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VIA EMAIL

October 29, 2012

**BCUC INQUIRY INTO THE
BC MRS PROGRAM**

EXHIBIT A2-10

To: All Registered Parties
(*BCUC – MRS Inquiry*)

Re: British Columbia Utilities Commission
Project No. 3698595/R-72-12
An Inquiry into potential adjustments for the
British Columbia Mandatory Reliability Standards Program

Commission staff submits the following document for the record in this proceeding:

British Columbia Utilities Commission
Letter L-56-11
British Columbia's Mandatory Reliability Standards (MRS)
Determination of Reference Amount for a Confirmed Violation of MRS

Yours truly,

Erica Hamilton

/sk
Enclosure



LETTER L-56-11

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VIA EMAIL

October 28, 2011

To: Registered Entities
British Columbia MRS Program

Re: British Columbia's Mandatory Reliability Standards (MRS)
Determination of Reference Amount for a Confirmed Violation of MRS

In this letter, the British Columbia Utilities Commission (Commission) proposes a Procedure for determining a Reference Amount as a measure of the seriousness of a Confirmed Violation of a Mandatory Reliability Standard, and requests comments on the Procedure.

BACKGROUND

Policy Action 14 of the 2007 British Columbia Energy Plan states: "Ensure that the province remains consistent with North American transmission reliability standards." The Energy Plan also states that the Commission will determine, set and enforce reliability standards in the province.

In 2008, the *Utilities Commission Act (Act)* was amended by the addition of section 125.2, which gives the Commission jurisdiction to determine whether a reliability standard should be adopted in British Columbia. Further, it authorizes the Commission to make orders for the administration of adopted reliability standards.

Ministerial Order M 039 dated February 22, 2009 (MRS Regulation) identifies the entities to which reliability standards adopted under section 125.2 of the *Act* apply (Applicable Entities).

Commission Orders G-67-09, G-167-10, G-162-11 and G-175-11 adopted a number of reliability standards for application in British Columbia. Order G-123-09 approved the Rules of Procedure for MRS, including the Registration Manual and the Compliance Monitoring Program (CMP). That Order also appointed the Western Electricity Coordinating Council (WECC) as Administrator for registration and compliance monitoring with respect to MRS.

CURRENT STATUS OF MRS PROGRAM

The initial registration of Applicable Entities in British Columbia is approaching completion, and compliance monitoring is well underway. Compliance is monitored from the later of November 1, 2010 or the date an Applicable Entity's operations connected with the bulk power system, regardless of registration date. Under the CMP, a possible violation of adopted reliability standards may be identified by the Applicable Entity, or by the Administrator through an audit or some other process.

After a review of the matter, the Administrator may provide a Notice of Alleged Violation (NOAV) to the Applicable Entity and the Commission. The NOAV will include information which informs the alleged violator of the potential penalty amount that the Administrator believes may be appropriate for a Confirmed Violation if one applied North American Electric Reliability Corporation (NERC) Sanction Guidelines to the factual pattern described in the Alleged Violation against an entity under NERC jurisdiction and within the Western Interconnect. The information on the potential penalty amount is not a matter that is considered during the violation phase process to consider the confirmation of an Alleged Violation.

The Applicable Entity has 30 days to respond to a NOAV. If the Alleged Violation is contested, the Commission will hold a hearing.

If the Commission makes a Confirmed Violation finding, the Applicable Entity must prepare a Mitigation Plan to correct the violation or provide a description of how the violation has been mitigated, if the Applicable Entity has not already done so. The CMP also provides that the Commission may issue a Remedial Action Directive to protect the reliability of the bulk power system.

ENFORCEMENT OF MRS

The Compliance Monitoring Program is based on mandatory rather than voluntary compliance with adopted reliability standards. Enforcement of compliance may ultimately require the levying of appropriate penalties, in the form of fines and other sanctions, for violations of adopted reliability standards. At this time, the Commission does not have authority to levy administrative penalties. If circumstances warrant, the Commission can bring a MRS violation before the courts, and seek to have an Applicable Entity convicted of an offence under the *Act*.

Notwithstanding its lack of authority to levy administrative penalties, the Commission believes that it is worthwhile to establish a Procedure for determining a Reference Amount as a measure of the seriousness of a Confirmed Violation. This will provide useful feedback to the Applicable Entity and to other interested persons about the seriousness of the violation, and will enable the Commission to establish a more informative “track record” for Applicable Entities with Confirmed Violations. The Commission recognizes, of course, that in the event future legislation provides it with the authority to levy administrative penalties, changes to this Procedure may be required.

REFERENCE AMOUNT OF A CONFIRMED VIOLATION, AND ADMINISTRATOR REFERENCE AMOUNT

In developing the Procedure, the Commission has been guided by the Energy Policy requirement for consistency with North American transmission reliability standards as reflected in the wording of section 125.2(6) of the *Act*. In the Commission’s view, this consistency also suggests comparable assessment of the level of seriousness of threats to the reliability of the bulk power system caused by Confirmed Violations to those arising from violations having similar factual patterns in other jurisdictions in North America that have adopted reliability standards. For this reason, the Commission has relied upon the established procedures and practices of the NERC, WECC and the United States Federal Energy Regulatory Commission (FERC) when preparing the draft Procedure attached as Attachment 1 to this letter.

In part to provide comparability with other jurisdictions, the Commission proposes to express the Reference Amount for a Confirmed Violation in terms of dollars. This will permit an assessment of the seriousness of the

Confirmed Violation relative to sanctions that have been levied against entities that are under NERC jurisdiction, where the maximum penalty currently is \$1,000,000. Alternatives would be to assess seriousness using descriptive words or a scale of zero to 10, but the Commission believes that these options will not provide adequate precision, granularity or comparability.

Therefore, the Commission proposes that, after the Commission makes a Confirmed Violation finding, the Administrator will review the potential penalty amount identified in the NOAV and assess the Administrator Reference Amount as the penalty amount that may be appropriate if one applied NERC Sanction Guidelines to the factual pattern upon which the Confirmed Violation is based, against an entity under NERC jurisdiction and within the Western Interconnect. The Administrator will determine the Violation Risk Factor (VRF) and the Violation Severity Level (VSL) according to the NERC matrices applicable at the time of the NOAV. The Administrator will then determine the initial value range of the base penalty amount from the table in Appendix A of the NERC Sanction Guidelines. After considering any other relevant factors discussed in the NERC Sanction Guidelines, the Administrator will assess the Administrator Reference Amount and report it to both the Applicable Entity and the Commission in a Notice of Administrator Reference Amount, within 30 days after the Commission makes the Confirmed Violation finding. The NERC Sanction Guidelines dated January 1, 2011 are Attachment 2 to this letter. The two NERC matrices are available at [VRF Matrix](#) and [VSL Matrix](#), respectively.

PROCESS TO DETERMINE REFERENCE AMOUNT OF A CONFIRMED VIOLATION

The Applicable Entity will have 30 days to accept the Administrator Reference Amount or to propose and provide information supporting an alternative reference amount (Alternative Reference Amount), as a measure of the seriousness of a Confirmed Violation compared to the penalty amount in similar circumstances for an entity under NERC jurisdiction. If the Applicable Entity does not propose an Alternative Reference Amount, the Commission may accept the Administrator Reference Amount as the Reference Amount for the Confirmed Violation.

If the Applicable Entity proposes an Alternative Reference Amount, and unless the Commission by order directs otherwise, the next step will be for Commission staff and the Applicable Entity to meet in a dispute resolution process (DRP) for the purpose of reaching agreement on a reference amount for the Confirmed Violation (Agreed Reference Amount). Within 14 days of an Applicable Entity filing an Alternative Reference Amount, Commission staff will send an initial letter to the Applicable Entity proposing a date for the first DRP meeting that is within 14 days of the date of the letter. The parties will be expected to use reasonable efforts to agree upon mutually convenient and timely DRP meeting dates.

Subject to any Commission order extending the time, within 40 days of the date of the initial letter, Commission staff will advise the Commission whether it and the Applicable Entity have reached agreement on an Agreed Reference Amount. If the Applicable Entity and Commission staff agree to an Agreed Reference Amount, the parties to the DRP will sign a Memorandum of Agreement that Commission staff will submit to the Commission in support of a proposal that the Agreed Reference Amount be determined as the Reference Amount for the Confirmed Violation. The Commission may accept or reject the Agreed Reference Amount as the Reference Amount.

If Commission staff and the Applicable Entity are unable to reach agreement on an Agreed Reference Amount or the Commission rejects the Agreed Reference Amount as the Reference Amount, the Commission will hold a hearing to determine the appropriate Reference Amount to be applied to the Confirmed Violation. It is expected that, considering the technical and limited nature of the matter, in the normal course the hearing will be a written hearing. The Commission will make its determination of the Reference Amount based on the

factual pattern upon which the Confirmed Violation is based and any evidence and submissions it receives as to Reference Amount. In making its determination, the Commission may consider the Administrator Reference Amount, any Alternative Reference Amount, and the information provided to support those or any other amounts.

The DRP discussions and information submitted at them will be private, confidential and without prejudice. If the Commission rejects an Agreed Reference Amount, the Commission will consider the Memorandum of Agreement and the Agreed Reference Amount to have been made and agreed to on a without prejudice basis. WECC staff will provide technical assistance to Commission staff during the DRP. The Commission staff Lead Spokesperson will have no interaction with Commissioners on the matter from the time that the DRP starts until the Commission determines the Reference Amount for the Confirmed Violation.

The Commission intends to determine the Reference Amount of each Confirmed Violation by order, and to post all such determinations on its MRS web site. The record of Confirmed Violations and Reference Amounts for an Applicable Entity may be a factor that the Commission considers in setting a penalty amount for a future violation in the event the Commission receives authority to levy administrative penalties.

COMMENTS ON PROCEDURE FOR REFERENCE AMOUNTS OF CONFIRMED VIOLATIONS

Parties who wish to comment on the attached draft Procedure should do so in writing by Thursday, November 24, 2011. The Commission will post all submissions on its website under Reconsiderations and Other Processes. Parties who wish to reply to the comments of others will do so by Monday, December 12, 2011. After considering the comments it receives, the Commission intends to issue the Procedure as an amendment to the Compliance Monitoring Program.

Questions in this matter should be directed to Mr. Bob Rerie, MRS Coordinator at (250) 296-3402.

Yours truly,

Alanna Gillis

JBW/dg
Enclosures

cc: Western Electricity Coordinating Council
Ms. Constance White, Vice President of Compliance

Ministry of Energy and Mines
Ms. Jennifer Champion
(Jennifer.Champion@gov.bc.ca)

DRAFT REVISION TO CMP

New CMP sub-section 4.1.3

4.1.3 Potential Penalty Amount:

A Notice of Alleged Violation will contain information that informs the alleged violator of the potential penalty amount that the Administrator believes may be appropriate for a Confirmed Violation if one applied North American Electric Reliability Corporation (NERC) Sanction Guidelines to the factual pattern described in the Notice of Alleged Violation against an entity under NERC jurisdiction and within the Western Interconnect.

New CMP section 7

7. REFERENCE AMOUNT OF CONFIRMED VIOLATION

7.1 Assessment of Administrator Reference Amount

For each Confirmed Violation, the Administrator will provide the Applicable Entity and the Commission with its assessment of the Administrator Reference Amount as the penalty amount that the Administrator believes may be appropriate for the Confirmed Violation if one applied the NERC Sanction Guidelines to the factual pattern upon which the Confirmed Violation is based, against an entity subject to NERC jurisdiction and within the Western Interconnect. The assessment will address the Violation Risk Factor and Violation Severity Level, the reliability impact, identify the corresponding range of the base penalty amount, and discuss the factors considered to determine the indicated Administrator Reference Amount.

The Administrator will provide its assessment of the Administrator Reference Amount in a Notice of Administrator Reference Amount within thirty (30) days after the Commission determines a Confirmed Violation.

7.2. Administrator Reference Amount as an Indicator of Relative Seriousness

Subject to Section 7.3, the Administrator Reference Amount will be interpreted as a measure of the seriousness of a Confirmed Violation using a penalty amount which could be assessed for a comparable violation at that time under NERC Sanction Guidelines.

For consistency and convenience, the Commission will use the same relative measure when it determines the Reference Amount of a Confirmed Violation, and will express Reference Amount in dollars.

7.3. Applicable Entity Response

7.3.1 Time for Response:

The Applicable Entity has thirty (30) days after the date of the Notice of Administrator Reference Amount to respond to the Administrator's assessment of a Administrator Reference Amount by exercising one of the options provided in section 7.3.2. Responses will be submitted to the Commission and the Administrator. If the Applicable

Entity fails to respond within thirty (30) days, the Commission may consider the Reference Amount of the Confirmed Violation in the absence of a response from the Applicable Entity.

7.3.2 Applicable Entity Options for Response:

The Applicable Entity has two options in responding to a Notice of Administrator Reference Amount from the Administrator:

1. The Applicable Entity may agree with the Administrator's assessment of the Administrator Reference Amount as the Reference Amount for the Confirmed Violation; or
2. The Applicable Entity may provide its alternative assessment of a penalty amount as the Reference Amount for the Confirmed Violation (Alternative Reference Amount), provide an explanation of its position, and include any supporting information.

7.3.3 Dispute Resolution Process:

Where an Applicable Entity has provided an Alternative Reference Amount and unless the Commission by order directs otherwise, a dispute resolution process (DRP) will take place between the Applicable Entity and Commission staff for the purpose of reaching an agreement on the Reference Amount for the Confirmed Violation (Agreed Reference Amount). Within fourteen (14) days of an Applicable Entity filing an Alternate Reference Amount, Commission staff will send an initial letter to the Applicable Entity proposing a date for the first DRP meeting to take place within fourteen (14) days of the date of the letter. The parties are expected to use reasonable efforts to agree upon mutually convenient and timely meeting dates.

Subject to a Commission order extending the time, within forty (40) days of the initial Commission staff letter, Commission staff will advise the Commission whether it and the Applicable Entity have reached agreement on an Agreed Reference Amount. If the parties reach agreement, the Agreed Reference Amount will be set out in a Memorandum of Agreement that Commission staff on behalf of the parties will submit to the Commission in support of a proposal that the Agreed Reference Amount be determined as the Reference Amount for the Confirmed Violation. The Commission can accept or reject the Agreed Reference Amount as the Reference Amount.

7.3.4 Hearing:

If the Applicable Entity provides an Alternative Reference Amount and does not reach an agreement with Commission staff on an Agreed Reference Amount or the Applicable Entity reaches an agreement with Commission staff but the Commission rejects the Agreed Reference Amount, the Commission will hold a hearing to determine the Reference Amount for the Confirmed Violation.

7.3.5 Posting of Commission Determinations:

All Commission Confirmed Violation Orders and Orders determining Reference Amount will be posted on the Commission's web site.

7.3.6 Use of Reference Amount in Future Commission Proceedings:

The Commission may consider an Applicable Entity's record of Confirmed Violations and its determinations of Reference Amounts for the Confirmed Violations as a factor in setting a penalty amount for a future violation in the event the Commission receives authority to levy administrative penalties.

ADDITIONAL DEFINITIONS:

Agreed Reference Amount: An amount agreed to between the Applicable Entity and Commission staff in the place of the Administrator Reference Amount and Alternative Reference Amount as a result of a dispute resolution process, as provided for in Section 7.3.3.

Alternative Reference Amount: An amount proposed by an Applicable Entity in response to a Administrator Reference Amount, as provided for in Section 7.3.2.

Notice of Administrator Reference Amount: Written Notice from the Administrator to an Applicable Entity and the Commission of the Administrator's assessment of a Administrator Reference Amount for a Confirmed Violation as provided for in Section 7.1.

Administrator Reference Amount: The penalty amount assessed by the Administrator that may be appropriate for a Confirmed Violation, if one applied North American Electric Reliability Corporation Sanction Guidelines to the factual pattern upon which the Confirmed Violation is based, against an entity subject to NERC jurisdiction and within the Western Interconnect, as provided for in Section 7.1.

Reference Amount: The seriousness of a Confirmed Violation expressed in dollars relative to the penalty amount that could be assessed for a comparable violation at that time under North American Electric Reliability Corporation Sanction Guidelines, as provided for in Section 7.2.



Appendix 4B

Sanction Guidelines of the North American Electric Reliability Corporation

Effective: January 1, 2011

Table of Contents

1. Preamble and Overview	1
2. Document Scope and Exclusions	2
3. Basic Principles	3
3.1 Necessary Element of NERC Compliance Program	3
3.2 Settlement of Compliance Violations.....	3
3.3 Settlement Request	4
3.4 Settlement Effect on Continuation of Determination of Penalties, Sanctions, or Remedial Actions....	4
3.5 Timing of Determination of Penalty, Sanction or Remedial Action	4
3.6 Determining Party	4
3.7 No Influence of Penalty, Sanction or Remedial Action upon Violation Confirmation Process.....	4
3.8 Reasonable Relationship to Violation	4
3.9 Use and Facets of Factors to Determine Penalties.....	5
3.10 Multiple Violations.....	5
3.11 Relation of the Penalty to the Seriousness of the Violation and Violator’s Ability to Pay	5
3.12 Violation Time Horizon.....	6
3.13 Extenuating Circumstances	7
3.14 Concealment or Intentional Violation	7
3.15 Economic Choice to Violate.....	7
3.16 No Influence by Outcome of Economic Choice to Violate	7
3.17 Non-Monetary Sanctions or Remedial Actions	7
3.18 Non-Exclusiveness of Monetary Penalties or Non-Monetary Sanctions.....	7
3.19 Monetization of the Value of Sanctions	7
3.20 Maximum Limitations on Penalties.....	8
3.21 Frequency and Duration of Violations.....	9
4. Determination of Monetary Penalties	11
4.1 Initial Value Range of the Base Penalty Amount.....	11
4.1.1 Violation Risk Factor.....	11
4.1.2 Violation Severity Level.....	11
4.2 Setting of the Base Penalty Amount.....	12
4.2.1 Applicability of the Violation Risk Factor	12
4.2.2 First Violation.....	12
4.3 Application of Adjustment Factors.....	13
4.3.1 Repetitive Violations and Compliance History	13
4.3.2 Failure to Comply with Compliance Directives	14
4.3.3 Self-Disclosure and Voluntary Corrective Action.....	14
4.3.4 Degree and Quality of Cooperation in Violation Investigation and Remedial Action	14
4.3.5 Presence and Quality of Compliance Program.....	14
4.3.6 Violation Concealment.....	14
4.3.7 Intentional Violation.....	14
4.3.8 Extenuating Circumstances	15
4.4 Setting of the Final Penalty Amount	15
4.4.1 Violator’s Financial Ability to Pay.....	15
4.4.2 Reconfirmation of Disgorgement of Unjust Profit or Gain	15
5. Determination of Non-Monetary Sanctions.....	16

Table of Contents

- 6. Remedial Action17**
 - 6.1 Definition and Anticipated Use17
 - 6.2 Compliance Requirements.....17
 - 6.3 No Obligation to Issue.....17
 - 6.4 Scope of Application17
 - 6.5 Availability18
 - 6.6 No Impact on Confirmation of Violation, or Penalties or Sanctions.....18
 - 6.7 Types of Remedial Actions18
- Appendix A: Base Penalty Amount Table.....19**

1. Preamble and Overview

The North American Electric Reliability Corporation, 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”) shall determine and may levy monetary penalties and non-monetary sanctions and remedial actions against owners, operators, and users of the bulk power system for violations of the requirements of NERC Reliability Standards (“reliability standards”) approved by the Federal Energy Regulatory Commission (FERC) and applicable 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 actions for violations. Collectively these processes, principles and factors are NERC’s penalties, sanctions, and remedial action guidelines.

NERC and the regional entities will exclusively follow the directives, principles and processes in these Sanction Guidelines when determining penalties, sanctions, or remedial action for a violation. However, adjustment factors are also provided to afford NERC or the regional entity the flexibility needed to accommodate the facts surrounding each violation. In this manner, rigid prescription of specific penalty formulae can be avoided at the same time that appropriate limitations on the degree of discretion and flexibility available to address each violation on its merits is maintained. The outcome will be remedies that are commensurate and fair compared to the reliability impact of the violation and to remedies levied for similar violations, yet appropriately reflective of any unique facts and circumstances regarding the specific violation and violator.

The adjustment factors established in this document are generally consistent with those listed in the FERC Policy Statement on Enforcement issued on October 20, 2005. However, discussion of the factors presented in this document is not exhaustive as other facets of these factors, or other additional factors not discussed herein, may also be considered to determine a given penalty, sanction, or remedial action, as NERC or the regional entity deems appropriate under the circumstances.

Regional entities shall follow these guidelines to determine penalties, sanctions, or remedial actions. NERC shall oversee the regional entities’ application of the guidelines to ensure that acceptable levels of consistency are achieved. NERC’s oversight will also ensure comparable outcomes; i.e. 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. In order to facilitate this oversight, regional entities’ reporting to NERC of penalties and sanctions they have determined will be thorough and in sufficient detail that NERC can understand and reasonably replicate the outcomes reached; 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 guidelines, NERC will review the 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 actions does not include the authority to modify these guidelines.

Any revision to this document or to the principles and factors identified or addressed within it must first be approved by the NERC board, then by FERC, appropriate authorities in Canada or appropriate authorities in Mexico prior to becoming effective and applicable within the United States or these authorities’ respective jurisdictions.

Document Scope and Exclusions

2. Document Scope and Exclusions

This document identifies and discusses the processes and principles to be followed, and factors that will be considered to determine penalties, sanctions, or remedial actions for violations of the reliability standards.

This document notes but does not otherwise address the progression of actions and steps that NERC or the regional entity will follow to process a violation from its initial incoming status upon discovery as a possible violation, through to its possible final determination as a confirmed violation. This is set out in the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure.

This document notes but does not otherwise address how a possible violation or alleged violation is reviewed in order to confirm or dismiss it. NERC's process and requirements for this review are set out in the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure. Regional entities will undertake such reviews using the processes and requirements set out in the NERC Compliance Monitoring and Enforcement Program.

This document notes but does not otherwise address the processes and procedural steps by which a confirmed violation can be appealed, or by which a penalty, sanction, or remedial action determined and levied for a violation can be appealed. These procedures are set out in the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure, and applicable regional entity program documents.

The NERC Compliance Monitoring and Enforcement Program provides for the possibility of settlements within NERC or regional entity compliance enforcement programs. This document makes reference to settlements to but does not address them further.

3. 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 actions for violations of the requirements of the reliability standards.

The principles are unique and complimentary; the order in which they are presented does not set or indicate order of precedence.

3.1 Necessary Element of NERC Compliance Program

Primary objectives of NERC as the ERO include the promotion and enforcement of compliance with the reliability standards by owners, operators, and users of the bulk power system; standards made mandatory by duly-authorized legislative bodies in the U.S and Canada, and designed to maintain and promote the reliability of the two countries' shared power grids. Consistent with these objectives, NERC and the regional entities will monitor and act to verify compliance with standards' requirements; however, beyond monitoring and acting only to verify compliance, NERC and the regional entities will also hold bulk power system owners, operators, and users — or their delegates — accountable for confirmed compliance violations. This accountability will include determination and the possible levying of penalties, sanctions, or remedial actions.

Penalties, sanctions, and remedial actions are valid and necessary mechanisms to NERC and the regional entities for the enforcement and promotion of compliance to the reliability standards, in part because they can:

- a. promote compliance behavior;
- b. provide deterrence to future incidents, actions or situations of noncompliance by the violator or others;
- c. implement actions that will promptly correct behavior;
- d. disgorge benefits that may or may have accrued to a violator as a consequence of violating;
- e. visit upon a violator some portion of any damage their violation may or may have visited upon others.

Accordingly, the determination and potential levying of appropriate penalties, sanctions, or remedial actions by NERC or the regional entity upon those responsible for violations shall be a required step within the NERC and regional entity compliance enforcement programs.

3.2 Settlement of Compliance Violations

NERC and the regional entities shall maintain the reliability of the bulk power system by enforcing compliance with NERC and regional entity reliability standards. NERC and regional entity compliance enforcements programs will lay out how NERC and the regional entities will do this. In particular and by necessity, elements of these programs regarding the confirmation of violations, the determination and levying of penalties, sanctions, or remedial actions, and appeals are rigid and legalistic in form and nature in order to respect the basic tenets of due process and natural justice inherent within United States and Canadian justice systems, respectively, upon which they are being based. However, absolute adherence to the compliance programs, to the exclusion of other options, may not be the most appropriate, efficient or desirable means by which to achieve the end goal in all circumstances, to all entities party to a violation.

As set out in the NERC Compliance Monitoring and Enforcement Program, Appendix 4C to the NERC Rules of Procedure, violations of the reliability standards may be dealt with through settlements reached between NERC, regional entity and the entity or entities to whom a possible, alleged, or confirmed violation is attributed to by NERC or the regional entity. Any provisions made

within a settlement regarding penalties, sanctions, or remedial actions can supersede any corresponding penalties, sanctions that would otherwise be determined pursuant to these guidelines.

3.3 Settlement Request

Any entity found in or being investigated for a violation may request settlement negotiations at any time, including prior to issuance of a notice of alleged violation; however, NERC or the regional entity may decline to enter into or continue settlement negotiations after the possible violation or alleged violation becomes a confirmed violation.

3.4 Settlement Effect on Continuation of Determination of Penalties, Sanctions, or Remedial Actions

Until a settlement is finalized or parties to that settlement agree otherwise, NERC or the regional entity may continue activities and actions towards the determination and levying of a penalty, sanction, or remedial action that would otherwise be applicable pursuant to these guidelines, or that will be applicable if the settlement is not finalized.

3.5 Timing of Determination of Penalty, Sanction or Remedial Action

All possible violations and alleged violations will be reviewed by NERC or the regional entity with the outcome that either the violation will be confirmed or the violation will be dismissed.

The penalty, sanction, or other remedial action for a violation will be determined when the violation becomes a confirmed violation or is resolved as part of a settlement agreement.

At any time during confirmation review, hearing, or appeals NERC or the regional entity may determine that remedial action is warranted by the subject entity of the review, hearing, or appeals. NERC or the regional entity may direct that such remedial actions be undertaken by the subject entity at any time, including prior to confirmation of a violation, and without regulatory approval.

3.6 Determining Party

The determination of penalty, sanction or other remedial action for a violation will generally be undertaken by the same entity determining the violation to be a confirmed violation, but subject to review by NERC if the determination is made by a regional entity.

3.7 No Influence of Penalty, Sanction or Remedial Action upon Violation Confirmation Process

The penalty, sanction, or remedial action determined for a violation will not influence the outcome of the regional entity's or NERC's confirmation review of the violation. In particular, if the determination of penalty, sanction, or remedial action for a probable violation is being undertaken by the same entity undertaking the confirmation review, the entity will insure that there is sufficient separation, in such terms as time, process, personnel or the like, to preclude that the penalty, sanction, or remedial action determined influences the outcome of the confirmation review.

3.8 Reasonable Relationship to Violation

Penalties, sanctions, and remedial actions levied or applied for the violation of a reliability standard shall bear a reasonable relation to the seriousness of the violation while also reflecting consideration of the factors that these guidelines direct to take into account. In the United States, the legislation establishing mandatory enforceable reliability standards and the ERO requires that "Any penalty imposed ... shall; (A) bear a reasonable relation to the seriousness of the violation; and (B) take into consideration the efforts of the user, owner, or operator to remedy the violation in a timely manner¹.

¹ H.R.6, Energy Policy Act of 2005, Section 215, Paragraph e, subparagraph 6.
NERC Sanction Guidelines
Effective: January 1, 2011

3.9 Use and Facets of Factors to Determine Penalties

Penalties levied for a given violation will be based on all facts and other information relevant to the incident or situation. To that end, these guidelines include factors which NERC and the regional entities will consider while determining the penalty or sanction to be levied.

NERC considers, and these guidelines direct, that the presence of some factors within a violation aggravates the seriousness of that violation and should cause an increase or expansion of the penalty to be levied. Conversely, the presence of some other factors mitigates that seriousness and should cause a decrease or reduction of the penalty to be levied. Also, some factors may mitigate or aggravate, and should have commensurate impact. NERC considers, and these guidelines direct, that the absence of an aggravating or mitigating factor will have no impact, as opposed to a mitigating or aggravating impact, respectively, to a penalty.

This document presents many of the relevant facets of the factors included in these guidelines. However, additional facets of these factors, or additional factors not discussed herein, may also be considered to determine a given penalty, sanction, or remedial action, as NERC or the regional entity deems appropriate under the circumstances. Where additional factors or facets are used they will be identified and their use will be justified. The effect of using these factors or facets on the penalty, sanction, or remedial action determined will also be fully and clearly disclosed.

3.10 Multiple Violations

A violation is a failure or inadequacy to meet a requirement of a reliability standard by a party responsible to comply with that requirement.

The failure or inadequacy of a violator to comply may involve more than one standard or several requirements of a single standard; as such, multiple individual violations may be in play when penalties, sanctions, or remedial actions for an incident or situation of noncompliance are being determined.

Strictly speaking, NERC or the regional entity can determine and levy a separate penalty or sanction, or direct remedial action, upon a violator for each individual violation. However, in instances of multiple violations related to a single act or common incidence of noncompliance, NERC or the regional entity will generally determine and issue a single aggregate penalty, sanction, or remedial action directive bearing reasonable relationship to the aggregate of the related violations. The penalty, sanction, or remedial action will not be that determined individually for the least serious of the violations; it 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 be registered as being responsible for more than one function (e.g., transmission owner, transmission operator, balancing authority, generation operator), and a single requirement in some reliability standards may apply to the responsible entity for several functions. Where several functions are performed by the same entity, a violation will be assessed against the entity, not against each function.

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

As discussed in Section 3.8, above, penalties levied for the violation of a reliability standard shall bear a reasonable relation to the seriousness of the violation. The seriousness of a given violation by a given violator shall be assessed by review of the applicability of the Violation Risk Factors² associated with the violation to the characteristics of the violator's operation or power system. Size is a characteristic of a violator's operation or system. The size of the violator can be considered in the assessment but shall not be the only characteristic considered. Where size is considered in such a

² See Section 4 Part 4.11 for a discussion of these factors
NERC Sanction Guidelines
Effective: January 1, 2011

Basic Principles

review the facts relating to the violation in question will be reviewed such that the “actual” size of the violator is properly discerned and 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 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 regional entity may review the penalty in light of the violator’s financial ability to pay the penalty. Financial ability shall include both the financial strength of the entity as well as its structure (e.g., for-profit versus non-profit). Where penalties are reduced or eliminated NERC or the regional entity shall consider non-monetary sanctions or remedial action as alternatives or substitutes to the penalty, pursuant to Sections 3.17, 3.18 and 3.19, below, of this document.

The above actions will: (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 to 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. This will promote that penalties levied for violations of reliability standards bear a reasonable relation to the seriousness of the violation while also addressing violators’ ability to pay the penalties they are assessed.

3.12 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 standards addressing shorter and narrower timeframes, such as entities’ conduct in real time. Similarly, 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 standards addressing 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.

Penalties levied for the violation of a reliability standard shall consider the time horizon of the standard violated; violations of standards involving more immediate or real-time activities will generally incur larger penalties than violations of standards with longer or broader horizons.

Time horizons inherent in reliability standard requirements are not reflected in their assigned Violation Risk Factors or Violation Severity Levels³. Accordingly, the time horizon element of a violation will be considered when determining the Base Penalty Amount⁴ for the violation.

The time horizon considered and its impact on the selection of the Base Penalty Amount for the violation will be decided upon by NERC or the regional entity based upon judgment and the facts of the violation. The rationale for the time horizon used and its impact on the setting of the Base Penalty

³ See Section 4 Part 4.11 for a discussion of these factors.

⁴ See Section 4 Part 4.2

Amount will be documented by NERC or the regional entity and provided within the Notice of Penalty issued for the violation.

3.13 Extenuating Circumstances

In unique extenuating circumstances, such as significant natural disasters, penalties may be significantly reduced or eliminated.

3.14 Concealment or Intentional Violation

Penalties levied for the violation of a reliability standard shall always take into consideration 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.

3.15 Economic Choice to Violate

Owners, operators, and users of the bulk power system may be presented with situations or circumstances where compliance with the reliability standards preclude or reduce an economic gain that could be realized by violating the standards. Penalties shall be sufficient to assure that entities responsible for complying with reliability standards do not find it attractive to make economic choices that cause or unduly risk violations to reliability standards, or risk or cause incidents resulting from violations of the reliability standards. Penalties levied to violators who have made such a choice shall reflect this aspect of the violation.

3.16 No Influence by Outcome of Economic Choice to Violate

Economic choices to violate are generally made for the violator's own potential gain, but making such a choice does not always result in all potential gains being realized or may result in damage or loss. However, irrespective of the outcome to the entity making an economic choice to violate, such decisions risk others' reliability, commonly without either their knowledge or consent. Penalties levied to violators making an economic choice to violate shall reflect only that the choice was made at all; 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 on the determination of the penalty to be levied.

3.17 Non-Monetary Sanctions or Remedial Actions

Enforcement actions taken by NERC or a regional entity are not limited to monetary penalties; at the discretion of NERC or the regional entity, sanctions or remedial actions may also be applied and can include limitations on activities, functions, operations, or other appropriate sanctions, including the establishment of a reliability watch list composed of major violators.

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

A non-monetary sanction may be imposed either in lieu of or in addition to a monetary penalty imposed for the same confirmed 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, in combination, the aggregate penalty continues to bear a reasonable relation to the seriousness of the violation.

3.19 Monetization of the Value of Sanctions

A significant element of NERC's oversight of penalties, sanctions, and remedial action determined and levied by regional entities is ensuring acceptable similarity in the degree and type of sanction for violations constituting comparable levels of threat to the reliability of the bulk power system. It is also a requirement and a commitment of NERC and its designees that penalties, sanctions, or remedial actions levied or applied for the violation of a reliability standard bear reasonable relation to the seriousness of the violation. Specifically with respect to penalties and sanctions, it is intuitive that it will be easier, more objective, and more transparent to monitor and test for acceptable similarity if

(monetary) penalties or monetized values of sanctions determined for violations are used as the primary basis of comparison, versus comparisons made on the basis of other (non-monetized) considerations. Similarly, there will be strong intuitiveness and transparency, particularly to those interested but not strongly familiar with the power industry, that the seriousness of a violation has been reasonably addressed if the consequences for it to the violator are determined and can be 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 will be the preference of NERC that (non-monetary) sanctions imposed either in lieu of or in addition to a penalty include disclosure of the monetary value that the sanctions represent to the violator. It is intuitive that defensible monetary values for those sanctions will be most easily determined if the penalty for the violation pursuant to these guidelines is first determined and then the sanctions to be levied are introduced and justified as appropriate alternatives to that penalty or additions to a lesser penalty. However, sanctions may be determined directly (e.g. without first determining a penalty amount) and monetized using other methods.

NERC does not have a preference between penalties and sanctions for violations. The preference expressed here will support ensuring comparability of outcomes regarding application of these guidelines and the promotion of reasonable relationship between the seriousness of a violation and the sanctions, or penalties and sanctions, levied for it.

3.20 Maximum Limitations on Penalties

Penalties are direct, monetary judgments levied against a violator by NERC or the regional entity for the violation of requirements of the reliability standards. In contrast, sanctions will impose limitations or restrictions of some kind that may result in economic or other impacts to the violator, and remedial actions are directives by NERC or a regional entity to the violator regarding the correction of conditions, practices or any other relevant action or activity underlying the noncompliance(s) involved.

In the United States, the Federal Power Act allows for the imposition of civil penalties of up to \$1,000,000 per day per violation. NERC and the regional entities draw their authority to levy penalties from the Federal Power Act; accordingly this figure is and can be understood as the maximum monetary penalty that NERC or regional entities are authorized to levy. However, as this legislation also requires that “[a]ny penalty imposed . . . shall; (A) bear a reasonable relation to the seriousness of the violation; and (B) take into consideration the efforts of the user, owner, or operator to remedy the violation in a timely manner⁵” ***entities required to comply with the reliability standards must also understand that NERC and the regional entities will be obligated to assess penalties amounts up to and including the maximum amount for violations where warranted pursuant to these guidelines.***

In Canadian jurisdictions the maximum monetary penalty potentially assessable for a reliability standard violation is significantly less than the amount allowed in the United States under the Federal Power Act. Also, legislation presently governing some Canadian jurisdictions does not accommodate the levying of such a penalty under some circumstances, may not accommodate the levying of such a penalty for all violations, or does not accommodate the levying of any monetary penalties.

When a penalty may be levied, or proposed to regulatory authorities with jurisdiction to be levied, the following steps will be followed:

- a. NERC or the regional entity will initially disregard the penalty limitations of the regulatory authorities with jurisdiction, and determine what the penalties or sanctions would be pursuant to these sanction guidelines only.

⁵ H.R.6, Energy Policy Act of 2005, Section 215, Paragraph e, subparagraph 6.
NERC Sanction Guidelines
Effective: January 1, 2011

Basic Principles

- b. NERC or the regional entity will review the maximum penalty allowed by the regulatory authorities with jurisdiction.
- c. NERC or the regional entity will set the actual penalty to be levied, or proposed to the regulatory authorities with jurisdiction to be levied, as the lesser of that determined pursuant to these guidelines and the maximum penalty or sanction allowed by the regulatory authorities.
- d. If the lesser penalty is the maximum penalty allowed by the regulatory authorities, 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 guidelines.

Adhering to the above steps will insure that the result of the determination of any penalty for any violation will produce output that can be directly compared (i.e. without influence of local authorities' penalty limitations or restrictions) with the penalty determined for any other violation, assisting efforts of NERC and others to ensure that these guidelines are uniformly applied and that there is an acceptable level of consistency in the application of these sanction guidelines across North America. Regulatory authorities with jurisdiction may also find such information useful for their determination of the appropriateness of any penalty or sanction proposed to them to be levied. Similarly, policy and legislative bodies may find such information of value to the review or development of arrangements addressing such matters.

3.21 Frequency and Duration of Violations

Section 316A of the Federal Power Act [16 U.S.C. § 825o-1(b)], as amended by the Energy Policy Act of 2005, provides that "any person who violates any provision of Part II of this title or any provision of any rule or order thereunder shall be subject to a civil penalty of not more than \$1,000,000 for each day that such violation continues."

FERC Order No. 672 interprets this statement as setting a cap on the monetary penalties that the Commission, NERC and regional entities can impose under FPA section 215. FERC has referred to this statutory provision as imposing a maximum \$1,000,000 "per day, per violation" penalty and has directed that the ERO must ensure that in the U.S. such a penalty amount (\$1,000,000), in such a manner ("per day, per violation"), can be imposed for a violation of the Reliability Standards should the conduct at issue so warrant.

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 is monetizing (Section 3.19) the value of a non-monetary sanction, for the violation of such a standard NERC or the regional entity 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 an entity could violate the same requirement two or more times on the same day. In this instance NERC or the regional entity is not limited to penalizing the violator a maximum of \$1,000,000 per day. As NERC or the regional entity deems appropriate NERC or the regional entity may deem that there have been multiple violations that 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 the Reliability Standards are measured not on the basis of discrete acts, but of cumulative acts over time. Reliability Standards that fall into this category are generally those

Basic Principles

involving measurements based on averages over a given period. Where a violation of such a standard has occurred the element of averaging performance over a period of time introduces the difficulty to NERC or the regional entity of reasonably identifying (i) what date the violation should be deemed to have occurred and (ii) its duration.

If a Reliability Standard requirement measured by an average over time can only be violated once per applicable period, then 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 severe. In the future, 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 period⁶. In the interim until relevant Reliability Standards are so modified, any ambiguity on this point will be construed conservatively, meaning that where an entity has not complied with such a standard NERC or the regional entity will generally consider that only one violation occurred per measurement period. However, notwithstanding this general principle of one violation per measurement period, 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 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; furthermore, (iii) the violation is deemed to have occurred at the point that the entity entered into noncompliance with the 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 has not been 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 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, or portion thereof thereafter until compliance is effectuated.

Non-compliance with a standard of this type will subject the violator to the potential maximum monetary penalty of \$1,000,000 per violation per day in violation.

NERC or the regional entity is not constrained to assessing the same penalty amount for each day that the entity was in violation of the Reliability Standard requirement in question.

⁶ Para. 41; FERC Order on Clarification and Rehearing [Docket No. RR06-1-006]
NERC Sanction Guidelines
Effective: January 1, 2011

Determination of Monetary Penalties

4. Determination of Monetary Penalties

The following describes the steps that NERC or the regional entity will follow to determine the monetary penalty for a violation⁷. The determination of non-monetary sanctions is discussed in Section 5 of this document; Section 6 discusses remedial action.

- Step 1. The Base Penalty Amount for the violation will be set as discussed in Sections 4.1 and 4.2, below.
- Step 2. The Base Penalty Amount set in Step 1 will be reviewed pursuant to Section 4.3, below. This will result in the Adjusted Penalty Amount.
- Step 3. The Adjusted Penalty Amount determined in Step 2 may be reviewed in light of the violator's financial ability to pay the penalty. Also, where applicable NERC or the regional entity will reconfirm that the penalty set will disgorge unjust profits or economic benefits associated with an economic choice to violate⁸. At the conclusion of this review the Final Penalty Amount will be set.

Unless NERC or the regional entity deems alternative frequency or duration is warranted penalties shall be assessed on a per violation per day basis. 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 3.21 of the Sanction Guidelines.

4.1 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 two factors regarding the violation: 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 table⁹.

4.1.1 Violation Risk Factor

Each requirement set out within NERC's reliability standards has been assigned a Violation Risk Factor (VRF) through the NERC reliability standards development process. The factors have been defined and approved through the 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 standards requirement: Lower Risk Factor, or; Medium Risk Factor, or; High Risk Factor. Definitions of the factors can be found in appropriate standards development process documentation.

4.1.2 Violation Severity Level

Violation severity levels (VSLs) are defined measurements of the degree to which a violator violated a requirement of a reliability standard. Whereas violation risk factors are determined pre-violation and indicate the relative potential impacts that violations of each standard could pose to the reliability of the bulk power system, the violation severity level is assessed post-

⁷ 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 3 Part 3.1 of this document.

⁸ Reference: Section 3 Parts 3.15 and 3.16.

⁹ As discussed in Section 3 Part 3.1 of this document where there is more than one violation in play, 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.

Determination of Monetary Penalties

violation and is an indicator of how severely the violator actually violated the standard(s) requirement(s) in question.

These guidelines utilize the violation severity levels that have been established¹⁰ by NERC for requirements of the reliability standards. Up to four levels can be defined for each requirement; the levels have been designated as: Lower, Moderate, High, and Severe.

4.2 Setting of the Base Penalty Amount

NERC or the regional entity will set the Base Penalty Amount for the violation. The Base Penalty Amount set for the violation may be set at the highest figure of the initial value range determined pursuant to Section 4.1, 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 Violation Risk Factor of the violation to the specific circumstances¹¹ of violator.
- b. Whether this is an inconsequential first violation by the violator of the reliability standard(s) in question.

As noted in Section 3.12 NERC or the regional entity will consider the time horizon involved with the violation when setting the Base Penalty Amount for the violation. As also noted in Section 3.12 this consideration will be documented for inclusion in the Notice of Penalty issued for the violation.

The penalty amount resulting from the 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 (4.3) of this document.

4.2.1 Applicability of the Violation Risk Factor

Violation Risk Factors are assigned to 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 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 Violation Risk Factor. 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 4.1.

4.2.2 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 4.1, 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 compliance record; e.g. the circumstances discussed in Section 4.3.1 have been an aggravating factor in one or more previous penalties assessed to the violator.

¹⁰ Assignment of these levels will be complete and filed with the Commission by March 1, 2008 in accordance with FERC Order on Compliance Filing dated June 7, 2007 [Docket No. RR06-1-007] .

¹¹ The circumstances of the violator will include but not be limited to, as appropriate: the violator's aggregate and net load; interconnections characteristics such as voltage class and transfer ratings;

Determination of Monetary Penalties

This relief will not be available for consideration in instances where the violator has 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.

4.3 Application of Adjustment Factors

Adjustment factors provide the opportunity to NERC or the regional entity to adjust the base penalty to reflect the specific facts and circumstances material to each violation and violator.

These 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. Self-disclosure and voluntary corrective action by the violator
- d. Degree and quality of cooperation by the violator in the violation investigation and in any remedial action directed for the violation
- e. The presence and quality of the violator's compliance program quality
- f. Any attempt by the violator to conceal the violation
- g. Intentional violations
- h. Extenuating circumstances

Two documents issued by United States regulatory agencies will be instructive to NERC and the regional entities when they are determining penalties for violations of the reliability standards: the FERC's Policy Statement on Enforcement issued on October 20, 2005 under Docket No. PL06-00, and; U.S Securities and Exchange Commission (SEC) Release No. 44969 under the Securities and Exchange Act of 1934, issued on October 23 2001, also concurrently issued by the SEC as Release No. 1470 under Accounting and Auditing Enforcement.

NERC or the regional may also consider other additional factors it deems appropriate under the circumstances as long as their use is clearly identified and adequately justified. The effect of using these factors will also be fully and clearly disclosed.

4.3.1 Repetitive Violations and Compliance History

A bulleted point under Paragraph 20 of the FERC Policy Statement on Enforcement highlights repeat offenses by a violator. 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 standard(s) or deemed appropriate by NERC or the regional entity in the absence of the standard(s) defining the time frame, NERC or the regional entity shall consider some increase to the penalty.

The term "violation reset time period" of a standards requirement may be defined or implied within a given standard to describe the period of time generally required for a violator to continue operations without incidence of further violation(s) of the Reliability Standards, particularly of the initial or a similar standard violated, in order to avoid or minimize consideration of the violator's previous violation history for sanctioning purposes in the event of a subsequent violation(s). NERC and the Regional Entities shall exercise appropriate judgment and discretion in this regard as warranted, particularly where no reset time period is specifically set within the standard violated. Repeat violations within violation reset time

Determination of Monetary Penalties

periods are aggravating factors in the determination of sanctioning. Accordingly, 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 violation severity levels may result in small or no increase; a history of more frequent violations or previous violations of higher risk requirements assessed more severe violation severity levels will generally incur commensurately larger increases.

4.3.2 Failure to Comply with Compliance Directives

If the violator has violated reliability standard requirements notwithstanding having received related compliance directives, such as for remedial action from NERC or the regional entity, NERC or the regional entity shall consider some increase to the penalty.

4.3.3 Self-Disclosure and Voluntary Corrective Action

NERC or the regional entity shall consider whether a violator self-disclosed the violation prior to detection or intervention by NERC or the regional entity, and any action undertaken by the violator to correct the situation. NERC or the regional entity will be instructed in their consideration of these factors by the text of Paragraphs 24 and 25 of the FERC Policy Statement on Enforcement. As they deem warranted, NERC or the regional entity may reduce the violator's penalty consistent with the cited sections of the FERC policy.

4.3.4 Degree and Quality of Cooperation in Violation Investigation and Remedial Action

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 remedial action arising from it. NERC or the regional entity will be instructed in making their determination on this by the text of Paragraphs 26 and 27 of the FERC Policy Statement on Enforcement. NERC or the regional entity may adjust the violator's penalty as they deem warranted commensurate with the cited sections of the FERC policy statement. This may result in an increase, a decrease or no change to the penalty.

4.3.5 Presence and Quality of Compliance Program

NERC or the regional entity shall consider the presence and quality of the violator's compliance program. NERC or the regional entity will be instructed in making their determination on this factor by the text of Paragraphs 22 and 23 of the FERC Policy Statement on Enforcement. As they deem warranted, NERC or the regional entity may reduce the violator's penalty consistent with the cited sections of the FERC policy. Consistent with the FERC policy NERC or the regional entity may not increase a violator's penalty specifically on the grounds that the violator has no program or a poor quality program.

4.3.6 Violation Concealment

Two bulleted points under Paragraph 20 of the FERC Policy Statement on Enforcement highlight misrepresentation of material facts and resistance or impediment to inquiry of a violation. When determining a penalty NERC or the regional entity shall consider any concealment or attempt to conceal the violation, or information needed to investigate the violation, on the part of the violator. If the violator concealed or attempted to conceal, some significant increase to the penalty shall be considered; doubling of the penalty otherwise determined is suggested. Conduct of this nature on more than one occasion regarding one violation, or with respect to more than one violation, should incur an even larger increase to the penalty otherwise determined.

4.3.7 Intentional Violation

Another bulleted point under Paragraph 20 of the FERC Policy Statement on Enforcement highlights offenses as willful action by a violator. When determining a penalty NERC or the

Determination of Monetary Penalties

regional entity shall consider if the violator intentionally violated without just cause; i.e., 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, some significant increase to the penalty shall be considered; doubling of the penalty otherwise determined is suggested. 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 otherwise determined.

NERC or the regional entity will consider violations attributable to an economic choice to violate as intentional violations. Consistent with the FERC Policy Statement on Enforcement any penalty issued involving conduct of this manner shall as a minimum disgorge any profits or economic benefits acquired as a consequence of the behavior, whenever and to the extent that they can be determined or reasonably estimated.

4.3.8 Extenuating Circumstances

NERC or the regional entity will consider if there are extenuating circumstances regarding the violation that justify reduction or elimination of the penalty otherwise determined.

Consideration of adjusting a penalty for this factor would be inconsistent with NERC or the regional entity increasing a penalty after consideration of any other factor included in this section of these guidelines, such as intentional violation without justifiable cause or concealment or attempt to conceal.

4.4 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. Also, if the violation was an economic choice, NERC or the regional entity will reconfirm that the penalty set will disgorge any unjust profits or economic benefits. At the conclusion of this review the Final Penalty Amount will be set.

4.4.1 Violator's Financial Ability to Pay¹²

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 their financial ability to pay. At the conclusion of this review NERC or the regional entity may:

1. Reduce the penalty payable to an amount that NERC or the regional entity, as applicable, deems 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.

Where the penalty amount has been reduced or excused, 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 that has been excused or by which the penalty has been reduced.

4.4.2 Reconfirmation 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 NERC or the regional entity shall reconfirm that the penalty set meets the requirements set forth in Parts 3.15 and 3.16 of Section 3 of this document.

¹² NERC anticipates that this will be the primary vehicle for addressing the ability to pay of "not-for-profit" and other similar organizations.

Determination of Non-Monetary Sanctions

5. Determination of Non-Monetary Sanctions

The imposition of sanctions is not bounded to monetary penalties. Non-Monetary sanctions applied must be applied with the objective of promoting reliability and compliance with the reliability standards. Non-monetary sanctions may include, but not be limited to, the following:

- a. Limitations on activities, functions, or operations
- b. Placing an entity on a reliability watch list composed of major violators

6. Remedial Action

6.1 Definition and Anticipated Use

Remedial actions are directives that may be issued to a bulk power system owner, operator, or user to resolve an alleged violation of a reliability standard by addressing conditions, practices, or any other relevant action or activity that is immediately necessary to terminate or correct to protect the reliability of the bulk power system from an imminent threat. A remedial action directive will be issued when NERC or the regional entity identifies an alleged violation of a reliability standard that must be corrected immediately to protect the reliability of the bulk power system from the imminent threat that NERC or the regional entity has identified.

NERC or the regional entity will generally employ remedial action directives where they deem it necessary to clearly specify minimum corrective actions that the subject of the remedial action directive must take; additionally or alternatively a remedial action directive may clearly specify timelines within which the subject must take specified actions, complete specified tasks, or achieve specified outcomes. Also, to the extent NERC or the regional entity is authorized to do so, a remedial action directive may communicate penalties, sanctions, or further remedial actions that may be imposed should the specific remedial action directive not be complied with by those to whom it has been issued. As a rule of thumb, remedial action directives will be of use to NERC or the regional entity whenever any significant combination of specificity, clarity, or time is of the essence to address a threat to the reliability of the bulk power system brought on by lack of or inadequate compliance to the reliability standards.

6.2 Compliance Requirements

In the United States, the Commission has concluded that owners, operators, or users of the bulk power system must comply with remedial action directives issued to them by NERC or a regional entity. Noncompliance with a remedial action directive may result in a substantially increased penalty or sanction.

Remedial action directives issued by NERC or the regional entity will include a deadline by which time the owner, operator, or user must complete requirements set out in the order, and by which time the entity must demonstrate compliance to the remedial action directive to NERC or the regional entity that issued it. Failure or refusal to meet the requirements or deadlines set out in a remedial action directive may itself result in further remedial action directives or significantly increased penalties or sanctions by NERC or the regional entity.

6.3 No Obligation to Issue

NERC or the regional entity may, but is not obligated, to issue remedial action directives. Lack of being issued a remedial action directive does not relieve a bulk power system owner, operator, or user from any responsibilities they otherwise have to comply or maintain compliance with requirements of the reliability standards. Remedial action directives will be used by NERC or the regional entities only as they deem warranted, when they deem warranted.

6.4 Scope of Application

The scope of remedial action directives issued by NERC or the regional entity will be limited to conditions, practices, or any other relevant actions or activities resulting in noncompliance, or that NERC or the regional entity considers at significant risk of becoming noncompliant, to requirements of the reliability standards, and that present an imminent threat to the reliability of the bulk power system. However, beyond merely directing compliance or improved compliance with standards' requirements, where NERC or the regional entity is authorized to do so, the directive may also stipulate how compliance or the improvement to compliance is to be achieved.

6.5 Availability

In the United States, the Commission has interpreted the Federal Power Act to authorize the NERC or the regional entity can issue a remedial action directive prior to completion of the confirmation review of a probable violation, or prior to the determination of a penalty or sanction for that violation. The Commission also concluded it is not necessary for NERC or the regional entity to acquire the Commission's or other regulators' approval prior to issuing remedial action directives. Accordingly, NERC or the regional entity may issue remedial action directives to entities in the United States whenever they deem it necessary or otherwise warranted to do so. Also, NERC or the regional entity may issue remedial action directives to entities in the United States regarding a violation that is immediately necessary to terminate or correct to protect the reliability of the bulk power system from an imminent threat, irrespective of whether that violation is ultimately verified or dismissed by NERC or the regional entity's investigation of the violation.

6.6 No Impact on Confirmation of Violation, or Penalties or Sanctions

Remedial action directives issued regarding a violation, in particular any costs incurred by the violator to comply with any such directive, will not be considered when reviewing whether the aggregate of any penalties and sanctions levied for that violation bear a reasonable relation to the seriousness of the violation. Also, any remedial action directives issued with respect to a violation will not influence the outcome of the confirmation review of that violation nor the determination of penalties or sanctions for that violation; ordering a violator to correct what needs correcting anyway is no grounds for dispelling a violation nor reducing or eliminating a penalty or sanction that would otherwise be determined appropriate for the violator for that violation.

6.7 Types of Remedial Actions

NERC or the regional entities may issue remedial action directives to correct compliance with NERC or regional reliability standards and reduce or eliminate imminent threats to the reliability of the bulk power system. Examples of remedial actions include:

- a. Specifying operating or planning criteria, limits, or limitations
- b. Requiring specific system studies
- c. Defining operating practices or guidelines
- d. Requiring confirmation of data, practices, or procedures through inspection testing or other methods
- e. Requiring specific training for personnel
- f. Requiring development of specific operating plans

Appendix A: Base Penalty Amount Table

The following lists the Base Penalty amounts corresponding to combinations of violation risk factor and violation severity factor.

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 3.21 regarding frequency and duration of violations.