

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

North American Electric	)	
Reliability Corporation	)	Docket No. FA11-21-002
	)	

**COMMENTS OF THE AMERICAN PUBLIC POWER ASSOCIATION, THE  
EDISON ELECTRIC INSTITUTE, THE ELECTRIC POWER SUPPLY  
ASSOCIATION, THE ELECTRICITY CONSUMERS RESOURCE COUNCIL,  
THE LARGE PUBLIC POWER COUNCIL, THE NATIONAL RURAL ELECTRIC  
COOPERATIVE ASSOCIATION AND THE TRANSMISSION ACCESS POLICY  
STUDY GROUP SUPPORTING PROPOSED STATEMENT ON PROCEDURES  
OF THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

The American Public Power Association (“APPA”),<sup>1</sup> the Edison Electric Institute (“EEI”),<sup>2</sup> the Electricity Consumers Recourse Council (“ELCON”),<sup>3</sup> the Electric Power Supply Association (“EPSA”),<sup>4</sup> the Large Public Power Council (“LPPC”),<sup>5</sup> the National Rural Electric Cooperative Association (“NRECA”)<sup>6</sup> and

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<sup>1</sup> APPA is the national service organization representing the interests of not-for-profit, publicly owned electric utilities throughout the United States.

<sup>2</sup> EEI is the association of the nation’s shareholder-owned electric utilities, international affiliates, and industry associates world-wide.

<sup>3</sup> ELCON is the national association representing large industrial consumers of electricity. ELCON member companies produce a wide range of products from virtually every segment of the manufacturing community. ELCON members operate hundreds of major facilities and consume power in the footprints of all organized markets and other regions throughout the United States.

<sup>4</sup> EPSA is the national trade association representing competitive power suppliers, including generators and marketers. Competitive suppliers, which, collectively, account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers. The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

<sup>5</sup> The Large Public Power Council represents the 25 largest state and municipally-owned utilities in the nation, including the larger, asset-owning members of the public power community.

<sup>6</sup> NRECA is the not-for-profit national service organization representing approximately 930 not-for-profit, member-owned rural electric cooperatives, including 66 generation and transmission cooperatives that supply wholesale power to their distribution cooperative owner-members.

the Transmission Access Policy Study Group (“TAPS”)<sup>7</sup> (collectively referred to as the “Trade Associations”) respectfully submit the following comments in response to the May 15, 2012 proposed Statement on Procedures of the North American Electric Reliability Corporation (“NERC,” “Statement of Procedures”).<sup>8</sup> The Statement on Procedures proposes a transparent and comprehensive process in response to Paragraph 7 of the May 4, 2012 Letter Order<sup>9</sup> issued by the Federal Energy Regulatory Commission (“FERC” or the “Commission”) Director, Office of Enforcement (“OE”) filed in this proceeding concerning the NERC Final Audit Report.<sup>10</sup> Specifically, the proposed Statement on Procedure for addressing the recommendations of the NERC Final Audit Report sets out a suggested briefing schedule which allows NERC to submit a brief that addresses all 42 recommendations in the Final Audit Report on a comprehensive basis and provides support for any proposed modifications to those recommendations, and then allows all interested parties (including FERC’s Office of Enforcement if it so chooses) an opportunity to comment on NERC’s response with replies as necessary from NERC. The Commission would then, based on the record thereby compiled, issue an order resolving all issues on a coordinated and comprehensive basis, and NERC would submit a compliance filing to the Commission that would be subject to notice and comment by interested parties. As discussed in more detail herein, the Trade Associations have come together

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<sup>7</sup> TAPS is an informal association of transmission-dependent utilities in more than 30 states, promoting open and non-discriminatory transmission access.

<sup>8</sup> North American Electric Reliability Corporation, *Statement on Procedures of the North American Electric Reliability Corporation*, Docket No. FA11-21-002 (filed May 15, 2012)(“Statement on Procedures Proposal”).

<sup>9</sup> Letter Order issued by the OE Director May 4, 2012.

<sup>10</sup> The OE Director issued the Final Audit in Docket No. FA11-21-000.

to comment on the process going forward pursuant to issuance of the May 4, 2012 Final Audit Report, and support the proposed Statement of Procedures insofar as it allows all interested parties a sufficient opportunity to review and provide constructive comments on the Final Audit Report.

## **I. COMMUNICATIONS**

Notices and communications regarding this filing may be addressed to:

### **AMERICAN PUBLIC POWER ASSOCIATION**

Susan N. Kelly  
Senior Vice President of Policy  
Analysis and General Counsel  
1875 Connecticut Avenue, NW  
Suite 1200  
Washington, D.C. 20009  
(202) 467-2900  
[skelly@publicpower.org](mailto:skelly@publicpower.org)

Allen Mosher  
Vice President of Policy Analysis and  
Reliability Standards  
1875 Connecticut Avenue, NW  
Suite 1200  
Washington, D.C. 20009  
(202) 467-2944  
[amosher@publicpower.org](mailto:amosher@publicpower.org)

### **EDISON ELECTRIC INSTITUTE**

James P. Fama  
Vice President, Energy Delivery  
701 Pennsylvania Ave, N.W.  
Washington, DC 20004-2696  
(202) 508-5725  
[jfama@eei.org](mailto:jfama@eei.org)

Barbara A. Hindin  
Associate General Counsel  
701 Pennsylvania Ave., N.W.  
Washington, D.C. 20004-2696  
(202) 508-5019  
[bhindin@eei.org](mailto:bhindin@eei.org)

### **ELECTRICITY CONSUMERS RESOURCE COUNCIL**

John P. Hughes  
Vice President, Technical Affairs  
1111 Nineteenth Street, NW Suite 700  
Washington, DC 20036  
(202) 682-1390  
[jhughes@elcon.org](mailto:jhughes@elcon.org)

## **ELECTRIC POWER SUPPLY ASSOCIATION**

Nancy Bagot  
Vice President of Regulatory Affairs  
1401 New York Avenue, NW  
Suite 1230  
Washington, DC 20005  
(202) 628-8200  
[nbagot@epsa.org](mailto:nbagot@epsa.org)

Jack Cashin  
Director, Regulatory Affairs  
1401 New York Avenue, NW  
Suite 1230  
Washington, DC 20005  
(202) 628-8200  
[jcashin@epsa.org](mailto:jcashin@epsa.org)

## **LARGE PUBLIC POWER COUNCIL**

Jonathan D. Schneider  
Stinson, Morrison Hecker, LLC  
1150 18th Street, N.W.  
Washington, D.C. 20036  
(202) 728-3034  
[jschneider@stinson.com](mailto:jschneider@stinson.com)

Jonathan Trotta  
Stinson, Morrison Hecker, LLC  
1150 18th Street, N.W.  
Washington, D.C. 20036  
(202) 728-3034  
[jtrotta@stinson.com](mailto:jtrotta@stinson.com)

## **NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

Barry R. Lawson  
Associate Director, Power Delivery and  
Reliability Government Relations  
4301 Wilson Boulevard  
Arlington, VA 22203  
(703) 907-5781  
[barry.lawson@nreca.coop](mailto:barry.lawson@nreca.coop)

Richard Meyer  
Senior Regulatory Counsel  
4301 Wilson Boulevard  
Arlington, VA 22203  
(703) 907-5811  
[richard.meyer@nreca.coop](mailto:richard.meyer@nreca.coop)

## **TRANSMISSION ACCESS POLICY STUDY GROUP**

Rebecca J. Baldwin  
Counsel for Transmission Access  
Policy Study Group  
Spiegel & McDiarmid LLP  
1333 New Hampshire Ave, NW  
Washington, DC 20036  
(202) 879-4000  
[rebecca.baldwin@spiegelmc.com](mailto:rebecca.baldwin@spiegelmc.com)

Cynthia S. Bogorad  
Counsel for Transmission Access  
Policy Study Group  
Spiegel & McDiarmid LLP  
1333 New Hampshire Ave, NW  
Washington, DC 20036  
(202) 879-4000  
[cynthia.bogorad@spiegelmc.com](mailto:cynthia.bogorad@spiegelmc.com)

## **II. COMMENTS OF SUPPORT FOR THE PROPOSED STATEMENT ON PROCEDURES**

By enacting the Energy Policy Act of 2005, Congress entrusted FERC with the duties of approving and enforcing rules to ensure the reliability of the Nation's bulk electric system ("BES"), and with the duties of certifying an electric reliability organization ("ERO") that would be charged with developing and enforcing mandatory Reliability Standards, subject to FERC approval. Section 215 of the Federal Power Act ("FPA") states that all users, owners and operators of the BES in the United States will be subject to FERC-approved Reliability Standards. As such, stakeholders/users of the BES need to have full confidence in the Electric Reliability Organization ("ERO") and all public information related to its activities in order to develop and maintain appropriate compliance regimes for upholding reliability. A transparent audit process is critical to this public confidence, represents good government at work, and is necessary to ensure that affected stakeholders can participate in the process so as to assist the Commission to achieve consistent, equitable and reasonable determinations regarding NERC's programs and budgets. Additionally, a public paper hearing process at this phase of the audit process properly reflects the oversight role of the Commission regarding NERC under section 215 of the FPA and the limitations that section imposes over a Commission audit of the ERO.

The instant FERC audit of NERC is the first to be performed as part of the Commission's responsibilities for monitoring the ERO under Section 215. Because the audit represents an initial comprehensive review of NERC as the ERO, it is especially important that it be clear and transparent to allow the Trade

Associations and all stakeholders to understand FERC's assessment and recommendations. The purpose of any audit is to enhance the degree of confidence of stakeholders by shining a light on activities, practices and performance. In the case of an entity such as NERC, a transparent, public process is necessary to achieve this goal, particularly regarding the recommendation phase of this process. Additionally, while it is reasonable and supportable that FERC's Office of Enforcement initiated this audit and the necessary fact-finding as a non-public process interacting with NERC, due to the direct impact that NERC's functions have over all BES participants, this next phase of the audit process must be public and incorporate the views of all interested stakeholders, particularly the impacted Load Serving Entities ("LSEs") and trade organizations that represent them. It is in the best interest of all parties – FERC, NERC and BES participants alike – that this audit engender confidence and establish reasonable recommendations that improve NERC's oversight of the BES.

The Final Audit Report was issued by the Office of Enforcement under the assertion of delegated authority and has not been reviewed or approved by the Commission. The Trade Associations believe that Commission review of the audit with stakeholder participation will best ensure stakeholder confidence in the performance audit results. Consequently, the Trade Associations support the proposed Statement on Procedures because they would provide for a broad, transparent review for the assessment process through a paper hearing.

All stakeholders that are impacted by the ERO and implementation of its budget should be able to fully participate in the review of the ERO audit and the promulgation of recommendations. The ERO budget is funded by industry and load, which include members of the Trade Associations. The audit raises issues about past NERC expenditures and programs that would inform evaluations of future NERC budgets, which are regularly addressed in stakeholder policy comments at NERC Board of Trustee meetings. Stakeholders need to know that there is a proper alignment of NERC program priorities and expenditures to support the NERC budget as consistent with industry's and government's reliability priorities.

### **III. CONCLUSION**

Wherefore, the Trade Associations respectfully request that the Commission accept the NERC Statement on Procedures proposal and move forward expeditiously with a schedule as reflected in that proposal.

Respectfully submitted,

#### **AMERICAN PUBLIC POWER ASSOCIATION**

/s/ Allen Mosher

Allen Mosher  
Vice President of Policy Analysis and  
Reliability Standards  
Susan N. Kelly  
Senior Vice President of  
Policy Analysis and General Counsel  
American Public Power Association  
1875 Connecticut Avenue, NW  
Suite 1200  
Washington, D.C. 20009  
(202) 467-2944

#### **LARGE PUBLIC POWER COUNCIL**

/s/ Jonathan D. Schneider

Jonathan D. Schneider  
Jonathan Trotta  
Stinson, Morrison Hecker, LLC  
1150 18th Street, N.W.  
Washington, D.C. 20036  
(202)728-3034

**EDISON ELECTRIC INSTITUTE**

/s/ James P. Fama

James P. Fama  
Vice President, Energy Delivery  
Barbara A. Hindin  
Associate General Counsel  
Edison Electric Institute  
701 Pennsylvania Ave., N.W.  
Washington, D.C. 20004-2696  
(202) 508-5725

**NATIONAL RURAL ELECTRIC  
COOPERATIVE ASSOCIATION**

/s/ Richard Meyer

Richard Meyer  
Senior Regulatory Counsel  
Barry Lawson  
Associate Director, Power Delivery and  
Reliability Government Relations  
National Rural Electric Cooperative  
Association  
4301 Wilson Boulevard  
Arlington, VA 22203-1860  
(703) 907-5811

**ELECTRICITY CONSUMERS RESOURCE  
COUNCIL**

/s/ John P. Hughes

John P. Hughes  
Vice President, Technical Affairs  
Electricity Consumers Resource  
Council  
1111 Nineteenth Street, NW Suite 700  
Washington, D.C. 20036  
(202) 682-1390

**TRANSMISSION ACCESS POLICY STUDY  
GROUP**

/s/ Rebecca J. Baldwin

Rebecca J. Baldwin  
Cynthia S. Bogorad  
Spiegel & McDiarmid LLP  
1333 New Hampshire Avenue, NW  
Washington, DC 20036  
(202) 879-4000

**ELECTRIC POWER SUPPLY ASSOCIATION**

/s/ Nancy Bagot

Nancy Bagot  
Vice President of Regulatory Affairs  
Jack Cashin  
Director of Regulatory Affairs  
Electric Power Supply Association  
1401 New York Avenue, NW  
Suite 1230  
Washington, DC 20005  
(202) 628-8200

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