

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

<b>North American Electric</b>	)	
<b>Reliability Corporation,</b>	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 10-1383</b>
	)	
<b>Federal Energy Regulatory Commission,</b>	)	
<b>Respondent.</b>	)	
	)	
<b>The American Public Power Association,</b>	)	
<b>The Edison Electric Institute, The</b>	)	
<b>Electricity Consumers Resource Council,</b>	)	
<b>The Large Public Power Council, The</b>	)	
<b>National Rural Electric Cooperative</b>	)	
<b>Association, and The Transmission Access</b>	)	
<b>Policy Study Group,</b>	)	
<b>Petitioners,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 10-1387</b>
	)	<b>(Consolidated)</b>
<b>Federal Energy Regulatory Commission,</b>	)	
<b>Respondent.</b>	)	

**MOTION TO DISMISS**

Pursuant to Rules 27 and 42 of the Federal Rules of Appellate Procedure and to Rule 27(g) of the Rules of this Court, the Petitioners<sup>1</sup> in the above-captioned

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<sup>1</sup> The Petitioners in these consolidated petitions for review are: North American Electric Reliability Corporation, the American Public Power Association, the Edison Electric Institute, the Electricity Consumers Resource

consolidated proceedings hereby move to dismiss their petitions for review. The Petitioners are authorized to state that Respondent Federal Energy Regulatory Commission (the “Commission”) does not object to this motion.

In these dockets, Petitioners are seeking review of two Commission orders regarding NERC’s obligation, as the nation’s Electric Reliability Organization (“ERO”), to develop reliability standards applicable to users, owners, and operators of the Bulk Power System.<sup>2</sup> The orders on review, *inter alia*, required NERC to modify its Rules of Procedure so that NERC can comply with a FERC directive that fails to garner the support of the NERC standard drafting team and at least 66% of the participants in the NERC standards development process. Petitioners claimed that this aspect of the orders on review was inconsistent with Section 215 of the Federal Power Act<sup>3</sup> and was arbitrary, capricious and unsupported by substantial evidence in the record.

Petitioners requested that these proceedings be held in abeyance pending the issuance of Commission orders on a compliance filing made by NERC on December 23, 2010. NERC’s compliance filing sought to address the

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Council, the Large Public Power Council, the National Rural Electric Cooperative Association, and the Transmission Access Policy Study Group.

<sup>2</sup> *North American Elec. Reliability Corp.*, 130 FERC ¶ 61,203, *order on reh’g*, 132 FERC ¶ 61,218 (2010).

<sup>3</sup> 16 U.S.C. § 824o (2006).

Commission's concerns, as expressed in the orders on review, with NERC's Rules of Procedure. On March 17, 2011, the Commission issued an order approving the compliance filing ("March 17 Order").<sup>4</sup> The March 17 Order has now become final.

As the Commission has found that NERC's compliance filing meets the requirements of the orders on review, there is no ripe controversy between the parties with respect to the orders on review. Petitioners continue to have concerns about the scope of authority that the Commission may attempt to exercise at some time in the future with respect to compliance filings made by NERC in response to Commission directives pursuant to NERC's revised Rules of Procedure accepted in the March 17 Order (including whether the Commission may adopt a reliability standard that has not been approved by NERC). However, at this time the Commission has not attempted to exercise such authority.

Therefore, to move forward with this appeal would involve the Court in issues that are abstract and speculative.<sup>5</sup> It is not clear that a concrete case or controversy will ever arise. For example, the Commission may never be presented with a compliance filing that includes a draft standard that has not been approved by NERC. As this Court has held in finding a case not ripe for review, "if [the

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<sup>4</sup> *North American Elec. Reliability Corp.*, 134 FERC ¶ 61,216 (2011).

<sup>5</sup> *See, e.g., Abbott Laboratories v. Gardner*, 387 U.S. 136, 148 (1967).

Court] do[es] not decide the claim now, [it] may never need to.”<sup>6</sup> The issue is therefore not ripe for review by this Court.

The Court should, therefore, dismiss these consolidated petitions for review without prejudice.

Respectfully submitted,

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<sup>6</sup> *Devia v. NRC*, 492 F.3d 421, 424 (D.C. Cir. 2007) (quoting *Nat’l Treasury Emples. Union v. United States*, 101 F.3d 1423, 1431 (D.C. Cir. 1996)), recently cited in *Alcoa Power Generating, Inc. v. FERC*, No. 10-1066, slip op. at 7 (D.C. Cir. May 3, 2011).

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May 12, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing Motion to Dismiss by first class mail, postage prepaid, upon all parties listed on the official service list in Case Nos. 10-1383 and 10-1387.

Dated at Washington, D.C., this 12<sup>th</sup> day of May, 2011.

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