

EXECUTIVE ORDER ON SECURING THE UNITED STATES BULK-POWER SYSTEM

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The issuance of the President's Executive Order on "Securing the United States Bulk Power System" has produced speculation on the potential impacts to the industry. The Executive Order has been discussed at several working group and task force meetings across the ERO Enterprise, with specific attention to language in the Executive Order that potentially could have implications for future compliance obligations.

For the time being, the ERO Enterprise is asking entities to focus on the current activity surrounding the Executive Order, and not to speculate on any potential outcomes.

Specifically, according to the Department of Energy, the Executive Order is currently being evaluated, discussions are being held with the North American Electric Reliability Corporation and the Federal Energy Regulatory Commission, and a path forward is being developed. Most importantly, no decisions have been made as to any regulations, or determinations as to which agency will have jurisdiction over those regulations.

SERC will provide updates on these activities as more information becomes available.

On May 1, 2020, after declaring a national emergency over threats by foreign adversaries to the U.S. bulk-power system (BPS), President Trump issued an Executive Order ("Order") authorizing the Secretary of Energy ("Secretary") to work closely with other federal agencies and U.S. industry to take measures to protect the BPS. The Order prohibits any entity or person subject to the jurisdiction of the U.S. from acquiring, importing, transferring, or installing any BPS electric equipment (transaction) in which any foreign country or foreign national has any interest and the transaction poses an unacceptable risk to national security or the security and safety of U.S. persons.

Why the national emergency?

The Order asserts that the threat stems from "the unrestricted acquisition or use" in the U.S. of BPS electric equipment "designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries..." It adds that such unrestricted acquisition or use augments the ability of foreign adversaries to create and exploit vulnerabilities in BPS electric equipment, "with potentially catastrophic effects." Therefore, the President determined that "the unrestricted foreign supply" of BPS electric equipment constitutes an "unusual and extraordinary threat" to U.S. national security, foreign policy, and economy.

Who are the foreign adversaries?

During stakeholder calls held on May 15 and May 21, 2020, government officials from the U.S. Department of Energy (DOE) pointed to past findings by the U.S. intelligence community, (e.g., the 2019 Worldwide Threat Assessment and the 2020 National Counterintelligence Strategy) to suggest that China and Russia are likely among the foreign adversaries for purposes of the Order. Intelligence community findings indicate that these countries are developing plans and capabilities to launch disruptive cyber-

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attacks meant to degrade the nation's critical infrastructure and increasingly have access to advanced tools and technologies to launch such attacks remotely.

What equipment is subject to the Order?

The Order defines "bulk-power system" as "(i) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and (ii) electric energy from generation facilities needed to maintain transmission reliability."

The Order specifically refers to "bulk-power system electric equipment," which it defines as "items used in bulk-power system substations, control rooms, or power generating stations, including reactors, capacitors, substation transformers, current coupling capacitors, large generators, backup generators, substation voltage regulators, shunt capacitor equipment, automatic circuit reclosers, instrument transformers, coupling capacity voltage transformers, protective relaying, metering equipment, high voltage circuit breakers, generation turbines, industrial control systems, distributed control systems, and safety instrumental systems." The Order further specifies that items not included in the above list and that have a broader application of use beyond the BPS are outside the scope of the Order.

More details and clarity regarding scope of the Order may be provided in the regulations that will be issued by the Secretary.

What transactions are prohibited under the Order?

According to the Order, prohibited transactions include "any acquisition, importation, transfer, or installation" of any BPS electric equipment (transaction) "by any person, or with respect to any property, subject to the jurisdiction of the United States" and meet the following elements:

- The transaction involves any property in which any foreign country or a

national thereof has any interest (including through an interest in a contract for the provision of the equipment),

- The transaction was initiated after the date of the Order, and
- The Secretary, in coordination with heads of other executive departments and agencies, determine that:
 - The transaction involves BPS electric equipment designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary; and
 - The transaction:
 - poses an undue risk of sabotage to or subversion of the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of the BPS;
 - poses an undue risk of catastrophic effects on the security or resiliency of the US critical infrastructure or the economy of the US; or
 - otherwise poses an unacceptable risk to US national security or the security and safety of US persons.

The Order prohibits the above transactions "except to the extent provided by statutes, or in regulations, orders, directive, or licenses that may be issued" pursuant to the Order, and "notwithstanding any contract entered into or any license or permit granted" prior to the date of the Order.

What steps should stakeholders take now?

The DOE recently clarified that **stakeholders do not need to take any immediate steps at this time**. The BPS is only a portion of the country's entire energy infrastructure. Before any actions involving the equipment identified in the Order are prohibited, there would need to be a nexus between a foreign adversary and an undue risk to national security or the safety and security of Americans. Therefore, for many stakeholders there will be no impact, and even for stakeholders impacted, the DOE will consider procedures for mitiga-



tion measures that may allow for the use of equipment that would otherwise be prohibited.

What steps do stakeholders need to take with equipment listed in the Order that is already in the BPS?

The DOE has confirmed that no equipment is actually prohibited as of today. Procedures will be developed to consider already installed equipment in the BPS, so any steps taken by stakeholders now would be premature and unnecessary.

What can stakeholders expect next?

The Order specifies that the Secretary has 150 days from the date of the Order (by September 28, 2020) to issue rules or regulations implementing the authorities delegated to the Secretary by the Order. According to the DOE, these regulations are currently being worked on and discussions are being held with the North American Electric Reliability Corporation (NERC) and the Federal Energy Regulatory Commission (FERC). Such regulations may, among other things,

- Determine “that particular countries or persons are foreign adversaries” exclusively for the purpose of the Order;
- Identify “persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries” exclusively for the purposes of the Order;
- Identify “particular equipment or countries” with respect to which transactions involving BPS electric equipment “warrant particular scrutiny” under the Order;
- Establish “procedures to license transactions” otherwise prohibited pursuant to the Order; and

- Identify “a mechanism and relevant factors for the negotiation of agreements to mitigate concerns raised” in the Order.

The Order further authorizes the Secretary to do the following:

- Design or negotiate measures to mitigate concerns identified in the Order. Such measures “may serve as a precondition to the approval by the Secretary of a transaction or of a class of transactions” that would otherwise be prohibited by the Order.
- Establish and publish criteria for recognizing particular equipment and vendors in the BPS electric equipment market as “pre-qualified” for future transactions and apply the criteria to establish and publish a list of pre-qualified equipment and vendors; and
- Identify any now-prohibited BPS equipment already in use and develop recommendations on ways to identify, isolate, monitor, and replace this equipment as soon as practicable and as appropriate.

Additionally, the Order establishes a Task Force (led by the Secretary) to develop energy infrastructure procurement policies and procedures to ensure national security considerations are integrated into government energy security and cybersecurity policymaking. The Task Force will consult with the energy industry through the Electricity and Oil and Natural Gas Subsector Coordinating Councils to further its efforts on securing the BPS. The Task Force will submit a report to the President one year from the date of the Order, and annually thereafter, summarizing its progress, findings, and recommendations.

You may find the Order [here](#).

