

established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Winona, MS.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO MS E5 Winona, MS [New]

Winona-Montgomery County Airport, MS (Lat. 33°27'54" N., long. 89°43'48.8" W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6.9-mile radius of Winona-Montgomery County Airport.

* * * * *

Issued in College Park, Georgia, on April 7, 2008.

Kathy Swann,

*Acting Manager, System Support Group,
Eastern Service Center, Air Traffic
Organization.*

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 39

[Docket Nos. AD08–6–000 and RM05–30–000]

Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards; Statement of Administrative Policy on Processing Reliability Notices of Penalty and Order Revising Statement in Order No. 672

Issued April 17, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule; Statement of Administrative Policy.

SUMMARY: On February 3, 2006, the Federal Energy Regulatory Commission issued a Final Rule (Order No. 672) implementing Subtitle A (Reliability Standards) of the Electricity Modernization Act of 2005, which is Title XII of the Energy Policy Act of 2005 (EPAct). The Commission is issuing a policy statement that adopts administrative policy on Commission review of notices of penalty for violation of Reliability Standards and that modifies Order No. 672.

DATES: *Effective Date:* April 17, 2008.

FOR FURTHER INFORMATION CONTACT:

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Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6523.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Sudeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellingshoff.

1. On February 3, 2006, the Commission issued a Final Rule (Order No. 672),¹ implementing Subtitle A (Reliability Standards) of the Electricity Modernization Act of 2005, which is Title XII of the Energy Policy Act of 2005.² Among other things, Order No. 672 amended the Commission's regulations to implement section 215(e) of the Federal Power Act (FPA), which authorizes the Electric Reliability Organization (ERO) to impose a penalty for a violation of a Reliability Standard by a user, owner or operator of the Bulk-Power System, subject to an opportunity for Commission review.³ In this order, the Commission adopts this statement of administrative policy on Commission review of these penalties.⁴ In addition, the Commission modifies our statement in Order No. 672 that any settlement of an alleged violation of a Reliability Standard that the ERO files with the Commission should be filed for information purposes only and that these settlements will not be subject to Commission review pursuant to section 39.7(e) of our regulations.⁵ Any settlement filed by the ERO after the date of this order will be subject to Commission review pursuant to section 39.7(e), although the Commission continues to encourage these settlements and expects that it will normally allow ERO or Regional Entity settlements to become effective.

I. Background

2. Pursuant to FPA section 215(e)(1),⁶ the North American Electric Reliability Corporation (NERC), in its capacity as

¹ *Rules Concerning Certification of the Electric Reliability Organization; Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204 (2006), *order on reh'g*, Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

² Public Law No. 109–58, Title XII, Subtitle A, 119 Stat. 594, 941, codified at 16 U.S.C. 824a (Supp. V 2005).

³ These implementing regulations are found in Part 39 of our regulations, 18 CFR Part 39 (2007).

⁴ FPA section 215(e)(3) empowers the Commission itself to impose a penalty against a user, owner or operator for a violation of a Reliability Standard. This order does not address the Commission's procedures for imposing these penalties. The Commission discussed these procedures in *Statement of Administrative Policy Regarding the Process for Assessing Civil Penalties*, 117 FERC ¶ 61,317, at P 5 & n.15 (2006).

⁵ See Order No. 672 at P 598.

⁶ 16 U.S.C. 824a(e)(1) (Supp. V (2005)).

the nation's ERO,⁷ may impose a penalty on a user, owner or operator of the Bulk-Power System for a violation of a Reliability Standard approved by the Commission. Pursuant to FPA section 215(e)(4),⁸ the Commission authorized NERC to delegate authority to impose such penalties to eight Regional Entities through Commission-approved Delegation Agreements.⁹ The Commission also approved, subject to further modifications, NERC's Compliance Monitoring and Enforcement Program (CMEP), which establishes procedures for Regional Entities to impose penalties and for NERC to review them, whether a registered entity appeals a Regional Entity determination, agrees not to contest it, or enters into a settlement with respect to the penalty.¹⁰ NERC itself may also impose a penalty.

3. FPA section 215(e)(2) provides that a penalty NERC or a Regional Entity imposes may take effect no earlier than 31 days after NERC files with the Commission a notice of penalty and the record of proceedings.¹¹ FPA section 215(e)(2) further states, "Such penalty shall be subject to review by the Commission, on its own motion or upon application by the user, owner or operator that is the subject of the penalty filed within 30 days after the date such notice is filed with the Commission."

4. In Order No. 693, the Commission approved 83 Reliability Standards that NERC proposed.¹² These Reliability Standards generally became effective on June 18, 2007. The Commission directed in Order No. 693 that NERC and the

Regional Entities, as a matter of enforcement discretion, focus their resources on the most serious violations during an initial period through December 31, 2007, and that this discretion should apply to all users, owners and operators of the Bulk-Power System.¹³ The Commission expects that, in due course, NERC will file notices of penalty with respect to certain violations of Reliability Standards that occurred during the June 18 to December 31, 2007 initial period. The Commission further expects that NERC will file notices of penalty representing settlements entered into by it or a Regional Entity of violations that occurred or are alleged to have occurred during this period. The Commission also expects that, in due course, NERC will file notices of penalty for violations that occurred or are alleged to have occurred after this initial six-month period. Accordingly, the Commission believes that an explanation of how it plans to process any notice of penalty filed by NERC will afford entities identified in notices of penalty, and the electric industry as a whole, increased transparency into the Commission's enforcement processes involving Reliability Standards.

II. Commission Review of ERO-Approved Penalties

5. Pursuant to section 39.7(e)(1) of our regulations, an entity subject to a notice of penalty may file an application for review of it within 30 days of the date NERC files the notice of penalty.¹⁴ Any answer, intervention or comment to an application for review of a proposed penalty must be filed within 20 days after the application is filed, unless otherwise ordered by the Commission.¹⁵ If the entity subject to a proposed penalty files an application for review of the proposed penalty, the Commission will take action on that application within 60 days of the date on which it is filed, unless the Commission determines on a case-by-case basis that an alternative expedited procedure is appropriate.¹⁶

6. In addition, any proposed penalty filed by NERC is subject to review by the Commission on its own motion

within 30 days after the date on which NERC files the notice of penalty.¹⁷ Should the Commission determine to review a proposed penalty on its own motion, it will issue an order initiating review of the proposed penalty and establishing a filing date for any answers, interventions or comments. The Commission's regulations do not state when answers, interventions and comments ordinarily would be filed if the Commission were to initiate review of a notice of penalty. However, we generally will establish the filing deadline as 20 days after the date of the Commission's order initiating a review of a proposed penalty on its own motion. Likewise, the Commission's regulations do not specify a default time period for the Commission to complete the review of a notice of penalty on its own motion. The Commission nevertheless anticipates that it would ordinarily issue a determination within 60 days of ordering that review, unless issues in a particular case require a longer period for consideration.

7. Section 39.7(e)(1) provides that the Commission may take action within 30 days after NERC files a notice of penalty, other than moving to review the notice of penalty, to prevent a proposed penalty from being affirmed by operation of law on the expiration of that 30-day period. For example, the Commission could issue an order stating that it requires more than 30 days to determine whether it should review a proposed penalty on its own motion. While we anticipate that the Commission will issue such orders rarely, in appropriate instances, the Commission retains the option of doing so. Such an order will not solicit answers, intervention or comments. If the Commission determines to review the notice of penalty, it will issue a subsequent order initiating review of the proposed penalty and establishing a filing deadline for any answers, intervention or comments. Should the Commission decide not to review the notice of penalty, the Commission will issue an order terminating the proceeding. The proposed penalty shall be affirmed by operation of law immediately upon the issuance of that order.

8. We wish to make clear that in an application for review of a proposed penalty filed by NERC, an entity may seek review of the amount of the proposed penalty or its type (i.e., argue that a proposed monetary penalty should be a non-monetary penalty, for example) as well as of any determinations underlying the proposed

⁷ *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062 (ERO Certification Order), order on reh'g and compliance, 117 FERC ¶ 61,126 (2006).

⁸ 16 U.S.C. 824o(e)(4) (Supp. V (2005)).

⁹ *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060 (Delegation Agreement Order), order on reh'g, 120 FERC ¶ 61,260 (2007), order on responsive filing, 122 FERC ¶ 61,245 (2008) (Second Delegation Agreement Order). The Regional Entity Delegation Agreements went into effect on June 5, 2007. See *Delegation Agreement Between the North American Electric Reliability Corp. and Texas Regional Entity, a division of ERCOT*, 119 FERC ¶ 61,232 (2007).

¹⁰ See *id.* The relevant CMEP provisions are sections 5.1 through 5.6.

¹¹ 16 U.S.C. 824o(e)(2) (Supp. V (2005)). See also 18 CFR 39.7(e).

¹² *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 1 (2007), order on reh'g, Order No. 693-A, 120 FERC ¶ 61,053 (2007). The Commission subsequently approved other Reliability Standards. *North American Electric Reliability Corp.*, 119 FERC ¶ 61,260 (2007) (approving eight regional standards proposed by the Western Electricity Coordinating Council); *Facilities Design, Connections and Maintenance Reliability Standards* (Order No. 705), 121 FERC ¶ 61,296 (2007); *Mandatory Reliability Standards for Critical Infrastructure Protection* (Order No. 706), 122 FERC ¶ 61,040 (2008).

¹³ Order No. 693 at P 222.

¹⁴ 18 CFR 39.7(e)(1).

¹⁵ 18 CFR 39.7(e)(4). All notices of penalty will receive a docket number with an "NP" prefix, as the Commission's Secretary stated in a February 7, 2008 notice.

¹⁶ 18 CFR 39.7(e)(6). The Commission may determine that an alternative time period is appropriate at any point within the "default" 60-day period that section 39.7(e)(6) establishes. If the Commission determines to extend that period in a particular proceeding, it will issue an order establishing the alternative time period.

¹⁷ 18 CFR 39.7(e)(1).

penalty, including whether a violation of a Commission-approved Reliability Standard occurred or whether there is a sufficient factual record to support any such determination.¹⁸ Likewise, if the Commission moves to review a proposed penalty, it may review the amount or type of the proposed penalty, as well as any determinations underlying it, such as the existence of one or more violations of a Commission-approved Reliability Standard.

9. Section 215(e)(6) of the FPA states that a penalty imposed for a violation of a Reliability Standard “shall bear a reasonable relation to the seriousness of the violation and shall take into consideration the efforts of [the registered entity] to remedy the violation in a timely manner.”¹⁹ When reviewing a notice of penalty, whether pursuant to an application for review or on our own motion, we will conduct a *de novo* review of the record of the proceeding below to ascertain whether the record contains adequate evidence that the proposed penalty determination accords with this test.²⁰ We observe in this regard that FPA section 215(e)(2) states that in any proceeding to review a notice of penalty, the Commission must provide notice and an opportunity for hearing that “may consist solely of the record before the ERO and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the penalty.”²¹ As we stated in Order No. 672, based on this provision, we expect in most instances not to open the record set forth in or accompanying a notice of penalty to additional material from third parties.²²

¹⁸ See Order No. 672 at P 508 (allowing the Commission to remand a penalty to the ERO for additional fact-finding proceedings). Nevertheless, for example, it would not be appropriate, absent extraordinary circumstances, for an entity that applies for a review of a notice of penalty to contest a finding of violation included in it if that entity had admitted or not contested a finding of violation, as set forth in the record of proceedings the NERC submits with a notice of penalty. Similarly, we ordinarily would look with great disfavor on an entity’s attempt in an application for review to contest a fact or matter if that entity stipulated to it, as described in the record of proceedings.

¹⁹ 16 U.S.C. 824o(e)(6) (Supp. V (2005)).

²⁰ See Order No. 672 at P 614 (*de novo* review is consistent with the practice of other administrative agencies that review sanctions imposed by their associated self-regulatory organizations). We concluded in the *Delegation Agreement Order* that a Regional Entity or NERC may not impose a penalty in an adjudication without concluding that the preponderance of the evidence supports the penalty. *Delegation Agreement Order* at P 146.

²¹ 16 U.S.C. 824o(e)(2) (Supp. V (2005)).

²² Order No. 672 at P 511. In this regard, we emphasize our agreement in the *ERO Certification Order* at P 491 that NERC affords appropriate deference in its procedures to the Regional Entities’ role as reliability managers and their familiarity with operating conditions by prohibiting NERC’s

However, the Commission retains the discretion in particular cases to permit additions to the record with respect to a notice of penalty.²³

10. We believe that entities that are subject to Reliability Standards should have notice of the general criteria the Commission will use to determine whether it will review particular notice of penalty on its own motion. We will use the following principles in this matter. First, the Commission does not anticipate moving to review every notice of penalty that NERC files, or even most. While the Commission is required to review every notice of penalty for which a registered entity files an application for review, the Commission’s limited resources would likely preclude review of all uncontested notices of penalty. Second, as described earlier, the Commission has approved NERC’s CMEP as the framework for NERC’s enforcement authority under section 215 of the FPA, as well as NERC’s delegation of enforcement powers to Regional Entities through the Delegation Agreements. The Commission sees no general need to review each notice of penalty for which a Regional Entity has developed a record and which it has approved, and which NERC has reviewed for sufficiency and consistency. Third, the Commission recognizes that, on a continuing basis, Regional Entities and NERC retain an element of enforcement discretion similar to our own discretion in enforcement matters.²⁴ Reviewing every uncontested notice of penalty on our own motion would be inconsistent with this recognition and would ultimately weaken the enforcement efforts of the Regional Entities and NERC.²⁵

consideration on appeal of any fact that is not in the record compiled by the relevant Regional Entity.

²³ See 18 CFR 39.7(e)(2) (an applicant for Commission review of a penalty in a notice of penalty may support its explanation by providing information that is not included in the ERO’s record) and 39.7(e)(3) (when reviewing a notice of penalty, the Commission may “establish a hearing before an administrative law judge or initiate such further procedures as it determines to be appropriate”). However, in neither of these situations is the Commission required to admit into the record information or documents proffered by parties to the review proceeding. In particular, the Commission would look with disfavor on admitting into the record in a proceeding to review a notice of penalty documents or information that a party had an opportunity to move into the record before the Regional Entity, but failed to do so.

²⁴ See Order No. 693 at P 225 (“The Commission agrees that, separate from our specific directive that all concerned focus their resources on the most serious violations during an initial period, the ERO and Regional Entities retain enforcement discretion as would any enforcement entity.”).

²⁵ *Id.* (observing that NERC’s Sanction Guidelines, which set forth the principles under which NERC and the Regional Entities will determine penalties,

11. Nonetheless, because the Commission bears ultimate responsibility for the enforcement of Reliability Standards, we may review a notice of penalty even if the registered entity that is the subject of the notice of penalty does not file an application for review.²⁶ In determining whether to review a notice of penalty (which will occur prior to receiving an application for review), we would look first to the apparent relative seriousness of the violation at issue in the notice of penalty. For example, we would evaluate the seriousness of a violation by the combination of violation risk factor and violation severity level that NERC has assigned and that we have approved for particular requirements of the Reliability Standards implicated in the notice of penalty.²⁷ We also will analyze notices of penalty to ascertain the potential risk to the reliability of the Bulk-Power System, as well as any actual harm, presented by their particular fact patterns. The more serious a violation described in a notice of penalty appears to be, the more likely it is that we would review the proposed penalty. In addition, the Commission retains the authority to review notices of penalty on its own motion to ensure that penalties are applied in a reasonably consistent manner, or to improve compliance with Reliability Standards and thereby increase the reliability of the Bulk-Power System.²⁸

provide flexibility as to establishing the appropriate penalty within the range of applicable penalties).

²⁶ It is possible that a registered entity will file an application for review of a notice of penalty after the Commission has issued an order stating that it will review the notice of penalty on its own motion. In that situation, the Commission will adhere to the procedural provisions of section 39.7(e)(4) and (e)(6) with respect to an application for review of a notice of penalty.

²⁷ Pursuant to section 4.1 of NERC’s Sanction Guidelines, NERC and Regional Entities use the intersection of the violation risk factor and violation severity level in setting the initial range of the Base Penalty Amount that is calculated in the process of determining an appropriate penalty for a particular violation. See *North American Electric Reliability Corp.*, 119 FERC ¶61,248, at P 74 (2007). While the Commission has approved or directed revisions to violation risk factors for all requirements of Reliability Standards it has currently approved to apply nationwide, NERC’s proposed violation severity levels for these standards are currently pending before the Commission in Docket No. RR08–4–000. Pending Commission review of this filing, as an interim measure when determining penalties, NERC and Regional Entities may use existing Levels of Non-Compliance assigned to particular standards to substitute for violation severity levels. *Id.* P 79.

²⁸ See *Second Delegation Agreement Order* at P 60 (The Commission’s discretion to review penalty determinations on its own motion includes, but is broader than, ascertaining whether they clearly conflict with the goal of consistent national reliability enforcement or whether their revision is needed for oversight of Regional Entity compliance

12. Section 39.7(e)(3) of our regulations provides that neither an application for review of a notice of penalty nor the Commission's initiation of a review of a notice of penalty will operate as a stay of the proposed penalty unless the Commission otherwise orders, upon application by the subject of a notice of penalty or upon the Commission's own motion.

Nevertheless, as a matter of policy, the Commission intends as a general matter to stay any proposed penalty under Commission review. Not doing so would require a user, owner or operator to pay a penalty that the Commission may later set aside or modify. To the extent that any proposed penalty is later affirmed by the Commission, the penalty amount must be paid with interest from the date of the stay.

13. Pursuant to section 39.7(e)(5) of our regulations, in any proceeding to review a proposed penalty, the Commission, after public notice and opportunity for hearing, may by order affirm, set aside, or modify the proposed penalty, or remand the determination of the proposed penalty, or its form or amount, to the ERO for further proceedings. Any party to the proceeding may seek rehearing of the Commission's order, as described in Rule 713 of the Commission's Rules of Practice and Procedure.²⁹

III. Commission Review of Settlements of Reliability Penalties by Regional Entities or NERC

A. Order No. 672

14. Order No. 672 stated the ERO should file, for informational purposes only, any settlement of an alleged violation regardless of whether the agreement contains an admission by the settling user, owner or operator. While settlements will be made public, Order No. 672 provided that settlements would not be noticed for public comment; nor would they be subject to Commission review pursuant to section 39.7(e) of the Commission's regulations

activities, citing *Delegation Agreement Order* at P 173).

²⁹ 18 CFR 385.713 (2007).

regarding Commission review of a notice of penalty.³⁰

B. Commission Determination

15. Upon reconsideration based on our experience since Order No. 672 issued, the Commission revises its policy stated in Order No. 672 with regard to reviewing settlements of alleged violations. In modifying our policy regarding ERO and Regional Entity settlements, we note that the Commission may change its policy if it provides, as it does here, a reasoned basis for that change.³¹ The Commission believes that, on reflection, our statement in Order No. 672 is not in the public interest for several reasons. First, it is contrary to Commission policy regarding settlements in other contexts. For example, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, the Commission must review written offers of settlement filed in any proceeding pending before the Commission.³² Further, the Commission reviews settlements entered into by the Commission's Office of Enforcement.³³ Second, after issuing Order No. 672, the Commission decided that the ERO should have authority on its own motion to reject settlements into which Regional Entities have entered.³⁴

16. The Commission does not believe that it should afford settlements entered into by the ERO or a Regional Entity relating to an alleged or confirmed violation of Commission-approved mandatory Reliability Standards more

³⁰ Order No. 672 at P 598. The Commission presumes that a settlement will require a registered entity that is a party to forego any right to file an application for Commission review of the settlement.

³¹ E.g., *B&J Oil and Gas v. FERC*, 353 F.3d 71 (D.C. Cir. 2004).

³² 18 CFR 385.602(g)(3), (h)(1)(i) (2007).

³³ See, e.g., *Statement of Administrative Policy Regarding the Process for Assessing Civil Penalties*, 117 FERC ¶ 61,317, at P 2 (2006) (noting that "civil penalties often are negotiated as part of a stipulation and agreement resolving compliance issues" and that "[i]n such cases the civil penalty is imposed through a Commission order approving the negotiated agreement. * * *") See also, e.g., *In re Gexa Energy, LLC*, 120 FERC ¶ 61,175 (2007); *In re Cleco Power, LLC*, 119 FERC ¶ 61,271 (2007).

³⁴ *Delegation Agreement Order* at P 107.

deference than we would afford to those entered into by the Office of Enforcement or approved by the Commission's Administrative Law Judges. Nor should the Commission abstain from reviewing settlements approved by the ERO in the manner in which it has permitted the ERO to review Regional Entity settlements. Finally, we do not believe it reasonable to treat settlements as categorically different than other notices of penalty.

17. Not allowing Commission review of a settlement would mean, for example, that an entity that does not contest a proposed penalty would nonetheless have its notice of penalty subject to review by the Commission, whereas an entity that initially contested the proposed penalty but subsequently settled with the Regional Entity would not have its settlement subject to review by the Commission. This distinction makes little sense and could actually increase litigation (in an effort to produce formal settlements) rather than reduce it. Therefore, any settlement entered into by the ERO or a Regional Entity after the date of this order will be subject to Commission review pursuant to section 39.7(e) of the Commission's regulations.

18. As a final matter, we wish to make it clear that the Commission continues to encourage settlements by Regional Entities and NERC.³⁵ Similar to the Commission's statement that it does not expect the ERO to reject Regional Entity settlements as a normal practice, the Commission expects that it will normally allow ERO or Regional Entity settlements to become effective.³⁶

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

APPENDIX

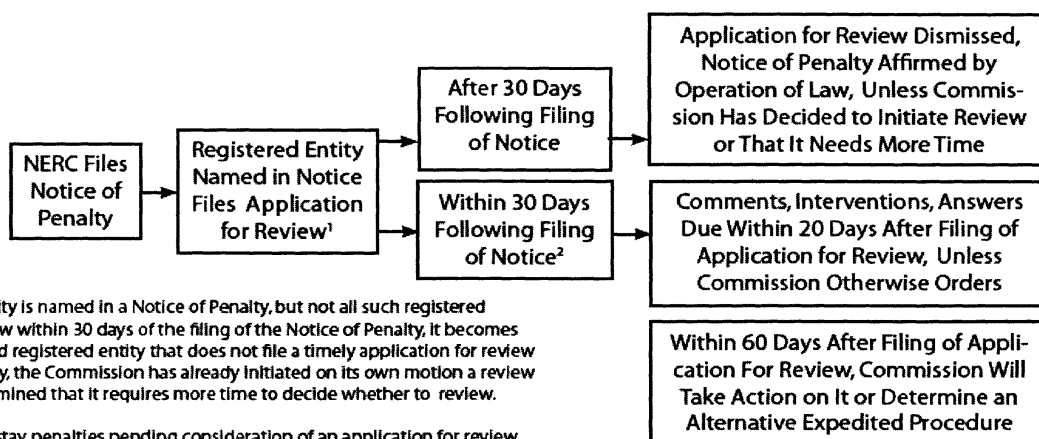
FLOW CHART ILLUSTRATING NOTICE OF PENALTY PROCESSES

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³⁵ See *ERO Certification Order* at P 479; *Delegation Agreement Order* at P 107.

³⁶ *Id.*

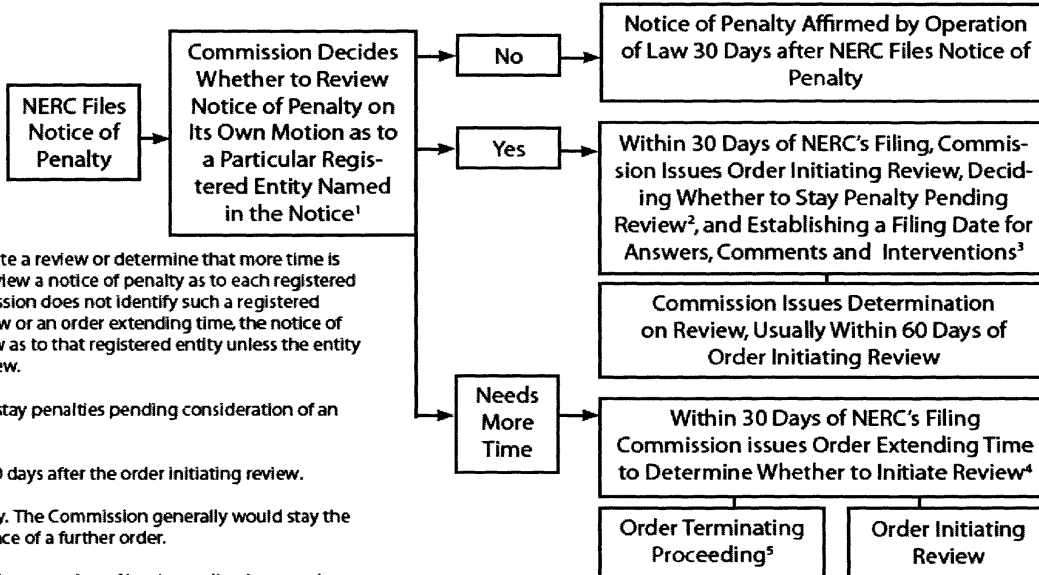
NERC Files Notice of Penalty That is Not a Settlement and Registered Entity Files Application for Review of Penalty



¹ If more than one registered entity is named in a Notice of Penalty, but not all such registered entities file applications for review within 30 days of the filing of the Notice of Penalty, it becomes affirmed by law as to each named registered entity that does not file a timely application for review unless, as to that registered entity, the Commission has already initiated on its own motion a review of the Notice of Penalty or determined that it requires more time to decide whether to review.

² The Commission generally will stay penalties pending consideration of an application for review.

NERC Files Notice of Penalty That is Not a Settlement And Commission Decides Whether to Initiate Review of Penalty on Its Own Motion



¹ The Commission need not initiate a review or determine that more time is needed to decide whether to review a notice of penalty as to each registered entity named in it. If the Commission does not identify such a registered entity in an order initiating review or an order extending time, the notice of penalty becomes affirmed by law as to that registered entity unless the entity files a timely application for review.

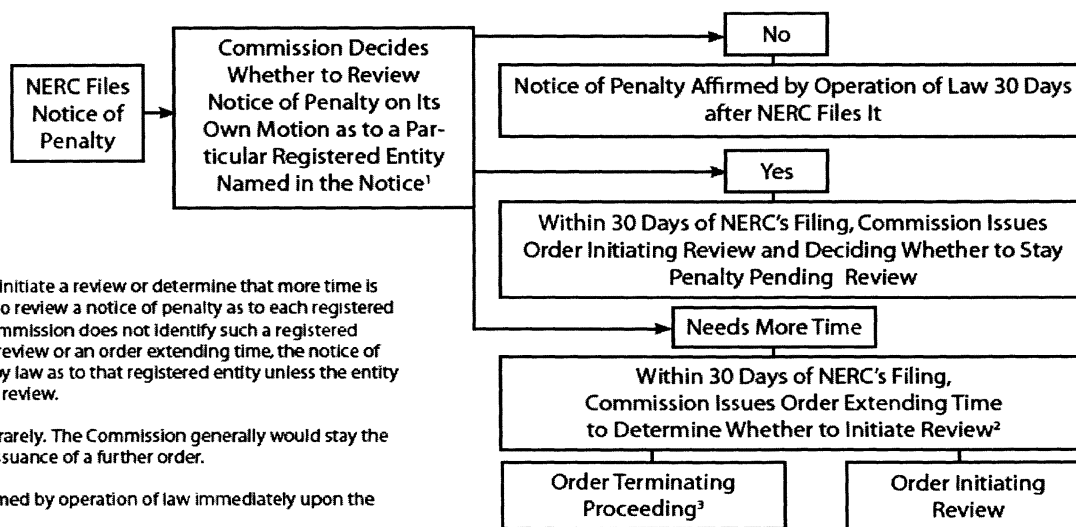
² The Commission generally will stay penalties pending consideration of an application for review.

³ The filing date usually will be 20 days after the order initiating review.

⁴ Such orders will be issued rarely. The Commission generally would stay the notice of penalty pending issuance of a further order.

⁵ The penalty would be affirmed by operation of law immediately upon the issuance of this order.

NERC Files Notice of Penalty for a Settlement by a Regional Entity or NERC



¹ The Commission need not initiate a review or determine that more time is needed to decide whether to review a notice of penalty as to each registered entity named in it. If the Commission does not identify such a registered entity in an order initiating review or an order extending time, the notice of penalty becomes affirmed by law as to that registered entity unless the entity files a timely application for review.

² Such orders will be issued rarely. The Commission generally would stay the notice of penalty pending issuance of a further order.

³ The penalty would be affirmed by operation of law immediately upon the issuance of this order.