

FERC APPROVES LARGEST CIVIL PENALTY EVER RELATING TO VIOLATIONS OF ELECTRIC RELIABILITY STANDARDS; COMMISSIONERS MOELLER AND SPITZER FILE CONCURRENCES

On October 8, 2009, FERC approved a \$25 million civil penalty as part of a settlement with Florida Power & Light Company ("FPL") stemming from a joint investigation by FERC and the North American Electric Reliability Corporation ("NERC") into the circumstances surrounding a significant loss of load event in Florida on February 26, 2008 ("the Florida Blackout"). The settlement alleged numerous violations by FPL of the Mandatory Reliability Standards for the Bulk-Power System, Order No. 693, FERC Stats. & Regs. ¶ 31,242 (2007) ("Reliability Standards"), the framework for which was established by the Energy Policy Act of 2005.

After the blackout caused millions of south Florida consumers—approximately eight percent of all Florida electric customer accounts—to lose power for several hours, FERC publicly announced a formal non-public investigation into the cause and events surrounding the event. FERC eventually concluded that the Florida Blackout originated at an FPL substation when a field engineer was diagnosing a piece of transmission equipment that previously had malfunctioned.

As a result of the joint investigation, it was alleged that FPL had committed violations in the following Reliability Standards categories: Balancing (balancing resources and demand to maintain interconnection frequency within prescribed limits); Communications (adequate telecommunications facilities and effective staffing); Emergency Preparedness and Operations (preparation for emergencies and procedures to be followed in the event of an emergency); Personnel Performance, Training and Qualifications (retention of suitably trained and qualified personnel); Protection and Control (numerous topics relating to the protection and control of power systems); Transmission Operations (operation of transmission system within prescribed limits and reliability of operations and operations planning); and Transmission Planning (transmission system planning and design).

SETTLEMENT

The FPL settlement represents the first civil penalty assessed by FERC in connection with alleged violations of the Reliability Standards. The settlement also represents the largest civil penalty assessed by FERC since passage of the Energy Policy Act of 2005, which provides the Commission authority to assess civil penalties up to \$1 million per violation per day.

Of the \$25 million total settlement, \$10 million is to be paid to the U.S. Treasury and \$10 million is to be paid to NERC, the FERC-designated organization charged with overseeing day-to-day enforcement of the Reliability

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Standards. The remaining \$5 million may be spent by FPL, subject to FERC and NERC approval, on Bulk Electric System reliability enhancement measures that go above and beyond the settlement's specific reliability compliance commitments or the basic requirements of the Reliability Standards.

If FPL has not spent or committed to spend all \$5 million on approved projects within three years, the balance will be paid to and divided equally between the U.S. Treasury and NERC. The settlement does not require FPL to admit that its actions constituted violations of the Reliability Standards.

In considering an appropriate remedy, Enforcement Staff considered the seriousness of the event and its impact on the Bulk Electric System. Staff also considered that FPL's actions were neither intentional nor fraudulent, that FPL demonstrated "exemplary cooperation" throughout the investigation, and that FPL had voluntarily implemented a number of reliability enhancement measures immediately following the Florida Blackout and throughout the course of the investigation. *Please click [here](#) to view the FERC document.*

CONCURRENCES

Commissioners Spitzer and Moeller concurred in the order approving the settlement. Commissioner Spitzer expressed concern over what he characterized as a lack of transparency and an absence of clarity in the order, in that the order did not identify the specific Reliability Standards allegedly violated by FPL and failed to demonstrate how the facts of the case applied to the Reliability Standards. By providing no meaningful information as to why FERC believes that the actions taken by FPL violate the Reliability Standards, explained Commissioner Spitzer, the order fails to provide clarity or transparency to the industry as to what is expected under those Standards and therefore does not adequately promote compliance with the Commission's rules, regulations, and orders. He further stated an expectation that all future orders on settlements addressing alleged violations of the Reliability Standards would include such information. Commissioner Moeller also wrote separately and echoed these same concerns.

The FPL settlement represents the second non-unanimous decision rendered by FERC this year in an enforcement action made public. *Please click [here](#) for the e-alert discussing the first such decision.*

If you have any questions concerning the material discussed in this client alert, please contact the following members of our energy practice group:

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