



Sanction Guidelines of the North American Electric Reliability Corporation

Effective: ~~July 1, 2014~~ **Month Day, 2020**
(~~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~~which NERC has delegated authority (hereinafter referred to collectively as “Regional Entities” or individually as a “Regional Entity”²⁺) shall determine and may levy monetary ~~Penalties~~ and non-monetary sanctions ~~and Remedial Action Directives~~ 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 ~~Requirements of~~ NERC Reliability Standards and Regional Reliability Standards (collectively, “Reliability Standards”), which are approved by the Federal Energy Regulatory Commission (“FERC”) ~~and in the United States and/or~~ 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, monetary and non-monetary sanctions, or Remedial Action Directives for a violation. The adjustment factors in these Sanction Guidelines provide NERC and the Regional Entities the flexibility needed while retaining the discretion~~ to take into account the facts surrounding each violation. ~~The outcome will be Penalties and using professional judgment to deviate from the recommended ranges for each factor as appropriate in order to achieve monetary and/or non-monetary sanctions that are commensurate bear a reasonable relationship to the reliability impact/seriousness 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, type, and type amount of sanction for violations constituting comparable levels compared to the level 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~~ 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.

⁺ ~~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. General Principles

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

2.1 Initial Determination of Whether a Monetary and/or Non-Monetary Sanction is Necessary

Situations involving multiple serious risk violations or systemic or programmatic failures should typically result in a monetary sanction and/or non-monetary sanctions.² Additionally, monetary sanctions and/or non-monetary sanctions 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. Monetary and non-monetary sanctions do not apply for noncompliance or violations that NERC or the Regional Entities determine should be processed through the use and 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 Sanctions

NERC or the Regional Entity may impose a non-monetary sanction either in lieu of or in addition to a monetary sanction for the same violation, and vice versa. Imposition of a monetary or non-monetary sanction for a violation does not preclude the imposition of the other as long as the aggregate monetary sanction and non-monetary sanction 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 sanction that impacts the final monetary sanction, NERC or the Regional Entity shall explain in the Notice of Penalty how the non-monetary sanction impacted the final monetary sanction amount.

2.3 Maximum Limitations of Monetary Sanctions

The maximum monetary sanction 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 sanction set forth in 18 CFR § 385.1602(d).³ NERC and the Regional Entities may assess monetary sanction 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 sanctions that bear a reasonable relation to the seriousness of the violation(s) while also reflecting consideration of the other factors specified in these Sanction Guidelines.

~~NERC or the Regional Entity, NERC will review the Sanction Guidelines and may modify them as NERC deems appropriate or considers the entity's size, the risk of the violation, and compliance history as key factors in the development of monetary and non-monetary sanctions in order to ensure that those sanctions are consequential enough such that violators do not consider the imposition of monetary and/or non-monetary sanctions 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. Authority delegated by NERC to the Regional Entities with respect to Penalties, sanctions, or~~

² In cases involving federal entities, non-monetary sanctions for violations are the only sanctions available. *See Sw. Power Admin. v. FERC*, 763 F.3d 27 (D.C. Cir. 2014). In other cases, NERC or the Regional Entities have the discretion to impose a zero dollar monetary sanction on a non-federal entity where appropriate after consideration of all the relevant principles and factors discussed in these Sanction Guidelines.

³ As of 2020, the maximum civil monetary sanction set forth in 18 CFR § 385.1602(d) is \$1,291,894 per violation, per day.

~~Remedial Action Directives does not include the authority to modify these Sanction Guidelines, to reach a sanction that is consequential to the violator while bearing a reasonable relation to the reliability impact and seriousness of the violation.~~

~~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. ~~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.

In cases involving significant programmatic failures, usually involving multiple serious risk violations, 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 sanctions levied against the entity by other regulators. After completing the development of any monetary and non-monetary sanctions using the process described in these Sanction Guidelines, NERC or the Regional Entity may consider whether the proposed sanction is consequential to the violator in light of the information reviewed and increase the sanction as appropriate, subject to the maximum limitation on monetary sanctions 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 sanction in order to ensure it was consequential to the violator and not an economic choice or cost of doing business.

1.4.2.5 Settlement of ~~Compliance~~ Violations

Pursuant to the NERC Compliance Monitoring and Enforcement Program, Appendix 4C ~~to~~of the NERC Rules of Procedure, an entity's 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, the relevant Compliance Enforcement Authority⁴ and the entity. Any provisions within a settlement regarding ~~Penalties or~~ monetary and non-monetary sanctions can supersede any corresponding ~~Penalties or~~ sanctions that would otherwise be determined pursuant to these Sanction Guidelines.

1.2 ~~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.~~

1.3 ~~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."~~

1.4 ~~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.~~

⁴ Regional Entities and NERC can act as the Compliance Enforcement Authority.

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.

In particular, NERC or the Regional Entity may consider a reduction in the monetary sanction if the entity resolves the violation through settlement, taking into account the speed with which settlement was reached. This document identifies many reduction applies to the monetary sanction amount after adjustments are made pursuant to the 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 listed in Section 3.3.

4.52.6 Multiple Violations

The entity may be in 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 of more than one Reliability Standard or several Requirements of a single the same Reliability Standard, or have multiple instances of violations of the same Standard and Requirement. As such, multiple individual violations may exist when for each violation of a Reliability Standard Requirement addressed in a Notice of Penalty, NERC or the Regional Entity determines Penalties or sanctions for a noncompliance may

NERC or the Regional Entity may determine and levy, in its sole discretion, either (1) a separate Penalty or monetary sanction upon a violator and/or non-monetary sanction(s) for each individual violation of a Reliability Standard Requirement. However, where multiple violation, describing the sanction for each violation individually or the total sanction for the group of 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 as a whole; or (2) a single, aggregate Penalty or monetary sanction and/or non-monetary sanction bearing reasonable relationship to the aggregate of the violations. In such a case, the Penalty or sanction 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 sanction that is appropriate and will generally be impose a monetary and/or non-monetary sanction 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 several more than one of its registered functions. Where an entity performs several more than one registered functions function, NERC or the Regional Entity will assess a violation and associated Penalty or sanction(s) against the Registered Entity entity, not against each function.

1.6 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 Factors⁵ 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 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.

~~1.6.11.1.1 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.

⁵ See Section 3.1.1 for a discussion of these factors

~~Time horizons inherent in Reliability Standard Requirements are not reflected in their Violation Risk Factors or Violation Severity Levels for the Requirement⁶. Accordingly, the time horizon element of a violation will be considered when determining the Base Penalty Amount⁷ 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.~~

~~1.71.1 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.~~

~~1.8 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.~~

~~1.9 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.~~

~~1.10 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.~~

~~1.11 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.~~

~~1.12 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.~~

~~1.13 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~~

⁶ See Section 3.1 for a discussion of these factors.

⁷ See Section 3.2

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.

1.14 — 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.

NERC or the Regional Entity will review the maximum Penalty allowed in the applicable jurisdiction.

b. ~~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.

c. 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.

1.152.8 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, someSome Reliability Standards may not support the assessment of Penalties-a monetary sanction on a “per day, per violation” basis, but instead should have Penalties-monetary sanctions calculated based on an alternative Penaltyviolation 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 Entityan 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 ~~violation aentity the~~ maximum ~~of \$1,000,000monetary sanction 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 ~~potential Penalty of \$1,000,000monetary sanction amount~~ per violation, per day. Also, NERC or the Regional Entity is not constrained to assessing the same ~~Penaltymonetary sanction~~ amount for each of the multiple violations, irrespective of their proximity in time.

2.9 Extenuating Circumstances

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.~~

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

2.3. Determination of Monetary PenaltiesSanctions

This Section describes the specific steps that NERC or the Regional Entity will follow to determine the monetary ~~Penalty for a violation~~⁸-~~sanction for a violation.~~⁹ Appendix A provides the ranges generally used for each factor used to determine the monetary sanction 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 sanction that bears a reasonable relationship to the seriousness of the violation(s). The determination of non-monetary sanctions is discussed in Section 4 of this document.

3.1 Overview of the Calculation of Monetary Sanctions

~~The calculation of monetary sanctions for violations of NERC or the Regional Entity will set the Base Penalty Amount for the violation~~Reliability Standards is calculated as discussed in Sections 3.1 and 3.2, below, follows:

~~NERC or the Regional Entity will adjust the Base Penalty Amount set in~~

~~Step 1 pursuant to:~~ Establish the Base Monetary Sanction Amount, as discussed in Section 3.3, below. This will result².

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

~~NERC or the Regional Entity may review~~Step 3: Make final adjustments to the Adjusted ~~Penalty~~Monetary Sanction 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 ~~disgorgeto~~ 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. At the conclusion of this review, NERC or the Regional Entity will set the~~,~~ and/or entity requests to reduce the proposed monetary sanction in light of the entity's financial ability to pay the monetary sanction, resulting in the Final ~~Penalty~~Monetary Sanction Amount.

~~2.4. 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. Establishing~~Initial Value Range of the Base ~~Penalty~~Monetary Sanction Amount

NERC or the Regional Entity will set the Base Monetary Sanction 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

⁸~~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.~~

⁹The 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 this document.

3.2.1 Violation Risk Factor and Violation Severity Level Table

NERC or the Regional Entity will determine an initial monetary sanction 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 VRF and VSL Table provided in Appendix A below, NERC or the Regional Entity will look up the initial monetary sanction value range for the Base Penalty Amount 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 sanction value range, and will adjust the initial monetary sanction 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 sanction value range results in a proposed monetary sanction that does not bear a reasonable relationship to the seriousness of the violation after consideration of the other factors discussed below.

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

NOTE: This table describes the ⁴⁰monetary sanction 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 sanction.

2.1.1.13.2.1.1 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~~VRF is assigned to each Reliability Standards Requirement: Lower ~~VRF~~; Medium ~~VRF~~; or High. If the Reliability Standard Requirement does not have a VRF or if a different VRF is more appropriate based on the facts and circumstances of the violation, NERC or the Regional Entity may use a different VRF that is appropriate given the facts and circumstances of the violation and describe the VRF used in the Notice of Penalty.

2.1.1.23.2.1.2 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. If the Reliability Standard Requirement does not have a VSL or if a different VSL is more appropriate based on the facts and circumstances of the violation, NERC or the Regional Entity may use a different VSL that is appropriate given the facts and circumstances of the violation and describe the VSL used in the Notice of Penalty.

⁴⁰As 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.

2.2 ~~Setting of the Base Penalty Amount~~

3.2.2 ~~Entity Size~~

~~NERC or the Regional Entity will set the Base Penalty Amount adjust the monetary sanction 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 violation. The Base Penalty Amount for seriousness of the violation may(s).~~

- ~~• If an entity belongs to a generation and transmission cooperative or joint-action agency, size will be set at the highest figure of attributed to the particular entity, rather than to the initial value range determined pursuant to Section 3.1, above. However, 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 may set deems involved and constituting the Base Penalty Amount at or below the lowest figure “actual” size of the initial value range in light entity.~~
- ~~• If the entity is made up of two specific circumstances regarding 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 sanction in such cases is approximately the same regardless of whether the multiple subsidiaries are assessed a single violation and the violator, specifically; or if each subsidiary is assessed its own violation, provided that the subsidiaries operate under the same or substantially the same compliance program.~~
 - ~~a. The applicability of the VRF to the specific circumstances¹¹ 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.~~

~~Applicability of the~~

~~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. 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.~~

¹¹ ~~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.~~

2.2.13.2.4

Violation Risk Factor Duration

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

3.2.5 Violation Time Horizon

~~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.~~

2.2.2 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 shall consider the Violation Time Horizon of the Reliability Standard Requirement violated and adjust the monetary sanction 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 Sanction Amount to Account for Aggravating and Mitigating Factors

Adjustment factors allow 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.~~

2.3 Application of Adjustment Factors

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

This document identifies aggravating and mitigating factors that, if present in connection with a violation, should be considered in determining the monetary and/or non-monetary 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 monetary and/or non-monetary sanction, 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 sanction, will be provided in the Notice of Penalty. The absence of an aggravating or mitigating factor will have no impact on the monetary sanction.

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

1. Repetitive violations and the ~~violator's~~ entity's compliance history
2. Failure of the ~~violator~~ entity to comply with ~~compliance directives~~ a Remedial Action Directive
3. ~~Intentional violations~~ Disclosure of
4. ~~Any attempt by the entity to conceal the violation by the violator through self-reporting, or as~~ resist, impede, be non-responsive, or otherwise exhibit a lack of cooperation
5. ~~Management involvement in any intentional violation or attempt to conceal the result of a compliance self-analysis following a Bulk Power System event, violation~~
- 3.6. ~~The presence and~~ voluntary Mitigating Activities, by quality of the violator's compliance program
- 4.7. Degree and quality of cooperation by the ~~violator~~ entity in the violation investigation and in any Mitigating Activities directed for the violation
 - a. ~~The presence and quality~~ Disclosure of the ~~violator's~~ compliance program
 - b. ~~Settlement~~
 - 5.8. ~~Any attempt~~ violation by the entity through self-reporting and voluntary Mitigating Activities by the violator ~~to conceal the violation~~
 - c. ~~Intentional violations~~
 - d. ~~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.

2.3.13.3.1 Aggravating Factor: 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~~ 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 sanction. Repetitive infractions 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) significant programmatic failures involving the same or similar Reliability Standards and Requirements.

~~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.~~

~~NERC or the Regional Entity will generally aggravate the monetary sanction 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 significant 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 sanction based on the particular facts and circumstances of each case.~~

~~A violation history of no violations will not result in mitigation of the monetary sanction otherwise determined.~~

2.3-23.3.2 Aggravating Factor: Failure to Comply with a Remedial Action Directive or with Agreed Corrective or Mitigating Activity

~~If the violator entity 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 monetary sanction. NERC or the Regional Entity will generally aggravate the monetary sanction 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 sanction. NERC or the Regional Entity will determine the actual increase to the monetary sanction based on the particular facts and circumstances of each case.~~

3.3.3 Aggravating Factor: Intentional Violation

~~When determining a monetary sanction 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 avoid a significant and greater threat to the immediate reliability of the Bulk Power System. If the entity engaged in such conduct, a significant increase to the monetary sanction shall be considered; the presumption in such cases is to double the monetary sanction otherwise determined. NERC or the Regional Entity will generally aggravate the monetary sanction 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 sanction. NERC or the Regional Entity will determine the actual increase to the monetary sanction 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 sanction 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 sanction otherwise determined.

Additionally, NERC or the Regional Entity shall consider an increase to the monetary sanction 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 sanction 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 sanction. NERC or the Regional Entity will determine the actual increase to the monetary sanction 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 sanction. The presumption in such circumstances is to double the monetary sanction otherwise determined. NERC or the Regional Entity will generally increase the monetary sanction 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 sanction. NERC or the Regional Entity will determine the actual increase to the monetary sanction 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 and 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 sanction as they deem appropriate. However, NERC or the Regional Entity may not increase an entity's monetary sanctions solely on the grounds that the entity has no internal compliance program or a poor quality or failed program.¹²

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 sanction, 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 sanction as they deem appropriate, which may result in a decrease or no change to the monetary sanction.

¹² 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.

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

NERC or the Regional Entity shall consider whether ~~a violator an entity self-reported the violation by a Self Report, (1) within a reasonably prompt time after becoming aware of the violation, and (2) prior to detection via a compliance monitoring engagement by NERC or the Regional Entity or intervention by NERC or the Regional Entity via a notification of an upcoming compliance monitoring engagement or Self-Certification, and any Mitigating Activities voluntarily undertaken by the violator entity to correct the none compliance violation.~~ 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.~~ entity's monetary sanction.

2.3.4 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.~~

2.3.5 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.~~

3.4 Final Adjustments to the Monetary Sanction

NERC or the Regional Entity may make additional adjustments to the Adjusted Monetary Sanction 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 sanction.

2.3.63.4.1 Settlement and Admitting to and Accepting Responsibility for Violation

NERC or the Regional Entity may consider a reduction in Penalty the monetary sanction if the violator resolves the violation through settlement, taking into account the speed with which settlement was reached. If the entity agrees to settlement and also clearly demonstrated recognition and affirmative acceptance of responsibility for the violation, NERC or the Regional Entity may consider a further reduction in the monetary sanction beyond the credit given for resolving the violation through settlement.

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.~~

~~3.4.2 NERC or the Regional Entity will consider violations attributable to an economic choice to violate as intentional violations.~~ ~~Disgorgement of Unjust Profits~~

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

~~2.3.73.4.3~~ ~~3.3.9~~ ~~Extenuating Circumstances~~

~~NERC or the Regional Entity will consider any~~In unique extenuating circumstances ~~regarding causing or contributing to the violation that justify reduction or elimination of the Penalty, such as significant natural disasters, NERC or the Regional Entity may significantly reduce or eliminate the monetary sanction~~ otherwise determined.

~~2.4~~ ~~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.~~

~~2.4.13.4.4~~ ~~Violator's~~Entity's Financial Ability to Pay¹³

At the written request of the ~~violator~~entity, NERC or the Regional Entity will review the ~~Penalty~~monetary sanction determined ~~in Step 2 above~~ in light of relevant, verifiable information that the ~~violator~~entity provides regarding its financial ability to pay. ~~At~~¹⁴ Financial ability shall include the ~~conclusion~~financial strength of the entity as well as its financial structure (e.g., for-profit versus non-profit). ~~this review~~ 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 sanctioned commensurate~~

¹³ ~~NERC anticipates that this will be the primary vehicle for addressing the ability to pay of "not for profit" and other similar organizations.~~

¹⁴ 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.

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 sanctions to less consequential or financially-limited entities.

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

1. Reduce the ~~Penalty~~monetary sanction to an amount that NERC or the Regional Entity deems that the ~~violator~~entity has the financial ability to pay, ~~or if the entity is not likely to become able to pay the proposed monetary sanction with the use of a reasonable installment schedule;~~
2. Extend the period over which the monetary sanction must be paid using a reasonable installment schedule;
- ~~2.3.~~ Excuse the ~~Penalty~~monetary sanction amount payable; or;
- ~~3.4.~~ Sustain the ~~Penalty~~monetary sanction amount determined ~~in Step 2~~above.

~~If~~If NERC or the Regional Entity reduces the monetary sanction, such reduction will not be more than necessary to avoid substantially jeopardizing the continued viability of the organization. ~~If~~ NERC or the Regional Entity reduces or excuses the ~~Penalty~~monetary sanction, NERC or the Regional Entity shall consider the assessment of appropriate non-monetary sanction(s) as a substitute or an alternative for the ~~Penalty~~monetary sanction amount otherwise considered appropriate.

~~2.4.2~~ 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.~~

3.4. 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, addressing risks to reliability, and ensuring~~ compliance with the Reliability Standards. ~~Non-monetary sanctions are not actions that an entity would need to take in order to mitigate a violation or otherwise return to compliance.~~ Non-monetary sanctions may include ~~limiting activities, functions, or operations,~~ 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;~~
- ~~conducting additional compliance monitoring of the entity, either through imposition of previously unscheduled engagements and/or increased frequency of planned engagements;~~
- ~~placing the violator entity on a reliability watch list of significant violators entities that have violated Reliability Standards; and/or~~

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

- -setting conditions for carrying on certain activities, functions, or operations.

NERC or the Regional Entity may impose other non-monetary sanctions using professional judgment as appropriate in order to achieve non-monetary sanction(s) that bear a reasonable relationship to the seriousness of the violation(s).

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

Appendix A

Appendix A: Monetary Sanction 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 sanction that bears a reasonable relationship to the seriousness of the violation(s).

Base Monetary Sanction Factors

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

Aggravating and Mitigating Factors

<u>Aggravating Factors</u>	<u>Range</u>	<u>Explanation</u>
<u>Repeat violations</u>	<u>0 to 8</u>	<u>Increases Base Monetary Sanction Amount by 0% to 800%</u>
<u>Failure to comply with a Remedial Action Directive</u>	<u>0 to 8</u>	<u>Increases Base Monetary Sanction Amount by 0% to 800%</u>
<u>Intentional Violation</u>	<u>0 to 8</u>	<u>Increases Base Monetary Sanction Amount by 0% to 800%</u>
<u>Concealment or Impediment</u>	<u>0 to 8</u>	<u>Increases Base Monetary Sanction Amount by 0% to 800%</u>
<u>Management Involvement</u>	<u>0 to 8</u>	<u>Increases Base Monetary Sanction Amount by 0% to 800%</u>

<u>Mitigating Factors</u>	<u>Range</u>	<u>Explanation</u>
<u>Internal Compliance Program</u>	<u>0 to 0.4</u>	<u>Reduces Base Monetary Sanction Amount by 0% to 40%</u>
<u>Cooperation</u>	<u>0 to 0.2</u>	<u>Reduces Base Monetary Sanction Amount by 0% to 20%</u>
<u>Self-Report</u>	<u>0 to 0.3</u>	<u>Reduces Base Monetary Sanction Amount by 0% to 30%</u>

Final Adjustment Factors

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

~~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.~~