

programs and enhances the Commission's overall ability to enforce section 215." FERC states that submittal of the mitigation plans is for information purposes, since neither section 215 of the Federal Power Act nor the Commission's regulations require Commission approval of a submitted mitigation plan. But the Commission maintains that it retains the ability to review a mitigation plan and take action under section 215 when appropriate, such as "where the Commission determines that a mitigation plan jeopardizes reliability by being substantively inadequate..."

CEA is concerned that the Commission's Order could be interpreted to require that mitigation plans prepared by Canadian entities be filed with the Commission. There is nothing in the Order that limits its applicability only to entities subject to jurisdiction of the Commission under section 215. While the Commission notes that the receipt of such mitigation plans is justified in light of its section 215 responsibilities, NERC is nevertheless directed to submit any mitigation plans it approves. CEA requests that the Commission clarify that this Order was intended to reach only those entities submitting mitigation plans that are subject to the Commission's jurisdiction under section 215.

The possible unintended consequences of the June 13th Order raises broader concerns regarding any of FERC's orders directed at NERC regarding its functions as an ERO. NERC is an international entity and is structured to allow for effective operations in both the U.S. and Canada. CEA members are very appreciative of prior FERC orders that have recognized that an effective international organization requires regulatory actions that are respectful of jurisdictional sovereignty. For example, FERC's decision not to remand any of NERC's proposed reliability standards in the Final Rule approving NERC's standards avoided jurisdictional complications where those standards are mandatory and enforceable in Canada.

CEA members understand the challenges in establishing NERC as the ERO in the United States, and further understand FERC's interest in remaining engaged in the standard setting and enforcement processes. But NERC can be effective as an international ERO only through governmental actions that recognize that the grid is regulated by multiple and distinct governmental authorities.

As a member of the Bilateral Electric Reliability Oversight Group ("Bilateral Group"), FERC has expressed its commitment to approaches that assure that the ERO can work effectively on an international basis. The Terms of Reference, signed by all the members of the Bilateral Group, recognize the importance of coordination and cooperation of the relevant governmental authorities in exercising their respective responsibilities to assure the reliability of the international grid. CEA asks that FERC remain diligent to the principles of bi-national cooperation and respect for jurisdictional sovereignty in its regulation of NERC. To that end, we ask that the Commission be mindful of the potential and unintended scope of a particular reliability order or on the potential impact of a particular order on NERC's ability to operate effectively as an international ERO. Only through such diligence can FERC avoid actions that could impact the reliability of the North American grid and undermine the effectiveness of the international ERO.

Conclusion

For the reasons stated above, we respectfully request that FERC clarify its Order Clarifying Procedures to provide that the Order only applies to mitigation plans submitted by

entities that are subject to the jurisdiction of the Commission for purposes of reliability standards enforcement.

Respectfully submitted,

_____/s/_____

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