

## FERC and NERC Reach Record \$25 Million Civil Penalty Settlement with FPL Related to Florida Blackout

On October 8, 2009, the Federal Energy Regulatory Commission (FERC) and the North American Electric Reliability Corporation (NERC) reached a record \$25 million settlement agreement with Florida Power and Light Company (FPL) to resolve a joint FERC-NERC enforcement investigation of a February 26, 2008 widespread blackout affecting Florida (Florida Blackout). Under the settlement, FPL will pay \$20 million to the U.S. Treasury and NERC and will spend up to \$5 million for reliability enhancements to its electric system.

The settlement represents the largest civil penalty assessed to date for alleged violations of mandatory reliability standards, which are enforced by NERC and FERC. Violations of mandatory reliability standards carry penalties of up to \$1 million per violation, per day.

In concurring statements, two of the three FERC Commissioners approving the settlement critically noted that the settlement “fails to identify with any specificity the Reliability Standards that FPL is alleged to have violated or how the facts support the application of the Reliability Standards.” Commissioners Moeller and Spitzer expressed their expectation that all FERC orders on future settlements include such specificity.

### BACKGROUND

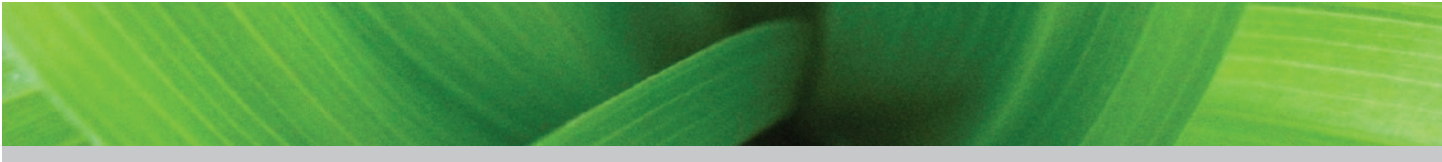
The Florida Blackout originated from a malfunctioning substation on the FPL system, and the failure of an FPL engineer to notify the load dispatcher on duty in FPL’s control center that both primary and secondary breaker failure protection had been disabled. Actions by the FPL load dispatcher then caused a system fault to occur and resulted in a 17-19 second arc that spread throughout the Bulk Electric System (BES).

FERC and NERC began a formal investigation of the Florida Blackout, which lasted more than 18 months. Eventually, FERC and NERC concluded that the Florida Blackout was a serious outage, but that FPL’s actions were neither intentional nor fraudulent, and commended FPL for its exemplary cooperation throughout the investigation.

### IMPLICATIONS

The FPL settlement establishes a significant milestone for an electric reliability compliance investigation with its record \$25 million civil penalty. However, the settlement is remarkable in that it does not identify the specific requirements allegedly violated and fails to relate the extraordinary size of the penalty to any violation or number of violations.

The rationale for the settlement amount is left obscure, raising obvious questions regarding the reasonableness of the settlement amount given that FERC’s civil penalty authority is \$1 million per violation, per day. FERC and NERC acknowledge that the Florida Blackout resulted from an unintended mistake, yet, it is unclear whether or



how the cause of the blackout had an impact on the civil penalty that was assessed. Does the FPL settlement signal that after any future widespread outage a significant civil penalty can be expected? Since it is certain outages will occur, FERC has left it unclear whether or how a utility can protect itself from such a result. FERC and NERC could have addressed these issues by releasing more detailed findings from their investigation. Although the FPL settlement agreement does not provide helpful guidance to the regulated owners, operators, and users of the BES, it will get their attention.

#### FOR ADDITIONAL INFORMATION

Van Ness Feldman counsels investor-owned utilities, municipal utilities, generators, and power marketers on compliance with mandatory reliability standards and has assisted clients in NERC audits, settlements, and registration disputes. For assistance or additional information, please contact Gary Bachman, Andrew Art, Vincenzo Franco or any other member of Van Ness Feldman's Electric Practice at 202.298.1800.

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