

126 FERC ¶ 61,014  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

North American Electric Reliability Corporation

Docket Nos. NP09-1-000  
NP09-2-000

ORDER ACCEPTING NOTICES OF PENALTY

(Issued January 9, 2009)

1. On December 12, 2008, the North American Electric Reliability Corporation (NERC) filed two Notices of Penalty pursuant to section 215(e) of the Federal Power Act (FPA).<sup>1</sup> Each Notice of Penalty contains a settlement agreement between SERC Reliability Corporation (SERC), a Regional Entity, and a registered entity subject to mandatory Reliability Standards. Based on our review of the two Notices of Penalty, we have decided not to engage in further review by instituting formal proceedings on our own motion.<sup>2</sup> As discussed below, the two filings are substantially consistent with the order issued on July 3, 2008, in which the Commission provided guidance regarding the content of a Notice of Penalty filing.<sup>3</sup>

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<sup>1</sup> 16 U.S.C. § 824o(e) (2006).

<sup>2</sup> If the subject of one of the Notices of Penalty files an application for review of the penalty before the expiration of the 30-day period for making such a filing, the Commission would review the penalty, and the penalty would not be affirmed by operation of law at the expiration of the 30-day period. *See* 18 C.F.R. § 39.7(e)(1) (2008).

<sup>3</sup> *Guidance on Filing Reliability Notices of Penalty*, 124 FERC ¶ 61,015 (2008) (July 3 Guidance Order). We do not intend to issue orders for each Notice of Penalty filed for which we have determined that no further review is necessary. Given that these are the first Notices of Penalty filed since the July 3 Guidance Order, we are issuing this Order to indicate that NERC's filings substantially comply with our expectations set forth in the July 3 Guidance Order.

## I. Background

2. Section 215(e) of the FPA authorizes the Commission-certified Electric Reliability Organization (ERO), as well as the Commission, to assess penalties for the violation of mandatory Reliability Standards. Pursuant to the statute, the ERO may delegate its enforcement authority to a Regional Entity. Pursuant to section 215(e) of the FPA and section 39.7(c) of our regulations,<sup>4</sup> NERC, as the ERO, must file a Notice of Penalty with the Commission before a penalty assessment for the violation of a Reliability Standard takes effect. Pursuant to FPA section 215(e)(2) and section 39.7(e)(1) of our regulations, each penalty determination is subject to review by the Commission, on its own motion or by an application for review by the subject of a penalty, within 30 days after the date NERC files the applicable Notice of Penalty.<sup>5</sup> In the absence of the filing of an application for review of a penalty or motion or other action by the Commission, each penalty filed by NERC shall be affirmed by operation of law upon the expiration of the applicable thirty-day period.

3. In June 2008, NERC submitted the first “batch” of thirty-seven Notices of Penalty. On July 3, 2008, the Commission issued an order stating that it would not engage in further review of the thirty-seven Notices of Penalty. In addition, the Commission provided guidance to NERC, as the ERO, regarding the content of future Notice of Penalty filings.<sup>6</sup> The purpose of the guidance was to minimize the number of occasions when the Commission would need to review Notices of Penalty on its own motion, to ensure the accuracy of the record and to set forth the Commission’s expectations for future penalty assessments by Regional Entities and NERC.<sup>7</sup>

4. Specifically, we stated that we expect that the record in a Notice of Penalty determination will provide detailed information about the nature and duration of each violation. In particular, information that identifies the time period for a violation is necessary to impose penalties on a per violation, per day basis.<sup>8</sup> We further stated that NERC and the Regional Entities must include in the record of a Notice of Penalty

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<sup>4</sup> 18 C.F.R. § 39.7(c) (2008).

<sup>5</sup> 18 C.F.R. § 39.7(e)(1) (2008).

<sup>6</sup> July 3 Guidance Order at P 2.

<sup>7</sup> *Id.* P 4.

<sup>8</sup> *Id.* P 22.

determination all relevant facts, in sufficient detail, to indicate the nature of each violation cited. We stated that we anticipate that a future Notice of Penalty determination will be based on specific facts that are linked to the penalty factors listed as relevant to the penalty determination, as opposed to generally reciting a list of factors.<sup>9</sup> With regards to mitigation plans, we required that NERC and the Regional Entities (1) ensure that they include optimal measures to bring the registered entity into compliance with the applicable Reliability Standards implicated in a Notice of Penalty; and (2) describe the verification that the mitigation plans were completed.<sup>10</sup>

## II. NERC Notices of Penalty

### A. Docket No. NP09-1-000

5. NERC filed a Notice of Penalty for \$3,000 assessed by SERC against Edgecombe Operating Services, LLC (Edgecombe) for a violation of Requirement R15 of Reliability Standard TOP-002-2, pursuant to a July 2008 settlement agreement between Edgecombe and SERC. Pursuant to Requirement R15, a Generation Operator must, at the request of the Balancing Authority or Transmission Operator, provide a forecast of expected real power output to assist in operations planning.

6. According to the settlement agreement, Edgecombe's balancing authority requires Edgecombe to submit a Non-Utility Generator (NUG) Daily Status Report that includes a rolling eight-day forecast of plant operations to be submitted prior to 06:00 a.m. each day in addition to any verbal notifications of potential or actual forced outages or de-rates and available capacity. Edgecombe failed to submit a forecast of expected real power output, as requested by the balancing authority, each day for the three-day weekend of January 18-20, 2008, by not sending in its NUG Daily Status Report. Once it discovered its failure to submit the required reports, Edgecombe submitted all three missing reports on Monday morning, January 21, 2008. Several days later, Edgecombe self-reported the violation to SERC and included a proposed mitigation plan to ensure that Edgecombe would not inadvertently fail to submit the eight-day notification in the future. The mitigation plan was accepted by SERC, and approved by NERC. After the completion date for the mitigation plan, SERC verified that Edgecombe timely completed all required actions in the mitigation plan.

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<sup>9</sup> *Id.* P 26.

<sup>10</sup> *Id.* P 35-37.

7. In its filing, NERC states that it approved the settlement, including the \$3,000 penalty, by considering the following factors: the violation was self-reported; Edgecombe quickly rectified its non-compliance and put in place procedures to prevent a reoccurrence; the delay in submitting the reports involved posed insignificant risk to Bulk-Power System reliability because Edgecombe provided the balancing authority with daily notices of plant availability and available Net Electric Output for the three days at issue, there were no days for which a forecast of expected real power output had not been provided, and the oversight pertained to a single 115 MW generating facility; Edgecombe had no prior history of non-compliance; and the fact that SERC did not identify concerns with Edgecombe's compliance plan.

**B. Docket No. NP09-2-000**

8. NERC filed a Notice of Penalty for \$235,000, assessed by SERC against E.ON U.S. Services Inc. (E.ON), for violation of Requirement R1 of Reliability Standard EOP-008-0 and Requirements R1, R2 and R3 of Reliability Standard FAC-001-0 pursuant to a May 2008 settlement agreement between E.ON and SERC. In the settlement E.ON neither admits nor denies the violations.

9. Requirement R1 of Reliability Standard EOP-008-0 mandates that a Transmission Operator shall have a plan to continue reliability operations in the event its control center becomes inoperable, and that the contingency plan shall not rely on data or voice communication from the primary control facility to be viable. Requirement R1 of Reliability Standard FAC-001-0 mandates that a Transmission Owner document, maintain, and publish facility connection requirements to ensure compliance with NERC Reliability Standards and applicable Regional Entity, sub-regional, power pool, and individual transmission owner planning criteria and facility connection requirements. Requirement R2 states that the Transmission Owner's facility connection requirements must include a written summary of its plans to achieve required system performance in a number of areas. Requirement R3 mandates that the Transmission Owner maintain and update its facility connection requirements as required, and make documentation of the requirements available to users of the transmission system, the Regional Entity and NERC on request within five business days.

10. In the settlement agreement, SERC alleges that E.ON violated Reliability Standard EOP-008-0 by failing to timely complete a mitigation plan to install communications to critical generation, transmission and tie-line remote thermal units that did not have redundant telemetry into both of its system control centers. This alleged violation lasted 270 days from June 18, 2007 to March 14, 2008. In the settlement agreement, SERC also alleges that E.ON violated Reliability Standard FAC-001-0 by failing to submit timely notification to SERC regarding completed mitigation of violations of facility connection requirements of FAC-001-000. This alleged violation lasted 70 days, from December 10,

2007, when E.ON completed the applicable portion of the mitigation plan, to February 8, 2008, when E.ON certified its completion of the plan.

11. In its filing, NERC states that it approved the settlement, including the \$235,000 penalty, by considering the following factors: E.ON's agreement to enter into the settlement; E.ON's agreement to host, finance and provide speakers at a workshop focusing on compliance with Reliability Standards for the benefit of others in the industry; SERC's determination that the violations were not repetitive and that E.ON had no negative relevant compliance history; there was no evidence of intent or attempt to conceal the violations; E.ON's candor and cooperation; E.ON's completion of most of the sub-requirements of EOP-008-0, Requirement 1 before the December 31 deadline for completion of the mitigation plan; and E.ON's completion of all of the mitigation plan requirements with respect to FAC-001-0, R1, R2 and R3 by the required completion date (although E.ON did not timely certify that they had been completed).

### **III. Discussion**

12. Based on our review of the two Notices of Penalty, we have decided not to engage in further review by instituting formal proceedings on our own motion. We find that the records NERC submitted with the Notices of Penalty are adequate to justify the penalties reflected in the filings. Specifically, each notice states the number of days of the alleged violations, provides sufficient detail as to the facts of each of the alleged violations to enable us to have a reasonable understanding of the nature of the underlying violations, and explains the factors involved in determining the penalties. Accordingly, NERC has substantially complied with the Commission's direction in the July 3 Guidance Order.

13. Nevertheless, one of these filings is lacking with respect to mitigation plans, which, as we pointed out in the July 3 Guidance Order, are critical to bringing into compliance registered entities that violate Reliability Standards.<sup>11</sup> NERC did not state in Docket No. NP09-1-000 how it determined that Edgcombe completed its mitigation plan. NERC should provide such information in future Notice of Penalty filings.

14. NERC did not include any mitigation plan relevant to consideration of the settlement in Docket No. NP09-2-000. In a December 19, 2008 order addressing NERC's compliance filing regarding delegation agreements with Regional Entities, the Commission stated that if a mitigation plan is relevant to a settlement in which a registered entity neither admits nor denies that it violated a Reliability Standard, NERC should publicly post the mitigation plan at the same time that NERC files with the

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<sup>11</sup> *Id.* P 35.

Commission a Notice of Penalty applicable to settlement.<sup>12</sup> In that order, we directed NERC to amend its Compliance Monitoring and Enforcement Plan to include this requirement. NERC should file relevant mitigation plans in the future with settlements in which the registered entity neither admits nor denies the violations.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>12</sup> *North American Electric Reliability Council, North American Electric Reliability Corporation, et al.*, 125 FERC ¶ 61,330, at P 55 (2008).