

**FERC Provides for Abbreviated Notice of Penalty Filings for  
Less Significant Violations of Reliability Standards**

**October 27, 2009**

In an attempt to speed the processing of alleged violations of mandatory Reliability Standards, on October 26 the Federal Energy Regulatory Commission (FERC) issued a new Guidance Order regarding Notices of Penalty filed for FERC approval by the North American Electric Reliability Corporation (NERC). In this Guidance Order, FERC approved NERC's proposal to create an abbreviated Notice of Penalty format for certain classes of minor violations.

FERC issued this new Guidance Order in response to concerns from NERC and the industry that there is a significant backlog of Notices of Penalty that have not been filed with FERC due to problems assembling the supporting material requested by FERC. FERC issued its first Guidance Order on this topic in July 2008, setting out the Notice of Penalty requirements that must be satisfied before FERC will approve them and they can take effect. Under the requirements detailed in the first Guidance Order, NERC must provide detailed information and extensive documentation to enable FERC to verify the comparability and consistency of NERC's penalty setting, assess the nature of the violations, and avoid the need for FERC to review the Notices of Penalty on its own motion. As a result of NERC's efforts to conform to this guidance, a significant backlog has developed of alleged violations that have not yet been filed with FERC. To address this concern, NERC proposed the development of simplified compliance and enforcement processes, including pro forma settlements, to address low-consequence violations.

In this new Guidance Order, FERC agreed that the backlog of violations creates problems of transparency and timeliness in the enforcement process, and approved the development of a simplified approach to filing Notices of Penalty for certain classes of Reliability Standard violations. While reaffirming that a Notice of Penalty must contain enough information to permit FERC to understand the nature of the violations, FERC noted that a Notice of Penalty "need not include more information than necessary to support the rationale for the penalty, given the nature of the violations at issue."

FERC stated that abbreviated Notice of Penalty filings could be appropriate in three circumstances:

1. The Registered Entity was performing the required task, but did not maintain the required documentation
2. The Regional Entity has proposed a zero-dollar penalty

3. The Regional Entity has entered a settlement agreement to resolve allegations of violations that either did not pose a significant reliability risk or have been fully addressed by mitigation plans and the Regional Entity has verified the completion of the mitigation

FERC did not provide detail on the format such abbreviated Notices of Penalty should take, but noted that NERC should work with the Regional Entities and industry stakeholders to develop any such pro forma Notices of Penalty.

If you would like more information on any of the issues discussed in the LawFlash, please contact any of the following Morgan Lewis attorneys:

**Washington, D.C.**

John D. McGrane	202.739.5621	<a href="mailto:jmcgrane@morganlewis.com">jmcgrane@morganlewis.com</a>
Stephen M. Spina	202.739.5958	<a href="mailto:sspina@morganlewis.com">sspina@morganlewis.com</a>
J. Daniel Skees	202.739.5834	<a href="mailto:dskees@morganlewis.com">dskees@morganlewis.com</a>

**About Morgan, Lewis & Bockius LLP**

With 22 offices in the United States, Europe, and Asia, Morgan Lewis provides comprehensive transactional, litigation, labor and employment, and intellectual property legal services to clients of all sizes—from global Fortune 100 companies to just-conceived startups—across all major industries. Our international team of attorneys, patent agents, employee benefits advisors, regulatory scientists, and other specialists—more than 3,000 professionals total—serves clients from locations in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, Minneapolis, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, and Washington, D.C. For more information about Morgan Lewis or its practices, please visit us online at [www.morganlewis.com](http://www.morganlewis.com).

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered Attorney Advertising in some states.  
Please note that the prior results discussed in the material do not guarantee similar outcomes.

© 2009 Morgan, Lewis & Bockius LLP. All Rights Reserved.