

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

North American Electric
Reliability Corporation

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Docket No. RD09-7-000

**REQUEST FOR CLARIFICATION AND MOTION FOR EXTENSION OF TIME
OR IN THE ALTERNATIVE FOR REHEARING
OF THE EDISON ELECTRIC INSTITUTE**

The Edison Electric Institute (“EEI”), on behalf of its member companies, hereby respectfully submits its Request for Rehearing and Clarification (“Request”) in response to the Order¹ issued in the above-captioned proceeding by the Federal Energy Regulatory Commission (“Commission” or “FERC”) on September 30, 2009.² EEI and its members are generally pleased that the Commission’s Order approves the revised Version 2 Critical Infrastructure Protection (“CIP”) Reliability Standards (“Version 2 CIP Reliability Standards”) to become effective on April 1, 2010, as requested by the North American Electric Reliability Corporation (“NERC” or “ERO”). See Order at P 2. These changes to the CIP Reliability Standards are important and should strengthen and improve them in order to better protect the nation’s Bulk Power System (“BPS”). Accordingly, EEI supports the Commission’s determination in the Order that the Version 2 CIP Reliability Standards are just, reasonable, not unduly discriminatory or preferential and in the public interest, meeting the standard set forth in section 215 of the Federal Power Act (“FPA.”).

¹*North American Electric Reliability Corporation*, Order Approving Revised Reliability Standards for Critical Infrastructure Protection and Requiring Compliance Filing, 128 FERC ¶ 61,291 (2009) (“Final Rule”).

² EEI submits this Request pursuant to Rules 212 and 713 of the Commission’s Rules of Practice and Procedure, 18. C.F.R. §§ 385.12 and 385.713.

EEI also supports the Order's approval of NERC's proposed Version 2 Implementation Plan, but does not believe that the deadline for a compliance filing to be made 90 days from of the date of the Order is reasonable. See Order at P 2.

Pursuant to section 215(d)(5), the Commission directs NERC to make certain modifications to the Version 2 CIP Reliability Standards and the Version 2 Implementation Plan. Order at P 9. EEI's request for clarification and rehearing is directed to several of these directives.

EEI is the association of U.S. shareholder-owned electric companies. EEI's members serve 95 percent of the ultimate consumers in the shareholder-owned segment of the industry, and represent approximately 70 percent of the U.S. electric power industry. EEI also has as Affiliate members more than 81 international electric companies and as Associate members more than 170 industry suppliers and related organizations. Additionally, EEI member companies have responsibility for and a strong commitment to supporting, maintaining, and improving the reliability and security of the North American Bulk Power System as well as to working with the Commission, other Federal and State authorities, and other stakeholders in this effort. Virtually all EEI members are required to comply with the CIP Reliability Standards.

EEI supports the Commission's decision to approve the proposed Version 2 CIP Reliability Standards because they respond directly to the concerns identified in Order No. 706, wherein the Commission directed NERC to develop certain modifications to the CIP Reliability Standards through its reliability standards development process.³ The Version 2 CIP Reliability Standards strengthen the cyber security framework for the identification and protection of the BPS Critical Assets and Critical Cyber Assets to support the reliable operation of the BPS. In an

³ Order No. 706, 122 FERC ¶ 61,040 (2008).

environment where systems vary greatly in architecture, technology, and in risk profile, the proposed Version 2 Reliability Standards appropriately recognize the differing roles of each entity in the operation of the BPS, the criticality and vulnerability of the assets needed to manage BPS reliability, and the risks to which they are exposed. Accordingly, the Commission's decision to approve the Version 2 CIP Reliability Standards will help to strengthen the security of the BPS.

Given the magnitude of the directives mandated by Order No. 706, EEI appreciates that the Order recognizes that the Version 2 CIP Reliability Standards represent the first in a phased approach to addressing those directives and that subsequent phases will address the remainder of the Commission's directives in Order No. 706. Accordingly, while there is further work to be done in response to Order No. 706, EEI believes that the Commission should be commended for providing timely approval of the proposed Version 2 CIP Reliability Standards to maintain and enhance the reliability and security of the BPS.

However, EEI seeks rehearing, or in the alternative, clarification of certain aspects of the Order, as discussed below.

STATEMENT OF ISSUES

Pursuant to 18 C.F.R. § 385.713(c), the following issues are presented by EEI's request for rehearing of the Order:

1. Whether the Commission erred in directing the ERO to develop a visitor access program within 90 days. Order at P 30.
2. Whether the Commission erred in directing specific changes to Requirement R1.6 of Reliability Standard CIP-008-2, rather than requesting that the NERC Standards

development process consider changes to the requirement consistent with the Commission's Order. Order at P 38.

SPECIFICATION OF ERRORS

Pursuant to section 385.713(c) of the Commission's Regulations,⁴ EEI specifies the following errors in Order No. 706:

1. The Commission erred in directing the ERO to develop a visitor control program in that the nature and extent of the program to be developed is unreasonably vague and not set forth. In addition, the time period within which the ERO is directed to develop such a program is unreasonably short.
2. The Commission erred in directing the ERO to make specific changes to Requirement R1.6 of Reliability Standard CIP-008-2 in contravention of Order No. 693, Order No. 693-A and Order No. 706.⁵

ARGUMENT

I. THE REQUIREMENT TO DEVELOP A VISITOR CONTROL PROGRAM IS UNREASONABLY VAGUE AND CANNOT BE IMPLEMENTED WITHIN THE TIME PERIOD ORDERED BY THE COMMISSION.

EEI appreciates that the Order approves Reliability Standard CIP Standard CIP-006-2 Requirement R2 and R1.6 (together establishing that the Responsible Entity will document, implement and maintain a physical security plan approved by the senior manager or delegates that will address "continuous escorted access" for personnel without authorization for unescorted access) as just, reasonable, not unduly discriminatory or preferential, and in the public interest.

⁴ 18. C.F.R. § 385.713(c)

⁵ Order No. 693, 118 FERC ¶61,218 (2007 at PP 184-187: order on reh'g, Order No. 693-A 120 FERC ¶61,053 (2007); Order No. 706, 122 FERC ¶61.040 (2008) at PP27-30; order on reh'g Order No. 706-A, 123 FERC ¶61.174 (2008).

EEI further appreciates that the Order makes clear that the use of the term “continuous” in Requirement R1.6 is analogous to the term “supervised.” See Order at P 29. EEI agrees with the Commission that the goal is for Responsible Entities to implement sound programs for “visitor control” and to reasonably demonstrate that they have maintained such programs.

The Commission directs the ERO through the Reliability Standards development process “to add a requirement on visitor control programs, including the use of visitor logs to document entry and exit, within 90 days from the date of this order.” Order at P 30. However, the order is not clear as to what the Commission is requiring in terms of the nature and extent of the programs to be developed. EEI believes that this lack of clarity, coupled with the unreasonably short period of time in which to complete the required standards development, is unreasonably vague and therefore seeks rehearing of this requirement.

If the Commission does not grant rehearing, EEI requests that the Commission clarify the parameters of such programs so that the NERC standards development process will have a clear direction for its activities in response to this directive. For example, the Commission should clarify whether it is only requesting that Registered Entities maintain visitor logs. The Commission should also clarify that a requested requirement for visitor control programs is limited to personnel without authorization for unescorted access and not for personnel with authorization for unescorted access.⁶ In other words, the Commission should clarify what it means by the term “visitor” and what the requested visitor control program should encompass.

EEI believes that given the uncertain nature of the task as well as the fact that all Responsible Entities have physical security plans, which EEI understands to include procedures for visitor control, as obligated to under CIP-006-2 Requirement R1, the requirement that the

proposed change to the standard must be completed within 90 days is unrealistically short. The Commission acknowledges that “90 days is a tight schedule compared to the typical development of Standards” and appears to assert that this timing is necessitated by “facility security,” but does not explain why this specific amount of time is appropriate, particularly when it is highly likely that a requirement on visitor controls is already a part of physical security plans. Therefore, EEI also moves for an extension of time for the NERC standards development process to develop the requested requirement on visitor control programs, as clarified by the Commission, for an additional 90 days after the Commission issues the requested clarification or as an alternative, the Commission direct NERC to develop “procedures” or ”guidelines” or “best practices” for physical security plans (including visitor control programs).

II. THE DIRECTIVE TO REMOVE A SPECIFIC SENTENCE IN RELIABILITY STANDARD CIP-008-2 CONTRAVENES ORDERS NOS. 693 AND 706.

In revising R1.6 of Reliability Standard CIP-008-2, the Standards development team included what it believed is a needed explanation of the requirement – the last sentence which states that “Testing the Cyber Security Incident response plan does not require removing a component or system from service during the test.” In the Order, the Commission directs the NERC Standards development process remove the last sentence. Order at P 38.

EEI requests that the Commission clarify its position for directing the deletion of the sentence “Testing the Cyber Security Incident response plan does not require removing a component or system from service during the test.” from CIP-008-2 R1.6. Although, EEI agrees that the sentence could be inferred by Requirement 1 and Requirement 1.6, it does not harm the requirement in any way by remaining part of the Standard. In addition, as the Commission acknowledges that the sentence “is similar to an interpretation.” Order at P 38. All

⁶ EEI notes that NIST SP 800-53A (Guide for Assessing the Security Controls in Federal Information Systems),

interpretations have to be approved through the Standards Development Process and accepted by the Commission before becoming part of the Standard.

EEI believes that the sentence does provide additional clarity of the requirements and does not harm reliability and therefore should not be removed from the Standard. In Order No. 706, the Commission agreed with the conclusion of the sentence – that “such testing need not require a Responsible Entity to remove any systems from service.” Order No. 706 at P 687. If the Commission determines that the sentence should still be deleted then we ask that the Commission clarify whether the sentence departs in any way from its statement in Order No. 706 and to provide guidance to the Standards Development Process should it determine that some additional guidance is appropriate to include in the Standard.

EEI believes that this directive to make specific changes to the requirement contravenes the Commission’s prior orders on the standards development process, as set forth in Order No. 693 and 693-A and Order No. 706, and therefore requests rehearing. In those orders, the Commission made clear that it “do[es] not wish that a direction for modification be so overly prescriptive as to preclude the consideration of viable alternatives in the ERO’s Reliability Standards development process.” See Order No. 693-A at P 40. EEI believes that in ordering the specific language changes to Requirement R1.6 it has directed an “exclusive” outcome to address its concerns, contrary to Order No. 693. See Order No. 693-A at P 40 (citing to Order No. 693 at P 185). Instead, the Commission should provide an understanding of its concerns, and direct the Reliability Standards development process to present an outcome that addresses its concerns.

Control PE-7 (Visitor Control) “permanent authorization credentials are not considered visitors.”

CONCLUSION

WHEREFORE, EEI respectfully requests that the Commission grant this Request for Rehearing or in the alternative clarify the Order as set forth above and grant the motion for an extension of time.

Respectfully submitted

/s/ James P Fama

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Dated: October 30, 2009

Certificate of Service

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding

Dated at Washington, D.C. this 30th day of October, 2009.

/s/ Barbara A. Hindin

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