

FERC Initiates First Review of a NERC Notice of Penalty

March 3, 2010

On February 26, the Federal Energy Regulatory Commission (FERC or the Commission) for the first time initiated a review of a Notice of Penalty filed by the North American Electric Reliability Corporation (NERC) regarding the settlement of an alleged violation of mandatory Reliability Standards. According to FERC, the \$80,000 proposed penalty amount in the Notice of Penalty may be insufficient under the circumstances surrounding the violations at issue, because the vegetation-related outage led to a combined loss of 270 MW of firm load in the systems of two Registered Entities: Turlock Irrigation District (Turlock), the subject of the Notice of Penalty, and Modesto Irrigation District. In order to determine whether the penalty is appropriate, and to determine if there are any other violations that may have contributed to the loss of firm load, FERC stayed the effectiveness of the settlement and established a deadline of March 18, 2010 for answers, interventions, and comments on these issues.

The settlement at issue between Turlock and the Western Electricity Coordinating Council (WECC), the Regional Entity with delegated authority from NERC to enforce compliance with mandatory Reliability Standards in the Western Interconnection, was intended to settle allegations that Turlock violated a number of Reliability Standards, including FAC-003-1 Requirement R2, which requires Transmission Owners to develop and implement an annual plan for vegetation management for transmission lines. According to the Notice of Penalty, Turlock did not follow its vegetation management program, which resulted in an outage of Turlock's Westley-Walnut 230 kV transmission line on August 29, 2007, when an almond tree grew too close to the line, resulting in flashover and setting in motion a series of events that led to firm load shedding involving a loss of power for 40,000 customers, a total of 270 MW of firm load.

Under FERC's regulations, such settlements must be filed with FERC before they can take effect, and if FERC does not take action within 30 days of the filing, the Notice of Penalty and corresponding settlement will take effect as a matter of law. However, during that time period, which may be extended by the Commission, the Commission may decide to review the Notice of Penalty and hold its effectiveness in abeyance until it decides whether to accept or reject the filing.

In the case of this Notice of Penalty, FERC stated, the \$80,000 penalty agreed to by Turlock and WECC may be insufficient for five reasons. First, FERC explained that the alleged violations had resulted in a loss of firm load, which increases the severity of the underlying violations. Second, FERC noted that this was the only Notice of Penalty for a vegetation management violation where firm load shedding had occurred, but the total penalty in the settlement was far less than the fines assessed for other vegetation

management violations that had not resulted in a loss of firm load. Third, FERC indicated that Turlock may have erroneously received mitigating credit for self-reporting the incident because other Reliability Standard Requirements obligated Turlock to report the disturbance in any case. Fourth, FERC noted that it believed the Notice of Penalty was missing a description of the system conditions on the day of the fault that could provide essential detail on the severity of the violation. Fifth, FERC explained that the mitigation proposed by Turlock was far less rigorous than FERC would have expected given that personnel had twice failed to identify the vegetation that caused the outage. Given these failures, FERC stated that proper mitigating efforts would have included at least a review by Turlock of its procedures for inspecting vegetation clearances to avoid such oversights in the future, but that Turlock had not committed to such actions.

FERC also expressed concern regarding whether other Reliability Standard violations may have taken place that contributed to the loss of firm load, and therefore should be considered aggravating factors in establishing an appropriate sanction. In particular, FERC noted that new information from NERC indicated that the loss of load may have been due in part to the disabling of the primary protection scheme on the transmission line in question by Turlock personnel and the mis-coordination by a Modesto Irrigation District relay scheme.

Interested parties have until March 18, 2010, to file interventions, comments, and answers related to whether the proposed penalty amount is appropriate given the consideration described above and whether other violations may have contributed to the loss of firm load following the vegetation-related transmission line outage.

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

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