

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

March 1, 2021

The Honorable Jennifer Granholm  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Avenue, SW  
Washington, DC 20585

**RE: DOE Review of Bulk Power Sector Supply Chain Executive Order**

Dear Secretary Granholm:

The U.S. Chamber of Commerce (“the Chamber”) congratulates you on your Senate confirmation and looks forward to working with you and the Department of Energy (“DOE”). A top priority for the Chamber is working with you and the Biden administration to modify former President Trump’s May 1, 2020 Executive Order 13920, the “Executive Order on Securing the United States Bulk-Power System” (the “BPS EO”).<sup>1</sup> Our members are committed partners of the federal government in seeking to achieve our common goal of safeguarding national security while strengthening the nation’s economy and supporting technological leadership.

Following the issuance of the BPS EO, the Chamber immediately convened an informal working group representing the majority of the primary participants in the electric sector supply chain for the United States bulk power system (the “Supply Chain Working Group”). The Supply Chain Working Group mobilized to supplement the contributions of electric utility interests providing feedback *via* the Electricity Subsector Coordinating Council (“ESCC”), to ensure that DOE has a robust understanding of the full breadth of stakeholders and associated interests that are impacted by, and will be required to achieve compliance with, any regulations or orders applicable to the complex equipment that comprises the United States bulk power system. We look forward to working with DOE to develop sound cybersecurity risk management measures for the bulk power system supply chain that avoid unintended adverse impacts to the bulk power system and the expansion and modernization of that system that will be essential to support the nation’s ongoing transition to cleaner energy sources.

The BPS EO was issued following limited outreach to industry on the complexities of the bulk power system, its supply chain, or consideration of the significant uncertainty that order immediately imposed upon the utilities and supply chain companies that are essential to our nation’s critically-important and highly-reliable electricity grid. The legality of grid-enhancement and expansion projects was immediately thrown into doubt during the middle of an unprecedented

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<sup>1</sup> Executive Order on Securing the United States Bulk-Power System, 85 Fed. Reg. 26,595 (May 4, 2020).

global pandemic. While an evolving Frequently Asked Questions (“FAQ”)<sup>2</sup> document was developed to address some stakeholder concerns, the durability of that guidance, as compared to the legally-binding nature of the BPS EO, remains unclear.

DOE’s Office of Electricity next issued on July 8, 2020, a welcomed “Request for Information (“RFI”),<sup>3</sup> which sought information related to the energy industry’s current practices to identify and mitigate perceived vulnerabilities in the supply chain for bulk power system components. The Chamber and its Supply Chain Working Group submitted detailed comments responsive to the RFI on August 24, 2020.<sup>4</sup> While stakeholders anticipated that the feedback submitted in response to the RFI would be utilized to craft a notice of proposed rulemaking that itself would be subject to comment, the next and most recent issuance from DOE resulting from the BPS EO took the form of the “Prohibition Order Securing Critical Defense Facilities,” issued on December 17, 2020.<sup>5</sup> On January 20, 2021, President Biden issued Executive Order 13990, “Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,”<sup>6</sup> which specifically suspends the BPS EO and, pursuant to subsequent guidance from DOE, the Prohibition Order.<sup>7</sup>

The BPS EO was promoted as an effort to protect against infiltration and operational threats to the U.S. power grid by “foreign adversaries,” yet the undefined scope of that executive order, and even the Prohibition Order, served to delay and sometimes halt the nationwide installation, operations, and maintenance of a wide variety of critical bulk power system equipment. Moreover, this separate and conflicting guidance was issued in parallel with the industry efforts to comply with NERC CIP-013, *Cyber Security – Supply Chain Risk Management*, approved by the Federal Energy Regulatory Commission (“FERC”). NERC CIP-013 specifically targets the security of electric sector supply chain generation and transmission systems. The Chamber and its Supply Chain Working Group offers to work in partnership with DOE and other impacted stakeholders to craft realistic and durable bulk power system supply chain protections that leverage, rather than overwrite, existing and important industry efforts in this space.

The Chamber strongly supports the goal of assuring that our nation’s bulk-power system is secure and resilient from sabotage, manipulation, or exploitation by nation-states and/or other bad actors, and believes this shared goal is best met by clearly aligning the scope, requirements, and effective date of any future DOE supply chain protection efforts with preexisting and robust industry-led standards, including NERC CIP-013. To facilitate this effort, the Chamber recommends that DOE promptly establish a task force – preferably prior to the expiration of the current suspension period – to represent and collaborate with the electric sector supply chain and

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<sup>2</sup> [BPS EO FAQs January 2021 v.01.15.2021.pdf \(energy.gov\)](#)

<sup>3</sup> Securing the United States Bulk-Power System, 85 Fed. Reg. 41,023 (July 8, 2020).

<sup>4</sup> [https://www.uschamber.com/sites/default/files/uscc\\_comments\\_on\\_doe\\_bps\\_eo\\_rfi.pdf](https://www.uschamber.com/sites/default/files/uscc_comments_on_doe_bps_eo_rfi.pdf).

<sup>5</sup> 86 Fed. Reg. 533 (January 6, 2021) (the “Prohibition Order”).

<sup>6</sup> 86 Fed. Reg. 7037 (January 25, 2021) (the “Suspension EO”).

<sup>7</sup> More recently, however, DOE has issued additional FAQs which state, in part, that “the Department *expects that*, during this 90-day review period, Responsible Utilities *will refrain from* installation of bulk-power system electric equipment or programmable components specified in Attachment 1 of the Prohibition Order” (emphasis added). <https://www.energy.gov/oe/bulkpowersystemexecutiveorder> This updated DOE guidance appears to mandate utility compliance with the Prohibition Order during the pause directed by the Suspension EO. Consequently, the confusion across impacted stakeholders of expected compliance obligations has only grown since the President’s suspension of the BPS EO and Prohibition Order.

other bulk power system stakeholders, including entities responsible for oil, natural gas, and related information and communications technology infrastructure.

In addition, as DOE undertakes its reevaluation of the BPS EO and the Prohibition Order, or engages in future efforts directed at securing the supply chain for the bulk power system, the Chamber recommends that DOE prioritize the following as part of those efforts:

1. As part of its internal and inter-governmental deliberations, DOE should consult with and implement the feedback of all impacted sectors within the bulk power system ecosystem, including electric utilities, independent generation providers, transmission companies, affected grid customers, and the electric sector supply chain (collectively, “Impacted Entities”).
2. Simultaneous with any new actions by DOE to secure the bulk power system supply chain, guidance should be provided to clarify the immediate responsibilities and legal obligations of all Impacted Entities with respect to potentially covered bulk power system equipment, with such guidance applicable to contracts for the acquisition, importation, transfer, or installation of such impacted equipment.<sup>8</sup> Such guidance should clarify any applicable legal effective date and should identify with specificity the types of transactions that may continue, without penalty. If new actions by DOE would have a retrospective impact (*i.e.* cover previously installed equipment or existing software or firmware), clear guidance should be issued on the process and financial burden to cure such items.
3. Prior to the publication of any additional final rules or orders by DOE, all Impacted Entities should be entitled the opportunity to review, comment on, and provide suggestions for the improvement of a publicly-issued notice of proposed rulemaking for a period of at least sixty (60) days, with sufficient time thereafter for DOE to integrate such feedback into any final rule. As the DOE and other government and industry stakeholders engage further, the Chamber offers the experience of our Supply Chain Working Group to provide historical perspective, insight on realities of implementation, and likely outcomes as additional inputs to your process.
4. DOE’s efforts should be focused exclusively on maintaining the security and resilience of the domestic bulk power system and/or the critical facilities interconnected thereto. The U.S. power grid is stronger and more advanced because of its access to international markets and the global supply chain, which contributes to the reliability and security of that grid. Further, the final rule should be appropriately and explicitly limited to bulk power system electric equipment and not expanded to include unrelated deployments of such equipment, such as in non-grid industrial controls systems, distributed control systems, safety instrumented systems, and Informational Technology (IT) and Operational Technology (OT) hardware and software with substantial uses outside the Bulk Power System. Thus, it is equally important that DOE

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<sup>8</sup> This guidance is critically needed, on an expedited basis, in light of the conflicting directives coming from the Suspension EO and DOE’s latest FAQs. *Supra* note 7.

be clear and deliberate on exclusions of components or subcomponents to any future rule and its subsequent implementation for all parties.

5. DOE's supply chain security efforts should, to the maximum extent practical, integrate and rely upon preexisting sector-specific efforts (*e.g.* NERC CIP-013 or Nuclear Regulatory Commission (NRC) Regulations), technical standards and reports (*e.g.*, ISO/IEC 27001, ISO/IEC 27002, ISO/IEC 27402, ISO 17800, ISA/IEC 62443, NIST SP 800-53, NIST SP 800-161, NIST SP 800-82, NIST SP 800-193, NISTIR 8259A), controls, and certifications (*e.g.*, the Department of Defense Cybersecurity Maturity Model Certification). DOE should parallel the scope of any regulations to the greatest extent possible to that of NERC CIP-013. NERC CIP provides clear standards and compliance documentation to ensure the security and reliable operation of the Bulk Electric System. These and other preexisting activities should be leveraged to ensure that DOE's efforts support an efficient compliance architecture and prevent unintended conflicts with already applicable efforts, technical standards, controls, and certifications. Similar to the memorandum of agreement (MOA) between NERC and NRC, DOE and NRC should issue an MOA ensuring the 'regulatory footprint' of each is clearly defined.<sup>9</sup>
6. To the maximum extent possible, the DOE should clearly set forth the domestic geographic application of any proposed or final rules. For example, DOE's efforts should unequivocally state whether they are focused on Defense Critical Electric Infrastructure (DCEI), or some larger or smaller subset of the domestic bulk power system. Based on the Chamber's input, the Prohibition Order was more specific to the "who" and "what" was deemed within its scope, which proved helpful in guiding stakeholder understanding and application of that order. This specified approach should apply to any future directives, as practice with the BPS EO has demonstrated that impacted utilities will conservatively apply a broad interpretation to such orders.
7. To the maximum extent possible, DOE should clearly identify criteria that need to be met, as well as the specific products and components within their purview, while also specifying the products and components which will not be subject to DOE's regulations applicable to the bulk power system supply chain. Clear and specific guidance should also be provided that explicitly explains the responsibilities of the final equipment provider and what responsibilities instead reside further down the supply chain.
8. Any actions contemplated by DOE should recognize the scale and complexity of grid control software, often incorporating millions of lines of code developed over decades. Certifications with regard to the national origin of the author of each line of existing code, particularly if that code is part of an open source project, are difficult or impossible. DOE should consider grandfathering code written before a certain date, particularly with respect to national-origin-based restrictions, provided that said code meets applicable cybersecurity standards such as those set forth in item 5, above.

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<sup>9</sup> Moreover, DOE's activities here should be aligned with any activities undertaken pursuant to President Biden's "Executive Order on America's Supply Chains," issued on February 24, 2021, and specifically the directive therein that the DOE Secretary develop a sectoral supply chain assessment of the energy sector industrial base.

Through its consideration and incorporation of the above principles into its anticipated activities directed at bulk power system supply chain security, DOE can ensure that any new activities and/or rulemaking proceedings will be built upon a workable framework that is durable and consistent with existing regulatory and other programs, while being mindful of the unnecessary costs and adverse security impacts that could result from a regulatory structure that conflicts with – rather than builds upon – the electric sector supply chain’s strong commitment to the security of the United States bulk power system. Moreover, a feasible framework will be essential to support – rather than upend – the unprecedented buildout and modernization of the electric grid that is necessary to support the Biden Administration’s near- and long-term carbon reduction goals. The confusing and disconnected nature of the BPS EO and the Prohibition Order, even though currently suspended, continue to impede these shared goals. Increased stakeholder input can make future regulatory efforts less problematic as the critical public/private partnership of safeguarding electric grid security moves forward.

The Chamber looks forward to working with you and your staff as it reevaluates the BPS EO and the Prohibition Order. Through the significant intellectual capital of our Supply Chain Working Group, we stand ready as a valuable resource for DOE as it advances with activities focused on bulk power system supply chain security. If you have any questions or seek further engagement regarding the important concepts discussed herein, please contact Heath Knakmuhs, Vice President and Policy Counsel, Global Energy Institute, at [hknakmuhs@uschamber.com](mailto:hknakmuhs@uschamber.com), or Vince Voci, Director, Policy, Cyber, Intelligence, and Security Division, at [vvoci@uschamber.com](mailto:vvoci@uschamber.com).

Sincerely,



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Cc: Mr. Ron Klain, White House Chief of Staff  
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