UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Michael Mabee	**)**	**Docket No. EL20-21-000**
Complainant	**)**	
	)	
v.	**)**	
	)	
Federal Energy Regulatory Commission	**)**	

MOTION TO INTERVENE AND COMMENT OF THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

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Pursuant to Rules 206, 212, and 214 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure[1] and the Commission's Notice of Complaint,[2] the North American Electric Reliability Corporation ("NERC") moves to intervene and comment on the Complaint filed by Michael Mabee ("Complainant") on January 30, 2020 in the above-captioned docket ("Complaint") and the Additional Information and Recommendations of Complainant ("Supplemental Complaint") filed by Complainant on February 19, 2020.

The Complaint and Supplemental Complaint claim that (i) the NERC Reliability Standard CIP-014-2, which addresses physical security of applicable Transmission stations and substations as well as their associated primary control centers, is inadequate; and (ii) that enforcement of the CIP-014-2 Reliability Standard seems nonexistent, and recommend that the Commission take several specified actions, including directing NERC to take specific actions, to address the Complainant's concerns.

[1] 18 C.F.R. §§ 385.206, 385.212, and 285.214 (2019).
[2] Notice of Complaint, Docket No. EL20-21-000 (Feb. 6, 2020).

As discussed below, NERC requests leave to intervene and comment in response to the Complainant's assertions and recommendations, and requests that the Commission dismiss the Complaint.

I. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to the following:[3]

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II. MOTION TO INTERVENE

NERC has a substantial interest in this proceeding as the Complainant seeks to have the Commission direct NERC to modify the CIP-014-2 Reliability Standard and submit to the Commission for approval a compliance and enforcement plan for physical security.[4] By enacting

[3] 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.

[4] Complaint at 7. The Complainant's last request for relief does not affect NERC directly, but as discussed in more detail in Section IV.C below, publicly available documents make clear that the Commission is already reviewing registered entities' compliance with CIP-014-2 independently, or in coordination with NERC, in a manner similar to that requested by Complainant.

the Energy Policy Act of 2005,[5] Congress entrusted the Commission with the duties of approving and enforcing rules to ensure the reliability of the Bulk-Power System ("BPS"), 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 for the purpose of establishing and enforcing Reliability Standards for the BPS in the United States.[6] As the ERO, NERC's mission is to improve the reliability and security of the BPS in North America.[7] 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").[8] NERC and the Regional Entities 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 ("CMEP").[9]

No other party can adequately represent NERC's interests or adequately respond to Complainant's allegations regarding the adequacy of the CIP-014-2 Reliability Standard and its enforcement. Therefore, it is in the public interest to permit this intervention.

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5 16 U.S.C. § 824o (2018).

6 The Commission certified NERC as the ERO in accordance with Section 215 of the FPA on July 20, 2006. *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) ("ERO Certification Order").

7 *See id.*

8 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/comm/SC/Documents/Appendix_3A_StandardsProcessesManual.pdf.

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

III. SUMMARY

A. Summary of the Complaint

The Complainant alleges that the CIP-014-2 Reliability Standard is inadequate and that enforcement of the CIP-014-2 Reliability Standard seems nonexistent.[10] The Complainant recommends that the Commission:

i. direct NERC to modify CIP-014-2 such that the entity's physical security plan be effective and receive regulatory approval, and that all risk assessments, evaluations, and security plans should be reviewed by qualified non-affiliated persons with expertise in physical security;

ii. direct NERC to submit to the Commission for approval a compliance and enforcement plan for physical security that would provide "meaningful assurances that the regulators and regulated entities are taking seriously their obligations to protect the bulk power system from physical threats;" and

iii. collaborate with the Department of Energy, Department of Homeland Security, Department of Defense, and the National Guard to "Red Team"[11] entities in order to evaluate weaknesses and determine whether their physical (and cybersecurity) programs are effective, and work with state public utility commissions ("PUCs") to ensure similar actions at the state level.[12]

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[10] NERC notes that the Complainant, as a private citizen, is not subject to the NERC Reliability Standards, including CIP-014-2.

[11] In this context, to "Red Team" an entity means to perform an adversarial perspective of the entity's physical security plans, risk assessments, and evaluations.

[12] Complaint at 7.

B. Summary of NERC's Comments

In response to the Complaint and Supplemental Complaint, NERC provides the following:

i. The Complainant has failed to demonstrate that Reliability Standard CIP-014-2 is inadequate or is otherwise inconsistent with applicable statutory and regulatory law;

ii. The Complainant has failed to demonstrate that enforcement of Reliability Standard CIP-014-2 is inadequate; and

iii. The Commission is already evaluating the adequacy of registered entities' compliance with Reliability Standard CIP-014-2.

Therefore, the Commission should dismiss the Complaint and Supplemental Complaint because they fail to meet the minimum requirements applicable to complaints under the Commission's Rules of Practice and Procedure,[13] and reflect unsupported assertions that embody the Complainant's misunderstanding of the NERC Standards Development Process and the NERC Compliance Monitoring and Enforcement Program. Rule 203, for example, requires pleadings to set forth the basis in fact and law for the positions taken.[14] Rule 206 provides that complaints must, among their elements, (i) clearly identify the alleged action or inaction claimed to violate applicable statutory or regulatory requirements, (ii) set forth the business, commercial, economic, or other issues presented by the action or inaction "as such relate to or affect the complainant," and (iii) make a good faith effort to quantify the financial impact or burden created for the

[13] *See* 18 C.F.R. § 385.206.

[14] 18 C.F.R. § 385.203(a)(7).

complainant due to the action or inaction.[15] Long-standing Commission precedent provides that "rather than bald allegations, [a complainant] must make an adequate proffer of evidence including pertinent information and analysis to support its claims."[16]

IV. COMMENTS

A. The Complainant Has Failed to Demonstrate That Reliability Standard CIP-014-2 is Inadequate or is Otherwise Inconsistent With Applicable Statutory and Regulatory Law.

The Complaint asserts that Reliability Standard CIP-014-2 is inadequate and requests that the Commission direct further modifications to the standard. The Complainant has failed to meet its burden under the Commission's rules. NERC developed Reliability Standard CIP-014-2, and its predecessor standard CIP-014-1, in accordance with its open and inclusive, Commission-approved standard development process.[17] Following its own public processes, the Commission found that the standards addressed its directives and approved Reliability Standards CIP-014-1 and CIP-014-2 as just, reasonable, not unduly discriminatory, and in the public interest. The Complaint fails to provide a factual basis to substantiate the claim that the CIP-014 Reliability Standard is now inadequate, nor does it identify any deficiencies in the applicable statutory and

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[15] 18 C.F.R. § 385.206(b)(1), (3), and (4) (listing the full list of elements for a complaint). NERC does not waive objection to the Complaint's failure to meet other elements of a properly pleaded complaint, but is simply highlighting these elements.

[16] *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 P2 (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).

[17] NERC develops Reliability Standards in accordance with Section 300 (Reliability Standards Development) of its Rules of Procedure and the NERC Standard Processes Manual, available at available at https://www nerc.com/AboutNERC/Pages/Rules-of-Procedure.aspx.

regulatory processes used for its development and approval. For these reasons, the Commission should dismiss the Complaint.

The CIP-014 Reliability Standard was developed to respond to Commission directives and was approved in accordance with applicable regulations. On March 7, 2014, the Commission issued an order directing NERC to develop a physical security Reliability Standard.[18] Reliability Standard CIP-014-1 was developed in response to the Commission's directive, using an abbreviated standard development process permitted under NERC's Rules of Procedure.[19] As explained in detail in NERC's petition for approval of the standard,[20] Reliability Standard CIP-014-1 addressed each of the Commission's directives in the March 7 Order. Specifically, Reliability Standard CIP-014-1, and its successor version CIP-014-2, requires owners and operators of the Bulk-Power System to:

- "***perform a risk assessment of their systems to identify their 'critical facilities;'***"[21] specifically, by performing a risk assessment of their systems to identify (i) their critical Transmission stations and Transmission substations, and (ii) the primary control centers that operationally (i.e., physically) control the identified Transmission stations and Transmission substations (Requirement R1);
- "***evaluate the potential threats and vulnerabilities to those identified facilities;***"[22] specifically, by evaluating the potential threats and vulnerabilities of a physical attack to the facilities identified in the risk assessment (Requirement R4); and
- "***develop and implement a security plan designed to protect against attacks to those identified critical facilities based on the assessment of the potential threats and vulnerabilities to their physical security***;"[23] specifically, by developing and implementing a security plan, based on the evaluation of threats and vulnerabilities, designed to protect

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[18] *Reliability Standards for Physical Security Measures*, Order Directing Filing of Standards, 146 FERC ¶ 61,166 (2014) [hereinafter March 7 Order].

[19] For a description of the abbreviated process, see the NERC Standard Processes Manual, Section 16.0 (Waiver).

[20] *Petition of NERC for Approval of Reliability Standard CIP-014-1*, Docket No. RM14-15-000 (May 23, 2014) [hereinafter CIP-014-1 Petition].

[21] March 7 Order, *supra* note 18, at P 6 (emphasis added). In the March 7 Order, the Commission stated, "[W]e anticipate that the number of facilities identified as critical will be relatively small compared to the number of facilities that comprise the Bulk-Power System." *Id.* at P 12.

[22] *Id.* at P 8 (emphasis added).

[23] *Id.* at P 9 (emphasis added).

against and mitigate the impact of physical attacks that may compromise the operability or recovery of the identified critical facilities (Requirement R5).

Additionally, the standard addresses the Commission's directives that the standard include: (i) procedures to ensure confidential treatment of sensitive or confidential information; (ii) third-party verification of the identification of critical facilities as well as third-party review of the evaluation of threats and vulnerabilities and the security plans; and (iii) the periodic reevaluation and revision of the identification of critical facilities, the evaluation of threats and vulnerabilities, and the security plans to help ensure their continued effectiveness.[24]

Following a public rulemaking process, the Commission found that Reliability Standard CIP-014-1 satisfied its directives in the March 7 Order and approved the standard as just, reasonable, not unduly discriminatory or preferential, and in the public interest.[25] Subsequently, on July 14, 2015, the Commission approved a revised version of the standard (Reliability Standard CIP-014-2), which, at the Commission's request, included a slight clarification in the wording of the standard.[26]

The Complaint is deficient and should be dismissed because it does not offer any factual evidence in support of its assertion that Reliability Standard CIP-014-2 is inadequate to protect reliability. The Complaint asserts that the standard is "inadequate" because "[t]here is no requirement that an entity's risk assessment or physical security plan be reviewed by anyone with any physical security expertise. There is no regulator determination whatsoever as to the

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[24] *See id.* at PP 10-11 and CIP-014-1 Petition, *supra* note 20, at 3-4 and Exhibit D (Consideration of Directives).

[25] *Physical Security Reliability Standard*, Order No. 802, 149 FERC ¶ 61,140 at P 18 (2014) [hereinafter Order No. 802], *reh'g denied, Physical Security Reliability Standard,* Order Denying Rehearing, 151 FERC ¶ 61,066 (2015).

[26] In approving CIP-014-1, the Commission directed NERC to address concerns regarding the term "widespread." *See id.* at P 31. NERC developed Reliability Standard CIP-014-2 in accordance with its standard development procedure to address the Commission's directive. NERC's properly noticed and uncontested filing seeking approval of CIP-014-2 was approved by the Commission on July 14, 2015. *N. Am. Elec. Reliability Corp.*, Docket No. RD15-4-000 (July 14, 2015) (delegated letter order).

effectiveness of any entity's physical security plan."[27] The Supplemental Complaint, citing historical information which by its own admission precedes CIP-014-1,[28] further asserts that the standard is not applicable to a large enough number of facilities[29] and contains numerous deficiencies and so-called "loopholes" that must be corrected through specific revisions to the standard.[30]

The assertions in the Complaint and Supplemental Complaint offer hypothetical situations about how an entity could attempt to circumvent the requirements of Reliability Standard CIP-014-2, including by colluding with other entities. The Complaint fails to offer any new information or facts that purport to actually demonstrate the inadequacy of those requirements.[31] Further, the Complaint fails to offer a plausible explanation of how the standard does not require review of risk assessments and physical security plans by entities with the proper expertise to review such documents. However, rather than repeat the justifications for the applicability and each of the individual requirements of the CIP-014 standard here, NERC refers the Commission to the record of Docket Nos. RM14-15-000 and RD15-4-000.

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[27] Complaint at 1. *See also id.* at 4 ("All the infrastructure owner must do is to have a binder with a bunch of papers labeled 'Physical Security Plan' and have any peer utility they choose review the 'risk assessment,' 'evaluation' and 'security plan(s).'").

[28] Supplemental Complaint at 2.

[29] Supplemental Complaint at 6.

[30] Supplemental Complaint at 6-10.

[31] *See, e.g.*, Supplemental Complaint at 7 ("R2.2 Loophole #1: Many, if not all, peer Transmission Owners would meet the requirement to be a 'verifying entity.' This means that peer Transmission Owners could verify each other's risk assessments. This creates an obvious conflict of interest and could incent Transmission Owners to 'go easy – they are verifying us next week.'"). *See also id.* at 9 ("One acceptable 'unaffiliated third party' under R6.1 is: 'An entity or organization with electric industry physical security experience and whose review staff has at least one member who holds either a Certified Protection Professional (CPP) or Physical Security Professional (PSP) certification.' However, this one member on the review staff may not be the leader or the person writing the 'review.' There is sufficient 'flexibility' to marginalize the role of this 'at least one member' of the review staff who has experience, in this largely paper exercise. There is no requirement that this one member who might have some knowledge perform any type of on-site evaluation. In the end, this loophole makes the qualifications and marching orders of the 'review staff' – especially peer utilities – suspect.").

NERC observes that the assertions in the Complaint and Supplemental Complaint could have been raised in comments submitted during NERC's open and inclusive standard development process,[32] or the Commission's own public rulemaking processes, where they could have been addressed on the record. The failure to do so then does not provide the grounds for a complaint now. Indeed, several of the Complainant's recommendations for changes to CIP-014-2 resemble those raised by the Foundation for Resilient Societies in its request for rehearing, which the Commission ultimately rejected.[33]

While NERC believes that the Commission should dismiss the Complaint for the procedural deficiencies stated above, NERC also believes that the allegations in the Complaint—that Reliability Standard CIP-014-2 is inadequate to protect reliability and that the Commission should direct further changes at this time—are without merit. As NERC stated in its 2019 State of Reliability Report:

> In 2018, as in previous years, there were no reported cyber or physical security incidents on BES facilities that resulted in a loss of load. This is the single most important security measure because it shows that the combined efforts of industry, NERC, the E-ISAC, and government partners have so far been successful in protecting the BPS's reliability.[34]

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[32] Indeed, NERC notes that its process allows any stakeholder to submit a new request to revise a standard through its standard development process. No such request has been submitted by the Complainant for Reliability Standard CIP-014-2.

[33] *Compare Physical Security Reliability Standard*, Order Denying Rehearing, 151 FERC ¶ 61,066 at PP 11, 16, and 30 (2015) (denying rehearing request based on alleged errors and deficiencies in the standard related to modeling the loss of one facility, CIP-014 applicability, and specific requirements or suggested guidelines for physical security measures) *with* Complaint at 5 (calling for modeling the loss of more than one facility), Complaint at 5 and Supplemental Complaint at 4-6 (calling for additional applicable entities), *and* Supplemental Complaint at 9-10 (calling for specific types of physical security measures to be included in physical security plans). The Complainant is aware of the Commission's action denying the rehearing requested by the Foundation for Resilient Societies. *See* Supplemental Complaint at 4 n.17, n.18, and 6 n.27.

[34] NERC State of Reliability Report at 67 (2019), https://www nerc.com/pa/RAPA/PA/Performance%20Analysis%20DL/NERC_SOR_2019.pdf.

Ensuring the security of the grid has always been a top priority of NERC, and NERC has actively monitored the implementation of Reliability Standard CIP-014-2. NERC committed to its Board of Trustees to review implementation of the standard and to submit reports accordingly.[35] NERC also filed with the Commission a report reviewing whether additional Control Centers should come into scope of Reliability Standard CIP-014-2.[36] Based on the findings of that report, the NERC Critical Infrastructure Protection Committee developed security guidelines to assist entities in protecting certain Control Centers.[37] To the extent that new information or evolving risks indicate the need to revise Reliability Standard CIP-014-2 to ensure its continued effectiveness, NERC should have the opportunity to pursue the appropriate revisions through its open and inclusive standard development process.

B. The Complainant Has Failed to Demonstrate That Enforcement of Reliability Standard CIP-014-2 is Inadequate.

The Complaint and Supplemental Complaint allege that enforcement of CIP-014-2 "seems nonexistent" and claim that utilities have only been cited four times for violations of CIP-014-2.[38] The Complainant requests that the Commission direct NERC to submit to the Commission for approval a compliance and enforcement plan for physical security.[39] The Complainant has failed

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35 *See*, Order No. 802, *supra* note 25, at PP 44, 70-71.

36 *CIP-014 Report –Security Protection for High Impact Control Centers*, Informational Filing, Docket No. RM15-14-000 (October 2, 2017), https://www nerc.com/FilingsOrders/us/NERC%20Filings%20to%20FERC%20DL/CIP-014%20High%20Impact%20Control%20Center%20Report.pdf.

37 NERC CIP Committee, *Security Considerations for High-Impact Control Centers* (December 12, 2018), https://www nerc.com/comm/CIPC_Security_Guidelines_DL/Physical%20Security%20Guideline%20Security%20Considerations%20High%20Impact%20Control%20Centers.pdf.

38 Complaint at 1 and 5-7.

39 *Id.* at 7.

to meet its burden under the Commission's rules, providing speculative arguments and conflating CIP-014-2 with CIP-001-1 and EOP-004-1, which had different reliability and security goals.[40]

Aside from being speculative and unsupported, the Complainant's allegation is not accurate. While the Complaint and Supplemental Complaint identify three Notices of Penalty that involved a total of four CIP-014-2 violations,[41] NERC has publicly posted an additional three moderate risk instances of CIP-014 noncompliance resolved through the Find, Fix, Track and Report ("FFT") disposition method,[42] and nine minimal risk CIP-014 noncompliance resolved through the Compliance Exception disposition method.[43] As of January 31, 2020, NERC had publicly reported 16 instances of CIP-014 noncompliance.

NERC has received additional instances of CIP-014 noncompliance that have not been resolved yet. Of all reported CIP-014 noncompliance, Regional Entities identified approximately two-thirds via compliance audits they conducted of registered entities, and registered entities self-

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[40] *Compare* purpose statement of CIP-014-2 ("To identify and protect Transmission stations and Transmission substations, and their associated primary control centers, that if rendered inoperable or damaged as a result of a physical attack could result in instability, uncontrolled separation, or Cascading within an Interconnection") *with* purpose statement of CIP-001-1 ("Disturbances or unusual occurrences, suspected or determined to be caused by sabotage, shall be reported to the appropriate systems, governmental agencies, and regulatory bodies") *and* purpose statement of EOP-004-1 ("Disturbances or unusual occurrences that jeopardize the operation of the Bulk Electric System, or result in system equipment damage or customer interruptions, need to be studied and understood to minimize the likelihood of similar events in the future"). CIP-014-2 is intended to identify and protect critical infrastructure, while CIP-001-1 and EOP-004-1 are intended to result in the reporting and study of disturbances or unusual occurrences affecting the Bulk Electric System.

[41] *See* NP17-29-000 (September 28, 2017) (involving two CIP-014-2 noncompliance resolved in a Spreadsheet Notice of Penalty), NP18-14-000 (May 31, 2018) (involving one CIP-014-2 noncompliance resolved in a full Notice of Penalty), and NP19-4-000 (January 25, 2019) (involving one CIP-014-2 noncompliance resolved in a full Notice of Penalty).

[42] FFTs posted on December 31, 2019 (involving CIP-014-2 R4, R5, and R6), available at https://www.nerc.com/pa/comp/CE/Enforcement%20Actions%20DL/Public_CIP_A-2_FinalPosted_FFT_Summary_01-30-2020.pdf.

[43] Compliance Exceptions posted on May 31, 2016, May 31, 2017, July 31, 2017, August 31, 2017, October 31, 2017, February 28, 2019, and March 28, 2019 (involving CIP-014 R1, R4, R5, and R6), available at https://www nerc.com/pa/comp/CE/Enforcement%20Actions%20DL/A-2_Public_CIP_FinalPosted_CE_Summary_01-31-2019.xlsx (pre-2019 issues only) and https://www.nerc.com/pa/comp/CE/Enforcement%20Actions%20DL/Public_CIP_A-2_FinalPosted_CE_Summary_01-30-2020.pdf (2019 issues).

reported the remaining noncompliance. This demonstrates two important points: (1) Regional Entities are looking at CIP-014 when conducting compliance monitoring engagements of registered entities and finding deficiencies that registered entities will need to correct as part of their mitigation efforts and steps to prevent recurrence,[44] and (2) registered entities are also examining their compliance with the CIP-014 Reliability Standard and notifying their respective Regional Entities of self-identified deficiencies and actions they are taking to return to compliance and prevent recurrence.[45] Pursuant to the Commission-approved NERC Rules of Procedure, open enforcement actions remain non-public until resolution, and additional details about these noncompliance will remain confidential until they are resolved.[46]

Outside of the enforcement context, NERC and the Regional Entities have invested significant effort to ensure that registered entities are taking their obligations under CIP-014 seriously. NERC and the Regional Entities conducted a self-certification in 2016 involving all Transmission Owners related to CIP-014-2, Requirements R1 through R3 to determine the number of registered entities to which CIP-014-2 applied, whether they conducted a risk assessment and

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[44] *See* NERC Rules of Procedure, *supra* note 8, Section 403(8)(10.5) ("A Bulk Power System owner, operator, or user found in noncompliance with a Reliability Standard shall submit a Mitigation Plan with a timeline addressing how the noncompliance will be corrected, unless an enforcement process is used that does not require a Mitigation Plan. The Regional Entity Compliance Staff shall review and accept the Mitigation Plan in accordance with Appendix 4C") and Appendix 4C, Section 6 (requiring registered entities to file either a proposed Mitigation Plan to correct the violation or a description of how the violation has been mitigated, and laying out the various requirements for Mitigation Plans).

[45] *See id.*, Appendix 4C, Section 3.5 (noting that "Self-Reports are encouraged at a time a Registered Entity becomes aware (i) that is has, or may have violated a Reliability Standard…" and that Self-Reports "may include the actions that have been taken or will be taken to resolve the violation.").

[46] *See id.*, Section 9.3.1 ("Information or data generated or received pursuant to Compliance Program activities, including a hearing process, shall be treated in a confidential manner pursuant to the provisions of Section 1500 of the NERC Rules of Procedure."); Section 401(10) (noting that NERC "will treat all Possible and Alleged Violations of Reliability Standards and matters related to a Compliance Monitoring and Enforcement Program process… as confidential in accordance with Section 1500."); and Section 1506 (permitting disclosure of a violation "at the point when the matter is filed with an Applicable Governmental Authority as a Notice of Penalty, the 'violator' admits the violation, or the alleged violator and NERC or the Regional Entity reach a settlement regarding the violation.").

verification or notification activities as required, whether they identified any critical Transmission stations or substations, and the number of such critical facilities.[47] To assist registered entities in completing the self-certification, NERC conducted a CIP-014-2 self-certification webinar that was attended by over 200 participants, and the ERO Enterprise conducted outreach through on-site engagements with 19 registered entities in six Regional Entity footprints.[48]

In the 2017 Annual CMEP Implementation Plan, NERC and the Regional Entities reported that they had begun engaging registered entities "through a variety of outreach activities and coordinated site visits to discuss and understand their implementation of CIP-014-2" and that initial observations indicated industry was "making progress toward effective implementation of and compliance with CIP-014-2."[49]

The ERO Enterprise has included CIP-014-2 as an area of focus in its Annual CMEP Implementation Plans from 2016-2019, as part of two different risk elements: "Extreme Physical Events" (2016-2018) and "Spare Equipment with Extended Lead Time" (2019).[50] While not identified as an area of focus in the 2020 CMEP Implementation Plan, the risk of physical threats

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47 NERC, *2016 ERO Enterprise CMEP Implementation Plan*, Version 2.5 (July 2016), at 16, available at https://www.nerc.com/pa/comp/Resources/ResourcesDL/2016%20CMEP%20IP_v_2%205_071116_POSTED.pdf.

48 NERC, *2016 ERO Enterprise CMEP Annual Report* (February 2017) at 18-19, available at https://www.nerc.com/pa/comp/CE/ReportsDL/2016%20Annual%20CMEP%20Report.pdf.

49 NERC, *2017 ERO Enterprise CMEP Implementation Plan*, Version 2.5 (May 2017) at 16, available at https://www nerc.com/pa/comp/Reliability%20Assurance%20Initiative/2017%20ERO%20CMEP%20Implementation%20Plan.pdf.

50 *2016 CMEP Implementation Plan*, *supra* note 47, (CIP-014-2 discussions on pages 3, 11, and 16), *2017 CMEP Implementation Plan*, s*upra* note 49, (CIP-014-2 discussions on pages 2, 10, and 15-16, noting that FERC staff and NERC staff coordinated in support of joint visits to registered entities in 2016 to evaluate progress on implementation of CIP-014-2), NERC, *2018 ERO Enterprise CMEP Implementation Plan*, Version 2.1 (May 2018), available at https://www.nerc.com/pa/comp/Resources/ResourcesDL/2018_ERO_CMEP_Implementation%20Plan_V2.1_May_2018.pdf (CIP-014-2 discussions on pages 2, and 10-11), and *2019 ERO Enterprise CMEP Implementation Plan*, Version 2.1 (November 2018), available at https://www.nerc.com/pa/comp/Resources/ResourcesDL/2019_ERO_CMEP_Implementation%20Plan_V2%20November%202018.pdf (CIP-014-2 discussions on pages 12-13).

or breaches was part of the risk element of "Loss of Major Transmission Equipment with Extended Lead Times."[51] The Annual CMEP Implementation Plans identify risk elements that the Regional Entities will consider as part of their compliance monitoring activities for registered entities in the coming year and include specific Standards and Requirements as areas of focus for each identified risk element. As noted above, most of the identified noncompliance with CIP-014 to date has been found by Regional Entities conducting compliance audits.

In addition, the ERO Enterprise has endorsed three different Implementation Guidance documents for CIP-014-2, which provide examples for registered entities to consider when implementing a Reliability Standard.[52] The three ERO Enterprise-endorsed CIP-014 Implementation Guidance documents address CIP-014-2 R1 (initial and subsequent risk assessments),[53] CIP-014-2 R4 (evaluation of potential threats and vulnerabilities of a physical

[51] NERC, *2020 ERO Enterprise CMEP Implementation Plan*, Version 2.0 (November 2019), available at https://www nerc.com/pa/comp/CAOneStopShop/2020_ERO_CMEP_Implementation%20Plan.pdf (physical security breaches and threats discussed on page 9).

[52] ERO Enterprise-endorsed Implementation Guidance is available at https://www nerc.com/pa/comp/guidance/Pages/default.aspx. The policy governing the ERO Enterprise's endorsement of Implementation Guidance was approved by the NERC Board of Trustees on November 5, 2015 and is available at https://www nerc.com/pa/comp/Resources/ResourcesDL/Compliance_Guidance_Policy_FINAL_Board_Accepted_Nov_5_2015.pdf.

[53] *North American Transmission Forum CIP-014-2 Requirement R1 Guideline* (2017), available at https://www nerc.com/pa/comp/guidance/EROEndorsedImplementationGuidance/CIP-014-2%20R1%20Guideline%20(NATF).pdf (providing guidance to Transmission Owners on possible ways to perform an initial and subsequent risk assessments to identify the Transmission station(s), Transmission substation(s) that, if rendered inoperable or damaged, could result in instability, uncontrolled separation, or Cascading within an Interconnection).

attack),[54] and CIP-014-2 R5 (developing and implemental physical security plan(s)).[55] These documents provide registered entities with vetted examples of possible approaches to demonstrate the reliability and security goals associated with the CIP-014 Reliability Standard and its Requirements.

Finally, NERC notes that the Complainant's allegation that enforcement of CIP-014-2 seems nonexistent based on the low number of publicly posted noncompliance cuts both ways. Rather than demonstrate that enforcement is nonexistent, the small number of CIP-014-2 noncompliance, as well as the more administrative nature of the CIP-014-2 noncompliance publicly posted to date, could instead demonstrate that (1) registered entities have taken their obligations under CIP-014-2 seriously and implemented sufficient controls to prevent or quickly detect noncompliance, and (2) the outreach efforts taken by the ERO Enterprise have been effective at preparing registered entities to demonstrate compliance with the Reliability Standard. The Complainant's logic results in a Catch-22: low levels of CIP-014-2 violations mean that the Standard is inadequate or not being adequately enforced by the ERO Enterprise, while high levels of violations would mean that registered entities are not taking their physical security obligations seriously.

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[54] *North American Transmission Forum Practices Document for NERC Reliability Standard CIP-014-2 Requirement R4* (2018), available at https://www nerc.com/pa/comp/guidance/EROEndorsedImplementationGuidance/CIP-014-2%20R4%20Evaluating%20Potential%20Physical%20Security%20Attack.pdf (providing guidance to Transmission Owners and Transmission Operators on possible ways to perform an evaluation of potential threats and vulnerabilities of a physical attack to each of their respective Transmission station(s), Transmission substation(s), and primary control center(s)).

[55] *North American Transmission Forum Practices Document for NERC Reliability Standard CIP-014-2 Requirement R5* (2018), available at https://www.nerc.com/pa/comp/guidance/EROEndorsedImplementationGuidance/CIP-014-2_R5_Developing_and_Implementing_Physical_Security_Plans_(NATF).pdf (providing guidance to Transmission Owners and Transmission Operators on possible ways to develop and implement physical security plan(s) to protect their respective Transmission station(s), Transmission substation(s), and primary control center(s)).

NERC believes that registered entities have a clear interest in ensuring the physical security of their systems and the BPS as a whole. As described above, the ERO Enterprise has conducted outreach to ensure that registered entities were prepared for CIP-014-2, monitors registered entities' compliance with the Reliability Standard, takes appropriate risk-based enforcement steps when noncompliance is discovered, and requires registered entities to mitigate and prevent recurrence of such noncompliance.

C. The Commission is Already Evaluating the Adequacy of Registered Entities' Compliance with Reliability Standard CIP-014-2.

The Complainant argues that FERC should evaluate registered entities' physical security programs to determine if they are effective.[56] While this recommendation does not directly affect NERC, NERC notes that the Commission addressed this issue in Order 802, stating that it would "focus its resources on carrying out compliance and enforcement activities to ensure that critical facilities are identified under Requirement R1."[57] The Commission further noted that it expected Commission staff to:

> audit a representative number of applicable entities to ensure compliance with Reliability Standard CIP-014-1. Depending on the audit findings, the Commission will determine if there is a need for any further action by the Commission including, but not limited to, directing NERC to develop modifications to Reliability Standard CIP-014-1 to provide greater specificity to the methodology for determining critical facilities.[58]

In March 2018, the Congressional Research Service reported that, as of November 2, 2017, the Commission had:

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56 Complaint at 7.
57 Order 802, *supra* note 25, at P 44.
58 *Id.*

> completed two audits of critical assets identified by covered entities (R1) and was in the process of conducting a third. These audits have involved technical review of utility regulatory documents by FERC engineers.[59]

Commission staff have already conducted evaluations of registered entities' compliance with CIP-014-2, and Complainant provides no explanation of what additional benefit would be achieved by coordinating such efforts with other departments within the federal government, the National Guard, or state public utility commissions.

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.

[59] Congressional Research Service, "NERC Standards for Bulk Power Physical Security: Is the Grid More Secure?" at 8 (2018), available at https://crsreports.congress.gov/product/pdf/R/R45135.

Respectfully submitted,

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Date: March 2, 2020

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 2nd day of March, 2020.

/s/ James McGrane
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