

175 FERC ¶ 61,163
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, James P. Danly,
Allison Clements, and Mark C. Christie.

Complaint of Michael Mabee
Related to Reliability Standards

Docket No. EL21-54-000

ORDER DENYING COMPLAINT

(Issued May 26, 2021)

1. On March 1, 2021, Michael Mabee filed a complaint (Complaint) under section 215 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission's Rules of Practice and Procedure.² The Complaint alleges that the weather-related power outages in Texas during the second week of February 2021 demonstrate that either the mandatory North American Electric Reliability Corporation (NERC) Reliability Standards were not followed or were ineffective. The Complaint requests that the Commission direct NERC and the Texas Reliability Entity (Texas RE) to investigate whether Reliability Standards were followed, and if violations did not contribute to the event, to direct NERC to improve the Reliability Standards to prevent similar occurrences in the future. For the reasons discussed below, we deny the Complaint.

I. Background

2. During the second week of February 2021, an arctic air mass impacted the Central United States, bringing snow, ice, and extreme cold temperatures from the Canadian border as far south as Texas, causing record winter power demand and impacting power generation, including natural gas and wind facilities.³ The Electric Reliability Council of Texas (ERCOT), Southwest Power Pool, and Midcontinent Independent System

¹ 16 U.S.C. §§ 824o(d)(5), (e)(3).

² 18 C.F.R. § 385.206 (2020).

³ U.S. Department of Energy, *Extreme Cold & Winter Weather, Update No. 1*, at 1 (Feb. 16, 2021), https://www.energy.gov/sites/prod/files/2021/02/f82/TLP-WHITE_DOE%20Situation%20Update_Cold%20%20Winter%20Weather_%231.pdf.

Operator implemented controlled power outages across their systems to balance available resources and load.⁴

3. Texas in particular experienced record-setting and sub-freezing temperatures and wind chills during this period, and associated record-setting winter seasonal electricity demands.⁵ As a result, certain generation units went out of service starting on February 14, 2021 and controlled electrical customer interruptions were implemented to prevent a statewide blackout.⁶ On February 15, 2021, Texas reached approximately 52,277 MW of generation loss, or 48.6 percent of its total installed generation capacity.⁷ Customers were progressively restored to service but normal operations were not fully restored in Texas until February 19, 2021.⁸

II. Complaint

4. The Complaint requests that the Commission direct NERC and Texas RE to conduct a comprehensive investigation into whether Reliability Standards were followed by all registered entities involved in the February 2021 cold weather event. The Complaint also requests that, if violations of the Reliability Standards did not contribute to the event, the Commission direct NERC to improve the Reliability Standards to prevent “catastrophic power outages such as this from occurring in the future.”⁹

5. The Complaint recounts the extreme weather conditions in Texas in mid-February 2021, including reported numbers of customers without power and examples of fatalities caused by lack of heating or other weather-related circumstances. Further, the Complaint claims that the lessons learned from events in 2011 and 1989, when similar blackouts occurred in Texas caused in part by a lack of weatherization for extreme cold weather,

⁴ *Id.*

⁵ ERCOT, *Review of February 2021 Extreme Cold Weather Event Presentation*, at 10 (Feb. 24, 2021), http://www.ercot.com/content/wcm/key_documents_lists/225373/2.2_REVISIED_ERCOT_Presentation.pdf.

⁶ *Id.* at 10, 12, 16.

⁷ *Id.* at 16.

⁸ *Id.*

⁹ Complaint at 12.

were allegedly ignored, and few steps were taken to harden the Texas grid against future weather-related events.¹⁰

6. On March 15, 2021 and April 1, 2021, complainant submitted motions in this proceeding requesting that the Commission take official notice of a report issued by the U.S. Government Accountability Office addressing electricity grid resilience and a report issued by the Texas Department of State Health Services, respectively.¹¹

III. Notice of Filing and Responsive Pleadings

7. Notice of the Complaint was published in the *Federal Register*, 86 Fed. Reg. 13,704 (March 10, 2021), with interventions and protests due on or before April 5, 2021. Timely motions to intervene were filed by Public Citizen, Gregory Wilde, and Foundation for Resilient Societies, and timely motions to intervene and comments were filed by NERC and Texas RE (collectively, NERC), Peter Vavaroutsos, Kenneth Chrosniak, John Dodson, Fred Reitman, Steven Baer, Douglas Ellsworth, Julian A. LoRusso, Secure the Grid Coalition, and, collectively, by American Public Power Association, Edison Electric Institute, Large Public Power Council, and National Rural Electric Cooperative Association (Trade Associations). Diana Lee Luxenberg filed an out-of-time motion to intervene and comments.

IV. Comments

8. NERC and Trade Associations contest assertions made in the Complaint as well as the requested relief. NERC and Trade Associations contend that the Complaint failed to support the assertion that any registered entity violated the Reliability Standards during the February 2021 cold weather event with any evidence. As a result, NERC and Trade Associations maintain that the Complaint does not meet the pleading requirements in Rule 206 of the Commission's Rules of Practice and Procedure.¹² In addition, NERC and Trade Associations state that the Complaint's requested relief of an investigation and Reliability Standards revisions would duplicate current activities addressing the February 2021 cold weather event and potentially hamper those efforts.¹³ NERC and Trade

¹⁰ Complaint at 7; *see also id.* at 11 (alleging that 52.6% of the U.S. Department of Energy's disturbance reports filed nationwide in the last decade were weather-related, and for the Texas RE region, this percentage was 70.9%).

¹¹ We have considered this supplemental information in considering the relief sought in the Complaint.

¹² NERC Comments at 2, 6; Trade Associations Comments at 3.

¹³ NERC Comments at 2, 8; Trade Associations Comments at 3.

Associations explain that NERC and the Commission are already conducting a joint inquiry into the operations of the Bulk-Power System during the February 2021 cold weather event.¹⁴ NERC adds that it is currently developing cold weather Reliability Standards under Project 2019-06 – Cold Weather, which is targeted for completion by June 2021.¹⁵ Finally, NERC contends that the Commission’s upcoming technical conference to examine the threat that climate change and extreme weather events pose to electric reliability, as well as its commitment to determine whether market participants engaged in violations of market rules during the February 2021 cold weather event, demonstrate that the requested relief is already underway.¹⁶

9. Several private citizens support the assertions contained in, and the relief sought by, the Complaint. For example, Vavaroutsos, Ellsworth, and LoRusso contend that the Complaint has merit and urged the Commission to take action in response.¹⁷ Chrosniak commented in support, stating that the blackouts in Texas during the cold weather event constituted a “‘failure due to negligence’ by not enforcing reliability standards.”¹⁸ Similarly, Reitman states that something is wrong with either the applicable Reliability Standards, the procedures being followed by ERCOT, or both, and Luxenberg contends that companies should be held accountable for violations of Reliability Standards and Reliability Standards should be strengthened to avoid blackouts.¹⁹

10. Other commenters expressed similar views, stating that many of the issues encountered during the February 2021 storm were due to a lack of regulatory oversight²⁰ and the fact that the recommendations issued after the 2011 cold weather-related event in Texas were not followed.²¹ Secure the Grid Coalition agrees with the complainant,

¹⁴ NERC Comments at 9; Trade Association Comments at 3-4.

¹⁵ NERC Comments at 10.

¹⁶ *Id.* at 10-11.

¹⁷ Vavaroutsos Comments at 1; Ellsworth Comments at 1; LoRusso Comments at 2; *see also* Baer Comments at 2 (stating that the electric utility system is extremely vulnerable).

¹⁸ Chrosniak Comments at 2.

¹⁹ Reitman Comments at 5; Luxenberg Comments at 1.

²⁰ Frank Comments at 1.

²¹ Dodson Comment at 1.

maintaining that the “reliability standards for the electric grid are both insufficient and underenforced.”²²

V. Determination

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2020), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

12. Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2020), we grant Diana Lee Luxenberg’s late-filed motion to intervene given her interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Substantive Matters

13. As discussed below, we deny the Complaint because the Complaint does not adduce evidence to support the assertion that Reliability Standard violations contributed to the February 2021 cold weather event or that the Reliability Standards were deficient in preventing the event, which, as explained more fully below, is required under our Rules and is further described in Commission precedent. Moreover, at this time, we believe that adequate steps are being taken by the Commission and NERC to assess and understand the impact of the February 2021 cold weather event on the Bulk-Power System and to mitigate the impacts of future events.

14. The Complaint seeks an order from the Commission directing NERC to investigate whether Reliability Standards were violated during the February 2021 cold weather event pursuant to section 215(e)(3) of the FPA. However, as the Commission has previously observed, Rule 206 of the Commission’s Rules of Practice and Procedure requires complainants to include the “action or inaction which is alleged to violate applicable statutory standards or regulatory requirements” and “explain how the action or inaction violates applicable statutory standards or regulatory requirements.”²³ In the context of alleged Reliability Standard violations, the Commission has explained that 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

²² Secure Grid Coalition Comments at 1.

²³ 18 C.F.R. §§ 385.206 (b)(1), (b)(2).

caused the violation.”²⁴ The Complaint does not contain facts demonstrating violations of specific Reliability Standards or a narrative explaining, at least broadly, which Reliability Standards were ineffective during the February 2021 cold weather event. Therefore, the Complaint does not meet the necessary elements of Rule 206.

15. In the same way, the Complaint fails to provide an adequate basis for the Commission to consider a directive to NERC pursuant to section 215(d)(5) of the FPA to develop and submit new or modified Reliability Standards. We find nothing in the Complaint that compels the issuance of such a directive at this time.

16. The Commission appreciates the magnitude of the February 2021 cold weather event and its terrible impact on people living in the affected areas of the country. For that reason, the Commission announced on February 16, 2021 the commencement of a joint inquiry with NERC into “the operations of the bulk-power system during the extreme winter weather conditions currently being experienced by the Midwest and South central states.”²⁵ The announcement explained that “FERC and NERC will formally begin the inquiry, which will work with other federal agencies, states, regional entities and utilities to identify problems with the performance of the bulk-power system and, where appropriate, solutions for addressing those issues.”²⁶ In addition, on February 22, 2021, the Commission announced that its Office of Enforcement is examining wholesale natural gas and electricity market activity during the February 2021 cold weather to determine if any market participants engaged in market manipulation or other violations.²⁷ Finally, the Commission initiated a proceeding and technical conference to examine the threat that climate change and extreme weather events pose to electric reliability. That proceeding will focus on how grid operators prepare for and respond to extreme weather events, including, but not limited to droughts, extreme cold, wildfires, hurricanes, and prolonged

²⁴ *Citizens Energy Task Force v. Midwest Reliability Org.*, 144 FERC ¶ 61,006, at P 39 (2013).

²⁵ *FERC, NERC to Open Joint Inquiry into 2021 Cold Weather Grid Operations*, News Release (Feb. 16, 2021), <https://www.ferc.gov/news-events/news/ferc-nerc-open-joint-inquiry-2021-cold-weather-grid-operations>.

²⁶ *Id.* While the joint inquiry is not a compliance investigation, the joint inquiry is tasked with identifying the underlying causes of any problems experienced by the Bulk-Power System during the February 2021 cold weather event.

²⁷ *FERC, FERC to Examine Potential Wrongdoing in Markets During Recent Cold Snap*, News Release (Feb. 22, 2021), <https://www.ferc.gov/news-events/news/ferc-examine-potential-wrongdoing-markets-during-recent-cold-snap>.

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heat waves.²⁸ These efforts will create a record about the causes of the February 2021 cold weather event as well as consider the potential for future extreme weather events that will, in turn, inform any decision on the need for further action, including possible new or modified Reliability Standards.²⁹ Moreover, these efforts appear to address certain relief that was requested by the Complaint.

The Commission orders:

We deny the Complaint, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁸ *FERC to Examine Electric Reliability in the Face of Climate Change*, News Release, Docket No. AD21-13-000 (Feb. 22, 2021), <https://www.ferc.gov/news-events/news/ferc-examine-electric-reliability-face-climate-change>.

²⁹ We recognize NERC's ongoing effort to develop cold weather Reliability Standards by June 2021. *See* NERC Comments at 10.

Document Content (s)

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