

Consumer-owned utilities not immune to federal reliability standards

Some changes to the nation's energy policy enacted by Congress as part of the *2005 Energy Policy Act* (2005 EPAct) are only just now starting to have a real impact on consumer-owned utilities. In part as a response to a regional-scale blackout in 2003, Congress used the 2005 EPAct to allow the Federal Energy Regulatory Commission (FERC) to impose mandatory reliability standards on all owners, operators, and users of the bulk power system. As "users" of the system, consumer-owned utilities are subject to these standards, even though they usually fall outside of FERC's regulatory jurisdictional authority pursuant to Section 201(f) of the *Federal Power Act*. With regulation comes enforcement, and with enforcement comes the risk of penalties. In the case of reliability standards, these penalties can be quite severe.

Prior to enactment of the 2005 EPAct, reliability standards were, for the most part, voluntary. The 2005 EPAct called for the formation of an electric reliability organization (ERO), the role of which is to establish and *enforce* reliability standards — meaning that reliability standards are no longer voluntary once they are adopted by FERC. The North American Electric Reliability Corporation (NERC) has emerged as the entity that serves as the ERO. In June 2007, FERC approved and adopted 83 different reliability standards that were developed by NERC. These standards relate to everything from the balancing of resources and demands to interconnections to personnel training.

NERC enforces its reliability standards through a variety of mechanisms, including self-reporting by utilities, and

using information from annual reports, audits, and investigations. Investigations are conducted by NERC, or by a regional entity such as the Western Electricity Coordinating Council (WECC).

When a regional entity has reason to believe that a utility is violating a reliability standard, it will provide notice to that utility, instigating an enforcement proceeding. At that point, the regional entity and the utility may enter into a settlement process, or, if the parties are unable to agree on a solution, the matter will go through a hearings process. In the end, confirmed violations are subject to penalties. These penalties may start out on the low end as a \$1,000 base fine, but can also be imposed at a statutory maximum of \$1,000,000 per day. The penalties levied for a violation relate to the seriousness of the violation and the risk that violation poses on the transmission system.

Even though utilities have the option to pursue a dispute resolution process in lieu of any formal hearing proceeding, such an approach is not without risk. For example, settlement agreements with a regional entity or NERC must provide for a waiver of the utility's right to further hearings and appeal. Therefore, if the settlement agreement is not complete, or if it does not fully protect the utility, the utility may be barred from addressing any shortcomings in the agreement at a later point in time.

Since NERC's 83 reliability standards were adopted by FERC two years ago, most enforcement proceedings have occurred in other areas of the country — areas where reliability of the electricity

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grid has been a concern in the past. The Northwest, however, is not immune from the standards, and WECC has recently issued several notices of violation. And even more reliability standards are on their way.

Other than contracting with Bonneville Power Administration, most consumer-owned utilities in the Northwest do not interact heavily with federal electricity regulators. Working with entities like NERC and WECC, therefore, likely entails building new relationships and developing a deeper

understanding of federal issues and administrative law than most consumer-owned utilities are used to. Utilities and other users of the electricity grid should keep these thoughts in mind as they begin encountering enforcement of reliability standards and other regulations affecting their systems. ^{NWPPA}

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