

Consideration of Comments on Initial Ballot — Violation Severity Levels for the CIP, COM, and VAR sets of Standards (Project 2007-23)

Summary Consideration:

The VSL DT appreciates the industry feedback regarding the CIP, COM and VAR standard VSLs. The following are highlights of stakeholder input and the VSL DT response to each item.

VSL Consistency with Requirements: The proposed set of VSLs represents a reasonable and consistent approach to assigning severity for a non-compliant condition. The VSL DT also recognizes that, as demonstrated by comments received, additional improvements are needed. Any additional VSL improvements are best made in concurrence with revising the language of the requirements. The VSL DT concludes that many of the comments received were related to the clarity of the requirement or the lack of clear measures within the standard, and not the VSL itself. VSLs replace the Levels of Non-compliance and are used, along with VRFs as a starting point in determining sanctions for violation of requirements. (The ERO Sanction Guidelines lists several factors that are used to make adjustments to this “starting point”.) The VSL DT cannot make revisions to requirements within the scope of this project. Therefore we would expect that additional improvements to the VSLs will occur as current and future standard drafting teams make revisions to the standards, including requirements, measures and compliance elements. All NERC Standards are slated for review in the course of the Standards Development Work Plan established by NERC. We encourage all stakeholders to participate in the standard development process.

Risk versus Severity: Some confusion remains related to the differences between Violation Risk Factors (VRFs) and Violation Severity Levels (VSL). VRFs are used to assess the risk to the bulk electric system if a requirement is not met and VSLs are used in classifying and identifying the degree or level by which the entity has failed to satisfy a requirement and are referenced after a determination has been made that an entity's performance is non-compliant. For example, some commented that, for certain VSLs, the violation of the requirement does not have a “direct impact on reliability” and therefore the commenter did not agree with the VSL assignment. This type of feedback is really questioning the appropriateness of the VRF assignment which is out of scope for the VSL DT work.

Binary: In accordance with FERC Guideline 2, to provide consistency in the VSL assignments for binary requirements, the VSL DT revised the VSLs for some requirements to assign binary VSLs at the SEVERE category level. Such change is consistent with the Commission's June 24, 2009 VSL order related to binary VSL assignments and will provide consistency and uniformity in the assignment of penalties for violations of binary requirements.

Balloting: Several comments stated that the VSLs for each standard should have been balloted individually instead of in the current sets. While the team can understand this concern we identified the administrative burden that balloting individually would cause in following FERC's Order to establish VSLs for the original 83 approved NERC standards. The VSL DT determined early in our project that working through “sets” of VSLs would allow for consistency across the sets and help reduce the administrative load on stakeholders.

Minor Text Changes: Minor errata changes were made on various VSLs to correct and align with requirement language and will be noted in the recirculation ballot.

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If you feel that the drafting team overlooked your comments, please let us know immediately. Our goal is to give every comment serious consideration in this process. If you feel there has been an error or omission, you can contact the Vice President and Director of Standards, Gerry Adamski, at 609-452-8060 or at gerry.adamski@nerc.net. In addition, there is a NERC Reliability Standards Appeals Process.¹

Voter	Entity	Segment	Vote	Comment
Michael Gammon	Kansas City Power & Light Co.	1	Affirmative	Although do not agree with the Severe only VSL for requirements that are administrative, the elimination of the double jeopardy VSL's is a vast improvement.
Charles Locke		3		
Thomas Saitta		6		
<p>Response: The VSL DT appreciates your comments. Such change is consistent with the Commission's June 24, 2009 VSL order related to binary VSL assignments and will ensure consistency and uniformity in the assignment of penalties for violations of binary requirements.</p>				
Dana Cabbell	Southern California Edison Co.	1	Affirmative	<p>Although we understand that Project 2007-23 arose from the June 2007 order in which FERC directed NERC to replace the former "Levels of Non-Compliance" in certain reliability standards with "Violation Severity Levels," we strongly agree with the NERC Board of Trustees recent direction to the NERC Standards Committee that the NERC Reliability Standards Development Procedure should be modified to require that Violation Risk Factors and Violation Severity Levels be developed at the same time and by the same drafting team that drafts the underlying reliability standard. We have the following recommendations that we would like you to consider:</p> <p>1. Concern: There appears to be an inconsistent gradation between reliability standards involving duration-based requirements. Many requirements in the various reliability standards require specific action prior to a defined elapsed time. The VSLs for all reliability standards appear to have inconsistencies when the requirement specifies an action within a defined elapsed time. Recommendation: We recommend enhancing the guideline(s) for VSL development to follow specific criteria for assigning severity level based on elapsed time. The VSLs may be based on some ratio/multiple of the original time stated in the requirement. For example, if a requirement specifies that an action be</p>
Marcus V Lotto		6		

¹ The appeals process is in the Reliability Standards Development Procedure: http://www.nerc.com/files/RSDP_V6_1_12Mar07.pdf.

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				<p>performed within 30 days, the VSL gradations might use 30 day increments: Lower - Action was performed within 31-60 days Moderate - Action was performed within 61-90 days High - An action was performed within 91-120 days Severe - Either action was not performed or it was performed >120 days.</p> <p>2. Concern: There appears to be an inconsistency in the use of “binary” VSLs as opposed to “graded” VSLs. Because the decision as to whether a requirement is binary in nature is left to the various VSL drafting teams, it appears to be inconsistently applied. Some requirements that appear amenable to a graded approach have VSLs that are “binary” in nature. Recommendation: We recommend that the development of VSLs occur in conjunction with the development/revision of the respective standard. If the VSLs are developed in conjunction with the requirements, the requirements can be revised as needed to ensure compliance can be measured using the appropriate level. Additionally, we recommend more prescriptive guidance to VSL drafting teams surrounding the use of “binary” VSLs.</p> <p>3. Concern: There appears to be an inconsistent use of the “roll up” approach to assigning VSLs. Although the roll-up approach may be beneficial to avoid double jeopardy in some cases, it cannot be utilized in all instances of requirements containing sub-requirements. Since the decision to roll-up is left to the discretion of the various VSL drafting teams, it creates potential inconsistencies. Recommendation: We recommend that the development of VSLs occur in conjunction with the development/revision of the respective reliability standard. If the VSLs are developed in conjunction with the requirements, the requirements can be revised as needed to ensure compliance can be measured using the appropriate level.</p> <p>4. Concern: There appears to be an inconsistent application of percentages in VSLs (i.e. 5% increments in some, but not all). Recommendation: We recommend that the guidelines for development of VSLs include the standardization of percentages, much like the quartiles in the existing VSL Development Guidelines Criteria. Additionally, the development of the VSLs should occur in conjunction with the development/revision of the respective reliability standards. If the VSLs are developed in conjunction with the requirements, the requirements can be revised as needed to ensure compliance can be measured using the appropriate level/gradation.</p>
<p>Response: The VSL DT appreciates your comments. The VSL DT understands your concerns. In accordance with Guideline 3, the VSL assignment(s) are consistent with the requirement. The VSL DT was unable to modify the requirement language but encourages you to contact current and future drafting teams to review and modify as necessary.</p> <p>The drafting team did aim for consistency in proposing VSLs for standards with timing elements. The drafting team could not identify a single time delay that</p>				

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<p>was applicable for all requirements. For some requirements, the intent of the requirement may be mostly met with a time delay that was a full 30 days beyond the original due date (meeting the criteria for a Lower VSL) , while for another requirement a time delay of 5 days beyond the original due date may have met the criteria for a Lower VSL. The VSL DT decided to determine a reasonable time delay for the “Lower” VSL and then increment by 10 calendar days for the Moderate, High and Severe VSLs.</p> <p>The drafting team made a good faith effort to minimize the number of requirements treated as “binary” and invited stakeholders, during the public comment period, to propose alternatives with multiple VSLs, and the team was responsive to the suggestions provided resulting in changing several “binary” VSLs.</p> <p>The “roll up” approach was used in instances where the requirement and its subrequirements, have a single reliability-related purpose. In situations where the requirement’s subrequirements identify different reliability-related purposes, then the VSL DT proposed an individual set of VSLs for each subrequirement. As these standards are revised, we expect that subrequirements that address a different reliability-related purpose from their primary requirement will be revised so that these subrequirements become primary requirements with their own VRF and VSLs.</p> <p>FERC did not endorse the use of the quartile approach and in the set of VSLs that FERC directed us to modify, where percentages were used, the percentage thresholds were 5%, 10%, 15%, and greater than 15%. The drafting team adopted these thresholds for most of its VSLs – there were some VSLs that have different percentages that were justifiable either because they match historical levels of noncompliance or because application of the 5%, 10%, 15% thresholds didn’t result in a set of VSLs that met NERC’s criteria for Lower, Moderate, High and Severe VSLs.</p>				
Ronald L. Donahey	Tampa Electric Co.	3	Negative	COM001 R4 does not require a written agreement to use English. It requires an agreement to use anything other than English
<p>Response: The VSL DT appreciates your comments. The existing VSL language is accurate as written and the DT has decided not to make changes at this time. The language in the requirement uses the phrase, “unless agreed to otherwise.” The DT encourages you to contact current and future drafting teams to review and modify as necessary.</p>				
David A. Lapinski	Consumers Energy	3	Affirmative	<p>COM-001-1 R6: Suggested alternate wording: “...adhered to at least 95%, but less than 100%, of the listed requirements...”</p> <p>COM-001-1 R6: The VSLs for this requirement refer to Attachment 1 of COM-001-0. This reference should be to COM-001-1.</p>
<p>Response: The VSL DT appreciates your comments. The existing VSL language is accurate as written and the DT has decided not to make changes at this time. The DT encourages you to contact current and future drafting teams to review and modify as necessary. The Attachment 1 reference has been corrected as errata to reflect COM-001 and will be noted in the announcement for the recirculation ballot.</p>				
David Frank Ronk	Consumers Energy	4	Affirmative	<p>COM-001-1 R6 “ The intent of the VSLs for this requirement seems appropriate; however, the VSLs are poorly worded. Using the Lower VSL as an example, the VSL states, “...failed to adhere to 5% or less of the requirements listed...” The intent seems to be that the entity adhered to almost all of the listed requirements, but missed 5% or less of them. However, the VSL could easily be read explicitly to mean that, of all the requirements, the entity adhered to some, but less than 5% of them. Suggested alternate</p>

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				wording: "...adhered to at least 95%, but less than 100%, of the listed requirements..." COM-001-1 R6:The VSLs for this requirement refer to Attachment 1 of COM-001-0. This reference should be to COM-001-1.
<p>Response: The VSL DT appreciates your comments. The existing VSL language is accurate as written and the DT has decided not to make changes at this time. The DT encourages you to contact current and future drafting teams to review and modify as necessary. The Attachment 1 reference has been corrected as errata to reflect COM-001 and will be noted in the announcement for the recirculation ballot.</p>				
Peggy Abbadini	Power Energy Group LLC	8	Negative	Decrease on VAR R2 from 25% to 5-15% on R2 has a greater punitive effect on smaller entities
<p>Response: The VSL DT appreciates your comments. The VSL DT believes that if a violation is identified, the VSL, along with other compliance considerations, will be utilized in determining penalty. The VSLs that were divided by percentage of non-compliant performance were modified to reflect FERC's guidance to use 5% increments. The VRF and VSL for a requirement assist in providing a starting point for the determination of a penalty or sanction for a violation of that requirement. The ERO Sanction Guidelines identify several factors, including the size of the violator, which the Compliance Enforcement Authority uses to determine the actual penalty. A review of the actual penalties already assessed demonstrates that the Compliance Enforcement Authority is making a good faith effort at assigning penalties that are commensurate with the associated infraction. This information can be seen at the following site: http://www.nerc.com/filez/enforcement/index.html</p>				
Michelle Rheault	Manitoba Hydro	1	Negative	Reasons for negative vote are as follows:
Mark Aikens		5		VAR-002: R1 - Severe VSL is too open to interpretation, prefer old wording which has a discrete %75 value. R2 - Lower VSL 5% or less can be interpreted to be any deviation including the tolerance of measuring equipment.
Daniel Prowse		6		R3 - High and Severe VSL's are the same and are the same as the original lower VSL R5 - Severe VSL is very restrictive
<p>Response: The VSL DT appreciates your comments. The requirement R1 previously utilized quartile VSLs. In accordance with Guideline 1, the VSL DT revised the VSL(s) for this requirement as noted in the redline text to apply a binary VSL at the SEVERE level. The VSL DT concluded that a graded score could not be use based on the requirement's use of the wording "each generator" and that if the typical 5% increment score were applied, it would violate Guideline 4. As revised, the VSL for this requirement also meets FERC Guideline 2a regarding binary VSL consistency.</p> <p>For R2 the VSLs that were divided by percentage of non-compliant performance were modified to reflect FERC's guidance to use 5% increments. For R3, the VSLs are similar but contain an "either" or a "both" which makes them different.</p> <p>For R5, The revisions were necessary to make clear that the VSL assignments are based on a single violation of a Reliability Standard and are not based on a cumulative number of violations of the same requirement over a period of time in accordance with FERC's Guideline 4.</p>				

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Thomas J. Bradish	RRI Energy	5	Negative	RRI voted negative since the revised VSLs still apply to certain Requirements that remain vague and ambiguous; e.g., see Covanta Interpretation that, in our opinion, maintains ambiguity.
Trent Carlson		6		
<p>Response: The VSL DT appreciates your comments. In accordance with FERC's Guideline 3, the VSL assignment(s) are consistent with the requirement. The VSL DT was unable to modify the requirement language but encourages you to contact current and future drafting teams to review and modify as necessary.</p>				
Terry L. Blackwell	Santee Cooper	1	Negative	Santee Cooper believes the VSLs of these standards should be balloted separately in addition to an interval between ballots that will allow time for proper review.
Zack Dusenbury		3		
Suzanne Ritter		6		
<p>Response: The VSL DT appreciates your comments. The decision to ballot these as groups as opposed to individually was made early in our project to assist in managing the scope and reduce the administrative complexity.</p>				
Terry Volkmann	Volkman Consulting, Inc.	8	Negative	The changes to VAR R3,4,7 are discriminatory to the smaller entities. A smaller entity with 4 generators go from complaint to a Severe VSL with one generator missing the requirement.
<p>Response: The VSL DT appreciates your comments. The VSL DT believes that if a violation is identified, the VSL, along with other compliance considerations, will be utilized in determining penalty. The VSLs that were divided by percentage of non-compliant performance were modified to reflect FERC's guidance to use 5% increments. The VSL DT is unable to respond further to your comment due to lack of specificity.</p> <p>The VRF and VSL for a requirement assist in providing a starting point for the determination of a penalty or sanction for a violation of that requirement. The ERO Sanction Guidelines identify several factors, including the size of the violator, which the Compliance Enforcement Authority uses to determine the actual penalty. A review of the actual penalties already assessed demonstrates that the Compliance Enforcement Authority is making a good faith effort at assigning penalties that are commensurate with the associated infraction. This information can be seen at the following site: http://www.nerc.com/filez/enforcement/index.html</p>				

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Larry Monday	E.ON U.S. LLC	1	Negative	<p>The proposed VSLs for VAR-001- 01a R3.1 will be difficult to apply unless a large number of generators are exempt. The 5% increments are too narrow to be meaningful. Also the double criteria within the VSLs could pose an application problem – single criteria (discrete number or percentage) would be sufficient.</p> <p>VAR-001-1a R6.1 is conditioned upon notification to the TO of the loss of an automatic voltage control regulator. This notification condition needs to be reflected in the proposed VSLs</p> <p>E.ON U.S. does not believe that the balloting process on these VSL levels is appropriate. The bundling of VSLs with a single “up or down” vote that applies to all the VSLs in that group creates a situation where acceptable VSLs are needlessly rejected. In instances where the majority of the VSLs are acceptable, an entity is forced to vote down all the VSLs because of the one problematic VSL. E.ON U.S. suggests that the only remedy to this issue it to ballot each VSL separately. While it is recognized that this may be a tedious process, it will in the end provide at least a baseline group of VSLs for the standards. Work on the rejected VSLs can then be the focus of additional discussions. E.ON U.S. does not agree with the proposal contained in the Reliability Standard Development Procedure Version 7 to exclude VSL from a ballot by the stakeholders.</p>
Charles A. Freibert	Louisville Gas and Electric Co.	3		
Charlie Martin		5		
Daryn Barker		6		
<p>Response: The VSL DT appreciates your comments. The requirement R 3.1 previously utilized quartile VSLs. In accordance with Guideline 1, the VSL DT revised the VSL(s) for this requirement as noted in the redline text to apply VSL gradations using 5% step increments, consistent with FERC’s June 19, 2008 VSL Order. The revised VSLs do not lower, either directly or indirectly, the bar for compliance related to current or historic practice or results.</p> <p>For R6.1, the VSL DT reiterates that VSLs are only applied after a violation has been identified. In accordance with FERC’s Guideline 3, the VSL assignment(s) are consistent with the requirement.</p> <p>The decision to ballot these as groups as opposed to individually was made early in our project to assist in managing the scope and reduce the administrative complexity. The issue regarding the Standard Development Process modification is outside the scope of this drafting team.</p>				
Paul B. Johnson	American Electric Power	1	Negative	<p>The SDT seeks to advance VSLs to the NERC BOD by simply applying severe VSLs to binary compliance measures. In doing so, it is not assessing the reliability compliance severity under the FERC and NERC approved structure, which recognizes the variability of compliance with which a requirement has or has not been met. This approach will lead to significantly higher penalties for noncompliance that are not commensurate with the appropriate levels of severity and risk factors for the level to which a mandatory reliability compliance standard is violated. The SDTs often developed binary compliance measures because the standards were written by the SDT without the knowledge of the variable VSLs and VRFs compliance penalty matrix.</p>
Raj Rana		3		
Brock	AEP Service Corp.	5		

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Ondayko Edward P. Cox	AEP Marketing	6		<p>AEP believes that it is the measures that should be revised through the standards development process to resolve the discontinuity between the binary measures and the variable compliance penalty matrix, not by arbitrarily assuming that all such requirements are of high severity level. As measures are improved in the standard development process, the determination of the degree of severity or risk level should follow directly from the compliance measure.</p> <p>In the interim, stakeholders have provided input on the appropriate severity level of the requirements and to suggest approaches for creating degrees of severity level for binary measures. The SDT describes that these suggestions lead to different interpretations or expansions of the existing standard. Again, it is the measures in the standard that must be revised through the standards development process to resolve the discontinuity between the binary measures and the variable compliance penalty matrix, not to dismiss stakeholder comments and proceed to ballot by assuming that all binary measures constitute high severity levels.</p>
<p>Response: The VSL DT appreciates your comments. In accordance with Guideline 2, to ensure consistency in the VSL assignments for binary requirements, the VSL DT revised the VSL assigned noncompliance with binary requirements to the SEVERE VSL category. Such change is consistent with the Commission’s June 24, 2009 VSL order related to binary VSL assignments and will ensure consistency and uniformity in the assignment of penalties for violations of binary requirements. In accordance with FERC’s Guideline 3, the VSL assignment(s) are consistent with the requirement. The VSL DT was unable to modify the requirement or measure language but encourages you to contact current and future drafting teams to review and modify as necessary.</p> <p>The VRF and VSL for a requirement assist in providing a starting point for the determination of a penalty or sanction for a violation of that requirement. The ERO Sanction Guidelines identify several factors that the Compliance Enforcement Authority uses to determine the actual penalty. A review of the actual penalties already assessed demonstrates that the Compliance Enforcement Authority is making a good faith effort at assigning penalties that are commensurate with the associated infraction. This information can be seen at the following site: http://www.nerc.com/filez/enforcement/index.html</p>				
Terry Bilke	Midwest ISO, Inc.	2	Affirmative	<p>There is too much industry (to include NERC) effort being spent on compliance elements. NERC should develop a job aid for drafting teams so that simpler and more objective VRFs and VSLs are developed with the standards. NERC should work with the FERC so these objective VRFs and VSLs are approved when submitted. We should not be expending this much effort on something that adds so little value to reliability.</p>
<p>Response: The VSL DT appreciates your comments. The DT agrees and encourages your continued promotion of a common approach for the definition and assignment of VRFs and VSLs.</p>				
Edward W Pourciau	Georgia System Operations Corporation	3	Negative	<p>These standards classify all binary violations as severe. Binary violations are not severe. They are not lower. The four violation levels apply to standards that can be violated in degrees. The four levels do not apply to a binary violation. Perhaps the concepts upon which the penalty matrix is built should be modified to correct this misapplication of the</p>

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				penalty matrix.
<p>Response: The VSL DT appreciates your comments. In accordance with Guideline 2, to ensure consistency in the VSL assignments for binary requirements, the VSL DT revised the VSL for this requirement to assign it a binary VSL at the SEVERE category level. Such change is consistent with the Commission’s June 24, 2009 VSL order related to binary VSL assignments and will ensure consistency and uniformity in the assignment of penalties for violations of binary requirements.</p>				
Thomas R. Glock	Arizona Public Service Co.	3	Negative	<p>To a large degree, the violation severity levels (VSLs) do not seem to correspond to actual violation circumstances. For example, many of the VSLs are overly severe for violations that may be simple documentation errors:</p> <p>Under CIP 002, R3: Lack of inclusion of a single critical cyber asset on the list, regardless of whether that asset is effectively protected under the requirements of the standard is a severe VSL under several of the sub-requirements, which is the same as not having a list at all. This type of severity level assignment is inconsistent throughout this document. In general, severe VSLs should be reserved for more egregious offenses, such as the lack of a program, policy, or procedure altogether or a failure to adequately protect assets, rather than for minor oversights in documentation. The NERC Compliance Training states the following: “A deficient documentation violation would be a less severe violation than a lack of performance violation (lack of training being performed). Documentation violations are less severe than performance violations. A document deficiency versus a performance deficiency is a measure of consideration in the penalty phase.” This should consistently be reflected in the VSLs.</p>
<p>Response: The VSL DT appreciates your comments. The VSL DT reasserts that VSLs are determined with no consideration of the risk associated with the requirement regarding the reliable operation of the BES. A lack of documentation may be a lower risk than the lack of a program, however if you cannot produce evidence of either, you have failed the requirement.</p> <p>The VRF and VSL for a requirement assist in providing a starting point for the determination of a penalty or sanction for a violation of that requirement. The ERO Sanction Guidelines identify several factors that the Compliance Enforcement Authority uses to determine the actual penalty. A review of the actual penalties already assessed demonstrates that the Compliance Enforcement Authority is making a good faith effort at assigning penalties that are commensurate with the associated infraction. This information can be seen at the following site: http://www.nerc.com/filez/enforcement/index.html</p>				