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FERC Reviews NERC Penalty

In an order issued on Friday, the Federal Energy Regulatory Commission (FERC) initiated review of a settlement filed by the North American Electric Reliability Corporation (NERC) concerning a violation by Turlock Irrigation District (Turlock) of the NERC Reliability Standards on vegetation management.

The settlement required Turlock to pay a penalty of \$80,000 for the violation. The violation resulted from a vegetation-caused outage in August 2007, which resulted in the loss of 270 MW of firm load in Turlock's and a neighboring service territory (about 40,000 customers). Turlock reported the violation to the Western Electricity Coordinating Council (WECC) (the NERC Regional Entity with front-line enforcement responsibility for Turlock's region). Following an investigation, WECC concluded that Turlock violated Reliability Standard FAC-003 because it failed to follow its vegetation management plan, resulting in the outage. Despite the high impact on the reliability of the Bulk Power System, NERC and WECC credited Turlock with self-reporting the violation, promptly mitigating it, and having an internal compliance program; Turlock's small size, non-profit status, cooperation and history of compliance also were noted.

In its order, FERC reviewed the factors that it considers in evaluating whether to further review a proposed penalty for violations of the Reliability Standards – in particular the seriousness of the violation (including the violation risk factor and violation severity level) and the potential and actual impact on reliability. FERC highlighted the following factors that warranted further review of the proposed Turlock penalty:

- The actual loss of firm load;
- The seriousness of violations related to vegetation management;
- The higher levels of penalties for vegetation management violations in prior cases (which did not involve loss of firm load);
- Whether Turlock should have been credited for self-reporting the violation, when the loss of firm load here was a reportable disturbance;
- The failure of the Notice of Penalty to address system conditions on the day of the violation, which could indicate that the consequences of the violation were more severe than presented in the Notice of Penalty filing; and
- Whether Turlock's mitigation and remedial efforts were as "rigorous" as warranted by the violation.

Based on these factors, FERC concluded that the penalty may be "insufficient." FERC also noted that other factors may have contributed to the loss of firm load and that other Reliability Standards may have been violated. For these reasons, FERC initiated a review of the proposed settlement to determine "whether violations of other reliability standards or facts not disclosed in the Notice [of Penalty filing] may have contributed to the loss of firm load on August 29, 2007, and whether the proposed penalty amount should be reconsidered based on the considerations discussed in this order." Comments on these issues are due within 20 days of the date of the order.

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This order reflects the heightened scrutiny that FERC is giving to Notice of Penalty filings by NERC, and is consistent with the priority that FERC has placed on reliability matters. In particular, vegetation management violations and loss of load remain at the top of FERC's priority list and may warrant the highest penalties. The order also emphasizes the need for registered entities to follow their vegetation management and other plans and procedures adopted to comply with the NERC Reliability Standards, and to periodically review and evaluate those plans and procedures – particularly after a reliability event occurs.



If you have any questions regarding this alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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