

COMMENTS ON THE FEDERAL ENERGY REGULATORY COMMISSION'S PROPOSED ORDER ON MANDATORY RELIABILITY STANDARDS FOR CRITICAL INFRASTRUCTURE PROTECTION

The following comments are in response to a *Federal Register* Notice published on September 25, 2008 (73 FR 55459) regarding the Federal Energy Regulatory Commission's (FERC's) proposed order on mandatory reliability standards for critical infrastructure protection (proposed FERC order).

1. The proposed FERC order frequently uses the term "facilities" to describe the scope of the exemption it wishes to clarify for commercial nuclear power plants. However, NRC licensees may interpret the term "facility" too broadly and, therefore, will not achieve FERC's stated objectives. For the NRC and its nuclear power plant licensees, the term "facility" typically means a "production or utilization facility," in accordance with Chapter 10 of the Atomic Energy Act of 1954, as amended (AEA) (42 USC 2131 *et. seq.*). The NRC staff regards "facility" as referring to the entire nuclear power generating plant, that comprises the entire set of buildings, cooling towers, assets, switchyards, systems, and equipment within the owner-controlled area, many of which are not directly regulated by the NRC. It is the NRC staff's understanding that NRC licensees, familiar with NRC regulations, have also come to use the term "facility" as synonymous with the entire nuclear power generating plant.

NRC licensees and applicants for NRC licenses may, therefore, incorrectly interpret the proposed FERC order in the same manner as they might have interpreted the Critical Infrastructure Protection (CIP) Reliability Standards approved in (FERC) Commission Order No. 706; i.e., NRC licensees might conclude that the CIP Reliability Standards do not apply to any portion of the entire nuclear power plant. Therefore, the use of the term "facilities" in FERC's proposed order might effectively exempt all nuclear power plants from FERC's CIP standards, and thus not close the regulatory "gap" that FERC intended to address with its proposed clarifications.

In light of this potential interpretation, more clarity is needed in the proposed FERC order to specifically describe the scope of FERC's cyber security requirements. Specifically, more specificity is necessary when distinguishing the scope of plant functions that are subject to NRC requirements from those functions that are subject to applicable FERC-regulated grid reliability requirements.

Accordingly, the NRC staff recommends that the language of the proposed FERC order be modified so that it can be read to apply to all portions of a nuclear power plant that are not within the regulatory jurisdiction of the NRC. When referring to the discrete elements of the nuclear plant regulated by the NRC, the NRC generally uses the term, "structures, systems and components." The NRC staff believes that, in its proposed order, FERC intended to use the term, "facilities" in an analogous way. One possible way of providing more specificity in the FERC order would be for it to state that "All portions of a nuclear power plant (*i.e.*, structures, systems and components, as that term is used by the NRC) that fall within the regulatory jurisdiction and authority pertaining to cyber security of the NRC are exempt from the CIP Reliability Standards in Commission Order 706."

Enclosure

-2-

2. To further identify the specific structures, systems and components that would be subject to the NRC's cyber security regulations, and to minimize the potential for unnecessary regulatory burdens on NRC licensees, a Memorandum of Understanding (MOU) between FERC and the NRC could be developed. The NRC staff will inform the (NRC) Commission of the suggested MOU as a framework to develop further cyber security guidance to NRC licensees and applicants for NRC licensees. If amenable to both Commissions, the MOU between FERC and NRC would outline the scope, clarify agency roles and responsibilities, and provide specific technical requirements related to the application and administration of regulations pertaining to the protection of critical digital assets at nuclear power generating plants. It is recommended that this MOU be modeled on an existing MOU established between the NRC and the Occupational Safety and Health Administration (OSHA) in 1988. The NRC and OSHA have successfully shared responsibilities under that MOU for nearly 20 years, and would thus be a good model upon which an MOU between FERC and the NRC could be based.

Document Content(s)

FERC Order Clarifications.DOC.....1-2