

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

Technical Conference on Environmental            )  
Regulations and Energy Reliability,            )     Docket No. AD15-4  
Wholesale Electricity Markets and                )  
Energy Infrastructure                                )

**Supplemental Statement of John DiStasio  
President, Large Public Power Council**

**March 24, 2015**

**INTRODUCTION**

This supplemental statement responds to the request made by Chairman LaFleur at the close of the first panel at the technical conference in this docket on March 11, 2015 asking for additional detail on the way in which a “Reliability Assurance Mechanism” associated with implementation of the Environmental Protection Agency’s (EPA) Clean Power Plan (CPP) may work. As I indicated in my initial statement to the Commission in this docket,<sup>1</sup> I believe it is critical that the Commission endorse an upfront and proactive role for NERC and FERC in evaluating the reliability impacts of the plans that states or EPA must establish to implement the applicable CO<sub>2</sub> emission rate targets established under the CPP. This upfront evaluation of reliability impacts should occur before the state or federal plans take legal effect and begin to impose federally enforceable requirements on affected electric utilities to reduce CO<sub>2</sub> emissions. I further recommend that the Commission endorse an ongoing role for NERC and FERC during the implementation stage of the state or federal plans, once they take legal effect.

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<sup>1</sup> Statement of John DiStasio, President, Large Public Power Council, FERC March 11, 2015 Technical Conference for Eastern Region, Docket No. AD14-4 (filed Mar. 9, 2015).

My comments here address the following two related items: (1) the timing and effect of the reliability assessment that NERC and FERC would perform prior to the state or federal plans taking legal effect under the CPP; and (2) the substantive scope of this reliability assessment.

### **SUPPLEMENTAL COMMENTS**

#### **1. The Timing of Input from NERC and FERC in Evaluating the Reliability Impacts of State and Federal Plans under the CPP**

I think it is useful to divide the points at which reliability input from NERC and FERC would be most valuable into three stages: (1) while the plans to implement the CPP's CO<sub>2</sub> emission targets are being developed; (2) immediately after finalization of these plans, but before they take legal effect; and (3) ongoing evaluation of the plans during the implementation phase of the CPP program. Procedures governing these stages would be slightly different for states which choose to develop state plans, and those for which EPA must fill the gap and adopt federal plans to implement particular states' CO<sub>2</sub> emission rate targets under the CPP.

At each of these stages, as I indicated in my initial statement, I believe that with FERC oversight, NERC is equipped to have "first chair" responsibility to perform reliability assessments. NERC has the expertise, statutory authority and necessary independence to perform the function. Under Federal Power Act (FPA) section 215(c), as a predicate to its certification as the Electric Reliability Organization, NERC was required to demonstrate independence from the users, owners and operators of the bulk power system (BPS). And NERC's responsibility to perform periodic assessments of the reliability and adequacy of the BPS is set out in FPA section 215(g), which directs NERC to "conduct periodic assessments of the reliability and adequacy of the bulk-power system in North America." I further believe that FERC must provide oversight of NERC's recommendations, to the extent they argue for an extension of otherwise applicable CPP compliance deadlines, as I discuss below.

NERC's input at each of the first two stages of its assessment (during and after finalization of the CPP implementation plans) must be timed to ensure that grid reliability is considered before investment decisions are made and funds expended. This input must be provided with an eye toward all planning options, and with enough lead-time to affect decisions regarding needed investment. An after-the-fact “safety value” is important, but cannot substitute for a process that integrates planning to achieve CO<sub>2</sub> reduction with a reliability impact assessment. The integration of these factors is critical in order to provide a platform for optimal planning from a reliability and economic standpoint.

In its Initial Reliability Review of the CPP, released in November 2014, NERC identified the analysis it would provide at the first stage I describe above as occurring in Phase II of its “Special Reliability Assessment.” NERC further indicated that its assessments will consider emerging state plans to implement the CPP requirements in light of the EPA's final rule, and that the studies will be “conventional reliability assessment[s] based on known requirements,” completed prior to submission of the state plans.<sup>2</sup>

I believe that reliability input at this early stage offers the greatest potential for a process that will effectively integrate EPA's environmental goals with reliability planning considerations. At this stage, I would also expect NERC will be well-positioned to take into account reliability assessments provided and concerns raised by RTOs/ISOs and state commissions, all of which will have information about and reason to be concerned with reliability of the grid. I also anticipate that NERC may reasonably delegate its participation in the state processes to regional entities, subject to NERC's oversight.

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<sup>2</sup> NERC, Potential Reliability Impacts of EPA’s Proposed Clean Power Plan: Initial Reliability Review (Nov. 2014), p. 4, available at: [http://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/Potential\\_Reliability\\_Impacts\\_of\\_EPA\\_Proposed\\_CPP\\_Final.pdf](http://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/Potential_Reliability_Impacts_of_EPA_Proposed_CPP_Final.pdf).

The second stage for reliability assessment – following the finalization of state or federal plans but prior to those plans taking legal effect – is a stage that provides NERC with the opportunity to identify specific situations in which the implementation of the state or federal plans – either individually or collectively – may threaten the reliability or adequacy of service.<sup>3</sup> NERC's input at this stage should be an essential last step prior to the plans taking legal effect and imposing enforceable CO<sub>2</sub> reduction requirements on affected electric utilities.<sup>4</sup> As a result, NERC's input safeguards against affected utilities making compliance and implementation decisions that could potentially jeopardize grid operations, absent subsequent emergency action.

Within this framework, I believe FERC's oversight role becomes critical in the event NERC determines, at either the first or second phases of its assessment, that the timeline for implementation of state or federal plans must be adjusted vis-à-vis what might otherwise be the requirements of the CPP, in order to assure reliable and adequate service. At that juncture, FERC must review NERC's assessment, and confirm that BPS reliability and adequacy call for an adjustment to the compliance schedule. In this oversight role, I believe that FERC should give NERC a substantial degree of deference, in view of its expertise and independence. One reasonable lens through which FERC may view NERC's assessment will be to ensure that it has followed reasonable and prudent utility practice in undertaking its work.

In the event NERC has determined, with FERC's imprimatur, that BPS reliability calls for an extension of the CPP implementation timeline for one or more states, it would be incumbent

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<sup>3</sup> To minimize any delays in the implementation of the state plans, I would suggest that NERC begin its assessment of the cumulative reliability impacts of those plans at the same time that states finalize and submit them for EPA review. Similarly, the evaluation of federal plans should begin as early as possible – perhaps at the time that EPA issues the proposed plan for a particular state, but not later than the issuance of the final federal plan. This proactive assessment of state and federal plans should help to ensure that EPA receives input from FERC and NERC as early as possible.

<sup>44</sup> NERC's evaluation of the cumulative reliability impacts should include an examination of the issues and concerns raised by RTOs/ISOs and state commissions regarding the implementation of the CPP.

upon EPA to adjust the implementation deadlines. I recognize that neither FERC nor NERC has authority to require such an adjustment of the CPP implementation deadlines under the Clean Air Act, and that EPA's consideration of this input is therefore within its own discretion, absent a change in law. In comments to EPA in the CPP rulemaking process, LPPC and others have urged EPA to account for the CPP's potential adverse reliability impacts to the electric grid when establishing the timeline for state or federal implementation of CPP reduction requirements.

Finally, during the implementation of the final state or federal plans (the third stage), NERC must maintain an ongoing role in evaluating dynamic system operations, in order to ensure that changing conditions with respect to load, generating resources and delivery systems do not threaten system reliability. Here again, to the extent that the implementation of a final state or federal plan threatens system reliability, I believe that it must be incumbent on EPA to act on NERC's recommendation (subject to FERC's oversight) in order to maintain a reliable grid. NERC's evaluation at this stage of the process might indeed be referred to as a "reliability safety value." But I again emphasize that, important though it is, this procedure must not be used as a substitute for taking reliability into close account when the state or federal plans are formulated and adopted in accordance with the requirements of the Clean Air Act.

## **2. The Scope of NERC and FERC Review**

At the March 11 conference, the Commissioners raised important questions regarding the appropriate scope of a reliability assessment in conjunction with the implementation of the state-specific CO<sub>2</sub> emissions targets under the CPP. There, I emphasized, as I do here, that under FPA section 215, NERC, as the certified Electric Reliability Organization, is charged with the responsibility to develop and enforce standards, and to perform reliability assessments, addressed to the reliable operation of the BPS. I believe that focusing on the BPS (or BES) appropriately

defines the scope of NERC's and FERC's review in connection with implementation of the CPP's CO<sub>2</sub> reduction requirements.<sup>5</sup>

FERC has approved a definition for the BES that includes bright-line core criteria, subject to enumerated inclusions and exclusions. Using this definition to establish the scope of reliability assessments to be performed in connection with the CPP seems to me to be an appropriate means of defining the reach of both NERC's and FERC's reliability oversight. FPA section 215(g) specifies that NERC's periodic assessments will be of “the reliability and adequacy of the bulk-power system.” This definition naturally excludes distribution-level oversight that is at the core of state authority.

I want further to emphasize that the assessments that NERC must undertake under FPA section 215(g) encompass not only reliable operation of the BPS, but the adequacy of the system as well. FPA section 215(a)(4) defines the term “reliable operation” to mean:

operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements.

While the term “adequacy” is not defined under the statute, it connotes further evaluation of the capability of the BPS to provide the level of service intended. That is to say, more than focusing on avoiding conditions which would trigger uncontrolled failure of the BPS (which might be avoided by unloading the system through controlled blackouts), it is appropriate to study whether the system is adequate to keep the lights on.

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<sup>5</sup> Recognizing that the Commission has permitted NERC to gear standards and enforcement to ensuring reliable operation of the “Bulk Electric System” (BES), I will treat these terms as synonymous for present purposes.

## **CONCLUDING REMARKS**

Whatever one's view of the CPP – and LPPC has members in different camps – the importance of preserving grid reliability when implementing EPA's directive should not be controversial. In fact, I think nothing would be more detrimental to EPA's CPP program than to find that its implementation threatens the reliability of the electric grid. Recognizing that FERC does not have control over the manner in which EPA will consider reliability implications of the CPP, I ask that the Commission consider endorsing the framework I have outlined here, providing a critical role for NERC and FERC in shaping the state and federal plans that may otherwise threaten the reliability of the BPS.