

March 2, 2022

VIA ELECTRONIC FILING

Ms. Christine E. Long
Registrar & Board Secretary
Ontario Energy Board
27th Floor 2300 Yonge Street
Toronto, ON M4P 1E4

Re: *North American Electric Reliability Corporation*

Dear Ms. Long:

The North American Electric Reliability Corporation (“NERC”) hereby submits Petition of the North American Electric Reliability Corporation for Approval of Modification to the Compliance Section of Reliability Standard CIP-014. NERC requests, to the extent necessary, a waiver of any applicable filing requirements with respect to this filing.

Please contact the undersigned if you have any questions concerning this filing.

Sincerely,

/s/ Lauren Perotti

Lauren Perotti
*Senior Counsel for the North American Electric
Reliability Corporation*

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**ONTARIO ENERGY BOARD
OF THE PROVINCE OF ONTARIO**

**NORTH AMERICAN ELECTRIC)
RELIABILITY CORPORATION)**

**PETITION OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
FOR APPROVAL OF MODIFICATION TO THE COMPLIANCE SECTION OF
RELIABILITY STANDARD CIP-014**

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The North American Electric Reliability Corporation (“NERC”) hereby submits for approval modifications to the Compliance section of Reliability Standard CIP-014. The modifications remove the provision from the Compliance section that requires all evidence demonstrating compliance with the standard to be retained at the Transmission Owner’s or Transmission Operator’s facility. This type of provision is unique to the CIP-014 Reliability Standard. For the reasons discussed below, NERC and the Regional Entities (collectively the “ERO Enterprise”) have determined that the provision is not necessary to protect the confidentiality of CIP-014 compliance evidence and creates unduly burdensome challenges to effective and efficient compliance monitoring of the standard. No changes to the mandatory and enforceable provisions of the CIP-014 standard are proposed.

Clean and redline versions of the Compliance section are provided in Exhibit A hereto.

I. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to the following:

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II. BACKGROUND

A. Development of CIP-014 Compliance Section

On March 7, 2014, the Federal Energy Regulatory Commission (“FERC”) issued an order directing NERC to develop and file for approval proposed Reliability Standards that address threats and vulnerabilities to the physical security of critical facilities on the Bulk-Power System (“BPS”).¹ Due to concerns about the public release of the identity of critical BPS facilities, FERC stated the following in the March 2014 Order:

All three steps of compliance with the Reliability Standard described above could contain sensitive or confidential information that, if released to the public, could jeopardize the reliable operation of the Bulk-Power System. Guarding sensitive or confidential information is essential to protecting the public by discouraging attacks on critical infrastructure. Therefore, NERC should include in the Reliability Standards a procedure that will ensure confidential treatment of sensitive or confidential information but still allow for the Commission, NERC and the Regional Entities to review and inspect any information that is needed to ensure compliance with the Reliability Standards.²

In developing CIP-014-1 in response to the March 2014 Order, NERC addressed the confidentiality issue in two ways. First, Requirements R2 and R6, which require third party

¹ *Reliability Standards for Physical Security Measures*, 146 FERC ¶ 61,166 (2014) [hereinafter March 2014 Order].

² *Id.* at P 10.

verifications, obligate Transmission Owners and Transmission Operators to implement procedures for protecting sensitive or confidential information made available to the unaffiliated third party reviewers.

Second, NERC included the following additional provision in the Compliance section associated with Reliability Standard CIP-014-1 to reduce to the risk of disclosure of CIP-014 compliance information:

1.4. Additional Compliance Information

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.

This provision is unique to CIP-014. No other Reliability Standard includes a similar provision in its associated Compliance section.

In approving the initial version of CIP-014, FERC stated that “NERC has included sufficient safeguards in Reliability Standard CIP014-1 to ensure that confidential or sensitive information produced in compliance with the Reliability Standard will not be publicly disclosed.” FERC referenced both the requirements in the standard as well as the “Additional Compliance Information” provisions in the Compliance section of the standard.³

NERC staff briefed both the Compliance and Certification Committee and the Board of Trustees Compliance Committee on the proposed removal and the NERC Board of Trustees approved the modification on February 10, 2022.⁴

³ *Physical Security Reliability Standard*, Order No. 802, 149 FERC ¶ 61,140 at P 107 (2014).

⁴ Removal of the “Additional Compliance Information” provision in CIP-014 was not balloted under the SPM as the Compliance section is not mandatory and enforceable.

III. JUSTIFICATION FOR APPROVAL

As noted above, NERC included the “Additional Compliance Information” provision in the Compliance section of CIP-014 to address heightened concerns regarding the protection of CIP-014 evidence. The ERO Enterprise has determined, however, that it should no longer treat CIP-014 evidence any differently than other sensitive evidence it collects during its Compliance Monitoring and Enforcement Program (“CMEP”) activities. With the advent of the ERO Secure Evidence Locker (“SEL”), NERC has a highly secure means of collecting and analyzing CIP-014 evidence in the same manner as any other sensitive evidence collected as part of CMEP activities.⁵

Pursuant to the NERC ROP, the ERO Enterprise has the authority to collect evidence in a manner it deems most appropriate from a Registered Entity to carry out the CMEP.⁶ To maintain consistency and to provide enhanced security in evidence collection among Regional Entities, the ERO Enterprise has implemented the ERO SEL to support effective data and information handling security practices.

The ERO Enterprise developed the ERO SEL for temporary storage of all Registered Entity artifacts (i.e., compliance evidence). The ERO SEL is a highly secure, isolated, and on-premises at NERC environment designed to protect submitted Registered Entity artifacts. The ERO SEL enables a Registered Entity to securely submit evidence through an encrypted session.

⁵ For additional information on the Align tool and the SEL, see *Request of the North American Electric Reliability Corporation to Expend Funds to Develop the ERO Enterprise Secure Evidence Locker*, Docket No. RR19-8-001, June 8, 2020.

⁶ The NERC ROP, Appendix 4C, Section 3.0, states: “The Compliance Enforcement Authority has authority to collect Documents, data and information in the manner it deems most appropriate, including requesting copies of Documents, data and information to be made and removing those copies from the Registered Entity’s location in accordance with appropriate security procedures conforming to Section 1500 of the Rules of Procedure and other safeguards as appropriate in the circumstances to maintain the confidential or other protected status of the Documents, data and information, such as information held by a governmental entity that is subject to an exemption from disclosure under the United States Freedom of Information Act, or a comparable state or provincial law, that would be lost of [sic] the information were placed into the public domain.” NERC Rules of Procedure, Appendix 4C, available at <https://www.nerc.com/AboutNERC/Pages/Rules-of-Procedure.aspx>.

The artifacts are encrypted immediately upon submission, securely isolated per Registered Entity, never extracted, never backed up, and subject to proactive and disciplined destruction policies. Additionally, using the ERO SEL provides security advantages over several decentralized platforms to ensure proper protection and chain-of-custody management. The ERO SEL provides the necessary functionality to allow the evidence to be reviewed by ERO CMEP staff in a manner that enables them to perform their responsibilities.

The ERO SEL architecture and operational model adhere to the National Institute of Standards and Technology 800-171 security control framework, which is established to protect Controlled Unclassified Information (“CUI”) in nonfederal systems (Critical Energy Infrastructure Information is classified as CUI).⁷ The ERO SEL is thus designed to significantly reduce risk of evidence loss and exposure.

A Registered Entity may choose to develop its own SEL rather than use the ERO SEL. In such instances, the SEL must be in accordance with the functionality criteria outlined on NERC’s website, and verified and approved by the ERO Enterprise prior to being used.⁸

The ERO Enterprise also has an alternative framework (or exception process) that allows for a Registered Entity to collaborate with the CEA on effective and secure evidence submittal outside of the ERO SEL (or its own SEL). The use of this alternative framework is limited to highly sensitive information, including certain CIP-014 artifacts.⁹

⁷ National Institute of Standards and Technology, *Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations*, NIST Special Publication 800-171, Revision 2 (Feb 2020), available at <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-171r2.pdf>.

⁸ *Registered Entity Provided Secure Evidence Lockers, Functional Specification*, April 29, 2020 Rev 6, available at <https://www.nerc.com/ResourceCenter/Align%20Documents/1-Align-Registered%20Entity%20SEL%20Functional%20Requirements%20Updated%20April%2029%202020.pdf>.

⁹ This alternative framework and the process for using the framework is outlined in *CMEP Process Bulk Electric System (BES) Artifact Submittal Exception Process*, February 9, 2022, Version 1.1, available at https://www.nerc.com/ResourceCenter/Align%20Documents/ERO%20Enterprise%20BES%20Artifact%20Submittal%20Exception%20Process_02092022.pdf.

Additionally, the experiences of conducting remote auditing during the pandemic highlighted the effectiveness of remote work. The CIP-014 compliance evidence provision, however, created challenges in the ERO Enterprise's ability to monitor CIP-014 as onsite audits were not feasible and continue to be difficult in light of ongoing pandemic conditions. The removal of the "Additional Compliance Information" provision is necessary to NERC's ability to do effective compliance monitoring while not posing undue risk to BPS reliability given the implementation of the ERO SEL and that we have an exception process for handling the most sensitive of the evidence.

For these reasons, NERC is seeking to harmonize CIP-014's Compliance section with every other Reliability Standard by removing the "Additional Compliance Information" provision.

IV. CONCLUSION

For the reasons set forth above, NERC respectfully requests that the Commission approve, to the extent necessary, Reliability Standard CIP-014-3 as modified to remove the "Additional Compliance Information" provision from the Compliance section of the standard.

Respectfully submitted,

/s/ Shamai Elstein

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Date: March 2, 2021

EXHIBIT A