outages; and (iii) if NERC and Texas RE determine violations did not contribute to the power outages, then FERC should direct NERC to revise the Reliability Standards to prevent such power outages resulting from cold weather events.

NERC and Texas RE appreciate the impact caused by the recent cold weather event. Accordingly, NERC and Texas RE have pursued both an inquiry into the cold weather event and Reliability Standards development, as more fully described below. In light of these actions, NERC and Texas RE request leave to intervene and comment in response to the Complainant's assertions and recommendations and request that the Commission dismiss the Complaint. The Commission should not engage in a complaint proceeding at this time as it would be duplicative and potentially hamper the efforts already underway. This is especially true because the complaint, as filed, lacks the necessary specificity as required under Section 206 of the Federal Power Act.

I. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to the following:⁶

Derrick Davis*
General Counsel & Corporate Secretary
Texas Reliability Entity, Inc.
805 Las Cimas Parkway, Suite 200
Austin, TX 78746
(512) 583-4900
derrick.davis@texasre.org

Edwin G. Kichline*
Senior Counsel
Marisa Hecht*
Counsel
North American Electric Reliability
Corporation
1325 G Street, N.W., Suite 600
Washington, D.C. 20005
(202) 400-3000
(202) 644-8099 – facsimile
ed.kichline@nerc.net
marisa.hecht@nerc.net

⁶ Persons to be included on the Commission's service list are identified by an asterisk. NERC respectfully requests a waiver of Rule 203 of the Commission's regulations, 18 C.F.R. § 385.203, to allow the inclusion of more than two persons on the service list in this proceeding.

II. SUMMARY OF COMPLAINT

The Complainant alleges that the cold weather event in Texas demonstrated that the Reliability Standards were not followed or were ineffective.⁷ The Complainant recommends that the Commission:

- i. Issue public notice of the complaint;⁸
- ii. Direct NERC and Texas RE to conduct an investigation into whether Reliability Standards were followed by all entities registered with Texas RE “who had any involvement in the Texas grid collapse of February 15, 2021”;⁹ and
- iii. Direct NERC to modify the Reliability Standards to prevent future outages if NERC and Texas RE determine that violations of the Reliability Standards did not contribute to the cold weather event in Texas.

On March 14, 2021, the Complainant also filed a motion requesting the Commission take official notice of a Government Accountability Office report.¹⁰ On March 31, 2021, the Complainant file another motion requesting the Commission take official notice of a Texas Department of State Health Services website tracking deaths related to the cold weather.¹¹

III. MOTION TO INTERVENE

NERC and Texas RE have a substantial interest in this proceeding as the Complainant seeks to have the Commission direct NERC and Texas RE to conduct an investigation or revise

⁷ NERC and Texas RE note that the Complainant, as a private citizen, is not subject to the NERC Reliability Standards, including the CIP Reliability Standards. Complaint at 1.

⁸ Complaint at 1.

⁹ Complaint at 12.

¹⁰ Government Accountability Office, *Electricity Grid Resilience: Climate Change Is Expected to Have Far-reaching Effects and DOE and FERC Should Take Actions*, GAO-21-346 (Mar. 2021), <https://www.gao.gov/assets/gao-21-346.pdf>.

¹¹ The website is available at <https://dshs.texas.gov/news/updates.shtm>.

Reliability Standards.¹² By enacting the Energy Policy Act of 2005,¹³ Congress entrusted the Commission with the duties of approving and enforcing rules to ensure the reliability of the Bulk-Power System, and with the duties of certifying an Electric Reliability Organization (“ERO”) that would be charged with developing and enforcing mandatory Reliability Standards, subject to Commission approval. The Commission certified NERC as the ERO in 2006.¹⁴ Texas RE carries out certain ERO activities as a Regional Entity defined in Section 215(a)(7) of the FPA.¹⁵

As the ERO, NERC’s mission is to improve the reliability and security of the Bulk-Power System in North America. Similarly, Texas RE supports this goal as a Regional Entity. Under its FERC-approved Rules of Procedure, NERC develops Reliability Standards in accordance with Section 300 (Reliability Standards Development) of the NERC Rules of Procedure (“ROP”) and the NERC Standard Processes Manual (“SPM”).¹⁶ NERC and the Regional Entities, including Texas RE, are responsible for monitoring, assessing, and enforcing compliance with Reliability Standards in the United States in accordance with Section 400 (Compliance Enforcement) of the ROP and the NERC Compliance Monitoring and Enforcement Program.¹⁷

¹² Complaint at 12.

¹³ 16 U.S.C. § 824o (2018).

¹⁴ *N. Am. Elec. Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh’g and compliance*, 117 FERC ¶ 61,126 (2006), *order on compliance*, 118 FERC ¶ 61,030, *order on compliance*, 118 FERC ¶ 61,190, *order on reh’g*, 119 FERC ¶ 61,046 (2007), *aff’d sub nom. Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

¹⁵ 16 U.S.C. § 824o(a)(7) and (e)(4). *See also N. Am. Elec. Reliability Corp.*, 119 FERC ¶ 61,060 (2006), *order on reh’g*, 120 FERC ¶ 61,260 (2007) (accepting a delegation agreement between NERC and Texas RE in order to designate Texas RE as a Regional Entity pursuant to Section 215(e)(4) of the FPA). The Commission approved the currently effective delegation agreement in 2020 in Docket No. RR20-5-000. *See N. Am. Elec. Reliability Corp.*, 173 FERC ¶ 61,277 (2020) (conditionally approving revised delegation agreements to be effective January 1, 2021 and directing modifications and a compliance filing).

¹⁶ The NERC Rules of Procedure are available at <https://www.nerc.com/AboutNERC/Pages/Rules-ofProcedure.aspx>. The NERC Standard Processes Manual is available at https://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/SPM_Clean_Mar2019.pdf.

¹⁷ *Id.* The NERC Compliance Monitoring and Enforcement Program is available at https://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/Appendix_4C_CMEP_06082018.pdf.

No other party can adequately represent NERC's or Texas RE's interests to respond to the Complainant's allegations. Therefore, it is in the public interest to permit this intervention.

IV. COMMENTS

NERC and Texas RE take seriously their responsibility to support the reliability of the Bulk-Power System. NERC and Texas RE understand the human and economic impacts caused by lack of electricity service, as evidenced by the cold weather event in Texas, and focus on their mission to help ensure a reliable Bulk-Power System in North America. As described in more detail below, NERC, Texas RE, and FERC are pursuing several actions right now to address the cold weather event. On February 16, 2021, NERC and FERC announced a joint inquiry into the cold weather event. This inquiry will “identify problems with the performance of the [Bulk-Power System]”¹⁸ and develop solutions as appropriate. Furthermore, NERC already is developing cold weather Reliability Standards as described below. As a result, the Complaint's requested relief of an investigation and standards revisions would duplicate current activities addressing the cold weather event and potentially hamper these efforts.

Furthermore, the Commission should dismiss the Complaint because it fails to meet the minimum requirements applicable to complaints under the Commission's Rules of Practice and Procedure.¹⁹ Specifically, the Complaint failed to state the provision of the Reliability Standard allegedly violated, as is required of complaints alleging violations of Reliability Standards.²⁰

¹⁸ *FERC, NERC to Open Joint Inquiry into 2021 Cold Weather Grid Operations*, News Release (Feb. 16, 2021), <https://www.nerc.com/news/Pages/NERC,-NERC-to-Open-Joint-Inquiry-into-2021-Cold-Weather-Grid-Operations.aspx>.

¹⁹ *See* 18 C.F.R. § 385.206.

²⁰ *Citizens Energy Task Force v. Midwest Reliability Org., et al.*, 144 FERC ¶ 61,006 at P 39 (2013).

In sum, the Complaint fails to (i) meet the minimum requirements of Commission Rules of Practice and Procedure Section 206; and (ii) provide for remedies that are not already underway. For these reasons, the Commission should dismiss the Complaint.

A. The Complaint should be dismissed because the Complaint fails to meet the minimum requirements of the FPA and the Commission’s regulations.

The Complaint asserts that the cold weather event in Texas demonstrates that the “mandatory [R]eliability [S]tandards were not followed...”²¹ and that “[v]iolators of [R]eliability [S]tandards must be held accountable.”²² Because the Complainant has failed to support its assertions, as required by the Commission’s rules and regulations, the Complaint should be dismissed.

To facilitate proceedings, the Commission sets forth procedural rules that dictate requirements for the content of complaints.²³ The purpose of these requirements is to help ensure respondents understand the specific allegations made in the complaint. Rule 203, for example, requires pleadings to set forth the basis in fact and law for the positions taken.²⁴ Rule 206 provides that complaints must, among other elements: (i) clearly identify the action or inaction alleged to violate applicable statutory or regulatory requirements; (ii) explain how the action or inaction violates applicable statutory standards or regulatory requirements; and (iii) state the specific relief or remedy requested and the basis for that relief.

Long-standing Commission precedent provides that “rather than bald allegations, [a complainant] must make an adequate proffer of evidence including pertinent information and

²¹ Complaint at 1.
²² *Id.* at 10.
²³ 18 C.F.R. § 385.
²⁴ *Id.* § 385.203(a)(7).

analysis to support its claims.”²⁵ Further, the Commission has previously held that, in cases alleging a violation of a Reliability Standard, the complaint must set forth the specific Reliability Standard at issue and explain how the alleged action or inaction caused the violation. In *Citizens Energy Task Force v. Midwest Reliability Org., et al.*, the Commission held:

If a complaint regarding an alleged violation of a Reliability Standard is to meet the threshold requirements of Rule 206, then the complaint must, at a minimum, set forth the specific provision of the Reliability Standard that is at issue and provide some explanation as to how the Respondent’s alleged action or inaction caused the violation.²⁶

The Complaint failed to meet the necessary elements of Rule 206 and should therefore be dismissed. The Complainant did not set forth any Reliability Standards, let alone a specific provision of those Reliability Standards, that were allegedly violated. The Complainant describes impacts the cold weather had on the electric system²⁷ and on customers but did not state how the actions or inactions of utilities violated applicable Reliability Standards. Load shedding often can be an acceptable, although last resort, action to mitigate further damage to the grid.²⁸ The

²⁵ *Ill. Muni. Elec. Agency v. Cent. Ill. Pub. Serv. Co.*, Order Dismissing Complaint Without Prejudice, 76 FERC ¶ 61,084 at 4 (1996); *CALifornians for Renewable Energy, Inc., (CARE) and Barbara Durkin v. Nat’l Grid, Cape Wind, and the Mass. Dep’t of Pub. Util.*, Order Dismissing Complaint, 137 FERC ¶ 61,113, at PP 2, 31-32 (2011); *CALifornians for Renewable Energy, Inc., Michael E. Boyd, and Robert M. Sarvey v. Pac. Gas and Elec. Co.*, Order Dismissing Complaint, 143 FERC ¶ 61,005 at P 2 (2013); and *Citizens Energy Task Force and Save Our Unique Lands v. Midwest Reliability Org., et al.*, Order Dismissing Complaint, 144 FERC ¶ 61,006 at P 38 (2013).

²⁶ *Citizens Energy Task Force v. Midwest Reliability Org., et al.*, 144 FERC ¶ 61,006 at P 39 (2013). The Commission more recently dismissed a complaint for failing to state a specific provision of a Reliability Standard in *CALifornians for Green Nuclear Power, Inc. v. NERC, et al.*, 174 FERC ¶ 61,203 at PP 49-50 (2021).

²⁷ The Complainant repeatedly refers to a “collapse” of the Texas electric system. While the consequences of the event were severe, the electric system was subject to controlled load shedding to preserve the reliability of the system and avoid the cascading outages that would represent a “collapse” of the system.

²⁸ NERC Chief Executive Officer James B. Robb testified before the United States Senate Committee on Energy and Natural Resources on this issue, stating, “To be clear, load shedding is an unwelcome last resort measure to avoid uncontrolled cascading outages across an entire interconnection. Faced with untenable choices during an emergency event when decisions must be made within minutes, actions taken by grid operators helped prevent even more widespread suffering. Data presented by [the Electric Reliability Council of Texas] show the entire electric system was within minutes of frequency and voltage collapse, necessitating the dramatic action they took.” *Reliability, Resiliency, and Affordability of Electric Service in the United States Amid the Changing Energy Mix and Extreme Weather Events*, Testimony of James B. Robb, NERC CEO, United States Senate Committee on Energy

information available at present is not sufficient to determine whether violations of Reliability Standards occurred or contributed to the event. Moreover, the request to investigate whether Reliability Standards were violated undercuts the basis upon which the Complainant's allegations partially rely – that the Reliability Standards were not followed. As discussed below, a joint inquiry to examine the causes of the event is currently underway. The Commission should therefore dismiss this complaint as not only insufficient under the Commission's regulations but also premature.

B. The Complaint should be dismissed because the requested relief is already underway.

The Complaint requests that the Commission: (i) direct NERC and Texas RE to conduct an investigation into whether Reliability Standards were followed; and (ii) direct NERC to modify the Reliability Standards to prevent future outages if NERC and Texas RE determine that violations of the Reliability Standards did not contribute to the Texas cold weather event.²⁹ The requested relief is moot and duplicative given the current efforts underway among NERC, Texas RE, FERC, and other stakeholders.

The Commission has dismissed complaints when current proceedings or projects render the requested relief premature. In *Complaint of Michael Mabee, Related to Critical Infrastructure, Reliability Standards*, the Commission denied a complaint regarding Reliability Standard CIP-013-1 because of existing FERC proceedings and NERC standards development projects

and Natural Resources (Mar. 11, 2021), <https://www.nerc.com/news/Headlines%20DL/NERC%20Reliability%20Hearing%20Testimony%203-11-21%20-%20Final.pdf> [hereinafter Robb Testimony].

²⁹ Complaint at 12.

underway.³⁰ Likewise, the Commission should dismiss the current Complaint based on the following activities.

First, on February 16, 2021, FERC and NERC announced a joint inquiry into the operations of the Bulk-Power System during the extreme winter weather conditions.³¹ Regional Entities, including Texas RE, and the Department of Energy are also on the inquiry team. This inquiry will focus on three areas: (1) a comprehensive, detailed analysis of the event, including root causes; (2) commonalities with other cold weather events; and (3) findings and recommendations for further action.³² At the Commission's February 2021 open meeting, FERC Commissioners indicated their intent to pursue action based on the outcome of this inquiry. Chairman Glick stated, "I am prepared, if necessary, to support the imposition of new mandatory standards to make sure that electric generators and others are better prepared when weather strikes the next time."³³ Similarly, Commissioner Clements stated:

Understanding and preventing the cause of the outages should be done in a thorough, deliberate fashion after we get the official data released. The causes of these outages are not fully understood, and it is prudent to wait until we have comprehensive data to shed light on the specific causes.³⁴

These statements demonstrate FERC Commissioners are determined to take action but need more data to ascertain next steps. As such, the Commission should not engage in a complaint

³⁰ *Complaint of Michael Mabee, Related to Critical Infrastructure, Reliability Standards*, Order Denying Complaint, 173 FERC ¶ 61,010 at P 15 (2020).

³¹ *FERC, NERC to Open Joint Inquiry into 2021 Cold Weather Grid Operations*, News Release (Feb. 16, 2021), <https://www.nerc.com/news/Pages/FERC,-NERC-to-Open-Joint-Inquiry-into-2021-Cold-Weather-Grid-Operations.aspx>.

³² Robb Testimony at 3.

³³ *Federal Energy Regulatory Commission, 1075th Commission Meeting Telephonic Conference*, Transcript at 7 (Feb. 18, 2021), <https://www.ferc.gov/sites/default/files/2021-03/transcript.pdf>.

³⁴ *Id.* at 37.

proceeding that requests relief that would duplicate and hinder this important inquiry that will inform next steps for regulators.

Second, NERC already initiated a project in the fall of 2019 to develop cold weather Reliability Standards. Project 2019-06 – Cold Weather³⁵ is developing revised Reliability Standards to address the recommendations in the NERC and FERC staff report titled *The South Central United States Cold Weather Bulk Electric System Event of January 17, 2018*.³⁶ Recognizing that the “continued reliability of the Bulk-Power System depends on the prompt development and implementation of Reliability Standards to address cold weather preparedness,” the NERC Board of Trustees formally directed that the development on this project be completed by June 2021.³⁷

Third, the Commission has announced a technical conference and enforcement review that will help to advance discussion of the cold weather event. The Commission will hold a technical conference that examines the threat that climate change and extreme weather events pose to electric reliability, inviting comments on the matter.³⁸ In addition, the Commission’s Office of Enforcement is examining jurisdictional markets to determine whether market participants

³⁵ The Project 2019-06 web page is available at <https://www.nerc.com/pa/Stand/Pages/Project%202019-06%20Cold%20Weather.aspx>.

³⁶ FERC and NERC staff, *The South Central United States Cold Weather Bulk Electric System Event of January 17, 2018* (July 2019), <https://www.ferc.gov/sites/default/files/2020-04/07-18-19-ferc-nerc-report.pdf>.

³⁷ NERC Board of Trustees, Action without a Meeting (Mar. 22, 2021), https://www.nerc.com/gov/bot/Agenda%20highlights%20and%20Mintues%202013/AWOM_Memo_2019-06%20Cold%20Weather%20Deadline_Executed.pdf.

³⁸ *FERC to Examine Electric Reliability in the Face of Climate Change*, News Release, Docket No. AD21-13-000 (Feb. 22, 2021), <https://www.ferc.gov/news-events/news/ferc-examine-electric-reliability-face-climate-change>.

engaged in market manipulation or other violations of market rules or tariffs during the cold weather event.³⁹

NERC and Texas RE understand and share the Complainant's concerns about the human and economic toll of the February cold weather event. Nevertheless, given all the activities by subject matter experts focused on the Texas cold weather and cold weather preparedness generally, as described above, undergoing Complainant's proposed proceeding would be duplicative and would exhaust resources needed for these other activities. The Complaint does not even mention these activities or assert that they are insufficient. As such, the Commission should dismiss the Complaint because the requested relief is already underway.

V. CONCLUSION

WHEREFORE, for the reasons stated above, NERC respectfully requests that the Commission grant this motion to intervene, accept the comments herein, and dismiss the Complaint.

³⁹ *FERC to Examine Potential Wrongdoing in Markets During Recent Cold Snap*, News Release (Feb. 22, 2021), <https://www.ferc.gov/news-events/news/ferc-examine-potential-wrongdoing-markets-during-recent-cold-snap>.

Respectfully submitted,

/s/ Marisa Hecht

Derrick Davis
General Counsel & Corporate Secretary
Texas Reliability Entity, Inc.
805 Las Cimas Parkway, Suite 200
Austin, TX 78746
(512) 583-4900
derrick.davis@texasre.org

Edwin G. Kichline
Senior Counsel
Marisa Hecht
Counsel
North American Electric Reliability
Corporation
1325 G Street, N.W., Suite 600
Washington, D.C. 20005
(202) 400-3000
(202) 644-8099 – facsimile
ed.kichline@nerc.net
marisa.hecht@nerc.net

Counsel for the Texas Reliability Entity, Inc.

*Counsel for the North American Electric
Reliability Corporation*

Date: April 5, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C., this 5th day of April, 2021.

/s/ Marisa Hecht _____
Marisa Hecht
*Counsel for the North American Electric
Reliability Corporation*