

EDO Principal Correspondence Control

FROM: DUE: 12/02/10

EDO CONTROL: G20100555
DOC DT: 08/09/10
FINAL REPLY:

Michael Moon
North American Electric
Reliability Corporation (NERC)

TO:

Borchardt, EDO

FOR SIGNATURE OF :

** PRI **

CRC NO: 10-0395

Borchardt, EDO

DESC:

ROUTING:

NERC's Conditional Acceptance of the Completed
FERC Order No. 706-B Bright-Line Survey
(EDATS: SECY-2010-0433)

Borchardt
Weber
Virgilio
Ash
Mamish
OGC/GC
Leeds, NRR
Burns, OGC
Bagley, OEDO

DATE: 08/31/10

ASSIGNED TO:

CONTACT:

NSIR

Wiggins

SPECIAL INSTRUCTIONS OR REMARKS:

Coordinate with NRR and OGC. Commission to review
prior to dispatch. Add OCM on for concurrence.
Please make publically available in ADAMS.

Template: SECY-017

E-RIDS: SECY-01

EDATS

Electronic Document and Action Tracking System

EDATS Number: SECY-2010-0433

Source: SECY

General Information

Assigned To: NSIR

OEDO Due Date: 12/2/2010 11:00 PM

Other Assignees:

SECY Due Date: 12/6/2010 11:00 PM

Subject: NERC's Conditional Acceptance of the Completed FERC Order No. 706-B Bright-Line Survey

Description:

CC Routing: NRR; OGC

ADAMS Accession Numbers - Incoming: NONE

Response/Package: NONE

Other Information

Cross Reference Number: G20100540, LTR-10-0395

Staff Initiated: NO

Related Task:

Recurring Item: NO

File Routing: EDATS

Agency Lesson Learned: NO

OEDO Monthly Report Item: NO

Process Information

Action Type: Letter

Priority: Medium

Sensitivity: None

Signature Level: EDO

Urgency: NO

Approval Level: No Approval Required

OEDO Concurrence: YES

OCM Concurrence: YES

OCA Concurrence: NO

Special Instructions: Coordinate with NRR and OGC. Commission to review prior to dispatch. Add OCM on for concurrence. Please make incoming publicly available in ADAMS.

Document Information

Originator Name: Michael Moon

Date of Incoming: 8/9/2010

Originating Organization: NERC (N. American Electric Reliability Corp.)

Document Received by SECY Date: 8/31/2010

Addressee: R. W. Borchardt, EDO and J. McClelland, NERC

Date Response Requested by Originator: NONE

Incoming Task Received: Letter

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: Aug 31, 2010 14:44

PAPER NUMBER: LTR-10-0395 **LOGGING DATE:** 08/31/2010
ACTION OFFICE: EDO

AUTHOR: Michael Moon (NERC)
AFFILIATION: NJ
ADDRESSEE: R. William Borchardt
SUBJECT: NERC's Conditional Acceptance of the Completed FERC Order No. 706-B Bright-Line Survey

ACTION: Signature of EDO
DISTRIBUTION:

LETTER DATE: 08/09/2010
ACKNOWLEDGED: No
SPECIAL HANDLING: Commission to review response prior to dispatch.

NOTES:
FILE LOCATION: ADAMS
DATE DUE: 12/06/2010 **DATE SIGNED:**

EDO --G20100555



**NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION**

August 9, 2010

Nuclear Regulatory Commission
Attn: R. William Borchardt
Executive Director for Operations
11545 White Plains Tower #1
Rockville, MD 20852

Federal Energy Regulatory Commission
Attn: Joseph H. McClelland
Director, Office of Electric Reliability
888 First Street, NE
Washington, DC 20426

Re: NERC's Conditional Acceptance of the Completed FERC Order No. 706-B Bright-Line Survey

Dear Mr. Borchardt and Mr. McClelland:

On March 19, 2009 the Federal Energy Regulatory Commission ("FERC") issued Order No. 706-B,¹ directing the North American Electric Reliability Corporation ("NERC") to determine for each of the Nuclear Power Plants ("NPPs") in the United States the "bright-line" delineating the Systems, Structures, and Components ("SSCs") that fall within the scope of the FERC-approved NERC Critical Infrastructure Protection ("CIP") Reliability Standards and those that fall under the Nuclear Regulatory Commission's authority under Title 10 of the Code of Federal Regulations (10 C.F.R. §73.54). The initial NERC CIP Reliability Standards included exclusions for NPPs. Upon further consideration, FERC determined in Order No. 706-B that some "balance of plant" SSCs at NPPs were not subject to either NERC CIP Reliability Standards or NRC cyber security requirements, and therefore should be regulated by NERC. Since May of 2009, NERC, in coordination with the NRC, has worked to designate this mandated "bright-line" between those systems that are subject to compliance with the NRC's cyber security requirements and those that are subject to compliance with the NERC CIP Reliability Standards.

NERC and NRC staff developed a bright-line data request that included an initial, generic list of balance of plant SSCs, included in Attachment I of the data request, that were considered

¹ *Mandatory Reliability Standards for Critical Infrastructure Protection*, Order No. 706-B, 126 FERC ¶ 61,229 (2009) ("Order No. 706-B").

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applicable to the NERC CIP Reliability Standards, and a generic list of balance of plant SSCs, included in Attachment II, considered within the scope of the NRC's cyber security regulations. This bright-line data request was sent to all NPPs in the United States by June 24, 2010, with a request to complete within 30 days of receipt. NERC has now received responses to the data requests from all 104 NPPs in the United States.

In order to meet the FERC-approved timing requirements in FERC Order No. 706-B, NERC must now determine the bright-line for each NPP by October 15, 2010. After reviewing the completed data requests, NERC has concluded that all of the NPPs have declared that the balance of plant SSCs identified in Attachment I of the data request that were considered to be within the NERC CIP Reliability Standards' scope have instead been declared by the NPPs as being within the NRC's cyber security regulations' scope because they are "important to safety". The stated basis for this declaration is that the NPP balance of plant SSCs included in Attachment I of the data request have the ability to impact reactivity and are therefore "important to safety".

Based on the NPPs responses to the data request, NERC has preliminarily determined that the assignment of regulatory authority for the balance of plant SSCs from NERC CIP Reliability Standards to the NRC's 10 C.F.R. §73.54 authority is conditionally acceptable. However, in order to ensure that each NPP's balance of plant SSCs are covered under NRC jurisdiction (rather than NERC jurisdiction), NERC will require that each NPP notify the NRC that, as a licensing condition, these SSCs are "important to safety" within the meaning of 10 C.F.R. §73.54(a)(1), and include supporting documentation similar to that provided to NERC in response to the data requests. A draft of the letter to be sent to each NPP explaining this process is attached for your information.

In order for NERC to satisfactorily fulfill its obligations under the FERC Order No. 706-B requirements to ensure that there is no gap in regulatory coverage, and after the NRC receives the notifications from the NPPs, NERC requests the following:

1. An affirmation from the NRC to NERC, that the NRC has accepted the NPP's letter of commitment declaring that all of the balance of plant SSCs are "important to safety" and within scope of the requirements of 10 C.F.R. §73.54; or
2. A letter from the NRC to NERC, declaring that the NRC does not accept the NPP's letter of commitment stating that the balance of plant SSC's are important to safety and therefore within the scope of 10 C.F.R. §73.54.

If, for any reason, the NRC does not accept the NPP's letter of commitment stating that the balance of plant SSC's are important to safety and within the scope of 10 C.F.R. §73.54 (a)(1), these balance of plant SSC's will be subject to compliance with the NERC CIP Reliability Standards, subject to the FERC-approved implementation plan.²

Additionally, if after the compliance dates identified in the FERC-approved NPP implementation plan, an NPP decides to re-categorize its balance of plant SSCs as no longer important to safety,

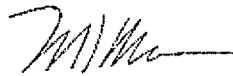
² The FERC approved NPP Implementation Plan is posted on the NERC website at: http://www.nerc.com/files/NERC_706B_Implementation_Plan.pdf

then auditable compliance with the applicable NERC CIP Reliability Standards will be required immediately upon receipt of notification of this re-classification.

For your convenience, NERC has developed a website providing additional information regarding the FERC Order No. 706-B project: <http://www.nerc.com/page.php?cid=3|23|347>.

Please direct any additional questions or concerns to Jim Hughes via email at Jim.Hughes@nerc.net or by telephone at 609.203.2288.

Respectfully,



Michael Moon
Director of Compliance Operations

Attachment: Letter from NERC to NPP Regarding Responses to bright line data request.

ATTACHMENT:

**DRAFT LETTER TO NUCLEAR POWER PLANTS REGARDING RECEIPT OF
COMPLETED NERC DATA REQUEST**



**NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION**

August 16, 2010

NERC's Response to the completed Bright-Line Survey: [NPP Name]

Contact and address here

[Email]

RE: Conditional Acceptance of the Completed 706-B Bright-Line Survey

Dear _____:

The North American Electric Reliability Corporation (NERC) is in receipt of your nuclear power plant's (NPP) completed referenced survey. After review of your completed survey by NERC, in coordination with the Nuclear Regulatory Commission (NRC), NERC has conditionally accepted your response that the balance of plant (BOP) Systems Structures and Components (SSC) listed in the survey are "important to safety" subject to the NRC's jurisdiction and, therefore, they do not fall under NERC's jurisdiction.

In order for NERC to ensure that these BOP SSCs are subject to NRC jurisdiction, NERC will require that each NPP provide the NRC a notification letter stating that, as a licensing condition, these SSCs are "important to safety" within the meaning of 10 CFR 73.54(a)(1), with supporting documentation similar to the basis provided in the referenced survey. It is recommended, however, that each NPP closely review the impact of classifying these BOP SSC's as "important to safety" consistent with NRC requirements, including: 10 CFR §50.59 (screening/evaluations), 10 CFR §73 (Physical Protection of Plants and Materials), 10 CFR Appendix A criterion 1-5 (General Design Criteria or Atomic Energy Act, as applicable), and the NPP's Final Safety Analysis Report (FSAR- as updated).

NERC is providing each NPP 30 calendar days after receipt of this letter to submit the notification letter described above to the NRC, with distribution to NERC. If a notification letter for your NPP is not received within the 30 calendar days by the NRC and NERC, the BOP systems identified in Attachment I of your completed survey will automatically be considered under NERC's jurisdiction and compliance with applicable NERC CIP Reliability Standards will be required, in accordance with the FERC-approved NPP implementation plan.¹

Once a notification letter for your NPP has been received, NERC will approve your survey response unconditionally and these systems will thereafter be considered subject to NRC's jurisdiction. However, if at any time after the compliance dates identified in the FERC-approved NPP implementation plan, the NPP decides to re-categorize these systems as no longer important to safety, then auditable compliance with the applicable NERC CIP Reliability Standards will be

¹ Available on the NERC website: http://www.nerc.com/files/NERC_706B_Implementation_Plan.pdf

required immediately upon receipt by NERC of notification from either the NPP or the NRC of this re-classification. At such time, NERC may initiate an on-site Spot Check audit within 30 calendar days in accordance with the NERC Compliance Monitoring & Enforcement Program (CMEP).²

If for any reason the NRC does not accept the NPP's notification letter of commitment stating that the BOP SSC's are important to safety and within the scope of 10 CFR 73.54(a)(1), then these BOP SSC's will immediately revert to NERC's jurisdiction and the applicable NERC CIP requirements.

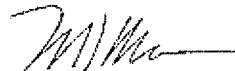
For your convenience, NERC has developed a website providing additional information regarding the 706B project: <http://www.nerc.com/page.php?cid=3|23|347>.

Any questions may be directed to Jim Hughes via email at Jim.Hughes@nerc.net or by telephone at 609.203.2288.

In addition to your normal NRC correspondence docketing process, please ensure to include Jim Hughes at:

Cc: Jim Hughes
NERC
116-390 Village Boulevard
Princeton, NJ 08540

Respectfully,



Michael Moon
Director of Compliance Operations

² NERC CMEP, available on NERC website: <http://www.nerc.com/page.php?cid=1|8|169>.