

129 FERC ¶ 61,224
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Mandatory Reliability Standards for Critical
Infrastructure Protection

Docket No. RM06-22-010

ORDER ADDRESSING COMPLIANCE FILING AND REQUIRING FURTHER
COMPLIANCE FILING

(Issued December 17, 2009)

1. On September 15, 2009, the North American Electric Reliability Corporation (NERC) filed an implementation 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), in compliance with the Commission's directive in Order No. 706-B.¹

2. In this order, we determine that additional information is required to evaluate NERC's Implementation Plan for nuclear power plant generator owners' and operators' compliance with Version 1 of the CIP Standards. Accordingly, we direct NERC to make a compliance filing providing additional information regarding the scope of systems determination as set forth more fully below. In addition, the Commission directs 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.

¹ *Mandatory Reliability Standards for Critical Infrastructure Protection*, Order No. 706, 122 FERC ¶ 61,040, *order on reh'g*, Order No. 706-A, 123 FERC ¶ 61,174 (2008), *order on clarification*, Order No. 706-B, 126 FERC ¶ 61,229 (2009).

I. Background

3. In January 2008, pursuant to section 215(d) of the FPA,² the Commission issued Order No. 706 approving Version 1 of the CIP Standards, CIP-002-1 through CIP-009-1, and the associated implementation plan.³ The CIP Standards require certain users, owners and operators of the Bulk-Power System to comply with specific requirements to safeguard critical cyber assets. The Commission also directed NERC to develop modifications to the CIP Standards to address specific concerns identified by the Commission.⁴

4. Each Version 1 CIP Standard provides that facilities regulated by the U.S. Nuclear Regulatory Commission (NRC) are exempt from the CIP Standard.⁵ 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.⁶ The Commission also directed NERC to engage in a stakeholder process to develop a more appropriate timeframe for nuclear power plants’ full compliance with 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.⁷

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, 2010.⁸ The Commission clarified that the September 30 Order does not alter its findings in Order No. 706-B

² 16 U.S.C. § 824o(d) (2006).

³ *Mandatory Reliability Standards for Critical Infrastructure Protection*, Order No. 706, 122 FERC ¶ 61,040, at P 86-90 (2008).

⁴ *Id.* P 25.

⁵ Order No. 706-B, 126 FERC ¶ 61,229 at P 1.

⁶ *Id.* P 1.

⁷ *Id.* P 60.

⁸ *North American Electric Reliability Corp.*, 128 FERC ¶ 61,291 (2009) (September 30 Order).

regarding the applicability of the CIP Reliability Standards, and associated implementation timetables, to facilities located at nuclear power plants.⁹

II. NERC Petition

6. NERC states that the Implementation Plan was developed and approved by industry stakeholders, posted for public comment from July 20, 2009 through August 14, 2009, and approved by ballot vote.¹⁰ The Implementation Plan was approved by the NERC Board of Trustees on September 14, 2009 for filing with the Commission.

7. NERC explains that the drafting team had to deal with certain variables when developing the Implementation Plan. Thus, the Implementation Plan articulates three critical path items that determine an appropriate timeframe for nuclear power plant owners' and operators' compliance with NERC CIP Standards. The first critical path item is the Commission's effective date of the Implementation Plan. The second is the availability of the "exemption process" that the Commission directed NERC to develop for exempting systems, structures, and components in the balance of plant of a nuclear power plant that are subject to the NRC's cyber security regulations.¹¹ Third, NERC also explains that the Implementation Plan needs to "account for the possibility that certain requirements could not be implemented without the nuclear plant going out of service."¹² Thus, "sufficient time need[s] to be made available to properly plan, schedule, and budget for the nuclear outage-related activities."¹³

8. The Implementation Plan, provided as Exhibit A to the NERC Petition, pertains to the implementation of Version 1 of the CIP Standards as they apply to nuclear generator owners and operators.¹⁴ With the exception of CIP-002-1, R1 and R2,¹⁵ the

⁹ *Id.* P 13.

¹⁰ *See* NERC Petition at 11. The initial ballot vote resulted in a weighted segment approval percentage of 97.37 percent. The recirculation ballot resulted in a 97.18 percent approval of the Implementation Plan. *Id.*

¹¹ NERC Petition at 6-7. Order No. 706-B, 126 FERC ¶ 61,229 at P 49-51.

¹² NERC Petition at 7.

¹³ *Id.*

¹⁴ *Id.* at Exhibit A, 1.

¹⁵ 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

(continued...)

Implementation Plan is structured such that the timeline for compliance for each requirement within the CIP Reliability Standards is the later of: (i) the Commission-approved effective date of the Implementation Plan plus 18 months; (ii) the date the scope of systems determination is completed plus 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.¹⁶ NERC states that the "scope of systems determination" includes establishing the FERC and NRC jurisdictional delineation for systems, structures, and components¹⁷ 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.¹⁸ NERC's petition does not provide any information regarding the exemption process.

9. NERC notes that with respect to the requirements of CIP-005-1, CIP-006-1, CIP-007-1, and CIP-008-1¹⁹ that require the *development* of plans, processes, and protocols, those requirements must be completed the later of the Commission-approved effective date plus 18 months, or the date the scope of systems determination is completed plus 10 months.²⁰ NERC further explains that with respect to the requirements in CIP-005-1, CIP-006-1, CIP-007-1, and CIP-008-1 that relate to the *implementation* of plans, processes, and protocols, the deadline for completing those requirements may vary if an outage is necessary for implementation. Specifically, implementation of such requirements must be completed the later of: (i) the Commission-approved effective date plus 18 months or the date the scope of systems determination is completed plus 10

months of the Commission-approved effective date of the Implementation Plan. *See id.* at Exhibit A, 3.

¹⁶ *Id.* at Exhibit A, 2.

¹⁷ 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. Order No. 706-B at P 15.

¹⁸ *See* NERC Petition at Exhibit A, 2; *see also* Order No. 706-B at P 50.

¹⁹ Certain aspects of CIP-005-1, CIP-006-1, CIP-007-1, and CIP-008-1 require the development of plans, process, and protocols, while the other aspects of these four standards require implementation of such plans, processes, and protocols. *Id.*

²⁰ *Id.*

months; or (ii) if an outage is required, six months following the completion of the first refueling outage at least 18 months following the Commission-approved effective date.²¹

10. NERC requests that the Commission approve the Implementation Plan and make the plan effective immediately. NERC also requests that the Commission “require the approved Version 2 [CIP] Reliability Standards to be implemented by U.S. nuclear power plant owners and operators on a schedule no sooner than that included in the Implementation Plan that is the subject of this filing.”²²

III. Notice and Responsive Pleadings

11. Notice of NERC’s compliance filing and petition was published in the *Federal Register*, with interventions and protests due on or before October 6, 2009.²³ Duke Energy Corporation filed a timely motion to intervene. Edison Electric Institute (EEI) filed a timely motion to intervene and comments.

12. EEI supports the Implementation Plan as responsive to the request in Order No. 706-B.²⁴ EEI urges NERC and NRC to develop in a timely manner the “various processes and procedures” to determine the applicability of specific components of the CIP Standards to nuclear plant owners and operators.²⁵ EEI states that the lack of an exemptions process hinders nuclear plant operators’ ability to seek timely determination as to whether or not specific components of their operations must comply with the CIP Standards. Specifically, EEI urges NERC and NRC to timely finalize a memorandum of understanding that resolves the regulatory jurisdiction over specific components of nuclear power plants. Thus, EEI “encourages the Commission to seek a more specific schedule and milestones for when the full range of features for implementing Order No. 706 will be in place.”²⁶

²¹ *Id.*

²² *Id.* at 3, 13.

²³ 74 FR 49375 (Sep. 18, 2009).

²⁴ Edison Electric Institute, Oct. 6, 2009, Comments (hereinafter the “EEI Comments”).

²⁵ *Id.* at 2.

²⁶ *Id.*

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Commission Determination

14. The Commission determines that the general structure of the Implementation Plan comports with the directives in Order No. 706-B. However, without further clarification regarding the scope of systems determination, particularly the exemption process, the Commission cannot properly evaluate whether the Implementation Plan provides an appropriate schedule for making the CIP Standards mandatory and enforceable on generator owners and operators of U.S. nuclear power plants. Accordingly, the Commission directs NERC to make a compliance filing within thirty days of the date of this order submitting to the Commission the following information:

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

The Commission believes that the responses to these questions are important to determine the finality of the proposed implementation timeline for the exemption process, or whether the proposal allows for open-ended delays in the application for exemptions, review, and final determination of exemptions.

15. As mentioned above, NERC requests that the Commission “require the approved Version 2 Reliability Standards to be implemented by U.S. nuclear power plant owners and operators on a schedule no sooner than that included in the Implementation Plan that is the subject of this filing.”²⁷ Consistent with NERC’s request, the Commission finds that the implementation timeline for the Version 2 CIP Standards should be the same as

²⁷ NERC Petition at 3, 13.

the Implementation Plan for the Version 1 CIP Standards. This compliance timeline for the Version 2 CIP Standards is reasonable because the Version 2 CIP Standards comprise a limited set of modifications. Further, under the Implementation Plan's compliance schedule there is a generous lead time before the earliest possible date owners and operators of nuclear power plants will be required to achieve compliance with the Version 1 CIP Standards, which provides an adequate timeframe to achieve compliance with the Version 2 CIP Standards. This approach also reduces the gap in compliance with the CIP Standards that currently exists between nuclear power plants and other users, owners and operators of the Bulk-Power System. Therefore, we direct NERC to submit as part of its compliance filing, a revised Implementation Plan that incorporates Version 2 CIP Standards into the Implementation Plan schedule.

16. Further, in future filings proposing modifications to the CIP Standards, NERC must address how owners and operators of nuclear power plants located in the United States will implement the revised CIP Standards and whether owners and operators can implement the revised CIP Standards under the proposed Implementation Plan. If NERC does not believe that such future modifications can be implemented under the Implementation Plan's schedule, NERC must propose in the filing a new implementation plan addressing nuclear power plant owners' and operators' compliance with the proposed modifications.

17. EEI requests that NERC and NRC timely finalize a memorandum of understanding that resolves the regulatory jurisdiction over specific components of nuclear power plants. In Order No. 706-B, the Commission stated that "a nuclear power plant licensee may seek an exception from the ERO to the extent that the licensee believes that specific equipment within the balance of plant is subject to NRC cyber security regulations" and "the ERO should consider the appropriateness of developing a memorandum of understanding with the NRC, or revising existing agreements, to address such matters as NRC staff consultation in the exception application process and sharing of Safeguard Information."²⁸ Consistent with Order No. 706-B, the Commission leaves the development of a memorandum of understanding to the discretion of NERC and the NRC.

²⁸ Order No. 706-B, 126 FERC ¶ 61,229 at P 50.

The Commission orders:

NERC is required to submit a compliance filing within thirty days from the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.