

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Mandatory Reliability Standards for Critical  
Infrastructure Protection

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Docket No. RM06-22-008

**REQUEST FOR REHEARING OF  
THE AMERICAN PUBLIC POWER ASSOCIATION,  
THE EDISON ELECTRIC INSTITUTE, AND  
THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

Pursuant to Rules 385.212 and 713 of the Federal Energy Regulatory Commission's ("Commission" or "FERC") Rules of Practice and Procedure,<sup>1</sup> the American Public Power Association ("APPA"), Edison Electric Institute ("EEI"), and National Rural Electric Cooperative Association ("NRECA") (collectively, the "Joint Trade Associations"), respectfully submits this Request for Rehearing of the "Order Addressing Violation Severity Level Assignments for Critical Infrastructure Protection Reliability Standards" issued on March 18, 2010, in Docket No. RM06-22-008 ("Order").<sup>2</sup>

APPA is the national service organization representing the interests of not-for-profit, publicly owned electric utilities throughout the United States. More than 2,000 public power systems provide over 15 percent of all kilowatt-hour sales to ultimate customers, and do business in every state except Hawaii. APPA utility members are not-for-profit load-serving entities ("LSEs") whose primary goal is to provide customers in the communities they serve with reliable electric power and energy at the lowest reasonable cost, consistent with good environmental stewardship. Approximately three hundred and twenty-one APPA member utilities are subject to

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<sup>1</sup> 18 C.F.R. §§ 385.212 and 713 (2009).

<sup>2</sup> *Mandatory Reliability Standards for Critical Infrastructure Protection*, 130 FERC ¶ 61,211 (March 18, 2010) ("Order").

the mandatory electric Reliability Standards established by the electric reliability organization (“ERO”) and approved by the Commission, pursuant to Section 215 of the Federal Power Act (“FPA”), including the Critical Infrastructure Protection (“CIP”) Reliability Standards at issue in this proceeding.

EEI is the association of U.S. shareholder-owned electric companies, whose members serve ninety-five percent of the ultimate consumers in the shareholder-owned segment of the industry and represent approximately seventy percent of the U.S. electric power industry. EEI also has more than eighty-one international electric companies as Affiliate members and more than one-hundred seventy industry suppliers and related organizations as Associate members. Additionally, EEI member companies have responsibility for and a strong commitment to supporting, maintaining, and improving the reliability and security of the North American Bulk Power System (“BPS”), as demonstrated by EEI member companies’ consistent cooperation with the Commission, other Federal and State authorities, and other various stakeholders regarding reliability-related matters. Virtually all EEI members are required to comply with the Critical Infrastructure Protection (“CIP”) Reliability Standards at issue in this proceeding.

NRECA is the not-for-profit national service organization representing approximately nine-hundred-thirty not-for-profit, member-owned rural electric cooperatives. The great majority of these cooperatives are distribution cooperatives that provide retail electric service to over forty-two million consumer-owners in forty-seven states. Kilowatt-hour sales by rural electric cooperatives account for approximately ten percent of total electricity sales in the U.S. In addition, NRECA members include approximately sixty-six generation and transmission (“G&T”) cooperatives that supply wholesale power to their distribution cooperative owner-

members. Both distribution and G&T cooperatives were formed to provide electric service to their owner-members at the lowest reasonable cost consistent with adequate and reliable service.

## NOTICES AND COMMUNICATIONS

The Joint Trade Associations request that Notices and Communication with respect to these proceeding may be served upon the following individuals:

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### I. INTRODUCTION

In the Order, the Commission approved the Violation Severity Level (“VSL”) assignments for eight Version 1 CIP Reliability Standards (*i.e.*, Reliability Standards CIP-002-1 through CIP-009-1) (“CIP Standards”) that the North American Electric Reliability Corporation

(“NERC”) submitted for Commission-approval on June 30, 2009.<sup>3</sup> However, the Commission established two additional guidelines for analyzing the validity of VSLs for cyber-security Requirements (“CIP VSL Guidelines”) and, accordingly, directed NERC to submit a compliance filing, within sixty days of the Order’s issuance that modifies fifty-seven sets of VSL assignments to reflect the application of the CIP VSL Guidelines.<sup>4</sup> Specifically, the Commission directed NERC to modify the CIP Standard Requirements set forth in Appendix 1 to the Order in accordance with the following CIP VSL Guidelines:

1. Requirements where a single lapse in protection can compromise computer network security, *i.e.*, the “weakest link” characteristic, should apply binary rather than graded Violation Severity Levels (“CIP VSL Guideline No. 1”); and,
2. Violation Severity Levels for cyber security Requirements containing interdependent tasks of documentation and implementation should account for their interdependence (“CIP VSL Guideline No. 2”).<sup>5</sup>

Although the Joint Trade Associations generally support the principles reflected in the CIP VSL Guidelines as well as many of the modifications to the VSL assignments that the Commission orders NERC to make, they are concerned that certain of the ordered modifications to the VSL assignments are inappropriate. In this regard, and for the reasons discussed below, the Joint Trade Associations respectfully request that the Commission grant rehearing of the Order so as to reinstate the gradation approach (instead of the binary approach) for certain VSL assignments and to recognize and reflect that the successful electronic implementation of electronic-access controls for purposes of CIP VSL Guideline 2 does not depend necessarily

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<sup>3</sup> See “Petition of the North American Electric Reliability Corporation for Approval of Violation Severity Levels to Critical Infrastructure Protection (CIP) Version 1 Reliability Standards CIP-002-1 through CIP-009-1” submitted on June 30, 2009 in Docket No. RM06-22-000 (“June 30 CIP VSL Filing”).

<sup>4</sup> See Order at PP 1 and 37; *see also* Order, Appendix 1 (listing the CIP Reliability Standard Requirements for which the Commission directs NERC to revise the VSL assignments).

<sup>5</sup> *Id.* at P 14.

upon the documentation of such controls. Rehearing of the Order is also appropriate so as to extend the sixty-day compliance filing deadline established in the Order so that NERC and other industry stakeholders can consider the new CIP VSL Guidelines and make the necessary modifications to the CIP VSL assignments within the context of the NERC *Reliability Standards Development Procedures* (or other equivalent process) rather than under the sixty-day time-period established by the Order.

## II. STATEMENT OF ISSUES AND SPECIFICATIONS OF ERROR

In accordance with 18 C.F.R. § 385.713(c)(1) and (2), the Joint Trade Associations respectfully requests rehearing regarding the following issues and specifications of error:

1. Whether the Order's application of the CIP VSL Guidelines has resulted in the Commission ordering NERC to make inappropriate modifications to certain CIP VSL assignments? Yes. With respect to CIP VSL Guideline No. 1, the Order is arbitrary and capricious because it fails to consider or discuss the anomalous results that a binary VSL assignment potentially could produce for certain CIP Standard Requirements. *Motor Vehicles Mfrs. Ass'n. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. U.S.*, 371 U.S. 156, 168 (1962)). ("Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.' *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)."). Moreover, the Order's rationale for assigning a binary VSL to certain CIP Standard Requirements is counter to the record evidence in this proceeding and otherwise arbitrary and capricious for being illogical and simply incorrect. 16 U.S.C. § 824o(d)(2) (requiring that the Commission give due weight to the technical expertise of the ERO with respect to the content of a proposed standard or modification to a reliability standard); *Wisconsin Valley Improvement Co. v. FERC*, 236 F.3d 738, 745 (D.C. Cir. 2001) (holding that an agency's decision is arbitrary and capricious if factual determinations lack substantial evidence). In addition, CIP Guideline No. 1's abandonment of a gradation approach in favor of a binary approach in instances where a single lapse in protection can compromise computer network security is arbitrary and capricious because it constitutes an unexplained and irrational departure from the Commission's prior policy of preferring the assignment of VSLs in multiple levels (*i.e.*, a graded approach) rather than under a binary approach. *Mid-Continent Area Power Pool v. FERC*, 305 F.3d 780, 782 (8th Cir. 2002) (citing *INS v. Yueh-Shaio Yang*, 519 U.S. 26, 32 (1996) (holding that "when an agency has adopted a general policy, 'an irrational departure from that policy...could constitute

action that must be overturned as arbitrary, capricious, [or] an abuse of discretion.”); *Panhandle Eastern Pipe Line Company v. FERC*, 196 F.3d 1273, 1275 (D.C. Cir. 1999) (holding that the agency may not abandon its prior policy without providing a reasonable explanation for “the reason for its departure”). Similarly, the Order is arbitrary and capricious with respect to its application of CIP VSL Guideline No. 2 to those CIP Standards that contain two or more tasks within one Requirement (e.g., provisions requiring performance of both implementation and documentation tasks) because it fails to consider the fact that implementation of the CIP Standards’ Requirements can be achieved without documentation and, therefore, such “interdependent” tasks often require different VSL assignments. *Motor Vehicles Mfrs. Ass’n. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. U.S.*, 371 U.S. 156, 168 (1962)). (“Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’ *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962).”). Thus, the Order’s rationale supporting CIP VSL Guideline No. 2 is counter to the record evidence in this proceeding and otherwise arbitrary and capricious for being illogical and not considerate of all relevant factors. 16 U.S.C. § 824o (d)(2) (requiring that the Commission give due weight to the technical expertise of the ERO with respect to the content of a proposed standard or modification to a reliability standard); *Wisconsin Valley Improvement Co. v. FERC*, 236 F.3d 738, 745 (D.C. Cir. 2001) (holding that an agency’s decision is arbitrary and capricious if factual determinations lack substantial evidence).

2. Whether the Commission erred in ordering NERC to make the VSL-assignment-modifications set forth in Appendix 1 to the Order without allowing NERC and industry stakeholders the opportunity to consider the new CIP VSL Guidelines and make the necessary modifications within the context of its *Reliability Standards Development Procedures* or other equally open and deliberative processes? Yes. The Commission’s decision to pronounce new CIP VSL Guidelines for the first time in the Order and direct NERC to make modifications to certain CIP Standard Requirements’ VSL assignments to reflect such new CIP VSL Guidelines is arbitrary and capricious because it deprives NERC, its Cyber VSL Drafting Team, and other interested industry stakeholders the opportunity to consider the CIP VSL Guidelines before they are applied to the CIP Standards Requirements. 16 U.S.C. § 824o (c)(2)(D) (requiring certified ERO to have procedures that provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties); see *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984) (courts and agencies are to “give effect to the unambiguously expressed intent of Congress.”); *Airmark Corp. v. FAA*, 758 F.2d 685, 695 (D.C. Cir. 1985) (“[W]hen an agency decides to reverse its course, it must provide an opinion or analysis indicating that the standard is being changed and not ignored, and assuring that it is faithful and not

indifferent to the rule of law.”) (quoting *Columbia Broadcasting System, Inc. v. F.C.C.*, 454 F.2d 1018, 1026 (D.C. Cir. 1971)).

### III. REQUEST FOR REHEARING

#### A. The Order’s Application of the CIP VSL Guidelines to certain of the CIP Standards, and the VSL Assignment modifications resulting therefrom, are inappropriate

##### 1. CIP VSL Guideline No. 1

In discussing the justification for CIP VSL Guideline No. 1, the Commission explains that “a single lapse of computer protection can create the opening for malicious activity that has systemic critical infrastructure consequences.<sup>6</sup> In this regard, “the control systems that support [BPS] reliability are only as secure as their weakest links” and, as a result, “the severity of non-compliance is not necessarily dependent on the number of similar lapses because a single vulnerability opens the computer network to potential malicious activity.”<sup>7</sup> To illustrate these concepts, the Commission provides the following examples:

1. Reliability Standard CIP-005-1, Requirement R4 requires a vulnerability assessment of electronic access points to an Electronic Security Perimeter. If any one required preventative measure is neglected, the result is one or more insecure points of ingress – an unmitigated vulnerability that presents a severe risk to the Critical Cyber Asset.<sup>8</sup>
2. Reliability Standard CIP-005-1, Requirement R 3.2 requires responsible entities to detect attempts at unauthorized access to one or more components of a Critical Cyber Asset. If even one access point does not have monitoring processes implemented that include detection and alerting for attempts at or actual unauthorized accesses, there is an opportunity for undetected unauthorized access to the Critical Cyber Asset. Therefore, in the context of cyber-security, severity of non-compliance is in many instances better assessed in a binary, as opposed to a gradated approach.<sup>9</sup>

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<sup>6</sup> Order at P 15.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at P 17.

<sup>9</sup> *Id.* at P 18.

Accordingly, the Commission concludes that Requirements of CIP Reliability Standards that have a “weakest link” characteristic should be revised to provide VSLs that employ a binary approach.

The application of CIP VSL Guideline No. 1 and the resulting modifications to Reliability Standards CIP-005-1, Requirement R4 and CIP-005-1, Requirement R 3.2 are inappropriate because they produce the anomalous result whereby an entity that monitors and assesses the vulnerability of ninety-nine percent of its electronic access points will be treated the same as an entity that assesses the vulnerability of a significantly less percentage (or none) of its electronic access points. Moreover, such a result conflicts with the Commission’s previous VSL Guideline No. 1 (*i.e.*, that VSLs should not have the unintended consequences of lowering the current level of compliance),<sup>10</sup> as it could cause an entity, which knows it will not be able to perform vulnerability assessments for all of its electronic access points, to simply not perform any additional vulnerability assessments since, in either case (*i.e.*, whether the entity performs some but not all assessments or none at all), it will be treated as having performed none.

Similarly, the Commission’s decision to assign binary VSLs that contain “weakest link” characteristics does not give adequate recognition to the “vertical” nature of physical or cyber-security boundaries but, instead, analyzes the issue on a purely “horizontal” basis. That is, a binary VSL assignment in these instances ignores the “layered” nature of physical and cyber-security boundaries by pre-determining that a single, unmonitored access point constitutes a guaranteed means of ingress for a would-be cyber-intruder, when, in reality, there likely are

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<sup>10</sup> See *North American Electric Reliability Corp.* 123 FERC ¶ 61,284, P17 n.12 (“VSL Order”), *order on reh’g and clarification*, 125 FERC ¶ 61,212 (2008) (“VSL Rehearing Order”) (explaining that VSLs: (1) should not have the unintended consequence of lowering the current level of compliance; (2) should ensure uniformity and consistency among all approved Reliability Standards in the determination of penalties; (3) should be consistent with the corresponding Requirement; and, (4) should be based on a single violation, not on a cumulative number of violations) (“General VSL Guidelines”).



multiple monitored and controlled access points beyond the unmonitored one that would need to be traversed in order to breach the security perimeter. In this sense, the rote application of CIP VSL Guideline No. 1 to these CIP Standards does not give adequate recognition to the numerous other administrative and technical controls that are associated with electronic access points, electronic security perimeters, and critical cyber assets.

Moreover, the Order fails to address or otherwise discuss these issues and, instead, summarily concludes that CIP VSL Guideline No. 1 “better reflect[s] certain characteristics of the cyber environment”<sup>11</sup> and, accordingly, directs NERC to make modifications to certain CIP Standard Requirements’ VSL assignments in a manner consistent with CIP VSL Guideline No. 1. The Commission’s determinations and directives in these regards are arbitrary and capricious because they fail to consider or discuss the anomalous results that a binary VSL assignment potentially could produce for certain of the CIP Standards’ Requirements.<sup>12</sup> In addition, the Order’s determinations are counter to the record evidence in this proceeding as set forth in the “Record Development of Proposed CIP Version 1 Reliability Standard Violation Severity Levels” that NERC submitted as Exhibit B to the June 30 CIP VSL Filing, which found a gradated approach to be the best way to accurately measure the severity of a CIP Standard violation.<sup>13</sup> Moreover, CIP Guideline No. 1’s abandonment of a gradation approach in favor of a binary approach in instances where a single lapse in protection can compromise computer

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<sup>11</sup> *Id.* at P 14.

<sup>12</sup> *Motor Vehicles Mfrs. Ass’n. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. U.S.*, 371 U.S. 156, 168 (1962)). (“Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’ *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962).”).

<sup>13</sup> 16 U.S.C. § 824o(d)(2) (requiring that the Commission give due weight to the technical expertise of the ERO with respect to the content of a proposed standard or modification to a reliability standard); *Wisconsin Valley Improvement Co. v. FERC*, 236 F.3d 738, 745 (D.C. Cir. 2001) (holding that an agency’s decision is arbitrary and capricious if factual determinations lack substantial evidence).

network security is arbitrary and capricious because it constitutes an unexplained and irrational departure from the Commission’s prior policy, in which the Commission indicated a preference for the assignment of VSLs in multiple levels (*i.e.*, a graduated approach) rather than under a binary approach.<sup>14</sup>

## 2. CIP VSL Guideline No. 2

In the Order, the Commission explains that, in the context of critical infrastructure protection, “the implementation of security measures is largely dependent on complex plans, policies and procedures that must be repeatable and verifiable” and, in many cases “it is difficult if not impossible to demonstrate that a network operator has implemented a specific plan or program without developing the documentation for the plan or program.”<sup>15</sup> Thus, for those CIP Standards that contain two or more tasks within one Requirement (*e.g.*, provisions requiring performance of both implementation and documentation tasks) the interdependency between documentation and implementation should be recognized in those Requirements’ VSL assignments (rather than using a gradation approach that parses out multiple actions contained in the Requirement).<sup>16</sup>

For instance, the Order explains that Reliability Standard CIP-005-1, Requirement R2 provides that a responsible entity must implement and document the processes and mechanisms for control of electronic access at all electronic access points to the Electronic Security

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<sup>14</sup> See VSL Hearing Order, 125 FERC ¶ 61,212 at P 65; *see also Mid-Continent Area Power Pool v. FERC*, 305 F.3d 780, 782 (8th Cir. 2002) (citing *INS v. Yueh-Shaio Yang*, 519 U.S. 26, 32 (1996) (holding that “when an agency has adopted a general policy, ‘an irrational departure from that policy...could constitute action that must be overturned as arbitrary, capricious, [or] an abuse of discretion.”); *Panhandle Eastern Pipe Line Company v. FERC*, 196 F.3d 1273, 1275 (D.C. Cir. 1999) (holding that the agency may not abandon its prior policy without providing a reasonable explanation for “the reason for its departure”).

<sup>15</sup> Order at P 21.

<sup>16</sup> *Id.*

Perimeter(s). Furthermore, while NERC proposes gradated VSLs based on implementation without documentation and vice-versa, the Commission curiously determines that verifying the successful electronic implementation of electronic-access controls depends on the documentation of such controls. In other words, if a responsible entity implements the processes and mechanisms but does not document such processes and mechanisms then, according to the Commission, the entity is unsecure.

The underlying reasoning for CIP VSL Guideline No. 2 is illogical because it ignores the fact that implementation of the CIP Standards' Requirements can be achieved without documentation and, therefore, the two "interdependent" tasks – implementation and documentation – often require different VSL assignments.<sup>17</sup> For example, under Reliability Standard CIP-007 Requirement R2.2a, failure to *fully document* detailed steps and results taken to disable other ports and services, including those used for testing purposes, prior to production use of all Cyber Assets inside the Electronic Security Perimeter(s) is not the equivalent of *failing to disable* the ports and services. In this sense, the application of CIP VSL Guideline No 2. is arbitrary and capricious because, as long as an entity can verify that a particular CIP Standard Requirement has been implemented, documentation is not vital to ensuring that the applicable Critical Cyber Assets have been protected.<sup>18</sup> Moreover, CIP VSL Guideline No. 2 ignores the

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<sup>17</sup> *Motor Vehicles Mfrs. Ass'n. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. U.S.*, 371 U.S. 156, 168 (1962)). ("Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.' *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962).").

<sup>18</sup> *Wisconsin Valley Improvement Co. v. FERC*, 236 F.3d 738, 745 (D.C. Cir. 2001) (holding that an agency's decision is arbitrary and capricious if factual determinations lack substantial evidence).

fact that a lack of documentation often is the result of human error or omission, which can be difficult to prevent even with a strong compliance program.<sup>19</sup>

**B. The Commission erred in ordering NERC to make the VSL-assignment-modifications without allowing NERC to consider the new CIP VSL Guidelines as part of its *Reliability Standards Development Procedures***

At the outset, it bears emphasizing that the VSL assignments submitted by NERC in the June 30 CIP VSL Filing: (1) were developed in accordance with the NERC *Reliability Standards Development Procedures*, which is a fair and open process that allows for the consideration and balancing of stakeholder interests;<sup>20</sup> (2) are based on the cumulative cyber-security and information-technology expertise of the NERC Cyber VSL Drafting Team – a representative body of members from various regions and industry sectors; and (3) reflect the consideration of NERC’s VSL Development Guidelines and Criteria<sup>21</sup> as well as the Commission’s previous guidelines for evaluating the validity of VSL assignments.<sup>22</sup>

As such, NERC should be permitted to address the Commission’s concerns regarding the fifty-seven CIP VSL assignments in Appendix 1 to the Order pursuant to these same procedures rather than being required to perform each of the ordered modifications under a short compliance deadline and without the opportunity to conduct a deliberative and open process conducted with the input of the NERC Cyber VSL Drafting team and other industry stakeholders. Allowing NERC to modify the VSL assignments in this way would be appropriate because, by enunciating

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<sup>19</sup> *Id.*

<sup>20</sup> Moreover, the CIP VSL assignments were approved by the NERC Board of Trustees after having received eighty-four percent weighted segment approval with eighty-seven percent of the industry ballot-pool participating. *See* June 30 CIP VSL Filing at pg. 6-7.

<sup>21</sup> *See* June 30 CIP VSL Filing at Exhibit E.

<sup>22</sup> *See* VSL Order at P17 n.12 (explaining that VSLs: (1) should not have the unintended consequence of lowering the current level of compliance; (2) should ensure uniformity and consistency among all approved Reliability Standards in the determination of penalties; (3) should be consistent with the corresponding Requirement; and, (4) should be based on a single violation, not on a cumulative number of violations).

the new CIP VSL Guidelines after the development of the CIP Standards VSL assignments and, in turn, ordering NERC to make the modifications set forth in Appendix 1 to the Order, the Commission has precluded a full consideration and application of the CIP VSL Guidelines within the context of an open and inclusive process that appropriately balances the interests of all interested stakeholders. As a result, certain of the ordered modifications to the CIP VSL assignments (discussed above) do not reflect reasoned decision-making and, therefore, are arbitrary and capricious. Moreover, allowing NERC to revise the CIP VSL assignments pursuant to its *Reliability Standards Development Procedures* would be consistent with Federal Power Act (“FPA”) Section 215, which requires that the FERC-certified ERO have procedures that provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties.<sup>23</sup>

#### IV. CONCLUSION

For the foregoing reasons, the Commission should grant rehearing of the Order as requested herein.

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<sup>23</sup> See 16 U.S.C. § 824o(d)(2); see also *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984) (courts and agencies are to “give effect to the unambiguously expressed intent of Congress.”); *Airmark Corp. v. FAA*, 758 F.2d 685, 695 (D.C. Cir. 1985) (“[W]hen an agency decides to reverse its course, it must provide an opinion or analysis indicating that the standard is being changed and not ignored, and assuring that it is faithful and not indifferent to the rule of law.”) (quoting *Columbia Broadcasting System, Inc. v. F.C.C.*, 454 F.2d 1018, 1026 (D.C. Cir. 1971)).

Respectfully submitted,

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April 19, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that I have, this the nineteenth day of April 2010, served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

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