

FERC Approves \$12 Million Settlement for Reliability Standards Violations of Imperian Irrigation District

Article By:

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On August 7, 2014, **FERC** issued an order approving a **Stipulation and Consent Agreement** between FERC's enforcement staff, NERC, and Imperial Irrigation District (IID). See [Imperial Irrigation District](#), 148 FERC ¶ 61,108 (2014). As indicated in FERC's [press release](#) about the order, this Stipulation and Consent Agreement is the second settlement to stem from the September 8, 2011 Southwest Blackout, which left more than 5 million people in Southern California, Arizona, and Baja California, Mexico without power for up to 12 hours. As we [previously reported](#), FERC approved the first settlement on July 7, 2014, which provided for a \$3.25 million civil penalty against Arizona Public Service Company (APS).

The Stipulation and Consent Agreement with IID provided for the second highest civil penalty ever levied for Reliability Standards violations at \$12 million. The Stipulation and Consent Agreement provides that IID will pay \$3 million in cash to be divided equally between the US Treasury and NERC. The remaining \$9 million is subject to an offset for IID's investment in a large scale battery energy storage project which will have 33 MVA or better capacity at a 99.5% availability. The Stipulation and Consent Agreement provides, however, that to the extent IID does not invest the full \$9 million in this project by December 31, 2016, it will pay the remainder of the \$9 million in equal shares to the US Treasury and NERC.

This penalty is based on FERC staff's finding that IID had violated 10 requirements of two Reliability Standards, specifically Reliability Standard TOP-002-2a, Requirements (R) 4, R5, R6, R10, and R11; Reliability Standard TOP-004-2 R1, R2, and R4; Reliability Standard TPL-002-0 R1; and Reliability Standard TPL-003-0a R1. As with the APS settlement, the Stipulation and Consent Agreement with IID provides significant detail as to the nature of the event, but provides less detail as to the specific actions or inactions by IID that FERC staff and NERC found to be violative of the standards. In a single paragraph, FERC found that the violations of the transmission operations standards (TOP-002-2a and TOP-004-2) were based on IID's failure (a) to have valid next-day and current day operational plans, (b) to coordinate operations planning with neighbors, and (c) to establish valid system operating limits (SOLs) or to operate within valid SOLs or known conditions following a single contingency. In a separate paragraph, FERC found that the violations of the transmission planning standards (TPL-002-0 R1 and TPL-003-0a R1) stemmed from IID's failure to consider in its near- and long-term planning studies the impact caused by the potential loss of APS's Hassayampa-N.Gila 500kV transmission line and to consider the effects of control devices and

protection systems. For its part, IID stipulated to the facts identified in the Stipulation and Consent Agreement, and FERC noted that IID self-reported violations of TOP-002-2a R5 and R11. However, consistent with other FERC/NERC settlements, IID neither admitted nor denied that its actions or inactions amounted to other violations of the Reliability Standards.

The portions of the Stipulation and Consent Agreement describing IID's mitigation measure describe in detail activities IID has committed to undertake to correct its noncompliance. For example, in 10 paragraphs and more subparagraphs, the Stipulation and Consent Agreement provides for a revised "Normal Operations Planning Procedure," which provides in detail how IID will develop daily operations guides and coordinate with its Reliability Coordinator (WECC) and neighboring balancing authorities and transmission operators. Similarly, the Stipulation and Consent Agreement provides for more formality for establishing and following SOLs and interconnection reliability operating limits (IROLs), including a specific operating procedure dealing with a WECC RC identified IROL for IID's Coachella Valley and Ramon transformers. With respect to near- and long-term planning, the Stipulation and Consent Agreement also provides details on improvements required for IID's transmission planning, including explicit consideration of IID's sub-100kV facilities implicated in the September 11, 2011 event. Taken together, these provisions may prove useful for other transmission operators and planners in ensuring that their operations, near-term, and long-term planning activities satisfy FERC's and NERC's expectations under the relevant reliability standards.

As with the APS settlement, however, the IID Stipulation and Consent Agreement appears to reach beyond the specific reliability standards violations found by FERC staff or NERC. As noted above, the \$12 million penalty is offset by a commitment of IID to invest in battery energy storage. The Stipulation and Consent Agreement does not provide any clear tie between the events of the 2011 Southwest Blackout or the alleged Reliability Standards violations and energy storage; it simply states that the battery energy storage project will "enhance the reliability of the BES." This offset to facilitate investment in battery energy storage may be viewed as an "above and beyond" measure, i.e., something not strictly required for compliance but encouraged as improvement in reliability.

Moreover, while there are extensive mitigation measure provisions in the Stipulation and Consent Agreement related to the four specific Reliability Standards that were found to have been violated, there are also several mitigation measures covering areas addressed in Reliability Standards for which there were no findings. These areas include emergency operations; voltage and reactive support and control; modelling; situational awareness; and protection systems. As with the APS settlement, the description of these additional mitigation activities appear to reveal other possible violations that the FERC and NERC staffs might have pursued in this case but decided not to assert.

Comparing the APS and IID settlements, it is difficult to see what factors warranted the substantially different sizes of the civil penalties assigned to each entity. Both settlements stem from the same event, and were presumably treated the same in terms of assessing the underlying impact to reliability and to customers. As in the APS settlement, FERC staff and NERC credited IID for "full cooperation," "voluntarily making improvements" in its procedures and its agreement to avoid a trial-type hearing. As in the APS settlement, the IID Stipulation and Consent Agreement describes several factors for the finding that IID's compliance program is "effective." In both settlements, FERC staff and NERC found that IID and APS have had prior histories of Reliability Standards violations. Although FERC noted that IID had violated "some of the same standards found to be violated in this investigation," it is not clear whether this was the basis for assigning a civil penalty to IID that is four times as large as APS's penalty. Aside from the compliance history difference, it may well be that FERC staff and NERC simply considered the standards at issue in IID's case were more

significant than those at issue in APS's case, but neither FERC's order nor IID's Stipulation and Consent Agreement indicate that that was a factor in determining the civil penalty amount in this case.

With the IID and APS settlements complete, FERC still has outstanding notices of alleged violations for CAISO, SCE, WAPA, and WECC related to the 2011 Southwest Blackout.

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