

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

North American Electric Reliability       )  
Corporation                                        )

Docket No. RD13-3-000

**MOTION TO INTERVENE OUT OF TIME AND COMMENTS OF  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR, ELECTRIC RELIABILITY  
COUNCIL OF TEXAS, THE INDEPENDENT ELECTRICITY SYSTEM OPERATOR  
OF ONTARIO, INC., ISO NEW ENGLAND INC., MIDWEST INDEPENDENT  
TRANSMISSION SYSTEM OPERATOR, INC., NEW YORK INDEPENDENT SYSTEM  
OPERATOR, INC., AND SOUTHWEST POWER POOL, INC.**

Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), California Independent System Operator (“CAISO”), Electric Reliability Council of Texas (“ERCOT”), the Independent Electricity System Operator of Ontario, Inc. (“IESO”)<sup>1</sup>, ISO New England Inc. (“ISO-NE”), Midwest Independent Transmission System Operator, Inc. (“MISO”), New York Independent System Operator, Inc. (“NYISO”), and Southwest Power Pool, Inc. (“SPP”) (collectively, “Joint ISOs/RTOs”) submit this motion to intervene out of time and comments on *the Petition of the North American Electric Reliability Corporation for Approval of Proposed Reliability Standard EOP-004-2 – Event Reporting* (“Petition”). The Joint ISOs/RTOs should be permitted to intervene out of time because they have a direct and substantial interest that cannot be represented by any other party, and their late intervention will not disrupt the proceeding or prejudice any party.

In support thereof, the Joint ISOs/RTOs state:

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<sup>1</sup> The IESO is not subject to the Commission's jurisdiction, and joining these comments does not constitute agreement or acknowledgement that it can be subject to the Commission's jurisdiction

## **I. Communications**

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## **II. Motion to Intervene Out of Time**

Joint ISOs/RTOs operate the bulk power system, administer the organized wholesale electricity markets, and act as the planning authorities within their respective regions. The Joint ISOs/RTOs submit that good cause exists for the Commission to grant this motion to intervene out of time in accordance with Rule 214(d), 18 C.F.R. § 385.214(d).

The Joint ISOs/RTOs' members conduct their operations in compliance with the NERC Reliability Standards and are subject to penalties for non-compliance. Consistent with recent NERC initiatives, the Joint ISOs/RTOs believe that reliability standards should be focused on issues that have a direct relationship to Bulk Electric System ("BES") reliability. Accordingly, registered entities should only be subject to potential liability for failure to comply with standards/requirements that are consistent with Section 215 of the Federal Power Act. Section 215 defines reliability standards in terms of requirements that "provide for reliable operation of the bulk-power system," which implicates real-time operational actions to respect applicable equipment operating limits to avoid prevent specific system conditions.<sup>2</sup>

Event reporting is an *ex-post* activity that does not support reliable operation of the Bulk Power System ("BPS"), and, therefore, should not be part of the reliability standards. Incorporating this activity in the standards merely subjects registered entities to potential

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<sup>2</sup> See FPA Sections 215 (a)(3) and (4).

penalties with no reliability benefits. Because the Joint ISOs/RTOs' member organizations will be subject to this unnecessary penalty exposure, they are directly affected by EOP-004-2. Accordingly, the Joint ISOs/RTOs have a direct and substantial interest in this proceeding that cannot be adequately represented by any other party.

The Joint ISOs/RTOs did not previously intervene in this proceeding, but the Joint ISOs/RTOs' member organizations did participate in the standards development process at NERC and offered similar comments individually and through the technical subcommittee of the ISO/RTO Council. Additionally, it is noteworthy that certain regional entities also filed similar comments on the proposed standard.<sup>3</sup>

EOP-004-2 was adopted by the NERC Board of trustees on November 7, 2012 and filed with FERC on December 31, 2012. It was noticed by the Commission, with motions to intervene, comments and protests due on or before January 30, 2013. After the comment period had closed, the Joint ISOs/RTOs learned that a Notice of Proposed Rule Making ("NOPR") would not be issued in this docket and that there would be no further opportunity to comment.

The Joint ISOs/RTOs respectfully submit their late comments for the Commission's consideration. The Joint ISOs/RTOs untimely intervention does not prejudice NERC because similar comments were raised by the ISOs and RTOs during the standards drafting process. Similarly, this intervention and comments will neither prejudice any other party nor otherwise disrupt this proceeding. The Commission has not yet issued a dispositive order on NERC's filing. As such, there is time for the Commission to consider these comments, which the Joint

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<sup>3</sup> See comments submitted in response to NERC Comment Form soliciting comments from August 29, 2012 through September 27, 2012. A summary of these comments are available at: [http://www.nerc.com/docs/standards/sar/Comments\\_received\\_2009-01\\_100112.pdf](http://www.nerc.com/docs/standards/sar/Comments_received_2009-01_100112.pdf).

ISOs/RTOs submit will assist the Commission in taking appropriate action on the petition.

Accordingly, the Commission should grant the Joint ISOs/RTOs motion to intervene out of time and grant it all the rights of a party.

### **III. Comments**

#### **A. Event Reporting Does Not Provide for “Reliable Operations” and Should Not be Incorporated in the Reliability Standards.**

##### **i. *The Reliability Value of Event Reporting is Prospective and is not Directly Related to and/or Support “Reliable Operations”***

The Joint ISOs/RTOs appreciate the value of event reporting and analysis and, therefore, commend NERC and the Commission for their efforts to facilitate system reliability via event reporting and critical review of system events as a means to prospectively improve existing operational and planning rules, practices and procedures – *i.e.*, those functional actions that do support reliable operations.

However, with respect to matters that should be addressed in reliability standards, it is important to distinguish between an obligation that is a “requirement... to provide for reliable operation of the bulk-power system,” as those terms are defined in Section 215, and those obligations that do not, such as administrative record-keeping and ex-post reporting tasks. The former are candidates for inclusion in standards, while the latter are not and should not be included in reliability standards, which should focus on actionable obligations that affect reliability. As the Commission recognized in its FFT Order, “some current requirements likely provide little protection for Bulk-Power System reliability or may be redundant.”<sup>4</sup>

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<sup>4</sup> In approving NERC’s initial Find Fix and Track proposal the Commission stated:

81. *The Commission notes that NERC’s FFT initiative is predicated on the view that many violations of requirements currently included in Reliability Standards pose lesser risk to the Bulk-Power System. If so, some current requirements likely provide little protection for Bulk-Power System reliability or may be redundant. The Commission is interested in obtaining views on whether such requirements could be removed from the Reliability*

Event reporting falls into the category of requirements that provide little protection and, in this case, is redundant to other federal regulations and NERC programs. Establishing reporting obligations in the NERC standards that carry penalties only serves to expose registered entities to unnecessary liability, potentially burden operating personnel during critical system events, and would burden enforcement and monitoring resources, without a corresponding reliability benefit. Mitigation of BES events comes from the operational actions of functional entities pursuant to execution of their duties under applicable rules and procedures (e.g., NERC standards, relevant regional rules and Tariffs) – it does not come from event reporting or event analysis.

This is not to say that event reporting and analysis is not important or worthwhile. To the contrary, it offers interested industry and governmental entities the opportunity to improve existing operational and planning rules based on the information developed in reviewing system events. This *ex post* activity facilitates a reliable electric grid by informing prospective actions related to future proposals to enhance system reliability. However, because this is an *ex post* activity, the reliability benefits are prospective in nature, and are related to analyzing how the information developed in the analysis can inform future reliability discussions and initiatives, such as standards development, best practices and lessons learned. The actual reliability value of these efforts is clear only after they result in a concrete proposal that is formally implemented.

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*Standards with little effect on reliability and an increase in efficiency of the ERO compliance program. If NERC believes that specific Reliability Standards or specific requirements within certain Standards should be revised or removed, we invite NERC to make specific proposals to the Commission identifying the Standards or requirements and setting forth in detail the technical basis for its belief. In addition, or in the alternative, we invite NERC, the Regional Entities and other interested entities to propose appropriate mechanisms to identify and remove from the Commission-approved Reliability Standards unnecessary or redundant requirements. We will not impose a deadline on when these comments should be submitted, but ask that to the extent such comments are submitted NERC, the Regional Entities, and interested entities coordinate to submit their respective comments concurrently.*

This resulted in an initiative to remove or revise requirements that pose lesser risk to the BPS. There was supposed to be a second phase to the P 81 initiative, but it is the Joint ISOs/RTOs' understanding that this has been either delayed or suspended by NERC.

ii. *Event Reporting Should be Addressed in Other Forums Outside of the Reliability Standards*

There are several alternative means of realizing the value of event reporting and analysis, such as the NERC Event Analysis Program and the DOE reporting program.<sup>5</sup> Because these programs are based on after-the-fact analysis that does not needlessly subject registered entities to liability, they are better suited to address and manage event reporting.

The Joint ISOs/RTOs are committed to providing all relevant system operations data in these forums and are active in these programs, particularly NERC's Event Analysis program. The NERC Operating Committee Event Analysis Program already receives and analyzes the same data and information required to be reported under the proposed EOP-004-2. That environment lends itself to the "collaborative approach in which registered entities, Regional Entities and NERC work together to achieve a common goal"<sup>6</sup> that NERC seeks and further allows all entities the time necessary to fully gather and assimilate all necessary data.

The unnecessary compliance and enforcement risk, and the burden related to requiring timely reporting for many of the events in EOP-004-2 Attachment 1, should be addressed by removing event reporting from the reliability standards and focusing on it in the post-event programs, such as the Events Analysis Program. The same prospective reliability value will be realized and there will be no impact to reliable operations because, as discussed, after-the-fact event reporting does not support reliable operations. Reliable operations, including mitigating

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<sup>5</sup> The Joint ISOs/RTOs submit that many of the reporting requirements imposed by the proposed EOP-004-2 are duplicative of other event data reporting obligations; therefore, for those events where, as discussed above, timely, mandatory reporting provides no reliability benefit, the purpose and objective of the proposed EOP-004-2 could easily be accomplished outside of the reliability standards, *e.g.*, in the context of NERC's independent event analysis process. The Standard is also partly redundant of Department of Energy Form OE-417, which NERC proposes as an alternative for Responsible Entities to use to report events. This form already elicits much of the same information that NERC seeks. NERC could request copies of these forms at any time or as a matter of course from Registered Entities, but again, does not need to do so under a reliability standard.

<sup>6</sup> See NERC Petition Page 5.

actions related to system events, are achieved by the operating actions of the relevant functional entities. There are no immediate operational reliability benefits that can be gained from including event reporting requirements in the NERC standards, because event reporting does not provide for the reliability of the BPS. Registered entities should not be subject to penalty exposure for such an illusory benefit.

Accordingly, the Joint ISOs/RTOs respectfully request that the Commission give due consideration to these comments in determining whether the proposed standard is necessary to support reliable operations as part of the NERC reliability standards and, therefore, whether there is a real reliability benefit that justifies subjecting registered entities to potential penalties.

Although EOP-004-2 is at issue in this proceeding, its approval or disapproval would either retire or maintain, respectively, two existing standards – CIP-001-2a and EOP-004-1. Because these standards pose the same issues as the proposed standard, any consideration that event reporting is not an appropriate obligation for the NERC standards would necessarily require consideration of whether the need for the existing standards should also be revisited if the premise for inclusion in reliability standards – *i.e.*, whether a requirement supports reliable operations under Section 215 – does not apply to event reporting.

*B. If the Commission Believes Event Reporting is Appropriate for Inclusion in the Reliability Standards, the Proposed Standard Would Benefit From Certain Revisions*

If the Commission disagrees with the Joint ISOs/RTOs' position that event reporting should not be included in the Reliability Standards and approves EOP-004-2 to mandate such reporting in the enforcement regime, the proposed standard EOP-004-2 is an improvement over the two events reporting standards it would replace – *i.e.*, CIP-001-2a and EOP-004-1. However, if the Commission moves forward with EOP-004-2, it should consider the following comments regarding particular revisions that would improve the standard in terms of mitigating the impact



of establishing requirements that have little to no reliability value, and clarifying particular events included in Attachment 1 to EOP-004-2.

*i. The Events Listed in EOP-004-2 Attachment 1 Should be Limited to Those That Give Third Parties the Ability to Act to Mitigate the Impact of the Event*

The Joint ISOs/RTOs believe that all mitigation of system events results from operational actions taken by functional entities in the execution of their duties pursuant to relevant rules and procedures. Assuming, for the sake of argument, that there are any reliability benefits that could result from event reporting, they would only be realized where timely reporting facilitates third-party actions that could potentially mitigate reliability impacts from an event. Otherwise, as noted, all reliability benefits in support of reliable operations are being realized by the actions of functional entities.

For example, where there is deliberate and ongoing third party vandalism/destruction of BES equipment, timely reporting could give law enforcement the ability to mitigate the event. Another example may be reporting deliberate load shedding so relevant officials are aware and can take appropriate actions related to their functions. The Joint ISOs/RTOs note, however, that reporting of such events and resulting actions by law enforcement and other officials are typically related to health, welfare and safety issues, matters which are outside the scope of reliable bulk-power system operation.

Accordingly, to the extent the Commission moves forward with the proposed standard, it should be revised using appropriate metrics for determining whether an event should be subject to a mandatory, timely reporting obligation. The petition correctly notes that the NERC standard drafting team considered events that do, or could, impact system reliability. While that is an important consideration, the inquiry cannot end there. The next question that must be answered is whether the event can be mitigated by the action of third parties and whether, consistent with

Section 215, that third party action supports reliable system operations (*e.g.*, law enforcement). Conversely, the question must also be asked whether the event can only be mitigated by the operational actions of the relevant functional entities executing their operational duties under the NERC standards and other relevant rules and procedures. Where the only benefit from reporting an event is prospective based on the information derived from the event analysis, and all event mitigation (*i.e.*, actions that support reliable operations) is being achieved by the operational actions of functional entities, such events should not be subject to reporting obligations in the context of the reliability standards, and any such events should be removed from EOP-004-2 Attachment 1.

*ii. The Scope of Entities to Which the Reports Are Submitted Should be Limited to Those Entities That Can Act to Mitigate the Actual Event*

As discussed, if the Commission believes event reporting is appropriate for inclusion in mandatory standards, the type of events should be limited to those where third parties can act to mitigate the actual event. Consistent with this limitation, the scope of entities to which reports must be submitted should also be limited to those entities that are actually capable of acting to mitigate the event. There is no reason to require that events be reported to entities if they cannot take action to mitigate the actual event in support of reliable operations. Imposition of such a requirement would do nothing but create liability exposure for registered entities with no corresponding reliability value. Therefore, if the Commission elects to retain event reporting in the reliability standards, the list of entities that receive the report should be based on the type of event and the third parties that could provide actual mitigation. This list should be developed by the registered entities in developing their plans under proposed EOP-004-2 R1.

With respect to entities that would be involved in prospective event analysis, the event reports could be submitted to them in the relevant processes/programs outside of the reliability

standards – *e.g.*, the NERC EAP. That structure would not compromise reliability benefits realized from event reporting and analysis, and it would mitigate unnecessary penalty risk to registered entities by removing unnecessary reporting obligations in the mandatory standards.

*iii. The Ambiguities in Attachment 1 Events Should be Clarified*

The Joint ISOs/RTOs provide comments upon the content of the proposed Standard in the event that the Commission disagrees with the ISO/RTO position that event reporting is not appropriate for inclusion in reliability standards and approves EOP-004-2.

Specifically, ambiguities related to particular thresholds for reporting described within EOP-004-2 – Attachment 1 need to be addressed. After carefully reviewing these thresholds, the Joint ISOs/RTOs respectfully submit that, to ensure that the purpose of EOP-004-2 is achieved, the certain threshold for reporting should be modified to provide that the appropriate entity is identified for reporting, to clarify when the reporting obligation is triggered, and to ensure that entities are reporting events of the type and significance intended. The following example demonstrates one of the ambiguities, and the Joint ISOs/RTOs request clarification of the following draft thresholds provided in EOP-004-2 – Attachment 1:

1. The requirement that an entity report when “[d]amage or destruction of a Facility within its Reliability Coordinator Area, Balancing Authority Area or Transmission Operator Area that results in actions to avoid a BES Emergency;” and

In accordance with the NERC glossary of terms, a BES Emergency is defined as:

“Any abnormal system condition that requires automatic or immediate manual action to prevent or limit the failure of transmission facilities or generation supply that could adversely affect the reliability of the Bulk Electric System.”<sup>7</sup>

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<sup>7</sup> See NERC Glossary of Terms Used in Reliability Standards.

Reliability Coordinators (“RCs”) and Balancing Authorities (“BAs”) take actions each and every day to “avoid a BES Emergency.” Often, these BAs and RCs are not located near and do not own the Facility or Facilities causing the issue.<sup>8</sup> Accordingly, when they take action they are reacting to conditions that their operating personnel are observing on the BES and their personnel would not necessarily be aware if those conditions resulted from the “damage or destruction of a Facility.” Based on their limited information, RCs and BAs will often not be able to determine if their actions require them to submit a report. This information “disconnect” demonstrates that RCs and BAs are likely not the appropriate entities for such reporting requirements. Facility owners are closest to events occurring on their facilities, although they do not have broader situational awareness. Therefore, to the extent the Commission disagrees with the Joint ISOs/RTOs position that event reporting is not appropriate for inclusion in reliability standards, at a minimum, EOP 004-002 needs clarification in this regard.

If the reporting requirement discussed above is retained, it is possible that the responsible entities (RCs, BAs) will expend significant time and resources reporting daily operations and actions routinely taken to respond to observed BES conditions as they present themselves without knowing whether or not the initiating factor for these actions was the “damage or destruction of a Facility.” This is because event reporting is backed by the potential for NERC penalties, and RCs and BAs may feel compelled to file reports as a precautionary measure, thereby taking action not otherwise needed to maintain a reliable Bulk Electric System.

Such reporting would result in an inefficient allocation of resources in multiple ways. First, as discussed, subject entities may expend time and effort unnecessarily to proactively avoid

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<sup>8</sup> As used, “Facility” is meant to be the defined term in the NERC Glossary of Terms Used in Reliability Standards: “A set of electrical equipment that operates as a single Bulk Electric System Element (*e.g.*, a line, a generator, a shunt compensator, transformer, etc.)”.

liability where there is none. Furthermore, this could result in unnecessary follow-up discussion, information exchange and mitigating actions. For these and other types of events where the reliability benefit from event analysis comes not from the timely preparation and submission of reports, but from the breadth and depth of the information reported, the standard, as proposed, could result in the failure to achieve the stated objective of this standard, which is the improvement of the reliability of the Bulk Electric System.

Accordingly, the Joint ISOs/RTOs respectfully request that the Commission remand EOP-004-2 to address the inappropriate assignment of responsibility in the event threshold. Appropriate revisions could include: (1) removing the requirement for RCs and BAs to report the “damage or destruction of a Facility” as it is redundant of the immediately subsequent requirement, and (2) removing reporting responsibility from BAs to report the “damage or destruction of a Facility,” as the appropriate responsible entity for this requirement needs clarification.

*iv. The Timing Requirements are Overly Stringent*

Finally, should the Commission continue to believe that a reliability standard governing the event reporting process must remain in place, the Joint ISOs/RTOs respectfully suggest that the Commission remand the proposed EOP-004-2 to NERC to re-assess the timing requirements as related to the objectives expressed within this standard.

A strict 24-hour obligation may not be necessary given the type of event and the type of actions/responsible entities that can mitigate the event. As discussed, where those benefits are realized by the actions of relevant functional entities, those benefits are already being achieved and there is no need for such stringent reporting obligations. The benefit in post-event analysis and discussion comes from a thorough examination and deeper understanding of the issues

associated with the event. This requires time to gather and analyze data as well as to assemble data into a usable format, which currently generally occurs through a more corroborative, longer-term process after the submission of the OE-417 form. Imposing a 24-hour reporting obligation provides no reliability benefit, because the reporting benefit is from the *ex post* activities described. Moreover, reporting the event within 24 hours is not necessary to mitigate the immediate impacts of the event itself, because, as discussed, those benefits are already realized by actions taken by registered entities in operating the system.

#### **IV. Conclusion**

In summary, the Joint ISOs/RTOs respectfully suggest that the Commission consider removing event reporting from the reliability standards framework, whether implemented via the proposed EOP-004-002, or via the existing standards that presently address event reporting – *i.e.*, CIP-001-2a and EOP-004-1. If the Commission disagrees with the Joint ISOs/RTOs, and believes event reporting belongs in the reliability standards, to achieve the appropriate scope of the event reporting standard the Commission should move forward with EOP004-2 and retire CIP-001-2a and EOP-004-1 but remand EOP-004-2 to consider revisions consistent with these comments related to: ( 1) the scope of events that should be included in Attachment 1, ( 2) the scope of entities that are required to receive the mandatory reports; and (3) consideration of the specific clarification described above, and any other events that require clarifications, to ensure the reporting obligation applies to the appropriate registered entities.

WHEREFORE, for the foregoing reasons, the Joint ISOs/RTOs respectfully request that the Commission grant this motion to intervene out of time and give due consideration to its comments.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated at Rensselaer, NY this 7<sup>th</sup> day of March, 2013.

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