



ORDER NUMBER

R-28-16

IN THE MATTER OF

the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

British Columbia Mandatory Reliability Standards Program

Rules of Procedure Revised Appendix 3: Penalty Guidelines for BC Mandatory Reliability Standards

BEFORE:

N. E. MacMurchy, Commissioner

on June 23, 2016

ORDER

WHEREAS:

- A. Pursuant to section 125.2(10) of the *Utilities Commission Act* (UCA), which provides for the administration of adopted reliability standards, the British Columbia Utilities Commission (Commission) by Order G-123-09 adopted Rules of Procedure for Reliability Standards in BC (BC Rules of Procedure);
- B. Parts 8 and 8.1 of the UCA empowers the Commission to impose administrative penalties and set financial limits for contraventions of BC Reliability Standards;
- C. The Mandatory Reliability Standards Inquiry Report, issued by Commission Order R-33-13, dated September 16, 2013, determined among other things, that the BC Rules of Procedure will be revised to provide for adoption of the North American Electric Reliability Corporation's (NERC) Violation Risk Factors and Violation Severity Levels as Compliance Provisions and for the incorporation of penalty ranges consistent with NERC penalty ranges in the BC Penalty Matrices;
- D. In compliance with Commission Order R-33-13, Directives 2 and 5, and following a public process, the Commission issued Order R-34-15 approving revisions to the Rules of Procedure for Reliability Standards in British Columbia, including revisions to Appendix 1: Registration Manual, Appendix 2: Compliance Monitoring Program and a new Appendix 3: Penalty Guidelines;
- E. In compliance with recommendations of Commission Order R-33-13, in a letter dated April 1, 2016, the Commission issued for comment a draft version of a revised Appendix 3: Penalty Guidelines and invited comments by May 2, 2016 on:

- i. basic principles to be adhered to when determining the penalty amount;
 - ii. considerations when determining the penalty amount including possible BC-specific technical factors if applicable, and
 - iii. the penalty process for the MRS Program;
- F. Comments were received from the British Columbia Hydro and Power Authority, FortisBC Inc. and Catalyst Paper Corporation; and
- G. The Commission found the comments to be generally constructive and incorporated them into the Penalty Guidelines where appropriate as explained in the attached reasons.

NOW THEREFORE pursuant to Parts 8 and 8.1 and section 125.2(10) of the *Utilities Commission Act*, the British Columbia Utilities Commission orders as follows:

1. The Penalty Guidelines for BC Mandatory Reliability Standards are approved as attached.
2. The imposition of penalties utilizing the Penalty Guidelines for BC Mandatory Reliability Standards process will apply to violations that are identified and reported on or after August 1, 2016.
3. Violations that were discovered and reported prior to August 1, 2016 may be subject to administrative penalties where, after due process, the Commission finds that the violation has resulted in substantial harm to persons or property.

DATED at the City of Vancouver, in the Province of British Columbia, this 23rd day of June 2016.

BY ORDER

Original Signed By:

N. E. MacMurchy
Commissioner

Attachment

British Columbia Mandatory Standards Program
Rules of Procedure Revised Appendix 3: Penalty Guidelines for BC Mandatory Reliability Standards

REASONS FOR DECISION

1.0 BACKGROUND

In 2009, the British Columbia Utilities Commission (Commission), by Order G-123-09, adopted Rules of Procedure for Reliability Standards in BC (BC Rules of Procedure). The *Energy and Mines Statutes Amendment Act* (Bill 30, 2012) Administrative Penalties Regulation (BC Reg. 316/2012, OIC No. 731) amended the *Utilities Commission Act* (UCA) to empower the Commission under Parts 8 and 8.1 of the UCA to impose administrative penalties and set financial limits for contraventions of BC reliability standards.

On October 9, 2012, the Commission initiated an inquiry into potential adjustments for the BC Mandatory Reliability Standards (MRS) Program to consider, among other things, a process for assessing severity and risk factors for violations. The MRS Inquiry Report issued under Commission Order R-33-13, dated September 16, 2013, determined that the BC Rules of Procedure will be revised to provide for the adoption of the North American Electric Reliability Corporation's (NERC) Violation Risk Factors and Violation Severity Levels as compliance provisions and for the incorporation of penalty ranges consistent with the NERC penalty ranges in the BC Penalty Matrices.

In compliance with Commission Order R-33-13, Directives 2 and 5, and following a public process, the Commission issued Order R-34-15 approving revisions to the Rules of Procedure for Reliability Standards in British Columbia, including approving a new Appendix 3: Penalty Guidelines.

Following recommendations in Order R-33-13, in a letter dated April 1, 2016 to all registered entities in the BC MRS Program, parties were asked to provide comments by May 2, 2016 on a draft version of revised Appendix 3: Penalty Guidelines. Comments were invited on:

- basic principles to be adhered to when determining the penalty amount;
- considerations when determining penalty amount including possible BC-specific technical factors, if applicable; and
- the penalty process for the BC MRS Program.

2.0 COMMENTS RECEIVED

Three parties responded to the request for comments: the British Columbia Hydro and Power Authority (BC Hydro), FortisBC Inc. (FBC) and Catalyst Paper Corporation (Catalyst). The Panel found that the comments received were generally constructive and well-reasoned. The comments included the following:

- To provide greater clarity that the assessment of penalties reflect a reasonable relation to the seriousness of the violation.

- Where an Entity is registered for several functions, the penalty should be assessed against the Entity, not against each function performed by the Entity.
- An Entity should not be subject to penalties in the future for Alleged or Confirmed Violations that have been closed.
- There should be greater clarity of the considerations that the Administrator will take into account in recommending a penalty versus the considerations the Commission will take into account in setting a penalty amount.
- There is full disclosure to an Entity of all information relied upon by the Administrator in determining a penalty recommendation and by the Commission in determining a penalty and that the Entity will have an opportunity to comment on the information being utilized.
- The discretion by the Commission to set a penalty amount outside of the penalty matrix should include the identification of the factors and reasons for the Commission's decision and an opportunity for the affected party to respond to the appropriateness of the proposed penalty.
- Orders related to cyber-security incidents or other incidents where revealing the information could potentially jeopardize the security of the bulk power system should be treated in a confidential manner.

Both BC Hydro and FBC stated that they were not aware of any specific technical factors relevant to British Columbia.

Catalyst stated it opposes any penalties on any customer under the Mandatory Reliability Standards. It stated: "As a customer we take direction from BC Hydro on transmission system maintenance and operations as per our Joint Transmission Interconnection Agreement and Local Operating Order. Any penalties or consideration as a result of a violation of our agreements with BC Hydro are already contemplated in those agreements, additional penalties would be redundant and punitive."

3.0 COMMISSION DETERMINATION

The Panel found that the comments received were constructive and well-reasoned and has revised the Penalty Guidelines to deal with the majority of the recommendations put forward.

With respect to Catalyst's concern about being penalized under both the Penalty Guidelines and under its agreements with BC Hydro, the Panel finds it is not appropriate to exempt any MRS Entity from the guidelines as this would be, in effect, delegating the responsibility for enforcing MRS standards from one Entity to another. However, the Panel has included in Penalty Guideline Section 3.2 the considerations that the Commission will take into account before levying a penalty, including the following: "Any undue hardship an administrative penalty may present for an Entity (to the extent this may be established by an Entity)."

The Panel finds that this consideration will allow an Entity that believes it is being excessively penalized due to penalties under the Penalty Guidelines and under its agreements with BC Hydro or some other Entity, to make its case for moderation of the proposed penalty.

A comment was also made that the implementation of the Penalty Guidelines should be made on a go forward basis and not be retroactive. The Panel is in general agreement with this recommendation and for this reason has made the order for the utilization of the penalty guideline process effective for dealing with violations that are discovered and reported on or after August 1, 2016. However, recognizing the responsibility of the Commission to ensure the safety and reliability of the bulk power system, the Commission retains the right to impose administrative penalties, after due process, for any violations of Mandatory Reliability Standards prior to that date that result in substantial harm to persons or property.

The Commission thanks the parties for providing comments on the draft guidelines which were very helpful to the Panel.



British Columbia
Utilities Commission

Penalty Guidelines

for British Columbia Mandatory Reliability Standards

**Appendix 3 to
Rules of Procedure
for Reliability Standards in British Columbia**

**Revised June 2016
by Order R-28-16**

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PENALTY GUIDELINES FOR BC MANDATORY RELIABILITY STANDARDS

Revised June 2016

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1.0 INTRODUCTION

The Penalty Guidelines for BC Mandatory Reliability Standards (Penalty Guidelines) provide Entities information on the criteria and process the Commission will use to determine a penalty amount for a Confirmed Violation of a Reliability Standard under the authority of part 8.1 of the *Utilities Commission Act* (UCA). The Commission will issue a Notice of Penalty once it has made its determination with respect to a Confirmed Violation and the penalty process has been concluded.

Definitions incorporated by reference

The definitions in section 2 of the Rules of Procedure are incorporated into the Penalty Guidelines by reference. Other terms used, but not specifically defined in the Rules of Procedure, are defined in the NERC Glossary of Terms Used in Reliability Standards, as adopted by the Commission from time to time or otherwise have their commonly understood meanings in the electric power industry.

2.0 BASIC PRINCIPLES

The following basic principles will be adhered to when determining a penalty amount.

2.1 Application of the *Utilities Commission Act*

Pursuant to section 109.1(4) of the UCA, the Commission may not find that a person has contravened a provision of the UCA, regulations, Commission order, standard or rule, or a Reliability Standard if the person exercised due diligence to prevent the contravention, or the person's actions or omissions relevant to the provision were the result of an officially induced error, or if an act or omission was reasonably necessary to comply with the *Workers Compensation Act* or its regulations.

Pursuant to section 109.2 of the UCA, if the Commission finds that a person has contravened a provision of a Reliability Standard, the Commission may impose an administrative penalty in an amount up to the prescribed limit set in the Administrative Penalties Regulation. The Administrative Penalties Regulation establishes limits for administrative penalties for contravention of a Reliability Standard – up to \$1,000,000 per day for a corporation and \$100,000 per day for a director, officer or agent of a corporation that contravenes a Reliability Standard.

Pursuant to section 109.8(1) of the UCA, the time limit for giving notice under section 109.3 imposing an administrative penalty is 2 years after the date on which the act or omission alleged to constitute the contravention first came to the attention of the chair of the Commission. The date that a NOAV is issued to an Entity with copy to the Commission is considered the date the act or omission alleged to constitute the contravention first came to the attention of the chair of the Commission.

2.2 Penalties for Confirmed Violations

A Confirmed Violation, defined in the BC Rules of Procedure as an Alleged Violation that has been confirmed by a Commission Order, constitutes a contravention of a Reliability Standard. The processes set out in section 4.4.2 of the CMP provide opportunity for a person to be heard before the Commission determines a Confirmed Violation. The Commission would not consider a possible administrative penalty until after a contravention has been determined by Commission Order to be a Confirmed Violation.

2.3 Violation Risk Factors and Violation Severity Levels

The NERC Violation Risk Factors (VRF) and Violation Severity Levels (VSL) that accompany the Reliability Standards adopted in BC will be used as Compliance Provisions in the BC MRS Program to consider the base penalty range. However, VRF and VSL are not the only factors that the Commission may consider in assessing a proposed penalty amount.

The VRF and VSL matrices associated with the Reliability Standards approved in BC will be available electronically.

2.4 BC penalty matrices

The BC penalty matrices provided below list base penalty ranges for combinations of NERC VRF and VSL. There are two BC penalty matrices, one for corporations (Table 1) and one for a director, officer or agent of a corporation (Table 2). The amounts in both tables were approved by Commission Order R-34-15 and the maximum limit of \$1,000,000 is as specified in the UCA section 106(4).

Table 1: BC Penalty Matrix for a Corporation¹

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	\$0	\$3,000	\$0	\$7,500	\$0	\$15,000	\$0	\$25,000
Medium	\$0	\$30,000	\$0	\$100,000	\$0	\$200,000	\$0	\$335,000
High	\$0	\$125,000	\$0	\$300,000	\$0	\$625,000	\$0	\$1,000,000

¹ Amounts may be imposed for each day the contravention continues, per *Utilities Commission Act*, RSBC 1996, Chapter 473, section 109.2(2).

Table 2: BC Penalty Matrix for a Director, Officer or Agent of a Corporation²

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	\$0	\$300	\$0	\$750	\$0	\$1,500	\$0	\$2,500
Medium	\$0	\$3,000	\$0	\$10,000	\$0	\$20,000	\$0	\$33,500
High	\$0	\$12,500	\$0	\$30,000	\$0	\$62,500	\$0	\$100,000

2.5 Administrator's identification of base penalty range and assessment of proposed penalty amount

2.5.1 Base penalty range

Upon applying the NERC Sanction Guidelines to the facts and circumstances of the Alleged Violation under consideration, and in consideration of the BC penalty matrices noted in Table 1 and Table 2 above, the Administrator will identify in the NOAV, the base penalty range that represents the seriousness of the violation.

2.5.2 Proposed penalty amount

The Administrator will consider various factors in its review of a Possible or Alleged Violation. These factors include but are not limited to:

1. Violation Risk Factor;
2. Violation Severity Level;
3. risk to the reliability of the Bulk Electric System, including the seriousness of the violation;
4. Violation Time Horizon;
5. the violation's duration;
6. the Registered Entity's compliance history;
7. the Registered Entity's self-reports and voluntary corrective action;
8. the degree and quality of cooperation by the Registered Entity in an audit or investigation process, and in any remedial action;
9. the quality of the Registered Entity's compliance program;
10. any attempt by the Registered Entity to conceal the violation or any related information;

² Amounts may be imposed for each day the contravention continues, per *Utilities Commission Act*, RSBC 1996, Chapter 473, section 109.2(2).

11. whether the violation was intentional; and
12. any other relevant information or extenuating circumstances.

After consideration of all relevant factors listed above, the Administrator will recommend a proposed penalty amount within the base penalty range ensuring that the proposed penalty amount is commensurate with a similar situation in other regions of the Western Interconnection. The Administrator will identify in the NOAV, the proposed penalty amount that represents the seriousness of the violation.

3.0 DETERMINATION OF PENALTY AMOUNT

3.1 General considerations

In considering appropriate penalties, the Commission will be guided by the general considerations below:

- The assessment of penalties shall bear a reasonable relation to the seriousness of the violation while also reflecting consideration of the other factors specified in these Penalty Guidelines.
- Where an Entity is registered for several functions, a penalty will be assessed against the Entity, not against each function performed by the Entity.
- Multiple violations for a single act or common incident would generally result in a single aggregate penalty, at least as large as what would be appropriate for the most serious of the individual violations.
- In unique extenuating circumstances, such as significant natural disasters, penalties may be significantly reduced or eliminated.
- Entities responsible for complying with Reliability Standards should not find it attractive to make economic choices that cause or risk violations to Reliability Standards, or cause or risk incidents resulting from violations.
- Penalties may be assessed on a “per day, per violation” basis unless alternative frequency or duration is determined to be more appropriate.
- Some standards may not support the assessment of penalties on a “per day, per violation” basis, and instead penalties may be appropriately considered based on an alternative time period or time span as appropriate for the standard violated.
- Multiple penalties may be assessed where there are a number of acts or incidents that result in multiple violations in one time period.
- Where a violation is found by assessment at the end of a period but may have occurred earlier in the period, an appropriate penalty may be larger, particularly if the Entity did not take appropriate steps to self-monitor for potential breaches that could be severe.
- Periodically monitored discrete violation – if a discrete event occurs and is not remedied on the date of occurrence, a contravention may be considered to have occurred on the day of first instance and each day thereafter until the contravention is corrected and brought into compliance; penalties may be assessed for each day and in different amounts for each day.

- Anything else the Commission considers to be relevant, including:
 - Long-term horizon allowing for time to address the risk before harm results (a potential mitigating factor). A penalty for a violation that could be mitigated over a longer period of time may be lower than if there was no time to mitigate because the violation took place in real-time;
 - Whether the violation was concealed;
 - Apparent strength of an Entity's internal compliance program; or
 - Specific technical factors relevant to BC (if any).

The discussion of possible factors for consideration cannot be exhaustive. Other aspects of factors or situations, and other considerations not described here, may be considered in determining an appropriate administrative penalty based on the Commission's assessment of the circumstances of individual situations.

Based on the circumstances, it is also possible for the Commission to determine that an administrative penalty is not appropriate, despite the finding of a contravention.

3.2 Specific considerations including Aggravating and Mitigating Factors

In accordance with section 109.2 of the UCA, and before determining whether an administrative penalty for contravention of a provision of a Reliability Standard is warranted and the penalty amount is determined, the Commission must consider:

- Previous contraventions, administrative penalties and orders;
- Gravity and magnitude of contravention;
- Extent of harm to others and/or immediacy of potential harm (a potential aggravating factor to the extent there may be limited time to address a risk before harm results);
- Whether contravention was repeated or continuous;
- Whether contravention was deliberate;
- Any actual or potential economic benefit derived from the contravention;
- Voluntary efforts and corrective action to prevent and correct the contravention;
- Cost of compliance with the provisions contravened;
- Whether the contravention was self-reported;
- Degree and quality of cooperation during investigation and mitigation; and
- Any undue hardship an administrative penalty may present for an Entity (to the extent this may be established by an Entity).

The Commission may also consider the factors above as potentially aggravating or mitigating factors when determining the magnitude of the penalty within the base penalty range. The presence or absence of these

factors may suggest that a higher or lower penalty could be appropriate in particular situations. Individual factors may be aggravating in one circumstance and mitigating in another.

3.3 Determination of non-monetary penalties

The imposition of penalties is not limited to monetary penalties. Non-monetary sanctions may be applied with the objective of promoting reliability and compliance with the Mandatory Reliability Standards. Non-monetary sanctions may include issuing Remedial Action Directives, limiting activities, functions or operations or requiring an Entity to increase its frequency of compliance reporting.

The Commission may impose non-monetary penalties either in lieu of or in addition to a monetary penalty for the same violation, as long as the aggregate penalty bears a reasonable relation to the seriousness of the violation and other relevant factors.

4.0 PENALTY PROCESS

- i. A proposed penalty amount for an Alleged Violation will be included in the Notice of Alleged Violation.
- ii. The Administrator will provide the Commission and the Entity with an assessment of the applicable VRF and VSL for the Alleged Violation and identify the base penalty range associated with the VRF and VSL in the applicable BC Penalty Matrix.
- iii. The Administrator will provide a risk assessment in written notes articulating the Administrator's description of the specific situation, including consideration of all relevant information as noted in section 3.2.
- iv. The Administrator will recommend a proposed penalty amount within the base penalty range and ensure that the proposed penalty amount is commensurate with a similar situation in other regions of the Western Interconnection.
- v. The Administrator must provide the information contained in section 4(i), 4(ii), 4(iii) and 4(iv) above to the Entity with the Notice of Alleged Violation.
- vi. The Entity has the opportunity to respond to the proposed penalty amount as outlined in section 4.4 of the CMP, within thirty (30) days.
- vii. No penalty will be considered unless or until an Alleged Violation becomes a Confirmed Violation by Commission order.
- viii. If an Alleged Violation is confirmed following a hearing as per section 4.4.6.3 of the CMP, the Entity has the opportunity to respond to the Administrator's proposed penalty amount within thirty (30) days of confirmation.
- ix. After considering the available information, including recommendations from the Administrator and feedback from the Entity, the Commission may, but would not be required to, request additional information from the Entity, Administrator or others. Any additional information provided to the Commission must be made available to the Entity for their review and comment before the Notice of Penalty is made.

- x. The Commission retains full discretion to deviate from the matrix ranges at any time, up to the maximum limits provided in the Administrative Penalty Regulation. Where the Commission finds it appropriate to deviate from the base penalty range it shall advise the Entity of the proposed penalty amount with reasons why this is appropriate and allow the Entity 30 days to respond.
- xi. Different penalties may apply in what may appear to be similar circumstances, as no situations are completely identical and the Commission has full discretion at all times in its determination of appropriate administrative penalties in each case.
- xii. When the Commission is satisfied that it has appropriate information to make its determination, it would order a Notice of Penalty, which may or may not include non-monetary sanctions, or issue a notice to the Entity advising that no penalty will be assessed. Pursuant to section 109.3 of the UCA, the Notice of Penalty will specify:
 - the Commission's decision to impose a penalty with reasons;
 - the name or corporation that is the recipient of the penalty;
 - the contravention;
 - the amount of the penalty, if any;
 - the date by which the penalty, if any, must be paid (within thirty (30) days of issuance of Notice of Penalty) and the consequences of not paying;
 - the person's right to apply for reconsideration under section 99 of the UCA or to appeal under section 101 of the UCA;
 - an address to which a request for a reconsideration under section 99 may be sent; and
 - the Commission may make public the recipient of a penalty, the contravention and the reasons for and amount of penalty.
- xiii. The Commission may treat as confidential any Notice of Penalty or disclosures relating to cyber-security incidents or other incidents which could otherwise jeopardize the security of the bulk power system.
- xiv. The Notice of Penalty is generally issued within sixty (60) days following the Entity's response to the proposed penalty amount. If the entity does make a submission on the proposed penalty amount, the Commission may issue a Notice of Penalty within ninety (90) days of the date of the Notice of Alleged Violation. The Notice of Penalty is to be served by registered mail.
- xv. The Entity must pay the penalty as directed in the Notice of Penalty within thirty (30) days. If the Entity applies for reconsideration, the penalty, if confirmed, is payable thirty (30) days after the appeal has been waived or an appeal decision has been rendered.