

130 FERC ¶ 61,151
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

North American Electric Reliability Corporation

Docket No. NP10-18-000

ORDER INITIATING REVIEW OF NOTICE OF PENALTY

(Issued February 26, 2010)

1. On November 13, 2009, the North American Electric Reliability Corporation (NERC) filed a notice of penalty in Docket No. NP10-18-000. In Docket No. NP10-18-000, NERC proposes an \$80,000 penalty against Turlock Irrigation District (Turlock) pursuant to a settlement agreement between Turlock and its Regional Entity, Western Electricity Coordinating Council (WECC). The proposed penalty addresses alleged violations of Reliability Standards TPL-001-0 R1, TPL-002-0 R1, TPL-003-0 R1 and TPL-004-0 R1, as well as FAC-003-1 R2, COM-002-2 R2, PER-002-0 R3 and VAR-001-1 R3. Pursuant to section 39.7(e)(1),¹ the Commission is initiating, on its own motion, a review of this notice of penalty, specifically, the alleged violation of Reliability Standard FAC-003-1 R2.² This alleged violation relates to a vegetation-caused outage of transmission facilities on August 29, 2007 that led to a loss of 270 MW of firm load in the service areas of Turlock and a neighboring registered entity, Modesto Irrigation District (Modesto). In this order, the Commission sets forth the basis for its review and authorizes answers, interventions and comments.

¹ 18 C.F.R. § 39.7(e)(3) (2009).

² FAC-003-1 R2 requires a Transmission Owner such as Turlock to create and implement an annual plan for vegetation management. The plan shall describe methods such as manual clearing, mechanical clearing, herbicide treatment, or other actions. The plan should be flexible by taking into consideration factors that may have an impact on the reliability of the transmission systems. The Transmission Owner shall have methods for documenting and tracking the planned work and ensuring that the work was completed according to work specifications.

I. Background

2. Pursuant to section 215(e) of the Federal Power Act,³ and section 39.7(c) of the Commission's regulations,⁴ NERC, as the Commission-approved Electric Reliability Organization (ERO), must file a notice of penalty with the Commission before a Regional Entity's or NERC's penalty assessment for the violation of a Reliability Standard takes effect. Each penalty determination is subject to Commission review, on its own motion or by the filing of an application for review by the subject of a penalty within thirty days after the date NERC files the applicable notice of penalty. 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. On December 11, 2009, the Commission issued a notice extending until January 11, 2010 the period of time for the Commission to consider whether to further review the Notice in Docket No. NP10-18-000.⁵ On January 11, 2010, the Director of our Office of Enforcement further extended the time period for consideration until February 26, 2010 and issued a data and document request seeking additional information from NERC and WECC relating to the alleged violation of FAC-003-1 R2.⁶ On January 26, 2010, NERC and WECC submitted a response to the January 11, 2010 request in public and non-public versions. On February 24, 2010, NERC, WECC and Turlock filed supplemental information on the vegetation-related outage and the loss of firm load.

4. Docket No. NP10-18-000 involves a settlement agreement between Turlock⁷ and WECC to resolve three groups of alleged violations of the Reliability Standards: (1) four

³ 16 U.S.C. § 824o(e) (2006).

⁴ 18 C.F.R. § 39.7(c) (2009).

⁵ *North American Electric Reliability Corporation*, 129 FERC ¶ 61,218 (2009).

⁶ *North American Electric Reliability Corporation*, 130 FERC ¶ 62,022 (2010).

⁷ Turlock engages in electricity production, transmission and distribution in Central California. Turlock serves 98,000 customers with a peak load of approximately 600 MW. Turlock owns and operates a 230 kV system composed of 31 miles of line and a 115 kV system with 136 miles of line. As of June 17, 2007, Turlock was registered for a number of reliability functions, including Transmission Owner, Transmission Operator, Balancing Authority, Planning Authority and Transmission Planner. *North American Electric Reliability Corporation*, Docket No. NP10-18-000, November 13, 2009 Filing, App. b at 1. (NP10-18-000 Record, November 13, 2009 Filing).

transmission planning (TPL) Standards; (2) FAC-003-1, the vegetation management standard, relating to an outage of firm load; and (3) violations that WECC staff alleged as a result of an October 2008 compliance audit of Turlock. WECC confirmed that Turlock mitigated the TPL Standards violations as of October 25, 2008,⁸ and that Turlock had mitigated the Reliability Standards violations found in WECC's compliance audit of Turlock.⁹

5. NERC states that on August 30, 2007, Turlock reported to WECC a violation of FAC-003-1 resulting from an August 29, 2007 230 kV line outage and firm load shedding.¹⁰ WECC and Turlock independently concluded that Turlock failed to adequately follow its 2007 Vegetation Management Work Plan. The outage on August 29, 2007 resulted from an almond tree growing into Turlock's 230 kV Westley-Walnut transmission line from within the line's right-of-way (ROW).¹¹ Turlock's failure to implement its 2007 annual vegetation management work plan resulted in automatic and manual firm load-shedding that dropped nearly 40,000 customers comprising 270 MW of firm load in the Turlock and Modesto areas; some customers lost power for more than an hour. Automated load dropping systems shed about 84 MW of firm load in Modesto's service area and about 70 MW of firm load in Turlock's service area. Manual load-shedding cut 96 additional MW of firm load in Modesto and 20 more MW of firm load in Turlock.¹² WECC opened a Compliance Violation Investigation of the outage and concluded that Turlock had violated FAC-003-1 R2, which requires that a Transmission Owner implement a Transmission Vegetation Management Plan, because Turlock failed to maintain sufficient clearances to prevent flashovers between vegetation and the 230 kV line. WECC noted that Turlock characterized the violation as having a level 3 (High) of non-compliance.¹³

⁸ NP10-18-000 Record, November 13, 2009 Filing at 14.

⁹ *Id.* at 15-18.

¹⁰ On August 29, 2007, vegetation contact caused Turlock's Westley-Walnut 230 kV line to fault; afterwards, Modesto's Westley-Parker 230 kV line open-ended. This resulted in firm load shedding and recovery operations of approximately 180 MW for Modesto and 90 MW for Turlock.

¹¹ NP10-18-000 Record, November 13, 2009 Filing at 8.

¹² NP10-18-000 Record, November 13, 2009 Filing at 7.

¹³ *Id.* at 8.

6. Turlock submitted a mitigation plan to address this violation on September 4, 2007 that included troubleshooter patrols for its 31 miles of 230 kV transmission lines; discussions with landowners and orchards to notify them of increased vegetation clearing; and additional training on compliance with FAC-003-1. On September 11, 2007, Turlock completed an internal investigation and concluded that human error was the underlying cause of the outage. Turlock issued a “written reminder,” the second of three levels of discipline, to an employee who failed to notice that the almond tree did not have sufficient clearance from the 230 kV line.¹⁴

7. WECC concluded that Turlock’s violation of FAC-003-1 R2 lasted from June 18, 2007 through September 14, 2007, when Turlock completed its Mitigation Plan for that requirement.¹⁵ FAC-003-1 R2 was the only alleged violation addressed in the settlement that resulted in a high impact to the reliability of the Bulk-Power System (BPS).¹⁶

8. NERC’s February 24, 2010 supplemental filing indicates that at the time of the vegetation contact the primary protection system on the Westley-Walnut line failed to operate because a communication switch that turns the “permissive trip signal on and off” at Turlock’s Walnut substation was incorrectly toggled “off”.¹⁷ NERC attributes this to human error.¹⁸ Without this Westley-Walnut line primary protection system, a secondary protection system caused the Westley-Walnut line to trip, and a back-up relay at Modesto’s Parker substation caused the Westley-Parker line to open-end.¹⁹ Tripping of the Westley-Walnut line and open-ending of the Westley-Parker line caused the loss of the Turlock and Modesto firm load.²⁰

¹⁴ *Id.* at 16.

¹⁵ *Id.* at 15.

¹⁶ *Id.* at 3. WECC determined that the remaining alleged violations did not pose a serious or substantial risk to the reliability of the BPS.

¹⁷ NP10-18-000 Record, NERC February 24, 2010 Supplemental Filing at 1.

¹⁸ *Id.* NERC’s supplemental filing indicates that the switch has been placed into the correct operating position and relabeled to prevent future mistakes. *Id.* at 2.

¹⁹ In its supplemental filing, NERC refers to this occurrence as a “mis-coordination between the Westley relay scheme for the Westley-Walnut 230 kV line and the Parker relay scheme for the Westley-Parker 230 kV line.” *Id.*

²⁰ *Id.* at 2.

9. In the settlement agreement, Turlock neither admits nor denies any of the violations alleged in the notice of penalty, but agreed to pay a penalty of \$80,000 to WECC. According to NERC, WECC states that it considers the FAC-003-1 R2 violation to have had a high impact to BPS reliability and constituted a significant event that warrants a commensurate penalty.²¹ WECC believes the remaining alleged violations resulted in a minimal to moderate impact on BPS reliability and should have penalties assessed accordingly.²² In approving the settlement, NERC's Board of Trustees Compliance Committee (BOTCC) considered WECC's position as stated above and the following purported mitigating factors: (1) Turlock is a small irrigation district that has comparatively limited financial resources; (2) each violation in the Agreement is Turlock's first violation of the applicable Standard;²³ (3) Turlock self-reported the FAC-003-1 R2, TPL-001-0 R1, TPL-002-0 R1, TPL-003-0 R1 and TPL-004-0 R1 violations; (4) Turlock management acted swiftly and with substantial disciplinary action after investigating all facets of the serious BPS event resulting from the FAC-003-1 R2 violation; (5) WECC determined that Turlock excels in several categories that indicate a high-quality Internal Compliance Program; and (6) Turlock management and staff fully cooperated with the WECC audit team during the audit and investigation of the alleged violations.²⁴ NERC BOTCC also recognized WECC's determination that there were no aggravating factors; specifically, there was no repeated violation, no relevant negative compliance history, no applicable compliance directives, and no evidence of any attempt by Turlock to conceal the violation or that the violation was intentional.²⁵

II. Discussion

10. The Commission has stated that it does not expect to reject Regional Entity settlements as a normal practice,²⁶ and continues to encourage settlements by the

²¹ NP10-18-000 Record, November 13, 2009 Filing at 3.

²² *Id.*

²³ We interpret this statement to mean that these were Turlock's first alleged violations of mandatory Reliability Standards after June 18, 2007 and that each alleged violation of a particular requirement was Turlock's first such alleged violation.

²⁴ *Id.* at 19.

²⁵ *Id.*

²⁶ See *Statement of Administrative Policy on Processing Reliability Notices of Penalty and Order Revising Statement in Order No. 672*, 123 FERC ¶ 61,046 (2008) (*Notice of Penalty Policy Order*) at P 18.

Regional Entities and NERC. To date the Commission has not yet further reviewed any of the 134 Notices NERC has filed, covering 920 alleged and confirmed violations, a large majority of which have been resolved by settlement. However, the Commission has retained the authority to review, on its own motion, settlement agreements with registered entities concerning alleged or confirmed violations of the Reliability Standards.²⁷ The Commission believes that the specific facts and circumstances of this notice of penalty indicate that the penalty amount may be insufficient. Because the penalty amount of NP10-18-000 reflects a settlement of all violations in the Notice, including the alleged violation of FAC-003-1, the Commission stays the effective date of the proposed penalty pending this review.²⁸

11. The Commission looks at certain factors to determine whether to review any notice of penalty – settlement or otherwise: seriousness of the violations, determined in part by the combination of violation risk factor and violation severity level that NERC has assigned and that we have approved for particular requirements of the Reliability Standards implicated in the notice of penalty; potential risk and actual harm to the BPS; consistency in the application of penalties and the ability of the penalty to improve compliance with Reliability Standards.²⁹ As we previously stated: “The more serious a violation described in a notice of penalty appears to be, the more likely it is that we would review the proposed penalty.”³⁰ The Commission notes that, as an initial matter, Reliability Standard FAC-003-1 R2 has a High violation risk factor.³¹ Consistent with its prior statements as to when it will initiate a review of a notice of penalty, the Commission also makes the following observations regarding the facts in the record of Docket No. NP10-18-000. These observations are not intended to limit our review of this

²⁷ *Id.* P 15-17.

²⁸ *Id.* P 12 (Commission may order a stay of a penalty while the notice of penalty is under review and until Commission affirms the penalty amount).

²⁹ *Id.* P 11.

³⁰ *Id.*

³¹ *See, e.g., Mandatory Reliability Standards for Critical Infrastructure Protection*, Docket Nos. RM06-22-002 and -003 (June 30, 2009) (Compliance Filing of the North American Electric Reliability Corporation in Response to Order on Compliance Filing – Mandatory Reliability Standards for Critical Infrastructure Protection Submission of Four Revised Violation Risk Factors) Exhibit B (Complete Violation Risk Factor Matrix Encompassing Each Commission Approved Reliability Standard); *see also Order on Violation Risk Factors*, 119 FERC ¶ 61,145 (May 18, 2007) (approving over 700 violation risk factors, including for FAC-003-1 R2).

matter, but are rather intended to describe certain concerns of the Commission based on the record before us at this time. Parties are free to comment on any facts, aggravating factors, or mitigating factors relevant to this matter.

12. First, and significantly, Turlock's alleged violation of FAC-003-1 R2 involved an event in which Turlock lost firm load on the BPS. Load shedding is not, alone, a violation, and the Commission recognizes that load shedding may sometimes be necessary or required. Yet, unnecessary loss of customer load as a consequence of a Reliability Standard violation is serious, and serves to increase the severity of the underlying violation. In contrast, prior to filing the Notice in Docket No. NP10-18-000 NERC filed eleven other Notices involving an alleged or confirmed violation of FAC-003-1 R2, not including violations of that Standard submitted as part of the Omnibus Notice of Penalty Filing,³² and no other such violation involved a loss of load.³³ No Notice NERC has filed after the Notice at issue here relates to a loss of load resulting from an alleged violation of FAC-003-1 R2.³⁴

³² *Order on Omnibus Notice of Penalty Filing*, 129 FERC ¶ 61,119 (2009).

³³ *See* Docket Nos. NP10-1-000, NP09-43-000, NP09-41-000, NP09-40-000, NP09-37-000, NP09-35-000, NP09-31-000 (2009), NP09-3-000, NP08-33-000, NP08-2-000, NP08-1-000 (2008).

³⁴ Turlock stipulated to the 270 MW quantity of lost load in the settlement. NP10-18-000 Record, November 13, 2009 Filing at Appendix b, P 28 (referring to initial automated load shedding of approximately 84 MW by Modesto and approximately 70 MW by Turlock and later manual load shedding by Modesto and Turlock of an additional 96 MW and 20 MW, respectively, for a total of 270 MW of load shed). However, a sequence of events in NERC's February 24 supplemental filing indicates that a greater quantity of load may have been lost for a period of time. Specifically, the sequence indicates that at an estimated 1353 Pacific Standard Time (i.e., 1:53 pm PST) on August 29, 2007, Modesto's and Turlock's automatic load shedding tripped approximately 81 MW and 73 MW of firm load, respectively and that 86 MW of load was "interrupted," for a possible initial total lost load of 240 MW. At 1359, Modesto restored 15 MW of firm load, but manually shed 35 MW of firm load at 1418, for an apparent net total at that time of 260 MW of load lost. At 1422, Modesto reported shedding an additional 50 MW and at 1438, Modesto manually shed 22 MW of firm load, for an apparent net total of 332 MW of load lost as of 1438. Turlock then shed 20 MW of firm load at 1445, for an apparent total maximum load lost of 352 MW for a short time until 1456, when Turlock restored 20 MW of firm load and 1457 when Modesto restored its firm load. NP10-18-000 Record, NERC February 24, 2010 Supplemental Filing at 2-3. We direct NERC to explain and, if possible, reconcile these calculations of total lost load.

13. NERC and the Regional Entities, as well as the Commission, have recognized in past notices of penalty that violations of vegetation management work plans are serious violations. The Commission directed in Order No. 693 that NERC and the Regional Entities, as a matter of enforcement discretion, focus their resources on the most serious violations during an “initial period” extending through December 31, 2007;³⁵ for which they have discretion not to assess a monetary penalty, but may assess penalties for non-compliance that put the BPS at risk.³⁶ WECC found that Turlock’s alleged violation fell within the initial period of enforcement, occurring from June 18, 2007 through September 14, 2007.³⁷ But vegetation management work plan violations arising during the initial period were elsewhere approved by NERC as warranting a penalty. For example, in Docket No. NP08-1-000, Reliability *First* Corporation, another Regional Entity, assessed a \$180,000 penalty against Baltimore Gas & Electric Company for an FAC-003-1 R2 violation that involved failure to maintain the appropriate clearance between a tree and a conductor in accordance with its Vegetation Management Plan; the touching resulted in a 230 kV transmission line outage – although not a loss of load – on August 15, 2007.³⁸

14. Second, the penalty amounts in other notices of penalty NERC has filed to date alleging FAC-003-1 R2 violations range from \$0 to \$250,000.³⁹ Again, none of these notices of penalty involved the result of loss of load. Moreover, the particular transmission outage on Turlock’s system caused load loss for thousands of customers both within Turlock’s service area and within Modesto’s neighboring service area. The Notice indicates, indeed, that the loss of load resulting from Turlock’s vegetation contact was more severe in Modesto’s service area (a total of 180 MW) than in Turlock’s service area (a total of 90 MW). Yet, for example, the \$225,000 penalty against Commonwealth Edison Company (Com Ed) in Docket No. NP10-1-000 for a single alleged violation of FAC-003-1 R2 involving three momentary transmission line outages is more than 280

³⁵ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 222-224, *order on reh’g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

³⁶ *Id.*

³⁷ NP10-18-000 Record, November 13, 2009 Filing at 8.

³⁸ North American Electric Reliability Corporation, Docket No. NP08-1-000, at 2 (filed June 4, 2008) (Notice of Penalty).

³⁹ See *North American Electric Reliability Corporation*, Docket No. NP10-48-000 (filed Feb. 1, 2010) (Notice of Penalty proposing \$250,000 penalty for two alleged violations of FAC-003-1 R2) .

percent of the penalty amount here.⁴⁰ Com Ed's alleged violation in that Notice did not result in a loss of load.⁴¹ While the record in this Notice notes the approximate number of customers who lost service as a result of Turlock's transmission outage, the Notice does not examine or attempt to quantify the actual harm caused by the load loss. Because the consequences of Turlock's FAC-003-1 R2 alleged violation are much more severe than those of the other filed violations of the same Standard and Requirement, the penalty against Turlock arguably should be higher than the highest penalty amount yet assessed for the same violation.

15. Third, the Commission questions WECC's finding, which appears to be a mitigating factor affecting the agreed-upon penalty amount, that Turlock self-reported the FAC-003-1 R2 violation.⁴² Both Turlock and Modesto, which also shed load in response to the fault, were required to report the event as a reportable disturbance: Reliability Standard EOP-004-1 R3 and Attachment 1-EOP-004 require a registered entity to report certain disturbances including, among others, those that result in firm load shedding of 100 MW or more to maintain the reliability of the bulk electric system.⁴³ Thus, it is not clear why Turlock should be credited with self-reporting with respect to FAC-003-1 R2.⁴⁴

16. Fourth, nothing in the record of the Notice addresses the system conditions on the day of the fault. The consequences of the fault could be more severe than presented in the notice of penalty if they extend to aggravating, say, overloaded transmission lines or

⁴⁰ The Commission recognizes that Turlock is a non-profit entity; however, the harm of this level of severity appears to support a higher penalty amount.

⁴¹ Docket No. NP10-1-000 Notice of Penalty at 10 (The NERC BOTCC found that Com Ed's three transmission line outages "were momentary with no interruption in service to any customers.").

⁴² NP10-18-000 Record, November 13, 2009 Filing at 18.

⁴³ Event 5 listed in Attachment 1-EOP-004. That the loss of load here was more than twice this threshold amount qualifying the event as a reportable disturbance further corroborates the finding that the instant facts present a serious violation.

⁴⁴ The required EOP-004-1 reporting is more in the nature of a self-certification, and the Commission has previously stated that self-certifications are different than self-reports and do not support a reduction in penalty amounts. *See Guidance Order on Reliability Notices of Penalty*, 124 FERC ¶ 61,015, at P 32 (2008) In contrast, a self-report confers the maximum benefit to compliance when it informs a compliance authority of a violation that otherwise would not have come to the compliance authority's attention.

operating reserve deficiencies. The Commission notes that the fault occurred in August, when the weather tends to be hottest and system loads tend to be high. WECC and NERC should have inquired as to whether the California Independent System Operator (CAISO) issued Emergency Energy Alerts for that day and how the fault and consequential transmission outage may have exacerbated sensitive operating conditions on CAISO's portion of the Western Interconnection. The record does not examine potential externalities of the fault, however, beyond noting that the fault also resulted in Modesto dropping load.

17. Fifth, the mitigation and remedial efforts appear to be less rigorous than called for by the facts of this matter. Turlock's entire mitigation plan for FAC-003-1 R2, accepted by WECC and approved by NERC, included an emergency "tree-only" inspection of the particular line involved in the event, some related trimming, and refresher training for Turlock's field personnel on certain aspects of its vegetation management plan.⁴⁵ The record indicates that field personnel failed, on at least two occasions, to spot vegetation within ten feet of a transmission line.⁴⁶ The Commission would expect that proper mitigation would involve, at minimum, Turlock's re-evaluation of its procedures for inspecting and determining tree clearances to ensure that its methods are designed to avoid to the extent feasible the type of oversight that contributed to the fault. Yet we do not find anything in the Notice that indicates that Turlock took such a step.

18. While the Commission believes that, based on the foregoing, the penalty amount may be insufficient, the information provided on February 24, 2010 indicates that other factors may have contributed to the loss of firm load, and that other Reliability Standards may have been violated. As noted above, information in NERC's supplemental filing, but not mentioned in the Notice, indicates why an apparent single contingency - the outage of the 230 kV Westley-Walnut transmission line - led to the unexpected result of a loss of load. While Turlock and WECC apparently were aware of these facts, the Notice did not mention them. There is no reference in the Notice to whether the NERC BOTCC was aware of or considered these facts in approving the settlement. This aspect of the loss of load could be an aggravating factor that would increase an appropriate penalty assessed to Turlock because Turlock presumably was responsible for the communication switch that was turned off at Turlock's Walnut station, disabling the primary protection communication. The Commission believes that consideration of this additional information may also have a material effect on the amount of the penalty. On the other hand, if Modesto's Parker relay scheme had not miscoordinated with Turlock's Westley relay scheme, the Westley-Parker line would have remained in service and load

⁴⁵ NP10-18-000 Record, November 13, 2009 Filing at 15.

⁴⁶ *Id.* at 7-8.

shedding would have been unnecessary. It is not clear whether Turlock should have known about the potential for miscoordination with Modesto's relay. Nor is it clear whether Turlock and Modesto checked after the August 29, 2007 loss of load whether there was any potential for other miscoordination between protection systems for their transmission facilities. It is also not clear whether Modesto filed a report and corrective action plan with WECC relating to the miscoordination with the Turlock relays, as could have been required by PRC-004-1, R3, or whether before August 29, 2007 Turlock and Modesto had coordinated protection systems on their major transmission lines, as required by PRC-001-1 R4.

19. As noted above, the Commission has the authority to review Notices that relate to settlements. As a result of this review, the Commission may take several courses of action.⁴⁷ The Commission also notes that under analogous authority on the part of NERC pursuant to section 5.4 of the Compliance Monitoring and Enforcement Program and Hearing Procedures (CMEP), the Regional Entities must report a settlement to NERC for the purpose of "evaluating its consistency with other settlements entered into for similar violations or under other, similar circumstances."⁴⁸ NERC may reject the settlement and notify the parties to the agreement of changes that would result in NERC approval; the Regional Entity will, in turn, attempt to renegotiate the settlement terms accordingly.⁴⁹

20. Accordingly, the Commission, on its own motion, is initiating a review of the proposed penalty in Docket No. NP10-18-000 to determine whether violations of other reliability standards or facts not disclosed in the Notice 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. The Commission establishes a filing deadline for any answers, interventions or comments of twenty days from this order.

⁴⁷ *Notice of Penalty Policy Order*, 123 FERC ¶ 61,046 at P 7 ("If the Commission determines to review the notice of penalty, it will issue a subsequent order initiating review of the proposed penalty and establishing a filing deadline for any answers, intervention or comments."); *see also* P 13 ("[I]n any proceeding to review a proposed penalty, the Commission, after public notice and opportunity for hearing, may by order affirm, set aside, or modify the proposed penalty, or remand the determination of the proposed penalty, or its form or amount, to the ERO for further proceedings.").

⁴⁸ CMEP section 5.4 (effective October 2, 2009).

⁴⁹ *Id.*

The Commission orders:

(A) The Commission, on its own motion, initiates a review of the Notice of Penalty in Docket No. NP10-18-000, as discussed above.

(B) Answers, interventions and comments are due twenty days from the date of this order.

(C) The proposed penalty in Docket No. NP10-18-000 is stayed pending the conclusion of the Commission's review.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.