

134 FERC ¶ 61,157
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

North American Electric Reliability Corporation

Docket No. NP11-104-000

NOTICE OF NO FURTHER REVIEW OF INITIAL ADMINISTRATIVE CITATION
NOTICE OF PENALTY

(Issued March 3, 2011)

1. On February 1, 2011, the North American Electric Reliability Corporation (NERC) filed a Notice of Penalty pertaining to 41 violations by 19 registered entities. The Notice of Penalty was submitted in an abbreviated format, which NERC refers to as an “Administrative Citation.” We will not further review on our own motion any of the violations included in the Notice of Penalty, and we encourage NERC to continue the use of the abbreviated Administrative Citation format in appropriate circumstances.
2. NERC, as the Commission-approved Electric Reliability Organization, must file a Notice of Penalty with the Commission before a penalty assessment made by a Regional Entity or NERC regarding a 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 registered entity subject to the penalty within thirty days after the date NERC files the applicable Notice of Penalty.¹ 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.²
3. In its filing, NERC states that penalties for violations that had a minimal impact on the reliability of the Bulk-Power System were candidates for inclusion in this initial Administrative Citation Notice.³ According to NERC, in each instance, a violation addressed in this Notice has been mitigated, certified by the respective registered entity as mitigated and verified by the Regional Entity as having been mitigated.⁴ NERC observes

¹ 18 C.F.R. § 39.7(e)(1).

² *Id.* No registered entity filed an application for review of a proposed penalty in this Notice of Penalty.

³ NERC Transmittal Letter at 1.

⁴ *Id.*

that the Commission has encouraged the use of a streamlined enforcement process that could avoid the filing of individual notices of penalty for violations that posed minimal risk to the reliability of the Bulk-Power System.⁵ NERC posits that use of the Administrative Citation process to file Notices for such “minimal risk” violations is consistent with the Commission’s guidance and will help NERC and the Regional Entities focus on the more serious violations of the mandatory and enforceable NERC Reliability Standards.

4. NERC’s filing takes the form of a cover letter and an attached spreadsheet that aggregates information relating to each specific violation in a number of cells in the same row. This information includes: identifying information relating to the violation and the registered entity; a list of the Reliability Standard requirement at issue, the start and end dates for the violation; the Violation Risk Factor assigned to the requirement and the Violation Severity Level determined for the violation; the proposed penalty amount; the method of discovery for the violation (such as a self-report or compliance audit); and descriptions of the violation, NERC’s assessment of the risk it posed to the Bulk-Power System, and the violation’s mitigation. The filing identifies sixteen violations of particular requirement of the Critical Infrastructure Protection (CIP) Reliability Standards.

5. Each violation included in NERC’s filing is of a requirement that has an assigned Lower or Medium Violation Risk Factor. In its filing, NERC proposes a total of \$25,400 in penalties for 24 violations and a zero dollar penalty for 17 violations. In some instances, the non-zero dollar penalties result from settlements between a Regional Entity and a registered entity that address multiple violations. The spreadsheet indicates that registered entities have admitted some violations and neither admitted nor denied other violations listed in the Notice.

6. Based on our review of the record provided by NERC, the Commission will not further review on its own motion any of the violations included in this Notice.⁶

7. The Commission recognizes that NERC and the Regional Entities expend substantial efforts and resources monitoring compliance with the Reliability Standards

⁵ NERC cites the Commission’s statement in *North American Electric Reliability Corp.; Reliability Standards Development and NERC and Regional Entity Enforcement*, 132 FERC ¶ 61,217 at P 218 (2010) (Three-Year Assessment Order), encouraging NERC and the Regional Entities to “align the record and format of notices of penalty to the relative seriousness of violations,” such as in “parking tickets” or “speeding tickets.”

⁶ The Secretary is issuing this notice pursuant to delegated authority as to those violations for which NERC proposes a \$0 penalty. *See* 18 C.F.R. § 375.302(aa) (2010).

and building adequate records to support findings of violations for Commission review. On numerous occasions, the Commission has encouraged NERC and the Regional Entities to develop flexible approaches and more streamlined processes to achieve efficiency in the enforcement process, especially with regard to more minor violations.⁷ NERC has adopted an Abbreviated Notice of Penalty format and a Deficiency Notice of Penalty format that have been successful at increasing efficiency.⁸ Based upon this filing, we believe that NERC's Administrative Citation Notice format will be a successful tool in improving efficiency of NERC's enforcement process, thereby reducing the time and resources expended by the Regional Entities, NERC, and Commission staff while still achieving transparency and consistency in penalty determinations for violations that are appropriate for this format. We also commend NERC for promptly following through with its intent to institute the Administrative Citation process.⁹

8. We encourage NERC's continued use of the Administrative Citation Notices of Penalty format. We also encourage, particularly in the early stages of this process, the ongoing consultation between our staff and NERC prior to filing to determine what violations are appropriate for inclusion in an Administrative Citation Notice of Penalty and the appropriate amount of detail and description necessary to ensure that the Administrative Citation process continues to be a success.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁷ *North American Electric Reliability Corp., Reliability Standards Development and NERC and Regional Entity Enforcement*, 132 FERC ¶ 61,217, at P 218 (2010).

⁸ *Further Guidance Order on Filing of Notices of Penalty*, 129 FERC ¶ 61,069 at P 10 (2009).

⁹ NERC announced this process at the November 18, 2010 Technical Conference on Reliability Monitoring, Enforcement and Compliance Issues. Docket No. AD11-1-000.