

FDC date	State	City	Airport	FDC No.	Subject
01/22/09	MQ	SAND ISLAND, MIDWAY ATOLL.	HENDERSON FLD	9/2621	NDB RWY 24, ORIG
01/22/09	MQ	SAND ISLAND, MIDWAY ATOLL.	HENDERSON FLD	9/2622	NDB RWY 6, ORIG
01/23/09	OK	TULSA	TULSA INTL	9/2663	ILS OR LOC RWY 36R, ILS RWY 36R (CAT II) AMDT 29
01/23/09	MN	MINNEAPOLIS	AIRLAKE	9/2667	VOR OR GPS RWY 12, AMDT 1A
01/23/09	MN	MINNEAPOLIS	AIRLAKE	9/2668	ILS OR LOC RWY 30, ORIG-B
01/23/09	TX	EL PASO	HORIZON	9/2701	VOR/DME OR GPS A, AMDT 4A
01/23/09	TX	EL PASO	EL PASO INTL	9/2704	RADAR-1, AMDT 13B
01/23/09	TX	EL PASO	EL PASO INTL	9/2705	ILS OR LOC RWY 22, AMDT 32A
01/23/09	TX	EL PASO	EL PASO INTL	9/2706	GPS RWY 4, ORIG-A
01/23/09	TX	EL PASO	EL PASO INTL	9/2707	RNAV (GPS) RWY 22, ORIG-A
01/23/09	NY	CANANDAIGUA	CANANDAIGUA	9/2878	RNAV (GPS) RWY 13, ORIG
02/03/09	MD	BALTIMORE	BALTIMORE-WASHINGTON INTL THURGOOD MARSHALL.	9/3453	ILS RWY 15R, AMDT 15A
01/30/09	OR	REDMOND	ROBERTS FIELD	9/3721	ILS OR LOC RWY 22, AMDT 2
02/05/09	OH	COLUMBUS	RICKENBACKER INTL	9/4049	ILS RWY 5R, ILS RWY 5R (CAT II) AMDT 2
02/04/09	CA	PALMDALE	PALMDALE REGIONAL/USAF PLANT 42.	9/4286	RNAV (GPS) RWY 25, ORIG-B

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BILLING CODE 4910-13-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM08-3-001; Order No. 716-A]

Mandatory Reliability Standard for Nuclear Plant Interface Coordination

Issued February 19, 2009.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order on rehearing.

SUMMARY: In this order, the Commission denies the New York Independent System Operator, Inc.'s request for rehearing of Order No. 716, *Mandatory Reliability Standard for Nuclear Plant Interface Coordination*. In Order No. 716, the Commission approved as mandatory and enforceable the Nuclear Plant Interface Coordination Reliability Standard proposed by the North American Electric Reliability Corporation.

DATES: *Effective Date:* This order denying rehearing of the final rule will become effective March 30, 2009.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

United States of America.
Federal Energy Regulatory Commission.

Before Commissioners: Jon Wellinoff, Acting Chairman; Suedeen G. Kelly, Marc Spitzer, and Philip D. Moeller.

Order on Rehearing

(Issued February 19, 2009.)

1. In Order No. 716, the Commission approved as mandatory and enforceable the Nuclear Plant Interface Coordination Reliability Standard proposed by the North American Electric Reliability Corporation (NERC).¹ In this order, the Commission denies the New York Independent System Operator, Inc.'s (New York ISO) request for rehearing of Order No. 716.

Background

2. On November 19, 2007, NERC, the Commission-certified Electric Reliability Organization (ERO), submitted for Commission approval the Nuclear Reliability Standard, designated NUC-001-1. NERC supplemented the

¹ *Mandatory Reliability Standard for Nuclear Plant Interface Coordination*, Order No. 716, 73 FR 63,770 (Oct. 27, 2008), 125 FERC ¶ 61,065, *addressing proposals in* Notice of Proposed Rulemaking (NOPR), 73 FR 16,586 (Mar. 28, 2008), FERC Stats. and Regs. ¶ 32,629 (2008).

filing on December 11, 2007 to propose four related NERC glossary terms.

3. In Order No. 716, the Commission approved the Nuclear Reliability Standard and related definitions. In doing so, the Commission approved the applicability provisions provided in Requirements R1 and R2, as clarified in NERC's May 13, 2008 comments.² The Nuclear Reliability Standard applies to "transmission entities," defined as "all entities that are responsible for providing services related to Nuclear Plant Interface Requirements (NPIRs)"³ and lists 11 types of functional entities that could provide services related to NPIRs.⁴ In Order No. 716, the Commission accepted NERC's clarification that the Nuclear Reliability Standard will apply to an entity that provides services relating to a nuclear plant generator operator's nuclear plant licensing requirements on the later of one of two events: on the effective date, for entities in NERC's compliance registry that already received notice in the form of a proposed NPIR, or on the

² *Id.* P 68.

³ The NERC glossary defines NPIRs as "The requirements, based on [nuclear plant licensing requirements] and Bulk Electric System requirements, that have been mutually agreed to by the Nuclear Plant Generator Operator and the applicable Transmission Entities."

⁴ The Nuclear Reliability Standard list of the applicable functional entities consists of transmission operators, transmission owners, transmission planners, transmission service providers, balancing authorities, reliability coordinators, planning authorities, distribution providers, load-serving entities, generator owners and generator operators.

date that a proposed NPIR is provided by the nuclear plant generator operator.⁵

4. In its Nuclear Reliability Standard Notice of Proposed Rulemaking (NOPR), the Commission proposed to accept the applicability provisions with the understanding that the Reliability Standard would be effective against a transmission entity when it executed an interface agreement with the nuclear plant generator operator.⁶ In its comments, NERC clarified its initial description of the applicability provisions and made clear that NUC-001-1 applied to transmission entities following receipt of the notification from the nuclear plant generator operator.⁷ Based on NERC's and other commenters' explanations, the Commission accepted the Nuclear Reliability Standard with the understanding that it would apply to transmission entities that provide services relating to nuclear plant licensing requirements on the implementation date, i.e., the NERC effective date for the Reliability Standard. On that date, the Nuclear Reliability Standard goes into effect immediately for transmission entities that have received notification from the nuclear plant generator, so long as the entity is registered on the NERC compliance registry.

Request for Rehearing

5. On November 17, 2008, New York ISO filed a request for rehearing of Order No. 716. New York ISO requests rehearing of the Commission's determination that the Nuclear Reliability Standard applies to a transmission entity upon receipt of notification by a nuclear plant generator operator. New York ISO argues that this method for determining applicability violates due process because it (1) allows the nuclear plant generator operator to determine which entities are subject to the Reliability Standard, and (2) does not provide transmission entities that receive notice from a nuclear plant generator operator any "clear recourse if they disagree with the nuclear plant generator operator's determination that they are responsible for addressing a specific NPIR."⁸ New York ISO states the Commission's ruling in Order No. 716 would allow an entity to become subject to the Nuclear Reliability Standard outside the NERC Rules of Procedure registration process, and place such an entity in "an untenable position" if it disagrees with

the nuclear plant generator operator that it is responsible for providing services related to a specific NPIR. New York ISO, therefore, requests that the Commission grant rehearing and hold that the Nuclear Reliability Standard is not applicable to a prospective transmission entity upon being approached by a nuclear plant generator operator with a NPIR until the entity consents to providing services, or until it has been found responsible for providing services by NERC or a Regional Entity, through a dispute resolution process.

6. New York ISO contends that applying the Reliability Standard to an entity once it has been approached by a nuclear plant generator operator with a proposed NPIR is at odds with the Commission's decision in Order No. 693, which approved the NERC compliance registry process to determine those users, owners and operators of the Bulk-Power System that must comply with the Reliability Standards.⁹ According to New York ISO, this approach effectively gives a nuclear plant generator operator the authority to determine the applicability of the Nuclear Reliability Standard (rather than NERC or a Regional Entity) without providing any clear avenue of appeal (as would be available if the compliance registry process were used). New York ISO claims that this is an unexplained change in the Commission's approach to applicability.

7. New York ISO would find that an entity is responsible for providing services, and subject to the Nuclear Reliability Standard, if it consents to provide services once it has been approached by a nuclear plant generator operator. Alternatively, NERC or a Regional Entity could find the entity responsible for providing services. New York ISO proposes that, to minimize

⁹ *Id.* at 10, citing *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 97 (2007): Each individual Reliability Standard will then identify the set of users, owners and operators of the Bulk-Power System that must comply with that standard. While the Commission may take prospective action against an entity that was not previously identified as a user, owner or operator through the NERC registration process once it has been added to the registry, the Commission will not assess penalties against an entity that has not previously been put on notice, through the NERC registration process, that it must comply with particular Reliability Standards. Under this process, if there is an entity that is not registered and NERC later discovers that the entity should have been subject to the Reliability Standards, NERC has the ability to add the entity, and possibly other entities of a similar class, to the registration list and to direct corrective action by that entity on a going-forward basis. The Commission believes that this should prevent an entity from being subject to a penalty for violating a Reliability Standard without prior notice that it must comply with that Reliability Standard.

delays, an entity could be found to constructively consent if it fails to timely invoke dispute resolution procedures.

8. In order to resolve disputes over whether an entity approached by a nuclear plant generator operator is responsible for providing services relating to a NPIR, New York ISO proposes a process to govern the identification of transmission entities and the implementation of interface agreements. New York ISO states that the lack of a clear dispute resolution process is unjust and unreasonable, given the Commission's determination that "an entity is subject to NUC-001-1 at the time that it is approached by a nuclear plant generator operator about providing NPIR-related services." New York ISO states that the Commission should implement a dispute resolution process that adopts the existing registration dispute procedures, found in section 501 of NERC's Rules of Procedure, which contain specific timelines for filing and resolution of the dispute.

9. In addition, New York ISO states that in Order No. 716, the Commission should have clarified that an entity that becomes subject to the Nuclear Reliability Standard would have a reasonable time (such as 90 days) to implement an interface agreement with a nuclear plant generator operator after it either agrees that it is responsible for an NPIR or has been held responsible for providing services to meet an NPIR by NERC or a Regional Entity.

Discussion

10. The Commission denies New York ISO's request for rehearing. NERC previously clarified the applicability provisions in response to the NOPR request for comment on whether the Nuclear Reliability Standard is enforceable against a transmission entity upon execution of an interface agreement or at some earlier time.¹⁰ Several of the commenters supported NERC's clarified proposal, which was ultimately approved in Order No. 716, while others, including the ISO/RTO Council, expressed concerns that are similar to those raised in New York ISO's request for rehearing, and which the Commission rejected. Nothing in New York ISO's request for rehearing requires the Commission to revisit that determination.

11. Order No. 716 approved NERC's proposal to make the Nuclear Reliability

¹⁰ See Order No. 716, 125 FERC ¶ 61,065 at P 34, 59. The Reliability Standards are enforceable against a particular entity once it is included on the compliance registry. See *id.* P 42-44.

⁵ Order No. 716, 125 FERC ¶ 61,065 at P 68.

⁶ NOPR at P 29.

⁷ Order No. 716, 125 FERC ¶ 61,065 at P 60.

⁸ New York ISO request for rehearing at 4, 13.

Standard applicable to transmission entities once they are notified by a nuclear plant generator operator that they are responsible for providing services needed to support nuclear plant licensing requirements as a result of the generator operator's delivery of a proposed NPIR. The Commission rejected arguments that use of the term *transmission entities* is inconsistent with the NERC registry process.¹¹ Furthermore, nothing in Order No. 716 supports New York ISO's suggestion that an entity becomes subject to the Nuclear Reliability Standard outside the NERC registration process. As with all other Reliability Standards, the NERC registry process determines whether an entity is a user, owner or operator of the Bulk-Power System, and, therefore, is required to comply with the Reliability Standards. The question whether an entity must comply with a particular Reliability Standard—the relevant issue in this proceeding—is resolved based on the provisions of the Reliability Standard and the factual circumstances surrounding a given user, owner or operator of the Bulk-Power System.¹²

12. Contrary to New York ISO's position, the issues New York ISO seeks to raise are outside the scope of the registry process established in the NERC Rules of Procedure. As discussed in the NOPR, NERC's registry process establishes procedures to identify and register owners, operators and users of the Bulk-Power System, including organizations performing functions listed in the definition of transmission entities, generators that are material to the Reliable Operation of the Bulk-Power System, and organizations that should be subject to the Reliability Standards.¹³ NERC's decision to register an entity, because it meets one or more of the functions established in the registry criteria, establishes that the entity must comply with the universe of Reliability Standards that are applicable to the functional classes in which the entity is registered. However, NERC's registration does not determine whether an entity must comply with each and every Reliability Standard applicable to the functional class. Whether an entity must comply with a particular Reliability Standard, such as NUC-001-1, is determined based on the

language of the Reliability Standard. For the Nuclear Reliability Standard, the primary factual issues to be addressed concern whether an entity is responsible for providing services related to NPIRs.¹⁴ Order No. 716 explained:

NERC and others have made clear that NUC-001-1 was intended to apply to transmission entities following receipt of notification from the nuclear plant generator operator, rather than after execution of the interface agreement. The applicability of NUC-001-1 is determined by the function performed by the entity. * * * This is consistent with other Reliability Standards where an entity is subject to a Reliability Standard based on the factual determination of whether it operates certain facilities or provides a certain service, not based on the consent of the entity.¹⁵

13. Industry comments on the NOPR indicate that the nuclear plant generator operator is in the best position to interpret nuclear plant licensing requirements and system needs affecting operations, based on the Nuclear Regulatory Commission requirements to perform grid stability studies, documented in plant licensing materials.¹⁶ Industry representatives concluded that NUC-001-1 should be enforceable against transmission service providers whose commitments to provide services form part of the basis for the original plant license. They also concluded that nuclear plant licensees and transmission service providers are already obliged to provide assurances with respect to the capability and stability of offsite power sources for the nuclear plant. Thus, we find appropriate NERC's reliance on nuclear plant generator operators to identify the transmission entities that are responsible for providing services relating to NPIRs.

14. The Nuclear Reliability Standard applies to transmission entities that are registered with NERC and that are responsible for providing services related to NPIRs consistent with the language of NUC-001-1. Thus, contrary to New York ISO's assertion, this process is consistent with the NERC registration process, which provides for adequate review of NERC's determinations. An entity that is subject to registration for providing services to a nuclear power plant may appeal the registration determination.¹⁷ Entities

who are unsure whether NUC-001-1 applies to a given set of circumstances may seek clarification through a request for an interpretation from NERC.¹⁸ Finally, an entity that believes it has been unfairly found to have violated NUC-001-1 may appeal NERC's determination to this Commission.¹⁹

15. We do not find that the identification process established in the Nuclear Reliability Standard improperly delegates authority to nuclear plant generator operators. Under NUC-001-1, nuclear plant generator operators must identify transmission entities by providing proposed NPIRs to transmission entities. Such identification is no different than the provision of any factual information under the Reliability Standards and represents no delegation of authority. Nuclear plant generator operators have no discretion to select transmission entities, and are subject to penalties if they fail to identify an entity providing services covered by NUC-001-1. As documented in Order No. 716, the entities providing services to support nuclear plant licensing requirements are known to the nuclear plant generator operators and such entities are familiar with their role in providing services, as a result of past efforts to negotiate services needed to meet nuclear plant licensing requirements.²⁰ On rehearing, we affirm our finding that no additional consent is necessary for a transmission entity to become subject to the Nuclear Reliability Standard.

16. In its request for rehearing, New York ISO objects to what it characterizes as the Commission's determination that a transmission entity may become subject to the Nuclear Reliability Standard, and any resulting enforcement action including penalties, upon being "approached" by a nuclear plant generator operator. We find above that speculation as to whether an entity may be in violation of the Nuclear Reliability Standard if it fails to execute an interface agreement under such circumstances to be beyond the scope of this proceeding. However, we emphasize, as discussed above, that the record in this proceeding demonstrated that potential transmission entities should be familiar with their roles as providing services to support nuclear

¹¹ *Id.* P 21.

¹² *Id.* P 68 ("This [approach] is consistent with other Reliability Standards where an entity is subject to a Reliability Standard based on the factual determination of whether it operates certain facilities or provides a certain service, not based on the consent of the entity.").

¹³ NOPR at P 24 n. 21 (citing Order No. 693 at P 92-96; NERC Statement of Compliance Registry Criteria).

¹⁴ NUC-001-1, section 4.2 (Applicability); *see also* Order No. 716, 125 FERC ¶ 61,065 at P 21 ("While the Commission prefers that Reliability Standards apply to all entities within a functional category defined in the Registry Criteria, it has approved appropriate limitations incorporated into an applicability section.").

¹⁵ Order No. 716, 125 FERC ¶ 61,065 at P 68.

¹⁶ *Id.* P 65-66.

¹⁷ NERC Rules of Procedure, section 504.

¹⁸ Any person that is "directly and materially affected" by Bulk-Power System reliability may request an interpretation of a Reliability Standard. NERC Rules of Procedure, Appendix 3A, Reliability Standards Development Procedure (2008).

¹⁹ NERC Rules of Procedure, sections 402(6) and 409-11 (establishing appeals process).

²⁰ Order No. 716, 125 FERC ¶ 61,065 at P 28, 65.

licensing requirements.²¹ The Final Rule reflected the Commission's intention that the approved approach to applicability would resolve concerns that entities supplying services related to nuclear plant licensing requirements would balk at executing an interface agreement, if execution made them subject to NUC-001-1.²² Furthermore, given the appeal rights provided for in the NERC enforcement process, we do not believe that an entity that disagrees with its role in providing such services will be subject to enforcement without recourse. The Commission declines at the rulemaking phase to address issues concerning individual entities that may be approached to provide services relating to nuclear plant licensing requirements. Such issues are better addressed in a proceeding providing a record detailing the circumstances of a potential transmission entity's registration.

17. We also reject New York ISO's request for an allotted period of time to implement an interface agreement. Order No. 716 stated, "Given that the parties have already been able to agree to the services needed to meet NRC licensing requirements, the same parties should be able to successfully identify the services provided, confirm that they address NRC criteria for off-site power and system limits, and document such services in an auditable format consistent with the NUC-001-1 Requirements."²³ Thus, it should not be a problem for these parties to write up existing arrangements in the format required by the Nuclear Reliability Standard. In addition, in cases where there is no immediate risk to grid reliability, the Commission approved NERC's proposal that it may order mediation as a remedial measure.²⁴ For these reasons, we find that it is unnecessary to incorporate additional time for parties to negotiate and implement an interface agreement.²⁵

18. In addition, the Commission in Order No. 716 rejected calls for formal incorporation of dispute resolution procedures to resolve registration and contract negotiation disputes and, instead, left the use of such procedures to NERC's discretion as a mitigation

option in the event nuclear plant generator operators and transmission entities fail to agree.²⁶ Given our affirmation of the determination that no additional consent is necessary to become subject to the Nuclear Reliability Standard, we likewise affirm our determination that additional dispute resolution procedures to address a failure to consent are not necessary.

The Commission orders:

New York ISO's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Kelliher is not participating.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-3964 Filed 2-25-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS WAYNE E. MEYER (DDG 108) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective February 26, 2009 and is applicable beginning February 11, 2009.

FOR FURTHER INFORMATION CONTACT: Commander M. Robb Hyde, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374-5066, telephone number: 202-685-5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C.

1605, the Department of the Navy amends 32 CFR Part 706.

This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS WAYNE E. MEYER (DDG 108) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights; Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights; and Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follow:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table Four, Paragraph 15 by adding, in numerical order, the

²¹ *Id.* P 82.

²² *Id.* P 69.

²³ *Id.* P 82.

²⁴ See discussion at *id.* P 75-80.

²⁵ The Commission declines to address in this order the proper resolution of a dispute concerning an entity, not currently responsible for providing services relating to a generator's nuclear plant licensing requirements, that is approached by a nuclear plant generator operator seeking to procure such services. Such issues are better resolved based on a case-by-case review of a complete factual record, detailing any reliability concerns.

²⁶ Order No. 716, 125 FERC ¶ 61,065 at P 75.