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September 5, 2014

SENT VIA ELECTRONIC FILING
Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
Room 1-A209
888 First Street, N.E.
Washington, D.C. 20426

Re: Docket No. RM14-15-000
Physical Security Reliability Standard

Dear Ms. Bose:

Attached please find the Notice of Intervention and Comments of the New York Public Service Commission in the above-entitled proceeding. Should you have any questions, please feel free to contact me at (518) 474-1585.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Alan T. Michaels'.

Alan T. Michaels
Assistant Counsel

Attachment

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

Physical Security Reliability Standard) Docket No. RM14-15-000

**NOTICE OF INTERVENTION AND COMMENTS
OF THE NEW YORK PUBLIC SERVICE COMMISSION**

Pursuant to Rule 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC or the Commission),¹ the New York Public Service Commission (NYPSC) hereby submits its notice of intervention and comments in the above-captioned proceeding.

I. INTRODUCTION

The Commission seeks comments on a Notice of Proposed Rulemaking (NOPR) regarding physical security standards. The purpose of the NOPR is to enhance physical security for critical facilities and reduce the overall vulnerability of the bulk power system to physical attacks.² The NOPR proposes to meet its goal of bolstering security through consistent regulatory standards.

II. BACKGROUND

On March 7, 2014, FERC directed the North American Electric Reliability Corporation (NERC), as the Commission-certified Electric Reliability Organization (ERO), to submit, for

¹ 18 C.F.R. §385.214 (2014).

² Notice of Proposed Rulemaking, Physical Security Reliability Standard, 148 F.E.R.C. ¶61,040 (Issued July 17, 2014) (Docket No. RM14-15-000) (NOPR).

approval, reliability standards to address physical security risks and vulnerabilities related to the bulk power system.³ In its Physical Security Order, FERC stated that the proposed reliability standards should require owners/operators of facilities within the bulk power system to identify infrastructure that is critical to grid reliability.⁴ Once identified, the owners/operators would develop and implement plans to protect against physical attacks that may compromise the identified critical facilities.⁵

The Commission issued its Physical Security Order pursuant to §215 of the Federal Power Act (FPA), which requires the ERO to develop mandatory and enforceable reliability standards, subject to Commission review and approval.⁶ FPA §215(d)(5) authorizes FERC to order the ERO to submit a proposed reliability standard that addresses a specific manner FERC deems appropriate to carry out §215 of the FPA.⁷

FERC’s Physical Security Order did not dictate specific requirements for NERC’s proposed reliability standards.⁸ However, the Commission recommended three steps that should be taken under the proposed reliability standards. First, the standards should require owners/operators of the bulk power system to identify “critical facilities.” FERC defined a critical facility as one that “if rendered inoperable or damaged, could have a critical impact on the operation of the interconnection through instability, uncontrolled separation or cascading

³ Order Directing Filing of Standards, Reliability Standards for Physical Security Measures, 146 F.E.R.C. ¶61,166 (Issued March 7, 2014) (Docket No. RD14-6-000) (Physical Security Order).

⁴ Id.

⁵ Id.

⁶ 16 U.S.C. §824o (2012).

⁷ 16 U.S.C. §824o(d)(5); 18 C.F.R. §39.6(f) (2013).

⁸ Physical Security Order at p.5 ¶13.

failures on the Bulk-Power System.”⁹ Second, the reliability standards should require owners/operators to evaluate potential threats to the identified facilities and their vulnerabilities.¹⁰ Third, the reliability standards should require owners/operators to develop a security plan designed to protect against attacks on the critical facilities identified.¹¹ Additionally, FERC recommended that the risk assessment used to identify critical facilities should be verified by an entity other than the owner/operator.¹²

In response to the Commission’s Physical Security Order, NERC initiated its standards development process, and on March 21, 2014, NERC posted its draft Physical Security Standard Authorization Request (SAR) for public comment.¹³ After comments were accepted, NERC submitted its SAR to the Commission. On July 17, 2014, FERC issued its NOPR and sought comments from the public. The NYPSC hereby intervenes and respectfully responds to FERC’s solicitation for comments.

III. NOTICE OF INTERVENTION

The NYPSC is a regulatory body established under the laws of the State of New York with jurisdiction to regulate rates or charges for the sale of electricity within the State.¹⁴ It is, therefore, a State Commission as defined in §1.101(k) of the Commission’s Rules of General

⁹ Id. at p.3 ¶6.

¹⁰ Id. at p.4 ¶8.

¹¹ Id. at p.4 ¶9.

¹² Physical Security Order at p.4 ¶11.

¹³ Docket No. CIP-014-1, Physical Security, NERC (Issued March 21, 2014) (NERC Proposed Reliability Standard).

¹⁴ New York Public Service Law (PSL) §65.

Applicability.¹⁵ Additionally, NYPSC is interested in this particular NOPR because it is charged with ensuring safe and adequate service of utilities in New York, and the care for public safety.¹⁶ Accordingly, NYPSC hereby provides its notice of intervention pursuant to Rule 214(a)(2) of the Commission's Rules of Practice and Procedure and the NOPR.¹⁷

Copies of all documents and correspondence in this proceeding should be sent to:

John Sennett
Director of Utility Security
Office of Electric, Gas & Water
New York State Public Service
Commission
3 Empire State Plaza, 12th Floor
Albany, NY 12223
John.Sennett@dps.ny.gov

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Assistant Counsel
New York State Public Service
Commission
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Alan.Michaels@dps.ny.gov

IV. DISCUSSION

Overall, the NYPSC supports the proposed security standards. Through the work of the NYPSC, however, New York State holds its regulated utilities to standards that are stricter than those proposed here. Nonetheless, the NYPSC recognizes the need for consistency, and notes the interdependence of the entire electric grid. Therefore, these standards are a welcome addition to the NYPSC's regulatory framework.

The NOPR raises one area of concern for the NYPSC. Despite the NYPSC's work in preserving and enhancing physical security within its jurisdiction, the language in the NOPR does not recognize state governmental entity expertise in identifying critical facilities. While the

¹⁵ 18 C.F.R. §1.101(k) (2014).

¹⁶ PSL §65, §5(2).

¹⁷ 18 C.F.R. §385.214(a)(2) (2014).

NOPR directs NERC to authorize federal governmental authorities to modify lists of identified critical facilities, state governmental authorities were omitted from that authorization.

Within NERC's proposed reliability standard, Requirement R1 states that each Transmission Owner shall perform a risk assessment of its infrastructure and identify critical facilities. The identified facilities would be those that, if rendered inoperable or damaged, could result in instability within the grid.¹⁸ In response, the Commission sought an amendment to this section of proposed reliability standard, by proposing in the NOPR "to direct NERC to develop a modification to the physical security Reliability Standard to allow applicable governmental authorities (i.e., the Commission and any other appropriate federal or provincial authorities) to add or subtract facilities from an applicable entity's list of critical facilities."¹⁹ The parenthetical defining appropriate governmental authorities does not include state governmental authorities.

Some state governmental authorities, like the NYPS&C, have been granted by state statute oversight responsibility for regulated utility safety and reliability within their respective jurisdictions. In today's environment with heightened security threats, such oversight includes attention to both the cyber and physical security of critical electric infrastructure. Those state authorities having that oversight responsibility, like the NYPS&C, are intimately familiar with the facilities within their jurisdictions. Therefore, state governmental entities with authority over utility security should be recognized in this proposed reliability standard. The FERC should recognize the expertise and knowledge such state governmental authorities possess concerning the critical infrastructure within their jurisdictions, and authorize them within this proposed standard to continue their oversight in this important area.

¹⁸ NERC Proposed Reliability Standard at p. 6.

¹⁹ NOPR, p. 8 ¶17, see also, p. 9 ¶19, p. 11 ¶22, p. 12 ¶23.

Utilizing its particular knowledge of facilities within its jurisdiction, a state governmental entity with authority over security may require security measures when other entities involved would not see a need for action. For example, the NYPSC may find a compelling basis for requiring a regulated utility to provide security measures for a critical electric facility, notwithstanding that the utility had previously decided the facility in question would not be covered under the proposed physical security reliability standards' eligibility requirements. State governmental entities with authority over physical security are highly capable of identifying critical facilities within their jurisdictions, and can determine each individual facility's needs for additional security measures. As such, the expertise of these authorized state governmental entities should be recognized in the proposed physical security reliability standard, and such a state governmental entity should be permitted to exercise authority to modify a list of critical facilities within its jurisdiction.

Moreover, the FPA itself recognizes that safety and physical security is a local issue that may be addressed by state authorities. Section 215(i)(3) of the FPA provides that a state authority may take action to ensure safety within that state, so long as it is not inconsistent with any reliability standard. In addition, this section grants New York the unique authority to "establish rules that result in greater reliability within [New York]... ." ²⁰ Therefore, it is particularly important to recognize the NYPSC as an appropriate governmental entity within the proposed reliability standard.

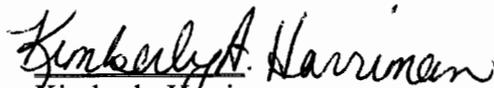
V. CONCLUSION

Based on the foregoing, the NYPSC provides its notice of intervention in this proceeding, and appreciates the opportunity to comment. The NYPSC anticipates a robust review of the

²⁰ 16 U.S.C. § 824o(i)(3).

public comments filed with the Commission, as well as those submitted to NERC. Lastly, the NYPSC requests that the “appropriate governmental authorities” noted in the NOPR be expanded to include those with state authority over physical security, as they are intimately familiar with the facilities in question, and can employ that knowledge in determining what facilities are critical.

Respectfully submitted,



Kimberly Harriman
General Counsel
Public Service Commission
of the State of New York

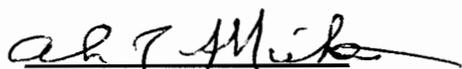
By: Alan T. Michaels
Assistant Counsel
3 Empire State Plaza, 17th Floor
Albany, NY 12223
518-474-1585 (phone)

September 8, 2014
Albany, New York

CERTIFICATE OF SERVICE

I, Alan T. Michaels, do hereby certify that I will serve on September 5, 2014, the foregoing Notice of Intervention and Comments of the New York Public Service Commission upon each of the parties of record indicated on the official service list compiled by the Secretary in this proceeding.

Dated: September 5, 2014
Albany, New York


Alan T. Michaels