

130 FERC ¶ 61,185
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Mandatory Reliability Standards for Critical
Infrastructure Protection

Docket No. RM06-22-011

ORDER ADDRESSING COMPLIANCE FILING AND APPROVING
IMPLEMENTATION PLAN

(Issued March 18, 2010)

1. On January 19, 2010, the North American Electric Reliability Corporation (NERC) submitted a compliance filing in response to the Commission's December 17, 2009 order¹ addressing NERC's plan for the implementation of eight Critical Infrastructure Protection Reliability Standards, CIP-002-1 through CIP-009-1 (CIP Standards) by generator owners and operators of nuclear power plants located in the United States (Implementation Plan).

2. In this order, we accept NERC's compliance filing and approve the Implementation Plan for nuclear power plant generator owners' and operators' compliance with Version 1 of the CIP Standards to become effective on the date of this order. In addition, the Commission directs 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 for Version 1 under the Implementation Plan.

I. Background

3. In Order No. 706, the Commission approved Version 1 of the CIP Standards, CIP-002-1 through CIP-009-1.² The CIP Standards require certain users, owners and

¹ *Mandatory Reliability Standards for Critical Infrastructure Protection*, 129 FERC ¶ 61,224 (2009) (December 17 Order).

² *Mandatory Reliability Standards for Critical Infrastructure Protection*, Order No. 706, 122 FERC ¶ 61,040, at P 86-90, *order on reh'g*, Order No. 706-A, 123 FERC

(continued...)

operators of the Bulk-Power System to comply with specific requirements to safeguard critical cyber assets. The Commission also directed NERC to develop certain modifications to the CIP Standards.³

4. Each Version 1 CIP Standard provides that facilities regulated by the U.S. Nuclear Regulatory Commission (NRC) are exempt from complying with the CIP Standard.⁴ On March 19, 2009, the Commission issued Order No. 706-B clarifying that because the 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.⁵ In Order No. 706-B, the Commission directed NERC to engage in a stakeholder process to develop a more appropriate timeframe for nuclear power plants’ full compliance with the CIP Standards, and to submit a compliance filing that sets forth a proposed implementation plan for nuclear power plants to comply with the CIP Standards.⁶

5. On May 22, 2009, NERC filed revised CIP Standards, Version 2, in compliance with Order No. 706. By order issued September 30, 2009, the Commission approved the Version 2 CIP Standards to become effective on April 1, 2010.⁷ The Commission clarified that the September 30 Order does not alter its findings in Order No. 706-B regarding the applicability of the CIP Standards, and associated implementation timetables, to facilities located at nuclear power plants.⁸

6. On September 15, 2009, in compliance with Order No. 706-B, NERC filed the Implementation Plan for the implementation of Version 1 of the CIP Standards by generator owners and operators of nuclear power plants.⁹ With the exception of CIP-

¶ 61,174 (2008), *order on clarification*, Order No. 706-B, 126 FERC ¶ 61,229 (2009).

³ Order No. 706, 122 FERC ¶ 61,040 at P 25.

⁴ Order No. 706-B, 126 FERC ¶ 61,229 at P 1.

⁵ *Id.*

⁶ *Id.* P 60.

⁷ *North American Electric Reliability Corp.*, 128 FERC ¶ 61,291 (2009) (September 30 Order).

⁸ *Id.* P 13.

⁹ NERC, Sept. 15, 2009, Compliance Filing and Petition for Approval of Implementation Plan, Docket No. RM06-22-10 (NERC September 15 Petition).

002-1, R1 and R2,¹⁰ the Implementation Plan is structured such that the timeline for compliance for each requirement within the CIP Standards is the later of: (i) the Commission-approved effective date of the Implementation Plan (designated as “R”) plus 18 months (R + 18 months); (ii) the date the scope of systems determination is completed (designated as “S”) plus 10 months (S + 10 months); or (iii) if an outage is required for implementation, six months following the completion of the first refueling outage at least 18 months following the Commission’s effective date.¹¹ NERC stated that the “scope of systems determination” includes establishing the NERC and NRC jurisdictional delineation for systems, structures, and components¹² that is predicated upon the completion of a NERC-NRC memorandum of understanding as well as the creation of an exemption process for excluding certain systems, structures, and components from the scope of NERC CIP Standards, as provided for in Order No. 706-B.¹³

7. By order issued on December 17, 2009, the Commission requested that NERC submit additional information regarding the scope of systems determination to assist the Commission’s evaluation of the Implementation Plan.¹⁴ Specifically, we directed NERC to provide the following information to help the Commission evaluate whether the Implementation Plan provides an appropriate schedule to make the CIP Standards mandatory and enforceable for generator owners and operators of U.S. nuclear power plants:

- the anticipated date the scope of systems determination framework will be finalized;
- the status of the development of the exemption process;

¹⁰ CIP-002-1, R1 and R2 pertain to the identification of critical assets, which is a preliminary step for implementing of the remainder of the CIP Standards. Accordingly, the Implementation Plan calls for CIP-002-1, R1 and R2 to be completed within 12 months of the Commission-approved effective date of the Implementation Plan. *See* NERC September 15 Petition at Exhibit A, 3.

¹¹ *Id.* at Exhibit A, 2.

¹² 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 at P 15.

¹³ *See* NERC Petition at Exhibit A, 2; *see also* Order No. 706-B at P 50.

¹⁴ December 17 Order, 129 FERC ¶ 61,224 at P 2 and 14.

- whether the exemption process will include: (i) an application deadline and (ii) a deadline for a determination on an exemption request; and
- a description of any other time parameters that may be included in the exemption process.¹⁵

In addition, the Commission directed NERC to make a compliance filing incorporating into the Implementation Plan the implementation of Version 2 of the CIP Standards by nuclear power plants on the same schedule established for Version 1.¹⁶

II. NERC Compliance Filing

8. In response to the Commission's information request, NERC's January 19 Compliance Filing explains its process for making the scope of systems determination and provides a project timeline for completing the scope of systems determination.¹⁷ According to NERC's Compliance Filing, it will use a "Bright-Line Test" to make its scope of systems determination.¹⁸ The Bright-Line Test will identify which systems, structures, and components in a nuclear power plant's balance of plant are subject to NERC's CIP Standards and which are subject to the NRC's jurisdiction. In its Compliance Filing, NERC reiterates its request that the Commission approve the Implementation Plan as it relates to the implementation of Version 1 of the CIP Standards with an immediate effective date.

9. NERC stated in its September 15, 2009 Petition that the scope of systems determination would be predicated upon the completion of a memorandum of understanding (MOU) between NERC and the NRC. The MOU was executed on December 30, 2009.¹⁹ The MOU sets forth and coordinates NERC's and the NRC's

¹⁵ *Id.* P 14.

¹⁶ *Id.* P 15.

¹⁷ NERC, January 19, 2010, Compliance Filing in Response to the Commission's December 17, 2009 Order Addressing Compliance Filing and Requiring Further Compliance Filing (Compliance Filing).

¹⁸ NERC's Compliance Filing appears to use the terms "Bright-Line Test," "Bright-Line exemption process," and "Bright-Line determination" interchangeably to refer to the "exemption process" NERC has developed to make its scope of systems determination.

¹⁹ Compliance Filing at 6. NERC submitted a copy of the MOU as Exhibit 1 to

respective roles and responsibilities related to the application of each of their cyber security requirements.²⁰ Under the rubric of the MOU, NERC and NRC are collaborating on the development of an “in-scope” system list to clarify which systems, structures, and components at nuclear power facilities will be subject to NRC’s cyber security regulations and which will be subject to the CIP Reliability Standards.²¹

10. According to NERC, to make the scope of systems determination using its Bright-Line Test, NERC will follow a two part process. First, NERC will conduct workshops followed by the Bright-Line documentation process. Specifically, NERC states that it plans to conduct a series of regional workshops for nuclear plants licensed by the NRC (licensees) to facilitate the development of a Bright-Line Survey and to communicate expectations for licensees’ completion of the Survey.²² At the workshops, NERC will present a preliminary Bright-Line Survey that the licensees will modify to the specifics of their respective facilities. The Survey is intended to gather detailed information about each licensee’s systems, structures, and components, and will require the licensees to identify all systems, structures, and components with cyber assets. Shortly after the workshops, NERC will distribute the Bright-Line Survey to each licensee. The completed surveys will be due back to NERC within 30 days. Beginning in June or July of 2010, NERC will verify the survey results through facility site visits if necessary. Once verified, NERC and the NRC will use the survey results to make the scope of systems determination.

A. Date the Scope of Systems Determination Framework Will Be Finalized

11. With respect to the anticipated date the scope of systems determination framework will be finalized, NERC states that it plans to finalize the scope of systems determinations within 8 months of the date the Implementation Plan becomes effective (referred to by NERC as “R + 8 months”). This projected timeframe is based on the assumption that the effective date for the Implementation Plan will be April 1, 2010. This timeline would ensure that there would be no significant gap between the compliance date linked to the Commission effective date (scenario (i) under the Implementation Plan; R + 18) and the compliance deadline linked to the scope of systems

the Compliance Filing.

²⁰ See MOU at I.3.

²¹ Compliance Filing at 6.

²² *Id.* at 7-8.

determination (scenario (ii) under the Implementation Plan; S + 10). NERC further notes that the scope of systems determination may be later for entities with requirements tied to a specific plant outage.

B. Status of the Development of the Exemption Process

12. In response to the Commission's question regarding the status of the development of the exemption process, NERC states that the exemption process, i.e., the Bright-Line Test, started with the planning of the regional workshops. NERC's Bright-Line determination project timeline, broken down by task, is included with its Compliance Filing as Exhibit 2.

C. Whether the Exemption Process Includes Deadlines for Applications and Determinations

13. With regard to whether the exemption process will include an application deadline or a determination deadline, NERC states that there will be a deadline for submitting "the necessary information," presumably the Bright-Line Survey. Based on NERC's statement that "the determination of a Licensees' scope of systems to be exempted from compliance with the NERC CIP Reliability Standards must be made no later than R + 8 months,"²³ it appears that NERC intends to complete the exemption process within eight months of the Commission-approved effective date for the Implementation Plan. According to NERC, this timeframe will ensure that the compliance deadline for licensees subject to a scope of systems determination will track the standard compliance deadline; i.e. R + 18 months.

D. Other Time Parameters

14. In response to the question regarding any other time parameters that may be included in the exemption process, NERC notes that its projected schedule is "contingent upon NRC resources."²⁴

E. Implementation of Version 2 and 3 of the CIP Standards

15. In response to the Commission's directive regarding the inclusion of the implementation of Version 2 of the CIP Standards into the Implementation Plan, NERC requests permission to submit an additional compliance filing requesting Commission approval of the Version 2 and Version 3 implementation plans for U.S. nuclear owners

²³ *Id.* at 9.

²⁴ *Id.* at 9-10.

and operators after the plans have been balloted by the industry and approved by the NERC Board of Trustees. NERC states that it is in the process of developing the CIP Version 2 and 3 implementation plans for nuclear facilities, but could not complete the balloting process within the 30 day compliance deadline set by the December 17 Order. NERC asserts that the deadline for U.S. nuclear power plant owners' and operators' compliance with the Version 2 and Version 3 CIP Standards will mirror the Implementation Plan for Version 1 of the CIP Standards as required by the December 17 Order.²⁵ In addition, NERC states that it "will include, for all future filings of proposed new versions of the CIP-002 through CIP-009 standards, an associated Implementation Plan that addresses U.S. Nuclear Power Plant Owners and Operators compliance to the proposed requirements."²⁶

III. Notice and Responsive Pleadings

16. Notice of NERC's Compliance Filing was published in the *Federal Register*, with interventions and protests due on or before February 9, 2010.²⁷ On February 9, 2010, Exelon Corporation (Exelon) filed comments.

17. Exelon notes that NERC's plan for completing the Bright-Line determination does not include a contingency for delays. Thus, Exelon is concerned with NERC's assertion that "the determination of a Licensees' scope of systems to be exempted from compliance with the NERC CIP Reliability Standards must be made no later than R + 8 months."²⁸ Exelon states that NERC's "formula R + 8 months may not give licensees the full time intended" to seek an exemption.²⁹ Exelon asserts that licensees must know what systems are subject to NERC's jurisdiction before they can invoke NERC's exemptions process to avoid dual regulation. To resolve this issue, Exelon requests that the Commission condition its approved effective date (R) on the actual date that the Bright-Line determination is finalized.

18. Exelon raises two additional concerns. First, Exelon states that the Bright-Line determination may conflict with the NRC's Critical Digital Asset assessment process noting that as the NRC's Critical Digital Asset assessments progress, "the rationale for

²⁵ *Id.* at 11.

²⁶ *Id.* at 10.

²⁷ 75 Fed. Reg. 4374 (Jan. 27, 2010).

²⁸ Exelon Comments (quoting Compliance Filing at 9).

²⁹ *Id.*

NERC exemptions may become more clearly defined.”³⁰ To alleviate this concern, Exelon requests that the Commission direct NERC either to consider the timing of the NRC’s Critical Digital Asset assessment process in its Bright-Line determination plan, or to provide for an ongoing exemptions process in lieu of a finite completion date. Second, Exelon “requests that NERC provide clear guidance on the scope of the proposed [Bright-Line] survey” and asks that the Commission direct NERC to extend the 30 day deadline for licensees to complete the survey.³¹

IV. Commission Determination

19. In the December 17 Order, we stated that the “general structure of the Implementation Plan comports with the directives in Order No. 706-B.”³² However, because the Implementation Plan is structured such that the compliance date is the later of three scenarios, one of which is tied to the completion of NERC’s scope of systems determination, absent information regarding NERC’s scope of systems determination, the Commission could not determine whether the implementation timeline established an adequate degree of finality for compliance with the CIP Standards. NERC’s January 19, 2010 Compliance Filing provides a description of NERC’s process for determining the scope of systems that must comply with the NERC CIP Standards and those systems that fall under the NRC’s regulations. The Commission is not reviewing NERC’s scope of systems determination process itself; i.e., the Bright-Line Test, as the Commission in Order No. 706-B left it to the ERO to formulate and implement an “exceptions process.”³³ Rather, the Commission is evaluating whether NERC’s exemption process, the scope of systems determination, will unduly delay the date the CIP Standards become mandatory and enforceable for nuclear power plant licensees.

³⁰ *Id.* at 4.

³¹ *Id.*

³² December 17 Order, 129 FERC ¶ 61,224 at P 14.

³³ Order No. 706-B, 126 FERC ¶ 61,229 at P 50 (holding that with respect to the delineation of which balance of plant equipment may be subject to the NRC cyber security regulation, “[t]he Commission believes that with the above two-part approach, i.e., subjecting all balance of plant equipment within a nuclear power plant to the CIP Reliability Standards, with exceptions allowed via a process implemented by the ERO, nuclear power plant licensees will have a bright-line rule that eliminates the potential regulatory gap and provides certainty; and a plant-specific equipment exception process to avoid dual regulation where appropriate”).

20. The Commission finds that NERC's process for the scope of systems determination, the Bright-Line Test, along with NERC's projected timeline for completing the Bright-Line Test provides for a final determination that will be made with a reasonable timeframe. We note that while NERC states that it intends to finalize the scope of systems determination within eight months of the date the Implementation Plan becomes effective, there remains the possibility that NERC will not meet that schedule. NERC itself notes that the implementation schedule is "contingent upon NRC resources;"³⁴ For that reason, the Commission remains concerned about potential delays in the compliance date. Accordingly, the Commission accepts NERC's compliance filing and approves NERC's Implementation Plan for U.S. nuclear power plant owners' and operators' compliance with Version 1 of the CIP Standards. However, should NERC become aware that it will be unable to complete the scope of systems determinations within NERC's projected timeframe (R + 8 months), NERC must timely notify the Commission of the reason for the delay and propose an alternate deadline.

21. Exelon requests that, in recognition of the potential for delays in the scope of systems determination, the Commission "condition the effective date of its approval of NERC's CIP Version 1 Implementation Plan for nuclear generator owners and operators based on the actual date that NERC and the NRC finalize the Bright-Line determination."³⁵ The Commission finds that Exelon's concern does not warrant action. In the first instance, NERC should meet the implementation schedule it has proposed and we approve in this order. However, as stated above, NERC must notify the Commission, give reason, and propose an alternative deadline if it is unable to meet its projected timeframe of R + 8 months. We believe this adequately resolves Exelon's concern.

22. Further, Exelon's request is unnecessary given the existing structure of the Implementation Plan. As the Commission understands Exelon's request, Exelon wants the effective date of the Implementation Plan to be tied to the date NERC and the NRC complete the scope of systems determination. The Implementation Plan is structured such that the compliance date is the latter of three scenarios, one of which is tied to the date the scope of systems determination is completed. Thus, the CIP Standards will not become mandatory and enforceable against generator owners and operators of nuclear plants until, at a minimum, 10 months after the date NERC completes the scope of systems determination (designated as S + 10 months in the Implementation Plan), regardless of when the scope of systems determination is concluded. Under this

³⁴ Compliance Filing at 9-10.

³⁵ Exelon Comments at 4-5.

structure, if NERC's scope of systems determination (i.e., completion of the Bright-Line test) is delayed, the compliance deadline will also be delayed. In other words, NERC's projected timeframe of R + 8 months³⁶ for completing the scope of systems determination does not affect the amount of time licensees will have to become compliant with the CIP Standards.

23. With respect to Exelon's remaining concerns, the Commission believes that they are beyond the scope of this order. In this proceeding the Commission is ruling on the timeline of the proposed Implementation Plan and the adequacy by which it will ensure timely compliance with the CIP Standards. The Commission has left the specific details of the development and implementation of the scope of systems determination to the discretion of the NRC and NERC.

24. Last, with respect to NERC's request to submit, after completion of its balloting process, its compliance filing establishing implementation plans for Version 2 and Version 3 of the CIP Standards, the Commission grants NERC's request. NERC is directed, upon completion of its balloting process, 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 for Version 1 under the Implementation Plan.

The Commission orders:

(A) NERC's compliance filing is hereby accepted, as discussed in the body of this order.

(B) NERC's Implementation Plan governing owners' and operators' of U.S. nuclear power plants implementation of Version 1 of the CIP Standards CIP-002-1 through CIP-009-1 is hereby approved, as discussed in the body of this order, effective as of the date of this order.

(C) NERC is hereby directed, upon completion of its balloting process related to the implementation plans applicable to generator owners and operators of U.S. nuclear power plants for Versions 2 and 3 of the CIP Standards, to make a compliance filing submitting implementation plans for the implementation of Versions 2 and 3 of the CIP

³⁶ "R" is the Commission-approved effective date of the Implementation Plan.

Standards by owners and operators of U.S. nuclear power plants on the same schedule established for Version 1 under the Implementation Plan, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.