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FERC Finalizes Mandatory Reliability Standard for Nuclear Plant Operators

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On October 16, 2008, the Federal Energy Regulatory Commission ("FERC") issued a final rule approving the reliability standard NUC-001-1, as proposed by the North American Energy Reliability Corporation ("NERC"). This new reliability standard requires nuclear plant operators and suppliers of back-up power and transmission and distribution services to enter into agreements for coordination. These agreements will ensure that system operating limits used in the reliability planning and operation of the bulk-power system are coordinated with nuclear licensing requirements. In issuing the final rule, FERC reviewed industry comments on the draft rule and adopted the bulk of the provisions contained in a March 20, 2008 Notice of Proposed Rulemaking ("NOPR"). FERC directed NERC to develop a modification to one requirement concerning coping times for station blackouts and restoration of off-site power. FERC also directed NERC to increase certain violation risk factors.

Overview of Rule

According to FERC, coordinating operations and planning between nuclear power plants and their transmission entities serves two purposes: safety of the nuclear power plant and reliability of the bulk-power system. The reliability standard requires nuclear plant operators to coordinate operations and planning with transmission entities by developing and formalizing procedures that reflect nuclear plant licensing requirements and transmission system operating limits. Safety of the nuclear power plant is enhanced by coordinating to minimize the need for the nuclear plant to rely on back-up power supplies. Reliability of the bulk-power system is enhanced by minimizing the need for the nuclear power plant to separate from the grid. Nuclear plant generator operators and transmission entities are required to execute interface agreements that reflect their expectations and procedures for coordinating operations to meet Nuclear Plant Licensing Requirements and Nuclear Plant Interface Requirements ("NPIRs"). FERC found, however, that the new

rule does not dictate any particular format for the interface agreement and that entities affected by the rule may rely on pre-existing arrangements so long as the parties can document that the pre-existing arrangements address all of the NPIRs, cover all required facilities, and otherwise fulfill the requirements of NUC-001-1.

Nuclear power plant operators are obligated by the reliability standard to identify all the transmission entities relied on by the nuclear power plant. If a transmission entity is not identified by the nuclear power plant operator and a problem at that transmission entity subsequently causes the reliability standard not to be met, the nuclear power plant operator potentially faces enforcement action. The nuclear power plant operator identifies the transmission entity by forwarding draft NPIRs to that entity. Once draft NPIRs are provided, the failure to enter an agreement exposes both parties to potential enforcement.

Changes from Proposed Reliability Standard

In the final rule, FERC ordered NERC to use its reliability standards development process to make one modification to the new reliability standard. Specifically, FERC ordered NERC to modify Requirement 9.3.5 to clarify references to coping times and off-site power restoration to address the concerns raised in the comments on NOPR. FERC further directed NERC to address industry concerns through its reliability standards development process and stressed that, in the mean time, there does not appear to be any reason that parties to an interface agreement should not coordinate concerning both issues as an interim measure.

Consistent with the NOPR, FERC reiterated its general view that reliability standards designed to ensure safe and reliable nuclear power plant operation and shutdown merit medium or high violation risk factors, rather than lower, due to the reliability benefits of nuclear power and the impact of separating a plant from the grid. Accordingly, FERC directed NERC to make specific modifications to the violation risk factors associated with several of the requirements in NUC-001. In each such instance, FERC acted to elevate the violation risk factors from low to medium or medium to high, increasing the potential fines for violations of the reliability standard.

Effective Date

The final rule approves NERC's request that the reliability standard take effect in areas subject to FERC jurisdiction on the first day of the first full calendar quarter falling 15 months after Commission approval, or April 1, 2010. At that time, the reliability standard will be mandatory and subject to enforcement by NERC and FERC. Violators of the reliability standard, including those failing to identify transmission entities relied on and those failing to enter into agreements by the deadline, will be subject to statutory penalties of up to $1 million per day, per violation.

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