



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

**Effective: July 1, 2014
(as noted below)**

The highlighted term “Load” in footnote 7 will become effective as a defined term on July 1, 2014 in accordance with the Bulk Electric System Order (Order No. 773) and the June 13, 2013 Order Granting Extension of Time. See Appendix 2 of the Rules of Procedure.

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1. Overview

The North American Electric Reliability Corporation (“NERC”), as the Electric Reliability Organization (“ERO”), and Regional Entities to whom NERC has delegated authority (hereinafter referred to collectively as “Regional Entities” or individually as a “Regional Entity”¹) shall determine and may levy monetary Penalties and non-monetary sanctions and Remedial Action Directives against owners, operators, and users of the Bulk Power System for violations of the Requirements of NERC Reliability Standards approved by the Federal Energy Regulatory Commission (“FERC”) and Applicable Governmental Authorities in Canada and/or Mexico. This document sets out the processes and principles to be followed, and factors that will be considered when determining Penalties, sanctions, or Remedial Action Directives for violations. Collectively these processes, principles and factors are NERC’s Penalties, sanctions, and Remedial Action Directive guidelines.

NERC and the Regional Entities will follow the directives, principles and processes in these Sanction Guidelines when determining Penalties, sanctions, or Remedial Action Directives for a violation. The adjustment factors in these Sanction Guidelines provide NERC and the Regional Entities the flexibility needed to take into account the facts surrounding each violation. The outcome will be Penalties and sanctions that are commensurate to the reliability impact of the violation and to those levied for similar violations, yet appropriately reflective of any unique facts and circumstances regarding the specific violation and violator.

Regional Entities shall follow these Sanction Guidelines when determining Penalties, sanctions, or Remedial Action Directives. NERC shall oversee the Regional Entities’ application of the Sanction Guidelines to ensure that Regional Entities achieve acceptable levels of consistency. NERC’s oversight will ensure that there is acceptable similarity in the degree and type of sanction for violations constituting comparable levels of threat to reliability of the Bulk Power System. NERC may develop reporting requirements or a standard reporting form for use by the Regional Entities for this purpose, as NERC deems necessary or appropriate.

As experience is gained by NERC and the Regional Entities through the use and application of these Sanction Guidelines, NERC will review the Sanction Guidelines and may modify them as NERC deems appropriate or necessary. Authority delegated by NERC to the Regional Entities with respect to Penalties, sanctions, or Remedial Action Directives does not include the authority to modify these Sanction Guidelines.

NERC and the Regional Entities will apply the provisions of this document in accordance with applicable statutory provisions and the regulations, orders, and statements of policy of FERC and other Applicable Governmental Authorities that are applicable to the determination and imposition of Penalties and sanctions for violations of Reliability Standards in the respective jurisdictions.

Any revision to this document must first be approved by the Board, then by FERC, Applicable Governmental Authorities in Canada or Applicable Governmental Authorities in Mexico prior to becoming effective and applicable within the United States or these Applicable Governmental Authorities’ respective jurisdictions.

¹ For purposes of this document, the term “Regional Entity” shall be treated as either singular or plural, as necessary, to refer to the applicable Regional Entity or Regional Entities.

2. Basic Principles

The following paragraphs identify and discuss the basic principles underpinning why and how NERC and the Regional Entities will determine Penalties, sanctions, and Remedial action Directives for violations of the Requirements of the Reliability Standards.

The order in which the principles are presented in this document does not set or indicate order of precedence.

2.1 Settlement of Compliance Violations

Pursuant to the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure, Possible or Alleged Violations of the Reliability Standards may be resolved through settlements reached between NERC, a Regional Entity and the Registered Entity or Entities to whom a Possible or Alleged Violation is attributed by NERC or the Regional Entity. Any provisions within a settlement regarding Penalties or sanctions can supersede any corresponding Penalties or sanctions that would otherwise be determined pursuant to these Sanction Guidelines.

2.2 Timing of Determination of Penalty, Sanction or Remedial Action Directive

The Penalty or sanction for a violation will be determined during the enforcement process in accordance with Section 5.0 of Appendix 4C.

At any time during the enforcement process, including any hearings or appeals, NERC or the Regional Entity may determine that a Remedial Action Directive to the Registered Entity is warranted and, in accordance with Section 7.0 of Appendix 4C, may direct that the Registered Entity implement the Remedial Action Directive.

2.3 Reasonable Relationship to Violation

Penalties and sanctions levied for the violation of a Reliability Standard shall bear a reasonable relation to the seriousness of the violation while also reflecting consideration of the other factors specified in these Sanction Guidelines.”

2.4 Use of Factors to Determine Penalties

Penalties levied for a Reliability Standard violation will be based on all facts and information relevant to the violation. To that end, these Sanction Guidelines include factors that NERC and the Regional Entities will consider while determining the Penalty or sanction for a violation.

The presence of some factors in connection with a violation aggravates the seriousness of that violation and should increase the Penalty. Conversely, the presence of certain other factors mitigates the seriousness of the violation and should reduce the Penalty. The absence of an aggravating or mitigating factor will have no impact on the Penalty.

This document identifies many aggravating and mitigating factors that, if present in connection with a violation, should be considered in determining the Penalty or sanction, and describes how these factors should be taken into account. Additional factors not identified in this document may also be considered in determining a Penalty or sanction, as NERC or the Regional Entity deems appropriate under the circumstances. Where additional factors are considered they will be identified, and their use will be justified, in the Notice of Penalty, and the effect of using these factors on the Penalty or sanction determined will be fully and clearly disclosed.

2.5 Multiple Violations

A violation is a failure to meet a Requirement of a Reliability Standard by a Bulk Power System owner, operator or user responsible to comply with that Requirement.

The Registered Entity's noncompliance may involve more than one Reliability Standard or several Requirements of a single Reliability Standard. As such, multiple individual violations may exist when NERC or the Regional Entity determines Penalties or sanctions for a noncompliance .

NERC or the Regional Entity may determine and levy a separate Penalty or sanction upon a violator for each individual violation of a Reliability Standard Requirement. However, where multiple violations related to a single act or common incidence of noncompliance, or where Penalties or sanctions for several unrelated violations by the Registered Entity are being determined at the same time, NERC or the Regional Entity or Entities may determine and issue a single aggregate Penalty or sanction bearing reasonable relationship to the aggregate of the violations. In such a case, the Penalty or sanction will generally be at least as large or expansive as what would be called for individually for the most serious of the violations.

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 several of its registered functions. Where an entity performs several registered functions, NERC or the Regional Entity will assess a violation and associated Penalty or sanction against the Registered Entity, not against each function.

2.6 Relation of the Penalty to the Seriousness of the Violation and Violator's Ability to Pay

As stated in Section 2.3 above, Penalties levied for the violation of a Reliability Standard shall bear a reasonable relation to the seriousness of the violation. As part of the assessment of the seriousness of the violation, NERC or the Regional Entity shall review the Violation Risk Factors² associated with the violation and the characteristics of the violator's operation or power system. NERC or the Regional Entity may consider the size of the violator. NERC or the Regional Entity will also consider the facts of the violation so that the "actual" size of the violator is appropriately considered. The following are provided as illustrative examples:

- If the violator belongs to a generation and transmission cooperative or joint-action agency, size will be attributed to the particular violator, rather than to that generation and transmission cooperative or joint-action agency.
- If the violator constitutes part of a corporate family the size of the violator will be attributed to that violator alone, in the absence of any facts indicating involvement of the whole corporation or corporate affiliates of the violator.
- If the violator is an entity 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 violator.

At the request of the violator, NERC or the applicable Regional Entity or Entities may review the Penalty in light of the violator's financial ability to pay the Penalty. Financial ability shall include the financial strength of the Registered Entity as well as its financial structure (e.g., for-profit versus non-profit). Where Penalties are reduced or eliminated NERC or the Regional Entity may consider non-monetary sanctions as alternatives or substitutes to the Penalty, pursuant to Sections 2.12, 2.13 and 2.14, below, of these Sanction Guidelines.

Consideration of the factors described in this subsection is intended to (i) promote that violators are penalized or sanctioned commensurate with the risk or effect that their specific violation of the

² See Section 3.1.1 for a discussion of these factors
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Reliability Standards had or is having on the reliability of the Bulk Power System while also (ii) mitigating overly burdensome Penalties to less consequential or financially-limited entities concurrent with (iii) promoting that no Penalty is inconsequential to the violator to whom it is assessed. Consideration of these factors is intended to result in Penalties levied for violations of Reliability Standards bearing a reasonable relationship to the seriousness of the violation while also addressing the violators' ability to pay the Penalties that are assessed.

2.7 Violation Time Horizon

Reliability Standards involving longer and broader time horizons, such as long-term planning activities, may have a lesser immediate impact and pose less immediate risk to the reliability of the Bulk Power System than Reliability Standards involving shorter and narrower timeframes, such as Registered Entities' conduct in real time. Similarly, Reliability Standards involving longer and broader time horizons typically will provide a longer time period over which to discover and remedy a violation when compared to Reliability Standards involving more immediate activities such as next-day planning, same-day operations or real-time operations. Using a time horizon element in the determination of Penalties for violations provides for recognition of the "more immediate" nature — and hence higher risk — of the threat of some violations as opposed to the lesser-risk "future threat if not corrected" nature of other violations.

NERC or the Regional Entity shall consider the time horizon of the Reliability Standard violated. Violations of Reliability Standards involving immediate or real-time activities will generally incur larger Penalties than violations of Reliability Standards with longer or broader time horizons.

Time horizons inherent in Reliability Standard Requirements are not reflected in their Violation Risk Factors or Violation Severity Levels for the Requirement³. Accordingly, the time horizon element of a violation will be considered when determining the Base Penalty Amount⁴ for the violation.

NERC or the Regional Entity will utilize judgment and will analyze the facts of the violation to determine the time horizon for the violation and its impact on the selection of the Base Penalty Amount. The rationale for the time horizon used and its impact on the setting of the Base Penalty Amount will be provided within the Notice of Penalty issued for the violation.

2.8 Extenuating Circumstances

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

2.9 Concealment or Intentional Violation

NERC or the Regional Entity shall always consider as an aggravating factor any attempt by a violator to conceal the violation from NERC or the Regional Entity, or any intentional violation incurred for purposes other than a demonstrably good faith effort to avoid a significant and greater threat to the immediate reliability of the Bulk Power System.

2.10 Economic Choice to Violate

Penalties shall be sufficient to assure that entities responsible for complying with Reliability Standards do not have incentives to make economic choices that cause or unduly risk violations of Reliability Standards, or incidents resulting from violations of the Reliability Standards. Economic choice includes economic gain for, or the avoidance of costs to, the violator. NERC or the Regional Entity shall treat economic choice to violate as an aggravating factor when determining a Penalty.

³ See Section 3.1 for a discussion of these factors.

⁴ See Section 3.2

2.11 No Influence by Outcome of Economic Choice to Violate

Whatever the financial outcome to the Registered Entity making an economic choice to violate a Reliability Standard, such decisions present a risk to reliability and to others, commonly without their knowledge or consent. Penalties levied to violators making an economic choice to violate shall reflect only that the violator made an economic choice to violate a Reliability Standard. The lack of or reduced magnitude of any actual benefit received, or any damage suffered, by the violator as a consequence of making this choice will have no influence upon the determination of the Penalty.

2.12 Non-Monetary Sanctions or Remedial Actions

Enforcement actions taken by NERC or a Regional Entity are not limited to monetary Penalties. NERC or the Regional Entity may apply, at its discretion, non-monetary sanctions including limitations on activities, functions, operations, or placement of the violator's name on a reliability watch list of major violators.

2.13 Non-Exclusiveness of Monetary Penalties or Non-Monetary Sanctions

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

2.14 Monetization of the Value of Sanctions

A significant element of NERC's oversight of Penalties, sanctions, and Remedial Action Directives determined and levied by Regional Entities is to ensure acceptable similarity in the degree and type of sanction for violations constituting comparable levels of threat to the reliability of the Bulk Power System by similarly situated entities. It is also a requirement and a commitment of NERC and the Regional Entities that Penalties or sanctions levied for the violation of a Reliability Standard bear reasonable relation to the seriousness of the violation. It is easier, more objective, and more transparent to monitor and test for the acceptable similarity of Penalties and sanctions if monetary Penalties or monetized values of sanctions are used as the primary basis of comparison. Similarly, there will be transparency, particularly to those familiar with the power industry, that NERC or the Regional Entity reasonably addressed the seriousness of a violation if the consequences are expressed clearly and quantifiably in monetary terms.

Penalties determined and levied by NERC or Regional Entities will by definition be valued in monetary terms: U.S or Canadian dollars. It is the preference of NERC that non-monetary sanctions imposed either in lieu of or in addition to a Penalty should include disclosure of the monetary value of the sanctions. Generally, NERC or the Regional Entity will first determine the Penalty for the violation and may, at their discretion, introduce sanctions as appropriate alternatives to the Penalty or as additions to a lesser Penalty. However, NERC or the Regional Entity may determine the monetary value of sanctions using other methods.

2.15 Maximum Limitations on Penalties

In the United States, the maximum Penalty amount that NERC or a Regional Entity will assess for a violation of a Reliability Standard Requirement is \$1,000,000 per day per violation. NERC and the Regional Entities will assess Penalties amounts up to and including this maximum amount for violations where warranted pursuant to these Sanction Guidelines.

In Canadian jurisdictions, the maximum monetary Penalty for a Reliability Standard violation is significantly less than \$1,000,000 per day per violation. Further, legislation presently governing certain Canadian jurisdictions does not accommodate the levying of such a Penalty under certain

circumstances, may not accommodate the levying of such a Penalty for all violations, or does not accommodate the levying of any monetary Penalties.

When NERC or a Regional Entity levies a Penalty or proposes a Penalty to Applicable Governmental Authorities with jurisdiction to levy a Penalty, NERC or the Regional Entity shall follow these steps:

- a. NERC or the Regional Entity will initially disregard the Penalty limitations of the Applicable Governmental Authorities, and will determine what the Penalties or sanctions would be pursuant to these Sanction Guidelines.
- b. NERC or the Regional Entity will review the maximum Penalty allowed in the applicable jurisdiction.
- c. NERC or the Regional Entity will set the actual Penalty as the lesser of (i) the Penalty determined pursuant to these Sanction Guidelines and (ii) the maximum Penalty or sanction allowed in the applicable jurisdiction.
- d. If the maximum Penalty allowed in the applicable jurisdiction is lower than the Penalty determined under the Sanction Guidelines, in addition to the legally permissible Penalty, the Notice of Penalty or similar document issued by NERC or the Regional Entity regarding the violation will also list the Penalty that was determined pursuant to these Sanction Guidelines.

Adhering to the above steps will insure that the determination of any Penalty for any violation will produce output that can be directly compared (i.e. without influence of any Penalty limitations or restrictions applicable in certain jurisdictions) with the Penalty determined for any other violation, thus assisting the efforts of NERC and others to ensure that these Sanction Guidelines are uniformly applied and that there is an acceptable level of consistency in their application across North America. Applicable Governmental Authorities may also find such information useful for their determination of the appropriateness of any Penalty or sanction proposed to them to be levied against a violator of the Reliability Standards.

2.16 Frequency and Duration of Violations

As stated in Section 2.15 above, the maximum Penalty that will be imposed in the U.S. for violation of a Reliability Standard is \$1,000,000 per day. However, some Reliability Standards may not support the assessment of Penalties on a “per day, per violation” basis, but instead should have Penalties calculated based on an alternative Penalty frequency or duration. Where NERC or the Regional Entity deems that a monetary Penalty is warranted, or where NERC or the Regional Entity monetizes (Section 2.14) the value of a non-monetary sanction, they shall determine the Penalty or monetized amount consistent with the following:

Multiple Instances of Violation on One Day

The nature of some Reliability Standards includes the possibility that a Registered 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 violator a maximum of \$1,000,000 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 potential Penalty of \$1,000,000 per violation, per day. Also, NERC or the Regional Entity is not constrained to assessing the same 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 Penalty might be levied in a situation where the violation was serious and the effects on the Bulk Power System were severe. In the future, 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. In the interim until relevant Reliability Standards are so modified, where assessing a 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 Registered 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 Penalty amount for each day that the Registered Entity was in violation of the Reliability Standard Requirement in question.

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 violation⁵. The determination of non-monetary sanctions is discussed in Section 4 of this document.

- Step 1. NERC or the Regional Entity will set the Base Penalty Amount for the violation as discussed in Sections 3.1 and 3.2, below.
- Step 2. NERC or the Regional Entity will adjust the Base Penalty Amount set in Step 1 pursuant to Section 3.3, below. This will result in the Adjusted Penalty Amount.
- Step 3. NERC or the Regional Entity may review the Adjusted Penalty Amount determined in Step 2 in light of the violator's financial ability to pay the Penalty. Also, where applicable, NERC or the Regional Entity will confirm that the Penalty will disgorge unjust profits or economic benefits associated with an economic choice to violate. At the conclusion of this review, NERC or the Regional Entity will set the Final Penalty Amount.

At the discretion of NERC or the Regional Entity, a Penalty may be assessed on a per violation per day basis or with an alternative frequency or duration. Where NERC or the Regional Entity deems that alternative Penalty frequency or duration is warranted, the Notice of Penalty associated with the violation will clearly identify this and provide the rationale for it. Where NERC or the Regional Entity deems that alternative Penalty frequency or duration is warranted, Penalties shall be determined in accordance with section 2.16 of these Sanction Guidelines.

3.1 Initial Value Range of the Base Penalty Amount

NERC or the Regional Entity will determine an initial value range for the Base Penalty Amount by considering the Violation Risk Factor ("VRF") of the Requirement violated and the Violation Severity Level (VSL) assessed for the violation. Using the Base Penalty Amount Table provided in Appendix A NERC or the Regional Entity will look up the initial value range for the Base Penalty Amount by finding the intersection of the violation's VRF and VSL on the table.⁶

3.1.1 Violation Risk Factor

Each Reliability Standard Requirement has been assigned a VRF through the NERC 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 risk is assigned to each Reliability Standards Requirement: Lower VRF; Medium VRF; or High VRF.

3.1.2 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.

⁵ The text in this section discusses the determination of a single Penalty for an individual violation; however, the process laid out is also applicable to determining the individual Penalties, or a single aggregate Penalty, for multiple violations that are associated with each other as discussed in Section 2.8 of this document.

⁶ As discussed in Section 2.5 of this document, where there is more than one violation, but the violations are sufficiently associated, NERC or the Regional Entity may set a single initial value range that is appropriate in light of the individual VRF/VSL combinations of the violations.

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

3.2 Setting of the Base Penalty Amount

NERC or the Regional Entity will set the Base Penalty Amount for the violation. The Base Penalty Amount for the violation may be set at the highest figure of the initial value range determined pursuant to Section 3.1, above. However, NERC or the Regional Entity may set the Base Penalty Amount at or below the lowest figure of the initial value range in light of two specific circumstances regarding the violation and the violator, specifically:

- a. The applicability of the VRF to the specific circumstances⁷ of the violator.
- b. Whether this is an inconsequential first violation by the violator of the Reliability Standard(s) in question.

As noted in Section 2.7, NERC or the Regional Entity will consider the time horizon for the violation when setting the Base Penalty Amount for the violation.

The Penalty amount resulting from this review will be the Base Penalty Amount that is used as the basis for further adjustment pursuant to the factors discussed in the next section (3.3) of this document.

3.2.1 Applicability of the Violation Risk Factor

VRFs are assigned to Reliability Standards Requirements as indicators of the expected risk or harm to the Bulk Power System posed by the violation of a Requirement by a typical or median Registered Entity that is required to comply. NERC or the Regional Entity may consider the specific circumstances of the violator to determine if the violation of the Requirement in question actually produced the degree of risk or harm anticipated by the VRF. If that expected risk or harm was not or would not have been produced, NERC or the Regional Entity may set the Base Penalty Amount to a value it (i) deems appropriate and (ii) is within the initial value range set above pursuant to Section 3.1.

3.2.2 First Violation

If the actual or foreseen impact of the violation is judged to be inconsequential by NERC or the Regional Entity and the violation is the first incidence of violation of the Requirement in question by the violator, NERC or the Regional Entity may at its discretion: (i) set the Base Penalty Amount to a value it deems appropriate within the initial value range set above pursuant to Section 3.1, or (ii) excuse the Penalty for the violation (i.e. set the Base Penalty Amount to \$0).

This relief will generally not be afforded to the violator if NERC or the Regional Entity determines that the violator has a poor internal compliance program or there is other evidence of a poor culture of compliance or compliance record; e.g. the circumstances discussed in Section 3.3.1 have been an aggravating factor in one or more previous Penalties assessed against the violator.

This relief will not be available for consideration in those instances where the violator concealed or attempted to conceal the violation, failed or refused to comply with compliance directives from NERC or the Regional Entity, or intentionally violated for purposes other than a demonstrably good faith effort to avoid a significant and greater threat to the immediate reliability of the Bulk Power System.

⁷ The circumstances of the violator will include but not be limited to: the violator's aggregate and net **Load**; and interconnections characteristics such as voltage class and transfer ratings.

3.3 Application of Adjustment Factors

Adjustment factors provide an opportunity for NERC or the Regional Entity to adjust the Base Penalty Amount to reflect the specific facts and circumstances material to each violation and violator.

These Sanction Guidelines recognize and require that, as a minimum, NERC or the Regional Entity consider the following:

- a. Repetitive violations and the violator's compliance history
- b. Failure of the violator to comply with compliance directives
- c. Disclosure of the violation by the violator through self-reporting, or as the result of a compliance self-analysis following a Bulk Power System event, and voluntary Mitigating Activities, by the violator
- d. Degree and quality of cooperation by the violator in the violation investigation and in any Mitigating Activities directed for the violation
- e. The presence and quality of the violator's compliance program
- f. Settlement
- g. Any attempt by the violator to conceal the violation
- h. Intentional violations
- i. Extenuating circumstances

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 and supporting documents.

3.3.1 Repetitive Violations and Compliance History

If a violator has had repetitive infractions of the same or a closely-related Reliability Standard Requirement, particularly within a time frame defined within the Reliability Standard(s) or deemed appropriate by NERC or the Regional Entity in the absence of a definition of a time frame in the relevant Reliability Standard, NERC or the Regional Entity shall consider an increase to the Penalty. In evaluating the violator's compliance history, NERC or the Regional Entity will take into account previous violations by affiliates of the violator, particularly violations of the same or similar Reliability Standard Requirements, and 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.

The reset period or reset time frame of a Reliability Standards Requirement may be defined or implied within a given Reliability Standard as the period of time generally required for a violator to continue operations without violating a Reliability Standard, particularly the initial Reliability Standard violated or a similar Reliability Standard. Expiration of this reset period or reset time frame would serve to negate or minimize consideration of the violator's previous violation history for sanctioning purposes in the event of a subsequent violation(s). NERC or the Regional Entity shall exercise appropriate judgment and discretion in this regard as warranted by the facts and circumstances, particularly where no reset period or reset time frame is specifically set within the Reliability Standard violated. Repeat violations within violation reset periods or reset time frames are aggravating factors in the determination of the Penalty or sanction. A violation history of no violations will produce no mitigation of the Penalty otherwise determined; a violation history of infrequent minor violations of lesser risk Requirements assessed lower VSLs may result in small or no increase; and a history of

more frequent violations or previous violations of higher risk Requirements assessed more severe VSLs will generally incur commensurately larger increases.

3.3.2 Failure to Comply with a Remedial Action Directive or with Agreed Corrective or Mitigating Activity

If the violator has violated Reliability Standard Requirements despite receiving related Remedial Action Directives or despite having agreed to corrective or Mitigating Activities for prior violations, NERC or the Regional Entity shall consider increasing the Penalty.

3.3.3 Disclosure of the Violation Through Self-Reporting and Voluntary Mitigating Activities by the Violator

NERC or the Regional Entity shall consider whether a violator reported the violation by a Self-Report, prior to detection or intervention by NERC or the Regional Entity, and any Mitigating Activities voluntarily undertaken by the violator to correct the noncompliance. As they deem warranted, NERC or the Regional Entity may reduce the violator's Penalty. If a Self-Report or a Self-Certification submitted by the violator accurately identifies a violation of a Reliability Standard, an identification of the same violation in a subsequent Compliance Audit or Spot Check will not subject the violator to an escalated Penalty as a result of the Compliance Audit or Spot Check process unless the severity of the violation is found to be greater than reported by the violator in the Self-Report or Self-Certification.

3.3.4 Degree and Quality of Cooperation

NERC or the Regional Entity shall consider the degree and quality of the violator's cooperation with NERC or the Regional Entity in the investigation of the violation and any Mitigating Activities arising from it. NERC or the Regional Entity may adjust the violator's Penalty as they deem appropriate, which may result in an increase, a decrease or no change to the Penalty.

3.3.5 Presence and Quality of Violator's Internal Compliance Program

NERC or the Regional Entity shall consider the presence and quality of the violator's internal compliance program, if any, and other indicators of the violator's culture of compliance. NERC or the Regional Entity may reduce the violator's Penalty as they deem appropriate. However, NERC or the Regional Entity may not increase a violator's Penalty solely on the grounds that the violator has no internal compliance program or a poor quality program.

3.3.6 Settlement

NERC or the Regional Entity may consider a reduction in Penalty if the violator resolves the violation through settlement, taking into account the speed with which settlement was reached.

3.3.7 Violation Concealment and Non-Responsiveness

NERC or the Regional Entity shall consider a significant increase to the Penalty if NERC or the Regional Entity determines, based on its review of the facts, that the violator concealed or attempted to conceal the violation or information necessary to investigate the violation. The presumption in such circumstances is to double the Penalty otherwise determined; however, NERC or the Regional Entity will determine the actual increase to the Penalty based on the particular facts and circumstances of the violation. Additionally, NERC or the Regional Entity shall consider an increase to the Penalty if NERC or the Regional Entity determines, based on its review of the facts, that the violator resisted or impeded the discovery and review of a violation.

3.3.8 Intentional Violation

When determining a Penalty NERC or the Regional Entity shall consider if the violator intentionally violated the Reliability Standard for purposes other than a demonstrably good faith effort to avoid a significant and greater threat to the immediate reliability of the Bulk Power System. If the violator engaged in such conduct, a significant increase to the Penalty shall be considered; the presumption in such cases is to double the Penalty otherwise determined. If conduct of this nature has been detected on more than one occasion, NERC or the Regional Entity should assess an even larger increase to the Penalty. NERC or the Regional Entity will determine the actual increase to the 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. Any Penalty issued involving conduct of this manner shall at a minimum disgorge any profits or economic benefits the violator acquired as a consequence of the behavior, whenever and to the extent that they can be determined or reasonably estimated.

3.3.9 Extenuating Circumstances

NERC or the Regional Entity will consider any extenuating circumstances regarding the violation that justify reduction or elimination of the Penalty otherwise determined.

3.4 Setting of the Final Penalty Amount

The Adjusted Penalty Amount determined in Step 2 may be reviewed in light of the violator's financial ability to pay the Penalty. If the violation resulted from an economic choice, NERC or the Regional Entity will confirm that the Penalty will disgorge any unjust profits or economic benefits. At the conclusion of this review, if applicable, NERC or the Regional Entity will set the Final Penalty Amount.

3.4.1 Violator's Financial Ability to Pay⁸

At the written request of the violator NERC or the Regional Entity will review the Penalty determined in Step 2 in light of relevant, verifiable information that the violator provides regarding its financial ability to pay. At the conclusion of this review NERC or the Regional Entity may:

1. Reduce the Penalty to an amount that NERC or the Regional Entity deems that the violator has the financial ability to pay, or;
2. Excuse the Penalty amount payable, or;
3. Sustain the Penalty amount determined in Step 2.

If NERC or the Regional Entity reduces or excuses the Penalty, NERC or the Regional Entity shall consider the assessment of appropriate non-monetary sanction(s) as a substitute or an alternative for the Penalty amount otherwise considered appropriate.

3.4.2 Confirmation of Disgorgement of Unjust Profit or Gain

Notwithstanding the application of any other consideration or factor applicable to the determination of a just and reasonable Penalty for the violation, if the violation in question involved an economic choice to violate a Reliability Standard, NERC or the Regional Entity shall confirm that the Penalty meets the requirements set forth in Sections 2.10 and 2.11 of this document.

⁸ NERC anticipates that this will be the primary vehicle for addressing the ability to pay of "not-for-profit" and other similar organizations.

4. Determination of Non-Monetary Sanctions

The imposition of sanctions is not limited to monetary Penalties. Non-monetary sanctions may be applied with the objective of promoting reliability and compliance with the Reliability Standards. Non-monetary sanctions may include limiting activities, functions, or operations, or placing the violator on a reliability watch list of significant violators.

Appendix A: Base Penalty Amount Table

The following lists the Base Penalty amounts corresponding to combinations of Violation Risk Factor and Violation Severity Level.

Violation Risk Factor	Violation Severity Level							
	Lower		Moderate		High		Severe	
	Range Limits		Range Limits		Range Limits		Range Limits	
	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	\$1,000,000

NOTE: This table describes the amount of Penalty that could be applied for each day that a violation continues, subject to the considerations of Section 2.16 regarding frequency and duration of violations.