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February 6, 2017

VIA REGULATIONS.GOV

Mr. Jeffrey Baumgartner  
Office of Electricity Delivery and Energy Reliability  
U.S. Department of Energy  
Mailstop OE-20  
1000 Independence Avenue, SW  
Washington, DC 20585

**RE: Comments of Grid Assurance LLC on Notice of Proposed Rulemaking on Procedures for Issuance of Grid Security Emergency Orders, 81 Fed. Reg. 88,136 (Dec. 7, 2016); RIN 1901-AB40**

Dear Mr. Baumgartner:

Grid Assurance LLC (Grid Assurance) appreciates the opportunity to submit these comments in support of the rule proposed in the Department of Energy's (DOE) Notice of Proposed Rulemaking on Procedures for Issuance of Grid Security Emergency Orders (NOPR).<sup>1</sup>

Grid Assurance is a new company founded by six major electric utility companies<sup>2</sup> to help transmission owners respond to catastrophic events affecting the Nation's electric grid, including the types of cyber attacks, electromagnetic pulses, geomagnetic storm events, and direct physical attacks considered "grid security emergencies" under Section 61003 of the FAST Act and the NOPR.<sup>3</sup> By providing U.S. transmission owners with ready access to an inventory of critical transmission equipment that can otherwise take many months or even years to procure, Grid Assurance will help support the rapid restoration of electric service in the event of Presidentially-declared grid security emergencies or other catastrophic events that impair the electric grid. Importantly, this new secure inventory of equipment will be additive to current utility-held

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<sup>1</sup> Grid Security Emergency Orders: Procedures for Issuance, 81 Fed. Reg. 88,136 (Dec. 7, 2016).

<sup>2</sup> Grid Assurance was founded by affiliates of American Electric Power, Berkshire Hathaway Energy, Duke Energy, Edison International, Eversource Energy and Great Plains Energy. Transmission owners that subscribe to the Grid Assurance service will also have the option of investing in the company, so it is expected that the number of co-owners of Grid Assurance will grow. Additional information about Grid Assurance is available at [www.gridassurance.com](http://www.gridassurance.com).

<sup>3</sup> Fixing America's Surface Transportation Act, Pub. L. No. 114-94, § 61003(a), 129 Stat. 1312, 1774 (codified at 16 U.S.C. § 824o-1(a)(7)) (FAST Act).

stocks, and will be dedicated to use for restoration after grid emergencies. Grid Assurance thus represents an important industry response to the Congressional concerns about electric grid vulnerability, and the need for increased resiliency, that motivated Section 61003 of the FAST Act.

## **I. Background on Grid Assurance**

The risks to North America’s transmission grid are growing. Physical attacks, cyber-attacks, geomagnetic events, natural disasters, and severe weather all pose potent risks. Obtaining replacements for some types of damaged grid equipment, such as large power transformers, can take many months, potentially delaying recovery of electric services. Building on the power sector’s long history of mutual aid (e.g., sending linemen and bucket trucks to help other utilities recover from weather-related outages), Grid Assurance was established as an industry-driven solution to provide transmission-owning utilities with ready access to a robust inventory of long-lead time critical equipment to address increasing grid risks.<sup>4</sup> This equipment will be stored at secure and strategically located warehouses, and will be available to be deployed to transmission owners promptly following a major grid failure.

Grid Assurance will provide this service on a subscription basis. For its subscribers, Grid Assurance will procure an optimized inventory of critical spare transformers, circuit breakers and related transmission equipment, provide secure warehousing of the inventory near transportation arteries, and release equipment from inventory to utility subscribers as needed to respond to emergencies.

Transmission-owning utilities need ready access to replacement equipment to recover promptly from catastrophic losses. Grid Assurance offers a cost-effective alternative to having each individual utility acquire, store, and maintain a sufficient set of spare equipment to respond to potential catastrophic events, due to:

- Reduced Cost via Inventory Pooling: By optimizing inventory to the collective resiliency needs of a large group of subscribers, each subscriber’s share of the cost of

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<sup>4</sup> Grid Assurance provides subscribers with access to equipment inventory following a “Qualifying Event,” defined in the Grid Assurance Subscription Agreement to include:

Any damage, destruction or other material impairment of the safe operation of any equipment comprising the electric transmission system of a Subscriber Group Member, which damage, destruction or impairment is caused by, or the result of: (a) an act of war, terrorism, rebellion, sabotage or a public enemy, or any other physical attack (whether or not such physical attack is conducted in connection with an act of war, terrorism or a public enemy); (b) a cyber-attack, whether or not in connection with an act of war, terrorism or a public enemy; (c) an electromagnetic pulse or intentional electromagnetic interference; or (d) an act of God, a catastrophic event (natural or otherwise) or a severe weather condition, including a solar storm, earthquake, volcanic eruption, hurricane, tornado, derecho, windstorm, wildfire or ice storm.

Grid Assurance LLC Petition for Declaratory Order and Request for Expedited Action, Exhibit A – Grid Assurance LLC Subscription Agreement, Part 1 (Defined Terms), FERC Docket No. EL16-20-000 (filed Dec. 4, 2015) (Subscription Agreement).

access to inventory will be minimized. Thus, this approach is expected to be more cost-effective than utility-by-utility sparing strategies.

- Economies of Scale: Grid Assurance will seek to take advantage of volume purchases to obtain favorable pricing on equipment supply and maintenance agreements.

In addition to cost advantages, other benefits of Grid Assurance include:

- Secure Storage and Management of Inventory: Grid Assurance will store the equipment at secure, strategically-located warehouses and contract with equipment manufacturers to periodically test, service and maintain equipment in inventory. Grid Assurance will manage its inventory so that manufacturer warranties are preserved.
- Delivery Logistics Planning and Support: Grid Assurance warehouses will be strategically located to maximize efficiency of delivery. Grid Assurance will perform ongoing logistics planning and will maintain expertise in large asset transportation, including intermodal transportation for inbound and outbound inventory.
- Binding Commitment to Supply Equipment: Grid Assurance is contractually bound to provide spare equipment to its subscribers following a Qualifying Event consistent with the terms of its Subscription Agreements. By comparison, other inventory sharing alternatives offer less certainty of supply or have more narrowly defined triggering events.

To facilitate the use of its sparing service, Grid Assurance has sought and received certain declarations from the Federal Energy Regulatory Commission (FERC) concerning the regulatory treatment of its sparing service for utilities located in the United States.<sup>5</sup> Grid Assurance is in the process of accepting subscribers and identifying the inventory needed to serve subscribers. Grid Assurance expects to begin ordering inventory in 2017.

## **II. Comments on NOPR**

Section 215A of the FAST Act authorizes the Secretary of Energy to order emergency measures as are necessary to protect or restore the reliability of critical electric infrastructure or defense critical electric infrastructure after the President declares a grid security emergency.<sup>6</sup> To facilitate effective emergency response measures under Section 215A, it also: (i) requires DOE

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<sup>5</sup> Specifically, FERC issued declarations that: (1) contracting with Grid Assurance for access to spare critical transmission equipment is a permissible resiliency element of a physical security plan under Requirement 5 of Reliability Standard CIP-014-1, (2) prior authorization under Section 203 of the Federal Power Act (FPA) is not required for sales by, or purchases from, Grid Assurance of spare transmission equipment that is not in service at the time of the transfer, (3) the decisions to enter into a Subscription Agreement with Grid Assurance and to acquire equipment at Grid Assurance's original cost after a catastrophic event are prudent, (4) a utility may use single issue ratemaking to recover Grid Assurance-related costs, and (5) cost-based pricing of Grid Assurance's sparing service and spare equipment is permissible under a waiver of FERC's affiliate pricing restrictions where certain reporting conditions are met. *Grid Assurance LLC*, 152 FERC ¶ 61,116 (2015); *Grid Assurance LLC*, 154 FERC ¶ 61,244, *order granting clarification*, 156 FERC ¶ 61,027 (2016).

<sup>6</sup> 16 U.S.C. § 824o-1(b).

to consult with appropriate industry and governmental stakeholders, to the extent practicable in light of the nature of the grid security emergency, regarding implementation of emergency measures; (ii) provides for Federal agencies to provide temporary access to classified information relating to a grid security emergency to, and facilitate security clearances for, key personnel for entities subject to a Section 215A emergency order; (iii) provides DOE and FERC authority to designate information as critical electrical infrastructure information exempt from the Freedom of Information Act (FOIA); and (iv) clarifies that actions or omissions taken to comply with DOE Section 215A emergency orders will not result in liability under the FPA or applicable environmental laws.<sup>7</sup> In the proposed rule, DOE proposes rules of procedure to implement these statutory provisions and ensure that DOE's statutory authority can be exercised expeditiously.

Grid Assurance supports the proposed rule. Grid Assurance supports the proposed rule, which will facilitate the efficient, coordinated, and timely exercise of DOE's emergency authority under FPA Section 215A in consultation with industry upon a Presidential declaration of a grid security emergency under Section 215A.

DOE consultation and outreach concerning an FPA Section 215A grid security emergency should include Grid Assurance and other spare equipment initiatives. In the preamble to the proposed rule, DOE states that consistent with its longstanding practice, DOE will make all reasonable efforts to consult with stakeholders prior to issuance of an emergency order under Section 215A, and notes that the electricity industry will likely have important situational awareness to assist DOE in identifying mitigation or protection measures.<sup>8</sup> Proposed Section 205.383 sets forth the outreach and consultation that DOE will undertake, to the extent practicable, before the issuance of any emergency order under Section 215A; as appropriate, such outreach will be made to, at a minimum, foreign government authorities, appropriate Federal agencies, and non-governmental entities, including owners, users, or operators of critical electric infrastructure and defense critical electric infrastructure.<sup>9</sup>

Grid Assurance was formed to enhance the abilities of transmission owners to promptly restore electric service and grid reliability following events that have major adverse impacts to the grid, including "grid security emergencies" declared under FPA Section 215A. Grid Assurance will soon begin purchasing an inventory of spare long-lead-time critical transmission equipment that will be made readily available to subscribers for the purpose of grid recovery following such an event. In the event of an emergency, Grid Assurance will distribute this inventory to its subscribers on a non-discriminatory basis according to predetermined deployment procedures found in its standardized subscription agreement.<sup>10</sup>

In the face of a Section 215A grid security emergency affecting Grid Assurance subscribers, Grid Assurance will distribute spare inventory as promptly as possible to support subscribers' recovery efforts, and at the same time DOE may be issuing emergency orders under Section 215A. Grid Assurance subscribers will be owners and operators of critical electric

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<sup>7</sup> 16 U.S.C. § 824o-1(b), (d), (e), and (f).

<sup>8</sup> 81 Fed. Reg. at 88,138.

<sup>9</sup> 81 Fed. Reg. at 88,142 (proposed 10 C.F.R. § 205.383).

<sup>10</sup> See Subscription Agreement at Schedule 4.3.

infrastructure and defense critical electric infrastructure, but Grid Assurance itself will not be. In order to assure a coordinated recovery effort, Grid Assurance requests that DOE include, as appropriate, Grid Assurance and other joint equipment sharing initiatives such as the Edison Electric Institute's Spare Transformer Equipment Program among the private sector entities with whom it consults under proposed Section 205.383. Further, Grid Assurance suggests that, to the extent practicable, DOE should ensure that any orders it issues under Section 215A account for, and be coordinated with, the recovery plans and capabilities of individual utilities, and the recovery support provided by joint initiatives such as Grid Assurance pursuant to their predetermined deployment protocols. Grid Assurance aims to be a constructive partner with its utility subscribers and DOE in addressing the types of grid security emergencies contemplated by Section 215A, and thus both pre-emergency and post-emergency consultation and coordination on restoration equipment issues will be very beneficial.

DOE should interpret its authority to provide temporary access to classified information to key personnel of entities subject to Section 215A emergency orders to extend to key personnel of joint equipment sharing initiatives. DOE proposes that, to the extent practicable and consistent with its obligations to protect classified information, DOE may provide temporary access to classified information related to a grid security emergency for which DOE has issued emergency measures under Section 215A to key personnel of any entity subject to such emergency measures.<sup>11</sup> DOE should interpret this authority to permit it to grant temporary access to classified information to key personnel of Grid Assurance who are supporting utility recovery efforts. Allowing such personnel temporary access to classified information under appropriate circumstances could, consistent with the language of Section 215A, "enable optimum communication" that facilitates addressing a grid security emergency in a timely and effective manner.<sup>12</sup>

DOE should clarify its procedures for the submission and designation of critical energy infrastructure information (CEII) pursuant to Section 215A. Pursuant to Section 215A(d), FERC recently promulgated amendments to its CEII regulations to, among other things, establish criteria and procedures to designate information as critical electric infrastructure information.<sup>13</sup> However, the amended regulations only address information submitted to FERC.<sup>14</sup> Under Section 215A, information may be designated as CEII by FERC *or* DOE.<sup>15</sup> Given that DOE does not have its own CEII regulations, it is not clear what requirements DOE will impose for the designation and submission of CEII in the context of Section 215A grid security emergencies. DOE should clarify how parties should request a classification of CEII in the context of a Section 215A grid security emergency, and amend its own Freedom of Information Act regulations accordingly.

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<sup>11</sup> 81 Fed. Reg. at 88,143 (proposed 10 C.F.R. § 205.386).

<sup>12</sup> 16 U.S.C. § 824o-1(b)(7).

<sup>13</sup> *See* Regulations Implementing FAST Act Section 61003 - Critical Electric Infrastructure Security and Amending Critical Energy Infrastructure Information; Availability of Certain North American Electric Reliability Corporation Databases to the Commission, Final Rule, 81 Fed. Reg. 93,732 (Dec. 21, 2016) (to be codified at 18 C.F.R. Parts 375 and 388).

<sup>14</sup> *See* 18 C.F.R. § 388.112.

<sup>15</sup> 16 U.S.C. 824o-1(d)(3).

### **III. Correspondence and Communications**

Please direct any questions or communications concerning these comments to:

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### **IV. Conclusion**

Grid Assurance appreciates DOE's consideration of these comments and stands ready to work with DOE to prepare for and respond to grid security emergencies that threaten the Nation's grid. Grid Assurance looks forward to playing an important role in addressing the resiliency and recovery needs of utility subscribers and their customers.

Respectfully Submitted,

/s/ Douglas W. Smith

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