

152 FERC ¶ 61,116
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
and Tony Clark.

Grid Assurance LLC

Docket No. EL15-76-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued August 7, 2015)

1. On June 9, 2015, Grid Assurance LLC (Grid Assurance) filed a petition for declaratory order asking the Commission to make several declarations related to the spare transmission equipment supply service Grid Assurance intends to offer to transmission owners in the United States and Canada (Petition). Grid Assurance asks the Commission to provide declarations regarding whether 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 (Physical Security)¹ and whether prior authorization under section 203 of the Federal Power Act (FPA)² is required for sales of spare equipment by, or purchases of spare equipment from, Grid Assurance. In addition, Grid Assurance asks the Commission to “acknowledge the benefits offered” by the type of sparing service model that Grid Assurance intends to

¹ The Commission approved Reliability Standard CIP-014-1 in *Physical Security Reliability Standard*, Order No. 802, 149 FERC ¶ 61,140 (2014), *order on reh’g*, 151 FERC ¶ 61,066 (2015). The text of Reliability Standard CIP-014-01 is available at <http://www.nerc.com>.

² 16 U.S.C. § 824b (2012).

offer as a “means for cost-effectively supporting grid resilience.”³ We grant in part and deny in part the Petition, as discussed below.

I. Background

2. Grid Assurance states that it is a Delaware limited liability company that was formed to support the rapid restoration of electric service in the event of certain types of catastrophes by providing greater accessibility and timely deployment of spare transmission equipment.⁴ Grid Assurance explains that it plans to provide services on a subscription basis pursuant to a standardized agreement (Subscriber Agreement) that it will execute with its subscribers.⁵ Pursuant to the Subscriber Agreement, Grid Assurance states that it will

- (1) maintain an inventory of critical spare transformers, circuit breakers and related transmission equipment optimized for the collective resiliency needs of its subscribers,
- (2) provide secure domestic warehousing of the inventory of spares in strategic locations, and (3) release inventory of spares to utility subscribers as needed to respond to a Qualifying Event.^[6]

³ Petition at 2.

⁴ Grid Assurance explains that American Electric Power Company, Inc; BHE U.S. Transmission, LLC; Edison Transmission, LLC; Eversource Energy; Exelon Corporation; KLT, Inc.; and Southern Company Services, Inc. are involved in the development of the Grid Assurance business model. In addition, Grid Assurance states that these companies, or their affiliates, may consider equity investments in Grid Assurance, and that additional electric utility sector entities may also become investors in Grid Assurance. *Id.* n.43.

⁵ *Id.* at 17.

⁶ *Id.* Grid Assurance generally describes a Qualifying Event as a certain type of catastrophic event, including but not limited to “physical and cyber-attacks, electromagnetic pulses, solar storms, earthquakes, floods, fires and severe weather events.” *Id.* at 3. Grid Assurance expects the standardized Subscriber Agreement to include a definition of the circumstances that constitute a Qualifying Event. *Id.* at 19.

3. In addition, Grid Assurance intends to assist with delivery logistics or may offer an optional delivery service.⁷ Grid Assurance refers to this package of services as the Sparing Service.⁸ Participation in the Sparing Service will be voluntary.

4. Grid Assurance states that it will provide the Sparing Service to transmission owners that enter into the Subscriber Agreement, and that the Sparing Service will be available to transmission owners and transmission developers in the United States and Canada, including investor-owned utilities, government-owned utilities, rural electric cooperatives and merchant transmission companies.⁹ Grid Assurance states that each subscriber will pay a periodic subscription fee equal to its share of Grid Assurance's cost of operation, which Grid Assurance anticipates will be determined using a "cost-based, transparent formula that will include a return on, and a return of, invested capital and recovery of operating costs, expenses, and taxes."¹⁰ In addition, the Subscriber Agreement will establish the pricing at which inventory will be sold to subscribers following a Qualifying Event. Grid Assurance expects that the pricing will be based on its cost for such equipment.¹¹

⁷ Grid Assurance clarifies that, in all cases, subscribers will be responsible for installing the equipment restoring service. *Id.* at 18.

⁸ Grid Assurance acknowledges the similarity of the Sparing Service to the Edison Electric Institute's Spare Transformer Equipment Program (Spare Transformer Equipment Program), which Grid Assurance characterizes "as an important and valuable first step in anticipating the sparing needs" of the electricity sector. *Id.* at 20. According to Grid Assurance, however, the Sparing Service will offer transmission owners a more comprehensive service than that offered through the Spare Transformer Equipment Program. The Commission addressed the Spare Transformer Equipment Program in *Edison Electric Institute*, 116 FERC ¶ 61,280 (2006).

⁹ Grid Assurance notes that affiliates of its owners may be among its initial subscribers, and that once the terms and conditions of the Subscriber Agreement are known in greater detail, it expects to make a filing with the Commission to address any necessary declarations or waivers concerning affiliate pricing restrictions under 18 C.F.R. § 35.44 (2014). Petition at 19. Section 35.44 establishes protections against affiliate cross-subsidization.

¹⁰ *Id.* at 20.

¹¹ *Id.*

II. Notice of Filing

5. Notice of the Petition was published in the *Federal Register*, 80 Fed. Reg. 34,396 (2015), with interventions and protests due on or before July 9, 2015. Timely motions to intervene were filed by Exelon Corporation, Ameren Services Company, Starwood Energy Group Global, L.L.C., National Rural Electric Cooperative Association, North American Electric Reliability Corporation (NERC), Southern Company Services, Inc., Old Dominion Electric Cooperative, American Electric Power Service Corporation, and American Public Power Association. Arkansas Public Service Commission filed a notice of intervention.

6. International Transmission Company, Michigan Electric Transmission Company, ITC Midwest LLC and ITC Great Plains, LLC (collectively, the ITC Companies) and the Foundation for Resilient Societies, Inc. (Foundation for Resilient Societies)¹² filed motions to intervene and comments.

7. ABB, Inc., Siemens Energy Management, and Mitsubishi Electric Power Products, Inc. submitted letters in support of the Petition.

8. Grid Assurance filed an answer to the ITC Companies and the Foundation for Resilient Societies.

III. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene and notice of intervention serve to make the entities that filed them parties to this proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the

¹² The Foundation for Resilient Societies states that it is a “non-profit research and education organization committed to enhancing the resilience of critical infrastructure.” Motion to Intervene Submitted by the Foundation for Resilient Societies, Inc. at 1, Docket No. EL15-76-000 (Foundation for Resilient Societies Comments).

decisional authority. We will accept Grid Assurance's answer because it has provided information that assisted us in our decision-making process.¹³

IV. The Petition

11. Grid Assurance asks the Commission to acknowledge the benefits offered by the Sparing Service "as a means for cost-effectively supporting grid resilience, and further asks the Commission to declare 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 R5 of mandatory reliability standard CIP-014-1; and (2) prior authorization under [FPA section 203] is not required for sales of spare equipment by, or purchases of spare equipment from, Grid Assurance."¹⁴ We address each of Grid Assurance's requests below.

A. The Sparing Service and Requirement R5 of Reliability Standard CIP-014-1

1. Grid Assurance's Request

12. In its Petition, Grid Assurance asks that the Commission declare that "contracting with Grid Assurance for access to spare critical transmission equipment is a permissible resiliency element of a physical security plan under Requirement R5 of mandatory reliability standard CIP-014-1."¹⁵ Grid Assurance states that subscribing transmission owners will have access to "an inventory of critical spare equipment, including equipment capable of replacing the subscriber's critical assets ... in the event equipment is damaged during a Qualifying Event."¹⁶ Grid Assurance notes that "spare equipment will be stored in secure, strategically located warehouses and will be made available to subscribers following a Qualifying Event."¹⁷ Grid Assurance states that its goal is to

¹³ Grid Assurance's response makes certain assertions regarding the status and activities of Grid Assurance. However, this order only rules on the requests for declaration included in the Petition.

¹⁴ Petition at 2, 4-5.

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 23

¹⁷ *Id.*

support the rapid restoration of electric service in the event of certain emergency situations “by providing greater accessibility and timely deployment of spare transmission equipment.”¹⁸

2. Commission Determination

13. As an initial matter, we note that Grid Assurance asks that the Commission “acknowledge the benefits offered by this type of sparing service model as a means for cost-effectively supporting grid resilience...”¹⁹ We recognize the potential for economies of scale, diversification, improved logistics, centralized inventory management, and other potential benefits that may result from the Sparing Service, and we encourage utilities to cost-effectively support grid resilience. Indeed, as the Commission has recognized, efforts to improve the reliability of the supply chain for electric infrastructure can provide significant benefits for customers.²⁰ However, Grid Assurance’s Petition is not an FPA section 205²¹ filing through which we could determine whether costs incurred under the Sparing Service will be just and reasonable. Accordingly, we deny, without prejudice to any future filings, Grid Assurance’s request that the Commission specifically acknowledge the “cost-effectiveness” of the Sparing Service.

14. We grant Grid Assurance’s request and declare that 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. As noted in the Commission’s order directing the development of a physical security Reliability Standard, owners and operators should be allowed to consider the resilience of the grid in their physical security risk assessment, including considerations such as recovery plans and inventory management.²² Requirement R5 of Reliability Standard

¹⁸ *Id.* at 17.

¹⁹ *Id.* at 21.

²⁰ See, e.g., *Edison Electric Institute*, 116 FERC ¶ 61,280 at P 16; *Reliability Standards for Geomagnetic Disturbances*, 143 FERC ¶ 61,147, at P 54 (2013); see also *Revised Critical Infrastructure Protection Reliability Standards*, 152 FERC ¶ 61,054, at P 64 (2015).

²¹ 16 U.S.C. § 824d (2012).

²² *Reliability Standards for Physical Security Measures*, 146 FERC ¶ 61,166, at

(continued...)

CIP-014-1 requires transmission owners to develop and implement a physical security plan that addresses, among other things:

Resiliency or security measures designed collectively to deter, detect, delay, assess, communicate, and respond to potential physical threats and vulnerabilities identified during the evaluation conducted in Requirement R4.²³

Grid Assurance's Sparing Service could be a permissible resiliency element of a physical security plan under Requirement R5.1 because the service would provide an inventory of equipment in strategic locations, which could be released to utility subscribers as needed to respond to a Qualifying Event. Therefore, to the extent that the Sparing Service proposed by Grid Assurance, is considered an aspect of a transmission owner's recovery plan and general inventory management practices, we declare that the Sparing Service could serve as a permissible resiliency element of a physical security plan under Requirement R5 of mandatory Reliability Standard CIP-014-1.

15. We note, however, that a transmission owner that subscribes to Grid Assurance's Sparing Service remains subject to all applicable NERC Reliability Standards. For example, nothing in this order relieves a transmission owner from the obligation to obtain unaffiliated third party review required under Requirement R6 of Reliability Standard CIP-014-1. Reliability Standard CIP-014-1, Requirement R6 provides, in pertinent part, that entities subject to the standard "shall have an unaffiliated third party review the evaluation performed under Requirement R4 and the security plan(s) developed under Requirement R5."²⁴ While we believe that the proposed Sparing Service can play a role in a transmission owner's security plan, it is important for an independent entity to make a determination as to the nature of the overall security plan and how the Sparing Service addresses the resiliency concerns of each particular transmission owner.

P 7 (2014).

²³ See Reliability Standard CIP-014-1 (Physical Security), Requirement R5.1.

²⁴ Reliability Standard CIP-014-1 (Physical Security), Requirement R6.

B. Prior Authorization Under FPA Section 203

1. Grid Assurance's Request

16. Grid Assurance asks the Commission to declare that “prior authorization under [FPA section 203] is not required for sales of spare equipment by, or purchases of spare equipment from, Grid Assurance.”²⁵ According to Grid Assurance, FPA section 203(a)(1) applies to dispositions or consolidations of “facilities subject to the jurisdiction of the Commission.”²⁶ Grid Assurance states that, since transmission facilities that are not in service are not facilities subject to the Commission’s jurisdiction,²⁷ FPA section 203(a)(1) does not apply to transfers of spare transmission equipment that is not yet energized. Grid Assurance observes that the Commission does not require a utility to seek authorization under FPA section 203 when it purchases transmission equipment from a manufacturer that it intends to place into service, or from a distributor of such equipment, and that the Commission should not extend a requirement to obtain prior FPA section 203 authorization to acquisitions of unenergized transmission equipment from other intermediaries in the supply chain for sparing services.

17. Grid Assurance concludes that the goal of “rapid restoration of the grid following a Qualifying Event would not be well-served” by requiring prior FPA section 203 authorization before replacement equipment can be transferred from Grid Assurance to its subscribers.²⁸ Grid Assurance states that clarification from the Commission on this issue will benefit potential Grid Assurance subscribers by reducing regulatory uncertainty associated with a purchase of spare transmission equipment.

2. Commission Determination

18. We grant Grid Assurance’s request and declare that prior authorization under FPA section 203 is not required for sales by or purchases from Grid Assurance of spare

²⁵ See, e.g., Petition at 2.

²⁶ *Id.* at 23 (quoting 16 U.S.C. § 824b (2012)).

²⁷ *Id.* (citing *New York Transco, LLC*, 151 FERC ¶ 61,005, at P 16 (2015) (*New York Transco*)).

²⁸ *Id.*

transmission equipment that is not in service at the time of the transfer. As Grid Assurance notes, FPA section 203(a)(1) states, in part:

No public utility shall, without first having secured an order of the Commission authorizing it to do so –

(A) sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of \$10,000,000; [or]

(B) merge or consolidate, directly or indirectly, such facilities or any part thereof with those of any other person, by any means whatsoever;

19. The Commission has found that transmission facilities that are not in service at the time of the transfer are not subject to its jurisdiction under section 203 of the FPA.²⁹ Although in its requested declaration Grid Assurance does not explicitly state that it is seeking the declaration only for facilities that are not in service at the time of the transfer, we will read its Petition as making that limited request.³⁰ For example, Grid Assurance explains that it intends to acquire and maintain an inventory of spare equipment that will be warehoused in strategic locations across the country.³¹ In addition, in making the argument that section 203 should not apply to the transfers, Grid Assurance relies on the Commission's precedent in which the Commission held that it does not have jurisdiction under FPA section 203 over the transfer of facilities not in service at the time of the transfer.³² Accordingly, based on the description of the spare transmission equipment in the Petition and our reading of the Petition, we find that, because the spare transmission equipment will not be in service at the time it is transferred, the sale by or purchase from

²⁹ See, e.g., *New York Transco*, 151 FERC ¶ 61,005 at P 16 (dismissing application under FPA section 203 where transmission facilities were not in service or energized). See also *PacifiCorp*, 132 FERC ¶ 61,018, at P 20 (2010) (*PacifiCorp*) (citing *Gamma Mariah, Inc.*, 44 FERC ¶ 61,442 (1988) (*Gamma Mariah*)); *Idaho Power Co.*, 132 FERC ¶ 61,019, at P 20 (2010) (*Idaho Power*) (same).

³⁰ See *supra*, P 9.

³¹ See, e.g., Petition at 3-4.

³² *Id.* at 24 (citing *New York Transco*, 151 FERC ¶ 61,005 at P 16).

Grid Assurance of the spare transmission equipment described in the Petition does not require prior authorization under FPA section 203.³³

C. Issues Raised by Comments on the Petition

1. Comments

20. The Foundation for Resilient Societies states that it supports a declaratory order by the Commission that (1) exempts Grid Assurance “from prior Commission approvals before sales of spare equipment above designated dollar values” and (2) affirms that “contracting with Grid Assurance for access to spare critical transmission equipment is a permissible resiliency element of a physical security plan under Requirement R5 of mandatory reliability standard CIP-014-1.”³⁴ The Foundation for Resilient Societies, however, supports such an order provided that the Commission “conditions its approval of the waiver of duties for prior Commission approval under [FPA section 203] and other regulatory requirements upon the submission by Grid Assurance of an Annual Public Information Report to the Commission on its Equipment Sparing Priority Policies, Practices, and Sparing Capabilities.”³⁵

21. The ITC Companies raise two issues in response to the Petition. First, recognizing that Grid Assurance does not directly pose questions to the Commission regarding cost recovery, the ITC Companies state that the Commission should consider how it intends to review, if at all, Grid Assurance’s rate structure. The ITC Companies suggest that the Commission consider how the cost structure of Grid Assurance would compare to the

³³ Our finding in this order regarding prior authorization under FPA section 203 does not address the issue of whether prior authorization under FPA section 203 is necessary for the sale or purchase of spare transmission equipment that was energized or in service at some point prior to the time of transfer, but will not be energized or in service at the time of transfer.

³⁴ Foundation for Resilient Societies Comments at 2.

³⁵ *Id.* The Foundation for Resilient Societies states that such a report should, among other things, identify: “the high and low number of spares by category stockpiled as physical assets of Grid Assurance over the space of a 12-month period”; “the number of physical spares by category committed to subscribers by contract”; and “contractual priorities for delivery of spares when one subscriber demands a spare.” *Id.* at 4.

costs that each utility would incur separately to maintain a stock of spare equipment, particularly under a program like the Spare Transformer Equipment Program.

22. Second, the ITC Companies comment that, while they agree with Grid Assurance concerning the need for a stable supply of critical transmission system equipment, the Sparing Service “should be considered in the context of existing spare equipment programs, as well as the general responsibility of NERC to ensure the reliability of the Bulk Electric System.”³⁶ Specifically, the ITC Companies state that the Sparing Service would overlap with the Spare Transformer Equipment Program, as well as encroach on a subject that could be viewed as more appropriately addressed by the NERC standards development process.³⁷

23. With regard to the Spare Transformer Equipment Program, the ITC Companies argue that the Commission should consider whether expanding that program could improve grid resiliency more effectively than Grid Assurance’s proposed Sparing Service. In addition, the ITC Companies question whether having multiple independent spare equipment programs is the most efficient way to address grid resiliency.³⁸ Therefore, the ITC Companies state that the Commission should consider whether the goals reflected in the Grid Assurance proposal could be met more efficiently by expanding the equipment covered and/or events addressed by the Spare Transformer Equipment Program.³⁹

24. The ITC Companies also argue that the Commission should “consider whether this issue of the need for industry-wide spare equipment is more properly within the purview of NERC’s standards development process.”⁴⁰ The ITC Companies state that NERC is best suited to establish and monitor an effective, industry-wide program for maintaining a stock of spare transmission system components. In addition, the ITC Companies assert that NERC “is best positioned to assess whether the stock of components being maintained under such a program is sufficient in number and in type to respond to major

³⁶ The ITC Companies Comments at 4.

³⁷ *See id.* at 3.

³⁸ *Id.* at 5.

³⁹ *Id.* at 6.

⁴⁰ *Id.* at 7.

catastrophic events.”⁴¹ According to the ITC Companies, NERC is the entity most capable of having greater participation in a spare equipment program compared to a voluntary program such as the Sparing Service. The ITC Companies note that “broad industry participation, whether mandatory or voluntary, is necessary to provide a sufficient number of spare components to respond to a critical incident.”⁴²

2. Answer

25. In response to the Foundation for Resilient Societies, Grid Assurance notes that it anticipates making a future filing at the Commission that would include as an attachment the *pro forma* Subscriber Agreement.⁴³ Grid Assurance states that this future filing would provide some of the details regarding the Sparing Service that the Foundation for Resilient Societies seeks. Grid Assurance also responds to the Foundation for Resilient Societies’ request “for disclosure of ‘policies that discourage the concentration of control over equipment spares that would be anticompetitive.’”⁴⁴ Grid Assurance clarifies that it will not be an equipment manufacturer, but will instead purchase spares from manufacturers for resale to subscribers in emergency situations. Further, Grid Assurance notes that subscribers will be free to continue to purchase equipment from equipment suppliers as they see fit. Grid Assurance states that it will provide an additional option to transmission owners, not limit options.

26. Grid Assurance also responds to the information report requested by the Foundation for Resilient Societies, commenting that the report raises several important concerns. First, Grid Assurance states that much of the information the Foundation for Resilient Societies requests is “of a sensitive nature” and should not be publicly disclosed. Grid Assurance states that the public disclosure of “detailed information about inventories of critical substation equipment has national security implications and

⁴¹ *Id.*

⁴² *Id.*

⁴³ Answer of Grid Assurance LLC to Comments of International Transmission Company d/b/a ITC *Transmission*, Michigan Electric Transmission Company, ITC Midwest LLC, and ITC Great Plains, LLC, and Foundation for Resilient Societies, Inc. at 9, Docket No. EL15-76-000 (filed Jul. 21, 2015) (Grid Assurance Answer). *See also supra* n.8.

⁴⁴ *Id.* at 9.

therefore must be carefully considered.”⁴⁵ Second, Grid Assurance states that if the Commission, or another government agency, requires information on spare equipment inventories and sales for regulatory or policy purposes, all holders or sellers of such spare equipment should be required to provide such information. Third, Grid Assurance states that imposing a reporting requirement that is unrelated to the regulatory provisions being interpreted would be unprecedented.

27. In response to the ITC Companies’ comments regarding cost recovery, Grid Assurance agrees that the Subscription Agreement described in the Petition would be a non-jurisdictional agreement, and asserts that because Grid Assurance will not own or operate facilities subject to the jurisdiction of the Commission, Grid Assurance will not be a public utility within the meaning of the FPA.⁴⁶ In addition, Grid Assurance does not anticipate any direct regulatory oversight by the Commission of the fees it will charge under the Subscription Agreement.⁴⁷ Grid Assurance notes that the Sparing Service will be voluntary, and that each transmission owner will be in the position to “consider the relative costs and benefits of subscribing to the [Sparing Service], relying on utility-owned spares, participating in [the Spare Transformer Equipment Program], or combinations of these approaches.”⁴⁸

28. Grid Assurance also asserts that the Sparing Service will be a complement to the Spare Transformer Equipment Program and will build upon that program’s success by backstopping a wider variety of equipment, and by responding to a broader set of threats to resiliency.⁴⁹ Grid Assurance notes, for example, that the Subscription Agreement will

⁴⁵ *Id.* at 10. According to Grid Assurance, the Commission recognized this concern in its order directing development of the physical security standard. *See Reliability Standards for Physical Security Measures*, 146 FERC ¶ 61,166 at P 10.

⁴⁶ *Id.* at 3.

⁴⁷ Grid Assurance reiterates, however, that once the terms and conditions of the Subscription Agreement are developed in greater detail, it anticipates making a filing with the Commission to address “certain issues that relate to the pricing of services by Grid Assurance, including, for instance, issues related to affiliated pricing restrictions under 18 C.F.R. § 35.44.” *Id.* at 4.

⁴⁸ *Id.*

⁴⁹ *Id.* at 5. Grid Assurances notes that the Spare Transformer Equipment Program provides for the sharing of transformers in response to certain triggering events that

(continued...)

contractually obligate it to provide access for its subscribers to a wide variety of long lead-time transmission equipment, including transformers, circuit breakers, reactors and bushings and that the inventory available under the Sparing Service would be provided in response to a broad range of catastrophic events. Grid Assurance, however, disputes the ITC Companies' assertion that holding sparing equipment in centralized warehouses is less secure than having inventory distributed among utilities. Grid Assurance explains that storage of transformers within strategically located warehouses provides several advantages, including avoiding the co-location of substation equipment and spares, which is a resiliency strategy "recognized by the National Infrastructure Advisory Council and NERC's Severe Impact Resilience Task Force."⁵⁰

29. Finally, Grid Assurance responds to the ITC Companies' comments regarding whether NERC is best suited to establish and monitor an effective, industry-wide program for maintaining spare transmission system inventory. Grid Assurance states that the Sparing Service is "fully consistent" with NERC's reliability standards, and would not encroach upon the standards development process. Grid Assurance notes that the Commission has stated, in the context of Reliability Standard CIP-014-1, that it will take a flexible approach to grid resiliency. According to Grid Assurance, Reliability Standard CIP-014-1 expressly provides latitude with respect to physical security plans, including the provision of spare equipment.⁵¹ Grid Assurance also maintains that NERC's responsibility under the FPA is to develop reliability standards, enforce such standards, and conduct reliability assessments, and that NERC is not authorized to assemble an inventory of spares and create a sparing service similar to the one described by Grid Assurance. Further, Grid Assurance states that there is nothing about the Sparing Service that would foreclose NERC from imposing more specific requirements with respect to spare equipment inventories in the future. To the extent that NERC develops reliability standards that effectively require Registered Entities to maintain certain separate equipment inventories, Grid Assurance states that the Sparing Service would provide an option for maintaining such inventories.

"require a Presidential declaration of a national emergency following an act of terrorism."
Id.

⁵⁰ *Id.* at 6.

⁵¹ *Id.* at 7-8.

3. Commission Determination

30. We decline to condition the Petition upon the filing of an annual information report, as requested by the Foundation for Resilient Societies. Such a report is beyond the scope of this proceeding, which is limited to addressing the specific questions posed in the Petition.

31. Likewise, we decline to speculate regarding how the Commission should, or would, consider or review Grid Assurance's rate structure, as suggested by the ITC Companies. The charge Grid Assurance may impose on its subscribers is beyond the scope of this proceeding, which, as noted above, is limited to addressing the specific questions posed in the Petition.

32. With regard to the comments on the Spare Transformer Equipment Program and the NERC standards development process, the ITC Companies' comments are beyond the scope of the declarations requested by Grid Assurance. As noted above, as to reliability issues Grid Assurance's request is limited to whether contracting with Grid Assurance for access to spare critical transmission equipment is a permissible resiliency element of a physical security plan under Requirement R5 of mandatory Reliability Standard CIP-014-1. Nothing in this order precludes any other entity from taking action with regard to these issues.

The Commission orders:

The Petition is hereby granted in part, and denied in part, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.