

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

North American Electric Reliability Corporation

Docket No. NP11-238-000

**COMMENTS OF THE NORTH AMERICAN ELECTRIC RELIABILITY
CORPORATION**

Pursuant to the Commission's order issued on August 29, 2011 in this proceeding,¹ North American Electric Reliability Corporation ("NERC"), hereby submits additional comments in support of the Notice of Penalty NERC filed on July 28, 2011 in this docket. NERC has addressed most of the issues raised by the Southwestern Power Administration ("SWPA") and other parties in this matter in the Notice of Penalty but it seeks to provide additional information on certain issues to ensure that the Commission has a complete and accurate record before it.

I. NERC, Regional Entities and FERC have the Authority to Impose Monetary Penalties on All Users, Owners and Operators of the Bulk Power System; There are no Policy Reasons to Treat Federal Entities Differently.

As discussed in the Notice of Penalty, section 215 of the Federal Power Act vests NERC, Regional Entities and FERC with authority to impose monetary and other types of penalties on all users, owners and operator of the bulk power system, including federal entities. NERC has addressed the penalty authority under section 215 extensively in the Notice of Penalty and will not repeat that discussion here. However, in disputing NERC and FERC's authority, SWPA and other parties also have raised issues related to (a) a federal entity's ability to pay or ability to agree to pay a monetary penalty and (b) the appropriateness of a federal power entity's passing through to its customers, the costs of a monetary penalty imposed under section 215.²

¹ *North American Electric Reliability Corporation*, 136 FERC ¶ 61,135 (2011).

² See e.g., Southwestern Power Administration's Notice of Intervention and Application for Review of North American Electric Corporation Notice of Penalty at 15, Motion to Intervene and Comments of the National Rural

These concerns should not influence the disposition of the issue by the Commission. It bears repeating that enforcement of penalties on all users, owners, and operators of the bulk power system is an integral part of ensuring the reliable operation of the bulk power system. Monetary penalties raise the potential for collection issues, regardless of the nature of the registered entity that is penalized. In contrast to the concerns expressed by these parties, monetary penalties have been imposed, to date, against customer-owned entities and not-for-profit entities. While SWPA and other parties seem to suggest that the potential difficulty of collecting penalties from federal entities may be higher due to the unavailability of funds or limitations imposed on expenditures, that should not cause the Commission to decline to apply them in every case.

It is also inappropriate to consider whether a federal entity would then pass through such costs to its customers as a reason to avoid imposing such penalties in the first place. Penalties imposed against customer-owned entities and not-for-profit entities also have the potential for being passed through to customers. As noted, notices of penalty have been filed to date to recover penalties from such types of entities. There is no reason to treat customers of federal entities differently. Monetary penalties have the potential to affect, directly or indirectly, customers of any registered entity that is so penalized. The suggestion that the penalty's deterrence value would be eliminated because the federal entity would be allowed to pass through the cost is unsupported and incorrect.

II. Conclusion

In conclusion, federal entities should not be excluded from the full panoply of the section 215 enforcement regime and should be subject to monetary penalties. Failure to hold these

Electric Cooperative Association at 8-11 and Motion to Intervene and Comments of Southwestern Power Resources Association at 3.

entities accountable sends the wrong signal to all other users, owners and operators of the bulk power system. Federal entities' accountability to the Congress and the President of the United States is not a substitute for the enforcement mechanisms created through section 215. These mechanisms were designed to apply to all users, owners and operators of the bulk power system, without exception.

NERC respectfully requests that FERC find that NERC, the Regional Entities and FERC have the authority, pursuant to section 215 of the Federal Power Act, to impose monetary penalties on federal entities and affirm the Notice of Penalty.

Respectfully submitted,

/s/ Sonia C. Mendonca

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Dated: September 19, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 19th day of September, 2011.

Sonia C. Mendonca
*Attorney for North American Electric Reliability
Corporation*