

## **FERC Clarifies Guidance on NERC's Obligation to Respond to Commission Directives on Reliability Standard Development**

**September 23, 2010**

During last week's Open Meeting, the Federal Energy Regulatory Commission (FERC or Commission) firmly rebuffed challenges to its prior order directing the North American Electric Reliability Corporation (NERC) to revise its Rules of Procedure. The prior order was made to ensure that NERC responds to the Commission's directives to make changes to Reliability Standards, as FERC holds that it is not sufficient for NERC to merely consider Commission-directed revisions in the Reliability Standards development process. While reiterating its order, however, the Commission softened its earlier language regarding NERC's obligation to comply with FERC directives, explaining that NERC remains free to develop alternative approaches to address the issues underlying such directives. This order confirms that, while the Commission cannot "dictate the specific content" of a Reliability Standard, NERC is obligated to respond to such directives by developing appropriate changes.

The Commission has certified NERC as the Electric Reliability Organization (ERO) under Section 215 of the Federal Power Act. As the ERO, NERC is the sole entity that may draft Reliability Standards that are enforceable by the Commission, NERC, and the Regional Entities against all users, owners, and operators of the bulk-power system. However, this authority to draft Reliability Standards is subject to Commission oversight, and all Reliability Standards must be submitted to and approved by FERC before they can be enforced. As part of that oversight function, the Commission has the authority to direct the ERO to develop revisions to a Reliability Standard.

Fearing that some NERC stakeholders had been using the NERC Reliability Standards development process to thwart Commission directives, the Commission had ordered NERC to revise its Rules of Procedure. In response, a number of parties requested rehearing, asserting that the Commission was overstepping its statutory authority and attempting to dictate the technical content of Reliability Standards.

In denying those requests for rehearing, the Commission reiterated its prior conclusion regarding NERC's obligation to respond to FERC directives to modify Reliability Standards. The Commission explained that while NERC "is not required to develop a modification or new Reliability Standard that rigidly adheres to the technical approach specified in a final Commission directive, [NERC] must develop and submit to the Commission some proposal that affirmatively responds to the concern or goal underlying the directive and an adequate technical analysis if it decides to take a different approach."

Although procedurally the Commission denied rehearing of its earlier order, which directed NERC to revise its Rules of Procedure so that NERC appropriately responds to FERC directives, this order

reiterates the industry’s understanding of the distinct roles that both the Commission and NERC have in the context of Reliability Standards development—NERC develops Reliability Standards, while the Commission approves them or directs revisions. The Commission explains that NERC is not bound by the specific terms of such a directive and may instead develop a modification to a Reliability Standard that addresses the Commission’s concerns in an alternative manner.

Furthermore, the Commission also emphasized the crucial role that NERC, as the ERO, performs in the context of Reliability Standards development, stating that only NERC can change a Reliability Standard and that the Commission cannot, even through formal directives, “prescribe the text or substance” of a particular Reliability Standard.

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

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