

Bulk Electric System (“BES”) reliability and to correct and clarify vague language in proposed EOP-012-2.

In this Protest, the IRC

- details its specific issues and concerns with the effectiveness of the proposed Reliability Standard,
- addresses and identifies the deficiencies in the responses of the Standard Drafting Team to the IRC’s proposals; and
- proposes specific language that would resolve the issues and ensure EOP-012-2’s effectiveness as a winterization standard.⁴

The tragic recent cold weather events underscore the importance of the Commission ensuring that requirements for winterization by Generator Owners are clear and actionable. From the beginning of the NERC standard development process, the IRC has actively engaged to advocate for durable requirements that will lead to effective winterization to avoid the level of generating unit unavailability that occurred in Texas during Winter Storm Uri and in the northeast and mid-Atlantic during Winter Storm Elliott. Key to an effective standard is ensuring that exceptions to the standard’s requirements (which may be permissible in unique circumstances) are not so vague or open-ended as to effectively swallow the Reliability Standard’s requirements themselves.

⁴ The IRC recognizes that the Commission cannot write the actual standard. However, the IRC urges the Commission, as it has done in other situations, to provide clear, direct guidance as to its expectations and concerns so that the standard can be corrected in a timely and efficient manner. The IRC provides herein the language that it proposed during the NERC standard development process to assist the Commission in crafting that clear guidance to NERC on remand.

Throughout the drafting process, the IRC was careful to propose specific language to address the concerns it raised. While some modifications were made in response to the IRC's comments (which the IRC appreciates), the IRC's most significant concerns remain unaddressed in the proposed Reliability Standard.

The IRC members are charged with a key mission of ensuring reliability for the millions of customers in their respective footprints. It is admittedly unusual for the IRC members in the United States to *unanimously* urge the Commission to reject and remand a NERC Reliability Standard. The IRC does not take this step lightly, but given the significance of this proposed Reliability Standard and the need to 'get it right' rather than just 'getting it done', the IRC urges the Commission to carefully weigh the fact that the record reflects the united opposition of all the RTOs and ISOs throughout the United States (and the IESO in Canada) to the exceptions and low winterization bar included in the proposed standard.

By providing clear direction and a prompt compliance deadline, the Commission can ensure effective, expeditious winterization under a revised Reliability Standard. Settling for the standard that NERC has filed in this proceeding, with its glaring exceptions and vague requirements, will only result in reliability issues that the Commission will need to address later and at a greater cost to Generator Owners and the public. Given the seriousness of the topic and its importance in helping to avoid future reliability events such as Winter Storms Uri and Elliott, this is the time to 'get it done right'.

I. PROTEST

For the reasons detailed below, the IRC respectfully requests that the Commission issue an order:

- (i) denying NERC's petition and remanding EOP-012-2 pursuant to the Commission's authority under Federal Power Act ("FPA") section 215(d)(4)⁵ and section 215(d)(5),⁶ and
- (ii) directing NERC to submit a revised version of EOP-012-2 to the Commission that addresses the specific issues raised by the IRC by no later than 120 days from the date of the Commission's order.

The IRC members, through the IRC Standards Review Committee, went on record at each opportunity in the NERC standard development process to raise important concerns with EOP-012-2 as drafted and propose solutions that would address these concerns. In the IRC's view, those proposed solutions, which the drafting team elected not to adopt, *go to the heart of ensuring that the standard meets the reliability goal of effective winterization, implements the Commission's directives in its February 16, 2023 order,⁷ and ensures timely and effective oversight of any exceptions to the standard's requirements.*

⁵ 16 U.S.C. § 824o(d)(4) ("The Commission shall remand to the Electric Reliability Organization for further consideration a proposed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part.").

⁶ *Id.* § 824o(d)(5) ("The Commission, upon its own motion or upon complaint, may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.").

⁷ *N. Am. Elec. Reliability Corp.*, 182 FERC ¶ 61,094 (2023).

Specifically, the IRC urges the Commission to direct NERC to revise the standard to:

- exclude cost-based constraint criteria from the standard itself, recognizing that the issue needs to be addressed through other avenues in the regulatory process;
- use effective facility performance as a benchmark instead of relying on vague references to ‘general industry practice’;
- eliminate language that is vague, unauditible, and susceptible to multiple interpretations by different Generator Owners;
- narrow the proposed exemptions for existing generating units;
- shorten and clarify the periods allotted for implementation of freeze protection measures;
- eliminate grandfathering provisions so that the same enhanced winterization standard applies to all affected generating units regardless of commercial operation date;
- require annual reviews of declared Generator Cold Weather Constraints; and
- add timing specificity for required inspections and maintenance.

As reflected in the record of the NERC standard development process, the IRC presented proposals and associated substitute language to address the identified concerns throughout the process. As will be detailed below, while the Standard Drafting Team responded to the IRC’s comments, the responses either did

not address the specific IRC proposal in any detail or did not provide sufficient grounds for the IRC to conclude that its concerns and alternative proposals should no longer be pursued.⁸ Based on the specific Protest below, the IRC asks the Commission to give NERC a clear and targeted mandate to revise the proposed Reliability Standard to address these issues. Clarity from the Commission is needed at this point as these issues have been thoroughly vetted in the record. Given the importance of having clear and auditable provisions in the standard as soon as possible and the lack of record support refuting or in some cases even addressing the IRC's concerns, this is the time for the Commission to ensure that the winterization standard will be effective from its inception.

A. The Commission Should Direct NERC to Revise the Generator Cold Weather Constraint Definition to Exclude Cost-Based Constraint Criteria.

1. IRC Concern

Under proposed Reliability Standard EOP-012-2, Requirement R7, Part 7.4, Generator Owners that declare a 'Generator Cold Weather Constraint' are excused from implementing freeze protection measures covered by the constraint.⁹ The definition of what qualifies as a potential Generator Cold Weather Constraint¹⁰ is subjective, unclear, and unauditible. Specifically, the definition indicates that a criterion that may be used to determine whether a constraint exists is that freeze

⁸ For the Commission's convenience, the IRC includes summaries of the Standard Drafting Team's responses and the reasons the IRC finds those responses unpersuasive.

⁹ See NERC Petition Ex. A at 2-3, 8-9 (pages 78-79 and 84-85 of the overall petition).

¹⁰ See *id.* at 2-3 (pages 78-79 of the overall petition).

protection measures “could not have been implemented at a reasonable cost consistent with good business practices, reliability, or safety.”¹¹ The definition further indicates that “[a] cost may be deemed ‘unreasonable’ when implementation of selected freeze protection measure(s) are uneconomical to the extent that they would require prohibitively expensive modifications or significant expenditures on equipment with minimal remaining life.”¹²

This definition as drafted would allow Generator Owners to declare a Generator Cold Weather Constraint simply by asserting that implementing a given freeze protection measure would constitute a “prohibitively expensive modification[.]” or a “significant expenditure[.]” and that the affected facility has “minimal remaining life.”¹³ This presents a number of issues. First, the proposed language allows an entity that is subject to the standard to invoke an embedded exception to the standard’s requirements if it determines that the cost of compliance is simply too high. Enforcing the standard when this exception is invoked effectively injects NERC and the Regional Entities into the process of judging the reasonableness of costs, cost estimates, and even the particular Generator Owner’s specific financial situation.

Cost recovery **is** a critically important issue, but one that has typically been addressed outside of NERC’s jurisdiction. Rather, cost should be addressed by the Commission through its obligation to ensure just and reasonable rates (undertaken,

¹¹ *Id.* at 3 (page 79 of the overall petition).

¹² *Id.*

¹³ *See id.*

in the case of the Commission, through its Office of Energy Market Regulation) and by the appropriate state, local, and provincial regulatory authorities, not shoehorned into a NERC Reliability Standard. As this issue is a matter of policy, it is somewhat unique from the other, more technical, issues the IRC has identified, and a Commission directive for NERC to remove cost-based constraints from EOP-012-2 would be consistent with how cost recovery has traditionally been handled.

Moreover, the IRC supports a constraint process that can be invoked on a unit-specific basis to address issues of technical feasibility, which is an area that falls squarely under NERC's expertise of ensuring the effective and efficient reduction of risks to the reliability and security of the grid. *In contrast, the proposed cost exception goes in an entirely different direction by allowing Generator Owners to effectively self-certify that they are invoking the exception based on self-defined assertions of 'unreasonable cost,' which NERC and the Regional Entities are not staffed or equipped to audit, as they lack the subject matter expertise necessary to fairly and impartially assess entity financial records and capabilities.* Even if NERC and the Regional Entities were to add this sort of financial component to their audits, the constraint definition lacks guidance that auditors can apply uniformly and consistently when confronted with differing interpretations of what constitutes a Generator Cold Weather Constraint. *Consequently, constraint declarations based on claims of unreasonable costs will prove to be difficult or impossible to audit effectively and consistently, even if*

NERC and the Regional Entities were to develop the requisite expertise in financial auditing.

Second, the proposed language invites Generator Owners to define for themselves what constitutes a “reasonable cost,” a “prohibitively expensive modification,” a “significant expenditure,” or “minimal remaining life.”¹⁴ Since Generator Owners compete with each other at the wholesale level, such vague terms can only work to invite a ‘race to the bottom’ as Generator Owners face economic incentives to keep their compliance costs lower than those of their competitors. Should one unit owner declare a cost-based constraint, its competitors will rapidly feel the pressure to do the same so they can remain competitive. In this instance, including cost-based constraints in the standard drives a ‘race to the bottom’ to spend as little as possible on winterization in order to remain economically competitive instead of a ‘race to the top’ to achieve superior performance.¹⁵ This runs counter to the objective of ensuring the minimum level of winterization that was recommended in the joint report that the Commission, NERC, and Regional Entity Staff issued on Winter Storm Uri. *Moreover, different Generator Owners could arrive at very different interpretations of these terms, resulting in a lack of*

¹⁴ *See id.*

¹⁵ While a generating unit with better winterization will operate better on severe cold winter days, under the proposed standard’s broad definition of what qualifies as a constraint, Generator Owners will inevitably have to balance that fact with the reality that on mild days the additional winterization provides less performance benefit for the expense incurred and could therefore make their generating units less economically competitive compared to the generating units of a Generator Owner that declared a cost-based constraint and did not adequately winterize its generating units. This results in the economic incentive to minimize winterization expenditures as noted above.

consistency in winterization that will make it harder for system operators to be confident that the generation fleet as a whole can withstand the winter temperatures the standard is intended to require them to prepare for.

These deficiencies mean that the cost component of Generator Cold Weather Constraints is effectively unauditible and could easily be used excessively, resulting in EOP-012-2 failing to address the Commission’s concerns regarding the ambiguity of constraint declarations¹⁶ and meet the Commission’s directives to “capture[] all bulk electric system generation resources needed for reliable operation and exclude[] only those generating units not relied upon during freezing conditions”¹⁷ and “include auditable criteria on permissible constraints.”¹⁸

2. Standard Drafting Team Response

In its response to the IRC’s comments during the NERC standard development process, the Standard Drafting Team argued that a reasonableness standard for evaluating constraint declarations is appropriate given the wide range of facts and circumstances that will be relevant under the definition.¹⁹ The Standard Drafting Team also indicated that the term “unreasonable costs” is intended to refer to cost-prohibitive modifications or significant expenditures that could lead to premature retirement of equipment.²⁰ Additionally, the Standard Drafting Team

¹⁶ See *N. Am. Elec. Reliability Corp.*, 182 FERC ¶ 61,094, at P 6 (2023).

¹⁷ *Id.* at P 58.

¹⁸ *Id.* at P 66.

¹⁹ See NERC Petition Ex. F, Consideration of Comments for Draft 3 of EOP-012-2 at 50-51 (pages 1,901-1,902 of the overall petition).

²⁰ See *id.*

expressed its agreement with comments submitted by another party regarding NERC's responsibility to ensure consistent interpretation of the Generator Cold Weather Constraint definition across all regions and resource types.²¹

While the IRC appreciates that cost recovery is a critically important issue, assessing the appropriateness of reliability-related costs, particularly under a nebulous standard of reasonableness, does not belong in a NERC Reliability Standard. Cost assessment is the domain of federal, state, provincial, and local laws that address market design and rate regulation. It is not the domain of FPA section 215 or NERC Reliability Standards. The IRC agrees that ensuring consistent interpretation of Reliability Standards across all regions and resource types is one of NERC's responsibilities. One of the most important ways it carries out that responsibility is by ensuring that Reliability Standards contain clear, objective criteria so that each affected entity has unambiguous advance notice of the Commission's and NERC's expectations and does not have to guess what will be required of it. A standard that contains an exception process that revolves around subjective terminology regarding "reasonable cost," a "prohibitively expensive modification," a "significant expenditure," or "minimal remaining life"²² accomplishes none of those goals, and instead leaves the ultimate practical definition of those terms to the NERC audit and enforcement processes, requiring entities to continually test the boundaries of those terms over the course of years or

²¹ *See id.*

²² *See* NERC Petition Ex. A at 2-3 (pages 78-79 of the overall petition).

decades as they learn by experience which constraint declarations result in findings of noncompliance and which do not.²³

3. IRC Proposed Solution

To avoid the problem of simply accepting an undefined and unauditable exception that will inject NERC and the Regional Entities into an area that is outside of their expertise and mission and create profound uncertainty regarding what constitutes an acceptable constraint, the IRC urges the Commission to direct NERC to revise the constraint definition by removing cost-based constraints from the Reliability Standard entirely.

The IRC understands that cost recovery is an important issue for impacted Generator Owners. To underscore the continued importance of cost recovery, the Commission should indicate its intention to allow for cost recovery and direct its Office of Energy Market Regulation to survey those markets within its jurisdiction to determine whether there are sufficient vehicles for cost recovery of winterization costs. Relevant state, local, and provincial regulators could undertake similar reviews, within their discretion, of cost recovery mechanisms for Generator Owners operating within their respective jurisdictions.

²³ A process not unlike the decades-long process of litigation by which courts have defined the boundaries of the reasonableness standard in their respective jurisdictions.

B. The Commission Should Direct NERC to Revise the Generator Cold Weather Constraint Definition to Focus on Effective Facility Performance Instead of General Industry Practice.

1. IRC Concern

The IRC believes that the discussion of freeze protection measures in the Generator Cold Weather Constraint definition creates additional ambiguity that provides far too much discretion to the entities required to comply with the proposed Reliability Standard. As a result, the language in the proposed standard provides insufficient guidance and guardrails concerning the Generator Owner's exercise of the discretion to interpret whether freeze protection measures are available for its equipment when determining whether a basis exists to declare a constraint.

As an example, the definition indicates that freeze protection measures are “intended to include acceptable practices, methods, or technologies *generally implemented* by the electric industry in areas that experience similar winter climate conditions” (emphasis added) and further indicates that a relevant factor in determining whether a constraint exists is whether winterization measures have been “broadly implemented” at comparable generating unit types in regions with similar winter weather.²⁴ The IRC is concerned that this focus on general industry practice, without any way to ensure consistency in the application of that language, leaves the Commission without an objective standard that can be effectively audited

²⁴ NERC Petition Ex. A at 2-3 (pages 78-79 of the overall petition).

and fails to account for the real-world effectiveness (or lack thereof) of the freeze protection measures implemented. In other words, a Generator Owner could determine that the only available winterization measures for its equipment are not “generally implemented” by the electric industry in areas with similar weather (perhaps because the measures rely on newly developed technology) and declare a constraint instead of implementing the winterization measures, which is inappropriate for a standard designed to address inadequate weatherization.

By the same token, the proposed definition does not provide sufficient guidance on how widely a freeze protection technology must be deployed before it will be considered a “generally implemented” technology. Given the typical pace of change within the electric utility industry, it may take years for a new technology to be adopted widely enough to be considered “generally implemented.” The IRC is concerned that this, coupled with the five-year review period for Generator Cold Weather Constraint declarations,²⁵ will effectively delay and disincentivize the adoption of effective new freeze protection technologies.

2. Standard Drafting Team Response

While the Standard Drafting Team addressed other aspects of the Generator Cold Weather Constraint definition in its consideration of the IRC’s comments, it does not appear to have responded to this specific concern.²⁶

²⁵ Discussed in further detail in section I.F. of these comments.

²⁶ See NERC Petition Ex. F, Consideration of Comments for Draft 2 of EOP-012-2 at 45 (page 1,288 of the overall petition) and NERC Petition Ex. F, Consideration of Comments for Draft 3 of EOP-012-2 at 50-51 (pages 1,901-1,902 of the overall petition).

3. IRC Proposed Solution

Given the inadequate response of the Standard Drafting Team and the vagaries of the proposed standard, the IRC urges the Commission to reject the proposed language and direct NERC to revise the language so that it is clear that freeze protection measures are “intended to include practices, methods, or technologies that would reasonably be expected to result in effective facility performance while operating at the Extreme Cold Weather Temperature (ECWT).”²⁷

C. The Commission Should Direct NERC to Narrow the Exemptions for Existing Generating Units.

1. IRC Concern

The Commission directed NERC to revise the Applicability section for EOP-012-1 to “capture[] all [BES] generation resources needed for reliable operation and exclude[] only those generation resources not relied upon during freezing conditions.”²⁸ While the IRC agrees with the revisions NERC has made to the Applicability section of the standard, the exemptions for certain existing generating units contained in Requirements R2, R3, and R6 and related footnotes²⁹ result in the standard failing to fully meet the Commission’s directive. Specifically, Requirements R2, R3, and R6 apply to each generating unit with “a calculated Extreme Cold Weather Temperature at or below 32 degrees Fahrenheit . . . and that

²⁷ NERC Petition Ex. F, Consideration of Comments for Draft 3 of EOP-012-2 at 49 (page 1,900 of the overall petition).

²⁸ *N. Am. Elec. Reliability Corp.*, 182 FERC ¶ 61,094, at P 58 (2023).

²⁹ See NERC Petition Ex. A at 5-8 (pages 81-84 of the overall petition).

self-commits or is required to operate at or below a temperature of 32 degrees Fahrenheit.”³⁰ Generator Owners are required to winterize these generating units and develop a Corrective Action Plan if one of these generating units experiences a Generator Cold Weather Reliability Event.³¹ However, footnotes 1, 2, and 4 indicate that units **“that may be called upon to operate in order to assist in the mitigation of BES Emergencies, Capacity Emergencies, or Energy Emergencies during periods at or below a temperature of 32 degrees Fahrenheit (zero degrees Celsius) are exempt”** (emphasis added) from Requirements R2, R3, and R6 if they “do not self-commit or are not required to operate at or below a temperature of 32 degrees Fahrenheit.”³²

Exempting generating units that may be called upon to assist in the mitigation of emergencies during freezing conditions from winterization requirements exempts units needed for reliable operation from meeting the requirements to implement freeze protection measures and develop a Corrective Action Plan as needed. The IRC recognizes the desire to address generating units that do not ordinarily operate in freezing conditions,³³ but the carve-out for these units in Requirements R2, R3, and R6 and footnotes 1, 2, and 4 is overly broad because it exempts generating units that may be called upon to assist in mitigating BES emergencies. The question of the appropriate level of winterization for these

³⁰ *Id.*

³¹ *See id.*

³² *Id.*

³³ NERC Petition at 42 (page 45 of the overall petition).

generating units is best addressed by means of other mechanisms included in EOP-012-2, such as the Generator Cold Weather Constraint declaration process and the Corrective Action Plan process. The exemption from Requirements R2, R3, and R6 should be limited to truly seasonal generating units that will not be called upon to operate during freezing conditions, even during BES emergencies.

2. Standard Drafting Team Response

In its response to the IRC's comments, the Standard Drafting Team summarily concluded that the language in Requirements R2, R3, and R6 and footnotes 1, 2, and 4 is "acceptable by the majority of industry and addresses the reliability concerns raised."³⁴ In its petition, NERC indicates that this exemption "would encourage units that do not normally operate in freezing conditions to participate in mitigating Emergency conditions, if they are able to do so, by avoiding a disincentive that may result from subjecting these units to the full requirements for conditions under which they would not plan to run normally."³⁵

While the IRC appreciates NERC's clarification of why it believes this exemption serves reliability, the IRC respectfully disagrees with NERC's analysis and conclusion. NERC indicates that this exemption applies to generating units that do not self-commit or are not required to operate in freezing temperatures yet may be called upon to help mitigate wintertime BES emergencies.³⁶ However, a

³⁴ NERC Petition Ex. F, Consideration of Comments for Draft 3 of EOP-012-2 at 169 (page 2,020 of the overall petition).

³⁵ NERC Petition at 42 (page 45 of the overall petition).

³⁶ *See id.* at 41-42 (pages 44-45 of the overall petition).

generating unit that may be called upon to help mitigate a BES emergency is expected to run if called upon even during freezing temperatures. During BES emergencies, ISOs and RTOs should not have to take additional steps to identify which of the generating units it can call upon for assistance might actually be able to respond to that call. If a unit can be called upon to help mitigate a wintertime BES emergency, that unit may be required to operate during freezing conditions and should not be exempt from having to winterize.

3. IRC Proposed Solution

To address this issue, the IRC recommends that the Commission reaffirm its February 2023 order and direct NERC to remove footnotes 1, 2, and 4 from the standard³⁷ and revise Requirements R2, R3, and R6 by replacing the phrase “self-commits or is required to operate” with “that may be committed to operate.”³⁸ This would ensure that all generating units that may be committed to operate or called upon to help mitigate emergencies during freezing conditions would be required to winterize, while allowing truly seasonal generating units that are ineligible to be committed to operate during freezing conditions (even during BES emergencies) to be exempt from Requirements R2, R3, and R6. Generating units that do not ordinarily operate in freezing conditions, but that may be called upon during BES

³⁷ While the IRC’s comments submitted during the standard development process also proposed revised language for footnotes 1, 2, and 4 as a potential alternative to outright removal of the footnotes (*see* NERC Petition Ex. F, Consideration of Comments for Draft 3 of EOP-012-2 at 167-168 (pages 2,018-2,019 of the overall petition)), the IRC believes that removal of the footnotes will result in a more effective Reliability Standard.

³⁸ NERC Petition Ex. F, Consideration of Comments for Draft 3 of EOP-012-2 at 167-168 (pages 2,018-2,019 of the overall petition).

emergencies, may still make use of other mechanisms within EOP-012-2, such as the constraint declaration process and the Corrective Action Plan process, to address unit-specific obstacles to winterization.

D. The Commission Should Direct NERC to Shorten and Clarify the Periods Allotted for Implementation of Freeze Protection Measures.

Requirement R7 of EOP-012-2 addresses implementation of the Corrective Action Plans that Generator Owners are required to develop when a generating unit's Extreme Cold Weather Temperature decreases, when a generating unit cannot timely implement necessary freeze protection measures, and when a generating unit that meets certain criteria experiences a Generator Cold Weather Reliability Event.³⁹ This is an important provision, but contains multiple deficiencies that undermine its effectiveness.

1. The Current Standard Timelines are Excessive and Should be Shortened and NERC or Regional Entity Pre-Approval of Timeline Exceedances Should be Required.

a. IRC Concern

The 24- and 48-month periods allotted for implementation of Corrective Action Plans do not appropriately reflect the urgency of winterizing generating units, especially given the amount of time industry has already had to winterize generating units during the development process for EOP-012-1 and EOP-012-2. Furthermore, if a generator experiences the conditions set forth under R7 after EOP-012-2 is fully implemented, that would be indicative of failed assumptions

³⁹ See NERC Petition Ex. A at 4-9 (pages 80-85 of the overall petition).

that must be corrected as expeditiously as possible. The IRC believes that it is important for the standard to require implementation of freeze protection measures as quickly as reasonably possible, especially measures that can be implemented in time for the next winter season, regardless of how much time may be left to implement the Corrective Action Plan. Reduced timeframes of 12 and 24 months for Corrective Action Plan implementation, combined with a requirement to “document the generator’s best efforts to promptly implement all immediate and near-term actions that it can undertake prior to the next upcoming winter season to winterize the generating unit(s) to operate at its calculated Extreme Cold Weather Temperature”⁴⁰ will help achieve this goal.

Nevertheless, the IRC recognizes that the practical realities of large generation fleets, complex freeze protection measure installation procedures, and limited outage windows in which corrective actions can be implemented can all provide legitimate grounds for exceeding the implementation timeframes contained in Requirement R7. NERC has addressed this issue by including Requirement R7, Part 7.3 in EOP-012-2, which allows Generator Owners to update their Corrective Action Plan timetables if they need to exceed the 24- and 48-month implementation timelines in EOP-012-2. This further supports the IRC’s recommendation to shorten the default timeframes.

⁴⁰ See NERC Petition Ex. F, Consideration of Comments for Draft 3 of EOP-012-2 at 109 (page 1,960 of the overall petition).

However, the lack of a pre-approval process for timetable revisions allows for unnecessary delays in winterization and renders the 24- and 48-month timeframes almost meaningless. As EOP-012-2 is currently drafted, NERC and the Regional Entities will only evaluate timeline exceedances for appropriateness and proper documentation after the fact, either as part of ongoing data collection and monitoring of EOP-012-2 implementation or during compliance engagements that include EOP-012-2 Requirement R7 in scope, which may not occur until months or years after a Generator Owner extends its Corrective Action Plan timetables. While NERC’s proposal to gather data on the implementation of EOP-012-2 will be an important oversight mechanism, no available after-the-fact oversight or enforcement mechanism can undo or mitigate the risk to the BES of an inappropriate extension of the Corrective Action Plan implementation timeframes that is only identified months or years after the fact and potentially well after an upcoming winter season.

b. Standard Drafting Team Response

The Standard Drafting Team responded to the IRC’s most recent comments on this topic by summarily indicating that it had considered the IRC’s position and “will not be decreasing the timetables for [Corrective Action Plan] implementation.”⁴¹ In its response to earlier IRC comments on this topic, the Standard Drafting Team indicated that it chose not to revise the 24- and 48-month

⁴¹ *Id.* at 110 (page 1,961 of the overall petition).

timeframes because a majority of the industry supported those timeframes.⁴² While the IRC appreciates the role that industry support plays in the standard development process, the IRC would also note that EOP-012-2 is intended to expeditiously move the BES beyond the industry-accepted practices that proved inadequate during Winter Storms Uri and Elliott. The shorter default implementation timeframes the IRC proposed will more effectively accomplish this goal, and the timeline extension process contained in Requirement R7, Part 7.3 is more than adequate to address generating unit-specific situations in which more time is needed. In short, the Standard Drafting Team's response did not engage on the merits of the IRC's proposal. In contrast, the Commission is required to determine if a particular proposal is just and reasonable rather than simply approving it based on the results of a popular vote.

c. IRC Proposed Solution

Consequently, the IRC recommends that the Commission direct NERC to replace the 24- and 48-month timeframes in Requirement R7 with 12- and 24-month timeframes, respectively, and to revise Requirement R7, Part 7.3 to require Generator Owners to apply for and receive NERC or Regional Entity approval to extend Corrective Action Plan implementation timelines beyond the timelines established in the standard. *This will provide a measure of assurance that BES reliability will not suffer due to inappropriate extensions of Corrective Action Plan*

⁴² See NERC Petition Ex. F, Consideration of Comments for Draft 2 of EOP-012-2 at 190 (page 1,433 of the overall petition).

implementation timelines. In short, rather than allowing for easily extendable long implementation timeframes, the IRC recommends that the Commission require Generator Owners to meet shorter timelines and receive pre-approval for extensions on a generating unit-specific basis. This would allow for rapid winterization without encouraging any unnecessary time lag before corrective actions are implemented. With such a unit-specific pre-approval process, NERC would have a far better opportunity to monitor winterization progress and any supply chain-related or other implementation issues that may arise, all of which would be lost if the Commission were to accept NERC's proposal for an elongated, easily extendable timeline for compliance.

2. Timeline Applicability is Ambiguous.

a. IRC Concern

The IRC is similarly concerned that Requirement R7 is not clear about which implementation timeline applies to which corrective actions. Part 7.1.1 provides that the 24-month timeline applies to “action(s) which address(es) existing equipment or freeze protection measures,” and the 48-month timeline applies to “action(s) which require(s) new equipment or freeze protection measures.”⁴³ However, some corrective actions might involve the application of new freeze protection measures to existing equipment, or the extension of existing freeze protection measures to newly installed equipment. Such scenarios involve portions

⁴³ NERC Petition Ex. A at 8 (page 84 of the overall petition).

of the applicability criteria for both timelines, and it is therefore unclear which timeline would apply.

b. Standard Drafting Team Response

The Standard Drafting Team did not directly respond to this concern in its response to the IRC's most recent set of comments in the NERC standard development process.⁴⁴ In its response to an earlier set of IRC comments, the Standard Drafting Team indicated that Generator Owners would be able to use "appropriate judgment" to determine the appropriate timeline for a given corrective action.⁴⁵ Use of professional judgment is a common method of navigating ambiguous rules and regulations, but the fact that this option exists is not a valid basis for approving an ambiguous Reliability Standard.

c. IRC Proposed Solution

To avoid this ambiguity, the IRC recommends that the Commission direct NERC to revise the standard to apply the shorter of the two timelines to corrective actions that do not require the installation of new equipment and the longer of the two timelines to corrective actions that do require the installation of new equipment.

⁴⁴ See NERC Petition Ex. F, Consideration of Comments for Draft 3 of EOP-012-2 at 110 (page 1,961 of the overall petition).

⁴⁵ See NERC Petition Ex. F, Consideration of Comments for Draft 2 of EOP-012-2 at 190 (page 1,433 of the overall petition).

3. The Standard Does Not Sufficiently Incentivize Generator Owners to Use Best Efforts to Promptly Implement All Immediate and Near-Term Winterization Actions They Can Reasonably Undertake Before the Upcoming Winter Season.

a. IRC Concern

Even if the Commission directs NERC to implement the IRC's recommendation to shorten the default timelines for corrective action implementation, there would still be no requirement for Generator Owners to immediately implement short-term corrective actions that can be implemented quickly. In other words, Generator Owners would have at least 12 months to implement any corrective action, including one that may only take one month to implement. In that scenario, the Generator Owner may perceive an economic incentive to defer the cost of the corrective action until the last month of the 12-month implementation period, rather than implementing the corrective action immediately so that it can be in place in time for the upcoming winter season. There is no reason not to incentivize the use of best efforts to promptly implement near-term winterization efforts, yet the language of the Standard omits this incentive.

b. Standard Drafting Team Response

The Standard Drafting Team does not appear to have directly responded to this particular IRC concern.⁴⁶

⁴⁶ See NERC Petition Ex. F, Consideration of Comments for Draft 2 of EOP-012-2 at 190 (page 1,433 of the overall petition) and NERC Petition Ex. F, Consideration of Comments for Draft 3 of EOP-012-2 at 110 (page 1,961 of the overall petition).

c. IRC Proposed Solution

To enhance BES reliability by ensuring that freeze protection measures are implemented as quickly as possible, the IRC recommends that the Commission direct NERC to revise the standard to include a requirement that Generator Owners “document the generator’s best efforts to promptly implement all immediate and near-term actions that it can reasonably undertake prior to the next upcoming winter season to winterize the generating unit(s) to operate at its calculated Extreme Cold Weather Temperature.”⁴⁷ This will help emphasize the importance of installing freeze protection measures as quickly as possible in situations where freeze protection measures can be implemented well in advance of the deadlines established in the standard.

E. The Commission Should Direct NERC to Eliminate Grandfathering Provisions so that the Same Enhanced Weatherization Standard Applies to All Affected Generating Units Regardless of Commercial Operation Date.

1. IRC Concern

EOP-012-2 Requirement R3 addresses winterization requirements for generating units that are in commercial operation prior to October 1, 2027, while Requirement R2 sets an enhanced performance standard for units that enter commercial operation on or after October 1, 2027. While some older generating units may not be able to perform at Requirement R2’s more stringent standard, many units that enter commercial operations before October 1, 2027, should be able

⁴⁷ NERC Petition Ex. F, Consideration of Comments for Draft 3 of EOP-012-2 at 109 (page 1,960 of the overall petition).

to do so. Rather than setting a lower bar for a certain class of units across the board, the IRC proposed that NERC remove Requirement R3 and revise Requirement R2 to apply to all generating units, regardless of when they achieved commercial operation.

2. Standard Drafting Team Response

While the Standard Drafting Team did not appear to respond to this particular IRC concern in its response to the most recent set of IRC comments,⁴⁸ it did address this concern in its responses to earlier sets of IRC comments. In those prior responses, the Standard Drafting Team indicated its belief that having separate requirements for new and existing units is appropriate and that it was ultimately persuaded by comments received from Generator Owners in areas that had not experienced significant winter performance issues and would therefore view the IRC's proposed approach as overly prescriptive.⁴⁹ It also indicated that requiring existing generating units to perform to the same standard as existing generating units may not be justified due to the difficulty of retrofitting units and the ability of existing generating units to prove they can operate reliably at temperatures above their Extreme Cold Weather Temperature.⁵⁰

While the above assertion may be true in some cases, real-world experience from Winter Storms Uri and Elliott cautions against setting a lower winterization

⁴⁸ See *id.* at 169 (page 2,020 of the overall petition).

⁴⁹ See NERC Petition Ex. F, Consideration of Comments for Draft 2 of EOP-012-2 at 291 (page 1,534 of the overall petition).

⁵⁰ See NERC Petition Ex. F, Consideration of Comments for Draft 1 of EOP-012-2 at 103 (page 617 of the overall petition).

standard for an entire category of generating units, especially given the flexibility built into the standard by way of the Generator Cold Weather Constraint declaration process and the Corrective Action Plan process. These processes provide the flexibility needed to address any difficulties that may arise with retrofitting existing generating units while ensuring that those generating units are able to perform as close to their Extreme Cold Weather Temperature as possible. Applying a high bar to all units and allowing the constraint declaration process to address the unique circumstances of individual generating units on a case-by-case basis would result in a more reliable BES than EOP-012-2's proposed approach.

3. IRC Proposed Solution

To address this issue, the IRC urges the Commission to direct NERC to remove Requirement R3 and revise Requirement R2 to apply to all generating units, regardless of when they achieved commercial operation, thereby applying Requirement R2's enhanced performance standard to all generating units. Generator Owners could use the Generator Cold Weather Constraint and Corrective Action Plan mechanisms on a case-by-case basis to address units that cannot meet the performance standard. This would also help ensure that a generating unit that enters commercial operation on November 1, 2026, is ultimately held to the same performance standard as a nearby generating unit that enters commercial operation on November 1, 2027, resulting in more thorough weatherization of generating units and a more reliable BES during extreme cold weather conditions.

F. The Commission Should Direct NERC to Require Annual Reviews of Declared Generator Cold Weather Constraints.

1. IRC Concern

Once a Generator Cold Weather Constraint is declared, EOP-012-2 only requires the constraint to be reviewed every five years.⁵¹ While the IRC understands that most Generator Owners will have little need to review their plans and that the five-year timeframe minimizes reporting burden, a more pressing concern is that a five-year review period lowers the bar for BES winterization and reliability by delaying the identification and adoption of new freeze protection technologies. Since the proposed Generator Cold Weather Constraint definition implies that generators are only required to implement freeze protection technologies that are “generally implemented by the electric industry in areas that experience similar winter climate conditions,”⁵² the standard does not provide a strong incentive for generators to install new freeze protection technologies. As a result, new technologies are unlikely to be installed during the gap between constraint reviews and may not even be installed as a result of the constraint review, as it is unclear how widely a technology must be used before it will be considered “generally implemented.” Given the typical pace of change within the electric utility industry, it may take years for a new technology to be adopted widely enough to be considered “generally implemented.”

⁵¹ See NERC Petition Ex. A at 9 (page 85 of the overall petition).

⁵² *Id.* at 2 (page 78 of the overall petition).

2. Standard Drafting Team Response

The Standard Drafting Team indicated that it believes a five-year review period “provides the best balance between rapid installation and reliable, cost-effective application of new technologies.”⁵³ The IRC respectfully disagrees. A five-year review period tips the scales in favor of slow installation and application of new technologies, and would result in years elapsing between a new freeze protection technology becoming viable and a Generator Owner evaluating that technology as part of its routine review of a declared constraint.

3. IRC Proposed Solution

To address this concern, the IRC urges the Commission to direct NERC to revise the standard to require that constraint reviews be performed annually instead of every five years.⁵⁴ When combined with the IRC’s recommended revisions to the Generator Cold Weather Constraint definition⁵⁵ to focus on effective freeze protection measures instead of on generally implemented freeze protection measures, this would be the best way to ensure that new freeze protection technologies are timely evaluated and implemented. This would shift EOP-012-2 from a reactive to a proactive stance towards new freeze protection technologies, and the IRC therefore urges the Commission to direct NERC to make the necessary revisions to the standard.

⁵³ NERC Petition Ex. F, Consideration of Comments for Draft 3 of EOP-012-2 at 80 (page 1,931 of the overall agreement).

⁵⁴ *See id.* at 79 (page 1,930 of the overall petition).

⁵⁵ Discussed in section I.A. of these comments.

G. The Commission Should Direct NERC to Add Timing Specificity for Required Inspections and Maintenance.

1. IRC Concern

Requirement R4, Part 4.5 of EOP-012-2 requires annual inspection and maintenance of generating unit freeze protection measures.⁵⁶ However, without any reference to timing other than a requirement for ‘annual’ inspections and maintenance, this provision does not ensure that the timing of generating unit inspections is such that the inspections will result in timely preparations for upcoming cold weather operations.⁵⁷

2. Standard Drafting Team Response

The Standard Drafting Team in its response to the IRC comments indicated that the Commission had not directed changes to this language in its February 16, 2023 Order.⁵⁸ While the Commission may not have previously directed revisions to the inspection provision, the IRC urges the Commission to take the opportunity to do so now, as addressing this issue will result in improved timing of inspections, which in turn will result in a more reliable BES.

3. IRC Proposed Solution

To address this issue, the IRC urges the Commission to direct NERC to revise the standard to require inspections and maintenance of all generating units

⁵⁶ See NERC Petition Ex. A at 7 (page 83 of the overall petition).

⁵⁷ An inspection conducted in March would be too late for the current winter season and too early for the upcoming winter season.

⁵⁸ See NERC Petition Ex. F, Consideration of Comments for Draft 1 of EOP-012-2 at 345 (page 859 of the overall petition).

to occur on at least an annual basis and always within three months of the upcoming winter season. This would be especially valuable for generating units that have previously experienced performance difficulties during extreme cold conditions and for newly winterized generating units to ensure they will perform as expected.

II. CONCLUSION

The IRC respectfully requests that the Commission issue an order disapproving EOP-012-2 pursuant to the Commission's authority under FPA section 215(d)(4). The IRC urges the Commission to direct NERC to revise EOP-012-2 to address the important considerations described herein pursuant to its authority under FPA section 215(d)(4) and section 215(d)(5), and to establish a deadline of 120 days from the date of the Commission's Order for NERC to submit a revised version of EOP-012-2.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

Dated at Austin, TX this 21st day of March, 2024.

/s/ Kennedy R. Meier
Kennedy R. Meier