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

NORTH AMERICAN ELECTRIC) Docket Nos. RM06-22-010
RELIABILITY CORPORATION)

**COMPLIANCE FILING OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
IN RESPONSE TO THE FEDERAL ENERGY REGULATORY COMMISSION'S
DECEMBER 17, 2009 ORDER ADDRESSING COMPLIANCE FILING AND
REQUIRING FURTHER COMPLIANCE FILING**

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January 19, 2010

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I. INTRODUCTION

The North American Electric Reliability Corporation (“NERC”) respectfully submits this compliance filing in response to the Federal Energy Regulatory Commission’s (“FERC”) Order issued December 17, 2009¹ requiring NERC to submit additional information in Docket No. RM06-22-010. FERC noted that this additional information will allow FERC to evaluate its approval of NERC’s Critical Infrastructure Protection (“CIP”) Version 1 Implementation Plan for nuclear power plant generator owners’ (“GOs”) and generator operators’ (“GOPs”) compliance with Version 1 of the CIP standards (“Version 1 Implementation Plan”).² FERC also directed NERC to incorporate 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. NERC’s filing includes:

1. An explanation of NERC’s process for determining the scope of systems of nuclear “GOs” and “GOPs” that are to be compliant with the NERC CIP Reliability Standards, and those systems that are to be compliant with the Nuclear Regulatory Commission’s (“NRC”) Title 10³ authority; and
2. A discussion of the manner in which the effective dates included in the Version 1 Implementation Plan submitted by NERC for FERC approval on September 15, 2009⁴ will be carried over to the CIP Version 2 and Version 3⁵ Implementation Plan for U.S. Nuclear Power Plant Owners and Operators.

¹ *Mandatory Reliability Standards for Critical Infrastructure Protection*, Order Addressing Compliance Filing and Requiring Further Compliance Filing, 129 FERC ¶ 61,224 (2009) (“December 17 Order”).

² *Id.* at P 2.

³ See 10 C.F.R. §73.54, *Protection of Digital Computer and Communication Systems and Networks* (“Title 10”). Title 10 provides the legal authority to the NRC for collecting from Licensees a cyber security plan and implementation schedule for implementation of that plan.

⁴ *Compliance Filing and Petition for Approval of the North American Electric Reliability Corporation of an Implementation Plan for Critical Infrastructure Protection Reliability Standards for Generator Owners and*

NERC noted in its September 15 Filing that there are three critical path items that determine an appropriate timeframe for nuclear power plant owners' and operators' compliance with the NERC CIP standards. These are: (1) FERC's effective date of the Version 1 Implementation Plan; (2) the availability of the "exemption process" that FERC directed NERC to develop for exempting systems, structures, and components ("SSCs") in a nuclear power plant's balance of plant that are subject to NERC's CIP standards; and (3) the fact that certain CIP requirements cannot be implemented without the nuclear plant going out of service, and therefore, sufficient time needs to be made available to properly plan, schedule, and budget for the nuclear outage-related activities.

In addressing NERC's proposed Implementation Plan and these three critical path items, FERC noted, in the December 17 Order, that while the general structure of the Implementation Plan comports with the directives in Order No. 706-B,⁶ without further clarification regarding the scope of systems determination and the exemption process, FERC cannot properly evaluate whether the Implementation Plan provides an appropriate schedule for making the CIP standards mandatory and enforceable on GOs and GOPs of U.S. nuclear power plants.⁷ Accordingly, FERC directed NERC to make a compliance filing within thirty days describing the scope of systems determination and exemptions process, specifically addressing the following:

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

Generator Operators of U.S. Nuclear Power Plants in Accordance with Paragraph 60 of Order No. 706-B, Docket No. RM06-22-010 (September 15, 2009) ("September 15 Filing").

⁵ NERC will include the Version 3 CIP standards in the proposed Version 2 Implementation Plan because NERC filed for FERC approval a proposed Version 3 of the CIP Reliability Standards on December 29, 2009 in Docket No. RD09-7-002.

⁶ *Mandatory Reliability Standards for Critical Infrastructure Protection*, Order No. 706-B, 126 FERC ¶ 61,229 (2009) ("Order No. 706-B").

⁷ December 17 Order at P 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.⁸

FERC noted that the responses to these questions are important to determine the finality of the proposed implementation timeline for the exemption process, or whether NERC's proposed Version 1 Implementation Plan allows for open-ended delays in the application for exemptions, reviews, and final determination of exemptions.⁹ As FERC noted in the December 17 Order, the scope of systems determination is important because it is a key variable in determining implementation dates for nuclear GOs' and GOPs' compliance with the CIP standards. That is, the proposed Implementation Plan is structured such that the timeline for compliance with each requirement within the CIP Reliability Standards is the later of: (i) the FERC-approved effective date of the Implementation Plan plus 18 months (*i.e.* the "R" date in the proposed CIP Version 1 Implementation Plan); (ii) the date the scope of systems determination is completed plus 10 months (*i.e.* the "S" date in the proposed CIP Version 1 Implementation Plan); or (iii) if an outage is required for implementation of certain requirements, six months following the completion of the first refueling outage at least 18 months following the FERC effective date of the Implementation Plan.¹⁰ Therefore, the implementation date of the CIP Version 1 standards is dependent upon NERC's determination of whether a Nuclear Plant Licensee's ("Licensee") SSCs fall within NERC's Section 215 jurisdiction, or whether those SSCs fall within the NRC's Title 10 jurisdiction (*i.e.* the "Scope of Systems Determination").

Additionally, FERC directed NERC in the December 17 Order to submit as part of its compliance filing a revised Implementation Plan that incorporates the Version 2 CIP Standards

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at P 8.

into the Implementation Plan schedule.¹¹ FERC noted in the December 17 Order that the implementation timeline for the Version 2 CIP standards should be the same as the Implementation Plan for the Version 1 CIP standards.¹² FERC stated that this implementation schedule is reasonable because the Version 2 CIP standards comprise a limited set of modifications, and because there is a generous lead time before the earliest possible date owners and operators of nuclear plants will be required to achieve compliance with the Version 1 CIP standards in accordance with NERC's Implementation Plan for the Version 1 CIP standards.¹³

In this filing, NERC hereby requests that FERC approve the proposed Implementation Plan for the Version 1 CIP standards so that the "R" date included in the proposed Implementation Plan will take effect (*i.e.* the timetable for the R+18 months will begin upon FERC approval of the Version 1 Implementation Plan). Additionally, NERC is currently developing the CIP Version 2 and Version 3 Implementation Plans for U.S. Nuclear Owners and Operators, which include the same implementation dates as the Version 1 Implementation Plan. The "R" date included in the Version 2 and Version 3 plans will specifically be anchored to the "R" date in the Version 1 Implementation Plan. Because the Version 2 and Version 3 plans must be balloted in accordance with NERC's *Reliability Standards Development Procedure*¹⁴ which could not be completed within the thirty days NERC was given to submit this compliance filing, NERC requests permission to submit an additional compliance filing requesting FERC approval of the Version 2 and Version 3 Implementation Plans after the plans have been balloted by the industry and approved by the NERC Board of Trustees.

¹¹ *Id.* at P 15.

¹² *Id.*

¹³ *Id.*

¹⁴ NERC's *Reliability Standards Development Procedure* is available at: http://www.nerc.com/fileUploads/File/Standards/RSDP_V6_1_12Mar07.pdf.

II. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this filing may be addressed to:

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* Persons to be included on FERC's service list are indicated with an asterisk. NERC requests waiver of FERC's rules and regulations to permit the inclusion of more than two people on the service list.

III. RESPONSES TO DECEMBER 17, 2009 ORDER

A. Status of Scope of Systems Determination

In the December 17 Order, FERC directed NERC to make a compliance filing providing additional information regarding the scope of systems determination, and specifically to address the following:

- 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 dates applicable to NERC's scope of systems determination are based on a FERC effective date of "R," which represents the date that FERC approves the Version 1 Implementation Plan that was submitted to FERC for approval on September 15, 2009. According to the proposed Version 1 Implementation Plan, Licensees must be in compliance with the CIP Reliability Standards by the later of R + 18 months or S + 10 months, where "S" is the date upon which the Bright-Line determination (or scope of systems determination for SSCs that are determined to be within NERC's Section 215 authority) will be finalized.

NERC has been actively engaged in the development of a "Bright-Line Test" to identify those systems that fall under NERC's Section 215 jurisdiction, and those systems that fall under the NRC's Title 10 jurisdiction and are therefore exempt from NERC jurisdiction. A significant first step in developing this Bright-Line test with the NRC was accomplished with the development of a Memorandum of Understanding ("MOU") that was executed by the NRC and NERC on December 30, 2009, and is attached as **Exhibit 1** to this filing. This MOU provides that NERC and the NRC will work collaboratively in processing NERC's disposition of exemption requests received from nuclear facilities subject to NERC's CIP standards. In the MOU, NERC agrees to consult with the NRC on each request for an exemption from NERC's CIP standards that NERC receives from Licensees also regulated by the NRC in order to facilitate the proper characterization of SSCs subject to either the NRC's regulations or NERC's CIP standards.

In addition to the MOU, NERC and the NRC have been engaged in further discussions to facilitate a process for developing an in-scope system list to distinguish those SSCs that should fall under NERC's jurisdiction from those SSCs that should fall under the NRC's jurisdiction. Additionally, NERC plans to conduct "Bright-Line Training Workshops" in order to present to

Licensees within each Region a “Bright-Line Survey” that will collect detailed information on each Licensees’ SSCs. These Bright-Line Surveys will be collected from each Licensee in order for NERC and the NRC to determine appropriate jurisdiction over each Licensee’s SSCs that are part of the nuclear balance of plant. These Bright-Line Surveys will also require each Licensee to identify all of its SSCs that have cyber assets. The results of these surveys will ultimately enable NERC and the NRC to make the necessary scope of systems determinations so that Licensees understand whether their assets must be compliant with NERC CIP Reliability Standards or with applicable NRC regulations.

NERC plans to conduct the Bright-Line Training Workshops in the second quarter of 2010. Shortly thereafter, NERC will disseminate the Bright-Line Survey to each Licensee, requiring the surveys be completed and returned to NERC within thirty (30) days. Upon receipt of the Bright-Line Surveys, NERC will then begin analyzing the assets described in each Licensee’s survey in consultation with the NRC to identify those that are subject to NERC’s jurisdiction and those that are subject to the NRC’s jurisdiction. As part of its analysis of the completed Bright-Line Surveys, NERC plans to conduct site visits of each nuclear plant, as necessary, in order to examine the SSCs in person. Each of these site visits could take up to two days, and will be commenced sometime in June or July of 2010.

Exhibit 2 to this filing contains a project timetable for determining the scope of systems determination by NERC. This timetable assumes a FERC effective date (the “R” date) of April 1, 2010.

A response to each of FERC’s specific directives regarding the exemption process is provided below.

a) the anticipated date the scope of systems determination framework will be finalized:

NERC plans to finalize the scope of systems determinations no later than the FERC effective date (R) + 8 months. Because a Licensee must be compliant with the CIP standards by the later of the scope of systems determination completion date + 10 months (*i.e.*, S + 10 months) or by the FERC effective date + 18 months (*i.e.*, R + 18 months), NERC's finalization of the scope of systems determination within the R + 8 month time period will ensure that there is not a significant gap in these dates of compliance. That is, completing the scope of systems determinations by R + 8 months should ensure that both implementation dates will fall near the same date. The implementation dates included in the proposed CIP Version 2 and Version 3 Implementation Plan are proposed to be the same as in the Version 1 Implementation Plan. Therefore, NERC's finalization of the scope of systems determinations should still be completed within the R + 8 months' date, and the date of compliance should still be sometime near the R + 18 months' date. One possible exception to this schedule will be for those entities that have portions of their CIP implementation dates for certain requirements tied to a specific plant outage. In these cases, the implementation dates could be extended for those requirements.

b) the status of the development of the exemption process

NERC and the NRC have already begun the process of working out which SSCs are in scope for NERC and which will be exempted from compliance with NERC CIP standards. The exemption process started with the planning of regional workshops with the industry. These regional workshops will facilitate a process for NERC and the NRC to develop the Bright-Line Surveys, and will communicate expectations for the Licensees to complete these surveys in order to facilitate the Licensees' compliance with the CIP Reliability Standards. The regional workshops are currently being scheduled for early- to mid-spring of 2010.

Additionally, the NRC and NERC have already created a preliminary Bright-Line list that will be presented to the industry in the regional workshops. Following the regional workshops, the Licensees will be asked to modify the preliminary Bright-Line surveys to make them specific to their respective facilities. Once NERC and the NRC verify the modified Bright-Line surveys with the Licensees, the Bright-Line determinations will be made, thereby completing the Bright-Line exemption process.

c) whether the exemption process will include: (i) an application deadline and (ii) a deadline for a determination on an exemption request

GOs and GOPs with nuclear holdings will be required to submit necessary information by a specified deadline to support the process for NERC, the NRC, and the Licensee to complete the Bright-Line determination. Based on the effective date in the Version 1 Implementation Plan, Licensees will be held accountable for compliance with NERC CIP standards by the R + 18 months' date or by the S + 10 months' date, whichever is later, or for those requirements requiring a plant outage to implement, six months beyond the date of the first refueling outage that at least 18 months after the FERC effective date of the implementation plan. As a result, 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 (except for certain outage-related implementation dates included in the Version 1 Implementation Plan). The current Bright-Line project management plan being developed by NERC and presented in this filing supports the above dates.

d) A description of any other time parameters that may be included in the exemption process.

There could be certain outage-related activities by the Licensees associated with some of the NERC CIP Reliability Standards. Additionally, this implementation schedule is contingent

upon NRC resources.

B. Implementation Plan for CIP Version 2 and Version 3 Standards for Nuclear Generator Owners and Generator Operators

In the September 15 Filing, NERC filed for FERC approval its Version 1 Implementation Plan for the CIP Version 1 standards (CIP-002-1 through CIP-009-1) applicable to nuclear power plant GOs and GOPs, in compliance with Order No. 706-B. Since the September 15 filing of the Version 1 Implementation Plan, FERC approved Version 2 of the CIP standards on September 30, 2009,¹⁵ and NERC filed for FERC approval a Version 3 of the CIP standards on December 29, 2009.

In its December 17 Order, FERC noted that the implementation timeline for the Version 2 CIP standards should be the same as the Implementation Plan for the Version 1 CIP standards. NERC agrees with this directive, and is processing the changes to the Version 2 and Version 3 Implementation Plans for U.S. Nuclear Power Plant Owners and Operators through the *Reliability Standards Development Procedure* approved by FERC. Additionally, consistent with FERC's directive in the December 17 Order, NERC will not be including U.S. Nuclear Power Plant Owners and Operators in its compliance program for the CIP Version 2 standards when they take effect on April 1, 2010.¹⁶ NERC 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.

¹⁵ *Order Approving Revised Reliability Standards for Critical Infrastructure Protection and Requiring Compliance Filing*, 128 FERC ¶ 61,291 (September 30, 2009).

¹⁶ In the September 30 Order, FERC stated that "nothing in [the September 30] order alters our findings in Order No. 706-B regarding the applicability of the CIP Reliability Standards, and associated implementation timetables, to facilities located at nuclear power plants.

NERC is currently preparing to post for comment the Version 2 and Version 3 Implementation Plans for U.S. Nuclear Power Plant Owners and Operators, as required by the *Reliability Standards Development Procedure*. While NERC expects the proposed CIP Version 2 and Version 3 Implementation Plans for U.S. Nuclear Power Plant Owners and Operators will include the same implementation dates as those presented in the Version 1 Implementation Plan, the comment period and balloting for the revised Implementation Plans for Version 2 and Version 3 could not be completed within the thirty-day timeframe for submitting this compliance filing. NERC therefore requests permission to submit an additional compliance filing requesting FERC approval of the Version 2 and Version 3 plan as soon as the results of the balloting process are complete.

Accordingly, NERC hereby requests that FERC approve the proposed Version 1 Implementation Plan so that the “R” date included in the Implementation Plan will take effect upon FERC approval. This will provide a date certain for the “R” date included in the proposed Implementation Plan. NERC will soon post for industry comment the CIP Version 2 and Version 3 Implementation Plans for U.S. Nuclear Power Plant Owners and Operators that includes the same implementation dates as the Version 1 plan, and will submit a further compliance filing requesting FERC approval of the CIP Version 2 and Version 3 plan upon ballot completion and NERC Board approval.

IV. CONCLUSION

For the reasons stated above, NERC respectfully requests that FERC accept this filing and the Attachments in compliance with the directives of the December 17 Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 19th day of January, 2010.

/s/ Holly A. Hawkins
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Exhibit 1

Memorandum of Understanding between the NRC and NERC

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. NUCLEAR REGULATORY COMMISSION
AND
THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

I. Purpose:

1. This Memorandum of Understanding (MOU) is entered into by the U.S. Nuclear Regulatory Commission (NRC) and the North American Electric Reliability Corporation (NERC) (hereafter "Party" or "Parties").
2. Consistent with their statutory authority and regulations, the NRC and NERC each have responsibility for establishing and enforcing cyber security requirements at commercial nuclear power plants operating in the United States of America (USA). The NRC's primary focus is on the prevention of radiological sabotage (*i.e.*, significant core damage) that could result in harm to public health and safety or the environment or have an adverse impact upon the common defense and security of the USA. NERC's primary focus is on the reliability of the bulk power system (BPS). It accomplishes this in part by enforcing compliance with applicable NERC Reliability Standards, including, but not limited to, the Critical Infrastructure Protection (CIP) Reliability Standards.
3. The purpose of this MOU is to set forth and coordinate the roles and responsibilities of each organization as they relate to the application of their respective cyber security requirements for the protection of digital assets at commercial nuclear power plants operating in the USA. This cooperation will ensure that the common responsibilities of each organization are achieved in the most efficient and effective manner without diminishing or interfering with their respective responsibilities and authorities. The goal of this cooperation is to maintain the safety and security of commercial nuclear power plants operating in the USA while optimizing the reliability of the BPS to the maximum extent possible.
4. This memorandum supplements an existing Memorandum of Agreement (MOA) between the NRC and NERC dated July 10, 2007.

II. Roles and Responsibilities:

1. NRC:
 - a. The NRC has statutory responsibility for licensing and regulating commercial nuclear facilities operating in the USA as well as the civilian use of byproduct, source, and special nuclear materials in order to protect public health and safety, promote the common defense and security, and protect the environment. Pub. L 93-438, 88 Stat. 1233 (42 U.S.C. 5801 *et seq.*).

- b. The NRC carries out its statutory responsibilities by promulgating regulations and issuing licenses, certificates and orders for commercial nuclear power plants and other nuclear facilities and materials in the USA.
- c. The NRC has issued orders and promulgated regulations imposing cyber security requirements on commercial nuclear power plants under its jurisdiction. Portions of these facilities also fall under the concurrent jurisdiction of NERC's CIP reliability standards.
- d. The NRC's cyber security regulations set forth at 10 C.F.R. § 73.54 govern digital systems and networks that can affect commercial nuclear power reactor safety, security, and emergency preparedness functions. Those regulations do not govern systems within nuclear facilities, such as those related to continuity of power, that could not have an adverse impact on safety, security, or emergency preparedness functions.

2. NERC:

- a. NERC has statutory responsibility for improving the reliability and security of the BPS in the United States. NERC conducts equivalent activities in Canada. NERC's authority and jurisdiction in the USA is set forth in the Federal Power Act pursuant to Title XII of the Energy Policy Act of 2005, FERC's implementing regulations at 18 C.F.R. Part 39, and applicable FERC Orders, including but not limited to, the Electric Reliability Organization (ERO) Certification Order, Order Nos. 672, 693, 706 and 706-B. NERC is a not-for-profit, self-regulatory corporation.
- b. NERC develops and enforces reliability standards; monitors the BPS; analyzes BPS events; assesses the adequacy of the BPS annually via a 10-year forecast and winter and summer forecasts; audits owners, operators, and users of the BPS; and educates and trains industry personnel.

III. **NRC/NERC Consultations on the FERC Order 706-B Exception Process:**

- 1. On January 18, 2008, FERC issued Order No. 706 imposing eight NERC-developed cyber security CIP reliability standards on BPS owners, operators, and users. This Order exempted facilities regulated by the NRC from compliance with NERC's CIP standards.
- 2. On March 19, 2009, FERC issued Order No. 706-B, significantly narrowing the nuclear facilities exemptions from NERC's CIP standards in order to ensure comprehensive cyber security protection of appropriate digital assets at nuclear power plants. Order No. 706-B allows nuclear facilities to seek exceptions from NERC's CIP standards on a case-by-case basis for those digital assets subject to the NRC's cyber security requirements.
- 3. The NRC and NERC agree to cooperate regarding NERC's disposition of exception requests received from nuclear facilities subject to NERC's CIP standards. NERC agrees to consult with the NRC on each request for an exception from NERC's CIP

standards that NERC receives from a nuclear facility also regulated by the NRC. This cooperation and consultation will facilitate the proper characterization of digital assets as subject to either the NRC's cyber security requirements or NERC's CIP standards.

IV. Cyber Security Inspection Protocol:

1. The NRC has regulatory responsibility for inspecting those digital assets, including digital control and data acquisition systems and networks, which can affect safety, security, and emergency preparedness functions of a nuclear power plant. The NRC will inspect such systems to ensure compliance with the NRC's cyber security requirements.
2. The NRC does not have regulatory responsibility to inspect those digital assets unrelated to the safety, security or emergency preparedness functions of a nuclear power plant, such as those digital control and data acquisition systems related to continuity of power, unless those systems can have an adverse impact on safety, security, or emergency preparedness functions.
3. NERC has regulatory responsibility for inspecting digital assets related to continuity of power for compliance with NERC's CIP standards.
4. The NRC and NERC agree to share any information discovered during the course of their respective inspections that they believe may be relevant to or have an adverse impact on any digital asset governed by the other Party's cyber security requirements.
5. The NRC and NERC agree to consult and coordinate to the maximum extent practicable on the process for conducting inspections to carry out activities contemplated under this MOU.

V. Information Sharing:

1. The NRC and NERC recognize that the sharing of relevant information between the Parties may be necessary to implement the provisions of this MOU. Consistent with applicable laws and regulations, the NRC and NERC support the sharing of all information necessary to carry out the intent of this MOU. Accordingly, all relevant information will be shared with the other Party in a timely manner so that each Party can take appropriate action.
2. The NRC and NERC recognize that this MOU may require the sharing of sensitive information up to and including Safeguards Information (SGI) as defined in 10 C.F.R. § 73.2. The NRC and NERC agree to protect sensitive information received from the other party in accordance with all applicable laws and requirements, including all requirements governing access to and protection of SGI. NERC further agrees that it will not transmit any SGI received from the NRC to any third party, except for its Regional Entities pursuant to V.4 below, without the written consent of the NRC.
3. NERC agrees to adhere to procedures governing the sharing, possession and handling of SGI under this MOU in accordance with the Appendix to this MOU, entitled, "Procedures Governing Access to and Possession of Safeguards Information." NERC

further agrees to develop, implement, and maintain an SGI program in accordance with applicable requirements and the Appendix to this MOU.

4. NRC and NERC recognize that NERC has delegated, by contract, certain authority to eight Regional Entities to assist NERC in carrying out NERC's compliance and enforcement program and that it may be necessary for NERC to share certain sensitive information with those Regional Entities in the process of carrying out the compliance and enforcement program. With respect to access to and protection of SGI, those eight Regional Entities will be considered to be contractors of NERC. NERC agrees that it will adhere to the procedures governing the sharing, possession and handling of SGI in accordance with the Appendix to this MOU entitled, "Procedures Governing Access to and Possession of Safeguards Information" for any SGI to which Regional Entities are given access.

VI. Enforcement Actions:

1. Nothing in this MOU is intended to limit the authority of the NRC or NERC to take enforcement action consistent with their statutory authority and regulations.
2. The NRC and NERC agree that the NRC will have sole responsibility for taking enforcement action because of a violation involving a digital asset subject to the NRC's cyber security requirements. The NRC shall inform NERC of any enforcement actions that it plans to take as a result of a violation of NRC cyber security requirements.
3. The NRC and NERC agree that NERC will have sole responsibility for taking enforcement action because of a violation involving a digital asset subject to NERC's CIP standards. NERC shall inform the NRC of any enforcement actions that it plans to take as a result of a violation of NERC's CIP standards.
4. In those situations where a cyber security incident at a nuclear power plant results in violations of both the NRC's and NERC's requirements, the NRC and NERC agree to consult and coordinate on any enforcement actions to be taken.
5. If NERC considers imposing remedial action directives or sanctions on a nuclear power plant, NERC agrees to consult in advance with the NRC to ensure that the proposed action will not adversely affect nuclear safety, security or emergency preparedness.
6. The NRC and NERC agree to coordinate on any public announcements of enforcement actions taken as a result of any violation of their respective cyber security requirements.

VII. Points of Contact:

The following are designated points of contact for carrying out the routine administration of matters arising under this MOU:


1. The resolution of policy issues concerning organizational jurisdiction and operational relations will be coordinated by the NRC's Executive Director for Operations and NERC's Chief Executive Officer. Appropriate points of contact will be established.

2. The NRC's Office of Enforcement (OE) and NERC's Compliance Department shall coordinate the resolution of issues involving enforcement actions taken by one or both parties at an NRC-licensed nuclear power plant. Appropriate OE and Compliance Program points of contact will be established.

VIII. Administrative Matters:


1. This MOU shall become effective upon signing by all of the Parties and shall remain in effect for five years from the date of signing unless terminated in accordance with the procedures set forth below.
2. This MOU may be modified or amended by written mutual agreement of the Parties.
3. Any Party may terminate this MOU by providing written notice of its intent to terminate the MOU to the other Party at least 180 days in advance of the effective date of termination.
4. This MOU shall not be construed to be or create a private right of action for or by any person or entity.
5. This MOU does not commit or obligate appropriated funds. All activities undertaken to implement any responsibilities carried out pursuant to this MOU shall be subject to the availability of appropriated funds.
6. If any provision(s) of this MOU, or the application of any provision(s) to any person or entity, is held to be invalid, the remainder of this MOU and the application of any remaining provision(s) to any person or entity shall not be affected.

FOR THE NUCLEAR REGULATORY COMMISSION

 12/30/09

R. W. Borchardt
Executive Director for Operations

FOR THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

 12/30/09

Rick Sergel
Chief Executive Officer and President

Appendix

Procedures Governing Access to and Possession of Safeguards Information

It is possible that both the NRC and NERC may require access to Safeguards Information (SGI) to carry out their respective responsibilities under this Memorandum of Understanding (MOU). The NRC has promulgated detailed regulations in 10 C.F.R. Part 73 governing access to and the handling of SGI. The definition of SGI is set forth at 10 C.F.R. § 73.2. This Appendix sets forth general principles and procedures governing access to and the handling of SGI for purposes of carrying out this MOU. To the extent that any of the principles and procedures set forth in this Appendix conflict with the requirements set forth in 10 C.F.R. Part 73, the NRC and NERC agree that the regulatory requirements set forth in Part 73 shall take precedence over this MOU.

SGI is a special category of sensitive unclassified information protected from unauthorized disclosure under Section 147 of the Atomic Energy Act of 1954 (AEA), as amended. Although SGI is sensitive unclassified information, it is handled and protected more like Classified National Security Information than like other sensitive unclassified information. Information designated as SGI must be withheld from public disclosure and must be physically controlled and protected to prevent any unauthorized disclosure. The requirements set forth in 10 C.F.R. Part 73 applies to any person, whether or not a licensee of the NRC, who produces, receives or acquires SGI.

All persons who have or have had access to SGI have a continuing obligation to protect SGI in order to prevent its inadvertent release and/or unauthorized disclosure. Violations of SGI handling and protection requirements, including the unauthorized disclosure of SGI, may result in the imposition of applicable civil and criminal penalties.

Information to be Protected as Safeguards Information:

Any documents provided to NERC by NRC that contain SGI will be designated in accordance with 10 C.F.R. § 73.22. Documents developed by NERC that contain SGI must also be designated and protected as SGI in accordance with 10 C.F.R. § 73.22. The NRC and NERC agree to comply with the requirements for protecting all information designated as SGI as set forth in 10 C.F.R. § 73.22(a).

Access to Safeguards Information:

Generally, no person may have access to SGI unless the person has an established "need to know" for the information and has been determined to be "trustworthy and reliable." Typically, a determination of trustworthiness and reliability is based upon a background check, including at a minimum, a Federal Bureau of Investigation (FBI) criminal history records check (including verification of identity based on fingerprinting), employment history, education and personal references. The terms "background check," "need to know" and "trustworthy and reliable" are defined in 10 C.F.R. § 73.2. The NRC and NERC agree to comply with the requirements for access to SGI set forth in 10 C.F.R. § 73.22(b) and 10 C.F.R. § 73.57.

Reviewing Official:

The determination that a NERC employee, consultant or contractor has a need for access to SGI (established "need to know" and is "trustworthy and reliable") must initially be made by an individual already authorized access to SGI. Accordingly, the NRC and NERC agree to implement the following procedures for granting NERC employees, consultants and contractors access to SGI for the purpose of carrying out this MOU.

NERC shall submit the name and fingerprints of at least one individual to the NRC who NERC has determined to be trustworthy and reliable and has a need to know SGI. NERC's trustworthiness and reliability determination shall be based, at a minimum, on all elements of a background check except for each individual's criminal history record. The NRC will conduct a criminal history record check based on each individual's fingerprints. Based upon the outcome of the criminal history record check, the NRC shall determine if the individual (or individuals if more than one name is submitted and approved) may have access to SGI and can serve as a reviewing official under this MOU. Upon approval by the NRC, this individual (or individuals if more than one name is submitted and approved) may serve as a reviewing official authorized to make SGI access authorization determinations for other NERC employees, consultants and contractors.

Individuals possessing an active Federal security clearance require no additional fingerprinting or background check for access to SGI, as this clearance meets the fingerprinting requirement and other elements of the background check, as prescribed in 10 C.F.R. § 73.22(b)(1). Such individuals must still meet the need to know requirement for access to SGI. However, when relying upon an existing active Federal security clearance to meet the SGI access requirements (except for the need to know determination), NERC should obtain and maintain a record of official notification stating that the individual possesses such a clearance.

Only NRC-approved reviewing officials shall be authorized to make SGI access determinations for other individuals who have been identified by NERC as having a need to know SGI. The reviewing official shall be responsible for determining that these individuals have a "need to know" for access to SGI to carry out their official duties under this MOU and for determining that these individuals are trustworthy and reliable. The reviewing official's determination of trustworthiness and reliability shall be based upon an adequate background check, including, at a minimum, an FBI criminal history records checks and fingerprinting. The reviewing official can only make SGI access determinations for other individuals, but cannot approve other individuals to act as reviewing officials.

NERC agrees that the reviewing official shall maintain secure and adequate records of each SGI access authorization determination. Such records shall be available to the NRC for inspection upon request.

Protection of Safeguards Information While in Use or Storage:

SGI must be adequately protected while in use or storage to prevent its unauthorized release or disclosure. The NRC and NERC agree to comply with the requirements for protection of SGI while in use or storage set forth in 10 C.F.R. § 73.22(c).

Preparation and Marking of Documents or Other Matter:

Documents and other matter must be prepared and conspicuously marked as SGI to ensure against unauthorized release or disclosure. The NRC and NERC agree to comply with the requirements for preparation and marking of documents and other material as set forth in 10 C.F.R. § 73.22(d).

Reproduction of Matter Containing Safeguards Information:

SGI may be reproduced to the minimum extent necessary consistent with need without permission of the originator. The NRC and NERC agree to comply with the requirements for reproduction of documents and other material containing SGI as set forth in 10 C.F.R. § 73.22(e).

External Transmission of Documents and Material:

Documents or other matter containing SGI when transmitted outside an authorized place of use or storage shall be enclosed in two sealed envelopes or wrappers and must not bear any markings or indication that the document contains SGI. The NRC and NERC agree to comply with the requirements for the external transmission of documents and other material containing SGI as set forth in 10 C.F.R. § 73.22(f).

Processing of Safeguards Information on Electronic Systems:

SGI may not be transmitted by unprotected telecommunications circuits except under emergency or extraordinary conditions. SGI must be processed or produced on an electronic system that ensures the integrity of the information and prevents the unauthorized release or disclosure of SGI. The NRC and NERC agree to comply with the requirements for the processing of SGI on electronic systems as set forth in 10 C.F.R. § 73.22(g).

Removal from Safeguards Information Category:

Documents containing SGI shall be removed from the SGI category (decontrolled) only after the NRC determines that the information no longer meets the criteria for designation as SGI. Organizations have the authority to make determinations that specific documents which they created no longer contain SGI and may be decontrolled. The NRC and NERC agree to comply with the requirements for removing information from the SGI category as set forth in 10 C.F.R. § 73.22(h).

Destruction of Matter Containing Safeguards Information:

Documents containing SGI should be destroyed when no longer needed. The NRC and NERC agree to comply with the requirements for the destruction of documents and other material containing SGI as set forth in 10 C.F.R. § 73.22(i).

Exhibit 2

Project Timetable for Determining the Scope of Systems Determination by
NERC

NERC Bright Line Determination
Project Time Line

ID	Task Name	Duration	09			Qtr 1, 2010			Qtr 2, 2010			Qtr 3, 2010			Qtr 4, 2010			Qtr 1, 2011			Qtr 2, 2011			Qtr 3, 2011		
			Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep		
1	FERC Effective Date - (Notionally Assume April 1, 2010)	360 days?																								
2	FERC Effective date - R	0 days																								
3	Milestone for R+18	18 mons																								
4	Milestone for S+10 - Tied to completion of Bright Lines	10 mons																								
5	S+10 latest determination	1 day?																								
6	Task BL1 - Develop workshop materials for "Bright Line" determinations	67 days?																								
19	Task BL2 - Develop workshop schedules for Bright Line	68 days?																								
24	Task BL3 - Hold Nuclear Entity Bright Line workshops	35 days?																								
25	Nuclear Entity Workshop - Region II Atlanta	1 wk?																								
26	Nuclear Entity Workshop - Region IV Arlington TX	1 wk?																								
27	Nuclear Entity Workshop - Region I Philadelphia	1 wk																								
28	Nuclear Entity Workshop - Region III Chicago	1 wk?																								
29	Post workshop Survey revisions	3 wks																								
30	Task BL4 - NERC Bright line Documentation process	81 days?																								
31	Distribute the survey	1 day?																								
32	Utility completes the survey	1 mon																								
33	NERC and NRC review and accept the revised Bright Line survey	3 mons																								
34	S+10 latest determination for completion BL4	1 day?																								

Project: Nuclear Bright line efforts
Date: Tue 1/19/10

Task		Rolled Up Task		External Tasks	
Progress		Rolled Up Milestone	◇	Project Summary	
Milestone	◇	Rolled Up Progress		Group By Summary	
Summary		Split		Deadline	↓