

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

Technical Conference on Penalty Guidelines) Docket No. PL10-4-000

**COMMENTS OF THE ISO/RTO COUNCIL
FOLLOWING THE TECHNICAL CONFERENCE ON PENALTY GUIDELINES**

Pursuant to the Second Notice of Technical Conference on Penalty Guidelines, issued on October 27, 2011 in the above-captioned proceeding, the ISO/RTO Council (“IRC”) hereby submits comments on the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) penalty guidelines and their application.

The IRC supports the Commission’s efforts to “increase fairness, consistency, and transparency in its enforcement program.”¹ With that goal in mind, the IRC respectfully suggests that it would be helpful for the Commission to clarify that, in the context of its reliability standards program its civil penalty authority is limited to compliance matters related to the mandatory reliability standards promulgated by the North American Electric Reliability Corporation (“NERC”) and approved by the Commission.²

¹ Statement of Chairman Jon Wellenough on Policy Statement on Penalty Guidelines, issued March 29, 2010 in Docket No. PL10-4-000.

² These comments are limited to the reliability standards program and non-FERC approved rules, practices and policies that may be adopted by organizations in that context. The IRC recognizes that the Commission has enforcement authority over the provisions in FERC-approved documents, for example, tariff provisions.

I. DESCRIPTION OF THE IRC

The IRC is comprised of the Alberta Electric System Operator (“AESO”), the California Independent System Operator, Electric Reliability Council of Texas , the Independent Electricity System Operator of Ontario, Inc. (“IESO”), ISO New England Inc., Midwest Independent Transmission System Operator, Inc., New York Independent System Operator, Inc., PJM Interconnection, L.L.C., Southwest Power Pool, Inc., and New Brunswick System Operator (“NBSO”).³ The IRC’s mission is to work collaboratively to develop effective processes, tools and standard methods for improving the competitive electricity markets across North America. In fulfilling this mission, it is the IRC’s goal to provide a perspective that balances reliability standards with market practices so that each complements the other, thereby resulting in efficient, robust markets that provide competitive and reliable service to customers.

IRC members conduct their operations in compliance with the NERC Reliability Standards. IRC members operate the bulk power system, administer the organized wholesale electricity markets, and act as the planning authorities within their respective regions.

II. COMMENTS

The Energy Policy Act of 2005⁴ (“EPAAct 2005”) “empowers the Commission to exercise direct enforcement authority over the [mandatory] Reliability Standards” promulgated by NERC.⁵ In Susan N. Kelly’s Statement on behalf of the American

³ The IESO, AESO and NBSO are not subject to the Commission’s jurisdiction, and these comments do not constitute agreement or acknowledgement that they can be subject to the Commission’s jurisdiction.

⁴ 42 U.S.C. § 15801, *et seq.* (2006).

Public Power Association (“APPA”) for the Technical Conference held on November 17, 2011, she shared comments regarding the penalty guidelines from APPA members.

The IRC noted with particular interest the following APPA member comment:

We had a violation for not documenting a test in violation of our own protocol, which was more rigorous than the applicable reliability standard. We did not violate the standard. We paid a fine for violating our own protocol. The conclusion is that a utility should not adopt a more rigorous internal policy than required.⁶

The IRC believes that the enforcement of FERC’s authority over mandatory reliability standards is crucial to the sustained reliability of the transmission grid. However, the members of the IRC all have various standards and practices some of which may exceed the requirements of certain mandatory reliability standards. The Commission should not exert its civil penalty authority, in the context of its reliability standards program, beyond the scope of violations of reliability standards. This exercise of authority would be beyond the legal authority delegated by Congress in EAct 2005. Moreover, it would discourage companies from adopting incremental rules, protocols and practices, which may be beyond the basic requirements of the mandatory reliability standards, yet are intended to support system reliability. For this reason, the Commission should direct those with auditing and enforcement roles in the reliability standards program that the scope of violations for reliability standards is limited to violations of the actual reliability standards.

⁵ 132 FERC ¶ 61, 216 (2010) at P 48.

⁶ Written Statement of Susan N. Kelly on Behalf of the American Public Power Association for the November 17, 2011 Technical Conference, filed in Docket No. PL10-4, *Technical Conference on Penalty Guidelines*, on November 18, 2011 at p. 8.

III. CONCLUSION

For the foregoing reasons, the IRC respectfully requests that the Commission clarify that, in the context of its reliability standards program, its penalty authority is limited to violations of the mandatory reliability standards, and does not extend to violations of organizations' reliability rules, practices, procedures and policies that are incremental to, and might be more rigorous than, the mandatory NERC reliability standards.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service lists for the above referenced proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2011).

Dated at Folsom, California this 19th day of December, 2011.

/s/Anna Pascuzzo
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