

FERC Provides Guidance on Penalties for Reliability Violations Resulting in Load Loss

March 22, 2011

On March 17, 2011, the Federal Energy Regulatory Commission (Commission) issued an order affirming a notice of penalty filed by the North American Electric Reliability Corporation (NERC) regarding an alleged violation of Reliability Standard FAC-003-1 Requirement R2 (Annual Plan for Vegetation Management) by the Turlock Irrigation District (Turlock). Turlock's alleged violation of FAC-003-1 Requirement R2 resulted in the loss of firm load due to tree contact with a 230 kV transmission line, combined with a human error related to a communication switch. The Commission affirmed the \$80,000 penalty agreed upon by Turlock and the Western Electricity Coordinating Council (WECC), and provided guidance on how future penalties should be assessed for reliability violations that incur a loss of load.

First, the Commission explained that for future notices of penalty, NERC should file a complete and accurate record, which the Commission said was lacking in the Turlock investigation, as the communication switch error was found through a Commission data request, after the notice of penalty was filed. The Commission reiterated that it maintains de novo authority to determine if a penalty is adequately supported by the record.

Second, the Commission explained the factors that NERC and the Regional Entities should utilize in assessing future penalties when a reliability violation involves a loss of load. "If . . . load shedding *results from* a violation of a Reliability Standard, the penalty for the violation should take into account the lost load because the violation created a more serious risk or result than a similar violation that did not necessitate load shedding." Further, penalty assessments should account for the consequential harm resulting from the loss of load, such as the quantity of load lost. The Commission emphasized that load shedding should *not* be penalized in situations where it is appropriate and in conformance with reliability standards, and recognized the importance that load shedding can play in protecting system reliability.

In addition, the Commission addressed several potential mitigating factors involved in penalty assessment. For example, although the Commission affirmed the penalty assessed against Turlock, the Commission disagreed with the contention that Turlock had self-reported the violation, finding instead that Turlock had simply fulfilled its requirements under EOP-004-1 Requirement R3 by informing WECC of the load loss. Thus, for future penalty assessments, FERC instructed NERC and the Regional Entities not to identify required reports as a self-reported mitigating factor.

The Commission also provided guidance on other penalty assessment factors. The Commission will

consider, as a mitigating factor, enhanced efforts that go beyond what is required to attain compliance. Also, in evaluating whether the size of an entity should affect the size of the penalty, the Commission will not consider the size of the transmission system, as measured in number of miles, but instead will consider organizational size, number of employees, and financial status.

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

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