

reliability standards development process is followed in the development or modification of a reliability standard.

As a member of the Bilateral Electric Reliability Oversight Group (“Bilateral Group”), FERC has expressed its commitment to approaches that assure that the ERO can work effectively on an international basis. The Terms of Reference, signed by all the members of the Bilateral Group, recognize the importance of coordination and cooperation of the relevant governmental authorities in exercising their respective responsibilities to assure the reliability of the international grid. And CEA members are very appreciative of prior FERC orders that have recognized that an effective international organization requires regulatory actions that are respectful of jurisdictional sovereignty. For example, FERC’s decision not to remand any of NERC’s proposed reliability standards in the Final Rule approving NERC’s standards avoided jurisdictional complications where those standards are mandatory and enforceable in Canada.

CEA members understand the challenges in establishing NERC as the ERO in the United States, and further understand FERC’s interest in remaining engaged in the standard setting and enforcement processes. But NERC can be effective as an international ERO only through governmental actions that recognize that the grid is regulated by multiple and distinct governmental authorities. The ERO cannot operate effectively as an international ERO unless all regulators remain respectful of the NERC standards development process.

The CIP NOPR contains numerous and detailed directives to modify various provisions in the proposed CIP standards. CEA agrees that guidance from a governmental authority in addressing issues of concern regarding certain standards would be useful to NERC in revisiting such standards. CEA, however, is concerned that the proposed directives in the CIP NOPR go far beyond simply providing guidance to NERC. These specific and detailed directives could

serve to limit NERC's ability to effectively balance the interests and concerns of the North American utility industry and could limit its ability to craft a revised standard that would receive approval from the other governmental authorities.

Among the directives that concern CEA members are the directives that dictate how the responsible entity must implement a requirement in the standard. CEA shares NERC's concerns expressed in comments submitted in this docket regarding the Commission's proposal to direct NERC to modify the CIP Reliability Standards to address the "how" rather than relying on the use of performance-based standards. Such a directive would limit the industry's ability to incorporate changes in circumstances or technologies, thereby effectively reducing both the security and reliability of the grid. CEA further agrees with NERC that the Commission's proposal to expand the scope of the CIP standards to encompass issues such as telecommunications links between Electronic Security Perimeters and protection architectures have no bearing on bulk power system reliability and are essentially "how" issues that should be left to the industry to address. And such additional measures could add considerable and unnecessary work for utilities and detract from existing efforts to implement the measures currently contained in the CIP Reliability Standards, potentially delaying overall compliance with the CIP Standards.

CEA members are further concerned about directives that would require the additional sharing of sensitive information by Canadian utilities. For example, FERC proposals to include a mechanism for the external review and approval of the critical assets lists based on a regional perspective (CIP NOPR ¶ 113) and to require the responsible entity to periodically submit to the Regional Entity the documentation of exceptions to the cyber security policy (CIP NOPR ¶ 132) would involve the submission of sensitive information. Some Canadian utilities are prohibited

from sharing security information with U.S. authorities. In addition, some utilities regard sharing sensitive security information externally or with a foreign entity as a security risk. Currently, sensitive information is kept on site and shared with external audit teams during visits and the information remains on-site following the audit. The Commission's proposed changes would require sensitive material to be shared on a regular basis and stored externally and perhaps in a foreign jurisdiction. Given the impact on Canadian utilities from such changes to the CIP Reliability Standards, CEA requests that the Commission exercise caution with respect to this issue, and allow for the NERC standards development process to develop the right approach for the disclosure of sensitive information by all affected entities, including Canadian utilities.

Beyond these detailed directives for changes to be made through the standards development process, in several places in the CIP NOPR, FERC proposes to direct NERC to make immediate modifications to the standard, rather than to make such modifications through the standards development process. For example, FERC expressed concern that there are no controls or limits on a responsible entity's use of the acceptance of risk exception, and therefore proposes to direct NERC to remove the "acceptance of risk" language from the CIP Reliability Standards. (CIP NOPR, ¶ 86) Further, in terms of the Violation Risk Factor assignments, FERC has directed NERC to modify several requirements to denote a higher Violation Risk Factor assignment. While it may be FERC's intention that such modifications be made through the standards development process, the directive that such modifications be made within 60 days of the issuance of the Final Rule would effectively prevent the use of the reliability standards development process in making such modifications. Any modifications to a Reliability Standard must be made through the standards development process.

Conclusion

An effective international ERO requires that the relevant governmental authorities trust the ERO standard-setting process for both developing and modifying reliability standards. NERC is in the best position to balance differing needs and concerns in the U.S. and Canada. CEA asks that the Commission refrain from issuing detailed directives regarding the CIP Reliability Standards and allow NERC, through the participation of both U.S. and Canadian stakeholders, to develop standards that work effectively on both sides of the border. And, for the reasons provided above, CEA requests that the Commission refrain from directing that standards be modified except through the standards development process. Finally, CEA requests that the Commission assure that all directives contained in the Final Rule (such as the proposed modifications to the Violation Risk Factor assignments) allow for sufficient time for the standards to be modified through the standards development process and with appropriate modifications to the implementation plan.

Respectfully submitted,

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