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Commission Upholds Central Aspects of Its Policy Regarding Violation Severity Levels for Reliability Standards

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On June 24, 2009, the Federal Energy Regulatory Commission (Commission) upheld central aspects of its prior decisions on Violation Severity Levels (VSLs) proposed by the North American Electric Reliability Corporation (NERC).[1] In acting to approve two compliance filings from NERC addressing VSL issues, the Commission turned back challenges to its current policy regarding the development of VSLs, including the treatment of VSLs for subrequirements that are merely conditions for meeting the actual core requirement and the double-jeopardy concerns presented by employing separate VSLs for the requirements and subrequirements of a Reliability Standard.

The first compliance filing addressed in the order dealt with the "binary" requirements and subrequirements found in the original 83 Reliability Standards approved by the Commission. Unlike most requirements, which have VSLs addressing increasing degrees of noncompliance, binary requirements are those requirements where an entity is either fully compliant or completely out of compliance. NERC's compliance filing revised the VSLs for these binary requirements and subrequirements so that all violations of these binary requirements would be assessed as "severe." In the second compliance filing addressed in the order, NERC submitted modified VSLs for those VSLs to which the Commission had previously granted rehearing. The Commission approved both of these compliance filings.

In approving these filings, the Commission addressed some of the central issues involving the assignment of VSLs to a Reliability Standard. In response to comments that separate VSLs for subrequirements are inappropriate when those subrequirements are the conditions for complying with the core requirement itself, the Commission pointed to its decision in Order No. 722, in which the Commission urged NERC to develop a new approach for assigning VSLs that would address such issues. While the Commission acknowledged the concerns regarding the current approach, it held that it would be premature to change the current policy.

The Commission also addressed concerns regarding the possible assessment of duplicative financial penalties for violations of both a core requirement and an associated binary subrequirement. The Commission explained that its current policy regarding the possibility of this sort of "double jeopardy" is that such concerns should be addressed on a case-by-case basis in the context of a specific compliance

1. *North American Electric Reliability Corp.*, 127 FERC ¶ 61,293 (2009).

proceeding.

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