

Comments: Critical Electric Infrastructure Information; New Administrative Procedures (RIN 1901-AB44)

INTRODUCTION

The Canadian Electricity Association (“CEA”) appreciates this opportunity to submit comments in response to the Department of Energy’s (“DOE” or “the Department”) Notice of Proposed Rulemaking (“NOPR”) issued on October 29, 2018 (RIN 1901-AB44). In the NOPR, the Department proposes administrative procedures intended to ensure that stakeholders and the public understand how the Department would designate, protect, and share Critical Electric Infrastructure Information (“CEII”) under the Federal Power Act. CEA offers these comments in response to this proposal.

DESCRIPTION OF CEA

Founded in 1891, CEA is the national forum and voice of the evolving electricity business in Canada. CEA members generate, transmit, distribute and market electric energy to industrial, commercial and residential customers across Canada and into the U.S. every day. Our membership includes provincially-owned and investor-owned utilities, many of which are vertically-integrated; independent power producers; independent system operators; wholesale power marketers; and municipally-owned local distribution companies. Several CEA members own assets in the U.S.¹

CEA members include owners, operators and users of the North American bulk power system (“BPS owner operators”) that adhere to North American Electric Reliability standards, and that provide CEII to the North American Electric Reliability Corporation (“NERC”) in compliance with mandatory reporting requirements. CEA members are engaged in the buying and selling of electricity, ancillary services, and other energy and environmental products in markets across North America, including in Commission-approved regional transmission organization/independent system operator (“RTO/ISO”) markets as registered participants

CEA members participate in other cross-border institutions and forums with their American counterparts that aim to ensure grid security, resilience and reliability, including the Electricity Subsector Coordinating Council and the Electricity Information Sharing and Analysis Center.

Overview

Canadians and Americans are joint custodians of an integrated electric grid connected by over 35 transmission lines. Integration has resulted in a flexible, reliable and secure grid on both sides of the border, which contributes to North American energy security and resilience. Considering the independent and integrated nature of the North American power grid, industry and governments on both sides of the border have developed a close working relationship and cross-border institutions that serve to protect and enhance the electrical grid’s security and reliability.

¹ The comments represent the position of CEA as an organization, but not necessarily the views of any particular CEA member with respect to any issue.



The Canadian electricity sector supports efforts to protect critical infrastructure, and to ensure that related information is secure. In general, CEA appreciates the Department's proposed administrative procedures for designating, protecting and sharing CEII ("CEII procedures") related to the integrated grid as it aims to adequately protect sensitive information designated as CEII, while at the same time facilitating information sharing when necessary. Nevertheless, CEA offers these comments in the spirit of continuing to help ensure the reliable and secure operation of the bulk power system.

The U.S.-Canada relationship

As noted above, the electricity grid of North America is virtually borderless. There are more than 35 electric transmission interconnections between the Canadian and U.S. power systems, which together form a highly integrated, North American grid. Electric integration, trade, and cooperation has benefited both American and Canadian customers with a resilient, reliable and secure grid.

Trade and integration

Some 30 states engage in mutually-beneficial electricity trade with Canada each year, and utilities in almost every Canadian province participate in FERC-regulated wholesale electricity markets. Mutually beneficial, bi-directional electricity trade and integration allows electric supply to meet demand as conditions require, provides for greater liquidity in the wholesale electricity markets, and for a greater diversity of supply options for customers throughout North America.

Interconnection and trade serve to bolster the reliability and resilience of the North American interconnected electricity system. Advantages include a higher level of reliable service for customers through enhanced system stability; efficiencies in system operation and fuel management; opportunities to use power from nearby markets to address local contingencies; and opportunities presented by seasonal/time zone variations associated with diversified load.

Cross-border electricity trade and integration also complements and supports the development of variable resources in the U.S., in addition to enhancing the affordability of supply for U.S. customers. For example, flexible and reliable hydropower can support the development of variable wind resources in the U.S. The U.S. Quadrennial Energy Review 1.2 reported that the External Market Monitor of ISO New England, Inc. concluded that Canadian electricity imports help reduce wholesale power costs for New England electricity consumers.² Additionally, a New England States Committee on Electricity study on incremental hydroelectric imports from Canada found average annual economic benefits associated with reduced New England electricity prices to be in the range of USD \$103 million to \$471 million.³

Cross-border partnerships and institutions

Canadian and American BPS owners and operators understand that due to the interconnected nature of the North American electricity grid, its reliable and safe operation is a shared responsibility. Compliance to a shared set of operational and commercial rules enables effective interconnectedness. For example, electric reliability standards developed by NERC are mandatory and enforceable in all Canadian provinces

² U.S. Department of Energy (2018). *Transforming the Nation's Electricity System: The Second Installment of the QER*. U.S. Department of Energy, pp. 6-7.

³ Black & Veatch (2013). *Hydro Imports Analysis*. New England States Committee on Electricity, pp. 1-1.



connected to the North American bulk power system, and both Canadian and Americans adhere to standard market practices and procedures utilized by ITOs/RTOs.

The Canadian electricity sector is an active participant in cross-border institutions and programs that aim to secure the grid. For example, Canadians participate in both cyber and physical mutual assistance programs with their American counterparts. Canadian utilities recently sent hundreds of workers in 2016, 2017 and 2018 to assist with power restoration in the U.S. following hurricanes, Nor'easter storms, and wildfires in California.

Canadian utility CEOs are also members of the Electricity Subsector Coordinating Council (ESCC). The ESCC, an effective forum and good example of effective U.S.-Canada security cooperation, enjoys the participation of senior government officials and electricity industry CEO's from both countries. The Canadian electricity sector and Canadian government also participate in major incident responses exercises, including GridEx exercises, that simulate the likely cross-border impacts of coordinated attacks and natural disasters.

Comments

International information sharing protocols

Given the interconnectedness of the North American electricity system, as a general principle CEA supports voluntary information sharing, including voluntary information sharing between Canadian and American bulk power system owners and operators and governmental authorities. As such, CEA supports the provision in this NOPR that allows for the development of international sharing protocols for the voluntary sharing of CEII with Canadian authorities and BPS owners and operators as described in described in section V(2)(j)(4).

CEA would encourage that DOE move forward with developing these procedures in consultation with both Canadian authorities and with Canadian BPS owners and operators. CEA recommends that DOE consult with Canadian industry, and ensure that Canadian jurisdictional structures are understood and respected. Canadian electricity generators, transmitters, and distributors operate within a different jurisdictional structure than the United States. Canada's multi-jurisdictional political system clearly divides the responsibility of natural resource management between the federal government and the ten provincial governments. While the federal government is mandated to oversee broad environmental, cross-jurisdictional and nuclear issues, the provinces have authority over the development and operation of electricity generation, transmission and distribution.

At the same time, CEA notes that lack of existing specific voluntary international CEII sharing procedures should not result in unnecessary barriers to any existing or future sharing of CEII by DOE, with Canadian authorities or BPS owners and operators, that is necessary for the reliable and safe operation of the BPS.

Canadian information from North American databases

CEA notes, and supports, that this NOPR does not contemplate any new information collection and storage techniques. However, the proposed rule, including in section 2(j)(3), notes that DOE proposes increased coordination between DOE and submitters of potential CEII to facilitate voluntary information sharing of CEII between, and by Federal entities and non-Federal entities, as appropriate, including with



the Electric Reliability Organization (“ERO”), regional entities, and information sharing and analysis centers.

CEA members understand and appreciate the value of information sharing. That said, as noted above, Canadians provide CEII to the ERO (NERC and its regional entities) in compliance with mandatory reporting requirements, and participate in other cross-border forums. As such, there is the potential for Canadian information to be shared with, or gathered and then shared by, DOE without explicit Canadian permission.

CEA would request that Canadian ownership and jurisdiction of its data be respected, and any data gathered from the ERO or other entities be limited to U.S. entities. CEA requests that any potential DOE access to NERC databases, or other private databases, will be limited to information regarding U.S. facilities only, and that Canadian information is exempt from being accessed.

In general, DOE information gathering or sharing of information should be limited to U.S. facility information only, unless voluntarily shared by Canadian entities or pursuant to voluntary information sharing agreements or protocols with Canadian authorities or industry entities. CEA would also appreciate clarification regarding DOE procedures for returning Canadian data that is potentially submitted as CEII by a non-Canadian entity without permission by the owner of that data.

Harmonization with Federal Energy Regulatory Commission Procedures

The NOPR notes that DOE has sought to harmonize its CEII procedures with FERC’s CEII procedures in Order 833 as much as possible. CEA supports this effort from a consistency standpoint.

Clarification would be appreciated regarding if there are processes to ensure consistency between DOE and FERC in various aspects for the designation or removal of designation of CEII, in particular if the same information is shared to both DOE and to FERC. For example, if information is designated as CEII by one entity, would it require designation by the other? Further clarification would be appreciated on any procedures in place in possible instances of one entity removing or declining CEII designation, but the other does not.

Public versions of CEII

In Sections V.2(f)(1)(iv) and V.2(f)(2)(iii), the DOE describes requirements for a public version of information designated CEII and information for which CEII designation is requested is redacted or otherwise protected through extraction from the non-CEII.

CEA would note that it may not always be feasible for a submitter of CEII to make available a public version of the information. CEA requests that DOE clarify accommodations or outcomes if a submitter is unable to produce a public version of CEII.

Notice for sharing of CEII not generated by DOE

Section 2(j)(5), regarding the sharing of CEII not generated by DOE, notes that the CEII submitter will be provided notice no less than ten (10) business days before DOE releases CEII submitted to and not generated by DOE, except in instances where voluntary sharing is necessary for law enforcement purposes, to ensure reliable operation or maintenance of electric or energy infrastructure, to maintain infrastructure security, or to address potential threats; where there is an urgent need to quickly



disseminate the information; or where prior notice is not practicable due to an emergency or other unforeseen circumstance.

While the instances in which DOE proposes to share CEII not generated by DOE without providing prior notice to the submitter may be overly broad in scope, CEA appreciates the need for timely information sharing, especially when a lack of information is necessary for law enforcement or infrastructure security purposes. CEA also appreciates that this NOPR notes that DOE would provide notice as soon as practicable if prior notice is not given. That said, CEA would encourage DOE to include language in the NOPR that will clearly note that DOE will make every reasonable effort to provide advance notice to the CEII submitter that the information will be shared.

CONCLUSION

CEA appreciates the opportunity to provide these comments to the DOE. CEA respectfully requests consideration of the comments raised herein, and looks forward to continuing to work with the DOE to ensure the reliability, resilience, and security of the integrated North American grid.

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