NERC
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

Proposed Revisions to Appendix 4B of the NERC Rules of Procedure

Sanction Guidelines

Introduction

The North American Electric Reliability Corporation ("NERC") is proposing revisions to Appendix 4B of its Rules or Procedure (ROP) in accordance with the directive in the Federal Energy Regulatory Commission's ("FERC") order accepting NERC's Five-Year Performance Assessment.[1] Appendix 4B of the ROP describes the NERC Sanction Guidelines, which NERC and the Regional Entities use to determine appropriate monetary and non-monetary sanctions for violations of the NERC Reliability Standards and Regional Reliability Standards by registered entities. The purpose of the proposed revisions is to update Appendix 4B to reflect the current practices of NERC and the Regional Entities in levying monetary and non-monetary sanctions for violations of the NERC Reliability Standards and Regional Reliability Standard and address specific directives from FERC in its order accepting NERC's Five-Year Performance Assessment.

The following is an overview of the key proposed changes to Appendix 4B:

- Explain how NERC and the Regional Entities choose the base penalty amount within the range based on violation risk factor and violation severity level in response to FERC's directive in P 82 (see revised Section 3.2.1 and Appendix A).
- Detail the potential range for aggravating factors applied to the base penalty amount for: (1) risk; (2) duration of violations; (3) size of the entity; (4) management involvement; (5) repetitive violations; and (6) any other factors applied to increase the base penalty amount in response to FERC's directive in P 82 (see revised Sections 3.2 and 3.3, and Appendix A).
- Detail the potential range of mitigating factors applied to reduce the resulting penalty amount for: (1) settlement; (2) self-reporting; (3) admission; (4) internal compliance program; (5) cooperation; and (6) any other credits used to decrease the base penalty amount in response to FERC's directive in P 82 (see revised Sections 3.3 and 3.4, and Appendix A).
- Address whether and/or how non-monetary sanctions will be considered in reaching the final penalty amount in response to FERC's directive in P 82 (see revised Sections 2.2 and 4).
- Address how NERC and the Regional Entities will assess a penalty which bears a reasonable relation to the seriousness of the violation and the size of the violator when dealing with multiple subsidiaries of a parent corporation that commit the same violations in response to FERC's directive in P 82 (see revised Section 3.2.2).
- Address how NERC and the Regional Entities will calculate a single penalty for multiple violations by a single entity in response to FERC's directive in P 82 (see revised Section 2.6).

[1] *Order on Five-Year Performance Assessment*, 170 FERC ¶ 61,029 (*Five Year Order*) (2020).

- Address how NERC and the Regional Entities consider "the violator's financial ability to pay the Penalty," so that "no Penalty is inconsequential to the violator to whom it is assessed," as provided in section 2.6 of the current Sanction Guidelines in response to FERC's directive in P 82 (see revised Section 2.4).
- Reorder Section 3 (Determination of Monetary Sanctions) to group all factors by related concepts, specifically:
    - a base monetary sanction representing all factors that are used before any aggravating or mitigating factors are applied,
    - adjustments based on all relevant aggravating and mitigating factors, and
    - final adjustments based on consideration of the entity agreeing to settle, the entity admitting to and accepting responsibility for the violations, disgorgement of unjust profits, extenuating circumstances, and the entity's financial ability to pay a monetary sanction.
- Revise the description of several factors in Section 3 (Determination of Monetary Sanctions) to mirror language used in FERC's *Revised Policy Statement on Penalty Guidelines*, 132 FERC ¶ 61,216 (2010).
- Specify a look-back period of five years for the aggravating factors described in the new Section 3.3.

Other revisions include:

- Shortening Section 1 (Overview) to remove extraneous language.
- Moving several concepts in the old Section 2 (Basic Principles) to the new Section 3 (Determination of Monetary Sanctions), specifically the old Sections 2.6, 2.7, 2.9, 2.10, and 2.12.
- Deleting old sections 2.2, 2.4, 2.14, and most of 2.16 to remove extraneous language and/or concepts that are no longer used.
- Revising the Violation Risk Factor and Violation Severity Level table in new Section 3.2.1 to update the maximum monetary sanction allowed per day by 18 CFR § 385.1602(d).
- Revising Section 4 (Determination of Non-Monetary Sanctions) to include additional examples of possible non-monetary sanctions.
- Various edits to ensure consistent terminology or phrasing throughout the Sanction Guidelines for similar concepts.