

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

Mandatory Reliability Standard for
Critical Infrastructure Protection

) Docket No. RM06-22-000

COMMENTS OF THE EDISON ELECTRIC INSTITUTE

The Edison Electric Institute (“EEI”) respectfully submits comments on the Order on Proposed Clarification (“Proposed Clarification”) issued in the above-cited proceeding.¹

EEI is the association of the nation’s shareholder-owned electric companies, international affiliates, and industry associates worldwide. EEI’s U.S. members serve approximately 95 percent of the ultimate consumers served by the shareholder-owned segment of the electric utility industry and approximately 70 percent of all electric utility ultimate consumers in the nation. Virtually all EEI members are required to comply with the mandatory electric reliability standards established by the ERO and approved by the Commission, pursuant to section 215 of the Federal Power Act, including the eight Critical Infrastructure Protection (“CIP”) Reliability Standards. Several members of EEI own or operate nuclear generating plants and would be required to implement the eight CIP Reliability Standards as well as NRC cybersecurity requirements under the clarification proposed by the Commission in this docket. The EEI member companies that own or operate nuclear generating plants are also members of the Nuclear Energy Institute (“NEI”). All nuclear licensees are members of NEI.

¹ *Mandatory Reliability Standards for Critical Infrastructure Protection*, 124 FERC ¶ 61,247 (September 18, 2008).

EEI understands that the Commission wants to ensure that there is no regulatory gap in protecting the bulk power system from a cybersecurity event. The Commission has authority under Section 215 for the oversight of cybersecurity standards that apply to all owners, users, and operators of the bulk power system, which would include nuclear generating plants/facilities. Because EEI does not have expertise in the underlying statutory authority regulatory programs of the NRC, or internal systems within nuclear facilities, EEI defers to the analysis offered by NEI in its comments on this issue.

While EEI agrees with the Commission that any gaps in regulatory coverage must be addressed, EEI also urges the Commission to avoid dual regulation and the unnecessary costs and resource commitments needed to sustain two regulatory structures covering cybersecurity at nuclear plants. EEI respectfully recommends that, in reaching its decision, the Commission carefully consider the comments of NEI, and those of owners and operators of nuclear plants, that describe the current and prospective NRC regulatory framework.

We also understand that a special concern in implementing a program to monitor compliance with the NERC CIP standards at nuclear generating facilities is the issue of how to deal with nuclear-related “safeguards information.” We understand that this would involve requiring Regional Entities, NERC and FERC personnel auditing and enforcing compliance with the NERC CIP standards to meet the information security requirements, including background checks and requirements for storage and protection of such information, associated with compliance with the safeguards provisions. Because of the substantial efforts and costs that would be involved in assuring safeguards compliance for the NERC-FERC compliance program, EEI urges the Commission to consider whether other approaches may achieve its goals if it were to determine that a regulatory gap exists.

If the Commission determines that a regulatory gap exists, the industry needs assurances that the nuclear generators are not put in the position of needing to organize and manage themselves under a potentially overlapping and costly set of dual regulatory requirements that may not result in additional protection of cybersecurity from a technical perspective. Regardless of the determination that the Commission makes about whether a gap exists today, clearly both the NERC CIP standards and the cyber security program in place under NRC regulations will evolve in the future and coordination to ensure that the two programs work together to achieve an appropriate level of cyber security for the bulk power system is important. Therefore, the Commission may also wish to explore the possibility of a Memorandum of Agreement or other arrangement with the NRC for the purpose of coordinating activities.

Should the Commission find that a regulatory gap exists and proceed with its proposal to require nuclear generation operators to be subject to NERC CIP Standards for a subset of their facility, the Commission has asked about whether Table 3 of NERC's "(Revised) Implementation Plan for Cyber Security Standards CIP-002-1 through CIP-009-1" sets out an appropriate timetable for compliance with the CIP standards at nuclear facilities. EEI believes it is inappropriate for nuclear plant owners and operators to be subject to the same implementation timetable as other generation owners and operators. Instead, because nuclear facilities are in a similar position as an entity with a newly identified or newly acquired critical asset in terms of becoming compliant with the CIP standards, and because nuclear facilities have particular needs regarding engineering change control and outage planning, EEI believes FERC should direct NERC to work with stakeholders to develop and submit to the Commission for approval a timetable that would provide a more appropriate timeframe to allow nuclear facilities to become fully compliant with the CIP standards.

As a final matter, EEI understands that NERC is in the process of revising the CIP standards and NRC is in the process of developing formal cybersecurity rules. EEI anticipates that the issues raised in this proceeding will be fully addressed by these initiatives.

Respectfully submitted,

/s/
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