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July 12, 2013

Ms. Rebecca Michael
North American Electric Reliability Corporation
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Ms. Michael,

In response to the request for comments on NERC's Role as the Electricity Sector Information Sharing and Analysis Center (ES-ISAC), Reliability*First* offers the following:

1. The ES-ISAC performs an important role in gathering information from government agencies on potential threats to the Bulk Electric System, analyzing those threats, and providing guidance (NERC Alerts) to the industry.
2. The ES-ISAC gathers reports from the industry and, in coordination with other ISACs and organizations such as ICS-CERT, analyzes that information for potential threats, again providing guidance to the industry where applicable.
3. Prior to NERC issuing its "Policy on the Role of the Electricity Sector – Information Sharing and Analysis Center (ES-ISAC) vis-à-vis NERC's Compliance Monitoring and Enforcement Program" guidance document, entities were reluctant to share information with the ES-ISAC. Post issuance of this guidance, the ES-ISAC has increased its receipt of information from the industry, thus resulting in better information flow and more timely recognition of issues potentially affecting the electricity sector. The "walling off" of compliance and enforcement staff from ES-ISAC staff and vice versa through this guidance has achieved the desired results of increased information flow and timely reporting of incidents to the ES-ISAC. The bottom line is the ES-ISAC is better able to provide timely and actionable information to the industry, improving reliability and security.
4. NERC and the Regional Entities have other means of identifying potential compliance violations than through reporting to the ES-ISAC. As the ERO model has matured, Registered Entities have adopted a compliance and reliability culture that results in self reports of potential compliance violations. That, along with reporting requirements embedded in the NERC standards, provides necessary information to compliance staffs to identify and investigate potential compliance violations.
5. The Federal Energy Regulatory Commission (FERC) is already involved in the use of Situation Awareness for FERC NERC and the Regional Entities (SAFNR) providing access to near real-time information. And, per the NERC Rules of Procedure, FERC is involved in the review and approval of certain NERC alerts, thereby having access to, and in many cases providing information related to potential threats. Providing FERC additional access to situation awareness information obtained by the ES-ISAC from registered entities could very well result in reversing the gains achieved through the

“Policy on the Role of the Electricity Sector – Information Sharing and Analysis Center (ES-ISAC) vis-à-vis NERC’s Compliance Monitoring and Enforcement Program” guidance document.

Larry E. Bugh

A handwritten signature in black ink that reads "Larry E. Bugh". The signature is written in a cursive style with a light grey rectangular background behind it.

Chief Security Officer
ReliabilityFirst Corporation



MEMO

To Rebecca Michael
From Summer C. Esquerre, NERC Reliability Standards Guidance & Oversight Manager
Date July 16, 2013
Subject NextEra Energy, Inc.'s Response to Request for Comments on NERC's Role as the ES-ISAC

1. The impact, if any, on NERC's compliance-related activities of "walling off" certain staff from the ES-ISAC activities;

NextEra Energy, Inc.'s "NextEra" Response:

There should not be any impact to NERC's compliance related activities as the compliance and ES-ISAC areas of focus are not equivalent. We are in agreement with NERC's statements in response to Department of Homeland Security (DHS) National Protection and Programs Directorate (NPPD) Office of Infrastructure Protection (IP) June 6, 2013 request for comments; "the ES-ISAC and ES-ISAC personnel have no responsibilities for the NERC Compliance Monitoring and Enforcement Program (CMEP). ES-ISAC personnel do not directly or indirectly report or convey information to the CMEP or to personnel assigned to that program about possible violations they may encounter or learn about in the course of their ES-ISAC activities. NERC has sufficient other means at its disposal to address possible violations of mandatory CIP reliability standards or an imminent threat to the reliability of the BPS."

The role of the compliance staff is to support NERC's mission of "enforcing reliability standards; annually assessing seasonal and long-term reliability; monitoring the bulk power system through system awareness; and educating, training and certifying industry personnel by monitoring and enforcing both the operational and cyber reliability standards. ES-ISAC's purpose is to serve the electricity sector by facilitating communications between electricity sector participants, federal governments, and other critical infrastructures. As the Electricity Sector Information Sharing Task Force (ES-ISTF) draft white paper suggests, "It is the job of the ES-ISAC to be the electricity sector's central hub for both physical and cyber threat information sharing by promptly disseminating threat indications, analyses, and warnings, together with interpretations, to assist electricity sector participants to take protective actions." The information received by the ES-ISAC does not always correlate to the activities necessary for energy providers' compliance to the CIP-001, CIP-008 and EOP-004 Reliability Standards. Additionally the information reported may not demonstrate compliance to the reliability standards. NextEra supports and encourages NERC's continuous separation of the compliance arm of NERC and the ES-ISAC by means of the "walling off" of compliance staff members from the ES-ISAC to encourage and foster an information sharing environment between the electricity sector and the ES-ISAC.

2. Access of FERC staff to ES-ISAC information for situational awareness and compliance purposes.

NextEra's Response:

Similar to NERC's current policy of "walling-off" compliance staff to ES-ISAC information, FERC staff should not have access to ES-ISAC confidential information for situational awareness and compliance. FERC should continue to use the mechanisms currently in place to receive information related to situational awareness and compliance to the reliability standards.

NextEra Energy, Inc.

700 Universe Boulevard, Juno Beach, FL 33408

Original Message-----

From: Patrick.Farrell@sce.com [<mailto:Patrick.Farrell@sce.com>]

Sent: Wednesday, July 17, 2013 8:17 PM

To: Rebecca J Michael

Subject: Request for Comments re: "NERC's Role as the Electricity Sector Information Sharing and Analysis Center"

Rebecca,

Thank you for inviting Southern California Edison (SCE) to comment on the North American Electric Reliability Corporation (NERC) Electricity Sector Information Sharing and Analysis Center (ES-ISAC) Recommendations for Improved Information Sharing. SCE collaborates with ES-ISAC frequently and finds the services valuable. SCE also supports ES-ISAC's role set forth in the Presidential Executive Order and the accompanying Presidential Policy Directive as a central hub for the electricity sector to share physical and cyber threat information.

Before commenting on the specific recommendations, however, please recognize that SCE fully endorses Edison Electric Institute's position that ES-ISAC should be funded separately from the Federal Power Act Section 215.

This includes funding the improvements for which NERC is now seeking comment.

With respect to the recommendations developed by the Electricity Sector Information Sharing Task Force, we appreciate the extensive thought around the recommendations and want to share concerns in the following two areas.

To truly encourage information sharing, we believe these points need serious consideration.

Even stronger separation between NERC's Information Sharing function and the Compliance function is still necessary to encourage trust.

We acknowledge that NERC has taken great strides to eliminate inhibitors to information sharing, but the separation should be stronger still. The policy does not clearly indicate the consequences if ES-ISAC intentionally or unintentionally discloses information to the NERC Compliance function, or to unauthorized agencies or people. A policy without serious repercussions for failure doesn't adequately serve the purpose. To encourage trust, the penalties for sharing should be severe. Consider modeling the policy after agencies that have successful information sharing programs, such as the Federal Bureau of Investigation.

The benefits of a single portal may improve some information sharing, but the use of the centralized portal for mandatory filings must remain optional and should include more ES-ISAC accountability to further encourage information sharing.

Although entities may go to a single portal for submitting mandatory physical and cyber incidents, many utilities will realize minimal benefit. Large utilities have decentralized functions, such as physical security, cybersecurity, transmission, and distribution. The responsible functional areas work with the respective agencies, which is not necessarily confusing or challenging. In addition, the functional areas often have important relationships with these agencies and receive specialized services or regional information (e.g., National Energy Sector Cybersecurity Organization). Allowing mandatory filings to be made through other means is essential.

In addition, entities may not be enticed to leverage the single portal because with a middle step in the process, the risk of a missed filing actually increases. The entities retain the obligation and burden of ensuring mandatory filings are made in a timely manner. Other than developing trust between the entities, ES-ISAC has no meaningful ability or process of accountability to ensure that filings are made in a timely manner. As a result, many entities will continue to file directly with the respective agencies to reduce any possible missed filings and related fines. Some entities may be encouraged to try the "single portal" process, but we believe that information sharing improvements will not be transformational.

Thank you for the opportunity to comment.

Patrick Farrell
SCE Regulatory Operations
NERC Advocacy Manager
Tel: 626-302-7613

On behalf of our member companies, the Edison Electric Institute (EEI) appreciates the opportunity to provide the following brief comments to NERC on two questions posed by FERC regarding the ES-ISAC activity in its final order in Docket No. FA11-21. EEI strongly supports the success of the ES-ISAC.

The structure of the Information Sharing and Analysis Center (ISAC) is defined by Presidential Decision Directive 63 (PDD 63), issued by President Clinton in May 1998. Since enactment of Section 215 in 2005 and the organization of the Electric Reliability Organization under NERC, EEI has consistently viewed the ES-ISAC as having no role in compliance and enforcement matters. In addition, the ES-ISAC has no role in any other NERC program or activity, including for example situational awareness and events analysis. Given this background, EEI provides the following views on the two questions posed by FERC.

1. What is the impact, if any, on NERC’s compliance-related activities of “walling off” certain staff from ES-ISAC activities?

The physical separation of ES-ISAC personnel from other NERC personnel, coupled with strong process management with explicit access restrictions for all NERC personnel, will help ensure that Registered Entities feel comfortable sharing information with the ES-ISAC. Physical separation will have no impact on the NERC compliance and enforcement program. The Compliance Monitoring and Enforcement Program (CMEP), including all rules and processes, do not rely on the ES-ISAC to satisfy any of its responsibilities.

In fact, if NERC compliance and enforcement personnel, and all other NERC employees, are not physically separated from ES-ISAC personnel and functions, the participants in this critical information sharing activity will be far less likely to share information for fear of it being used in compliance activities.

This is all the more important during a cyber incident. For example, imagine that a company discovers a serious intrusion that either is causing or has the potential for causing reliability problems. That entity should feel unconstrained to report all information immediately to the ES-ISAC so that the ES-ISAC can perform its analysis activities, provide assistance and, after careful consideration and decision, provide pertinent and timely information and assistance to the rest of the electric sub-sector based on the incident. Just knowing that NERC or regional compliance personnel may obtain this information could introduce very serious chilling effect. Compliance simply has no role with the ES-ISAC, and therefore NERC must maintain a strong separation. That includes attorneys as well as compliance and enforcement and events analysis personnel.

EI recognizes that in March 2013 the NERC Board of Trustees approved a policy that addressed information sharing between the ES-ISAC and NERC Compliance and Monitoring Program. While a step in the right direction, the policy is insufficient unless it is accompanied by implementing procedures to ensure the necessary separation of functions and information sharing prohibitions. To guarantee that ES-ISAC activities are conducted independently, NERC should develop, and the Board of Trustees should approve, a detailed employee handbook with explicit separation of functions requirements and information-sharing prohibitions for all NERC personnel. Any breaches of the rules should be reported to the Board of Trustees and result in

disciplinary actions, up to and possibly including employee termination. The FERC Standards of Conduct rules for transmission providers provide a framework for separation of functions and no-conduit rule restrictions. As with the Standards of Conduct, any breaches of the NERC restrictions should be publicly posted on the NERC website. The NERC Corporate Governance and Human Resources Committee should be required to oversee independent audits of NERC personnel behavior and performance under the requirements set forth in the handbook.

The ES-ISAC should report directly to the NERC CEO, and not through other managers or department heads. This would mean, among other things, that to the extent that ES-ISAC personnel exchange information within NERC, it should be limited to the NERC CEO. While possible but unlikely, other NERC committees or boards may have some involvement with the ES-ISAC, including for example reviews of breaches of rules and disciplinary action decisions, the information provided to these committees or boards must be very limited.

2. Should FERC staff have access to ES-ISAC information for situational awareness and compliance purposes?

EI strongly supports the success of the ES-ISAC. A critical condition for success is confidence that information sharing will not be served as a conduit for compliance and enforcement, or events analyses. Therefore, FERC staff should have no access to ES-ISAC information for either situational awareness or compliance purposes. The ES-ISAC function should be completely independent of any form of FERC involvement. ES-ISAC should be treated as if it were an independent organization with only those obligations set forth in its organizing documents. There should be no obligation to report information to FERC unless FERC can identify responsibilities for itself under PDD63, or

via other relevant DHS or DOE rules or processes. Otherwise, FERC has no operational responsibilities pertaining to the ES-ISAC. As previously stated, just knowing that information can be passed onto FERC staff for enforcement considerations would impose upon FERC an underlying obligation to report possible violations of standards or initiate enforcement activities. Again, this could create a powerful chilling effect that would inhibit the free flow of information.

In conclusion, the limitation of ES-ISAC information to (physically separated) NERC ES-ISAC personnel only, and not FERC staff or NERC compliance and enforcement staff, will help to guarantee the success of the ES-ISAC information sharing process by avoiding any inappropriate disincentives or significant chilling effects that could slow or inhibit Registered Entities from actively participating in the ES-ISAC and freely sharing information regarding cyber incidents and other relevant events. The ES-ISAC program as defined by PPD 63 serves different purposes from the NERC compliance and enforcement or situational awareness activities, and thus the separation of NERC ES-ISAC staff and information is appropriate and should not impact NERC's or FERC's compliance-related activities. Physical separation, strong standards of conduct, and the active policing of those standards, will increase participation in the ES-ISAC and help ensure the success of its critical mission.

July 22, 2013



July 22, 2013

SUBMITTED ELECTRONICALLY

Rebecca Michael, Esq.
North American Electric Reliability Corporation
3353 Peachtree Road NE
Suite 600, North Tower
Atlanta, GA 30326

Re: Comments of the ISO/RTO Council Regarding NERC's Role as the Electricity Sector Information Sharing and Analysis Center

Dear Ms. Michael:

The ISO/RTO Council (the "IRC") hereby submits via e-mail this cover letter and the IRC's attached comments on NERC's Role as the Electricity Sector Information Sharing and Analysis Center.

Respectfully submitted,

/s/ Christopher Sharp

Christopher Sharp
Compliance Attorney
New York Independent System Operator, on behalf of the
ISO/RTO Council

Enclosure

COMMENTS OF THE ISO/RTO COUNCIL REGARDING NERC'S ROLE AS THE ELECTRICITY SECTOR INFORMATION SHARING AND ANALYSIS CENTER

I. Introduction

On June 21, 2013 the North American Electric Reliability Corporation ("NERC") issued a notice seeking comments on NERC's role as the Electricity Sector Information Sharing and Analysis Center ("ES-ISAC"). Specifically, the notice asked the following questions:

1. The impact, if any, on NERC's compliance-related activities of "walling off" certain staff from the ES-ISAC activities; and
2. Access of FERC staff to ES-ISAC information for situational awareness and compliance purposes.

The ISO-RTO Council ("IRC")¹ offers the following comments on NERC performing the ES-ISAC function generally and in response to the specific questions asked.

II. IRC Comments

The IRC recommends that NERC continue to perform the ES-ISAC function. The ES-ISAC was established at NERC, it is functioning effectively, and there is no need to completely remove the ES-ISAC function from NERC. The ES-ISAC function plays an important role in disseminating information on an industry-wide basis. This facilitates system reliability and mitigates risks by informing relevant industry participants of conditions that may present operational or security concerns. The systems, processes, funding, and administration for this function are working and the IRC believes that NERC's retention of this program is the most effective and efficient means of facilitating the function on a prospective basis.

One of the main concerns with NERC retaining this function is that NERC and FERC also act as regulators with respect to the Section 215 reliability standards. Accordingly, the concern is that information submitted pursuant to this process to facilitate system security and reliability may be subject to undue regulatory scrutiny. To address this, stakeholders have made proposals ranging from the establishment of effective functional separation between the NERC

¹ The IRC is comprised of the Alberta Electric System Operator ("AESO"), the California Independent System Operator Corporation ("CAISO"), the Electric Reliability Council of Texas, Inc. ("ERCOT") the Independent Electricity System Operator ("IESO"), ISO New England Inc. ("ISO-NE"), the Midcontinent Independent System Operator, Inc. ("MISO"), the New York Independent System Operator, Inc. ("NYISO"), PJM Interconnection, L.L.C. ("PJM") and the Southwest Power Pool, Inc. ("SPP").

ES-ISAC and regulatory functions (i.e.: “walling off”) to removing the function from NERC and placing it with a non-regulator third party.²

As noted above, the ES-ISAC is established and functional in its present organizational form and the IRC does not believe that these concerns justify removing ES-ISAC from NERC to make it a separate organization or to transfer it to a non-regulator third party.

However, functional separation of the ES-ISAC function from the rest of NERC can support the ongoing actions by ES-ISAC in communicating and analyzing security issues as they emerge, and promote candid communications by industry participants in the ES-ISAC. The IRC believes that communications should flow freely between industry and ES-ISAC to detect and address security risks in real time. Communication channels between the ES-ISAC, NERC, and other government agencies should be coordinated through disclosed procedures and identified contacts, so that only appropriate staff that “need to know” receive the communications, in order to avoid wider dissemination of potential and actual security threats.

Furthermore, in recognition of the North American electricity grid and NERC’s regulatory and statutory responsibility to ensure reliability of the North American bulk power system, there are individual agreements already in place between each of the relevant Canadian entities. These agreements allow NERC to engage in effective cross-border information sharing. If the ES-ISAC was removed from NERC, the Canadian entities may not be able to participate without establishing agreements with the new organization, and the new organization would have to be acceptable to Canadian interests. Therefore, maintaining ES-ISAC within NERC allows for the continuation of these existing agreements while ensuring established cross-border information sharing protocols continue uninterrupted.

With respect to question 1 in the notice, the functional separation between NERC ES-ISAC and compliance functions should not negatively impact the NERC compliance function, which is based on procedures and processes that are completely independent of the ES-ISAC function. NERC can already obtain information through the appropriate exercise of its regulatory role with respect to industry participants. Furthermore, to the extent entities submit information in the ES-ISAC process that potentially implicates a compliance issue they are obligated to self-report pursuant to the distinct CMEP procedures.

With respect to question 2, consistent with the above discussion, appropriate functional separation between the ES-ISAC function and FERC compliance function should not undermine FERC’s ability to perform its reliability compliance oversight function. With respect to the FERC situational awareness function, again, efforts should be made to establish appropriate separation of those functions, but to the extent those separations are not perfect, that does not

² For example, the FS-ISAC and MS-ISAC models utilize third-party approaches for performing this function. However, at this time, the IRC does not believe pursuing a similar option is necessary and, in fact, may undermine the efficiency and effectiveness of the established program under NERC.

justify removing the ISAC function from NERC. As with NERC, communication channels between industry participants, the ES-ISAC, and FERC should be coordinated through disclosed processes and identified contacts so that only appropriate staff that “need to know” receive the communications, thereby avoiding wider dissemination of potential and actual security threats.

In further response to question 2, the IRC offers the following alternative perspective. In light of the recent Executive Order (EO) on cybersecurity and the information sharing aspects of the EO, the issue of FERC access to ES-ISAC information should also be considered within that context. For example, the EO assigns related responsibilities to DHS and requires federal coordination among the agencies on these matters. The National Institute of Science and Technology currently is working to establish a comprehensive cyber security framework to address these role and communication protocols. The role of ES-ISAC in the context of the EO, and the issue of access to such information, could be addressed in that context.

III. Conclusion

Consistent with the above comments, the IRC recommends that NERC retain the ES-ISAC function. The risk of compliance related activities flowing from ES-ISAC submissions does not justify moving the function to a third party or separate entity.³ However, NERC and FERC (as relevant) should employ appropriate separation between their informational functions and regulatory functions, and establish defined and disclosed communication protocols so that potential and actual security threats are communicated in a timely manner and known only by those who “need to know” in order to effectively respond. The IRC appreciates the opportunity to comment on this matter and looks forward to working with NERC and the industry to ensure ES-ISAC function continues to provide value to the industry and government in the most efficient and effective manner possible.

³ As noted, if ES-ISAC submissions potentially implicate compliance matters, entities should be self-reporting those matters via the CMEP and other relevant procedures. There is also the concern that regulators will be scrutinizing this information and pursuing baseless compliance actions, which will negatively impact industry and NERC resources and create unreasonable reliability risk. The IRC believes that although that is a concern, it is a separate issue and does not justify removal of the ES-ISAC function from NERC.

Respectfully submitted,

/s/ Matthew Morais

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/s/Theodore J. Paradise

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/s/ Jessica Savage

Jessica Savage
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Dated: July 22, 2013

Duke Energy appreciates the opportunity to provide feedback to NERC regarding its role as the Electricity Sector Information Sharing and Analysis Center (ES-ISAC). Duke Energy values the opportunities when given, to assist NERC and industry stakeholders in strengthening the reliability of the Bulk Power System.

Duke Energy would like to submit the following comments on the two questions posed by FERC.

1. What is the impact, if any, on NERC's compliance-related activities of "walling off" certain staff from ES-ISAC activities?

Duke Energy maintains that separation between FERC/NERC and the ES-ISAC is an appropriate measure due to the threat of compliance or enforcement getting involved while an investigation is under way, which could harm the integrity of what should be an open and honest dialogue between the Entity and the ES-ISAC.

Additionally, Duke Energy feels that compliance decisions should not be made while an event is under way, as this could lead to misinformation being shared with the regions or erroneous self reports being issued.

2. Should FERC staff have access to ES-ISAC information for situational awareness and compliance purposes?

Duke Energy is not opposed to FERC/NERC having access to after-the-fact, general information about ES-ISAC activities. Duke Energy believes that FERC/NERC having general information about current trends or the possible threats that have or may have occurred, can be useful in ensuring that targeted emphasis can be placed to the appropriate areas within the compliance arena.

Duke Energy believes that any information received by FERC/NERC from the ES-ISAC should never include entity information or any information that could lead to the entity being identified.

Again, Duke Energy appreciates the opportunity to provide comment, and looks forward to continue working with NERC and industry stakeholders in the effort to provide a reliable Bulk Power System.

Respectfully submitted,

Duke Energy



Tampa Electric Company (TEC) appreciates the opportunity to provide the following brief comments to NERC on two questions posed by FERC regarding the ES-ISAC activity in its final order in Docket No. FA11-21. TEC supports the comments submitted by the Edison Electric Institute and wishes to offer additional comments as stated below. The structure of the information sharing and center (ISAC) is defined by Presidential Decision Directive 63 (PDD 63), issued by President Clinton in May 1998. Since enactment of Section 215 in 2005 and the organization of the Electric Reliability Organization under NERC, TEC has consistently viewed the ES-ISAC as having no role in compliance and enforcement matters. Given this background, TEC provides the following views on the two questions posed by FERC.

1. What is the impact, if any, on NERC’s compliance-related activities of “walling off” certain staff from ES-ISAC activities?

There should be no impact to NERC’s compliance-related activities due to “walling off” certain staff in that other reporting obligations remain in place. TEC believes that the ES-ISAC staff should be walled off from all of NERC, not just the Compliance Monitoring and Enforcement Program. Although TEC has provided voluntary, non-compliance related information to the ES-ISAC, we are aware that others in the industry do not feel safe in sharing information. Without the walling off of NERC staff, there may be reluctance to work with the ES-ISAC.

If the industry cannot be successful in sharing confidential information with the ES-ISAC, without concern for information bleeding over into compliance, enforcement and other

NERC actions, an alternative should be considered to establish the ES-ISAC as a separate entity following the model used by the FS-ISAC.

2. Should FERC staff have access to ES-ISAC information for situational awareness and compliance purposes?

There should be no access by FERC staff, until and unless the ES-ISAC releases non-attributed, high level summary information for the good of the industry. FERC already receives reports from that industry that are required to be reported.

Comments for the following registrations:

Entergy (NCR1234)

Entergy-Fossil & Hydroelectric Gen (NCR11167)

Entergy-Nuclear (NCR11166)

The North American Electric Reliability Corporation (“NERC”), pursuant to the Federal Energy Regulatory Commission’s (“FERC”) audit report recommendations, is requesting stakeholder input on NERC’s Role as the Electricity Sector Information Sharing and Analysis Center (“ES-ISAC”), regarding:

1. The impact, if any, on NERC’s compliance-related activities of “walling off” certain staff from the ES-ISAC activities.
2. Access of FERC staff to ES-ISAC information for situational awareness and compliance purposes.

Entergy’s Comment:

Entergy is concerned that “walling off” certain NERC staff from ES-ISAC activities may not constitute sufficient independence (perceived and actual).

Entergy believes a conflict of interest exists in NERC functioning as both the ES-ISAC for the electricity sector as well as the primary enforcement agency responsible for levying penalties for the same entities who share information with the ES-ISAC. A “walling off” of certain NERC staff from the ES-ISAC activities does not provide a sufficient separation of duties and will continue to hinder the willingness of industry participants to share information with the ES-ISAC. Information sharing responsibilities should be assigned to an agency with full independence from agencies and affiliates responsible for enforcement actions in order to achieve adequate separation of duties.

Additionally, Entergy is concerned over the access of FERC staff to ES-ISAC information for situational awareness and compliance purposes. This situation, again, demonstrates an improper relationship between an agency responsible for information sharing (ES-ISAC) and an agency responsible for enforcement activities (FERC).

Entergy believes it is important that the ES-ISAC improve the flow, quality, and increase the specificity of threat intelligence information in a timely manner. Effective intelligence information is critical in order for companies to quickly implement countermeasures to address emerging cyber threats. NERC’s role in the ES-ISAC and FERC’s relationship with the ES-ISAC impedes and inhibits these goals and objectives.

PPL Response - NERC ES-ISAC Questions

July 22, 2013

These comments are submitted on behalf of the following PPL NERC Registered Affiliates (PPL): Louisville Gas and Electric Company and Kentucky Utilities Company; PPL Electric Utilities Corporation, PPL EnergyPlus, LLC; and PPL Generation, LLC, on behalf of its NERC registered affiliates. The PPL NERC Registered Affiliates are registered in six regions (MRO, NPCC, RFC, SERC, SPP, and WECC) for one or more of the following NERC functions: BA, DP, GO, GOP, IA, LSE, PA, PSE, RP, TO, TOP, TP, and TSP. In general, PPL supports the comments submitted by Edison Electric Institute (EEI) on behalf of its member companies.

1. The impact, if any, on NERC's compliance-related activities of "walling off" certain staff from the ES-ISAC activities; and

PPL agrees for the reasons stated by EEI that a separation between NERC compliance-related activities and ES-ISAC is beneficial to the success of the ES-ISAC while having no effect on the Compliance Monitoring and Enforcement Program (CMEP).

EEI explicitly recommends that a handbook be established to outline employee expectations on information sharing. PPL feels that this is a good opportunity to document not only the prohibitions to information sharing, but exceptions to the rules, as stated by EEI. Therefore, PPL is in support of this effort and looks forward to the opportunity to comment on the draft handbook prior to the Board of Trustee approval.

From: "Moltane, Michael P." <mmoltane@ltctransco.com>
Date: July 22, 2013, 5:00:23 PM EDT
To: "Rebecca.michael@nerc.net" <Rebecca.michael@nerc.net>
Cc: "Milosek, Greg" <gmilosek@ltctransco.com>
Subject: NERC Role as the ES-ISAC: ITC Comments

To: Rebecca Michael –

ITC Holdings (ITC) comprised of the following entities is submitting its comments regarding NERC's request listed below.

1. ITC Transmission (NCR # 00803)
2. METC (NCR # 00820)
3. Michigan Electric Coordinated Systems (NCR # 08023)
4. ITC Midwest (NCR # 10192)
5. ITC Great Plains, LLC (NCR # 10400)

NERC Request for Comments:

ITC Comments:

ITC has not experienced or observed any "walling off" of staff from the ES-ISAC activities; and cannot provide comments on FERC's staff access to ES-ISAC information. Overall, ITC has found NERC ES-ISAC to be open and helpful to assist ITC with current cyber intrusion events, lists of cyber indicators of compromise (IOC) and their willingness to modify ES-ISAC watchlist programs to help merge IOC data into ITC data screening prevention programs.

Sincerely,

Michael Moltane
Manager, Operations Policy
ITC Holdings
248-946-3093

**NERC's ROLE AS THE ELECTRICITY SECTOR
INFORMATION SHARING AND ANALYSIS CENTER**

**JOINT COMMENTS OF THE AMERICAN PUBLIC POWER ASSOCIATION
AND THE LARGE PUBLIC POWER COUNCIL**

The American Public Power Association (“APPA”) and the Large Public Power Council (“LPPC”) submit these joint comments in response to the North American Electric Reliability Corporation’s (“NERC”) June 21, 2013 announcement seeking stakeholder input on its role as the Electricity Sector Information Sharing and Analysis Center (“ES-ISAC”) (“Notice”).¹

The Notice specifically seeks input on: “(1) [t]he impact, if any, on NERC’s compliance-related activities of ‘walling off’ certain staff from the ES-ISAC activities; and (2) [a]ccess of [Federal Energy Regulatory Commission (“FERC”)] staff to ES-ISAC information for situational awareness and compliance purposes.” These questions are drawn substantially from FERC’s January 16, 2013 “Order Approving Settlement Agreement” between its enforcement staff and NERC in Docket No. FA11-21.²

In these comments, APPA and LPPC maintain that:

- Separation between NERC’s role in administering the ES-ISAC and its compliance/enforcement functions is vital to the success of the ES-ISAC, and should be improved through adoption of rules functionally separating the ES-ISAC from NERC's compliance and enforcement staff.
- Emergency action taken by NERC when an entity fails to respond to an imminent threat should be undertaken as an Essential Action under NERC’s Rules of Procedure, not a Remedial Action.
- FERC should be granted access to the ES-ISAC on condition that any information the ES-ISAC provides is also shielded from FERC enforcement staff.

I. NERC Must Ensure More Complete Separation Between ES-ISAC and Compliance and Enforcement Personnel.

The ES-ISAC’s role as the electricity subsector’s communication pathway between and among electric sector asset owners and the federal government about security-related and disturbances depends critically on the participants’ unconditional confidence that these communications will consistently occur in a non-public and non-regulatory environment. The Policy Statement adopted by the NERC Board of Trustees at its March 8, 2013 Meeting contains

¹ NERC’s Role as the Electricity Sector Information Sharing and Analysis Center – Request for Comments (June 21, 2013), available here:

<http://www.nerc.com/gov/bot/FINANCE/2014%20Business%20Plan%20and%20Budget2nd%20Draft/NERC's%20Role%20as%20the%20ES-ISAC-Request%20for%20Comments.pdf>.

² *North American Elec. Reliability Corp.*, 142 FERC ¶ 61,042 at P 14 (2013).

certain protections furthering this principle, but must be improved in key respects in order to ensure that NERC employees involved in compliance and enforcement matters have no access to information communicated by the industry to NERC's ES-ISAC personnel.

The ES-ISAC structure contemplates that communications will be developed through collaborative efforts between NERC's ES-ISAC staff, federal agencies (e.g., DHS, DOE, FBI) and industry participants. Access to these communications by NERC compliance and enforcement staff may reveal sensitive information about the experiences and practices of specific industry participants, such as attempted penetrations of cyber-security protections or identified vulnerabilities that require prompt non-public actions by the industry. Permitting NERC compliance and enforcement staff to access this information would have a chilling effect on the principles of open disclosure that underlie the ES-ISAC program. NERC Registered Entities have separate responsibilities to disclose events on their systems, and to ensure situational awareness for reliable interconnected operations. These entities also have a long history of timely disclosing potential violations of reliability standards through self-reports. These reporting mechanisms – which sit outside the ES-ISAC construct – remain the most effective way to ensure visibility by NERC compliance and enforcement staff of Bulk Electric System reliability. Compromising the confidentiality of the ES-ISAC program in furtherance of NERC's compliance and enforcement functions would substantially undermine the effectiveness of the ES-ISAC and thus grid reliability.

The Policy Statement's requirement that ES-ISAC staff shall not "report or convey" information about possible reliability violations to NERC compliance and enforcement staff provides incomplete protection from disclosure. It does not ensure that compliance and enforcement staff will not otherwise have access to information available through the ES-ISAC, or that information will not be disclosed to them through other means. While the intention of the Policy Statement seems clearly aimed at preventing NERC's compliance and enforcement staff from having access to ES-ISAC communications, it does not expressly address access to databases, or prevent related information from being turned over to enforcement staff by personnel other than those working directly for the ES-ISAC. This may occur inadvertently, or in the context of oversight of the ES-ISAC function by upper management within NERC. To ensure more complete protection, APPA and LPPC strongly urge NERC to adopt a construct analogous to the FERC rules governing standards of conduct separating electric utility transmission and wholesale sales personnel. These rules are simply stated, and provide for "functional separation" between relevant personnel, along with a prohibition against other personnel serving as a conduit for embargoed information. These provisions are designed precisely to fill the gaps left by the Policy Statement. The core principles are stated in 18 C.F.R. §§ 358.5 and 358.6, as follows:

§ 358.5 - Independent functioning rule.

(a) General rule. Except as permitted in this part or otherwise permitted by Commission order, a transmission provider's transmission function employees must function independently of its marketing function employees.

(b) Separation of functions. (1) A transmission provider is prohibited from permitting its marketing function employees to:

- (i) Conduct transmission functions; or
 - (ii) Have access to the system control center or similar facilities used for transmission operations that differs in any way from the access available to other transmission customers.
- (2) A transmission provider is prohibited from permitting its transmission function employees to conduct marketing functions.

§ 358.6 - No conduit rule.

- (a) A transmission provider is prohibited from using anyone as a conduit for the disclosure of non-public transmission function information to its marketing function employees.
- (b) An employee, contractor, consultant or agent of a transmission provider, and an employee, contractor, consultant or agent of an affiliate of a transmission provider that is engaged in marketing functions, is prohibited from disclosing non-public transmission function information to any of the transmission provider's marketing function employees.

These broader rules are easily adapted to the circumstance of the ES-ISAC and NERC's compliance and enforcement operations, and such measures would engender a degree of confidence on the part of the industry in the confidentiality of information shared with the ES-ISAC that is critical to the free flow of information on which that organization depends.

In addition, APPA and LPPC reiterate the position taken in their policy input response to the NERC Board in advance of its March, 2013 meeting³ regarding language in the Policy Statement that would enable NERC to take a “remedial action directive” if a Registered Entity fails to fully respond to information concerning an imminent threat. While APPA and LPPC agree that electric sector entities are responsible for responding to ES-ISAC communications identifying imminent threats, a “remedial action directive” under NERC Rules of Procedure (“ROP”) section 400 is inappropriate since it presupposes violation of a NERC reliability standard. ROP section 402.5 states: “Remedial Action Directives may be issued by NERC or a Regional Entity that is aware of a Bulk Power System owner, operator, or user that is, or is about to engage in an act or practice that would result, in noncompliance with a Reliability Standard, where such Remedial Action Directive is immediately necessary to protect the reliability of the Bulk Power System from an imminent or actual threat.” ROP section 407 (Penalties, Sanctions, and Remedial Action Directives) further provides that “NERC shall review all Penalties, sanctions, and Remedial Action Directives imposed by each Regional Entity for violations of Reliability Standards. . .”

An entity-specific “Essential Action” under ROP section 810 is a more appropriate tool to ensure a response to an imminent threat, since it does not contemplate a reliability standard violation. ROP section 810.3.3 defines an “Essential Action” as “specific actions that NERC has

³ See NERC, Policy Input to NERC Board of Trustees (May 1, 2013), available here: http://www.nerc.com/gov/bot/Agenda%20highlights%20and%20Mintues%202013/Policy%20Input_May_2013_%20Boston.pdf.

determined are essential for certain segments of owners, operators, or users of the Bulk Power System to take to ensure the reliability of the Bulk Power System. Such Essential Actions require NERC Board approval before issuance.” NERC should revise its Policy Statement to reflect this important distinction. APPA and LPPC note, however, that the definition of “Essential Action” suggests some leakage of information within NERC, from ES-ISAC personnel to the General Counsel and Board. Thus, as discussed above, NERC should implement a firm standard of conduct which applies to all NERC staff who may interact with compliance and enforcement staff, as well as any Board members involved in compliance and enforcement actions to ensure protection from disclosure of ES-ISAC information.

II. FERC Should Honor An Equivalent Separation of Functions Rule as a Condition of Access to the ES-ISAC.

While APPA and LPPC appreciate FERC's interest in accessing the ES-ISAC, the potential flow of information to FERC's enforcement staff raises the same concern as in the case of NERC operations. For that reason, APPA and LPPC urge NERC to press FERC to commit to internal rules prohibiting the flow of relevant information to FERC enforcement personnel as a condition of access to information produced by the ES-ISAC. Functional separation within FERC, as with NERC, would ensure industry confidence that ES-ISAC communications will consistently occur in a non-public environment outside the scope of Federal Power Act section 215 enforcement activity. Allowing this information to be shared cross-functionally within FERC would raise concerns for registered entities and would chill an open discourse within the ES-ISAC.

Respectfully submitted,

AMERICAN PUBLIC POWER ASSOCIATION

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