

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY**

**Ensuring the Continued Security of the)
United States Critical Electric)
Infrastructure**

86 FR 21309

COMMENTS OF DUKE ENERGY CORPORATION

Duke Energy Corporation (“Duke Energy”), on its own behalf and on behalf of its subsidiaries¹ hereby submits comments in response to the Department of Energy’s (“DOE” or “Department”) Request for Information (“RFI”) issued on April 22, 2021 in the above-captioned proceeding.²

I. COMMUNICATIONS

All correspondence, and other communications related to this proceeding should be addressed to the following persons:

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¹ For purposes of these comments, the Duke Energy Corporation subsidiaries are: Cimarron Windpower LLC, Conetoe II Solar, LLC, Duke Energy Carolinas LLC, Duke Energy Florida, LLC Duke Energy Indiana, LLC, Duke Energy Kentucky, Inc., Duke Energy Ohio, Inc., Duke Energy Progress, LLC, Duke Energy Renewables, LLC, Frontier Windpower, LLC, Frontier Windpower II, LLC, Holstein Solar, LLC, Ironwood Windpower, LLC, Lapetus Energy Project, LLC, Los Vientos Windpower IA, LLC, Los Vientos Windpower IB, LLC, Los Vientos Windpower III, LLC, Los Vientos Windpower IV, LLC, Los Vientos Windpower V, LLC, Mesquite Creek Wind, LLC, Mesteno Windpower, LLC, North Rosamond Solar, LLC, Notrees Windpower, LP, RE Rambler, LLC, Three Buttes Windpower LLC, and Top of the World Wind Energy LLC.

² 86 Fed. Reg. 21309 (April 22, 2021).

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II. DESCRIPTION OF DUKE ENERGY

Duke Energy is an energy holding company in the United States. Duke Energy's regulated utility operations serve 7.7 million electric customers located in Florida, Indiana, Kentucky, North Carolina, Ohio and South Carolina with a service territory of over 95,000 square miles with approximately 51,000 MW of generating capacity and 32,400 miles of transmission. Duke Energy's renewable operations include wind and solar power facilities in nineteen states with approximately 3,000 MW of generating capacity.

III. BACKGROUND

Executive Order ("E.O.") 13920, Securing the United States Bulk-Power System,³ issued on May 1, 2020, authorized the Secretary to prohibit the acquisition, transfer, or installation of certain bulk-power system electric equipment sourced from foreign adversary countries. After receiving comments on a July 8, 2020, request for information on implementation of E.O. 13920,⁴ on December 17, 2020, the Secretary issued a Prohibition Order invoking the authority of E.O. 13920 ("Prohibition Order").⁵ The Prohibition Order, applicable to a limited number of entities, prohibited the acquisition, import, transfer or installation of equipment manufactured or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of the People's Republic of China.

³ Executive Order 13920, Securing the United States Bulk-Power System, 85 FR 26595 (May 4, 2020).

⁴ Securing the United States Bulk-Power System: Request for Information, 85 FR 41023 (July 8, 2020).

⁵ Prohibition Order Securing Critical Defense Facilities, 86 FR 533 (Jan. 6, 2021).

On January 20, 2021, E.O. 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, was issued, which suspended E.O. 13920 for 90 days.⁶ The Prohibition Order was also suspended during this same time period. E.O. 13990 also directed the Secretary and the Office of Management and Budget Director to “jointly consider whether to recommend that a replacement order be issued.”⁷ Effective April 20, 2021, the Secretary revoked the Prohibition Order to allow for the Department to conduct the RFI.⁸

IV. COMMENTS

Duke Energy participated in the development of and support the comments filed by the Edison Electric Institute (“EEI Comments”)⁹ and the American Clean Power Association (“ACP Comments”).¹⁰ Those comments address many of the actions taken by the electric industry to protect critical electric infrastructure. Additionally, Duke Energy believes that with more timely information regarding relevant threats to critical electric infrastructure, we could improve the implementation of our security practices and better mitigate risks. In these separate comments Duke Energy intends to highlight potential actions for the DOE to consider during the rulemaking process.

A. Development of a Long-Term Strategy

Duke Energy’s supply chain risk management (“SCRM”) processes use all available information to assess and mitigate the risks posed by vendors, suppliers, manufacturers and their

⁶ Executive Order 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, 86 FR 7037, 7042 (Jan. 25, 2021).

⁷ *Id.*

⁸ Revocation of Prohibition Order Securing Critical Defense Facilities, 86 FR 21308 (April 22, 2021).

⁹ *Comments of the Edison Electric Institute*, dated June 7, 2021.

¹⁰ *Comments of the American Clean Power Association*, dated June 7, 2021.

related critical electric infrastructure equipment. Duke Energy believes that the DOE can best exercise its role as the Sector Risk Management Agency by prioritizing and clearly articulating known risks to critical electric infrastructure.

1. Identification of Foreign Ownership, Control, and Influence (“FOCI”)

We support the DOE’s efforts to provide the industry with clear guidance on those foreign adversaries who pose a risk to critical electric infrastructure. Additionally, intelligence regarding the DOE’s determination of those vendors, suppliers and manufacturers with FOCI with respect to foreign adversaries would improve our SCRM process.

2. Information Regarding Components

Although Duke Energy supports the use of the software bill of materials and we have the ability to request this information, a request does not guarantee that vendors will provide this information. Vendors may be concerned regarding the release of their trade secrets. Additionally, vendors may not have information at all component levels. Thus, component level detail may be difficult to obtain. We request that the DOE coordinate with other agencies to provide the electric industry with intelligence on component level vulnerabilities. Duke Energy would support a national database of equipment and components that increase the risk to critical electric infrastructure. These details would allow the electric industry to more narrowly focus efforts to obtain information from vendors.

3. Vulnerability Assessments on Components

Although we assess critical cyber assets for vulnerabilities and engage third parties to perform penetration testing, we believe that the National Labs are better situated for analyzing

component level vulnerabilities. We would support the National Labs performing assessments on those components identified as high priority by the DOE and providing the results to the electric industry.

4. Security Clearances

Duke Energy understands that information regarding foreign adversaries and, more specifically component vulnerabilities, may be considered classified. As such, the appropriate level of security clearance is critical to our access to information. We appreciate the work of the DOE and the Department of Homeland Security to provide a process to authorize acquisition of adequate security clearance for our personnel. However, we urge the DOE to exercise the authority granted to the Secretary under Section 215A of the Federal Power Act to expedite the acquisition of security clearances “to enable optimum communication with Federal agencies regarding threats to the security of the critical electric infrastructure”.¹¹ Additionally, reciprocity of clearances across various federal agencies would improve our access to information. We would appreciate the DOE’s support in obtaining such reciprocity.

B. Prohibition Authority

As we believe that any risks to critical electric infrastructure should be prioritized and clearly articulated, we also believe that any future prohibition order should prioritize the electric infrastructure that has the most impact on service and should clearly identify any equipment and components that may be prohibited.

¹¹ 16 U.S.C. §820o-1(e).

1. Bulk Electric System (“BES”)

Duke Energy believes that any future prohibition order should focus on equipment that is part of the BES as currently defined by the North American Electric Reliability Corporation (“NERC”) and subject to the mandatory reliability standards approved by the Federal Energy Regulatory Commission (“FERC”) pursuant to Section 215 of the Federal Power Act¹² (“NERC Reliability Standards”). By focusing on equipment installed on the BES, any risk mitigation measures could be applied in a more efficient manner without the need to expressly identify each customer facility that may serve a critical function.

2. Avoid Duplication of Efforts and Potential Conflicts

As the NERC Reliability Standards are modified as new risks to the operation of the BES are identified, DOE should avoid creating requirements that cause owners and operators of the BES to follow multiple sets of different regulatory requirements. If the DOE can provide clear information regarding certain risks to the BES, NERC and FERC can address these risks through the standard development process as contemplated by Section 215 of the Federal Power Act.¹³

Additionally, the Department of Defense (“DOD”) has the ability today to protect its Critical Defense Facilities through requirements included in its Federal Acquisition Regulations which are contained in contracts between the DOD and those entities serving the DOD. For example, FAR 52.204-24 and 52.204-25 contain restrictions on entering into contracts for or using

¹² 16 U.S.C. §820o.

¹³ *Id.*

certain telecommunications and video surveillance services or equipment.¹⁴ These restrictions apply broadly to the BES and distribution equipment and facilities.

3. Risk Based Prohibition

Any prohibitions on the use of certain equipment should be based upon known intelligence regarding the risk that the particular equipment or component poses to the BES. Once the risk posed by the component is identified and communicated to the industry, methods of risk mitigation can be discussed. Prohibitions on certain equipment could easily lead to a decreased supply of alternative equipment and delayed deliveries. As this could also increase the risk to the BES, prohibition on use should be the last resort after other risk mitigation measures are considered.

V. CONCLUSION

Duke Energy thanks the DOE for the opportunity to comment on the RFI. Duke Energy respectfully requests that the DOE consider its comments during the rulemaking process.

Respectfully submitted,

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¹⁴ 48 C.F.R. §§ 52.204-24 and 52.204-25 implementing Pub. L. 115-232 §889(a) (John S. McCain National Defense Authorization Act for Fiscal Year 2019).