

129 FERC ¶ 61,094
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 375

[Docket No. RM10-2-000; Order No. 728]

Delegations for Notices of Penalty

(Issued October 30, 2009)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Commission is revising its regulations to delegate authority to the Secretary of the Commission and to the Director of the Office of Enforcement to take specified actions in order to process certain Notices of Penalty issued by the North American Electric Reliability Corporation. These revisions are necessary to enable the Commission to process routine, non-controversial Notices of Penalty in a timely and efficient manner.

EFFECTIVE DATE: This rule will become effective **[immediately upon publication in the FEDERAL REGISTER]**

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SUPPLEMENTARY INFORMATION

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FEDERAL ENERGY REGULATORY COMMISSION

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

Delegations for Notices of Penalty

Docket No. RM10-2-000

ORDER NO. 728

FINAL RULE

(Issued October 30, 2009)

1. The Commission is issuing this Final Rule to revise its delegations of authority to allow for the efficient and timely processing of Notices of Penalty (Notices) issued by the North American Electric Reliability Corporation (NERC). These revisions will permit the Director of the Office of Enforcement and the Secretary of the Commission to process routine, non-controversial Notices that propose zero dollar penalties and do not require further consideration by the Commission and to issue public notices stating as much. The Director of the Office of Enforcement will also be able to direct the submission of further information from NERC or other entities where necessary as to Notices without the need for action by the Commission.

I. Background

2. Under section 215(e) of the Federal Power Act (FPA), NERC as the Electric Reliability Organization (ERO) must file each Notice with the Commission.¹ The penalty is subject to Commission review upon its own motion or upon application by the entity subject to the proposed penalty within 30 days. If no review is sought or initiated, the penalty takes effect by operation of law.

3. Currently, when the Commission receives a Notice, it is analyzed within the thirty day period by staff from the Office of Enforcement, the Office of Electric Reliability, and the Office of General Counsel. Those offices recommend to the Commission whether it should allow the Notice to become effective by operation of law. The Commission conducts a vote and, if it decides that no further action is warranted, instructs the Secretary to issue a public notice to that effect. Based upon the Commission's experience thus far, it appears likely that, in most cases, Notices in which a registered entity is assessed a zero monetary penalty will become effective in this manner.

4. On occasion, staff will conclude that further information is needed for the proper consideration of a Notice. In such cases, Commission staff will recommend that the

¹ 16 U.S.C. § 824o(e) (2006).

Commission direct NERC to provide further information and extend the thirty-day period to allow the Commission to analyze the information received.²

II. Discussion

5. The Commission concludes that, in many cases involving the assessment of zero dollar penalties, Notices can be processed without the need for a formal Commission vote. In proceedings involving non-controversial zero dollar penalties, a Notice can be processed more efficiently by allowing the Secretary to issue a notice indicating that the Commission will take no further action. Further, the Commission believes that the Director of the Office of Enforcement should be able to direct the submission of further information from NERC or other entities regarding Notices and extend the time for consideration of a Notice to consider this information. Consequently, this Final Rule delegates the necessary authority to the Director of the Office of Enforcement and to the Secretary to undertake such actions in connection with Notices that assess a zero dollar penalty and do not raise other significant concerns or issues.

6. The Commission notes that our current regulations permit the Director of the Office of Electric Reliability to collect information from NERC or from Regional Entities, but the Director of the Office of Enforcement lacks similar authority. The Commission believes that the Director of the Office of Enforcement should have the

² See North American Electric Reliability Corp., 127 FERC ¶ 61,198 (2009).

similar authority to direct NERC or the applicable Regional Entity to submit further information on a Notice where the Commission does not have sufficient information to reach a decision on the Notice. To facilitate the gathering of this information, the Director of the Office of Enforcement should also have the authority to extend the time for consideration of a Notice to consider the new information. This Final Rule adds both authorities to the Office of Enforcement's delegations.

7. Under FPA section 215, a Notice takes effect by operation of law if no review is sought or initiated. This does not require affirmative Commission action, and the Commission's regulations do not provide for any formal procedure by which the Commission must decide to take no action. The Commission has generally issued a notice indicating that it will not further review on its own motion the Notice. However, unlike other administrative notices, the Secretary lacks the authority to issue a public notice that no further review will take place, absent action by the Commission. This Final Rule therefore adds such authority to the Secretary's delegations.

8. Although the delegations do not specify in what circumstances a Notice should be allowed to become effective without an affirmative vote by the Commission, it will be Commission policy that Notices will not need a formal Commission vote only in zero dollar penalty cases that do not raise significant concerns or other issues. The following circumstances will necessitate a formal Commission vote to issue a notice that the Commission will not further review the Notice:

- A penalty assessment or settlement involving a dollar amount greater than zero;
- A penalty that appears low based on the facts presented;
- Conduct or an event that may pose a high risk to the Bulk-Power System;
- An event that resulted in loss of load to customers;
- A special or unique legal question, such as Commission jurisdiction;
- A Notice that results from a live hearing process at the Regional Entity or ERO level, i.e., a contest by the registered entity;
- A Notice resulting from NERC's enforcement efforts (as opposed to violations addressed in the first instance by one of the eight Regional Entities);
- A Notice that involves intent to violate a Reliability Standard or falsification of records;
- A Notice with a record that fails to justify the finding of a violation or the proposed penalty amount; and
- Any other matter worthy of Commission attention.

III. Information Collection Statement

9. The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule.³ This Final Rule does not contain information reporting requirements and is not subject to OMB approval.

IV. Environmental Analysis

10. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the quality of the human environment.⁴ Issuance of this Final Rule does not represent a major federal action having a significant adverse effect on the quality of the human environment under the Commission's regulations implementing the National Environmental Policy Act. Part 380 of the Commission's regulations lists exemptions to the requirement to draft an Environmental Analysis or Environmental Impact Statement. Included is an exemption for procedural, ministerial or internal administrative actions.⁵ This rulemaking is exempt under that provision.

³ 5 C.F.R. Part 1320.

⁴ Regulations Implementing the National Environmental Policy Act of 1969, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

⁵ 18 CFR 380.4(1) and (5).

V. Regulatory Flexibility Act

11. The Regulatory Flexibility Act of 1980 (RFA)⁶ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This Final Rule concerns matters of internal agency procedure. The Commission therefore certifies that it will not have such an impact. An analysis under the RFA is not required.

VI. Document Availability

12. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington D.C. 20426.

13. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

⁶ 5 U.S.C. 601-612.

14. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202)502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

VII. Effective Date and Congressional Notification

15. These regulations are effective immediately upon publication in the Federal Register. In accordance with 5 U.S.C. 553(d)(3), the Commission finds that good cause exists to make this Final Rule effective immediately. It makes minor revisions to matters of internal operations and is unlikely to affect the rights of persons appearing before the Commission. There is therefore no reason to make this rule effective at a later time.

16. The provisions of 5 U.S.C. § 801 regarding Congressional review of Final Rules do not apply to this Final Rule, because this Final Rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

17. The Commission is issuing this as a Final Rule without a period for public comment. Under 5 U.S.C. § 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only matters of internal agency procedure and will not significantly affect regulated entities or the general public.

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List of subjects in 18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

In consideration of the foregoing, the Commission amends Part 375,

Chapter I, Title 18, Code of Federal Regulations, as follows.

PART 375—THE COMMISSION

1. The authority citation for Part 375 continues to read as follows:

Authority: 5 U.S.C. 551-557; 15 U.S.C. 717-717w, 3301-3432; 16 U.S.C. 791-825r, 2601-2645; 42 U.S.C. 7101-7352, 16451-16463.

2. Section 375.302 is amended by adding paragraph (aa) as follows:

§ 375.302 Delegations to the Secretary.

* * * * *

(aa) Issue a notice that the Commission will not further review on its own motion a Notice of Penalty filed under Section 215(e) of the Federal Power Act.

3. Section 375.311 is amended by adding paragraphs (u) and (v) as follows:

§ 375.311 Delegations to the Director of the Office of Enforcement.

* * * * *

(u) Direct the Electric Reliability Organization or the applicable Regional Entity to provide such information as is necessary to implement Section 215(e)(2) of the Federal Power Act (16 U.S.C. 824o(e)(2)) pursuant to § 39.2 and Part 40 of this chapter.

(v) Issue an order extending the period of time for consideration of a Notice of Penalty filed under Section 215(e) of the Federal Power Act for the purpose of directing the Electric Reliability Organization or the applicable Regional Entity to provide such information as is necessary to implement Section 215(e)(2) of the Federal Power Act (16 U.S.C. 824o(e)(2)) pursuant to § 39.2 and Part 40 of this chapter.

Document Content(s)

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