

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability
Corporation

Docket No. FA11-21-000

**MOTION TO INTERVENE AND COMMENT OUT-
OF-TIME OF AMERICAN PUBLIC POWER
ASSOCIATION, THE NATIONAL RURAL
ELECTRIC COOPERATIVE ASSOCIATION, AND
TRANSMISSION ACCESS POLICY STUDY GROUP,
AND COMMENTS IN SUPPORT OF COMPLIANCE
FILING**

Pursuant to Rules 212 and 214(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.214(d), and the Commission’s February 4, 2013 Notice of Filing and its February 4, 2013 Errata Notice, the American Public Power Association (“APPA”), the National Rural Electric Cooperative Association (“NRECA”), and the Transmission Access Policy Study Group (“TAPS”) seek to intervene or at least comment out-of-time and submit brief comments in support of the February 1, 2013 Compliance Filing of the North American Electric Reliability Corporation (“NERC”) in Response to Paragraph 30 of November 2, 2012 Commission Order – NERC Written Criteria for Determining Whether a Reliability Activity is Eligible to be Funded under Federal Power Act Section 215 (“NERC Compliance Filing”).

I. MOTION TO INTERVENE AND/OR COMMENT OUT-OF-TIME

The Commission’s Notice, as revised by its Errata Notice, provides a comment opportunity, but not an opportunity to intervene. While this is consistent with the Commission’s rulings regarding the performance audit proceeding which gave rise to

NERC's Compliance Filing,¹ to ensure full due process rights APPA, NRECA, and TAPS seek intervention out of time. At minimum, we ask the Commission that our late comments be accepted and considered.

APPA is the national service organization representing the interests of not-for-profit, publicly owned electric utilities throughout the United States. 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. TAPS is an association of transmission-dependent utilities in more than 35 states, promoting open and non-discriminatory transmission access. APPA, NRECA, and TAPS participated in joint trade association submissions at earlier stages of this proceeding and in the stakeholder process, described in NERC's Compliance Filing at 8-12, used to develop NERC's written criteria to be used by NERC to determine whether an activity is a statutory activity under Section 215 of the Federal Power Act ("FPA"), and should be funded pursuant to that Section.

Good cause exists for granting this motion for late intervention pursuant to Rule 214(d). This filing is made within two days of NERC's responsive filing and accepts the record as it stands. Because our brief comments support previously filed submissions, without adding new arguments, the addition of APPA, NRECA, and TAPS as parties and/or acceptance of our limited comments will not disrupt the proceedings or otherwise prejudice or burden the parties.

The interests of APPA, NRECA, and TAPS cannot adequately be represented by any other party, and their participation in this proceeding is in the public interest. APPA,

¹ *N. Am. Elec. Reliability Corp.*, 139 FERC ¶ 61,179, P 11 (2012).

NRECA, and TAPS should be granted intervention and each should be made a full party to the above-captioned proceeding. At minimum, our late comments should be accepted and considered.

Notices and communications regarding this filing may be addressed to:

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II. COMMENTS

APPA, NRECA, and TAPS support NERC's Compliance Filing. As noted above, APPA, NRECA, and TAPS participated in the stakeholder process used to develop NERC's written criteria that NERC proposes to use to determine whether an activity is a statutory activity under Section 215 of the Federal Power Act, and should be funded pursuant to that Section. We also generally support the February 22, 2013 Comments of the Large Public Power Council in Support of Filing ("LPPC Comments") and the March 6, 2013 Response of the North American Electric Reliability Corporation to Edison Electric Institute's Motion to Intervene, Motion to Consolidate, and Comments.

NERC's written criteria are appropriate tools to be applied by NERC internally to screen proposed activities as to whether they fall within the scope of Section 215 and are eligible for statutory funding. As explained in the LPPC Comments at 2, the NERC written criteria reflect a reasonable attempt to detail activities that are either expressed in the statute as essential to certification of the Electric Reliability Organization under FPA Section 215, or are so closely correlated as reasonably to be considered activities under that Section. Decisions as to which of the particular activities that fall within the written criteria should be pursued by NERC at any given time are subject to consideration in development of NERC's annual business plan, NERC's annual filing of its business plan and budget, and this Commission's determination in such proceedings.

APPA, NRECA, and TAPS urge the Commission to accept NERC's written criteria as proposed.

Respectfully,

**AMERICAN PUBLIC
POWER ASSOCIATION**

/s/ Allen Mosher

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March 8, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated on this 8th day of March, 2013.

/s/ Cynthia S. Bogorad

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