

ultimate consumers. All APPA utility members are Load-Serving Entities, with the primary goal of providing customers in the communities they serve with reliable electric power and energy at the lowest reasonable cost, consistent with good environmental stewardship. Approximately 325 APPA members are currently shown on the North American Electric Reliability Corporation's (NERC) compliance registry, and thus are responsible for compliance with applicable NERC reliability standards. Those APPA members listed on the registry as Transmission Owners (TOs), Transmission Operators (TOPs), Generation Owners (GOs) or Generation Operators (GOPs) would be subject to the proposed information collection.

EEI is the association of the nation's shareholder-owned electric utilities and affiliates and associates world-wide. EEI's members represent 95% of the ultimate customers in the shareholder-owned segment of the industry, and represent approximately 70% of the U.S. electric power industry. EEI's members are owners, operators and users of the bulk power system and are subject to the Reliability Standards established by NERC. Virtually all of EEI's members are subject to the proposed information collection.

NRECA is the not-for-profit national service organization representing approximately 930 not-for-profit, member-owned rural electric cooperatives. NRECA's members encompass both (a) distribution cooperatives that operate primarily at retail over lower-voltage distribution systems and provide retail electric service to over 40 million consumer-owners in 47 states, and (b) 65 generation and transmission (G&T) cooperatives that supply wholesale power to their distribution cooperative owner-members and/or operate higher-voltage transmission systems, a large portion of which would be subject to the proposed information collection.

EPSCA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for 40 percent of the installed

generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. Essentially all EPSA members have wholesale electric market generators and marketers that are registered in the NERC compliance registry, and therefore must comply with applicable NERC reliability standards.

The members of the Associations operate their systems to ensure the reliable operation of the bulk-power system and depend on that reliable operation to serve their customers. These utilities and their customers/members would experience substantial harm should some portion of that system fail, including possible failures due to cyber vulnerabilities. The Associations and their members thus have a vital interest in mitigating these potential vulnerabilities and have taken steps to do so. Previously, several of the Associations worked closely with their respective members and with NERC to facilitate the response to the advisory issued by NERC in June 2007, acting through the Electric Sector-Information Sharing and Analysis Center (ES-ISAC), which identified certain measures designed to significantly mitigate the potential cyber vulnerability that is the subject of the proposed information collection by the Commission.

The Associations recognize the Commission's view that the collection of information on this subject is necessary for the proper performance of the Commission's duties. However, we urge that both the request and the format for responses be tailored to provide the Commission with the information it needs, without going beyond that need. The need for a properly developed information request is particularly important considering the sensitive nature of the information to be submitted. The industry has substantial concerns with any collection of data involving potential cyber vulnerabilities, or measures taken to mitigate those vulnerabilities, unless strict confidentiality and security measures are implemented to safeguard the collected information.

The first step to addressing these concerns is to ensure access to the information requested is strictly limited to that needed by the Commission. The second step is to ensure that the submitted information is adequately protected. The Associations' members have substantial concerns about the procedures for the handling of the data to be provided, and the maintenance of its confidentiality. The Commission acknowledges the need to preserve confidentiality and to minimize the burden on industry. The Commission proposes that the information will be examined on-site at NERC's headquarters and that disclosure by NERC will only be on a "need-to-know" basis to NERC personnel and to the Commission and its staff. The Associations believe that proper procedures to ensure the confidentiality of the data to be collected must be in place before the Commission's request is sent to respondents.

The information sought by the proposed information collection is likely to include critical energy infrastructure information (CEII), as defined in the Commission's regulations, 18 CFR Part 388, and in NERC's Rules of Procedure Section 1500. One issue to be resolved is whether and how these provisions of the Commission's regulations and NERC Rules of Procedure apply and how they will be implemented. In addition to assuring protection of the responses under these provisions, confidentiality concerns may be mitigated by having each respondent report information with respect to its facilities on an aggregated basis, rather than on a facility-specific basis. The role of NERC personnel, if any, in tabulating, formatting or otherwise reviewing or handling the data also must be clarified.

Other confidentiality concerns include the security of submission of the information, procedures in place at NERC headquarters to ensure protection of the responses while housed at NERC, the status and treatment of Commission staff work papers based on the data collected, how and when data submitted will be returned to respondents, the response of the Commission

and NERC to possible requests for the information from third parties while it is housed at NERC headquarters and how respondents impacted by such a request will be notified in a timely manner. A satisfactory resolution to these concerns is essential to ensure full and complete response to the proposed information request.

The Commission estimates that it will take each respondent no more than 12 hours to generate the requested information, but it is unclear how that estimate was determined. The accuracy of that estimate is dependent on several factors, including the scope and clarity of the information request, the definition of key terms such as “plan” and “facility,” whether a common template or other format can be used, and whether the information can be provided on an aggregate basis. Based on extensive discussions with their respective members, the Associations believe that the burden to respond to the proposed request could be substantially greater unless these issues are satisfactorily resolved. For example, one utility estimated that depending on the definition used, it might have several hundred “facilities” for which it must provide information. The possible breadth of the required responses under such a scenario underscores the need to use a template or common format as well as aggregated information as a means to minimize information collection burdens. The resolution of these issues also directly impacts the amount of time that respondents will need to collect and provide the requested information. The wider the scope of the collection, the more time it will take to prepare responses.

The Commission estimates that the number of respondents will be approximately 1,150, including many small entities. These potential respondents vary greatly in size and in the nature and extent of their operations, as well as the human and information resources they have to respond to such a request. A template or similar format for providing responsive information will minimize information collection burdens, especially on smaller entities. Such a template

will also facilitate the Commission's evaluation of the responses from this large number of respondents, by making the submitted data more consistent and usable. In addition, the means of submitting the data – whether in password-protected electronic form or in paper – will affect the burden estimate as well as what procedures are needed to assure confidentiality.

The Associations urge the Commission and the Office of Management and Budget to consider and adopt these comments. OMB should not issue its clearance for the proposed information collection until there is a satisfactory resolution of these critical issues.

Respectfully submitted,

/s/

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January 14, 2008