

NERC Compliance Public Bulletin #2010-003

Reporting of Violations that Occur During an Active Mitigation Plan Spanning Multiple Reporting Periods

Version 1.0

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PURPOSE

The purpose of this bulletin is to provide guidance for reporting ongoing and/or repeat violations of reliability standards during the period of time when a registered entity is implementing an approved mitigation plan. Violations of reliability standards, or the underlying factors that caused or contributed to a violation, may continue from the time the reliability standard was originally violated, during the performance of the mitigation plan, until finally mitigated under an approved mitigation plan. In some cases, the mitigation plan may have a duration that spans multiple reporting periods specified by one or more of the reliability standards or requirements associated with the plan. Because the underlying condition(s) that caused or contributed to the violations may not be fully mitigated until completion of the mitigation plan, the registered entity implementing the mitigation plan may have continuing and/or repeat violations when the specified reporting periods are reached. In these cases, the specific facts and circumstances will dictate whether the violations should be treated as a continuation of the original violations or new violations. This bulletin addresses:

- How to determine whether new, additional violations have occurred;
- How to report such new, additional violations; and
- How such new, additional violations will be treated under the Compliance Monitoring and Enforcement Program (“CMEP”).

REPORTING OF VIOLATIONS

The following provides examples of the most common types of circumstances:

- 1) ***Ongoing or continuing violations of reliability standards should not be reported as new, additional violations during the approved duration of the mitigation plan.***

The underlying circumstances causing or contributing to a violation are expected to persist until the mitigation plan is completed so the violation will continue for that period of time. Such ongoing or continuing violations should not be reported as additional violations if they continue into later reporting periods. However, the Regional Entity is required to determine the number of days the registered entity was in violation of the reliability standard.

For example, in the case of violations of NERC Reliability Standard PER-003 (Operating Personnel Credentials), which requires monthly reporting of violations, if a registered entity does not have NERC Certified Operators on shift, it may be in violation of NERC Reliability Standard PER-003. If a registered entity is working under an approved mitigation plan to remedy the violation and the mitigation plan has an agreed-upon completion date of three months from the date of the violation, the violation is ongoing in nature. As a result, subsequent violations that occur during the approved three-month duration of the mitigation plan would not be reportable as new violations. However, each additional violation during the pendency of the mitigation plan should be identified and logged in the event the registered entity fails to complete the approved mitigation plan, including any authorized extensions. A similar example could exist for violations of NERC Reliability Standard PRC-005 (Transmission and Generation Protection System Maintenance and Testing) during which the mitigation plan requires an extended maintenance and testing schedule to bring the registered entity back into compliance.

In accordance with the NERC CMEP and Federal Energy Regulatory Commission (“FERC” or the “Commission”) Orders, Notices of Penalty will identify the duration of the violation which began on the start date of the violation and will end on the actual completion date when the mitigation plan will be fully implemented and the violation corrected. The Notice of Penalty will state whether the mitigation plan was completed at the time of the Notice of Penalty filing. Because the additional violations are identified and tracked by the Regional Entity during the period of abeyance, reporting of new, additional violations during this period is not required.

- 2) ***Violations of reliability standards that are incident-driven in nature should be reported as new, additional violations during the period a mitigation plan is implemented.***

Unlike violations that are ongoing in nature, there is another class of violations that are incident-driven and should be treated as new violations even if they are similar in nature to violations occurring during the pendency of an approved mitigation plan. For example, violations of an Interconnection Reliability Operating Limit (IROL) or a System Operation Limit (SOL) are to be reported as a new, additional violation for each incident, as they occur, regardless of the reporting period.

Enforcement action for the original violation(s) will be unaffected by the subsequent violations that occurred during implementation of the mitigation plan. Enforcement action for the new, additional violation(s) that occurred during the mitigation plan will consider: (i) whether the violations occurred while the registered entity was implementing an approved mitigation plan addressing the root cause of the original and each subsequent violation, and (ii) the extent to which the registered entity could and should have avoided the subsequent violation(s) (i.e., was the registered entity abating interim risk per its approved mitigation plan [*See*: Section E.1 “Abatement of Interim BPS Reliability Risk” of NERC Standard Mitigation Plan template]).

Applying the requirements of Section 6.3 of the CMEP to violations of reliability standards that are incident-driven in nature will require Regional Entities to report any additional violations that occur during the period of time the accepted mitigation plan is being implemented. Penalties and sanctions for the additional violations will be held in abeyance until completion of the mitigation plan.

- 3) *Some reliability standards, or specific requirements of some reliability standards, will require the Regional Entities' analysis to determine if the type of requirement violated, under the circumstances, constitutes an "ongoing violation" or an "incident-driven" violation and, consequently, whether the incident/occurrence is to be reported as a new, additional violation in accordance with the guidelines included in items 1 or 2 above.*

There is a third category of cases that do not fall neatly in the "ongoing" or "incident-driven" buckets, and enforcement staff will need to analyze whether to treat these violations as new, additional violations. For example, a subsequent vegetation-related transmission outage or finding of an inadequate Clearance 2 (C2) associated with NERC Reliability Standard FAC-003 (Vegetation Management) that occurs during the mitigation plan implementation period may or may not constitute a new additional violation, depending on the circumstances. Some examples include the following:

- a. A registered entity experiences a vegetation-related transmission outage or becomes aware of at least one C2 encroachment. As part of its initial response activities, the registered entity immediately undertakes timely inspection, over as short a period of time as possible, of the remainder of its relevant facilities to inspect for other additional C2 encroachments. The initial encroachment causing the outage, in conjunction with any additional encroachments that the registered entity finds during its initial inspection, would be considered one violation of the standard. Any additional encroachments will serve to inform the registered entity and the Regional Entity of the scope and severity of the violation in the enforcement and penalty determination phase of the proceedings. Elimination of these encroachments can be completed simultaneously with the inspection or as a part of the approved mitigation plan.
- b. Building on the example in a) above and assuming that: (i) the inspection has been completed, (ii) encroachments of the clearances set in the registered entity's Transmission Vegetation Management Plan ("TVMP") have been eliminated, (iii) there is a subsequent, vegetation-related transmission outage or finding of a C2 encroachment that occurs during the approved implementation period of the mitigation plan, this new C2 encroachment may constitute a new, additional violation.
- c. If the clearances set within, or other provisions of the registered entity's TVMP do not comply with FAC-003, a C2 encroachment that was discovered or caused an outage during implementation of the approved

mitigation plan may not be considered a new, additional violation if the underlying cause of the initial violation is responsible for the outage or encroachment. For instance, revision of the registered entity's C2 requirements to larger distances, provided original distances were not less than that stipulated by IEEE 516-2003, should not result in new, additional violations for portions of the registered entity's system where it is not yet meeting the new distances.

REPORTING OF ADDITIONAL VIOLATIONS

NERC and the Regional Entities have an obligation to record and report violations of the applicable reliability standard where appropriate and under an approved mitigation plan.

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Process disclaimer: NERC reserves the right to issue new process bulletins or modify existing process bulletins when necessary and at its discretion.

REVISION HISTORY

Version	Date	Reviewers	Revision Description
1	April 15, 2010	NERC and Regional Entity Staff	Version 1.0