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

**Californians for Green Nuclear Power, Inc.** ) **Docket No. EL21-13-000**  
**Complainant** )  
 )  
**v.** )  
 )  
**North American Electric Reliability** )  
**Corporation,** )  
**Western Electricity Coordinating Council,** )  
**California Independent System Operator** )  
**Corporation,** )  
**California Public Utilities Commission,** )  
**California State Water Resources Control** )  
**Board,** )  
**California State Lands Commission** )  
**Respondents** )

**THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION AND  
THE WESTERN ELECTRICITY COORDINATING COUNCIL  
JOINT ANSWER TO COMPLAINT**

Jordan White  
Vice President of Strategic Engagement and  
Deputy General Counsel  
Chris Albrecht  
Senior Counsel  
Western Electricity Coordinating Council  
155 North 400 West, Suite 200  
Salt Lake City, UT 84103  
(801) 582-0353  
jwhite@wecc.org  
calbrecht@wecc.org

Lauren Perotti  
Senior Counsel  
Marisa Hecht  
Counsel  
North American Electric Reliability Corporation  
1325 G Street, N.W., Suite 600  
Washington, D.C. 20005  
(202) 400-3000  
(202) 644-8099 – facsimile  
lauren.perotti@nerc.net  
marisa.hecht@nerc.net

*Counsel for the Western Electricity Coordinating  
Council*

*Counsel for the North American Electric  
Reliability Corporation*

November 16, 2020

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**THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION AND  
THE WESTERN ELECTRICITY COORDINATING COUNCIL  
JOINT ANSWER TO COMPLAINT**

Pursuant to Rules 206 and 213 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure<sup>1</sup> and the Commission’s Notice of Complaint,<sup>2</sup> the North American Electric Reliability Corporation (“NERC”) and the Western Electricity Coordinating Council (“WECC”) submit this Answer to the Complaint filed by Californians for Green Nuclear Power, Inc. (“Complainant”) on October 26, 2020 in the above-captioned docket (“Complaint”) against NERC, WECC, the California Independent System Operator Corporation (“CAISO”), the California Public Utilities Commission (“CPUC”), the California State Water Resources Control Board (“CSWRCB”) , and the California State Lands Commission (“CSLC”).

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<sup>1</sup> 18 C.F.R. §§ 385.206 and 385.213 (2020).

<sup>2</sup> Notice of Complaint, Docket No. EL21-13-000 (October 27, 2020).

The Complaint alleges that (i) Respondents CAISO, CPUC, CSWRCB, and CSLC have violated NERC’s Reliability Standards through the approval of the retirement of the Diablo Canyon Power Plant (“DCPP”) planned in 2025; and (ii) Respondents NERC and WECC, as the Electric Reliability Organization (“ERO”) and a Regional Entity under the Federal Power Act (“FPA”),<sup>3</sup> respectively, failed to conduct proper oversight or enforce NERC’s Reliability Standards to prevent Reliability Standards violations caused by the retirement of the DCPP in 2025.<sup>4</sup>

As discussed below, the Commission should dismiss the Complaint against Respondents NERC and WECC for the following reasons: (i) the Complaint exceeds the statutory authority of Section 306 of the FPA<sup>5</sup> because NERC and WECC are not licensees, transmitting utilities, or public utilities; (ii) the Complaint fails to meet the minimum requirements of the FPA and the Commission’s regulations by not specifying the basis in fact and law or the remedy requested; and (iii) the Complaint fails on substantive grounds because NERC and WECC have adhered to their duty to perform oversight and enforce Reliability Standards under the FPA.

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<sup>3</sup> 16 U.S.C. §§ 791-828c.

<sup>4</sup> Complaint at 4.

<sup>5</sup> 16 U.S.C. § 825e.

## **I. NOTICES AND COMMUNICATIONS**

Notices and communications with respect to this filing may be addressed to the following:<sup>6</sup>

Jordan White\*  
Vice President of Strategic Engagement and  
Deputy General Counsel  
Chris Albrecht\*  
Senior Counsel  
Western Electricity Coordinating Council  
155 North 400 West, Suite 200  
Salt Lake City, UT 84103  
(801) 582-0353  
jwhite@wecc.org  
calbrecht@wecc.org

Lauren Perotti\*  
Senior Counsel  
Marisa Hecht\*  
Counsel  
North American Electric Reliability  
Corporation  
1325 G Street, N.W., Suite 600  
Washington, D.C. 20005  
(202) 400-3000  
(202) 644-8099 – facsimile  
lauren.perotti@nerc.net  
marisa.hecht@nerc.net

## **II. SUMMARY**

### **A. Summary of the Complaint**

Complainant is a non-profit organization that takes issue with the CPUC’s approval of a plan to retire DCPD in 2025.<sup>7</sup> Regarding Respondents NERC and WECC, the Complaint alleges that Respondents NERC and WECC failed to conduct proper oversight or to enforce NERC’s Reliability Standards “that will be violated by removing DCPD’s 2,240 MW from the California electric grid.”<sup>8</sup> The Complaint also alleges that Respondents CAISO, CPUC, SCWRCB, and CSLC have violated NERC’s Reliability Standards through the approval of the retirement of the DCPD planned in 2025.<sup>9</sup> The Complaint requests that the Commission:

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<sup>6</sup> Persons to be included on the Commission’s service list are identified by an asterisk. NERC and WECC respectfully request a waiver of Rule 203 of the Commission’s regulations, 18 C.F.R. § 385.203, to allow the inclusion of more than two persons on the service list in this proceeding.

<sup>7</sup> Complaint at 2-4.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.* at 4.

- i. Open a FERC docket to initiate an investigation of whether the closure of DCPD violates federal Reliability Standards;
- ii. Perform or order an in-depth reliability analysis focused on how the continued safe operation of DCPD provides reliability benefits as described in the Complaint;
- iii. Take action to enforce NERC's Reliability Standards; and
- iv. Review and initiate remediation of the reliability concerns described in the Complaint.<sup>10</sup>

**B. Summary of NERC and WECC Answer**

The Commission should dismiss the Complaint against Respondents NERC and WECC and decline to provide the requested relief because: (i) NERC and WECC are not proper parties to a complaint under FPA Section 306, and the complaint exceeds the statutory authority pursuant to FPA Section 306; (ii) it fails to meet the minimum requirements applicable to complaints under the Commission's Rules of Practice and Procedure;<sup>11</sup> and (iii) NERC and WECC state that they satisfy their statutory and regulatory obligations under Section 215 of the FPA and the Commission's regulations.

**III. ANSWER**

**A. The Complaint Should be Dismissed Because the Complaint Exceeds the Statutory Authority Under Section 306 of the FPA.**

The Commission should dismiss the Complaint because it exceeds the statutory authority of Section 306 of the FPA.<sup>12</sup> Of the various statutes listed in the Complaint, only the FPA is

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<sup>10</sup> Complaint at 20.

<sup>11</sup> See 18 C.F.R. § 385.206.

<sup>12</sup> 16 U.S.C. § 825e.

relevant to NERC and WECC.<sup>13</sup> Complaints may be brought under FPA Section 306 regarding “anything done or omitted to be done by *any licensee, transmitting utility, or public utility* [emphasis added] in contravention of the provisions” of the FPA.<sup>14</sup> However, neither NERC, as the ERO under the Sections 215(a)(2) and (b) of the FPA,<sup>15</sup> nor WECC, as a Regional Entity as defined in Section 215(a)(7) of the FPA,<sup>16</sup> is considered a licensee, transmitting utility, or public utility. Neither NERC nor WECC (i) is licensed under Section 4 of the FPA;<sup>17</sup> (ii) owns, operates, or controls facilities used for transmission;<sup>18</sup> or (iii) owns or operates facilities subject to the Commission’s jurisdiction.<sup>19</sup> Accordingly, NERC and WECC are not proper parties to a complaint under FPA Section 306, and the Complaint against Respondents NERC and WECC must be dismissed as exceeding the authority provided under the statute.

Moreover, dismissing the Complaint on these grounds is consistent with Commission precedent in similar cases. In *Morris v. N. Am. Elec. Reliability Corp. and SERC Reliability Corp.*, the Commission dismissed a complaint brought against NERC and another Regional Entity,

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<sup>13</sup> The Complaint was noticed pursuant to the FPA, the Natural Gas Act of 1938, and the Federal Pipeline Safety Regulations, and Rule 206 of the Commission’s Rules of Practice and Procedure. See Notice of Complaint, *supra*.

<sup>14</sup> 16 U.S.C. § 825e (emphasis added).

<sup>15</sup> *Id.* § 824o(a)(2) and (b). The Commission certified NERC as the ERO in accordance with Section 215 of the FPA on July 20, 2006. *N. Am. Elec. Reliability Corp.*, 116 FERC ¶ 61,062 (2006), *order on reh’g and compliance*, 117 FERC ¶ 61,126 (2006), *order on compliance*, 118 FERC ¶ 61,030 (2007), *order on clarification and reh’g*, 119 FERC ¶ 61,046 (2007), *aff’d sub nom. Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

<sup>16</sup> 16 U.S.C. § 824o(a)(7) and (e)(4). See also *N. Am. Elec. Reliability Corp.*, 119 FERC ¶ 61,060 (2006), *order on reh’g*, 120 FERC ¶ 61,260 (2007) (accepting a delegation agreement between NERC and WECC in order to designate WECC as a Regional Entity pursuant to Section 215(e)(4) of the FPA). The Commission approved the currently effective delegation agreement in 2016 in Docket No. RR15-12. See *N. Am. Elec. Reliability Corp.*, 153 FERC ¶ 61,135 (2015) (conditionally approving revised delegation agreement and directing compliance filing), *order on compliance*, *N. Am. Elec. Reliability Corp.*, Docket No. RR15-12-001 (delegated letter order) (Mar. 23, 2016). A petition for approval of a revised delegation agreement to be effective January 1, 2021 is pending in Docket No. RR20-5-000.

<sup>17</sup> 16 U.S.C. § 796(5).

<sup>18</sup> *Id.* § 796(23).

<sup>19</sup> *Id.* § 824(e).

finding that “[n]either [NERC nor the Regional Entity] serves as a licensee, transmitting utility, or public utility. Thus consistent with the plain words of the statute, and our precedent, we conclude that the complaint exceeds the statutory authority of section 306 of the FPA.”<sup>20</sup>

Similarly, in *Citizens Energy Task Force v. Midwest Reliability Org., et al.*, the Commission dismissed a complaint against another Regional Entity, Midwest Reliability Organization (“MRO”), finding that MRO was “not a proper party to the Complaint.... MRO serves no other role under the FPA and is not a licensee, transmitting utility, or public utility. Thus,... the Complaint impermissibly exceeds the statutory authority of section 306 of the FPA.”<sup>21</sup>

Consistent with the plain language of the statute and the Commission’s precedent, the Commission should dismiss this Complaint against NERC and WECC as it exceeds the statutory authority of Section 306 of the FPA.

**B. The Complaint Should be Dismissed Because it Fails to Meet the Minimum Requirements of the FPA and the Commission’s Regulations.**

The Commission should dismiss the Complaint because it fails to meet the minimum requirements of the FPA and the Commission’s regulations with respect to the content of complaints. To facilitate proceedings, the Commission sets forth procedural rules that dictate requirements for the content of complaints.<sup>22</sup> The purpose of these requirements is to help ensure respondents understand the specific allegations made in the complaint. Rule 203, for example, requires pleadings to set forth the basis in fact and law for the positions taken.<sup>23</sup> Rule 206 provides that complaints must, among other elements, (i) clearly identify the action or inaction alleged to

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<sup>20</sup> *Morris v. N. Am. Elec. Reliability Corp. and SERC Reliability Corp.*, 153 FERC ¶ 61,266 at P 10 (2015) (dismissing a complaint alleging that NERC and SERC violated the NERC Rules of Procedure in assessing a penalty for Reliability Standards violations).

<sup>21</sup> *Citizens Energy Task Force v. MRO*, 144 FERC ¶ 61,006 at P 38.

<sup>22</sup> 18 C.F.R. § 385.

<sup>23</sup> *Id.* § 385.203(a)(7).



violate applicable statutory or regulatory requirements; (ii) explain how the action or inaction violates applicable statutory standards or regulatory requirements; and (iii) state the specific relief or remedy requested and the basis for that relief.

Long-standing Commission precedent provides that “rather than bald allegations, [a complainant] must make an adequate proffer of evidence including pertinent information and analysis to support its claims.”<sup>24</sup> Further, the Commission has previously held that, in cases alleging a violation of a Reliability Standard, the complaint must set forth the specific Reliability Standard at issue and explain how the respondent’s action or inaction caused the violation. In *Citizens Energy Task Force v. Midwest Reliability Org., et al.*, the Commission held:

If a complaint regarding an alleged violation of a Reliability Standard is to meet the threshold requirements of Rule 206, then the complaint must, at a minimum, set forth the specific provision of the Reliability Standard that is at issue and provide some explanation as to how the Respondent’s alleged action or inaction caused the violation.<sup>25</sup>

The Complaint failed to meet the necessary elements of Rule 206 and should therefore be dismissed.

First, the Complaint fails to “clearly identify the action or inaction” of NERC or WECC that allegedly violated applicable statutory or regulatory requirements or “explain how the action or inaction” violated applicable law. The Complaint merely provides general, non-specific assertions that NERC and WECC “failed to conduct proper oversight or enforce NERC’s reliability

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<sup>24</sup> *Ill. Muni. Elec. Agency v. Cent. Ill. Pub. Serv. Co.*, Order Dismissing Complaint Without Prejudice, 76 FERC ¶ 61,084 at 4 (1996); *CALifornians for Renewable Energy, Inc., (CARE) and Barbara Durkin v. Nat’l Grid, Cape Wind, and the Mass. Dep’t of Pub. Util.*, Order Dismissing Complaint, 137 FERC ¶ 61,113, at PP 2, 31-32 (2011); *CALifornians for Renewable Energy, Inc., Michael E. Boyd, and Robert M. Sarvey v. Pac. Gas and Elec. Co.*, Order Dismissing Complaint, 143 FERC ¶ 61,005 at P 2 (2013); and *Citizens Energy Task Force and Save Our Unique Lands v. Midwest Reliability Org., et al.*, Order Dismissing Complaint, 144 FERC ¶ 61,006 at P 38 (2013).

<sup>25</sup> *Citizens Energy Task Force v. Midwest Reliability Org., et al.*, 144 FERC ¶ 61,006 at P 39 (2013).

standards to prevent reliability standards violations caused by removing DCP's 2,240 MW from the California electric grid."<sup>26</sup> Critically, the Complaint did not state which NERC Reliability Standards were allegedly violated or that NERC and WECC allegedly failed to enforce, let alone the specific provision of any such Reliability Standards or any facts, evidence, or analysis supporting the claim that NERC or WECC failed to enforce them.

Without the specificity required by Rule 206 and the Commission's precedent in *Citizens Energy Task Force v. Midwest Reliability Org., et al.*, it is not possible for NERC and WECC to determine what action or inaction is the subject of the Complaint.

NERC and WECC note that Section 215 of the FPA does not authorize the ERO or the Commission to set and enforce compliance with standards for adequacy of electric facilities or services.<sup>27</sup> Furthermore, the licensing and relicensing of nuclear generation plants is outside the authority of the ERO. As such, it is difficult to even infer the types of Reliability Standards violations the Complaint is trying to allege.

Second, the Complaint did not state the "specific" relief or remedy requested and the basis for that relief as required by Rule 206. As noted previously, the Complaint requests that the

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<sup>26</sup> Complaint at 4.

<sup>27</sup> 16 U.S.C. § 824o(i)(2) ("This section does not authorize the ERO or the Commission to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services."). Additionally, 16 U.S.C. § 824o(a)(3) states, "The term 'reliability standard' means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system. The term includes requirements for the operation of existing bulk-power system facilities, including cybersecurity protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity." Finally, the Adequate Level of Reliability Task Force developed a technical report supporting the definition of Adequate Level of Reliability and providing guidance on the scope of Reliability Standards: [https://www.nerc.com/comm/Other/Adequate%20Level%20of%20Reliability%20Task%20Force%20%20ALRTF%20DL/Final%20Documents%20Posted%20for%20Stakeholders%20and%20Board%20of%20Trustee%20Review/2013\\_03\\_26\\_Technical\\_Report\\_clean.pdf](https://www.nerc.com/comm/Other/Adequate%20Level%20of%20Reliability%20Task%20Force%20%20ALRTF%20DL/Final%20Documents%20Posted%20for%20Stakeholders%20and%20Board%20of%20Trustee%20Review/2013_03_26_Technical_Report_clean.pdf).

Commission: (i) open a docket investigating whether the closure of DCPD violates federal Reliability Standards; (ii) order or perform an in-depth analysis focused on how the continued safe operation of DCPD provides the reliability benefits asserted in the Complaint; and (iii) take action to enforce NERC's Reliability Standards, as well as review and initiate remediation of reliability concerns raised in the Complaint.<sup>28</sup> However, by failing to identify the specific Reliability Standards provisions it seeks to be enforced, the Complaint fails to state the specific relief or remedy requested and the basis for that relief, as required by Rule 206.

By requesting that FERC investigate "whether the closure of the DCPD violates federal Reliability Standards,"<sup>29</sup> the Complaint: (i) demonstrates on its face that it fails to meet the requirement in Rule 206(b)(7) that it state a specific request for relief (as well as the requirements in Rule 206(b)(1) and (2) related to specific allegations), and (ii) undercuts the very basis upon which its allegations against NERC and WECC rely—that NERC and WECC failed to enforce Reliability Standards or exercise proper oversight.

In conclusion, the Complaint fails to meet the minimum requirements of Rule 206. The Complaint did not clearly identify the NERC or WECC action or inaction that allegedly violated applicable law or explain how that action or inaction allegedly violated applicable law. The Complaint also did not state the specific relief or remedy requested. Therefore, if the Commission does not dismiss the Complaint because NERC and WECC are not proper parties to a complaint under Section 306 of the FPA, then the Commission should dismiss the Complaint based on these procedural deficiencies.

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<sup>28</sup> Complaint at 20.

<sup>29</sup> *Id.*

**C. NERC and WECC have Performed their Statutory Obligations Regarding Reliability Standards and Oversight.**

NERC and WECC deny any and all allegations against them that could reasonably be inferred from the nonspecific assertions in the Complaint and answer that they perform their duties as authorized and required by statute. By enacting the Energy Policy Act of 2005,<sup>30</sup> Congress entrusted the Commission with the duties of approving and enforcing rules to ensure the reliability of the Bulk-Power System, and with the duties of certifying an ERO that would be charged with developing and enforcing mandatory Reliability Standards, subject to Commission approval. The Commission certified NERC as the ERO in 2006.<sup>31</sup> Similarly, the Commission accepted the delegation agreement designating WECC as a Regional Entity pursuant to FPA Section 215(e)(4).<sup>32</sup>

As the ERO, NERC is committed to assure the reliability and security of the Bulk-Power System in North America.<sup>33</sup> Similarly, WECC supports this goal as a Regional Entity.<sup>34</sup> Under its FERC-approved Rules of Procedure (“ROP”), NERC and WECC develop Reliability Standards in accordance with Section 300 (Reliability Standards Development) of the NERC ROP, the NERC Standard Processes Manual, and the WECC Standard Development Procedures.<sup>35</sup> NERC and the

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<sup>30</sup> 16 U.S.C. § 824o.

<sup>31</sup> *N. Am. Elec. Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh’g and compliance*, 117 FERC ¶ 61,126 (2006), *order on compliance*, 118 FERC ¶ 61,030, *order on compliance*, 118 FERC ¶ 61,190, *order on reh’g*, 119 FERC ¶ 61,046 (2007), *aff’d sub nom. Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

<sup>32</sup> 16 U.S.C. § 824o(a)(7) and (e)(4). *See also N. Am. Elec. Reliability Corp.*, 119 FERC ¶ 61,060 (2006), *order on reh’g*, 120 FERC ¶ 61,260 (2007) (accepting a delegation agreement between NERC and WECC in order to designate WECC as a Regional Entity pursuant to Section 215(e)(4) of the FPA).

<sup>33</sup> *N. Am. Elec. Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh’g and compliance*, 117 FERC ¶ 61,126 (2006), *order on compliance*, 118 FERC ¶ 61,030, *order on compliance*, 118 FERC ¶ 61,190, *order on reh’g*, 119 FERC ¶ 61,046 (2007), *aff’d sub nom. Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

<sup>34</sup> *Id.*

<sup>35</sup> The NERC Rules of Procedure are available at <https://www.nerc.com/AboutNERC/Pages/Rules-ofProcedure.aspx>. The NERC Standard Processes Manual is available at [https://www.nerc.com/comm/SC/Documents/Appendix\\_3A\\_StandardsProcessesManual.pdf](https://www.nerc.com/comm/SC/Documents/Appendix_3A_StandardsProcessesManual.pdf). The WECC Reliability Standards Development Procedures are available at

Regional Entities, including WECC, monitor, assess, and enforce compliance with Reliability Standards in the United States in accordance with Section 400 (Compliance Enforcement) of the ROP and the NERC Compliance Monitoring and Enforcement Program.<sup>36</sup> Further, NERC and WECC perform assessments of the reliability and adequacy of the Bulk-Power System as required by Section 215(g) of the FPA<sup>37</sup> and Section 800 (Reliability Assessment and Performance Analysis) of the NERC ROP.

Additionally, the Commission looks to ensure that NERC and WECC continue to meet their statutory and regulatory obligations. Recently, the Commission found that, “NERC continues to satisfy the statutory and regulatory criteria for certification as the ERO” and found that “the Regional Entities [including WECC] continue to satisfy applicable statutory and regulatory criteria.”<sup>38</sup>

Therefore, to the extent that the Complaint alleges that NERC and WECC have failed to satisfy their statutory and regulatory obligations in any way, NERC and WECC deny the allegations in their entirety and urge the Commission to dismiss the Complaint.

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<https://www.wecc.org/Reliability/WECC%20Reliability%20Standards%20Development%20Procedures%20-%20FERC%20Approved%20October%2027%202017%20-%202019%20Template.pdf>.

<sup>36</sup> *Id.* The NERC Compliance Monitoring and Enforcement Program is available at

[https://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/Appendix\\_4C\\_CMEP\\_06082018.pdf](https://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/Appendix_4C_CMEP_06082018.pdf).

<sup>37</sup> 16 U.S.C. § 824o(g).

<sup>38</sup> *N. Am. Elec. Reliability Corp.*, Order on Five-Year Performance Assessment, 170 FERC ¶ 61,029 at P 20 (2020).

**IV. CONCLUSION**

WHEREFORE, for the reasons stated above, NERC and WECC respectfully request that the Commission dismiss the Complaint against NERC and WECC, consistent with Section 306 of the FPA and Rule 206 of the Commission's rules.

Respectfully submitted,

/s/ Marisa Hecht

Jordan White  
Vice President of Strategic Engagement and  
Deputy General Counsel  
Chris Albrecht  
Senior Counsel  
Western Electricity Coordinating Council  
155 North 400 West, Suite 200  
Salt Lake City, UT 84103  
(801) 582-0353  
jwhite@wecc.org  
calbrecht@wecc.org

*Counsel for Western Electricity Coordinating  
Council*

Lauren Perotti  
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Counsel  
North American Electric Reliability  
Corporation  
1325 G Street, N.W., Suite 600  
Washington, D.C. 20005  
(202) 400-3000  
(202) 644-8099 – facsimile  
lauren.perotti@nerc.net  
marisa.hecht@nerc.net

*Counsel for the North American Electric  
Reliability Corporation*

Date: November 16, 2020

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C., this 16<sup>th</sup> day of November 2020.

*/s/ Marisa Hecht* \_\_\_\_\_  
Marisa Hecht  
*Counsel for the North American Electric  
Reliability Corporation*