



## **II. MOTION TO INTERVENE**

Pursuant to Rule 214, WIRES submits the following in support of its Motion to Intervene. WIRES is an international non-profit trade association of investor-, publicly-, and cooperatively-owned transmission providers, transmission customers, regional grid managers, and equipment and service companies. WIRES promotes investment in electric transmission and state and federal policies that advance energy markets, economic efficiency, and consumer and environmental benefits through development of electric power infrastructure. WIRES' members support investment in needed and beneficial transmission infrastructure – investments that are critical to ensure a reliable, cost-effective, and modern bulk power system.

The potential impact of the January 17 Filing and any action the Commission takes on that filing on the planning and development of critical transmission projects directly affects WIRES' members. WIRES members include owners and operators of transmission and other facilities that are subject to the Commission's jurisdiction. In addition, WIRES provides a broad-based and unique perspective on the issues raised in the January 17 Filing that cannot be adequately represented by any other party. WIRES respectfully requests that the Commission grant its Motion to Intervene and allow WIRES to become a party to this proceeding.

## **III. NOTICES AND COMMUNICATIONS**

All communications and correspondence with respect to this Motion to Intervene should be served upon the following individual who should be included on the official service list compiled by the Secretary of the Commission in this proceeding:

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#### IV. COMMENTS

The Commission directed NERC, pursuant to FPA section 215(d)(5), to develop and file a Reliability Standard that addresses “threats and vulnerabilities to the physical security of critical facilities on the Bulk-Power System.”<sup>4</sup> In doing so, the Commission recognized that “[p]hysical attacks on the Bulk-Power System can adversely impact the reliable operation of the Bulk-Power System, resulting in instability, uncontrolled separation, or cascading failures.”<sup>5</sup> NERC subsequently developed mandatory Reliability Standard CIP-014, with a stated purpose of identifying and protecting “Transmission stations and Transmission substations, and their associated primary control centers that if rendered inoperable or damaged as a result of a physical attack could result in instability, uncontrolled separation, or Cascading within an Interconnection.”<sup>6</sup> Under Reliability Standard CIP-014-2, a Transmission Owner must: (1) identify any critical transmission stations or substations on its system; (2) evaluate the potential threats and vulnerabilities posed by a physical attack on these facilities; (3) and develop and implement a physical security plan to address each of the critical transmission stations and substations.<sup>7</sup> Reliability Standard CIP-014-2 also requires that Transmission Owners implement procedures to prevent public disclosure of information concerning CIP-014 facilities.<sup>8</sup>

Given these requirements (particularly with respect to information protection), transmission owners should have the ability to develop transmission planning processes for

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<sup>4</sup> *Reliability Standards for Physical Security Measures*, 146 FERC ¶ 61,166, at P 5 (2014) (“March 2014 Order”).

<sup>5</sup> March 2014 Order at P 5.

<sup>6</sup> Reliability Standard CIP-014-2.

<sup>7</sup> Reliability Standard CIP-014-2, Requirements R4 and R5.

<sup>8</sup> Reliability Standard CIP-014-2, Requirement R2.4.

transmission projects needed to mitigate the risks associated with CIP-014 facilities that differ from those used to plan other transmission projects, as the PJM Transmission Owners have proposed for the limited number of Supplemental Projects<sup>9</sup> in PJM that, under proposed Attachment M-4, will be classified as CIP-014 Mitigation Projects. Allowing different planning processes for CIP-014 Mitigation Projects, as proposed by the PJM Transmission Owners, will help transmission owners to mitigate the risks associated with CIP-014 facilities through the development of transmission solutions while allowing them to appropriately manage risks and the protection of information related to Reliability Standard CIP-014.

As is clear from the March 2014 Order and the requirements of Reliability Standard CIP-014, facilities deemed to be critical to Bulk-Power System reliability require protection against the disclosure of sensitive or confidential information. The information is considered so sensitive that the “Compliance” section of Reliability Standard CIP-014-2 provides:

“Confidentiality: To protect the confidentiality and sensitive nature of the evidence for demonstrating compliance with this standard, *all evidence* will be retained at the Transmission Owner’s and Transmission Operator’s facilities.”<sup>10</sup> Publicly disclosing information that identifies facilities that have been determined to be CIP-014-2 critical transmission stations and substations before a solution can be put in place to mitigate the vulnerabilities of identified critical facilities could seriously endanger the physical security of these facilities.<sup>11</sup> For example, public disclosure of such information would provide potential attackers with not only

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<sup>9</sup> PJM defines a Supplemental Project as “a transmission expansion or enhancement that is not required for compliance with the following PJM criteria: system reliability, operational performance or economic criteria, pursuant to a determination by the Office of the Interconnection and is not a state public policy project pursuant Operating Agreement, Schedule 6, section 1.5.9(a)(ii).” PJM Operating Agreement, Schedule 6 § 1.42A.

<sup>10</sup>Reliability Standard CIP-014-2 (emphasis added).

<sup>11</sup> See January 17 Filing at 6.

the location of Reliability Standard CIP-014 transmission stations and substations, but also with the consequences in the event that the facilities were damaged or rendered inoperable.

If the Commission does not allow transmission owners to propose different planning processes for these facilities, as in proposed Attachment M-4, the PJM Transmission Owners will be forced to comply with Attachment M-3 to the PJM Tariff, which applies generally to Supplemental Projects, and requires public disclosure of needs and solutions for all projects including those being planned and developed for Reliability Standard CIP-014 Mitigation Projects.<sup>12</sup> While the open and transparent planning procedures contained in Attachment M-3 may be appropriate for the majority of Supplemental Projects in PJM, that is clearly not the case for Reliability Standard CIP-014 Mitigation Projects that have specific requirements prohibiting disclosure of information. A new mechanism is therefore needed to balance the information protection concerns associated with Reliability Standard CIP-014 facilities with the Commission's goal of fostering an open and transparent regional transmission expansion planning process.<sup>13</sup>

Moreover, once a project has been identified as critical and in compliance with Reliability Standard CIP-014, the proposal allows for consultation between the Transmission Owner and the affected state commissions.<sup>14</sup> Thus, an affected state regulator, with processes in place for dealing with confidential information, may consult with the Transmission Owner on the proposed project and solution while ensuring that NERC requirements are met. Additionally,

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<sup>12</sup> January 17 Filing at 6.

<sup>13</sup> See, e.g., *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>14</sup> Proposed Attachment M-4 Section b, Step 5(A).

once the project is completed and the risk has been mitigated, the Transmission Owner must provide public notice of the project before it may recover the costs of the project.<sup>15</sup> As such, the proposal balances the need to disclose protected information to state regulators while protecting the information from public disclosure, including protecting highly sensitive information concerning the location of Reliability Standard CIP-014 critical transmission stations or substations.

The Commission should also consider the approach advocated for by Commission and NERC staff in the recent “Joint Staff White Paper on Notices of Penalty Pertaining to Violations of Critical Infrastructure Protection Reliability Standards.”<sup>16</sup> In the White Paper, Commission and NERC staff stated that there is a need to find a “reasonable balance” that “allows for an appropriate level of transparency while providing a sound approach to secure information that could jeopardize the security of the Bulk-Power System.”<sup>17</sup> WIRES is generally supportive of this approach, and asks the Commission to evaluate the approach on this basis.

The Commission must balance the need to plan and develop projects that will mitigate risks associated with Reliability Standard CIP-014-2 facilities, with the transparency requirements that may otherwise be applicable. The Commission should allow transmission owners, as the PJM Transmission Owners have done in the instant docket, to craft policies and procedures that are appropriately tailored to mitigate the risks associated with CIP-014 projects

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<sup>15</sup> Proposed Attachment M-4 Section b, Step 5(A).

<sup>16</sup> Joint Staff White Paper on Notices of Penalty Pertaining to Violations of Critical Infrastructure Protection Reliability Standards, Docket No. AD19-18-000 (Aug. 27, 2019) (“White Paper”).

<sup>17</sup> White Paper at 12.

in their specific regions.<sup>18</sup> Finally, given the criticality of CIP-014 Mitigation Projects, WIRES requests that the Commission expeditiously approve the filing.

## V. CONCLUSION

WIRES appreciates the opportunity to comment in this proceeding. WIRES also urges the Commission to recognize the requirements associated with Reliability Standard CIP-014 facilities and to act expeditiously to accept this proposal and others that are filed with the Commission that seek to create a balance between the NERC requirements and the Commission's goal of providing transparency in the transmission planning process.

Respectfully submitted,

*Larry Gasteiger*

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<sup>18</sup> WIRES notes that there may be other just and reasonable solutions to mitigate risks associated with Reliability Standard CIP-014-2 depending on the circumstances and facts related to transmission planning in other regions.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 7<sup>th</sup> day of February 2020.

*Larry Gasteiger*

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