



October 16, 2009

FERC Approves \$25 Million Penalty for Alleged Violations of NERC Reliability Standards Associated with the 2008 “Florida Blackout”

On October 8, 2009, the Federal Energy Regulatory Commission (FERC) approved a Stipulation and Consent Agreement (Agreement) imposing a \$25 million dollar penalty on Florida Power and Light Company (FPL) for possible violations of various Reliability Standards promulgated by the North American Electric Reliability Corporation (NERC).¹ The alleged violations are in connection with the 2008 “Florida Blackout” which put approximately 596,000 FPL customer accounts and 354,000 non-FPL customer accounts out of service. The FERC order on the blackout is “the first reliability enforcement matter” where FERC imposed “a substantial penalty and specific mitigation measures in response to a serious outage.”² Despite being the first of its kind, the decision’s precedential value may be limited as FERC Commissioners Spitzer and Moeller wrote separate concurrences raising concerns that the decision lacks transparency and specificity and indicating that they expect more detailed assessments in the future.

I. The Florida Blackout

FPL is a public utility with transmission, distribution, and generation operations that serve approximately 4.5 million customers in Florida. Both its control center and its Flagami Substation are located in Miami, Florida. Due to a series of actions taken at the control center and Flagami Substation, FPL experienced a loss of load event on February 26, 2008, which resulted in portions of the lower two-thirds of the state of Florida experiencing a several hour-long blackout.

The events leading up to the blackout began on February 23 and 24, 2008, when the Load Dispatcher on duty at the control center attempted to separate one of the shunt reactors from the 138kV bus at the Flagami Substation by opening the circuit switcher connecting the two. This attempt tripped a breaker, causing relays to have to be reset and the circuit switcher to be tagged “emergency use only.” On February 26, 2008, a Protection and Control (P&C) Field Engineer for FPL was assigned to test the tagged circuit switcher.

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In the course of his testing, the engineer disabled the circuit switcher's primary and secondary protection mechanisms. The P&C Field Engineer communicated his disabling of the primary protection mechanism to the Load Dispatcher, who later stated that he had not understood the primary protection mechanism to have been disabled. The disabling of the second protection mechanism was not communicated to the Load Dispatcher. Moreover, the Load Dispatcher did not request authorization from the System Operator for the removal of protection, and the System Operator's monitoring equipment failed to independently register the disabling of the protection.

After the protection was disabled, the P&C Field Engineer requested that the Load Dispatcher open the circuit switcher. Due to a mechanical failure in the circuit switcher's bottle interrupter, opening the circuit switcher caused a fault on the system to occur. The fault caused a 17-19 second arc, and because the primary and secondary protections had been disabled, it took 1.7 seconds for the fault to clear remotely. The fault caused frequency swings and voltage excursions that lead to the loss of 22 transmission lines, 4,300 MW of generation, and 3,650 MW of customer load. Because of the degree to which the blackout affected the electrical system and consumers, both NERC and FERC investigated the causes and events surrounding the blackout.

II. The Penalty for Violating NERC Reliability Standards

Since 2007, NERC has been responsible for developing and enforcing Reliability Standards that ensure the reliability of the bulk electric system (BES) in North America. The Reliability Standards NERC develops must be evaluated and approved by FERC before becoming effective. Any penalties imposed by NERC for violations of those Reliability Standards must also be submitted to FERC for approval.

In the case of the Florida Blackout, the FERC Office of Enforcement and NERC allege that FPL violated Reliability Standards in seven categories: Balancing; Communications; Emergency Preparedness and Operations; Personnel Performance, Training and Qualifications; Protection and Control; Transmission Operations; and Transmission Planning. FPL does not admit that its actions constituted violations of any Reliability Standards, but did agree in the Agreement to adopt reliability enhancement measures and pay a civil penalty. These enhancement measures include incremental enhancements to the FPL NERC Compliance Program, enhancements to FPL's Training and Certification program, the addition of several new measures to help ensure FPL will maintain its average frequency response, updates to FPL's Emergency Operating Procedures, additional Operations Engineers for BES analysis, review of FPL's equipment maintenance practices, and the submission of Quarterly Progress Reports.

The \$25 million civil penalty amount agreed upon was determined by balancing the following factors:

- The seriousness of the event;
- The impact on the BES;
- The fact that FPL's actions were neither intentional nor fraudulent;
- The cooperation FPL demonstrated during the investigation; and



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- FPL's implementation of reliability enhancement measures immediately after the event and during the investigation.³

Out of recognition that both FERC and NERC participated in the investigation, the civil penalty is to be paid to both the United States Treasury and NERC.⁴ Within 10 days of the decision becoming effective, FPL is required to pay \$10 million to the U.S. Treasury and \$10 million to NERC. The remaining \$5 million can be spent on reliability enhancement measures that go beyond those measures FPL committed to in the Agreement. Any money not spent or committed to be spent after three years on these additional measures is to be paid, in equal portion, to the U.S. Treasury and NERC.

III. Future Orders Approving Penalties for Violations of Reliability Standards

Both Commissioners Spitzer and Moeller issued separate concurrences to highlight concerns they each had with the order, and to put the industry on notice of their expectation that orders on settlements addressing alleged violations contain more detailed information in the future. In the longer of the two concurrences, Commissioner Spitzer emphasized that while he supported the order as a "reasonable outcome," he was concerned about the "lack of transparency and an absence of clarity in the Order."⁵ Specifically, while the Order identified the categories of the Reliability Standards that FPL was alleged to have violated, he found that "nowhere does the Order identify with any specificity the Reliability Standards that the Commission and NERC alleged FPL violated," nor does the order provide any "meaningful information as to why the actions taken by FPL leading up to and after the Florida Blackout are, in the Commission's view, violative of the Reliability Standards."⁶ Due to these shortcomings, Commission Spitzer cautioned that "[i]n the future, I expect that all orders on settlements addressing alleged violations of the Reliability Standards will provide this important information."⁷ This admonition was echoed by Commission Moeller, who also stressed that "[t]hose who are subject to Commission penalties need to know, in advance, what they must do to avoid a penalty."⁸

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¹ *Florida Blackout*, 129 FERC ¶ 61,016 (2009) (Florida Blackout Order).

² Florida Blackout Order, Spitzer Concurrence at 1 (Spitzer Concurrence).

³ Florida Blackout Order at P 20; Florida Blackout Order, Stipulation and Consent Agreement at PP 16-20, 25.

⁴ Florida Blackout Order at P 18.

⁵ Spitzer Concurrence at 1.

⁶ *Id.* at 1-2.

⁷ *Id.* at 1.

⁸ Florida Blackout Order, Moeller Concurrence at 1 (footnote omitted).