

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

Complaint of Michael Mabee Related to            )           Docket No. EL20-21-000  
Critical Infrastructure Reliability Standard        )

**PROTEST OF  
THE AMERICAN PUBLIC POWER ASSOCIATION,  
THE LARGE PUBLIC POWER COUNCIL, AND  
TRANSMISSION ACCESS POLICY STUDY GROUP**

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”),<sup>1</sup> and the Commission’s February 24, 2020 Notice of Supplemented Complaint, the American Public Power Association (“APPA”),<sup>2</sup> the Large Public Power Council (“LPPC”),<sup>3</sup> and Transmission Access Policy Study Group (“TAPS”)<sup>4</sup> hereby protest the January 29, 2020 Complaint and the February 19, 2020 “Additional Information and Recommendations of Complainant” (“Supplemental Complaint”)

---

<sup>1</sup> 18 C.F.R. § 385.211 (2019).

<sup>2</sup> APPA is the national service organization representing the interests of not-for-profit, state, municipal, and other locally owned electric utilities in the United States. More than 2,000 public power systems provide over 15 percent of all kilowatt-hours sales to ultimate customers and serve over 49 million people, doing business in every state except Hawaii. Over 250 public power utilities are Registered Entities subject to compliance with mandatory reliability standards.

<sup>3</sup> LPPC represents 27 of the largest state and municipally-owned utilities in the nation. LPPC’s members are located throughout the nation, both within and outside the boundaries of regional transmission organizations and independent system operators. The members comprise the larger, asset-owning utilities in the public power community, owning approximately 90 percent of the transmission assets owned by non-federal public power entities. LPPC members are also members of APPA.

<sup>4</sup> TAPS is an association of transmission-dependent utilities (“TDUs”) in more than 35 states promoting open and non-discriminatory transmission access. Representing entities entirely or predominantly dependent on transmission facilities owned and controlled by others, TAPS has long recognized the need for reliable and secure transmission infrastructure that enables TAPS members to serve their load affordably. As TDUs, TAPS members make investments to secure their own assets and pay, through transmission rates, for investments made by other utilities to improve their transmission facilities’ security. In addition, many TAPS members participate in the development of and are subject to compliance with NERC reliability standards, including Critical Infrastructure Protection (“CIP”) standards.

filed by Michael Mabee in the above-captioned proceeding.<sup>5</sup> As explained below, and in the comments filed by the North American Electric Reliability Corporation (“NERC”) in this proceeding,<sup>6</sup> the Commission should dismiss the Complaint and Supplemental Complaint because Complainant has not carried his burden under Rule 206 to show that the Commission should revisit its approval of NERC Reliability Standard CIP-014-2 (Physical Security), nor has Complainant established that enforcement of CIP-014-2 is inadequate.

## I. PROTEST

### A. The Complaint and Supplemental Complaint Fail to Provide An Adequate Basis to Revisit The Commission’s Approval of CIP-014-2

In an order issued on March 7, 2014, the Commission directed NERC “to develop and file for approval proposed Reliability Standards that address threats and vulnerabilities to the physical security of critical facilities on the Bulk-Power System.”<sup>7</sup> In response, NERC filed a petition with the Commission on May 23, 2014 seeking approval of proposed Reliability Standard CIP-014-1. The Commission issued a notice of proposed rulemaking (“NOPR”) regarding the proposed standard in Docket No. RM14-15-000, and numerous interested parties filed comments on the NERC proposal. After considering these comments, the Commission approved Reliability Standard CIP-014-1 in Order No. 802, subject to a further directive.<sup>8</sup> The Commission subsequently approved Reliability Standard CIP-014-2 on July 14, 2015.<sup>9</sup>

---

<sup>5</sup> APPA, LPPC, and TAPS are each separately filing doc-less motions to intervene in the above-captioned proceeding.

<sup>6</sup> *Complaint of Michael Mabee Related to Critical Infrastructure Reliability Standard*, Docket No. EL20-21-000, Motion to Intervene and Comment of the North American Electric Reliability Corporation (March 2, 2020) (“NERC Comments”).

<sup>7</sup> *Reliability Standards for Physical Security Measures*, 146 FERC ¶ 61,166, at P 5 (2014).

<sup>8</sup> *Physical Security Reliability Standard*, Order No. 802, 149 FERC ¶ 61,140 (2014), *reh’g denied*, 151 FERC ¶ 61,066 (2015); *see also* NERC Comments at 7-8 (describing the background of CIP-014-2).

<sup>9</sup> *North American Elec. Reliability Corp.*, Docket No. RD15-4-000 (July 14, 2015) (letter order).

Complainant did not avail himself of the opportunity to participate in the NOPR proceedings addressing Reliability Standard CIP-014-1 in Docket No. RM14-15-000. He neither filed comments in response to the NOPR, nor sought rehearing of Order No. 802. Complainant now seeks to collaterally attack the Commission's approval of the CIP-014 standard, relying on little more than his own view that the standard vetted by industry stakeholders and approved by the Commission is "inadequate." Complainant, however, does not cite any new or changed circumstances that might warrant revisiting the Commission's conclusion that the CIP-014 standard is just and reasonable and provides an appropriate framework for the physical security of critical facilities.<sup>10</sup>

Nor does Complainant offer any specific factual support regarding the alleged deficiencies and "loopholes" he perceives in Reliability Standard CIP-014-2.<sup>11</sup> For example, the Complaint and Supplemental Complaint speculate that CIP-014 could allow two Registered Entities to effectively evade the third-party review requirements of CIP-014-2 by engaging in reciprocal reviews in which they "go easy" on one other.<sup>12</sup> Complainant offers no evidence that any Registered Entity has engaged in such a gambit. Moreover, Complainant does not explain why a Registered Entity would have any *incentive* to pursue such a scheme or take any other approach to CIP-014 compliance that might compromise the physical security of its facilities.<sup>13</sup>

---

<sup>10</sup> See, e.g., *Alamito Co.*, 41 FERC ¶ 61,312, at 61,829 (1987) (explaining that "in the absence of new or changed circumstances requiring a different result, it is contrary to sound administrative practice and a waste of resources to re-litigate issues in succeeding cases once those issues have been finally determined." (internal quotes and citation omitted)); see also NERC Comments at 8-10.

<sup>11</sup> See NERC Comments at 8-9.

<sup>12</sup> Supplemental Complaint at 7-8; see also Complaint at 4.

<sup>13</sup> See NERC Comments at 17 (stating that "NERC believes that registered entities have a clear interest in ensuring the physical security of their systems and the [Bulk-Power System] as a whole.").

The claim that CIP-014-2 is “inadequate” is based on nothing more than speculation and opinion, and falls far short of the standard required for a complaint under the Commission’s regulations.<sup>14</sup>

**B. The Complaint and Supplemental Complaint Fail to Establish that Enforcement of CIP-014-2 is Inadequate**

Complainant asserts that enforcement of CIP-014-2 “seems nonexistent,”<sup>15</sup> and he asks the Commission to “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.”<sup>16</sup> In its Comments, however, NERC explains that Complainant’s arguments are speculative, unsupported and inaccurate.<sup>17</sup> Indeed, the principal “evidence” that Complainant cites in support of his claim of deficient CIP-014-2 enforcement is the relatively small number of citations published for violations of CIP-014-2.<sup>18</sup> As NERC correctly observes, however, the small number of violations can just as easily (and, in our view, more credibly) be regarded as evidence that Registered Entities are taking their CIP-014 compliance obligations very seriously.<sup>19</sup>

---

<sup>14</sup> See 18 C.F.R. § 385.206(b)(1) (2019) (requiring that a complainant, *inter alia*, “[c]learly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements”); *see also, e.g., Kathryn E. Leonard v. R.I. Pub. Util. Comm’n*, 167 FERC ¶ 61,072, at P 36 (2019) (explaining that “rather than bald allegations, a complainant must make an adequate proffer of evidence including providing pertinent information and analysis to support its claims.” (quotes, alterations, and citations omitted)).

<sup>15</sup> Complaint at 1.

<sup>16</sup> Complaint at 7; Supplemental Complaint at 12.

<sup>17</sup> See NERC Comments at 11-17.

<sup>18</sup> See Complaint at 5-7.

<sup>19</sup> NERC Comments at 16. Complainant fails to establish that the list of Form OE-417 incidents included with the Supplemental Complaint is germane to assessing the adequacy of CIP-014-2 or its enforcement. *See* Supplemental Complaint at 11 & Exhibit A.

## II. CONCLUSION

For the reasons set forth above, and in the NERC Comments, APPA, LPPC, and TAPS respectfully request that the Commission dismiss the Complaint and Supplemental Complaint in this proceeding.

Respectfully submitted,

### **American Public Power Association**

/s/ John E. McCaffrey  
John E. McCaffrey  
Senior Regulatory Counsel  
Jack Cashin  
Director, Policy Analysis and  
Reliability Standards  
American Public Power Association  
2451 Crystal Drive  
Suite 1000  
Arlington, VA 22202  
202-467-2900

### **Large Public Power Council**

/s/ Jonathan D. Schneider  
Jonathan D. Schneider  
Jonathan P. Trotta  
Stinson LLP  
1775 Pennsylvania Avenue, NW  
Suite 800  
Washington, DC 20006  
(202) 728-3034

### **Transmission Access Policy Study Group**

/s/ Rebecca J. Baldwin  
Cynthia S. Bogorad  
Rebecca J. Baldwin  
SPIEGEL & MCDIARMID LLP  
1875 Eye Street, NW  
Suite 700  
Washington, DC 20006  
(202) 879-4000

DATED: March 10, 2020

**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.

Dated at Arlington, Virginia, this 10th day of March, 2020.

*/s/ John E. McCaffrey*  
\_\_\_\_\_  
John E. McCaffrey