

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability Corporation

Docket No. RR23-1

**Motion to Answer and Answer of Public Citizen**

Pursuant to 18 CFR § 385.213, Public Citizen answers NERC's June 15 reply, in order to correct the factual record. NERC makes an unsupported claim that the Federal Power Act requires NERC to consider reliability standards' impact on competitive markets -- it does not. NERC's insistence that reliability standards must support competitive markets may compromise the effectiveness of federal electric reliability standards.

The question is whether the statutory language of the Federal Power Act—which states that FERC should rely on the technical expertise of NERC with respect to the “content of a proposed standard or modification to a reliability standard,” but, should *not* defer to NERC with respect to the “effect of a standard on competition”<sup>1</sup>—supports NERC's declaration that reliability standards cannot interfere with competitive markets:

*While NERC Reliability Standards are intended to promote [Bulk Power System] BPS reliability, they must also accommodate competitive electricity markets. Reliability is a necessity for electricity markets, and robust electricity markets can support reliability. The intent of considering the NERC Market Principles is to ensure that Regional Standards are written to achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets. Recognizing that BPS reliability and electricity markets are inseparable and mutually interdependent, all Regional Standards shall be consistent with the NERC Market Principles.<sup>2</sup>*

NERC is attempting an impermissible logic leap: from Congress declaring that FERC should not defer to NERC on the “effect of a [reliability] standard on competition” to proclaiming that NERC's reliability standards must “accommodate competitive electricity markets”.

In fact, details of FERC's rulemaking disputes NERC's interpretation. On March 30, 2006, in response to some ISOs and RTOs requesting clarification on Order No. 672,

---

<sup>1</sup> 16 U.S.C. § 824o(d)(2).

<sup>2</sup> [www.citizen.org/article/competitive-electricity-markets-%e2%89%ao-reliability/](http://www.citizen.org/article/competitive-electricity-markets-%e2%89%ao-reliability/)

FERC issued the Final Rule on Order No. 672.<sup>3</sup> Part 3 of the order—*No Deference on Competition*—articulates and clarifies the standards, rules, and procedures surrounding how FERC will review a Reliability Standard for its effect on market competition.<sup>4</sup> ¶ 27 reaffirms that FERC will not defer to NERC with respect to the Reliability Standard’s effect on competition, and declares that FERC does not have a “generic test to balance reliability and competition concerns in the absence of specific facts.” Instead, FERC states that it will evaluate the competitive effect of a proposed Reliability Standard on a case-by-case basis. FERC also confirms that it will ensure the proposal does not favor or thwart bilateral or organized markets.

NERC’s declaration in this proceeding that its Reliability Standards “must also accommodate competitive electricity markets” is in conflict with FERC’s conclusion that it will evaluate a Reliability Standard’s effect on competition on a case-by-case basis. As such, the proposed language in Section 1.1 of the Texas Reliability Entity, Inc. *Regional Standards Development Process* is inconsistent with the Federal Power Act and FERC’s Order No. 672.

Respectfully submitted,

Tyson Slocum, Energy Program Director  
Sarah O'Farrell, Legal Intern  
Public Citizen, Inc.  
215 Pennsylvania Ave SE  
Washington, DC 20003  
(202) 588-1000  
tslocum@citizen.org  
sofarrell@citizen.org

Filed July 24, 2023

---

<sup>3</sup> [www.ferc.gov/sites/default/files/2020-05/20060330190036-RM05-30-001\\_o.pdf](http://www.ferc.gov/sites/default/files/2020-05/20060330190036-RM05-30-001_o.pdf)

<sup>4</sup> *Id.* at ¶ 27.