

134 FERC ¶ 61,180
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Mandatory Reliability Standards for Critical
Infrastructure Protection

Docket No. RM06-22-014

ORDER DISMISSING COMPLIANCE FILING

(Issued March 10, 2011)

1. In this order, the Commission dismisses the compliance filing submitted on September 9, 2010, by the North American Electric Reliability Corporation (NERC) as moot for the reasons discussed below.

I. Background

2. On September 9, 2010, NERC submitted a compliance filing in response to the Commission's March 18, 2010 order,¹ which addressed NERC's implementation plan for implementation of Version 1 of eight Critical Infrastructure Protection (CIP) Reliability Standards, CIP-002-1 through CIP-009-1, by generator owners and operators of nuclear power plants located in the United States (CIPS Version 1 Implementation Plan).² In the March 18 Order, the Commission approved the CIPS Version 1 Implementation Plan and directed NERC to make a compliance filing submitting implementation plans for the implementation of Versions 2 and 3 of the CIP Standards by owners and operators of U.S. nuclear power plants on the same schedule established in the CIPS Version 1 Implementation Plan.

¹ *Mandatory Reliability Standards for Critical Infrastructure Protection*, 130 FERC ¶ 61,185 (2010) (March 18 Order).

² In Order No. 706-B, the Commission clarified that because the U.S. Nuclear Regulatory Commission's (NRC) regulations do not extend to all equipment within a nuclear power plant, the CIP Standards apply to the "balance of plant" equipment within a nuclear power plant located in the United States that is not regulated by the NRC. *See Mandatory Reliability Standards for Critical Infrastructure Protection*, Order No. 706-B, 126 FERC ¶ 61,229, at P 50 (2009).

3. The CIPS Version 1 Implementation Plan is structured such that the compliance date is the latter of three scenarios, one of which is tied to the date that NERC and the U.S. Nuclear Regulatory Commission (NRC) complete a “scope of systems determination.” The “scope of systems determination” identifies which systems, structures, and components³ within the balance of plant at nuclear power facilities will be subject to NRC’s cyber security regulations and which will be subject to NERC’s CIP Standards.⁴

4. NERC, through its September 9, 2010 compliance filing, submitted for Commission approval proposed implementation plans for U.S. nuclear power plants for implementing Versions 2 and 3 of the CIP Standards (Version 2 and 3 Implementation Plans). The proposed Version 2 and 3 Implementation Plans mirror the CIPS Version 1 Implementation Plan.

5. On November 26, 2010, the NRC issued a letter regarding the regulation of cyber security at commercial nuclear power plants. The November 26, 2010 NRC letter states that on October 21, 2010, the NRC determined, using NERC’s bright-line survey regarding balance of plant, that the NRC’s cyber security rule, 10 C.F.R. § 73.54, includes structures, systems, and components in the balance of plant at NRC-licensed nuclear power plants that have a nexus to radiological health and safety. Accordingly, the NRC concluded that based on this determination the NRC staff does not believe that there will be any structures, systems, and components in the balance of plant that will fall under NERC’s CIP Standards. The NRC further noted:

The NRC staff will work with the staff from FERC and NERC to review the existing Memorandum of Agreement between the NRC and FERC and the existing Memorandum of Understanding between the NRC and NERC for possible updates or clarifications to reflect the Commission’s interpretations related to [balance of plant] [structures, systems, and components].⁵

³ The phrase “structures, systems and components” refers to any element of equipment, systems or networks of equipment, or portions within a nuclear power plant within an entity’s ownership or control. *See* Order No. 706-B, 126 FERC ¶ 61,229 at P 15.

⁴ NERC used a “Bright-Line Test,” (sometimes referred to as the “Bright-Line Rule”) to make this scope of systems determination. The Bright-Line Test is described in detail in the March 18 Order. *See* March 18 Order, 130 FERC ¶ 61,185 at P 8-10.

⁵ November 26, 2010 Letter from the NRC to Mr. Michael Moon, Director of Compliance Operations, NERC, at 1 (*available at* <http://pbadupws.nrc.gov/docs/ML1031/ML103140394.pdf>).

II. Notice

6. Notice of NERC's compliance filing was published in the *Federal Register*, with interventions and comments due on or before September 30, 2010.⁶ No interventions or comments were filed.

III. Commission Determination

7. Based on the NRC's November 26, 2010 letter, we find that the NRC's cyber security rule appears to cover all balance of plant, and no balance of plant at a U.S. nuclear power plant has been found to be subject to NERC's CIP Standards. Accordingly, we dismiss the compliance filing containing the Version 2 and 3 Implementation Plans as moot. However, if at a future time, it is determined that any of the systems, structures or components within a nuclear power plant's balance of plant are subject to NERC's CIP Standards, NERC must file with the Commission, within 90 days of such determination, an implementation plan for U.S. nuclear power plant owners' and operators' compliance with the then current version of the CIP Standards.

The Commission orders:

(A) NERC's September 9, 2010 compliance filing is hereby dismissed as moot, as discussed in the body of this order.

(B) NERC is hereby directed to file an implementation plan, within 90 days of a determination that any of the systems, structures or components within a nuclear power plant's balance of plant are subject to NERC's CIP Standards, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁶ 75 Fed. Reg. 57,761 (Sept. 22, 2010).