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

**MANDATORY RELIABILITY STANDARDS) Docket No. RM06-22-000
FOR CRITICAL INFRASTRUCTURE PROTECTION)**

**COMMENTS OF THE NORTH AMERICAN ELECTRIC RELIABILITY
CORPORATION IN RESPONSE TO THE COMMISSION'S SEPTEMBER 18, 2008
ORDER ON PROPOSED CLARIFICATION**

Rick Sergel
President and Chief Executive Officer
David N. Cook
Vice President and General Counsel
North American Electric Reliability
Corporation
116-390 Village Boulevard
Princeton, NJ 08540-5721
(609) 452-8060
(609) 452-9550 – facsimile
david.cook@nerc.net

Rebecca J. Michael
Assistant General Counsel
North American Electric Reliability
Corporation
1120 G Street, N.W.
Suite 990
Washington, D.C. 20005-3801
(202) 393-3998
(202) 393-3955 – facsimile
rebecca.michael@nerc.net

November 3, 2008

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I. INTRODUCTION

The North American Electric Reliability Corporation (“NERC”) respectfully submits the following comments in response to the Federal Energy Regulatory Commission’s (“FERC” or the “Commission”) September 18, 2008 Order on Proposed Clarification in the above captioned proceeding.¹

II. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to the following:

Rick Sergel
President and Chief Executive Officer
David N. Cook*
Vice President and General Counsel
North American Electric Reliability
Corporation
116-390 Village Boulevard
Princeton, NJ 08540-5721
(609) 452-8060
(609) 452-9550 – facsimile
david.cook@nerc.net

Rebecca J. Michael*
Assistant General Counsel
North American Electric Reliability
Corporation
1120 G Street, N.W.
Suite 990
Washington, D.C. 20005-3801
(202) 393-3998
(202) 393-3955 – facsimile
rebecca.michael@nerc.net

*Persons to be included on the Commission’s service list.

III. BACKGROUND

On January 18, 2008, the Commission approved eight Critical Infrastructure Protection (“CIP”) Reliability Standards and also directed NERC to develop modifications to the CIP Reliability Standards to address specific concerns identified by the Commission.² On June 27, 2008³ and supplemented on July 30, 2008,⁴ NERC, in

¹ *Mandatory Reliability Standards for Critical Infrastructure Protection*, “Order on Proposed Clarification,” 124 FERC ¶ 61,247 (2008).

² *Mandatory Reliability Standards for Critical Infrastructure Protection*, Order No. 706, 73 FR 7368 (Feb. 7, 2008), 122 FERC ¶ 61,040, *order on reh’g*, 123 FERC ¶ 61,174 (2008).

³ *Mandatory Reliability Standards for Critical Infrastructure Protection*, “Compliance Filing of the North American Electric Reliability Corporation in Response to Paragraph 757 of Order No. 706 - Mandatory

compliance with the directives in paragraphs 751 and 757 of Order No. 706,⁵ submitted modifications to the Violation Risk Factors for Requirements or Sub-Requirements in the CIP Reliability Standards CIP-002-1 through CIP-009-1.

On September 18, 2008, the Commission issued an order in which it proposed to clarify the scope of the eight CIP Reliability Standards⁶ approved in Order No. 706 to ensure that no “gap” occurs in the applicability of these Standards to nuclear generating plants. In their current form, each of the eight CIP Reliability Standards provides that facilities regulated by the U.S. Nuclear Regulatory Commission (“NRC”) are exempt from the Standards. The Commission noted that it has come to its attention that the NRC does not regulate all “facilities” within a nuclear generation plant.⁷ Thus, to ensure that there is no “gap” in the regulatory process, the Commission proposes to clarify that the facilities within a nuclear generation plant in the United States that are not regulated by the NRC are subject to compliance with the eight CIP Reliability Standards approved in Order No. 706.⁸ Such facilities may include those whose functions pertain to the “continuity of operation” of a nuclear generation plant and those whose functions pertain to the non-nuclear safety systems and networks, also referred to by the NRC as the “balance of plant.”⁹

Reliability Standards for Critical Infrastructure Protection Submission of Revised Violation Risk Factors,” Docket No. RM06-22-002 (June 27, 2008).

⁴ *Mandatory Reliability Standards for Critical Infrastructure Protection*, “Supplemental Compliance Filing of the North American Electric Reliability Corporation in Response to Paragraphs 751 and 757 of Order No. 706 - Mandatory Reliability Standards for Critical Infrastructure Protection Submission of Proposed Violation Risk Factors,” Docket No. RM06-22-003 (July 30, 2008).

⁵ See Order No. 706 at PP 751 and 757.

⁶ Reliability Standards CIP-002-1 through CIP-009-1. Reliability Standard CIP-001-1, which pertains to sabotage reporting, does not include the exemption statement that is the subject of the September 18 Order.

⁷ See September 18 Order at P 5 (discussing the April 8, 2008 public joint meeting of the Commission and the NRC staff regarding cyber security at nuclear generation plants).

⁸ *Id.* at P 1.

⁹ *Id.* at PP 6 and 9.

IV. COMMENTS

NERC has reviewed the applicability of the Reliability Standards CIP-002-1 through CIP-009-1, and in particular the language in the Applicability section of these standards pertaining to nuclear power plants. NERC agrees with the Commission that the Applicability sections of Reliability Standards CIP-002-1 through CIP-009-1 need to be clarified.

The language in the currently approved standards states:

4.2. The following are exempt from Standard CIP-002:

4.2.1 Facilities regulated by the U.S. Nuclear Regulatory Commission or the Canadian Nuclear Safety Commission.

NERC proposes to use either the Urgent Action provision of its *Reliability Standards Development Procedure* to address these proposed changes or to address them as part of the current “Phase 1” revisions to the CIP standards, whichever process will be more expedient. The language in the Applicability sections of each of the CIP standards (CIP-002-1 through CIP-009-1) is proposed to be modified as follows:

- 4.2.** Digital computer and communications systems and networks within a U.S. nuclear power plant that, if compromised, would adversely impact reliability of the bulk power system must comply with the requirements of this standard.
- 4.3.** Digital computer and communications systems and networks within a U.S. nuclear power plant associated with radiological safety-related and important-to-safety functions; security functions; emergency preparedness functions, including off-site communications; and support systems and equipment which, if compromised, would adversely impact radiological safety, security, or emergency preparedness functions that are regulated and enforced by the U.S. Nuclear Regulatory Commission are exempt from the requirements of this standard.
- 4.4.** Digital computer and communications systems and networks within a Canadian nuclear power plant regulated by the Canadian Nuclear Safety Commission are exempt from this standard.¹⁰

¹⁰ While not an issue within the jurisdiction of the Commission, NERC will discuss and resolve with the Canadian Nuclear Safety Commission how best to ensure compliance with the NERC CIP standards by

In its September 18 Order, the Commission further asks for comment on whether there is a clear delineation between those facilities within a U.S. nuclear generation plant that pertain to reactor safety, security or emergency response and the non-nuclear safety portion or, as NRC refers to it, the “balance of plant.” The Commission states that, for example, the generator itself in a nuclear generation plant would seem to be a Critical Asset under the CIP Reliability Standards, but the motors that operate nuclear reactor control rods would seem to be under NRC regulation.¹¹

NERC agrees with the Commission’s understanding of the delineation between those facilities within a nuclear generation plant whose functions are necessary and sufficient for reactor safety, security or emergency response versus the non nuclear-safety portion of the plant whose functions are necessary for bulk power system reliability. NERC believes that the delineation provided by its proposed revised language in the Applicability sections of the CIP Reliability Standards makes clear this delineation and adequately addresses this issue raised in the Commission’s Order. NERC also believes that it may be prudent for NERC and the NRC to discuss a coordinated approach for monitoring and enforcing compliance with the CIP standards that satisfies NERC’s regulatory mandate while minimizing overlap and undue burden on nuclear plant licensees. In this regard, while the NRC may issue Inspection Findings related to Performance Deficiencies with the Nuclear Energy Institute (“NEI”) document “Power Security Program for Nuclear Reactors” (NEI 04-04 Revision 1), those findings would normally only result in the issuance by NRC of “non cited violations.” Such violations

nuclear power plants in Canada. Until that resolution is reached, the suggested language in proposed Section 4.4 would apply.

¹¹ *Id* at P 9.

would not be subject to the range of penalties and sanctions that NERC would impose for similar deficiencies with the NERC CIP standards in a non nuclear generating plant. In essence, the material “gap” that exists is an “enforceability” gap.

The Commission also seeks comment in its September 18 Order on whether Table 3 of NERC’s Revised Implementation Plan for Cyber Security Standards CIP-002-1 through CIP-009-1 for generation owners and generation operators should control the implementation schedule of the CIP Reliability Standards to the facilities within a nuclear generation plant that the NRC does not regulate.¹²

NERC believes that, with the revisions to the Applicability section of the CIP standards themselves that it proposes, Table 3 is clear and sufficient as currently written.

V. CONCLUSION

The North American Electric Reliability Corporation respectfully requests that the Commission accept these comments in response to the September 18, 2008 Order.

Respectfully submitted,

Rick Sergel
President and Chief Executive Officer
David N. Cook
Vice President and General Counsel
North American Electric Reliability Corporation
116-390 Village Boulevard
Princeton, NJ 08540-5721
(609) 452-8060
(609) 452-9550 – facsimile
david.cook@nerc.net

/s/ Rebecca J. Michael
Rebecca J. Michael
Assistant General Counsel
North American Electric Reliability
Corporation
1120 G Street, N.W.
Suite 990
Washington, D.C. 20005-3801
(202) 393-3998
(202) 393-3955 – facsimile
rebecca.michael@nerc.net

¹² *Id.*

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 3rd day of November, 2008.

/s/ Rebecca J. Michael

Rebecca J. Michael

*Attorney for North American Electric
Reliability Corporation*