

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

**Mandatory Reliability Standard
for Nuclear Plant Interface Coordination**

Docket No. RM08-3-000

COMMENTS OF THE EDISON ELECTRIC INSTITUTE

I. The Proposed Standard Should Be Adopted.

The Edison Electric Institute (“EEI”) submits these comments in response to the Notice of Proposed Rulemaking (“NOPR”) in this docket issued on March 20, 2008, in which the Commission is proposing to approve the proposed Nuclear Plant Interface Coordination Reliability Standard, designated NUC-001-1, (“the nuclear standard” or “NUC-001-1”). On November 19, 2007, the North American Electric Reliability Corporation (“NERC”), which the Commission has certified as the Electric Reliability Organization (“ERO”), filed its petition for Commission approval of the nuclear standard (“the petition”). This petition was amended by an additional filing on December 11, 2007.

EEI is the association of the nation’s shareholder-owned electric utilities and affiliates and associates world-wide. EEI’s members are owners, operators and users of the bulk power system and are subject to the Reliability Standards established by the ERO. Many EEI members also own and/or operate nuclear generation plants.

EEI supports approval of the proposed nuclear standard itself as a means to improve coordination between Nuclear Plant Generator Operators and those identified as “Transmission Entities” under the proposed standard. NOPR at P 1. However, EEI has several comments concerning the applicability of existing NERC processes and other issues regarding the

implementation of the proposed standard, such as the applicability of the Commission's rules on Standards of Conduct for Transmission Providers.¹

II. The NERC Registration Process Should Be Followed.

As the NOPR states, it is the Commission's understanding that NERC will use its authority under the compliance registry process to register all users, owners and operators of the Bulk-Power system that provide transmission or generating services relating to off-site power supply or delivery. NOPR at P 25. In the petition, NERC appears to suggest that Transmission Entities will be registered after the requisite agreements with Nuclear Plant Generator Operators are in place:

Once the agreement becomes final, all applicable nuclear plant generator operator and transmission entities for each agreement will be identified by name and specific function. The respective Regional Entity will then be responsible for ensuring that each nuclear plant generator operator and transmission entities identified in the agreement(s) is registered on the NERC Compliance Registry for the applicable functions(s). NERC will work with the Regional Entities to ensure that all nuclear plant generators and transmission entities included in the agreement that result from the NPIRs [Nuclear Plant Interface Requirements] are listed in the Compliance Registry for this specific reliability standard."

Petition at 12-13.

It is EEI's understanding that the intent of the Standard Drafting Team and of NERC Staff was that the Nuclear Plant Generator Operators would identify in advance which parties would qualify as Transmission Entities for each nuclear plant under NUC-001-1, whether or not they had already entered into an agreement. Requirement R1 requires the Nuclear Plant Generator Operator to provide the proposed NPIRs in writing to the applicable Transmission

¹ *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g and clarification*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. Nat'l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006) (codified at 18 C.F.R. Part 358).

Entities and verify receipt. This would not require an entity to register as a Transmission Entity as much as it would supplement their existing registrations. New registrations would only be required for those parties that had not been previously identified under the criteria contained in the NERC's Statement of Compliance Registry Criteria. The Regional Entities would maintain lists of applicable parties for NUC-001-1 in order to facilitate compliance monitoring. EEI believes that this process will work for the vast majority of entities covered by the nuclear standard.

However, where an entity has been identified by the Nuclear Plant Generator Operator as a "Transmission Entity" but is not yet registered, the Regional Entity should investigate whether the entity is a "Transmission Entity" with respect to the nuclear plant, and if so, register the entity on the NERC compliance registry. Having an agreement in place would not be a pre-condition for registration.

In circumstances where no agreements exist, the Nuclear Plant Generator Operator and parties it perceives to be necessary for providing services under NUC-001-1 should meet informally in a good faith attempt to reach an agreement. If after 30 days no agreement can be reached, the Nuclear Plant Generator Operator should submit a written recommendation to the Regional Entity that contains the names and proposed functional roles of all parties with whom an agreement is needed. The Regional Entity should then decide whether to register the identified party. Any newly registered entities should have all due process rights to appeal a registration decision. The Regional Entities may also wish to make dispute resolution services available to assist parties in reaching an agreement. A small entity may also consider entering into a joint registration arrangement, as previously approved by the Commission, to fulfill its responsibilities to a nuclear plant operator.

The Commission requests comment on its understanding that the nuclear standard is not enforceable against an entity, other than a Nuclear Plant Generator Operator, until it executes an interface agreement. NOPR at P 36. EEI believes that it is neither reasonable nor fair to impose the sole compliance responsibility on a Nuclear Plant Generator Operator if a presumptive Transmission Entity is uncooperative and fails to register and execute an agreement sufficient to comply with the standard. Once the Transmission Entities are identified in the nuclear standard registration process conducted by the Regional Entities, the Transmission Entity and the Nuclear Plant Generator Operator must all be subject to enforcement of applicable requirements of the nuclear standard.

The Commission also states that it is concerned about the possibility that Nuclear Plant Generator Operators and Transmission Entities may fail to come to agreement while attempting to draft an interface agreement and therefore asks NERC to clarify what compliance options are available when the parties are unable to reach agreement. NOPR at P 36. Registration of covered entities is required to ensure that all parties that are required to enter into an interface agreement do so. Registration of entities that share a compliance responsibility will provide a compliance incentive for parties to reach an agreement required under the standard. In some cases, the failure to execute an agreement may be the result of good-faith differences as to the responsibilities to be undertaken by the parties. No sanctions should be imposed if the Regional Entity finds this to be the case. However, as a last resort, sanctions may be imposed as a means to ensure compliance if the failure to agree leads to a standards violation. Registration gives the Regional Entity the compliance “hook,” so to speak, to require the entity to enter into an appropriate agreement or face possible enforcement action.

EEI generally agrees with the Commission’s conclusion that, once registered, a

Transmission Entity providing services to a nuclear generating plant may be subject to other Reliability Standards applicable to the function for which the Transmission Entity has been registered. However, if there were a party that had not previously registered pursuant to another Reliability Standard, its identification as a “Transmission Entity” under the new NUC-001-1 requirements should not change that party’s obligations under other Reliability Standards. In other words, if a party should be registered because it performs functions to which other Reliability Standards are applicable, then it should be registered regardless of whether or not it performs functions under NUC-001-1. EEI believes that it will be a relatively rare occurrence where an entity is registered for the first time under NUC-001-1, and it is subsequently determined that the party should have been previously registered for other functions. This situation may be more indicative of a problem with the Regional Entity’s application of the compliance registry criteria.

As a general principle, EEI believes that an entity should not be able to be able to be selectively registered for only a particular Reliability Standard, if once registered, it is determined that other Reliability Standards are applicable to it. This selective compliance is at odds with the mandatory compliance requirement established under section 215 of the Federal Power Act. However, the Regional Entity should ensure that it does not broadly sweep the entity into other standards which are not applicable to it. An entity also has due process rights to challenge its inclusion in the compliance registry.

III. An Agreement Under NUC-001-1 May Take Several Forms.

In the NOPR, the Commission requests comment on the issue of what agreements or arrangements should be required in the situation where a single entity is both the Nuclear Plant Generator Operator and the Transmission Entity. EEI believes that a formal agreement is not

required in such a situation. Instead, the entity should document the responsibilities and protocols assigned to each unit in order to assure compliance with the requirements of the nuclear standard. In fact, the standard itself contemplates that a formal agreement is not necessary. The footnote to Requirement R2 provides that “[a]greements may include mutually agreed upon procedures or protocols.” While the exact nature of the arrangements will depend on the organization of the particular utility involved, there should be written documentation sufficient for NERC or a Regional Entity to determine that the appropriate arrangements are in place.

EEI also requests that the Commission clarify that Nuclear Plant Generator Operators and Transmission Entities affiliated and unaffiliated, do not need to enter into new agreements if an existing agreement between the parties is sufficient for compliance with the nuclear standard. Some language in the requirements could be read to suggest that new agreements are required, e.g., R3 – R8, “Agreements developed in accordance with this standard....” Existing agreements, including procedures and protocols as highlighted in footnote 1 in NUC-001-1, can be used as evidence of compliance for the requirements in this standard. This flexibility is particularly important where an RTO or ISO may perform certain required responsibilities for a nuclear generating plant under NUC-001-1. Some RTO/ISOs may enter into bilateral agreements with each Nuclear Plant Generator Operator while others may cover these responsibilities in manuals or procedures. The Commission should interpret NUC-001-1 in a flexible manner to ensure that all such arrangements can be considered as compliance.

IV. The Commission’s Directive to Raise Violation Risk Factors Is Based on an Incorrect Assumption.

EEI disagrees with the Commission’s proposal to direct NERC to raise violation risk factors (“VRFs”) for several of the requirements in the nuclear standard, based only on general

statements about the need to ensure the safe and reliable operations of the grid and of nuclear plants. The purpose of NUC-001-1 is to ensure coordination between Nuclear Plant Generator Operators and Transmission Entities “for the purpose of ensuring nuclear plant safe operation and shutdown.” Petition at 5. EEI believes that the proposal to raise many of the VRFs is based on concern about preventing major reliability events due to the loss of a single nuclear generator operator, a concern that has been addressed by other Reliability Standards that apply to generation sources, regardless of fuel type. For example, the Transmission Planning Transmission Operations, and Reliability Operations Standards already require that a transmission system be able to withstand threats of the loss of a single generator.

Furthermore, the Functions with responsibilities under these other Reliability Standards already incorporate the limitations of nuclear generating plants into their studies and analyses, taking into account how problems with a given generator could impact the grid. NUC-001-1 deals only with the safe operation and shutdown of nuclear generating plants by requiring the Nuclear Plant Generator Operator and Transmission Entities to coordinate and enter into agreements to ensure that the NPIRs are met. The operation of the Bulk-Power System and the measures to address instability, separation or cascading failures are already addressed by other Reliability Standards. The Commission’s prior approval of these other standards is the appropriate way to ensure Bulk-Power System reliability – not the elevation of the VRFs for requirements in NUC-001-1.

In addition, as EEI has expressed in prior comments on other proposed Reliability Standards, EEI strongly believes that any proposal to change VRFs or other aspects of Reliability Standards must be considered through NERC’s ANSI-approved standards development process, which draws on the expertise of industry experts. The Commission adopted this approach in

Order No. 706, stating that “where a directive for modification appears to be determinative of the outcome,” the Commission provides guidance to the ERO standards development process but will consider an equivalent alternative approach that adequately addresses the Commission’s underlying goal or concern “as efficiently or effectively as the Commission’s proposal.”

Mandatory Reliability Standards for Critical Infrastructure Protection, Order No. 706, 122 FERC ¶ 61,040 (2008) at P 29.

V. The Commission Should Clarify that Compliance with the Nuclear Standard Does Not Violate the Standards of Conduct or Applicable Tariffs.

EEI also requests clarification that the communications required to comply with NUC-001-1 are permitted under the Commission’s Standards of Conduct rules. The Commission previously clarified that transmission providers may communicate with affiliated nuclear plants regarding certain matters related to the safety and reliability of the transmission system and of the nuclear plants in order to comply with requirements of the Nuclear Regulatory Commission.² These orders related to affiliated nuclear power plants. EEI asks the Commission to clarify that their provisions apply as well to unaffiliated entities that must comply with NUC-001-1, to the extent that any of the communications may be affected by the Standards of Conduct.

In addition, it is possible that a Nuclear Plant Generator Operator may request that a Transmission Entity, pursuant to the proposed nuclear standard or agreements entered into pursuant to the standard, provide transmission system information to it before or in a different manner than provided to other transmission customers of the Transmission Entity.³ Complying with such a request may raise compliance issues under the Standards of Conduct, tariffs under which the Transmission Entity operates, or under the Commission’s authority to prevent undue

² *Interpretive Order Relating to Standards of Conduct*, 114 FERC ¶ 61,155 (2006), *Order on Additional Clarification*, 115 FERC ¶ 61,202 (2006).

³ *See, e.g., Comments of Centerpoint Energy Houston Electric, LLC*, submitted in Docket No. RM08-3 (May 7, 2008).

discrimination. EEI asks the Commission to clarify that a Transmission Entity is not subject to enforcement under the Standards of Conduct, applicable tariff or other authority for providing information in compliance with NUC-001-1.

CONCLUSION

WHEREFORE, EEI requests that the Commission consider these comments and adopt them in its final rule.

Respectfully submitted,

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Document Content(s)

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