

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

North American Electric Reliability Corporation)	Docket No. RR23-1-000
)	

**REPLY COMMENTS OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
TO COMMENTS OF PUBLIC CITIZEN, INC.**

The North American Electric Reliability Corporation (“NERC”) respectfully submits the following reply comments addressing concerns raised by Public Citizen, Inc. (“Public Citizen”) in comments filed in response to NERC’s May 15, 2023 Petition For Approval of Revisions to the Texas Reliability Entity, Inc. (“Texas RE”) Regional Reliability Standards Development Process (“RSDP”) in Docket No. RR23-1-000. NERC submits these comments to clarify, for the record, the precedent and history underlying the proposed Texas RE RSDP Section 1.1 language regarding consideration of Market Principles.

NERC seeks leave to submit this reply and requests that the Federal Energy Regulatory Commission (“Commission”) waive Rule 213(a)(2), 18 C.F.R. 385.213(a)(2), for this purpose. This reply should be permitted because it enhances the record by clarifying and completing the record on issues raised by Public Citizen.

In its June 5, 2023 comments, Public Citizen cites Section 1.1 of the proposed Texas RE RSDP, which states in part:

While NERC Reliability Standards are intended to promote [Bulk Power System] BPS reliability, they must also accommodate competitive electricity markets. Reliability is a necessity for electricity markets, and robust electricity markets can support reliability. The intent of considering the NERC Market Principles is to ensure that Regional Standards are written to achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets. Recognizing that BPS reliability and electricity markets are inseparable and mutually interdependent, all Regional Standards shall be consistent with the NERC

Market Principles.

Of the Market Principles referenced in the proposed Texas RE RSDP, Public Citizen argues that:

The assertion that federal reliability standards “must also accommodate competitive electricity markets” and must “ensure that Regional Standards are written to achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets” is unsupported by any facts or statute. In reality, “competitive electricity markets” are struggling mightily to preserve reliability, and often competitive markets are the culprit in eroding BPS reliability [...].

NERC’s claim that reliability rules must not interfere with “competitive electricity markets” is unsupported by any facts or statute, and all references should be removed from the *Regional Reliability Standards Development Process*.¹

NERC clarifies that, contrary to Public Citizen’s comments, Federal Power Act (“FPA”) section 215² and FERC Order No. 672³ require the consideration of competitive effects in the development and approval of proposed Reliability Standards. In addition, NERC notes that this longstanding principle has resulted in nearly identical language being included in the previous iteration of the Texas RE RSDP that was approved by the Commission in 2017.⁴

FPA section 215(d)(2) explains the requirements for Commission approval of a Reliability Standard or modification to a Reliability Standard, including when it should defer to the technical expertise of the Electric Reliability Organization (“ERO”) or a regional entity organized on an Interconnection-wide basis. FPA section 215(d)(2) further states that the Commission “shall not defer with respect to the effect of a standard on competition.”⁵ The Commission elaborated on the

¹ Public Citizen Comments at 1-2.

² 16 U.S.C. § 824o.

³ *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, 114 FERC ¶ 61,104, *order on reh'g*, Order No. 672-A, 114 FERC ¶ 61,328 (2006) [hereinafter Order No. 672].

⁴ *See N. Am. Elec. Reliability Corp.*, Docket No. RR17-3-000 (May 30, 2017) (delegated letter order); *see e.g., infra* n.13.

⁵ 16 U.S.C. § 824o(d)(2).

evaluation of competition for Reliability Standards in Order No. 672, which provides that:

[a]s directed by section 215 of the FPA, the Commission itself will give special attention to the effect of a proposed Reliability Standard on competition. *The ERO should attempt to develop a proposed Reliability Standard that has no undue negative effect on competition.* Among other possible considerations, a proposed Reliability Standard should not unreasonably restrict available transmission capability on the Bulk-Power System beyond any restriction necessary for reliability and should not limit use of the Bulk-Power System in an unduly preferential manner. It should not create an undue advantage for one competitor over another.⁶

In approving a Reliability Standard, [the Commission] will ensure that it does not have the implicit effect of either favoring or thwarting either bilateral or organized markets. At the same time, we will also ensure that a proposed Reliability Standard does not unduly favor either individual participants or certain classes of participants, as required by the statute.⁷

To this end, Order No. 672 expressly requires the consideration of competitive objectives in ERO standard development processes; specifically, any proposed Reliability Standard development process must “include steps to evaluate the effect of the proposed Reliability Standard on competition.”⁸

NERC developed its Market Principles to be consistent with Order No. 672 and FPA section 215.⁹ The Market Principles apply to NERC’s Reliability Standards development processes and ensure that “in addition to providing for an Adequate Level of Reliability, NERC Reliability Standards shall be written such that they achieve their reliability objective without causing undue

⁶ Order No. 672 at P 332 (emphasis added).

⁷ *Id.* at P 378.

⁸ Order No. 672, 114 FERC ¶ 61,104 at P 258.

⁹ 16 U.S.C. § 824o(a)(3) (defining a “reliability standard” as “a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system. The term includes requirements for the operation of existing bulk-power system facilities, including cybersecurity protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.”)

restrictions or adverse impacts on competitive electricity market [...]”.¹⁰ The Market Principles are also derived from, and consistent with, the Commission-approved NERC Rules of Procedure Section 303, Relationship between Reliability Standards and Competition, which provides as follows:

303. Relationship between Reliability Standards and Competition

To ensure Reliability Standards are developed with due consideration of impacts on competition, to ensure Reliability Standards are not unduly discriminatory or preferential, and recognizing that reliability is an essential requirement of a robust North American economy, each Reliability Standard shall meet all of these market-related objectives:

1. Competition — A Reliability Standard shall not give any market participant an unfair competitive advantage.
2. Market Structures — A Reliability Standard shall neither mandate nor prohibit any specific market structure.
3. Market Solutions — A Reliability Standard shall not preclude market solutions to achieving compliance with that Reliability Standard.
4. Commercially Sensitive Information — A Reliability Standard shall not require the public disclosure of commercially sensitive information or other Confidential Information. All market participants shall have equal opportunity to access commercially non-sensitive information that is required for compliance with Reliability Standards.
5. Adequacy — NERC shall not set Reliability Standards defining an adequate amount of, or requiring expansion of, Bulk Power System resources or delivery capability.¹¹

The Commission-approved NERC Standard Processes Manual also references the Market Principles among the principles for guiding standards development.¹²

Finally, NERC clarifies that the language in proposed Texas RE RSDP Section 1.1 does not

¹⁰ NERC maintains the Market Principles as a standalone document on its Standards Resources webpage Market Principles, https://www.nerc.com/pa/Stand/Resources/Documents/Market_Principles.pdf (last revised May 16, 2014).

¹¹ NERC Rules of Procedure, Section 300 (Reliability Standards Development) including section 330 (Relationship between Reliability Standards and Competition) is available at <https://www.nerc.com/AboutNERC/Pages/Rules-of-Procedure.aspx>.

¹² See Appendix 3A to the NERC Rules of Procedure, *Standard Processes Manual* (version 4), at Section 2.3, Market Principles. The Commission approved the current *Standard Processes Manual* in *N. Am. Elec. Reliability Corp.*, Docket No. RR19-2-000 (Mar. 1, 2019) (delegated letter order).

differ in any substantive way from the language in Section II of the current Texas RE RSDP, which was approved by the Commission in 2017.¹³

NERC appreciates the opportunity to provide these clarifying comments and respectfully requests that the Commission accept them for consideration and approve the proposed amendments to the Texas RE RSDP, as described in the May 15, 2023 Petition.

Respectfully Submitted,

/s/ Lauren A. Perotti

Lauren A. Perotti
Assistant General Counsel
North American Electric
Reliability Corporation
1401 H Street NW Suite 410
Washington, D.C. 20005
(202) 400-3000
(202) 644-8099 – facsimile
lauren.perotti@nerc.net

Counsel for the North American Electric Reliability Corporation

June 15, 2023

¹³ See currently effective Texas RE RSDP Section II (p. 3-4), included as Attachment 3 to NERC’s March 6, 2017 Petition for Approval of Amendments to the Texas Reliability Entity Bylaws and Regional Reliability Standards Development Process, Docket No. RR17-3-000. The Commission approved the currently effective Texas RE RSDP on May 30, 2017. See *N. Am. Elec. Reliability Corp.*, Docket No. RR17-3-000.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service lists compiled by the Secretary in Docket No. RR23-1-000.

Dated at Washington, DC this 15th day of June, 2023.

/s/ Lauren A. Perotti

Lauren A. Perotti
*Counsel for North American
Electric Reliability Corporation*