



Appendix 4B

**Sanction Guidelines
of the
North American
Electric Reliability Corporation**

Effective: January 19, 2021

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1. Overview

The North American Electric Reliability Corporation (“NERC”), as the Electric Reliability Organization (“ERO”), and Regional Entities to which NERC has delegated authority (hereinafter referred to collectively as “Regional Entities” or individually as a “Regional Entity”) shall determine and may levy monetary and non-monetary penalties against a Registered Entity (herein referred to as “entity” or “entities”), as owners, operators, and users of the Bulk Power System for violations of the NERC Reliability Standards and Regional Reliability Standards (collectively, “Reliability Standards”), which are approved by the Federal Energy Regulatory Commission (“FERC”) in the United States and/or Applicable Governmental Authorities in Canada and/or Mexico.

NERC and the Regional Entities will follow these Sanction Guidelines when determining monetary and non-monetary penalties, while retaining the discretion to take into account the facts surrounding each violation and using professional judgment to deviate from the recommended ranges for each factor as appropriate in order to achieve monetary and/or non-monetary penalties that bear a reasonable relationship to the seriousness of the violation. NERC shall ensure that Regional Entities achieve acceptable levels of consistency in the application of the Sanction Guidelines across North America via NERC’s oversight efforts.

Any revision to these Sanction Guidelines must first be approved by the NERC Board of Trustees, then by FERC to become effective and applicable within the United States. Similarly, these Sanction Guidelines must be approved by an Applicable Governmental Authority to become effective in that Applicable Governmental Authority’s jurisdiction.

2. General Principles

The following paragraphs present and discuss the underlying principles that NERC and the Regional Entities use to determine monetary and non-monetary penalties for violations of the Requirements of the Reliability Standards.

2.1 Initial Determination of Whether Monetary and/or Non-Monetary Penalties are Necessary

Situations involving multiple serious risk violations or systemic or programmatic failures should typically result in monetary penalties and/or non-monetary penalties.¹ Additionally, monetary penalties and/or non-monetary penalties may be appropriate for one or a small number of minimal, moderate, or serious risk violations, depending on the circumstances, including for example, the method of identification of the violation(s), the duration of the violation(s), and an entity’s compliance history. NERC or the Regional Entities have the discretion to impose a zero dollar monetary sanction where appropriate after consideration of all the relevant principles and factors discussed in these Sanction Guidelines. Monetary and non-monetary penalties do not apply for noncompliance or violations that NERC or the Regional Entities determine should be processed through the Compliance Exception or the Find, Fix, Track and Report (“FFT”) disposition methods described in the NERC Compliance Monitoring and Enforcement Program, Appendix 4C of the NERC Rules of Procedure.

2.2 Non-Exclusiveness of Monetary or Non-Monetary Penalties

NERC or the Regional Entity may impose a non-monetary penalty either in lieu of or in addition to a monetary penalty for the same violation, and vice versa. Imposition of a monetary or non-monetary penalty for a violation does not preclude the imposition of the other as long as the aggregate monetary penalty and non-monetary penalty bears a reasonable relation to the seriousness of the violation and other relevant factors stated herein. If NERC or a Regional Entity imposes a non-monetary penalty that impacts

¹ In cases involving federal entities, monetary penalties for violations are not available. *See Sw. Power Admin. v. FERC*, 763 F.3d 27 (D.C. Cir. 2014).

the final monetary penalty, NERC or the Regional Entity shall explain in the Notice of Penalty how the non-monetary penalty impacted the final monetary penalty amount.

2.3 Maximum Limitations of Monetary Penalties

In the United States, the maximum monetary penalty amount that NERC or a Regional Entity will assess for a violation of a Reliability Standard Requirement is equal to current inflation-adjusted maximum civil monetary penalty set forth in 18 CFR § 385.1602(d).² NERC and the Regional Entities may assess monetary penalty amounts up to and including this maximum amount for violations where warranted pursuant to these Sanction Guidelines.

2.4 Reasonable Relationship to Seriousness of Violation

The application of these Sanction Guidelines is intended to result in monetary and non-monetary penalties that bear a reasonable relation to the seriousness of the violation(s) and mitigate overly burdensome penalties to less consequential or financially-limited entities, while promoting that no penalty is inconsequential to the entity to whom it is assessed.

NERC or the Regional Entity considers the factors described in these Sanction Guidelines in the development of monetary and non-monetary penalties in order to ensure that those penalties are consequential enough such that entities do not consider the imposition of monetary and/or non-monetary penalties to be an economic choice or cost of doing business. NERC or the Regional Entity may make adjustments to the values for all the factors described in the Sanction Guidelines as necessary to reach a penalty that is consequential to the entity while bearing a reasonable relation to the reliability impact and seriousness of the violation. Such adjustments will generally occur in the most significant cases involving programmatic failures or multiple serious risk violations.

In such cases, NERC or the Regional Entity may review publicly available information regarding the entity involved, including, but not limited to, annual reports, quarterly reports, other financial statements, and penalties levied against the entity by other regulators. After completing the development of any monetary and non-monetary penalties using the process described in these Sanction Guidelines, NERC or the Regional Entity may consider whether the proposed penalty is consequential to the entity in light of the information reviewed and increase the penalty as appropriate, subject to the maximum limitation on monetary penalties described in Section 2.3 of these Sanction Guidelines. In such cases, NERC or the Regional Entity shall describe in the Notice of Penalty the analysis of the publicly available information that led it to increase the monetary and/or non-monetary penalty in order to ensure it was consequential to the entity and not an economic choice or cost of doing business.

2.5 Settlement of Violations

Pursuant to the NERC Compliance Monitoring and Enforcement Program, Appendix 4C of the NERC Rules of Procedure, an entity's Possible or Alleged Violations of the Reliability Standards may be resolved through settlements reached between the relevant Compliance Enforcement Authority³ and the entity. Any provisions within a settlement regarding monetary and non-monetary penalties can supersede any corresponding penalties that would otherwise be determined pursuant to these Sanction Guidelines. In particular, NERC or the Regional Entity may consider a reduction in the monetary penalty if the entity resolves the violation through settlement, taking into account the entity's good faith efforts to reach settlement without undue delay. This reduction applies to the monetary penalty amount after adjustments are made pursuant to the aggravating and mitigating factors listed in Section 3.3.

2.6 Multiple Violations

The entity may be in violation of more than one Reliability Standard, Requirements of the same Reliability Standard, or have multiple instances of violations of the same Standard and Requirement. As

² As of 2020, the maximum civil monetary sanction set forth in 18 CFR § 385.1602(d) is \$1,291,894 per violation, per day.

³ Regional Entities and NERC can act as the Compliance Enforcement Authority.

such, for each violation of a Reliability Standard Requirement addressed in a Notice of Penalty, NERC or the Regional Entity may levy, in its sole discretion, either (1) a separate monetary penalty and/or non-monetary penalty(s) for each violation, describing the penalty for each violation individually or the total penalty for the group of violations as a whole; or (2) a single, aggregate monetary penalty and/or non-monetary penalty bearing reasonable relationship to the aggregate seriousness of the violations as a whole. When using the second option described above, NERC or the Regional Entity has the discretion to adjust the factors described in these Sanction Guidelines to reach a monetary and/or non-monetary penalty that is appropriate and will generally impose a monetary and/or non-monetary penalty at least as large or expansive as what would be called for individually for the most serious of the violations.

2.7 Multiple Reliability Functions

Some entities may register for more than one reliability function in the NERC Compliance Registry (e.g., Transmission Owner, Transmission Operator, Balancing Authority, Generation Operator), and as a result, a single Requirement in certain Reliability Standards may apply to the entity for more than one of its registered functions. Where an entity performs more than one registered function, NERC or the Regional Entity will assess a violation and associated penalty(s) against the entity, not against each function.

2.8 Frequency and Duration of Violations

Some Reliability Standards may not support the assessment of a monetary penalty on a “per day, per violation” basis, but instead should have monetary penalties calculated based on an alternative violation frequency or duration. NERC or the Regional Entity shall determine the monetary penalties consistent with the following:

Multiple Instances of Violation on One Day

The nature of some Reliability Standards includes the possibility that an entity could violate the same Requirement two or more times on the same day. In this instance NERC and the Regional Entity are not limited to penalizing the entity the maximum monetary penalty amount per day. NERC or the Regional Entity may deem that multiple violations of the same Requirement occurred on the same day, each of which is subject to the maximum monetary penalty amount per violation, per day. Also, NERC or the Regional Entity is not constrained to assessing the same monetary penalty amount for each of the multiple violations, irrespective of their proximity in time.

Cumulative Over Time

Certain Requirements of Reliability Standards are measured not on the basis of discrete acts, but on cumulative acts over time. Reliability Standards that fall into this category generally involve measurements based on averages over a given period.

If a Reliability Standard Requirement measured by an average over time can only be violated once per applicable period, there is risk that a disproportionately mild monetary penalty might be levied in a situation where the violation was serious and the effects on the Bulk Power System were severe. As individual Reliability Standards are revised, each Reliability Standard Requirement that is based on an average over time will specify the minimum period in which a violation could occur and how to determine when a violation arises, which may be other than once per applicable period. Until relevant Reliability Standards are so modified, when assessing a monetary penalty for violation of such a Reliability Standard, NERC or the Regional Entity will generally consider that only one violation occurred per measurement period. However, if an average must be measured by a span of time greater than a month, each month of that span shall constitute at a minimum one violation.

Periodically Monitored Discrete Violation

Some Reliability Standards may involve discrete events which are only monitored periodically or which are reported by exception. If a Requirement of such a Reliability Standard states that a discrete event constitutes a violation, then (i) a violation arises when that event occurs and (ii) that violation continues until remedied; and (iii) the violation occurred at the point that the entity entered into noncompliance with the Reliability Standard, regardless of the monitoring period for the activity or its date of discovery or

reporting. For example, if a task required by a Reliability Standard Requirement was not done by the required date, it is irrelevant that monitoring for compliance for the Requirement occurs only on a yearly or other periodic basis; NERC or the Regional Entity will deem a violation to have occurred on the first day of noncompliance and each day thereafter until compliance is effectuated. Similarly, if a discrete event occurs and is not remedied on the date of its occurrence, then NERC or the Regional Entity will deem a violation to have occurred on the day of the first instance of the noncompliance and each day thereafter until the entity is in compliance.

NERC or the Regional Entity may, at its discretion, assess the same monetary penalty amount for each day that the entity was in violation of the Reliability Standard Requirement in question.

2.9 Extenuating Circumstances

In unique extenuating circumstances causing or contributing to the violation, such as, but not limited to, significant natural disasters or pandemic, NERC or the Regional Entity may significantly reduce or eliminate monetary and/or non-monetary penalties.

3. Determination of Monetary Penalties

This Section describes the specific steps that NERC or the Regional Entity will follow to determine the monetary penalty for a violation.⁴ Appendix A provides the ranges generally used for each factor used to determine the monetary penalty for a violation. NERC and the Regional Entities have the discretion to deviate from the ranges for the factors provided in Appendix A by applying professional judgment to the outcome of the calculations where appropriate in order to achieve a monetary penalty that bears a reasonable relationship to the seriousness of the violation(s). The determination of non-monetary penalties is discussed in Section 4 of these Sanction Guidelines.

3.1 Overview of the Calculation of Monetary Penalties

The calculation of monetary penalties for violations of NERC or Regional Reliability Standards is calculated as follows:

Step 1: Establish the Base Monetary Penalty Amount, as discussed in Section 3.2.

Step 2: Adjust the Base Monetary Penalty Amount after accounting for any relevant aggravating or mitigating factors, resulting in the Adjusted Monetary Penalty Amount, as discussed in Section 3.3.

Step 3: Make final adjustments to the Adjusted Monetary Penalty Amount to account for other circumstances, as discussed in Section 3.4, such as agreeing to settlement, extenuating circumstances, disgorgement of unjust profits or economic benefits associated with an economic choice to violate, and/or entity requests to reduce the proposed monetary penalty in light of the entity's financial ability to pay the monetary penalty, resulting in the Final Monetary Penalty Amount.

3.2 Establishing the Base Monetary Penalty Amount

NERC or the Regional Entity will set the Base Monetary Penalty Amount for the violation using the following factors:

1. VRF and VSL Table
2. Entity Size
3. Assessed Risk
4. Violation Duration
5. Violation Time Horizon

⁴ The text in this section discusses the determination of a single monetary sanction for an individual violation; however, the process laid out is also applicable to determining the individual monetary sanction, or a single, aggregate monetary sanction, for multiple violations that are associated with each other as discussed in Section 2.6 of these Sanction Guidelines.

3.2.1 Violation Risk Factor and Violation Severity Level Table

NERC or the Regional Entity will determine an initial monetary penalty value by considering the Violation Risk Factor (“VRF”) of the Requirement violated and the Violation Severity Level (“VSL”) assessed for the violation. Using the VRF and VSL Table below, NERC or the Regional Entity will look up the initial monetary penalty value by finding the intersection of the violation’s VRF and VSL on the table. In general, NERC or the Regional Entity will start with the lowest value of the initial monetary penalty value range, and will adjust the initial monetary penalty value pursuant to the factors discussed below, but NERC or the Regional Entity has the discretion to start at a higher value within the ranges below on a case-by-case basis as appropriate. Starting at a higher value within the ranges below may be appropriate in cases where using the lowest value of the initial monetary penalty value range results in a proposed monetary penalty that does not bear a reasonable relationship to the seriousness of the violation after consideration of the other factors discussed below.

| Violation Risk Factor | Violation Severity Level | | | | | | | |
|-----------------------|--------------------------|-----------|----------|-----------|----------|-----------|----------|-------------|
| | Lower | | Moderate | | High | | Severe | |
| | Low | High | Low | High | Low | High | Low | High |
| Lower | \$1,000 | \$3,000 | \$2,000 | \$7,500 | \$3,000 | \$15,000 | \$5,000 | \$25,000 |
| Medium | \$2,000 | \$30,000 | \$4,000 | \$100,000 | \$6,000 | \$200,000 | \$10,000 | \$335,000 |
| High | \$4,000 | \$125,000 | \$8,000 | \$300,000 | \$12,000 | \$625,000 | \$20,000 | \$1,291,894 |

NOTE: This table describes the monetary penalty that could be applied for each day that a violation continues, subject to the consideration of the other factors described below that are used to determine a monetary penalty.

3.2.1.1 Violation Risk Factor

Each Reliability Standard Requirement has been assigned a VRF through the NERC Reliability Standards or Regional Reliability Standards development process. The VRFs have been defined and approved through the Reliability Standards development process and are assigned to Requirements to provide clear, concise and comparative association between the violation of a Requirement and the expected or potential impact of the violation to the reliability of the Bulk Power System. One of three defined levels of VRF is assigned to each Reliability Standards Requirement: Lower; Medium; or High.

3.2.1.2 Violation Severity Level

VSLs are defined levels of the degree to which a Requirement of a Reliability Standard was violated. Whereas VRFs are determined pre-violation and indicate the relative potential impacts that violations of each Reliability Standard could pose to the reliability of the Bulk Power System, VSLs are assessed post-violation and are an indicator of the severity of the actual violation of the Reliability Standard(s) Requirement(s) in question.

These Sanction Guidelines utilize the VSLs, which have been designated as: Lower, Moderate, High, and Severe.

3.2.2 Entity Size

NERC or the Regional Entity will adjust the monetary penalty amount based on entity size, in terms of generating capacity and/or transmission line miles, size of lines (in MVA, for example), and/or peak load served in order to more accurately reflect the potential impact and, consequently, the seriousness of the violation(s).

- If an entity belongs to a generation and transmission cooperative or joint-action agency, size will be attributed to the particular entity, rather than to the generation and transmission cooperative or joint-action agency.

- If the entity constitutes part of a corporate family, the size of the entity will be attributed to that entity alone, in the absence of any facts indicating involvement of the whole corporation or corporate affiliates of the entity.
- If the entity is established solely as a shell to register as subject to one or more Reliability Standards, the size of the entity will be disregarded in favor of consideration of the size of the parent entity or any affiliates that NERC or the Regional Entity deems involved and constituting the “actual” size of the entity.
- If the entity is made up of multiple subsidiaries of a parent corporation that commits the same violation, the size of the entity will be assessed using the combined size of the various subsidiaries, up to the size of the entire parent corporation. NERC or the Regional Entity will endeavor to ensure that the monetary penalty in such cases is approximately the same regardless of whether the multiple subsidiaries are assessed a single violation or if each subsidiary is assessed its own violation, provided that the subsidiaries operate under the same or substantially the same compliance program.

In general, an entity that is larger in size will have a higher multiplier than an entity that is smaller in size, all else being equal.

3.2.3 Assessed Risk

NERC or the Regional Entity shall consider the assessed risk that the violation of the Reliability Standard Requirement posed to the reliability of the Bulk Power System. The assessed risk of a violation can be minimal, moderate, or serious and substantial. Assessed risk is the potential impact to the reliability of the Bulk Power System multiplied by the likelihood of that impact occurring, or the actual harm to reliability if the impact occurs, determined based on facts about the entity and the scope of the violation, including any facts that increase or decrease the potential impact to the reliability of the Bulk Power System, the likelihood of that impact occurring, or actual harm if the impact did occur. In general, violations with an assessed risk of serious and substantial will have a higher multiplier than violations with an assessed risk of moderate, and violations with an assessed risk of moderate will have a higher multiplier than violations with an assessed risk of minimal, all else being equal.

3.2.4 Violation Duration

NERC or the Regional Entity shall consider the duration of the violation of the Reliability Standard Requirement. In general, violations with a longer duration will have a higher percentage increase to the monetary penalty than violations with a shorter duration, all else being equal.

3.2.5 Violation Time Horizon

NERC or the Regional Entity shall consider the Violation Time Horizon of the Reliability Standard Requirement violated and adjust the monetary penalty accordingly. In general, violations with shorter Violation Time Horizons, such as Real Time Operations, will have a higher multiplier than violations with longer Violation Time Horizons, such as Long Term Planning, all else being equal. If the Reliability Standard Requirement does not have a Violation Time Horizon or if a different Violation Time Horizon is more appropriate based on the facts and circumstances of the violation, NERC or the Regional Entity may use the Violation Time Horizon that is most appropriate given the facts and circumstances of the violation.

3.3 Adjusting the Base Monetary Penalty Amount to Account for Aggravating and Mitigating Factors

Adjustment factors allow NERC or the Regional Entity to adjust the Base Monetary Penalty Amount to reflect the specific facts and circumstances material to each violation and the entity.

These Sanction Guidelines identify aggravating and mitigating factors that, if present in connection with a violation, should be considered in determining the monetary and/or non-monetary penalty, and describes how these factors should be taken into account. Additional factors not identified in these Sanction

Guidelines may also be considered in determining a monetary and/or non-monetary penalty, as NERC or the Regional Entity deems appropriate under the circumstances. When additional factors are identified, the basis for their use, and the determination of whether they aggravated or mitigated the monetary penalty, will be provided in the Notice of Penalty. The absence of an aggravating or mitigating factor will have no impact on the monetary penalty.

These Sanction Guidelines recognize and require that, at a minimum, NERC or the Regional Entity consider the adjustment factors described in this section:

1. Repetitive violations and the entity's compliance history
2. Failure of the entity to comply with a Remedial Action Directive
3. Intentional violations
4. Any attempt by the entity to conceal the violation, or resist, impede, be non-responsive, or otherwise exhibit a lack of cooperation
5. Management involvement in any intentional violation or attempt to conceal the violation
6. The presence and quality of the entity's compliance program
7. Degree and quality of cooperation by the entity in the violation investigation and in any Mitigating Activities directed for the violation
8. Disclosure of the violation by the entity through self-reporting and voluntary Mitigating Activities by the entity

NERC or the Regional Entity may also consider other factors it deems appropriate under the circumstances as long as their use is clearly identified and adequately justified. The effect of using these factors must be fully and clearly disclosed in the Notice of Penalty.

3.3.1 Aggravating Factor: Repetitive Violations and Compliance History

If an entity or relevant affiliate of an entity has had repetitive infractions of the same or a similar Reliability Standard Requirement, NERC or the Regional Entity will evaluate whether any such prior violations reflect recurring conduct by affiliates that are operated by the same corporate entity or whose compliance activities are conducted by the same corporate entity and shall consider an increase to the monetary penalty based on the facts and circumstances of the instant and prior violations. Repetitive infractions that may result in aggravation of the monetary penalty generally include prior violations that were still ongoing within five years of the start date of the instant violation that are either (1) violations with the same root cause as the instant violation and mitigation activities that should have prevented future violations; or (2) programmatic failures involving the same or similar Reliability Standards and Requirements.

NERC or the Regional Entity will generally aggravate the monetary penalty by a greater amount in cases where (1) the relevant violation history was closer in time to the instant violation, (2) the number of violations determined to be relevant violation history was higher, and/or (3) the relevant violation history involved programmatic failures or higher risk violations with the same root cause as the instant violation. NERC or the Regional Entity may deem relevant prior violations that are older if appropriate, provided it describes in the Notice of Penalty how that decision was reached. NERC or the Regional Entity will determine the actual increase to the monetary penalty based on the particular facts and circumstances of each case.

An entity with a compliance history of no violations will not, on the basis of its compliance history, receive a reduction of the monetary penalty otherwise determined.

3.3.2 Aggravating Factor: Failure to Comply with a Remedial Action Directive

If the entity has violated Reliability Standard Requirements despite receiving related Remedial Action Directives, NERC or the Regional Entity shall consider increasing the monetary penalty. NERC or the Regional Entity will generally aggravate the monetary penalty by a greater amount in cases where the number of Remedial Action Directives that the entity did not comply with was higher within the last five

years, with more such conduct generally resulting in greater aggravation of the monetary penalty. NERC or the Regional Entity will determine the actual increase to the monetary penalty based on the particular facts and circumstances of each case.

3.3.3 Aggravating Factor: Intentional Violation

When determining a monetary penalty NERC or the Regional Entity shall consider if the entity intentionally violated the Reliability Standard for purposes other than a demonstrably good faith effort to (1) avoid a significant and greater threat to the immediate reliability of the Bulk Power System or (2) preserve personnel safety. If the entity engaged in such conduct, a significant increase to the monetary penalty shall be considered; the presumption in such cases is to double the monetary penalty otherwise determined. NERC or the Regional Entity will generally aggravate the monetary penalty by a greater amount in cases where such conduct has been detected on more than one occasion within the last five years, with more such conduct generally resulting in greater aggravation of the monetary penalty. NERC or the Regional Entity will determine the actual increase to the monetary penalty based on the particular facts and circumstances of each case.

NERC or the Regional Entity will consider violations attributable to an economic choice to violate as intentional violations.

3.3.4 Aggravating Factor: Violation Concealment, Resistance, Impediment, Non-Responsiveness, and Lack of Cooperation

NERC or the Regional Entity shall consider a significant increase to the monetary penalty if, based on its review of the facts, NERC or the Regional Entity determines that the entity concealed or attempted to conceal the violation or information necessary to investigate the violation. The presumption in such circumstances is to double the monetary penalty otherwise determined.

Additionally, NERC or the Regional Entity shall consider an increase to the monetary penalty if NERC or the Regional Entity determines, based on its review of the facts, that the entity resisted, impeded, was non-responsive, or otherwise exhibited a lack of cooperation during the discovery and review of a violation.

NERC or the Regional Entity will generally increase the monetary penalty by a greater amount in cases where such conduct has been detected on more than one occasion within the last five years, with more such conduct generally resulting in greater aggravation of the monetary penalty. NERC or the Regional Entity will determine the actual increase to the monetary penalty based on the particular facts and circumstances of the violation.

3.3.5 Aggravating Factor: Management Involvement

If the entity's management or an individual within the high-level personnel of the organization participated in, directed, condoned, or was willfully ignorant of the violation, or tolerance of the violation by substantial authority personnel was pervasive within the entity as a whole or a unit of the entity, NERC or the Regional Entity shall consider a significant increase to the monetary penalty. The presumption in such circumstances is to double the monetary penalty otherwise determined. NERC or the Regional Entity will generally increase the monetary penalty by a greater amount in cases where such conduct has been detected on more than one occasion within the last five years, with more such conduct generally resulting in greater aggravation of the monetary penalty. NERC or the Regional Entity will determine the actual increase to the monetary penalty based on the particular facts and circumstances of the violation.

3.3.6 Mitigating Factor: Presence and Quality of Entity's Internal Compliance Program

NERC or the Regional Entity shall consider the presence and quality of the entity's internal compliance program, if any, and other indicators of the entity's culture of compliance. An effective internal compliance program requires an entity to exercise due diligence to prevent and detect violations, promote an organizational culture that encourages a commitment to compliance with the Reliability Standards and

other laws and regulations, and design, implement, and enforce the internal compliance program so that it is generally effective in preventing and detecting violations. The failure to prevent or detect an instant violation does not necessarily mean that the internal compliance program is not generally effective in preventing and detecting violations. NERC or the Regional Entity may reduce the entity's monetary penalty as they deem appropriate. However, NERC or the Regional Entity may not increase an entity's monetary penalties solely on the grounds that the entity has no internal compliance program or a poor quality or failed program.⁵

3.3.7 Mitigating Factor: Degree and Quality of Cooperation

NERC or the Regional Entity shall consider the degree and quality of the entity's cooperation with NERC or the Regional Entity in the investigation of the violation and any Mitigating Activities arising from it. To qualify for a reduction in the monetary penalty, cooperation must be both timely and thorough, starting at essentially the same time as the entity reports or otherwise becomes aware of a violation, and should include the disclosure of all pertinent information known by the entity. NERC or the Regional Entity may adjust the entity's monetary penalty as they deem appropriate, which may result in a decrease or no change to the monetary penalty.

3.3.8 Mitigating Factor: Disclosure of the Violation Through Self-Reporting and Voluntary Mitigating Activities by the Entity

NERC or the Regional Entity shall consider whether an entity self-reported the violation (1) within a reasonably prompt time after becoming aware of the violation,⁶ and (2) prior to detection via a compliance monitoring engagement⁷ by NERC or the Regional Entity or intervention by NERC or the Regional Entity via a notification of an upcoming compliance monitoring engagement, and any Mitigating Activities voluntarily undertaken by the entity to correct the violation.⁸ As they deem warranted, NERC or the Regional Entity may reduce the entity's monetary penalty.

3.4 Final Adjustments to the Monetary Penalty

NERC or the Regional Entity may make additional adjustments to the Adjusted Monetary Penalty Amount if the entity agrees to settlement, if there are applicable extenuating circumstances, or if the entity provides evidence that it lacks the financial ability to pay the proposed monetary penalty.

3.4.1 Settlement and Admitting to and Accepting Responsibility for Violation

NERC or the Regional Entity may consider a reduction in the monetary penalty if the entity resolves the violation through settlement, taking into account the entity's good faith efforts to reach settlement without undue delay. If the entity agrees to settlement and also clearly demonstrated recognition and affirmative

⁵ An entity with no internal compliance program or a poor quality or failed program may have violations that are of an increased risk given the lack of controls to prevent, identify, or mitigate violations. Similarly, an entity with no internal compliance program or a poor quality or failed program may be indicative of the entity's management or an individual within the high-level personnel of the organization being willfully ignorant of the potential for a violation. In such cases, NERC or the Regional Entity may increase the monetary sanction based on those factors as appropriate.

⁶ An entity should submit a Self-Report as soon as practical, but typically within three months of discovery, and provide additional or more comprehensive information as it becomes known. NERC or the Regional Entity retain the discretion to provide self-reporting credit outside this period as appropriate based on relevant facts and circumstances.

⁷ Compliance monitoring engagements include a Compliance Audit, Spot Check, or Self-Certification.

⁸ An entity's receipt of a notification letter for an upcoming compliance monitoring engagement detailing the Reliability Standards and Requirements in scope for the upcoming compliance monitoring engagement generally terminates the entity's eligibility for self-reporting credit for violations of the Reliability Standard Requirements that are in scope for the compliance monitoring engagement until after the termination of the compliance monitoring engagement.

acceptance of responsibility for the violation, NERC or the Regional Entity may consider a further reduction in the monetary penalty beyond the credit given for resolving the violation through settlement.

3.4.2 Disgorgement of Unjust Profits

Any monetary penalty issued for a violation involving an economic choice to violate shall, at a minimum, disgorge any profits the entity acquired as a consequence of the behavior, whenever and to the extent that they can be determined or reasonably estimated.

3.4.3 Extenuating Circumstances

In unique extenuating circumstances causing or contributing to the violation, such as significant natural disasters or pandemic, NERC or the Regional Entity may significantly reduce or eliminate the monetary penalty otherwise determined.

3.4.4 Entity's Financial Ability to Pay

At the written request of the entity, NERC or the Regional Entity will review the monetary penalty determined above in light of relevant, verifiable information that the entity provides regarding its financial ability to pay.⁹ Financial ability shall include the financial strength of the entity as well as its financial structure (e.g., for-profit versus non-profit). NERC or the Regional Entity may consider the entity's inherent characteristics, such as but not limited to; its size, financial structure, and ownership structure. Consideration of an entity's size, financial structure, and ownership structure is intended to (i) promote that entities are penalized commensurate with the risk or impact that a specific violation of the Reliability Standards had or is having on the reliability of the Bulk Power System while also (ii) mitigating the potential of overly burdensome monetary penalties to less consequential or financially-limited entities.

At the conclusion of this review, NERC or the Regional Entity may:

1. Reduce the monetary penalty to an amount that NERC or the Regional Entity deems that the entity has the financial ability to pay if the entity is not likely to become able to pay the proposed monetary penalty with the use of a reasonable installment schedule;
2. Extend the period over which the monetary penalty must be paid using a reasonable installment schedule;
3. Excuse the monetary penalty amount payable; or
4. Sustain the monetary penalty amount determined above.

If NERC or the Regional Entity reduces the monetary penalty, such reduction will not be more than necessary to reach an amount that the entity has the financial ability to pay, and NERC or the Regional Entity shall consider the assessment of appropriate non-monetary penalties as a substitute or an alternative for the monetary penalty amount otherwise considered appropriate. NERC or the Regional Entity shall consider the assessment of appropriate non-monetary penalties as a substitute or an alternative for the monetary penalty amount otherwise considered appropriate in cases in which NERC or the Regional Entity excuses the monetary penalty.

⁹ Examples of relevant, verifiable information that an entity may provide includes, but is not limited to, audited financial statements, filed state and federal tax returns, approved budgets, interim financial statements, loan or mortgage agreements related to the entity's operations, asset ledgers, and/or other documents showing financial or contractual obligations or legal relationships between the entity and other parties. If an entity has declared, or expects to declare, bankruptcy and requests that NERC or the Regional Entity review the monetary sanction in light of its financial ability to pay, it must provide NERC or the Regional Entity relevant, verifiable information regarding its financial ability to pay as provided in this Section. In such cases, NERC or the Regional Entity will take all appropriate actions necessary to preserve any claims related to monetary sanctions for violations of the Reliability Standards with the appropriate bankruptcy court.

4. Determination of Non-Monetary Penalties

Non-monetary penalties may be applied with the objective of promoting reliability, addressing risks to reliability, and ensuring compliance with the Reliability Standards. NERC or the Regional Entity should consider the factors in Section 3 when evaluating whether to impose non-monetary penalties and to what degree to impose non-monetary penalties that bear a reasonable relationship to the seriousness of the violation(s).¹⁰ Non-monetary penalties are not actions that an entity would need to take in order to mitigate a violation or otherwise return to compliance. Non-monetary penalties may include, but are not limited to:

- requiring the chief executive officer or equivalent to sign the settlement agreement;
- requiring periodic reporting on reliability, security, and/or compliance related efforts to (1) the entity's board or equivalent, and/or (2) the NERC Board of Trustees Compliance Committee;
- issuing a non-public or public letter of reprimand;¹¹
- conducting additional compliance monitoring of the entity, either through imposition of previously unscheduled engagements and/or increased frequency of planned engagements;
- placing the entity on a reliability watch list of significant entities that have violated Reliability Standards;¹² and/or
- setting conditions for carrying on certain activities, functions, or operations.

NERC or the Regional Entity may impose other non-monetary penalties using professional judgment as appropriate in order to achieve non-monetary penalty(s) that bear a reasonable relationship to the seriousness of the violation(s). Non-monetary penalties should have reasonable time limitations that are described in the Notice of Penalty.

If NERC or a Regional Entity imposes a non-monetary penalty that impacts the final monetary penalty, NERC or the Regional Entity shall explain in the Notice of Penalty how the non-monetary penalty impacted the final monetary penalty amount.

¹⁰ For example, violations with higher assessed risk, more aggravating compliance history, management involvement in the violations, or evidence of concealment may warrant greater non-monetary penalties than violations without such factors present.

¹¹ A public letter of reprimand could be posted on NERC's website and should not include sensitive information that could be used to jeopardize the reliability or security of the Bulk Power System.

¹² An entity could be placed on a reliability watch list if, for example, it had significant reliability or security failures, repeated serious risk violations or programmatic failures, repeatedly failed to complete mitigation activities as required or on time, or engaged in other conduct that warranted such an action.

Appendix A: Monetary Penalty Factors

NERC and the Regional Entities have the discretion to deviate from the ranges provided for each factor below by applying professional judgment to the outcome of the calculations in order to achieve a monetary penalty that bears a reasonable relationship to the seriousness of the violation(s).

Base Monetary Penalty Factors

| Base Monetary Penalty Factors | Range | Explanation |
|-------------------------------|---------------------|--|
| VRF and VSL Table | \$1,000 to \$20,000 | The VRF and VSL Table is the starting point for monetary penalty calculations. The range represents the minimum and maximum “Low” level for all VRF and VSL combinations in the VRF and VSL Table. |
| Entity Size | 0.25 to 6 | Multiplies the monetary penalty amount derived above by 0.25 to 6 |
| Assessed Risk | 1 to 8 | Multiplies the monetary penalty amount derived above by 1 to 8 |
| Violation Duration | 0 to 5 | Increases the monetary penalty amount derived above by 0% to 500% |
| Violation Time Horizon | 1 to 4 | Multiplies the Violation Duration factor derived above by 1 to 4 |

Aggravating and Mitigating Factors

| Aggravating Factors | Range | Explanation |
|--|--------|--|
| Repeat violations | 0 to 8 | Increases Base Monetary Penalty Amount by 0% to 800% |
| Failure to comply with a Remedial Action Directive | 0 to 8 | Increases Base Monetary Penalty Amount by 0% to 800% |
| Intentional Violation | 0 to 8 | Increases Base Monetary Penalty Amount by 0% to 800% |
| Concealment or Impediment | 0 to 8 | Increases Base Monetary Penalty Amount by 0% to 800% |
| Management Involvement | 0 to 8 | Increases Base Monetary Penalty Amount by 0% to 800% |

| Mitigating Factors | Range | Explanation |
|--------------------|-------|-------------|
|--------------------|-------|-------------|

NERC Sanction Guidelines

| | | |
|-----------------------------|----------|---|
| Internal Compliance Program | 0 to 0.4 | Reduces Base Monetary Penalty Amount by 0% to 40% |
| Cooperation | 0 to 0.2 | Reduces Base Monetary Penalty Amount by 0% to 20% |
| Self-Report | 0 to 0.3 | Reduces Base Monetary Penalty Amount by 0% to 30% |

Final Adjustment Factors

| Other Adjustment Factors | Range | Explanation |
|--|--|--|
| Settlement/Avoiding Hearing and Admission/Acceptance of Responsibility | 0 to 0.3 if entity agrees to settlement without admitting to and accepting responsibility for violation 0 to 0.4 if entity agrees to settlement and also admits to and accepts responsibility for violation | Reduces Adjusted Monetary Penalty Amount by 0% to 30% if entity agrees to settlement without admitting to and accepting responsibility for violation Reduces Adjusted Monetary Penalty Amount by 0% to 40% if entity agrees to settlement and also admits to and accepts responsibility for violation |