

# No. 14-55076

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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ROBERT WALDON, an individual; SIR WALDON, INC., a California  
Business Entity, individually and on behalf of all others similarly  
situated, dba Oggi's Pizza,  
*Plaintiffs—Appellants,*

*v.*

ARIZONA PUBLIC SERVICE COMPANY, an Arizona Corporation;  
PINNACLE WEST CAPITAL CORPORATION, an Arizona  
Corporation; DOES 1-100, inclusive,  
*Defendants—Appellees.*

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
MARILYN L. HUFF, DISTRICT JUDGE • CASE NO. 3:13-cv-02086-H-KSC

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AMICUS CURIAE BRIEF OF EDISON ELECTRIC INSTITUTE,  
AMERICAN PUBLIC POWER ASSOCIATION, NATIONAL RURAL  
ELECTRIC COOPERATIVE ASSOCIATION, AND ELECTRIC POWER  
SUPPLY ASSOCIATION IN SUPPORT OF DEFENDANTS AND  
APPELLEES ARIZONA PUBLIC SERVICE COMPANY AND PINNACLE  
WEST CAPITAL CORPORATION

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, disclosure is hereby made by amici curiae Edison Electric Institute, American Public Power Association, National Rural Electric Cooperative Association, and Electric Power Supply Association of the following corporate interests:

- a. Parent companies of the corporations or entities:

None.

- b. Any publicly held company that owns ten percent (10%) or more of the corporations or entities:

None.

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## **INTEREST OF AMICI CURIAE**

The Edison Electric Institute (EEI) is the national association of U.S. investor-owned electric companies, including Pinnacle West Capital Corporation and its subsidiary Arizona Public Service Company. EEI members provide electricity for 220 million Americans and operate in all 50 states and the District of Columbia.

The American Public Power Association (APPA) is the national service organization representing the nation's not-for-profit, publicly owned electric utilities. More than 2,000 public power utilities, doing business in every state except Hawaii, serve over 47 million Americans. APPA's purpose is to advance the public policy interests of its members and their consumers, and to provide member services, to ensure adequate, reliable electricity at a reasonable price consistent with good environmental stewardship.

The National Rural Electric Cooperative Association (NRECA) is the national service organization for more than 900 not-for-profit rural electric cooperatives and public power districts providing retail electric service to more than 42 million customers in 47 states. NRECA's members include consumer-owned local distribution systems and 65 generation and



transmission cooperatives that supply wholesale power to their distribution cooperative owner-members.

The Electric Power Supply Association (EPSA) is the national trade association representing the competitive power industry. EPSA's members include 15 companies, along with numerous supporting members and state and regional partners that represent the competitive power industry in every region of the country. EPSA's members have significant financial investments in electric generation and electricity marketing operations across the country and therefore support the development of state and federal legislative and regulatory policies that encourage competitive wholesale markets for electricity.

The respective members of EEI, APPA, NRECA, and EPSA (collectively, the Associations) rely on a complex, highly interconnected interstate transmission grid to carry electricity at a wholesale, bulk power level from generating facilities to local distribution facilities.

In this case, plaintiffs seek to impose liability on the defendant utilities for their alleged failure to comply with bulk-power reliability standards approved by the North American Electric Reliability Corporation (NERC) and Federal Energy Regulatory Commission (FERC).

The Associations' members are subject to these bulk-power reliability standards. The Associations have a strong interest in preserving their respective members' ability to continue improving the bulk-power system by developing reliability standards and self-reporting violations without these actions exposing them to potentially limitless liability.

### **STATEMENT OF COMPLIANCE WITH RULE 29(c)(5)**

This brief is submitted pursuant to Rule 29(b) of the Federal Rules of Appellate Procedure, accompanied by a motion for leave to file. No party or party's counsel authored this brief in whole or in part; no party or party's counsel contributed money to fund the preparation or submission of this brief; and no other person except amici curiae and their counsel contributed money to fund the preparation or submission of this brief.

### **INTRODUCTION**

The Associations' members rely on a complex, highly-interconnected interstate transmission grid to carry electricity at a wholesale, bulk-power level from generating facilities to distribution facilities. The distribution facilities in turn deliver electricity to customers at a retail level. The Associations' members and other utilities cooperate closely in compliance

with bulk-power system reliability standards to keep the transmission grid functioning and stable within tight parameters. The grid and bulk-power system are not immune from occasional failure (nor could they be), and the bulk-power reliability standards cannot and are not intended to protect retail consumers from all possibility of failure.

Recognizing that outages will occur, most states, including California and Arizona, have limited utilities' tort liability for outages. They have done so through statutes, common law, and public utility commission-approved tariffs, to avoid subjecting utilities to potentially enormous liability when the system does fail. *See, e.g.,* Richard J. Pierce, Jr., *Regional Transmission Organizations: Federal Limitations Needed for Tort Liability*, 23 Energy L.J. 63, 65 (2002); (Def.-Appellees' Opp'n Br. 12-14; 18-19; 33-34).

The plaintiffs here seek to overturn these established and prudent limitations by asserting that the reliability standards approved by NERC and FERC somehow create tort liability for the defendant utilities where none previously existed. But these standards, and the reliability system of which they are part, are designed to enhance transmission grid reliability at a wholesale bulk-power level, not to expand utility liability to retail

third parties for outages. Indeed, there is no private right of action to enforce the standards.

The regulatory framework underlying the NERC and FERC standards promotes reliability through development of standards, auditing, self-assessment, and self-correction of issues that may arise in a technically complex grid. This is accomplished through more than 100 standards for planning, preparation, contingency, and operations. Of course, in such a complex and wide-reaching system, some standards may not be met at all times. When violations do occur, the vast majority are self-reported and self-remediated as part of a comprehensive NERC- and FERC-approved process. This type of program based on voluntary interconnection, close cooperation, self-assessment, and self-reporting is fundamentally inconsistent with imposing potentially unlimited tort liability through creation of a private right of action when a standard is not met. This Court should not permit a private action like plaintiffs' that would twist the purpose of the reliability standards to undercut the viability of the reliability standards program and expose a utility to potentially limitless liability for participating in the transmission grid.

## ARGUMENT

### A. Nature of the transmission grid.

The transmission grid consists of an array of transmission facilities owned by individual utilities. In the early 1900s, utilities built such facilities to transmit electricity from their own generating facilities to their own distribution systems. *See* Navigant Consulting, Inc., *Transmission Planning White Paper* 5 (Jan. 2014).<sup>1</sup> But increasingly through the 20th century, they began to exchange some power with neighboring utilities to accommodate peak increases in demand and to provide backup resources in the event of equipment failures on local systems. *See id.* at 6. Section 202(a) of the Federal Power Act encourages such voluntary interconnection and coordination of facilities to generate, transmit, and sell electric energy with the greatest possible economy. 16 U.S.C. § 824a(a) (2012). In the mid-1990s, FERC began to encourage broader “open” access to transmission facilities to allow competitive sales of power, and Congress ultimately endorsed this approach in energy legislation. *See* 18 C.F.R. § 35.28 (2014); 16 U.S.C. § 824j-1 (2012). As a result, the transmission

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<sup>1</sup> Available at <http://www.naruc.org/grants/Documents/Transmission%20Planning%20Whitepaper.pdf> (last visited Aug. 25, 2014).

grid has become increasingly integrated and now handles enormous volumes of transactions.

The transmission facilities that form the grid, together with the generation facilities to which they are connected, are essentially a huge interconnected machine. This “machine” consists of thousands of generation units, thousands of miles of transmission lines, hundreds of control areas, and a multitude of different owners and operators, all interdependent and all operating in synchronization to provide safe, reliable transmission of electricity to distribution facilities.<sup>2</sup> See Navigant Consulting, Inc., *supra* at 8, 10, 48-50.

These transmission facilities include extremely expensive and sensitive equipment, which is generally managed by the owner utilities. See *id.* at 38-40, 48-49, 55-56. Moreover, in large parts of the country, scheduling and payment for use of the grid are managed by “regional

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<sup>2</sup> In 2000, the National Academy of Engineering announced that “Electrification—[the] [v]ast networks of electricity [that] provide power for the developed world” was the greatest engineering achievement of the 20th Century. See Wm. A. Wulf, *Great Achievements and Grand Challenges*, The Bridge, Fall/Winter 2000, at 5, 6, available at <http://www.nae.edu/File.aspx?id=7327> (last visited Aug. 25, 2014).

transmission organizations” or “independent system operators” to which the utilities belong. *See id.* at 9.

**B. Nature of the reliability standards.**

The transmission grid and bulk-power system are not immune from occasional failure. Natural events, such as storms, heat waves, and downed trees, and human error, can force the outage of one or more generation or transmission facilities. *See* Richard J. Campbell, Cong. Research Serv., *Weather-Related Power Outages and Electric System Resiliency* 1, 3, 11 (Aug. 28, 2012).<sup>3</sup> While reliability standards try to minimize these events, they also provide for “defense-in-depth.” *See* NERC, *Results-Based Reliability Standard Development Guidance* 1.<sup>4</sup> That is, the system is designed and operated to be resilient, so that if a problem occurs other parts of the generation and transmission network can react quickly to contain the problem and to avoid damage to other

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<sup>3</sup> Available at <http://fas.org/sgp/crs/misc/R42696.pdf> (last visited Aug. 25, 2014).

<sup>4</sup> Available at <http://www.nerc.com/pa/Stand/Resources/Documents/ResultsBasedStandardGuidance.pdf> (last visited Aug. 25, 2014).

facilities. *See, e.g.,* NERC, *Transmission Vegetation Management Standard FAC-003-2 Technical Reference* 4 n.1 (June 28, 2010).<sup>5</sup>

For decades, utilities have cooperated with one another to ensure that the bulk-power system is operated within tight voltage, frequency, and stability limits and other protocols. For instance, utilities have established control areas to manage the grid, developed common operating standards, assisted one another with storm recovery, and undertaken other measures to keep power flowing to distribution facilities. *See* Navigant Consulting, Inc., *supra*, at 21-22; The Regulatory Assistance Project, *Electricity Regulation in the US: A Guide* 17-18 (Mar. 2011).<sup>6</sup> This cooperation has helped the bulk-power system remain stable, so it can perform its transmission function and can instantaneously balance electric supply with demand, while protecting the generation and transmission equipment. *See* Navigant Consulting, Inc., *supra*, at 21-22; The Regulatory Assistance Project, *supra*, at 17-18.

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<sup>5</sup> Available at [http://www.nerc.com/pa/Stand/Project%20200707%20Transmission%20Vegetation%20Management/FAC-003-2\\_Technical\\_White\\_Paper\\_2010July14.pdf](http://www.nerc.com/pa/Stand/Project%20200707%20Transmission%20Vegetation%20Management/FAC-003-2_Technical_White_Paper_2010July14.pdf) (last visited Aug. 25, 2014).

<sup>6</sup> Available at [http://www.raponline.org/docs/RAP\\_Lazar\\_ElectricityRegulationInTheUS\\_Guide\\_2011\\_03.pdf](http://www.raponline.org/docs/RAP_Lazar_ElectricityRegulationInTheUS_Guide_2011_03.pdf) (last visited Aug. 25, 2014).



In the aftermath of the 1965 blackout in the northeast United States, the electric industry voluntarily established the North American Electric Reliability Council (the Council, NERC's predecessor), a voluntary reliability organization. *See* Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards, 112 FERC ¶ 61,239, at para. 3 (Sept. 1, 2005). The Council developed Operating Policies and Planning Standards that provided voluntary guidelines for operating and planning the North American bulk-power system. *Id.* The policies and standards covered areas such as operations, coordination between systems, personnel training, emergency operations, planning for system adequacy and security, facility connection requirements, system modeling data requirements, system protection and control, and system restoration. These voluntary policies and standards were designed to increase coordination among systems.

In 2005, Congress, with the support of the electric utility industry and others, took steps to strengthen the existing voluntary reliability program. The Energy Policy Act of 2005 (EPA) amended the Federal Power Act by adding section 215, titled "Electric Reliability." Section 215

authorized the creation of the “Electric Reliability Organization” to establish and enforce mandatory bulk-power reliability standards, subject to oversight by FERC. *See* 16 U.S.C. § 824o (2012).

Following passage of EPAct and section 215, the Council was reconstituted, renamed the North American Electric Reliability Corporation (NERC), and certified by FERC as the Electric Reliability Organization in 2006. *See* Order Certifying North American Electric Reliability Corporation as the Electric Reliability Organization and Ordering Compliance Filing, 116 FERC ¶ 61,062 (July 20, 2006). NERC proposed a new set of reliability standards, which was approved by FERC and became mandatory in 2007. *See* Mandatory Reliability Standards for the Bulk-Power System, Order No. 693, 118 FERC ¶ 61,218 (Mar. 16, 2007) (Order No. 693); Order on Rehearing, Order No. 693-A, 120 FERC ¶ 61,053 (July 19, 2007).

In approving the standards, FERC explained that a “Reliability Standard is a requirement approved by the Commission that is intended to provide for the Reliable Operation of the Bulk-Power System. Such requirement may pertain to the operation of existing Bulk-Power System facilities, including cybersecurity protection, or it may pertain to the

design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the Bulk-Power System.” Order No. 693, 118 FERC ¶ 61,218, para. 23. The Bulk-Power System consists of generating units, transmission lines (generally those 100 kV and above), and substations and controls. These facilities operate as an interstate grid subject to exclusive FERC regulation for the purpose of ensuring Bulk-Power System reliability and do not include facilities used in the local distribution of electric energy, which remain within state jurisdiction.

The FERC-approved NERC reliability standards employ a “defense-in-depth” strategy. Defense-in-depth exists when an appropriate portfolio of reliability requirements complement and reinforce each other. *See* NERC, *Results-Based Reliability Standard Development Guidance* 1. The reliability standards cover facilities design, connections, and maintenance; modeling, data, and analysis; personnel performance and training; transmission planning; and operations and planning in the event of contingencies, among other things. *See id.* at 1-2. Each standard has a role in preventing harm to the bulk-power system. As a whole, they are

designed to maintain bulk-power operations in the event of single or multiple contingencies.

The standards employ these multiple approaches to *identify* and to *reduce* potential risks to the bulk-power system. But the standards do not and cannot *eliminate* those risks because of the complexity of the bulk-power system, and the standards cannot, and are not intended to, protect retail consumers from outages. *See id.* at 1 (standard should “*reduce a risk to the reliability of the bulk power system*”).

In fact, one of the tools within the reliability standards is load shedding (i.e., the interruption of power service), which is used if needed to minimize a local event and to keep it from expanding. *See, e.g.*, Order No. 693, 118 FERC ¶ 61,218, paras. 553-557. As part of the reliability standards protections, the grid is designed to shed load under certain circumstances to ensure the integrity and reliability of the bulk-power system and to protect equipment from serious damage.

That the reliability standards are intended to protect the integrity and reliability of the bulk power system as a whole, not to protect individual retail consumers from all outages, is also apparent from the particular reliability standards that plaintiffs cite in their complaint.

Plaintiffs allege general failures to comply with Standards TOP-001-1a, TOP-002-2.1b, and TOP-004-2.<sup>7</sup> (ER 84-85.) The explicit purpose of each of these reliability standards is to protect the transmission system itself, not to guarantee uninterrupted service to final consumers. *See* NERC, Standard TOP-001-1a — Reliability Responsibilities and Authorities 1<sup>8</sup> (“to return the *transmission system* to normal conditions during an emergency”) (emphasis added), Standard TOP-002-2.1b — Normal Operations Planning 1<sup>9</sup> (“being prepared for reliable operations” in order “to ensure that *interconnected system* reliability will be maintained”) (emphasis added), and Standard TOP-004-2 — Transmission

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<sup>7</sup> Plaintiffs also cite to Standard TOP-001-2, but that standard is not yet subject to enforcement because it is pending regulatory approval. *See* NERC, *All Reliability Standards*, available at <http://www.nerc.com/pa/Stand/Pages/AllReliabilityStandards.aspx?jurisdiction=United%20States> (last visited Aug. 25, 2014). In any event, like the approved standards, the stated purpose of Standard TOP-001-2 is to avoid occurrences “that adversely impact the reliability of the Interconnection.” NERC, Standard TOP-001-2 — Transmission Operations 1, available at <http://goo.gl/P8loCT> (last visited Aug. 25, 2014).

<sup>8</sup> Available at <http://goo.gl/vdgMX0> (last visited Aug. 25, 2014).

<sup>9</sup> Available at <http://goo.gl/59lahD> (last visited Aug. 25, 2014).

Operations 1<sup>10</sup> (“[t]o ensure that the *transmission system* is operated” to preserve stability in the face of contingencies) (emphasis added).

### **C. Enforcement of the reliability standards.**

In EAct, via Federal Power Act section 215(e), Congress specifically gave FERC, NERC, and NERC-delegated regional entities exclusive responsibility for enforcing the reliability standards, including responsibility over penalties for violations of the standards. 16 U.S.C. § 824o(e) (2012). Congress required FERC, NERC, and the regional entities to ensure that any penalties imposed must bear a reasonable relation to the seriousness of the violation and must take into consideration the efforts of the party being penalized to remedy the violation in a timely manner. 16 U.S.C. § 824o(e)(6). Congress also capped such penalties for violations of the Federal Power Act at no more than \$1 million a day. 16 U.S.C. § 825o-1 (2012).

Even so, the emphasis of the reliability standards has always been maintaining and improving reliability rather than punishment. The goal of NERC’s compliance program is to “[p]romote a culture of reliability

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<sup>10</sup> Available at <http://goo.gl/x8jLHr> (last visited Aug. 25, 2014).

excellence” and to develop strategic partnerships to provide compliance guidance to utilities. See NERC, *Electric Reliability Organization Enterprise Strategic Plan 2012-2015* 3 (Feb. 2012) (emphasis omitted).<sup>11</sup>

This approach has yielded substantial dividends. About 71% of all violations found by NERC from the inception of the mandatory reliability standards regime in 2007 through 2013 have been self-identified and self-reported by the entity involved. See NERC, *Key Compliance and Enforcement Metrics and Trends* 13 (Feb. 5, 2014).<sup>12</sup> Furthermore, the yearly percentage of self-identified violations has increased every year since 2009. *Id.* Indeed, in the first quarter of 2014 about 89% of all violations were self-reported. See NERC, *Key Compliance and Enforcement Metrics and Trends* 6 (May 6, 2014).<sup>13</sup> These high

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<sup>11</sup> Available at [http://www.nerc.com/gov/bot/FINANCE/2013%20NERC%20Business%20Plan%20and%20Budget%20DL/ERO%20Enterprise%20Strategic%20Plan%202012-2015%20FINAL%20\(02%202012\)%20\(2\).pdf](http://www.nerc.com/gov/bot/FINANCE/2013%20NERC%20Business%20Plan%20and%20Budget%20DL/ERO%20Enterprise%20Strategic%20Plan%202012-2015%20FINAL%20(02%202012)%20(2).pdf) (last visited Aug. 25, 2014).

<sup>12</sup> Available at [http://www.nerc.com/pa/comp/CE/Compliance%20Violation%20Statistics/Item%204%20-%20Corp%20metrics-%20Ready%20for%20Sr%20Mgmt%20review-%20Jan%2010%202014%20\(1\)%20-%20For%20BOTCC%20pkg%20\[Read-Only\].pdf](http://www.nerc.com/pa/comp/CE/Compliance%20Violation%20Statistics/Item%204%20-%20Corp%20metrics-%20Ready%20for%20Sr%20Mgmt%20review-%20Jan%2010%202014%20(1)%20-%20For%20BOTCC%20pkg%20[Read-Only].pdf) (last visited Aug. 25, 2014).

proportions of self-reported violations demonstrate that utilities are committed to the culture of improving reliability.

Possible violations that pose a low risk to reliability are handled administratively under NERC's "Find, Fix, Track and Report" (FFT) process. *See* Order Accepting with Conditions the Electric Reliability Organization's Petition Requesting Approval of New Enforcement Mechanisms and Requiring Compliance Filing, 138 FERC ¶ 61,193 (Mar. 15, 2012). FFT matters are self-reported and self-remediated by the utility, without a finding of a violation. *See id.* at paras. 7-12. FERC has also approved a streamlined format to provide notice to FERC of violations that do not merit the use of the full Notice of Penalty process. *Id.*

In approving these procedures, FERC "applaud[ed] NERC for proposing a format that will help it and the Regional Entities focus their resources on issues that pose the greatest risk to reliability." *Id.* at para. 40. From January 2013 to April 2014, about 72% of violations have been considered lower risk and have been resolved under these procedures. *See*

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(...continued)

<sup>13</sup> *Available at* <http://www.nerc.com/pa/comp/CE/Compliance%20Violation%20Statistics/Item%204%20-Key%20Compliance%20and%20Enforcement%20Metrics%20and%20Trends.pdf> (last visited Aug. 25, 2014).



NERC, *Key Compliance and Enforcement Metrics and Trends* (May 6), *supra*, at 8.

In addition, NERC has launched the Reliability Assurance Initiative to ensure that its compliance monitoring and enforcement program is forward-looking, focuses on high reliability risk areas, and reduces the administrative compliance burden on utilities. *See* NERC, *Reliability Assurance Initiative (RAI)*, <http://www.nerc.com/pa/comp/Pages/Reliability-Assurance-Initiative.aspx> (last visited Aug. 25, 2014). The initiative seeks to design a compliance program that encourages positive behaviors and recognizes an entity's risk to reliability, in part by monitoring its management controls and its corrective action programs used to meet the reliability standards. *Id.*

All of these features of the reliability program—the utility industry's voluntary efforts to maintain reliable operations of the grid, the industry's commitment to a mandatory reliability standards regime, the high percentage of self-reported violations, and the focus on improving management controls and corrective action programs—demonstrate that the standards and NERC's compliance program seek to promote reliability

by reducing risks through positive self-assessment and correction, not to impose unlimited liability for failing to meet one of the standards.

**D. The reliability standards do not create tort liability.**

Plaintiffs' request to impose tort liability for alleged violations of a NERC standard is inappropriate. Congress did not enact section 215 to protect plaintiffs from the consequences of outages, but instead to enhance the reliability of the bulk-power system. Furthermore, Congress did not provide for damages to retail customers. Consequently, plaintiffs are not members of a class protected by the statute or entitled to compensation under section 215 for their losses. *See* Def.-Appellees' Opp'n Br. 26-31; 39-40.

For this reason, as plaintiffs concede, "FERC does not provide either a procedure or a remedy for damages and State law claims." (ER 79.) When FERC approved the reliability standards, it found that "[t]he possible consequences for violating a Reliability Standard should be clear and understandable to those who must comply." Order No. 693, 118 FERC ¶ 61,218, para. 5. Thus, "the potential (if not actual) consequences for any violation are clearly spelled out—the statute permits the [Electric Reliability Organization] to assess civil penalties of up to '\$1 million per

violation, per day' in addition to other remedies." *Id.* at 16,447, para. 276. FERC did not contemplate that the reliability standards could be used to impose liability beyond the civil penalties prescribed by statute. But imposing state tort liability based on failure to meet a NERC reliability standard would expose a utility to potentially limitless liability for participating in the transmission grid.

Moreover, as noted above, Congress explicitly granted FERC, NERC, and delegated regional entities the authority to impose penalties for violations of the NERC standards within certain monetary limits. 16 U.S.C. §§ 824o(e), 825o-1. And Congress granted FERC exclusive jurisdiction over the interstate transmission of electric energy that uses the bulk-power system subject to NERC standards. 16 U.S.C. § 824(b) (2012). To impose state tort liability in favor of plaintiffs for violation of a NERC standard would be contrary to this assignment of responsibility.

Finally, the NERC reliability standards depend on utility self-assessment, reporting, correction, and improvement, under the watchful eye of NERC and FERC. The goal of the standards is to reduce the probability of outages, not to guarantee that they will never happen or to provide a remedy when they do. The system succeeds by promoting a

culture of reliability excellence. To impose liability for alleged failure to meet a particular standard would be contrary to this positive approach, and would interfere with utilities' incentives to develop detailed standards and to self-report potential violations.

For all these reasons, the Associations urge this Court to find that a violation of a NERC standard is not a basis to impose liability under state tort law or to find negligence per se.

### **CONCLUSION**

For the foregoing reasons, this Court should affirm the district court's order dismissing plaintiffs' complaint.

August 29, 2014

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I hereby certify that on August 29, 2014, I electronically filed the foregoing AMICUS CURIAE BRIEF OF EDISON ELECTRIC INSTITUTE, AMERICAN PUBLIC POWER ASSOCIATION, NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION, AND ELECTRIC POWER SUPPLY ASSOCIATION IN SUPPORT OF DEFENDANTS AND APPELLEES ARIZONA PUBLIC SERVICE COMPANY AND PINNACLE WEST CAPITAL CORPORATION with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

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