

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

Version 4 Critical Infrastructure)	Docket No. RM11-11-000
Protection Reliability Standards)	
Version 5 Critical Infrastructure)	Docket No. RM13-5-000
Protection Reliability Standards)	

**EMERGENCY REQUEST FOR DELAY OF COMPLIANCE
DEADLINE OF THE AMERICAN PUBLIC POWER ASSOCIATION, THE EDISON
ELECTRIC INSTITUTE, THE ELECTRICITY CONSUMERS RESOURCE COUNCIL,
THE ELECTRIC POWER SUPPLY ASSOCIATION, THE LARGE PUBLIC POWER
COUNCIL, THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION AND
THE TRANSMISSION ACCESS POLICY STUDY GROUP**

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”),¹ the American Public Power Association (“APPA”),² the Edison Electric Institute (“EEI”),³ the Electricity Consumers Resource Council (“ELCON”),⁴ the Electric Power Supply Association (“EPSA”),⁵ the Large Public Power Council (“LPPC”),⁶ the National Rural Electric Cooperative

¹ 18 C.F.R. § 385.212 (2013).

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

³ EEI is the association of the nation’s shareholder-owned electric utilities, international affiliates, and industry associates world-wide.

⁴ ELCON is the national association representing large industrial consumers of electricity. ELCON member companies produce a wide range of products from virtually every segment of the manufacturing community. ELCON members operate hundreds of major facilities and consume power in the footprints of all organized markets and other regions throughout the United States.

⁵ EPSA is the national trade association representing competitive power suppliers, including generators and marketers. Competitive suppliers, which, collectively, account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities.

⁶ LPPC represents the 25 largest state and municipally-owned utilities in the nation, including the larger, asset-owning members of the public power community.

Association (“NRECA”)⁷ and the Transmission Access Policy Study Group (“TAPS”)⁸ (collectively referred to as the “Trade Associations”)⁹ hereby respectfully request that the Commission delay the deadline for complying with Version 4 of the Critical Infrastructure Protection (“CIP”) Reliability Standards (“CIP Version 4”) of the North American Electric Reliability Corporation (“NERC”), which are currently scheduled to become effective on April 1, 2014, pending action in a rulemaking proceeding on a proposed Version 5 of the CIP Reliability Standards (“CIP Version 5”).¹⁰ As explained below, absent such relief, entities registered with NERC will need to begin expending substantial time and resources this summer in order to meet the current April 1, 2014 deadline for complying with CIP Version 4, even though CIP Version 4 is expected to be retired before it takes effect, enabling registered entities to transition directly from Version 3 of the CIP Reliability Standards (“CIP Version 3”) to CIP Version 5.

The Trade Associations respectfully request that the Commission issue an order granting the relief requested herein ***not later than August 15, 2013***. Expedient Commission action delaying the deadline for complying with CIP Version 4 pending action on the CIP Version 5 NOPR will allow registered entities to focus their time and

⁷ NRECA is the national service organization dedicated to representing the national interests of cooperative electric utilities and the consumers they serve. NRECA is the national service organization for more than 900 not-for-profit rural electric utilities that provide electric energy to over 42 million people in 47 states or 12 percent of electric customers.

⁸ TAPS is an association of transmission-dependent utilities in more than 35 states, promoting open and non-discriminatory transmission access. Many TAPS members are small entities within the meaning of the RFA.

⁹ The comments contained in this filing represent the position of each of the Trade Associations as an organization, but not necessarily the views of any particular member with respect to any issue.

¹⁰ See *Version 5 Critical Infrastructure Protection Reliability Standards*, 143 FERC ¶ 61,055 (2013) (the “CIP Version 5 NOPR”).

resources preparing for the transition to CIP Version 5, rather than for a transition to CIP Version 4 that is likely to be superseded.

I. BACKGROUND

On April 19, 2012, the Commission issued Order No. 761 approving CIP Version 4, which consists of eight modified Reliability Standards (CIP-002-4 through CIP-009-4).¹¹ A primary change mandated in CIP Version 4 was to Reliability Standard CIP-002, which establishes criteria for identifying critical cyber assets. Under CIP Version 3, which is currently in effect, critical cyber assets are identified by a risk-based assessment.¹² By contrast, under CIP Version 4, critical cyber assets will be identified by applying 17 “bright line” criteria.¹³ All facilities determined to be critical cyber assets will be required to comply with the CIP Reliability Standards by April 1, 2014.¹⁴

On February 1, 2013, NERC filed a petition for approval of CIP Version 5, which consists of eight modified (CIP-002-5 through CIP -009-5) and two new Reliability Standards (CIP-010-1 and CIP-011-1) and, collectively, includes 12 new requirements.¹⁵ CIP Version 5 moves away from the “bright line” criteria set forth in CIP Version 4, and instead provides that each Bulk Electric System (“BES”) Cyber System (as defined in the NERC Petition) will be assigned a “low,” “medium,” or “high” impact

¹¹ See generally *Version 4 Critical Infrastructure Protection Reliability Standards*, Order No. 761, 139 FERC ¶ 61,058 (2012) (“Order No. 761”).

¹² See CIP-002-3.

¹³ See CIP-002-4.

¹⁴ See Order No. 761, 139 FERC ¶ 61,058 at PP 3, 7.

¹⁵ Petition of the North American Electric Reliability Corporation for Approval of Critical Infrastructure Protection Reliability Standards Version 5, Docket No. RM13-5-000 (filed Feb. 1, 2013) (the “NERC Petition”).

rating. Under the new approach, rather than critical cyber assets being subjected to all CIP Reliability Standard requirements, each BES Cyber System is only subject to those requirements that correspond with its impact category.

On April 18, 2013, the Commission issued the CIP Version 5 NOPR stating that CIP Version 5 “improve[s] the currently-approved CIP Reliability Standards,”¹⁶ and that “the proposed approach to categorizing BES Cyber Systems is a step towards applying the CIP protections more comprehensively to better assure the protection of the bulk electric system.”¹⁷ The Commission therefore proposed to approve CIP Version 5, with certain modifications.¹⁸ With respect to implementation of the new version, the Commission stated:

We propose to approve [NERC’s] implementation plan for the CIP version 5 Standards to allow responsible entities to transition from compliance with the currently-effective CIP version 3 Standards to compliance with the CIP version 5 Standards, essentially retiring the CIP version 4 Standards prior to mandatory compliance. Thus, upon approval of the CIP version 5 Standards in a Final Rule in this docket, CIP-002-4 through CIP-009-4 would not become effective, and CIP-002-3 through CIP-009-3 would remain in effect and would not be retired until the effective date of the CIP version 5 Standards.¹⁹

II. REQUEST TO DELAY THE DEADLINE FOR COMPLIANCE WITH CIP VERSION 4

The Trade Associations strongly urge the Commission to expeditiously issue an order delaying the deadline for complying with CIP Version 4, pending action on CIP

16 CIP Version 5 NOPR, 143 FERC ¶ 61,055 at P 4.

17 *Id.* at P 36.

18 *Id.* at PP 4-8.

19 *Id.* at P 89.

Version 5 that will likely allow registered entities to transition directly to CIP Version 5. Such an extension will allow registered entities to avoid wasting valuable time and resources preparing to comply with CIP Version 4, and allow them instead to focus their efforts more productively on cyber resources that constitute the greatest risk to the bulk electric system.²⁰

As described above, proposed CIP Version 5 would substantially modify compliance obligations by focusing on facilities with the greatest impact to the system. Under CIP Version 4, any facilities that are deemed to be critical cyber assets under the “bright line” criteria set forth in CIP-002-4 will be required to comply with all CIP Reliability Standards requirements. By contrast, CIP Version 5 would do away with the “bright line” criteria, and adopt a more granular approach, whereby each BES Cyber System will be classified as low, medium or high impact, and will be required to comply with the CIP Version 5 Reliability Standards requirements that correspond to its impact category. Critically, the implementation of CIP Version 5 will result in substantial modifications to the compliance obligations for many registered entities’ facilities that would have been deemed critical assets under CIP Version 4, but will only be low or medium impact BES Cyber Systems under CIP Version 5. Particularly given indications in the CIP Version 5 NOPR that the Commission intends to approve NERC’s implementation plan to skip CIP Version 4 and transition directly from CIP Version 3 to CIP Version 5, there is no useful purpose served by having registered entities expend

²⁰ In the unlikely event that the final rule on CIP Version 5 deviates from the implementation schedule proposed by NERC and contemplated by the CIP Version 5 NOPR so dramatically that the Commission would require CIP Version 4 would take effect before CIP Version 5, the Trade Associations request that any extension continue until a date not less than eight months following the issuance of the final rule on CIP Version 5 in order to allow registered entities sufficient time to comply with CIP Version 4.

time and resources attempting to comply with CIP Version 4 standards that are likely to not become applicable. Not only would this be a waste of resources, but it would also divert attention from other compliance efforts generally and relating to CIP Version 5 specifically.

As NERC has explained, its proposal to transition directly from CIP Version 3 to CIP Version 5 was intended to alleviate uncertainty resulting from “industry stakeholders not knowing whether the Commission will act on CIP Version 5 prior to the CIP Version 4 effective date, April 1, 2014, which would trigger compliance obligations for Responsible Entities.”²¹ Notwithstanding NERC’s proposal, however, registered entities must assume that the April 1, 2014 compliance deadline for CIP Version 4 remains in effect and prepare accordingly. Indeed, registered entities have indicated that, in order to meet the April 1, 2014 deadline, they will need to begin implementing, and incurring the costs of, modifications this summer.²²

The Commission has previously delayed implementation of a final rule where there is a genuine possibility that a requirement will not be in place in the near future, and the costs of compliance with the requirement are largely incurred up front.²³ The same is true here, and delaying the deadline for complying with CIP Version 4 until CIP

²¹ NERC Petition at 43.

²² See, e.g., Comments of the NRG Companies and Motion to Delay Effective Date of Version 4 Standards at 5, Docket No. RM13-5-000 (filed June 24, 2013) (EPSA member company commenting on the CIP Version 5 NOPR and explaining that it “will need to make a decision on whether to proceed forward with remediation work and expenditures required by [CIP] Version 4 by the end of July 2013 with little guidance as to how to maneuver the transition from [CIP] Version 3”).

²³ See, e.g., Electricity Market Transparency Provisions of Section 220 of the Federal Power Act, 142 FERC ¶ 61,105 at PP 2-3 (2013) (granting an extension of time to comply with the requirement to report electronic tag ID data in Electric Quarterly Reports). See also *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, 143 FERC ¶ 61,231 (2013).

Version 5 can be implemented will relieve registered entities from having to make needless expenditures and divert internal resources to comply with requirements that are likely to undergo an imminent change.

Delaying the deadline for complying with CIP Version 4 is also consistent with fundamental principles of good government, as articulated in Executive Order 13579, which directed independent agencies to “modify, streamline, expand or repeal” regulations that are “outmoded, ineffective, insufficient, or excessively burdensome.”²⁴ It is plainly unduly burdensome to compel registered entities to work towards complying with standards that are not expected to take effect and that will essentially be outmoded before they take effect. The Commission has properly acted in furtherance of such principles in the past and should do so in this case, in order to ensure that regulatory requirements “achieve their intended purpose and do not impose undue burdens on regulated entities or unnecessary costs on those entities or their customers.”²⁵

²⁴ *Regulation and Indep. Regulatory Agencies*, Executive Order 13579, 76 Fed. Reg. 41587 at § 2(a) (July 14, 2011).

²⁵ Plan for Retrospective Analysis of Existing Rules, Docket No. AD12-6-000 at 1 (Nov. 8, 2011) (unreported).

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the Trade Associations respectfully request that the Commission issue an order not later than August 15, 2013, delaying the deadline for complying with, or, in the alternative, staying the effectiveness of, CIP Version 4 until CIP Version 5 is implemented.

Respectfully submitted,

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