

APPA is the national service organization representing the interests of more than 2,000 not-for-profit, publicly owned electric utilities throughout the United States.

NRECA is the not-for-profit national service organization representing approximately 930 not-for-profit, member-owned rural electric cooperatives, including 66 generation and transmission cooperatives that supply wholesale power to their distribution cooperative owner-members.

TAPS is an association of transmission-dependent utilities in more than 30 states, promoting open and non-discriminatory transmission access.

ELCON is the national association representing large industrial users of electricity.

EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers account for 40 percent of the installed capacity in the United States.

The Trade Associations Support Reasonable and Cost Effective Approaches For Protecting Critical Electricity Infrastructure And Cyber Security. The Commission Should Approve Version 4.

The NOPR at P. 21 proposes Commission approval for Version 4. The Trade Associations support the proposal. Trade Associations agree with the Commission that Version 4 was offered as an interim step to fulfilling the broad range of directives in Order No. 706, an activity that we now generally refer to as Version 5. It was not offered to suggest that Version 5 could be indefinitely postponed or delayed. Rather, and as these comments state, Trade Associations support a focused effort to ensure timely

completion of Version 5 and filing of a comprehensive set of revisions to the CIP standards for approval with the Commission.

We have understood since initial Commission approval of Order No. 706 that there have been criticisms of the discretion afforded to companies for determining the applicability of the NERC CIP standards. Version 4 aims at addressing those concerns with the understanding that Version 5 would follow. The NOPR rightly indicates that Version 4 will remove that discretion and also increase the number of assets that will be covered by the mandatory NERC Reliability Standards. Trade Associations agree that Version 4 implementation will require a significantly greater number of operations control centers, transmission substations, and large baseload generation stations to be identified as Critical Assets covered by NERC's CIP standards. NOPR at P. 23. All generation blackstart facilities that are included in restoration plans used to re-start the bulk power system following a large blackout will be covered as well. We view this is an important step-change and a significant response to the criticisms that have been raised.

Implementation of the Version 4 proposal, however, will be neither a simple nor straightforward activity. While in broad terms we understand that Version 4 might be viewed as an interim step, it also may have created some implementation challenges. The Trade Associations therefore caution the Commission against concluding that implementation should be viewed as simple or easy. Companies all across the country have implemented Version 3 in different ways. Further, companies have been reviewing

Order No. 706 and begun to consider various and interrelated enterprise planning, budgeting, and implementation issues that will be required upon approval of Version 5. As noted above, CIP and cyber security are beginning to represent significant enterprise cost drivers for Registered Entities, which must justify those costs to their shareholders and customers in terms of the benefits and values provided by the activities, and how effectively their spending satisfies the defined goals or strategic risks. These strategic planning and budgeting activities must necessarily take a long-term view that includes full implementation of what generally will be required under Version 5.

In addition to proposing approval of Version 4, the Commission seeks comment on several questions relating to identifying Critical Assets under CIP-002-4. While we appreciate the Commission's continuing inquiries on various policy and technical issues, we preface our responses to the questions by respectfully requesting that the Commission not seek to adjust or revise the proposal or implementation of Version 4 through the compliance process as explained below.

First, the Commission asks whether a registered entity retains the flexibility under Version 4 to identify assets that, although outside of the bright-line criteria, are essential to Bulk Power System ("BPS") reliability. NOPR at P 31. Based on CIP-002-4 as presently drafted, we understand that registered entities do not have such flexibility to identify additional assets. The "bright line" proposal was designed to remove discretion. Requirement R1 requires entities to develop a list of identified Critical Assets determined through the annual application of the Critical Asset Criteria, and such criteria do not

permit an additional “catch-all” inclusion for additional assets deemed essential to BPS reliability. Trade Associations believe that the very purpose of having a set of approved bright-line criteria is to provide registered entities with clear direction to distinguish between: (1) those assets covered by the thresholds set forth in the Critical Asset criteria, and (2) all of an entity’s other BPS assets that, while part of the BPS, are not intended to be part of the entity’s CIP compliance program. Registered entities certainly have the discretion to supplement certain additional non-critical assets with the software and equipment enhancements similar to those assets covered under the Critical Asset criteria, without being subject to the documentation and compliance obligations imposed upon their CIP-compliant assets. Similar to federal environmental regulations for power plants or state-based insurance requirements for households and small businesses, nothing in the mandatory standards prevents entities from applying protection or controls to facilities or equipment not covered by the standards.

Second, the Commission also seeks comment on whether NERC and Regional Entities would have the ability, either in an event-driven investigation or compliance audit, to identify specific assets that fall outside bright-line criteria yet are still essential to BPS reliability and should be subject prospectively to compliance with the CIP Reliability Standards. NOPR at P 31. Trade Associations do not support an approach that would allow NERC or Regional Entities any opportunity to add assets to an entity’s CIP compliance program that are clearly outside the established and approved bright-line criteria. Such an approach would undermine and frustrate the very purpose of

establishing bright-line criteria to provide registered entities with clear guidance when assessing their BPS assets under the Critical Asset Criteria and determining which associated Critical Cyber Assets would be subject to the CIP Reliability Standards. If NERC or Regional Entities were permitted to identify additional critical facilities on the basis that they are “essential to BPS reliability,” they very well could impose CIP compliance obligations on any assets that are part of the BPS, insofar as any such assets are necessarily “essential to BPS reliability” (*i.e.*, a disturbance involving that asset could impair reliability). Instead of adding yet further uncertainties, registered entities should have the requisite clarity afforded by bright-line criteria to install the necessary equipment and other measures to safeguard the cybersecurity of those Cyber Assets associated with the Critical Assets covered by the bright-line criteria, consistent with the CIP Reliability Standards, and no other assets.

Moreover, as a generic matter this could set a troubling precedent, with the prospect that NERC or Regional Entities could in the future seek to second-guess other registered entity decisions and reach beyond the boundaries of standards’ applicability. As the Commission itself asserts, the application of uniform criteria is an improvement over the current approach because it adds greater consistency and clarity in identifying Critical Assets. NOPR at P 29. Trade Associations agree that all registered entities ought to be subject to the same applicability criteria for identifying Critical Assets. Approval of the Commission’s proposal would serve to defeat the purpose of the bright-line criteria.

Third, the Commission also states a concern about a “lack of regional review” in the identification of Cyber Assets that might result in a reliability gap, indicating that “it will be essential for NERC and the Regional Entities to actively review the designation of cyber assets that are subject to the CIP Reliability Standards, including those which span regions in order to determine whether additional cyber assets should be protected.”

NOPR at PP 60-61. Without more specific information about the mechanics of this proposal or the nature of this perceived gap, and in the absence of any requirement in CIP-002-4 whereby registered entities are required to present their lists of Critical Cyber Assets to NERC or a Regional Entity, Trade Associations cannot support this proposal. Registered entities are in the best position to determine which of their respective Cyber Assets are critical to the operation of Critical Assets and therefore subject to CIP compliance. NERC and the Regional Entities would have reasonable opportunity as part of any compliance audit or other compliance monitoring process to review a registered entity’s approach for developing its list of Critical Cyber Assets and, at that time, can perform an independent evaluation to determine if there exists any gap in undesignated Cyber Assets.

Fourth, the Commission also seeks comments regarding misuse of control centers and associated control systems. NOPR at P. 53-58. We share the Commission’s concern that these kinds of assets need appropriate protections under the standards. However, we understand that careful consideration is being given for defining the term “control center” within the Version 5 project, and that the treatment of various “control systems” is also

being addressed. As the NOPR describes, these assets are used in widely varying circumstances and configurations, and appropriate prioritization and tailored application of mandatory requirements will be needed.

While the Commission does not seek comment on the following issue, Trade Associations would like to address the Commission's discussion of Version 4 improving the identification of Critical Assets, where the Commission refers to NERC's June 30, 2011 data response presenting industry survey data. The Commission cited the NERC data response stating that "the 25 percent of generation units rated 300 MVA and above would be identified as Critical Assets under Version 4," and that "[w]hile the bright line thresholds result in the identification of a significant number of additional generation plants above 1500 MVA as Critical Assets, the thresholds also result in the identification of less generation below 300 MVA." NOPR at P 23.

While Trade Associations understand that these statements were based on a question in the data response concerning the application of the bright line on generation units rated at or above 300 MVA, we nonetheless question the basis for the Commission's use of this particular numerical value or its relevance for reliability. None of the Critical Asset criteria refers to a 300 MVA threshold for generation facilities. The NERC registration criteria do not use this value and we can find no other references in the Commission-approved Rules of Procedure or various NERC technical materials. Criterion 1.1 refers to a group of generation units at a single plant location with an aggregate rating exceeding 1500 MW in a single Interconnection, while Criterion 1.2

refers to reactive resources at a single location having an aggregate rating of 1000 MVAR or greater. Therefore, Trade Associations do not believe the 300 MVA numerical value discussion should influence the Commission's final rule. Rather, the Trade Associations believe that the Commission should reserve its evaluation of the ability of the bright line to adequately identify Critical Assets in a manner that aligns with the thresholds set forth in the current Attachment 1 criteria, in order to provide registered entities with confidence in the approach as a true bright line.

As a more strategic matter, the questions and commentary offered in the NOPR suggests to us the need for a longer term discussion on CIP and cyber security. The Commission encourages NERC to "accelerate development" of Version 5, stating that bright line criteria may limit the applicability of "legally mandated cyber security protections" and therefore "indicate to an adversary the types of assets that fail to meet the threshold." NOPR at P. 32 The NOPR does not provide further description, and perhaps the Trade Associations are over-reading this brief language as a troubling set of suggestions to the electric industry, that entities will act to protect their critical infrastructure only if legally required or that registered entities will not and cannot act to conduct appropriate activity absent such mandates. Instead, we hope to understand the intent of the language as an encouragement for the continuation of the diligent work underway to address shared cyber security goals and objectives. For the reasons set forth later in these comments, Trade Associations believe that NERC should ensure Version 5 achieves multiple goals, including a fully responsive proposal to Order No. 706, a

realistic timetable for Version 5 development that will reduce compliance and implementation issues, and ensuring that the complexities of the controls and protections defined under Version 5 form a cohesive package. For purposes of these comments, Trade Associations understand that “accelerate development” does not mean forcing NERC to submit a rushed project that has not been fully thought through, which could also result in the very problem articulated in P. 32, that “adversaries” will see gaps or vulnerabilities waiting only for those adversaries’ opportunistic exploits.

Moreover, the Commission in P. 32 encourages NERC to “address the concerns discussed herein in Section B,” which covers a broad range of issues such as the NIST framework, connectivity, and control centers, but offers this encouragement in the context of the applicability criteria. To ensure that NERC and industry stakeholders understand the nature of this statement, and that the Version 5 stakeholder process respects the Commission’s interests as stated in the NOPR, we seek additional explanation in the final order, specifically, whether stakeholders should understand such encouragement to mean general direction and encouragement to address these issues in Version 5 or as a new requirement to do something more than previously directed in Order No. 706 *et al.* However, it is the Trade Associations’ expectation that the Commission will refrain from including further directives in the final rule. Trade Associations also strongly encourage the Commission to direct its technical staff to participate in the standard development process and to articulate their interests and concerns.

Trade Associations Support The Commission’s Proposal To Approve With Certain Conditions The Effective Date And Implementation Plan Of Version 4. (NOPR, P. 39)

As previously stated, companies across the country have made widely varying commitments under Version 3. For many companies, implementation of Version 4 will be a complex and long-term process, which will necessarily involve careful enterprise-wide planning and budgeting coordination across multiple business units, including the prospective full implementation of Version 5.

Given the inherent planning complexities of implementing “3 to 4 to 5” and the widely varying circumstances of companies, Trade Associations believe that the Commission should avoid a “one size fits all” implementation plan that would apply to all companies. Instead, we recommend that the Commission allow NERC and the Regional Entities to allow registered entities to offer options that include tailored implementation plans. Such an approach could be workable if it provided consistent guidelines to registered entities to develop a tailored implementation plan, a clear framework for achieving compliance through such a plan, and a mechanism for NERC, the Regional Entities, and registered entities to coordinate efforts to achieve compliance in an efficient and orderly manner with no adverse impact on BPS reliability.

The Commission, in proposing to approve the implementation plan for CIP-002-4, recognizes that certain registered entities have already installed the necessary equipment and software for the elements identified by the new bright-line criteria utilizing their respective methodologies associated with CIP-002-3 to address cybersecurity, while other

registered entities' methodologies may not have identified these elements and therefore they may need to purchase and install new equipment and software to achieve compliance with CIP-002-4. Regardless of entities' requirements to meet the tenets of CIP-002-4, registered entities may well face significant challenges as a result of the approval and implementation of Version 4 followed potentially so closely in time to the approval of Version 5 and its substantially different requirements.

Trade Associations also believe that the implementation plan proposed in the NERC Petition will provide an effective and practicable approach for many companies, and support its approval by the Commission. However, especially for registered entities having more complex widespread operations or involving multiple business units, the migration toward Version 5 will demand complex planning, significant costs, and critical implementation challenges. The current regulatory framework is a unique situation and may have significant practical implications due to its potentially overlapping standards versions, that it therefore may be suitable for a tailored implementation framework. Allowing for tailored implementation through NERC and the Regional Entities could help ensure that both short- and long-term budgeting, business plan development, and implementation can be conducted by registered entities as efficiently and practically as possible.

We understand that the Commission may be apprehensive that some registered entities may indefinitely delay compliance if implementation flexibility is allowed. But, with the benefit of discussions with many registered entities in highly diverse

circumstances, we are convinced that the complexities of moving from “3 to 4 to 5” for some companies merits the Commission’s consideration to allow some latitude in implementation. And, provided that the Commission allows NERC to develop a reasonable framework for developing adequately tailored implementation plans, this concern will likely be unfounded. Rather, flexibility will conserve resources and facilitate timely implementation of Version 5, with corresponding benefits to industry cybersecurity.

Trade Associations Support The Commission Setting Goals For NERC To Submit Modified CIP Standards.

In the NOPR, the Commission seeks comments on whether it should set a specific deadline for NERC to file Version 5 for approval. NOPR at P. 41. Trade Associations understand that the Commission seeks to better ensure a timely approval by NERC stakeholders of Version 5. Trade Associations propose that the Commission set a realistic goal for NERC to file Version 5 and periodic informational filing reports or, alternatively, if a fixed date is viewed as absolutely critical, the date should be set for the first quarter in 2013.

Our recommendation is shaped by several considerations. The plan offered to date by the standards drafting team is both aggressive and optimistic, suggesting that the proposed Version 5 comprehensive package could be delivered to the Commission as early as September 30, 2012.

We applaud the drafting team's commitment and dedication; however, we also believe that such a deadline suggests the project can and will successfully overcome numerous practical hurdles. The September 30 date would allow for one initial ballot and one successive ballot under the NERC standards development process. Considering the large scale and complexity of the project, we do not believe that there is a high likelihood that only one successive ballot will achieve the necessary weighted 2/3 majority approval by stakeholders. There are very large numbers of "moving parts" in Version 5 and companies are in very different levels of technical understanding in their consideration of the issues being addressed. The entire proposed Version 5 package was posted for industry review the first time only two weeks ago. We expect that the drafting team will be engaged for many weeks in considering and responding to comments provided in both the initial and successive ballot processes, and revising the proposed initial draft standards for posting and balloting. The successive ballot is accordingly likely to take place in the second quarter of 2012. Moreover, an aggressive fixed deadline, and the single successive ballot that such a deadline would force, could inadvertently blunt this important learning process that results from technical understanding gained from the comments of the Registered Ballot Body.

In addition, we urge the Commission to avoid issuing a directive for NERC to file for approval a rushed project. While we understand the potential sense of urgency, everyone -- the Commission, NERC, registered entities -- has lived for several years with the unintended consequences of the expedited development and approval of the "Version

0” standards. On behalf of our respective memberships, we urge the Commission to avoid inadvertently creating another broad and frustrating range of implementation, and compliance and enforcement issues.

Finally, Trade Associations do not wish to place the NERC Board of Trustees in the position of needing to decide whether to exercise special decisional authorities under Section 321 of the NERC Rules of Procedure (ROP) should the Commission impose a fixed deadline and stakeholders are unable to reach the needed 2/3 majority approval. We understand that this special ROP tool was created for purposes other than to accelerate or complete a standards development project under a tight timeline, and would hope that a fixed deadline would not inadvertently pressure the Board of Trustees to invoke this unique authority. We also understand that the Board of Trustees seeks to protect and maintain the integrity of the stakeholder process and does not seek to undermine in any way the collective subject matter expertise of the electric industry that is brought together through the process.

Therefore, we strongly recommend that the Commission should set a reasonable goal for NERC and seek periodic informational filings on status and issues that raise significant technical disagreements or tensions.

Alternatively, should the Commission find that it needs to ensure a fixed filing date for Version 5, we recommend that a reasonable date could be during the first quarter of 2013. Regardless of the decision, whether stated as a goal or a fixed date, Trade Associations respectfully request that the Commission seek periodic informational filings

and remain open to allowing an extension in consideration of the issues raised by these comments.

NERC and the industry are devoting substantial resources to the timely completion of Version 5. However, an artificial deadline may increase the risk that some complex technical issues will not be fully resolved in Version 5 – prompting a need for immediate initiation of further revisions to the CIP standards. The pancaking of multiple versions of the CIP standards will increase industry costs, stretch scarce industry expertise, and could lessen overall security of the BPS by confusing and distracting subject matter expertise that should be focused on the tasks at hand.

The Commission justifiably did not set out a strict deadline for addressing the directives in Order No. 706. Instead, it allowed the industry time to deliberate through the NERC process, evaluate and resolve complex set of technical issues with the expectation that this process would produce a comprehensive set of Reliability Standards on cyber security. Trade Associations recommend that the Commission should continue in this manner and let the NERC Standard Development Process work at a deliberate pace to produce a set of well crafted Reliability Standards.

Trade Associations Believe That The Commission Should Carefully Consider The Consequences And Value Of Developing Criteria For Identifying Critical Cyber Assets In Version 4.

In the NOPR, the Commission seeks comment on a general proposal to link connectivity and the applicability of Version 4 for Critical Cyber Assets. NOPR at P. 43. We understand the interests and strong concerns of the Commission as they have been

articulated in various orders, including Order No. 706, regarding the criticality of the electricity sector in its role as a basic infrastructure industry whose physical and cyber security must be strongly protected. While companies have different strategies and apply their strategies with different tools and tactics, registered entities understand their responsibilities and the importance of electric infrastructure, and are committed to providing appropriate and reasonable levels of protection.

Trade Associations believe that no additional directives need to be issued in the final rule of this Docket. The Commission directives in Order No. 706 are being fully addressed by the CSO706 Standard Drafting Team (SDT), which is reflected in Version 5 set of CIP Reliability Standards presented to the industry for comment and ballot on November 7, 2011. We recommend that the Commission approve the Version 4 CIP Reliability Standards and let the Version 5 SDT complete its work through the NERC Reliability Standard development process. Trade Associations also believe that any further directives in the final rule approving Version 4 CIP Reliability Standards would be counterproductive at this late stage in the Standard Development process for Version 5 and ask that the Commission seek to avoid such action, where a final order in this docket could be issued during the successive balloting process. We seek that the Commission not inadvertently prejudge Version 5 in this docket.

Along this line, Trade Associations recommend that the Commission direct its staff to present any of the proposals detailed in the NOPR's discussion PP 40-61 to the SDT for consideration in the Standard Development process. It is our opinion that the

collaboration and open communication of the Commission's staff with the SDT can address the concerns raised in the NOPR's discussion. The Trade Associations strongly believe the "weakest link" concept stated by the Commission in its orders needs significant refinement. NOPR at P. 43. Coupled with a general proposal to link this weakest link concept with a connectivity criteria and the "potential to compromise reliable operations," we strongly believe that the industry will have very different understandings of the meaning of a "weakest link" policy and how it might be applied in terms of a potential to "compromise" operations. In other words, we are concerned that there may be no reasonable limit if the policy goal is to protect against "potential" threats that could "compromise" reliability. Far more detailed discussion is needed, since we understand these kinds of concepts to difficult to measure against any goals or benchmarks, and a subjective "moving target" that can inspire intense discussion without yielding substantive decisions. Trade Associations therefore encourage the Commission to move ahead by improving upon its characterizations of various issues, the use of terms, and their application to actual circumstances. The Commission should avoid seeking specific outcomes or actions out of an overly simplistic view based on these broad abstractions. We urge the Commission to understand that a vaguely defined and applied "weakest link" policy requires far more specificity and shared understanding. Instead, we request that the Commission seek to clarify through NERC the broad strategic goals and objectives for the specific risks and threats that need to be considered by NERC for CIP and cyber security, how to apply goals and risks through the NERC standards, and how other NERC tools or processes might be applied to these strategic challenges.

We recognize that brief written comments cannot set forth all of the combinations and permutations of how the “weakest link” policy might be better focused or otherwise improved. We do believe that at this point the Commission would be well served to explore the potential risks posed by connectivity and the consequences of exploiting those risks. However, we also strongly believe that description and discussion of the various issues are not well suited to open public venues.

Trade Associations Urge the Commission Not To Consider In This Docket Broad Policy Issues Involving Cyber Security. (NOPR, P. 45)

Trade Associations appreciate the Commission’s interest in the NIST Framework and other questions asked in the NOPR with respect to the NERC Functional Model, considerations of tiered approaches, connectivity and cyber security, and so on. We agree that NIST provides important insights for considering approaches for CIP and cyber security. However, we also believe that it is both premature for the Commission in this docket to consider moving toward a more formal NERC role to “ensure protection of all cyber systems connected to the Bulk Power System,” and that the questions are wrongly positioned procedurally by raising them in this much narrower proceeding. Seeking to resolve these questions without even knowing exactly how Version 5 addresses the directives issued in Order No. 706 adds yet another layer of uncertainties on NERC Registered Entities.

The Commission questions suggest to the Trade Associations broader generic issues along the lines of far-reaching policy level matters that should be considered independent of and not within the narrow limits of a proposal to change the applicability

of mandatory NERC CIP standards. These generic issues include potential federal-state jurisdictional matters, government-industry coordination efforts, smart grid design and implementation, defining Bulk Power System, and the costs and benefits of new or more focused policy directions. Moreover, and based only on the single sentence of the NOPR, we also disagree with the concept of seeking to link such an initiative with an effort to establish CIP requirements based on “entity functional characteristics,” which seems to introduce a broad new assertion of authority by the Commission that does not appear to fall within the Commission’s jurisdictional authority under Section 215.

At this time, the electric industry is seeking to develop the Version 5 standards, which will involve considerable time, attention, and cost. Full implementation of these standards could take place by 2016. Various industry groups and companies are hard at work with their counterparts in the government on a broad range of federal, regional, state, and local activities. Before embarking on yet another layer of requirements or discussions on policy level issues, consideration of changes to existing or forthcoming requirements, the Trade Associations strongly believe that the Commission would be better served by allowing the industry to move forward with Version 5 without the new clouds of uncertainties that the NOPR suggests.

While we understand the NOPR as a suggestion that the Commission has a sense of urgency to address CIP and cyber security with an aggressive posture, we also believe that the industry has established a stable foundation with the CIP standards, that Version 5 will extend that foundation, and continuous revisions to any foundation can also pose

risks to the integrity of a system. While we believe that there is strong value in continuously seeking improvement, we also believe similar value can be found in seeking a steady state in order for all Registered Entities to understand, plan, manage, implement, and critically analyze the effectiveness of their CIP and cyber security activities.

Moreover, and combined with the potentially new uncertainties for NERC Registered Entities on the technical issues, Trade Associations also believe that NERC Registered Entities have begun to approach significant process exhaustion in these seemingly endless lists of questions and ask the Commission to begin considering the merits of a more disciplined, measured, and longer term approach to considering questions that we view as policy in nature. The volume of activity, the intensity of matters moving through NERC and the Commission with regard to bulk power system reliability, and the apparent urgency of these activities, suggest to the Trade Associations that both NERC and the Commission see a set of enormous gaps in reliability that we simply do not see.

Should the Commission seek to continue its lines of questions, Trade Associations request that the Commission recognize that the development, approval, and implementation of Version 5 is not only an unfinished project, but one that many in the electric industry do not yet understand on either technical or policy levels, its strengths, whether it will adequately cover specific risks or threats, whether it will satisfy strategic policy goals, or how much it will cost. We respectfully request the Commission not prejudge the outcomes. We believe that before exploring the redesign, we should first

build the house and examine how well it meets our needs, the quality of the construction, and whether we have properly budgeted in light of resource constraints.

Respectfully submitted,

/s/ Signed

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November 21, 2011