



ORDER NUMBER

R-30-22

IN THE MATTER OF

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

and

British Columbia Hydro and Power Authority
Confirmation and Notice of Penalty with Reasons for Decision
for the Contravention of Mandatory Reliability Standards
Identified as:
FAC-008-3 Requirement 6 Violation ID BCUC2017000621

BEFORE:

R. I. Mason, Panel Chair
M. Kresivo, KC, Commissioner
E. B. Lockhart, Commissioner

on September 14, 2022

ORDER

WHEREAS:

- A. On August 3, 2022, the British Columbia Utilities Commission (BCUC) issued a confidential order with Confidential Notice of Penalty and Reasons for Decision to British Columbia Hydro and Power Authority (BC Hydro) for contravention of Reliability Standard FAC-008-3 Facility Ratings Requirement 6, as noted above (Confidential Order with Reasons);
- B. By confidential Order R-3-22 dated January 18, 2022, the BCUC confirmed BC Hydro's contravention of Reliability Standard FAC-008-3 Facility Ratings Requirement 6, as noted above;
- C. On August 3, 2022, the BCUC directed BC Hydro to file written submissions with supporting reasons to the BCUC with respect to the confidentiality of the Confidential Order with Reasons, amongst other materials, including proposed redactions, if any, that BC Hydro seeks prior to their publication as may be ordered by the BCUC;
- D. On September 2, 2022, BC Hydro filed its submissions for public disclosure of Confidential Order R-3-22 and the Confidential Order with Reasons with a proposed redacted version of the Confidential Order with Reasons; and
- E. Following review of BC Hydro's submissions, the Panel considers the release of the Confidential Order with Reasons in the redacted form as proposed by BC Hydro and the Confidential Confirmation Order in its entirety to the general public is warranted and in the public interest.

NOW THEREFORE pursuant to section 125.2(10) and Part 8.1 of the UCA, the BCUC orders the following:

1. Order R-3-22 is to be made public, as attached in Appendix A.
2. Order R-24-22 is to be made public, as attached in Appendix B.
3. The redacted Reasons for Decision to Order R-24-22 are to be made public, as attached in Appendix C.
4. All other material filed in this proceeding shall be held confidential, unless otherwise ordered by the BCUC.

DATED at the City of Vancouver, in the Province of British Columbia, this 14th day of September 2022.

BY ORDER

Original signed by:

R. I. Mason
Commissioner

Attachment



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CONFIDENTIAL
ORDER NUMBER
R-3-22

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

British Columbia Hydro and Power Authority
Confirmation of Alleged Violation of Mandatory Reliability Standard:
FAC-008-3 Requirement 6 - Violation ID: BCUC2017000621

BEFORE:

R. I. Mason, Panel Chair
M. Kresivo, QC, Commissioner
E. B. Lockhart, Commissioner

on January 18, 2022

ORDER

WHEREAS:

- A. On August 21, 2020, the Western Electricity Coordinating Council (WECC), acting as the Administrator for the British Columbia Mandatory Reliability Standards Program (BC MRS Program), issued Notice of Alleged Violation CF1374 (Notice CF1374) to British Columbia Hydro and Power Authority (BC Hydro) citing an alleged violation of FAC-008-3 R6 identified as Violation ID BCUC2017000621 (Alleged Violation of FAC-008-3 R6);
- B. British Columbia Utilities Commission (BCUC) Order G-123-09 approved the Compliance Monitoring Program (CMP), which provides a process for dealing with violations of Mandatory Reliability Standards adopted by the BCUC. The most recent revisions to the CMP were approved by Order R-40-17, dated September 1, 2017;
- C. From October 2, 2017 through October 13, 2017, WECC, acting as the Administrator for the BCUC, conducted a Compliance Audit of BC Hydro and identified the Alleged Violation of FAC-008-3 R6;
- D. Notice CF1374 describes the facts and circumstances that allegedly demonstrate or constitute the Alleged Violation of FAC-008-3 R6 together with additional information, including proposed penalty amounts, pursuant to Section 4.3.2 of the CMP;
- E. Pursuant to Section 4.4 of the CMP and as set out in the Notice of Alleged Violation, BC Hydro has three options and 30 days to respond to the Notice of Alleged Violation;
- F. On September 18, 2020, BC Hydro responded to Notice CF1374, in accordance with Section 4.4.2, stating that it does not contest the Alleged Violation of FAC-008-3 R6 and requesting confidential treatment of Notice CF1374, its response to Notice CF1374 and all related materials and evidence (Compliance Materials);

Order R-3-22

- G. By Order R-33-21 dated December 7, 2021, the BCUC established a proceeding for the review of Alleged Violation of FAC-008-3 R6 and directed BC Hydro to file submissions on the confidential nature of the Notice of Alleged Violation and material related to Alleged Violation of FAC-008-3 R6. On December 23, 2021, BC Hydro filed its submission; and
- H. The BCUC has reviewed the information in Notice CF1374 and BC Hydro's response dated September 18, 2020 and determines that confirmation of the Alleged Violation of FAC-008-3 R6 is warranted.

NOW THEREFORE pursuant to section 125.2(10) of the UCA and in accordance with the CMP, the BCUC orders the following:

1. BC Hydro contravened Reliability Standard FAC-008-3 Requirement 6, as set out in Notice CF1374 issued to BC Hydro on August 21, 2020.
2. The Alleged Violation of FAC-008-3 R6 identified as Violation ID BCUC2017000621 is confirmed.
3. August 21, 2020, the date WECC issued the Notice of Alleged Violation to BC Hydro in respect of Alleged Violation of FAC-008-3 R6, is the date the acts or omissions alleged to constitute the Alleged Violation first came to the attention of the Chair of the BCUC.
4. All Compliance Materials will be held confidential until the BCUC determines otherwise.

DATED at the City of Vancouver, in the Province of British Columbia, this 18th day of January 2022.

BY ORDER

Original signed by:

R. I. Mason
Commissioner



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CONFIDENTIAL
ORDER NUMBER
R-24-22

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

British Columbia Hydro and Power Authority
Notice of Penalty for the Contravention of
Mandatory Reliability Standard Identified as:
FAC-008-3 Requirement 6 - Violation ID: BCUC2017000621

BEFORE:

R. I. Mason, Panel Chair
M. Kresivo, QC, Commissioner
E. B. Lockhart, Commissioner

on August 3, 2022

ORDER

WHEREAS:

- A. On August 21, 2020, the Western Electricity Coordinating Council (WECC) issued Notice of Alleged Violation CF1374 (Notice CF1374) to the British Columbia Hydro and Power Authority (BC Hydro) citing the Alleged Violation identified above. Notice CF1374 described the facts and circumstances that allegedly demonstrate or constitute the Alleged Violation together with the additional information, including a proposed penalty amount for the Alleged Violation, pursuant to Section 4.3.2 of the Compliance Monitoring Program;
- B. On September 18, 2020, BC Hydro submitted its response to Notice CF1374, in accordance with section 4.4.2 of the Compliance Monitoring Program, stating that it did not contest the Alleged Violation;
- C. By confidential Order R-3-22, dated January 18, 2022, the British Columbia Utilities Commission (BCUC) confirmed BC Hydro's Alleged Violation of FAC-008-3 R6 identified as Violation ID BCUC2017000621 (Violation) as issued by the WECC through Notice CF1374, finding the Violation to be a contravention of the *Utilities Commission Act* (UCA);
- D. By Order R-15-22 dated April 1, 2022, the BCUC established a regulatory timetable for review of the Violation for the purposes of penalty determination. The regulatory timetable included BC Hydro responses to (i) WECC's submission of information and additional evidence of the Violation, and (ii) WECC's revised penalty recommendation using the criteria stipulated under section 109.2(3) of the UCA; and
- E. The BCUC has considered all the evidence and BC Hydro's submissions in this proceeding and makes the following determinations.

Order R-24-22

NOW THEREFORE pursuant to section 125.2(10) and Part 8.1 of the UCA and in accordance with the Compliance Monitoring Program, and for the Reasons for Decision attached to this order, the BCUC:

1. Issues to BC Hydro the attached confidential Notice of Penalty for its contravention of an adopted reliability standard identified as BCUC2017000621.
2. Orders BC Hydro to make full payment of the penalty amount stipulated in the Notice of Penalty accompanying this order within 30 days of receipt.
3. Directs BC Hydro, in a compliance filing, to provide confirmation of payment of this penalty amount within 15 days of making such payment.
4. Directs that this Confidential Order with Reasons for Decision and all related materials filed in this proceeding be held confidential until the BCUC determines otherwise.
5. Directs BC Hydro to file written submissions, with supporting reasons, within 30 days of the issuance of this Decision with respect to confidentiality as described in Section 7 of the Reasons for Decision.

DATED at the City of Vancouver, in the Province of British Columbia, this 3rd day of August 2022.

BY ORDER

Original signed by:

R. I. Mason
Commissioner

Attachment

CONFIDENTIAL
NOTICE OF PENALTY

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

British Columbia Hydro and Power Authority
Notice of Penalty
for the Contravention of Mandatory Reliability Standards
Identified as:
FAC-008-3 R6 Violation ID BCUC2017000621

Pursuant to section 125.2(10) and Part 8.1 of the *Utilities Commission Act* (UCA) and in accordance with the Compliance Monitoring Program and the Reasons for Decision attached, the British Columbia Utilities Commission (BCUC) hereby notifies British Columbia Hydro and Power Authority (BC Hydro) that:

The following administrative penalty has been levied against BC Hydro for its contravention of an adopted reliability standard:

- Violation BCUC2017000621 - \$167,500

BC Hydro is ordered to make full payment of the penalty amount stipulated in this Notice of Penalty within 30 days of receipt and the BCUC directs BC Hydro, in a compliance filing, to provide confirmation of payment of this penalty amount within 15 days of making such payment.

BC Hydro may appeal this Notice of Penalty under section 101 of the UCA or apply for a reconsideration in writing under section 99 of the UCA addressed to:

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC V6Z 2N3

British Columbia Hydro and Power Authority

**Penalties for the Confirmed Violations of Mandatory Reliability
Standards: BCUC2017000621**

Confidential Reasons for Decision

August 3, 2022

Before:
R. I. Mason, Panel Chair
M. Kresivo, QC, Commissioner
E. B. Lockhart, Commissioner

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Executive Summary

By Order R-3-22 dated January 18, 2022, the BCUC confirmed an Alleged Violation (Violation) of Mandatory Reliability Standard (MRS) FAC-008-3 Requirement 6, finding the Violation to be a contravention of the *Utilities Commission Act*.

Requirement FAC-008-3 R6 requires each Transmission Owner and Generator Owner to have Facility Ratings for its solely and jointly owned Facilities that are consistent with the associated Facility Ratings methodology or documentation for determining its Facility Ratings.

The Violation was discovered during a Western Electricity Coordinating Council (WECC) Compliance Audit in October 2017, when BC Hydro failed to provide evidence that its Facility Ratings for its solely and jointly owned Facilities were consistent with the associated Facility Ratings methodology or documentation for determining its Facility Ratings. On November 14, 2018, BC Hydro submitted the first version of its Mitigation Plan to address its noncompliance, which after “extensive work with WECC” was accepted by WECC on May 2, 2019. WECC issued Notice of Alleged Violation CF1374 (Notice CF1374) on August 21, 2020.

The root cause of these issues was BC Hydro “not having fully documented controls for ensuring that its personnel followed its documented Facility Rating methodology and documentation process.” Further, BC Hydro “did not effectively communicate changes on its system, resulting in equipment ratings not being collected and recorded,” relying on a legacy process for updating its Facility Ratings.

The Violation began on August 1, 2015 when the Standard became mandatory and enforceable and is expected to be remediated July 1, 2022.

WECC considers that 48 hours to 90 days is a reasonable timeframe for how long it should take an Entity to remediate a violation of MRS Standard FAC-008-3. BC Hydro learned of its non-compliance with MRS Standard FAC-008-3 from the Compliance Audit report finding conducted in October 2017 and is not expected to complete its remediation and mitigation activities until July 1, 2022, which is 56 months after BC Hydro learned of its non-compliance.

In considering an administrative penalty for the Violation, the Panel makes the following findings:

- The Panel finds that the Violation posed a serious risk to the Bulk Electric System and finds this to be an aggravating factor.
- The Panel finds that the Violation was continuous, and that the continuous nature of the Violation is aggravating because of the length of time it took BC Hydro to establish the full extent of the Violation once it had been identified in WECC’s Compliance Audit, and the length of time BC Hydro has taken to complete its remediation and mitigation efforts.
- The Panel finds that BC Hydro took inadequate measures to prevent and correct the Violation and finds this to be an aggravating factor. The Panel finds that 56 months is too long to remediate a violation of MRS Requirement FAC-008-3 R6 given the risk to the Bulk Electric System.
- The Panel finds that an administrative penalty for the Violation is warranted. The Violation posed a serious risk to the Bulk Electric System and BC Hydro took too long to provide evidence of the extent of condition of the Violation and submit and execute appropriate mitigation plans.
- The Panel finds the appropriate administrative penalty for the Violation is \$167,500.
- The Panel declines to exercise its discretion to levy a daily penalty for each day that the Violation continued.

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to Order R-24-22

In response to concerns raised by BC Hydro about the investigation and hearing process, the Panel makes the following findings and determinations:

- The Panel finds that the limitation period for an administrative penalty for the Violation has not expired and that the BCUC continues to have the jurisdiction to impose an administrative penalty for the Violation.
- The Panel finds that WECC did not unreasonably delay the issuance of Notice CF1374 from the time the draft was prepared in November 2019 to the date it was issued on August 21, 2020, and therefore there are no circumstances that exist to demonstrate that the limitation period began to run earlier or began to run before the issuance of Notice CF1374.
- The Panel lacks confidence in the process WECC used to determine its recommended penalty amount for the Violation. As a result, the Panel gives no weight to WECC's recommended penalty amount and has made its own determination on an appropriate penalty based on the evidence in this proceeding.
- The Panel rejects BC Hydro's submission that it has been denied access to information required for it to know and understand the case against it.
- The Panel finds that WECC's actions do not demonstrate a biased administration of the Compliance Monitoring Program as alleged by BC Hydro.

1.0 Introduction

Unless otherwise specifically defined in these Reasons for Decision, capitalized terms used herein bear the same meanings as set out in the North American Electric Reliability Corporation (NERC) Glossary of Terms, adopted by the British Columbia Utilities Commission (BCUC) from time to time.

This proceeding concerns the appropriate administrative penalty, if any, to be assessed against British Columbia Hydro and Power Authority (BC Hydro) under the Mandatory Reliability Standards (MRS) Program for a violation of a reliability standard (Reliability Standard) and associated requirements (Requirements) adopted by the BCUC that apply to BC Hydro in respect of the Bulk Electric System.

In this Decision the Panel addresses the following matters:

- the legislative framework for the BCUC's jurisdiction to levy administrative penalties;
- the MRS Program in BC;
- the background to this penalty proceeding;
- the expiration of the limitation period for imposition of an administration penalty;
- [REDACTED];
- procedural fairness issues raised by BC Hydro;
- the assessment of an administrative penalty; and
- confidentiality of the penalty decision.

2.0 Legislative Framework

2.1 Reliability Standards

Section 125.2 (2) of the *Utilities Commission Act* (UCA) provides the BCUC with exclusive jurisdiction to determine whether a “reliability standard,” as defined in the UCA, is in the public interest and should be adopted in British Columbia.

The term “reliability standard” is defined in section 125.2 (1) of the UCA as:

a reliability standard, rule or code established by a standard-making body for the purpose of being a mandatory reliability standard for planning and operating the North American bulk electric system, and includes any substantial change to any of those standards, rules or codes

Section 125.2 (1) of the UCA provides that the term “standard-making body” includes the Western Electricity Coordinating Council (WECC).

Section 125.2 (6) of the UCA states that the BCUC must, by order, adopt the reliability standards addressed in the report¹ if the BCUC considers that the reliability standards are required to maintain or achieve consistency in British Columbia with other jurisdictions that have adopted the reliability standards.

¹ Report subject to section 125.2 (3) of the UCA.

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Section 8 of the UCA authorizes the BCUC to appoint or engage persons who have special or technical knowledge necessary to assist the BCUC in carrying out its functions.

By Order G-123-09, the BCUC approved the Rules of Procedure for Reliability Standards in British Columbia (Rules) including a compliance monitoring program (Compliance Monitoring Program).² Section 2.2 of the Rules defines a Reliability Standard as follows:

A Reliability Standard as defined in section 125.2(1) of the *Utilities Commission Act* (UCA) that has been adopted by the Commission under section 125.2(6) of the UCA for application in British Columbia. A Reliability Standard normally consists of the following components: (i) Introduction; (ii) Requirements; and (iii) Measures. A Reliability Standard does not include Compliance Provisions.

Henceforth in the Decision, the capitalized term Reliability Standard applies as defined in the Rules.

The purpose of the FAC-008 Facility Ratings Reliability Standard is to ensure that Facility Ratings used in the reliable planning and operation of the Bulk Electric System are determined based on technically sound principles. A Facility Rating is essential for the determination of System Operating Limits.³

2.2 Administrative Penalties

Section 109.1 (1) of the UCA provides that the BCUC may find that a person has contravened a reliability standard adopted by the BCUC.

Pursuant to section 109.2 (1) of the UCA, if the BCUC finds that a person has contravened a reliability standard, the BCUC may impose an administrative penalty on that person in an amount that does not exceed the prescribed limit.

Pursuant to section 3(4) of the Administrative Penalties Regulation enacted by Order in Council No. 731 issued November 8, 2012, the prescribed penalty limit is \$1,000,000 for corporations contravening a reliability standard adopted by the BCUC. Section 109.2 (2) gives the BCUC discretion to impose separate administrative penalties, each not exceeding the prescribed limit, for each day the contravention continues.

² BCUC Order G-123-09 approved the Rules of Procedure for Reliability Standards in British Columbia (Rules).

³ FAC-008-3 Facility Ratings Reliability Standard as Attachment D to Order R-32-14, p. 167.

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Section 109.2 (3) of the UCA requires that, before the BCUC imposes an administrative penalty on a person, the BCUC, in addition to considering anything else the BCUC considers relevant, must consider the following factors:⁴

- (a) previous contraventions by, administrative penalties imposed on and orders issued to the following:
 - (i) the person;
 - [...]
- (b) the gravity and magnitude of the contravention;
- (c) the extent of the harm to others resulting from the contravention;
- (d) whether the contravention was repeated or continuous;
- (e) whether the contravention was deliberate;
- (f) any economic benefit derived by the person from the contravention;
- (g) the person's efforts to prevent and correct the contravention;
- (h) the cost of compliance with the provision contravened;
- (i) whether the person self-reported the contravention;
- (j) the degree and quality of cooperation during the commission's investigation;
- (k) any undue hardship that might arise from the amount of the penalty; and
- (l) any other matters prescribed by the Lieutenant Governor in Council

These factors (a) through (l) above are collectively referred to as UCA Factors throughout the Decision.

Furthermore, section 109.2(3) of the UCA provides that in addition to being required to consider the UCA Factors, the Panel may consider anything else it considers relevant before imposing an administrative penalty. Such additional considerations are referred to in the Decision as Additional Factors.

2.3 Timeline for Issuing Penalties

Pursuant to section 109.8(1) of the UCA, the time limit for giving an Entity notice under section 109.3 imposing an administrative penalty is two 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 BCUC.

Pursuant to Section 2.1 of the Penalty Guidelines, the date on which the act or omission alleged to constitute the contravention first came to the attention of the BCUC Chair is the date that a Notice of Alleged Violation is issued to an Entity, with a copy to the BCUC.⁵

⁴Section 109.2 (3) of the UCA.

⁵Rules of Procedure for Reliability Standards in British Columbia, Appendix 3: Penalty Guidelines for British Columbia Mandatory Reliability Standards, by Order R-40-17 dated September 1, 2017, p. 1.

2.4 MRS Compliance Processes

All entities registered in the MRS Program (Entity) are required to comply with Reliability Standards. The Compliance Monitoring Program provides processes for dealing with compliance with Reliability Standards adopted by the BCUC.

2.4.1 Compliance Audit

Pursuant to section 2.1 of the Compliance Monitoring Program, the BCUC or the Administrator will perform compliance audit (Compliance Audit) activities in a manner consistent with the audit schedule as approved in an annual implementation plan.⁶ Upon completion of a Compliance Audit, the Administrator issues a compliance audit report (Compliance Audit Report) with any possible violations (Possible Violation) identified during the Compliance Audit.

2.4.2 Mitigation Plans

Pursuant to section 5 of the Compliance Monitoring Program, the BCUC strongly encourages Entities to thoroughly and swiftly mitigate any possible noncompliance with a Reliability Standard as soon as such has been identified and reminds Entities that mitigation information is an important consideration of whether a Possible Violation may be considered for the find, fix, track (Find, Fix, Track) process. For Possible or Alleged Violations, an Entity may elect to prepare a mitigation plan. Once a violation has been confirmed, however, an Entity must prepare: (i) a mitigation plan to correct the Confirmed Violation, or (ii) a description of how the Confirmed Violation has been mitigated.

Pursuant to section 5.2 of the Compliance Monitoring Program, a mitigation plan must include the Entity's point of contact, the violation the mitigation plan will correct, the cause of the violation, the action plan for correction of the violation, the action plan for prevention of recurrence of the violation, anticipated impact or risk to the bulk power system while the mitigation plan is being implemented, a timetable for completion of the mitigation plan, implementation milestones no more than 90 days apart for mitigation plans with expected completion dates more than 90 days from the submission date, and any other information as directed by the BCUC.

Pursuant to section 5.5 of the Compliance Monitoring Program, the BCUC or WECC may, at any time, request the Entity to submit a revised Mitigation Plan to replace a Mitigation Plan already accepted by the BCUC for any of the following reasons:

- 1) An extension to the mitigation plan requires the inclusion of additional milestones;
- 2) Evidence suggests the scope of an accepted mitigation plan must be expanded to include greater scope of mitigation to fully mitigate the Possible, Alleged or Confirmed Violation(s); or
- 3) Any other reason as deemed appropriate by WECC or the BCUC.

Pursuant to section 5.8 of the Compliance Monitoring Program, the Entity must provide updates at least every 90 days to WECC on the progress of the mitigation plan and WECC will track and review the status of the mitigation plan to completion. Upon completion of a mitigation plan, the Entity must provide an attestation of mitigation plan completion to WECC stating that all required actions described in the mitigation plan have been completed and must include information sufficient to verify completion.

⁶ Section 2.2 of the BCUC Rules of Procedure for Reliability Standards, by Order R-40-17 dated September 1, 2017, defines the implementation plan as an annual plan describing compliance monitoring activities and schedules for the upcoming calendar year, approved by the BCUC under section 3.1 of the Compliance Monitoring Program.

2.4.3 Find, Fix, Track

Pursuant to section 4.2 of the Compliance Monitoring Program, WECC will perform a Find, Fix, Track review on a Possible Violation prior to considering the alleged violation (Alleged Violation) process. The Find, Fix, Track process is defined as “[a] process described in the Rules of Procedure for assessing and reporting Possible Violations that appear to the Administrator to pose a lesser risk to the bulk power system and/or Bulk Electric System.”⁷ WECC is required to consider the following factors in its Find, Fix, Track review:

- 1) The underlying facts and circumstances (i.e., what happened, how, why, where and when);
- 2) The specific Reliability Standard(s) possibly violated;
- 3) Whether the Entity has mitigated or begun mitigation of the Possible Violation;
- 4) The Administrator’s assessment of potential and actual level of risk to reliability, including mitigating factors during the period of noncompliance;
- 5) Information that the Administrator may have about the perceived strength of the Entity’s compliance program, including preventive and corrective processes and procedures, internal controls and culture of compliance;
- 6) Information that the Administrator may have about the Entity’s compliance record; and
- 7) Whether aggravating factors are present.

2.4.4 Notice of Alleged Violation

Pursuant to section 4.3 of the Compliance Monitoring Program, WECC may issue a Notice of Alleged Violation to the Entity, with a copy to the BCUC, once a Possible Violation is identified as an Alleged Violation. A Notice of Alleged Violation may list one or more Alleged Violations pertaining to Reliability Standards and a violation of each requirement associated with a Reliability Standard is considered a separate violation. In accordance with the Compliance Monitoring Program, a Notice of Alleged Violation also specifies the NERC Violation Risk Factor and Violation Severity Level associated with each Alleged Violation which establish the base penalty range for the violation.

3.0 MRS Program

Pursuant to the legislative framework set out above, this section provides background information on the BC MRS Program.

3.1 Role of the Western Electricity Coordinating Council and the Adoption of Compliance Provisions

By Order G-123-09, pursuant to section 8 of the UCA, the BCUC appointed the Western Electricity Coordinating Council (WECC) as its Administrator for the BC MRS Program. The BCUC and WECC entered into an administration agreement (Administration Agreement) dated October 8, 2009 (which was renewed in October 2014 and again in July 2019) whereby the BCUC granted WECC the authority to assist the BCUC with respect to functional registration of BC Entities and monitoring compliance of Reliability Standards adopted in BC. This grant of authority is restricted to the actions and obligations specified in the Administration Agreement as reflected in the Rules. Section 3 of the Administration Agreement provides that “WECC shall make

⁷ Rules of Procedure for Reliability Standards in British Columbia, by Order R-40-17 dated September 1, 2017, p. 2.

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to Order R-24-22

recommendations to the BCUC regarding a violation(s) of the Reliability Standard(s) but shall not determine the disposition of the BCUC-approved Reliability Standards." It goes on to state that "[n]othing in this Agreement delegates any of the BCUC's statutory jurisdiction to WECC."

Pursuant to Section 4.3.2(5) of the Compliance Monitoring Program, as the BCUC's Administrator for the BC MRS Program, WECC provides a Notice of Alleged Violation addressed to a BC Entity and WECC's risk assessment of each Alleged Violation, based on WECC's assessment of the facts and evidence.

WECC considers various factors in its review of Possible and Alleged Violations. These factors include, but are not limited to:⁸

- (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 Entity's compliance history;
- (7) the Entity's self-reports and voluntary corrective action;
- (8) the degree and quality of cooperation by the Entity in an audit or investigation process, and in any remedial action;
- (9) the quality of the Entity's compliance program;
- (10) any attempt by the Entity to conceal the violation or any related information;
- (11) whether the violation was intentional; and
- (12) any other relevant information or extenuating circumstances.

On September 16, 2013, the BCUC issued Order R-33-13 which ordered, amongst other things, that the Rules be revised to provide for the adoption of two NERC indicators, namely, Violation Risk Factor and Violation Severity Level as compliance provisions and for the incorporation of penalty ranges. Subsequently, by Order R-34-15, dated June 3, 2015, the BCUC adopted the NERC Violation Risk Factor and Violation Severity Level indicators as compliance provisions for Reliability Standards adopted in BC. These compliance provisions, included in Section D of each Reliability Standard or published separately by NERC, are considered in the assessment of penalties.

3.2 Assessment of Administrative Penalties

The factors governing the BCUC's determination of a penalty following confirmation of a violation are set out in section 109.2 of the UCA. In assessing the appropriate penalty, if any, the BCUC may also be guided but is not bound by the provisions of the Penalty Guidelines for BC Mandatory Reliability Standards (Penalty Guidelines) which were approved by Order R-28-16, dated June 23, 2016. The most recent revision of the Penalty Guidelines was approved by Order R-40-17, dated September 1, 2017.

⁸ Exhibit A2-5-1, WECC Revised Notice of Alleged Violation CF1374 dated June 8, 2022, p. 7.

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The Penalty Guidelines include the BC penalty matrices (Penalty Matrix) setting out recommended minimum and maximum penalties (Base Penalty Range) consistent with section 3(4) of the Administrative Penalties Regulation.⁹ The Penalty Guidelines set out one Penalty Matrix for Corporations and another for a director, officer or agent of a corporation. The Base Penalty Range for a violation is determined by the combination of Violation Risk Factor and Violation Severity Level of that violation. Section 2.5 of the Penalty Guidelines states that BCUC's administrator (i.e., WECC) will consider the BC Penalty Matrix and identify in the Notice of Alleged Violation the Base Penalty Range that represents the seriousness of the violation.

In a report regarding an inquiry into potential adjustments to the BC MRS Program, the BCUC states that:

Regardless of any matrix or listing of factors, the [BCUC] retains the discretion to determine that an administrative penalty is not appropriate despite the finding of a contravention or to impose an amount of an administrative penalty to the maximum limit provided in the *Administrative Penalties Regulation*. In imposing a penalty, however, it must take into account the factors set out in section 109.2(3) of the UCA.¹⁰

The Penalty Matrix for corporations is set out in Table 1 below.

Table 1: BC Penalty Matrix for a Corporation¹¹

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

As stated in Section 2.3 of the Penalty Guidelines, the NERC Violation Risk Factor and Violation Severity Level that accompany each Reliability Standard adopted in BC will be used as compliance provisions in the MRS Program to consider the Base Penalty Range.

Each Reliability Standard Requirement has been assigned a Violation Risk Factor based on the expected or potential impact of the violation to the reliability of the Bulk Power System.¹² One of the three defined levels of Violation Risk Factor is assigned to each Reliability Standard Requirement:¹³

- High: "A requirement that, if violated, could directly cause or contribute to bulk electric system instability, separation, or a cascading sequence of failures, or could place the bulk electric system at an unacceptable risk of instability, separation, or cascading failures; or, a requirement in a planning time frame that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly cause or contribute to bulk electric system instability, separation, or a cascading

⁹ *Administrative Penalties Regulation*, BC Reg 316/2012.

¹⁰ Order R-33-13, dated September 16, 2013, Report, p. 14.

¹¹ Amounts may be imposed for each day the contravention continues, per *Utilities Commission Act*, RSBC 1996, Chapter 473, section 109.2(2).

¹² NERC Rules of Procedure, Appendix 4B Sanction Guidelines, effective January 19, 2021, p. 7.

¹³ NERC Violation Risk Factors, p. 1.

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sequence of failures, or could place the bulk electric system at an unacceptable risk of instability, separation, or cascading failures, or could hinder restoration to a normal condition.”

- Medium: “A requirement that, if violated, could directly affect the electrical state or the capability of the bulk electric system, or the ability to effectively monitor and control the bulk electric system. However, violation of a medium risk requirement is unlikely to lead to bulk electric system instability, separation, or cascading failures; or, a requirement in a planning time frame that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly and adversely affect the electrical state or capability of the bulk electric system, or the ability to effectively monitor, control, or restore the bulk electric system. However, violation of a medium risk requirement is unlikely, under emergency, abnormal, or restoration conditions anticipated by the preparations, to lead to bulk electric system instability, separation, or cascading failures, nor to hinder restoration to a normal condition.”
- Lower: “A requirement that is administrative in nature and a requirement that, if violated, would not be expected to adversely affect the electrical state or capability of the bulk electric system, or the ability to effectively monitor and control the bulk electric system; or, a requirement that is administrative in nature and a requirement in a planning time frame that, if violated, would not, under the emergency, abnormal, or restorative conditions anticipated by the preparations, be expected to adversely affect the electrical state or capability of the bulk electric system, or the ability to effectively monitor, control, or restore the bulk electric system. A planning requirement that is administrative in nature.”

Violation Severity Levels are defined levels of the degree to which a Requirement of a Reliability Standard was violated. Whereas Violation Risk Factors are determined pre-violation and indicate the relative potential impacts that violations of each Reliability Standard could pose to the reliability of the Bulk Power System, Violation Severity Levels are assessed post-violation and are an indicator of the severity of the actual violation of the Reliability Standard(s) Requirement(s) in question.¹⁴ Violation Severity Levels have designations as described below:

Table 2: NERC Violation Severity Level Descriptions¹⁵

Lower VSL	Moderate VSL	High VSL	Severe VSL
The performance or product measured did not meet a minor aspect of the requirement.	The performance or product measured did not meet a significant aspect of the requirement, but the majority of the requirement was met.	The performance or product measured did not meet a majority of the requirement, but did meet a significant aspect of the requirement.	The responsible entity failed to meet the performance of the requirement.

4.0 Process

4.1 Process Prior to the Proceeding

WECC conducted a Compliance Audit of BC Hydro on October 2, 2017 through October 13, 2017, during which BC Hydro failed to provide evidence that its Facility Ratings for its solely and jointly owned Facilities were consistent with the associated Facility Ratings methodology or documentation for determining its Facility Ratings.¹⁶

¹⁴ NERC Rules of Procedure, Appendix 4B Sanction Guidelines, effective January 19, 2021, p. 7.

¹⁵ NERC Violation Severity Level Guidelines, p. 2.

¹⁶ Exhibit A2-5-1, p. 1.

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On November 14, 2018, BC Hydro submitted the first version of its Mitigation Plan to address its noncompliance and after “extensive work with WECC”, on May 2, 2019, WECC accepted BC Hydro’s Mitigation Plan.¹⁷

On August 21, 2020, WECC issued Notice of Alleged Violation CF1374 (Notice CF1374) to BC Hydro with a copy to the BCUC, alleging a violation of FAC-008-03 R6 identified as Violation ID BCUC2017000621 (Alleged Violation).¹⁸

On September 18, 2020, BC Hydro filed its response to Notice CF1374 stating that it does not contest the Alleged Violation. [REDACTED]

On December 3, 2021, the BCUC appointed a panel to determine whether to confirm the Alleged Violation.

By Order R-3-22 dated January 18, 2022, the BCUC confirmed the Alleged Violation (Violation) to be a contravention of the UCA. Accordingly, the Alleged Violation became the Violation.

4.2 Process in this Proceeding

On February 2, 2022, the BCUC appointed the Panel to consider a penalty for the Violation.²⁰

On February 11, 2022, the BCUC issued a letter to WECC requesting information and evidence to substantiate the following claims in Notice CF1374 (Evidence Request):²¹

- Relevant repeat violations of this Reliability Standard (Historical Violations); and
- [REDACTED]

On February 28, 2022 and March 11, 2022, WECC requested extensions to file its response as it needed more time to fulfill the Evidence Request. By letters dated February 28, 2022 and March 14, 2022,²² the BCUC accepted WECC’s extension requests to allow submission of the response to the Evidence Request by March 25, 2022.

On March 25, 2022, WECC filed its response to the Evidence Request, withdrawing the findings of Historical Violations and [REDACTED] and providing new information concerning the facts and evidence of Notice CF1374.²³

By Order R-15-22 dated April 1, 2022, the BCUC established a regulatory timetable for a confidential hearing process to review the Violation for the purpose of penalty determination.

¹⁷ Exhibit A2-5-1, p. 4.

¹⁸ Exhibit A2-6, Notice of Alleged Violation CF1374 dated August 21, 2020, p. 1.

¹⁹ Exhibit A2-7, BC Hydro Response to Notice CF1374 dated September 18, 2020, p. 1.

²⁰ Exhibit A-1.

²¹ Exhibit A-2.

²² Exhibits A-3 and A-4.

²³ Exhibit A2-2.

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By letter dated April 13, 2022, BC Hydro requested that the BCUC adjourn [REDACTED] this proceeding, to allow BC Hydro reasonable opportunity to consider and respond to new information provided by WECC as well as the information provided by WECC concerning the facts and evidence contained in Notice CF1374 (Adjournment Request). BC Hydro requested an extension to file further submissions by April 29, 2022.

By letter dated April 22, 2022, the BCUC rejected BC Hydro's Adjournment Request, stating that BC Hydro had sufficient time to respond to evidence on the record by April 28, 2022.²⁴

By letter dated April 28, 2022, BC Hydro submitted a response to the proposed penalty amount and UCA Factors and made additional submissions addressing:

- (i) its mitigation efforts relating to FAC-008-3;
- (ii) expiration of the limitation period for imposition of an administrative penalty as BC Hydro alleges that WECC delayed issuance of Notice CF1374 when WECC began drafting Notice CF1374 and determined that mitigation information was not required for issuance, but did not issue Notice CF1374 until approximately six to nine months later;
- (iii) [REDACTED]; and
- (iv) matters concerning procedural fairness.²⁵

On April 28, 2022, WECC wrote to the BCUC responding to BC Hydro's Adjournment Request of April 13, 2022.²⁶

By letter dated May 5, 2022, the BCUC received a BC Hydro submission in which it requested that correspondence between the BCUC and WECC dated April 28, 2022, of which BC Hydro received copies, should be included in evidence and considered by the BCUC in this proceeding (BC Hydro Evidence Request).²⁷

The BCUC accepted the BC Hydro Evidence Request by Order R-20-22 dated May 27, 2022 and accepted WECC's letter of April 28, 2022 into evidence as Exhibit A2-4.

On May 27, 2022, the BCUC issued a letter to WECC requesting a response to BC Hydro's comments on WECC's alleged delay in issuing Notice CF1374, as well as a revision of Notice CF1374 regarding [REDACTED] and the current penalty recommendation.²⁸

By letter dated June 8, 2022, WECC submitted to the BCUC a revised Notice CF1374 removing references to the withdrawn Historical Violations [REDACTED] and including the current penalty recommendation (Revised Notice CF1374).²⁹ WECC also provided a response to BC Hydro's comments on the alleged delay in issuing Notice CF1374 (Reply to Alleged Delay).³⁰

On June 27, 2022, and pursuant to Order R-20-22, BC Hydro submitted its response with respect to the Reply to Alleged Delay.³¹

²⁴ Exhibit A-6.

²⁵ Exhibit B-2.

²⁶ Exhibit A2-4.

²⁷ Exhibit B-3, BC Hydro submission dated May 5, 2022, p. 1.

²⁸ Exhibit A-7.

²⁹ Exhibit A2-5, pp. 5-16.

³⁰ *ibid.*, p. 3.

³¹ Exhibit B-4.

5.0 BC Hydro Concerns about the Notice and Hearing Process

BC Hydro raises a number of concerns about the investigation and hearing process. In this section the Panel considers these concerns and addresses the specific issues raised by BC Hydro, namely:

- The limitation period for administrative penalties;
- [REDACTED]
- BC Hydro's allegation that it was denied procedural fairness.

5.1 Limitation Period for Administrative Penalties

BC Hydro points to the two-year limitation period in the *UCA* with respect to the imposition of an administrative penalty and, as set out in section 2.1 of the Penalty Guidelines for BC MRS, that the limitation period commences on the date a Notice of Alleged Violation is issued to an Entity with a copy to the BCUC. Therefore, BC Hydro submits that any delay associated with the issuance of a Notice of Alleged Violation is highly prejudicial to BC Hydro.³²

BC Hydro notes, from the evidence submitted by WECC, WECC had prepared the draft of Notice CF1374 as early as November 2019 and further, WECC believed, as early as February 2020, that it did not need BC Hydro's completion of mitigation plans to issue Notice CF1374. However, WECC did not issue Notice CF1374 until August 21, 2020, nine months after the first draft of Notice CF1374. BC Hydro states that WECC could have issued Notice CF1374 between six and nine months earlier and that WECC has not provided an explanation for this delay (Alleged Delay).³³

BC Hydro submits that the start of the limitation period cannot be deferred by delaying the issuance of a Notice of Alleged Violation and that WECC should have issued Notice CF1374 when it prepared its draft in November 2019, and certainly no later than February 2020, which means the limitation period would have commenced in or around November 2019 or February 2020 and therefore, by the time of BC Hydro's submission, would have expired.³⁴ BC Hydro views the Alleged Delay as highly prejudicial to BC Hydro given that the Penalty Guidelines for BC MRS generally tie the running of limitation periods for administrative penalties to the issuance of notice of alleged violations.³⁵ BC Hydro also argues that WECC should not be permitted to postpone the running of a limitation period by delaying the issuance of a Notice of Alleged Violation without a reasonable explanation,³⁶ and that WECC has not provided an explanation for why it took a further six to nine months to issue Notice CF1374.³⁷

WECC states that it did not unreasonably delay the issuance of Notice CF1374.³⁸ WECC states that, following a compliance audit wherein the Possible Violation contained in Notice CF1374 was identified, WECC's enforcement process consisted of reviewing all evidence concerning the Possible Violation submitted by BC Hydro, to ensure the nature and scope of the violation were identified. Further, to effectively process and issue

³² Exhibit B-2, p. 3.

³³ *ibid.*, pp. 3–4

³⁴ *ibid.*, p. 6.

³⁵ Exhibit A2-3, BC Hydro Request for Suspension of Enforcement Proceedings dated April 13, 2022, p. 2.

³⁶ Exhibit B-2, p. 5.

³⁷ *ibid.*, p. 6.

³⁸ Exhibit A2-5, p. 2.

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Notice CF1374, WECC submitted that it needed to gather all necessary information concerning the extent of condition, root cause, and the risk to the reliability of the Bulk Electric System posed by the Possible Violation, and this evidence was gathered over the subsequent months.³⁹ WECC submits that BC Hydro did not provide its extent of condition information in full until June 30, 2020.⁴⁰

In WECC's Reply to Alleged Delay, and in response to BC Hydro's suggestion that "as early as February 11, 2020, WECC indicated that it did not need completion of the Mitigation Plan to issue Notice CF1374, yet did not issue Notice CF1374 until August 2020," WECC submits that 10 days after February 11, 2020, WECC determined that a revised Mitigation Plan was required.⁴¹ WECC stated that in the subsequent months, it continued coordinating with BC Hydro to discuss the evidence requirements for its revised Mitigation Plan and how interim risk is addressed during the mitigation process.⁴²

BC Hydro submits that the Rules of Procedure do not require an Entity to submit a Mitigation Plan prior to WECC issuing a Notice of Alleged Violation, only that WECC must provide the Entity notice that it can submit a Mitigation Plan while contesting an Alleged Violation. Therefore, BC Hydro submits that any consideration around revising a Mitigation Plan already in place does not provide WECC grounds to delay the issuance of a Notice of Alleged Violation.⁴³

WECC submits that contrary to BC Hydro's understanding, "the time it takes for WECC to process a violation or WECC's internal deliberations concerning when a [Notice of Alleged Violation] is or is not ready to be issued are factors that are not relevant to the BCUC's determination of a penalty that bears a reasonable relation to the serious [sic] of the violation."⁴⁴

BC Hydro agrees with WECC that the time it takes WECC to process a violation or for its internal deliberations concerning when WECC will issue a Notice of Alleged Violation is not relevant to the BCUC's determination on the amount of penalty [emphasis added].⁴⁵ However, BC Hydro submits that once the limitation period with respect to a violation has expired, the BCUC does not have jurisdiction to issue any penalty at all.⁴⁶

BC Hydro also notes that a limitation period is meant to include a reasonable opportunity to investigate a potential violation and that WECC cannot artificially extend the limitation period, whether intentionally or unintentionally, by delaying the issuance of a Notice of Alleged Violation while it investigates the violation.⁴⁷

BC Hydro submits that the BCUC should dismiss this proceeding on the basis that the limitation period has expired and that the BCUC no longer has jurisdiction to issue a notice of administrative penalty.⁴⁸

³⁹ *ibid.*

⁴⁰ Exhibit A2-2, pp. 2-3.

⁴¹ Exhibit A2-5, p. 2.

⁴² *ibid.*

⁴³ Exhibit B-4, p. 2.

⁴⁴ Exhibit A2-5, p. 2.

⁴⁵ Exhibit B-4, p. 2.

⁴⁶ *ibid.*

⁴⁷ *ibid.*

⁴⁸ Exhibit B-2, p. 7.

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Panel Determination

The Panel finds that the limitation period for an administrative penalty for the Violation has not expired and that the BCUC continues to have the jurisdiction to impose an administrative penalty for the Violation until August 21, 2022.

BC Hydro alleges that:

- WECC could have issued Notice CF1374 when it prepared a draft of Notice CF1374, nine months prior to when Notice CF1374 was issued on August 21, 2020;
- The start of the limitation period for an administrative penalty cannot be deferred by delaying the issuance of a Notice of Alleged Violation; and
- This delay was “highly prejudicial” to BC Hydro.

The Panel finds that the elapsed time between WECC’s preparation of a draft of Notice CF1374 and the issuance of Notice CF1374 was reasonable. The Panel accepts that WECC needed time to gather information concerning the extent of the condition of BC Hydro’s transmission network posed by the Violation, and that BC Hydro did not provide this information in full until June 30, 2020, a fact that BC Hydro does not dispute.

The Panel finds that the revisions to the Mitigation Plan related to the Violation that occurred between WECC’s preparation of a draft of Notice CF1374 and the issuance of Notice CF1374 were not the cause of the Alleged Delay. It is coincidental that these revisions took place at the same time as WECC was evaluating the Possible Violation, which WECC was not able to complete until BC Hydro delivered its evidence on the extent of condition of its transmission network.

The Panel finds that the time period between June 30, 2020 and August 21, 2020 was reasonable for WECC to deliberate on the Violation once the extent of the condition of BC Hydro’s transmission network was available to it.

For the foregoing reasons, the Panel finds that WECC did not unreasonably delay the issuance of Notice CF1374 from the time the draft was prepared in November 2019 or from February 2020 to the date it was issued on August 21, 2020, and therefore there are no circumstances that exist to demonstrate that the limitation period began before the issuance of Notice CF1374 on August 21, 2020. As a result, the Panel further finds that no prejudice arises to BC Hydro from the fact that nine months elapsed between the draft of Notice CF1374 and its issuance.

5.2 [REDACTED]

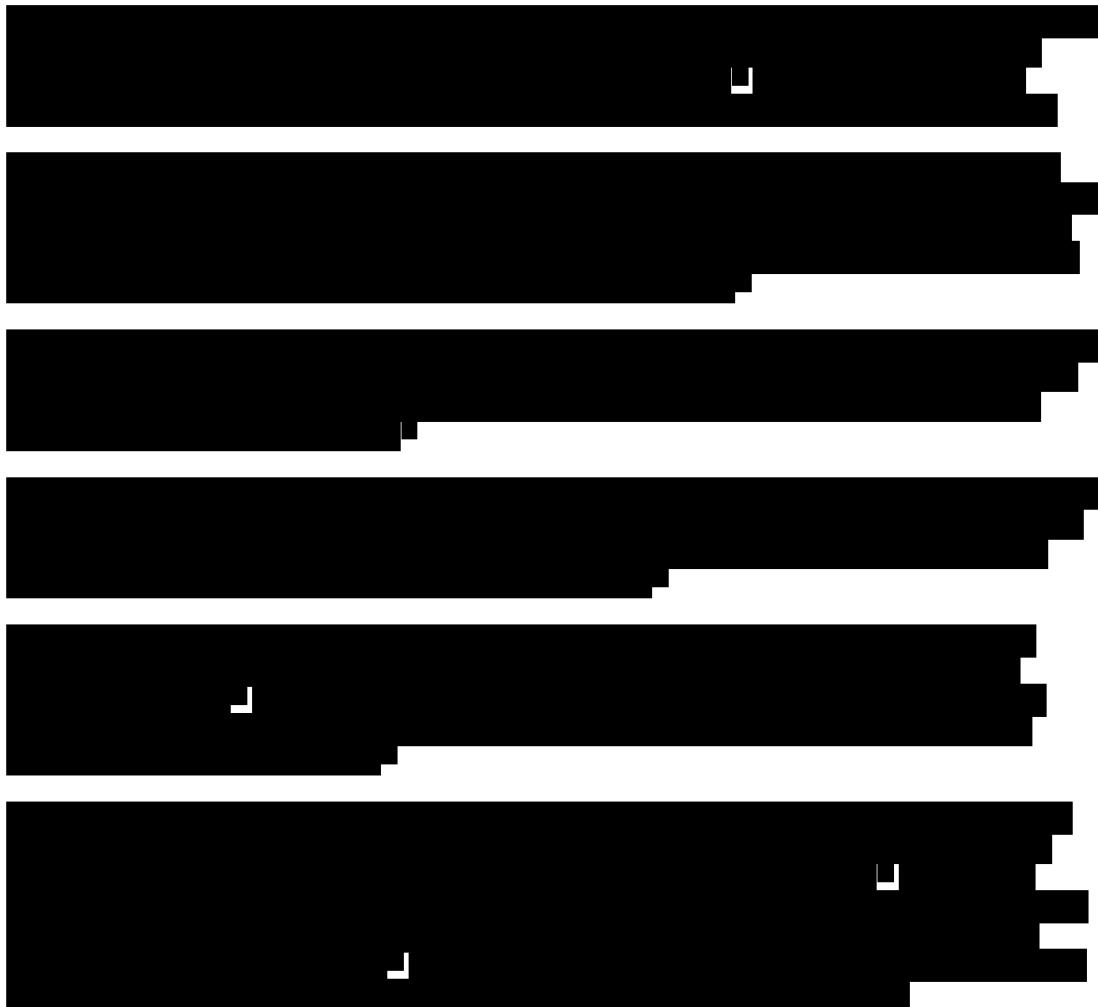
[REDACTED]

[REDACTED]

⁴⁹ Exhibit A2-6, p. 8.

⁵⁰ Exhibit A2-7, pp. 1–2.

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⁵¹ Exhibit A2-2, p. 1.

⁵² *ibid.*

⁵³ *ibid.*, p. 2.

⁵⁴ Exhibit B-2, p. 7.

⁵⁵ *ibid.*, p. 1.

⁵⁶ *ibid.*, p. 8.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *ibid.*, p. 9.

Panel Discussion

[REDACTED]

[REDACTED]

5.3 Alleged Denial of Procedural Fairness

BC Hydro submits that all administrative bodies acting under statutory authority have a “duty to comply with the rules of natural justice and to follow the rules of procedural fairness,” and that parties affected should “have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair, impartial, and open process, appropriate to the statutory, institutional, and social context of the decision.”⁶⁰

BC Hydro submits that its procedural fairness concerns relate to its right to know the case against it and that WECC’s enforcement of the Notices of Alleged Violation has prejudiced BC Hydro’s ability to respond to the allegations against it. BC Hydro submits it had a reasonable expectation that WECC would set out the facts and evidence upon which it based its allegations and that WECC would set out the basis for its recommended penalty. BC Hydro submits that because WECC has denied BC Hydro access to information required for BC Hydro to know and understand the case against it raises fairness and other procedural concerns.⁶¹

BC Hydro further submits it is entitled to a transparent process, including a “complete understanding of how WECC arrived at its penalty recommendations,” and to a “higher degree of procedural fairness” because of the significance of the monetary penalties involved.⁶²

[REDACTED]

Specifically, BC Hydro submits that WECC’s penalty recommendations are not transparent because:⁶⁴

- [REDACTED]
- WECC has not explained why the calculated penalties under the BC Penalty Tool and NERC Penalty Tool were [REDACTED]; and
- WECC has also not explained how the withdrawal of the alleged Historical Violations affected the recommended or calculated penalty amounts.

⁶⁰ Ibid., p. 11.

⁶¹ Ibid., pp. 11–12.

⁶² Ibid.

⁶³ Ibid., p. 13.

⁶⁴ Ibid.

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BC Hydro also submits that it remains unable to fully understand and test how WECC arrived at the new revised proposed penalty amount as WECC declined to provide the penalty tool.⁶⁵

In BC Hydro's view, the process to date clearly demonstrates that the process BC Hydro has received falls far short of the requirements of procedural fairness, including an unbiased administration of the Compliance Monitoring Program, specifically:⁶⁶

- [REDACTED]
- WECC has indicated it delayed issuing the FAC-008 NOAV by six to nine months (depending on whether November 2019 or February 2020 are viewed as the key dates);
- Despite a request from the BCUC, WECC has declined to provide its penalty tool it uses to determine recommended penalties, arguing that BC Hydro may use the tool to challenge the recommended penalties; and
- In contemplating when to issue Notice CF1374, WECC considered that "it could get [BC Hydro's] attention to see a penalty amount associated with their violation and behavior."⁶⁷

Based on BC Hydro's submissions as presented in Sections 5.1, 5.2 and 5.3 above, BC Hydro submits that if the BCUC does not make the determination that the limitation period associated with the issuance of Notice CF1374 has expired, BC Hydro requests the BCUC dismiss this penalty proceeding or levy an administrative penalty of \$0 due to [REDACTED] and the procedural unfairness and biased administration of the Notice CF1374 investigation and enforcement process.⁶⁸

Panel Determination

While this proceeding concerns the determination of a penalty associated with the Violation, BC Hydro raises concerns regarding the overall process, including the investigation and confirmation processes that led to this penalty proceeding. The Panel addresses here BC Hydro's concerns in their entirety, including the investigation and confirmation processes and this proceeding.

The Panel addresses each of the following matters raised by BC Hydro in its submission:

- The allegation that WECC has not allowed BC Hydro to know the complete case being made against it;
- The weight to be given to WECC's recommended penalty amounts; and
- The allegation that WECC's actions in enforcing Notice CF1374 do not demonstrate an "unbiased administration" of the Compliance Monitoring Program.⁶⁹

⁶⁵ Ibid.

⁶⁶ Ibid., p. 10.

⁶⁷ Exhibit A2-2-1, p. 22.

⁶⁸ Exhibit B-2, p. 2.

⁶⁹ Ibid., p. 10.

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Knowing the Case to Meet

The Panel finds that BC Hydro was presented with the case it had to meet in Notice CF1374 on August 21, 2020. In Notice CF1374, WECC sets out the facts in support of the Violation, which were the basis for BC Hydro deciding not to contest that the Violation had occurred. The Panel is using the same facts set out in Notice CF1374 for determining the penalty associated with the Violation, so the case against BC Hydro has not changed since it decided not to contest the Violation.

The Panel further finds that BC Hydro had an opportunity to contest the Violation. BC Hydro responded to Notice CF1374 on September 18, 2020, one month after WECC issued the notice. In its response, BC Hydro did not contest the Violation and submitted that [REDACTED]
[REDACTED], but made no submission that it had not had an opportunity or sufficient time to respond.

[REDACTED]

[REDACTED]

The Panel finds that BC Hydro had an opportunity to respond to the recommended penalty amount for the Violation and the factors upon which a penalty would be based. The Panel further finds that BC Hydro had sufficient time, from April 1 to April 28, 2022, to make its submission on WECC's recommended penalty amount and that the case against BC Hydro was not modified during that period.

The Panel determines later in this section of these Reasons for Decision that it gives no weight to WECC's recommended penalty amount for the Violation. As a result, WECC's recommended penalty amount is not part of the case against BC Hydro.

Even though the Panel gives no weight to WECC's penalty recommendations, the Panel finds that the absence of WECC's penalty tool as evidence in this proceeding does not give rise to procedural unfairness. WECC's penalty tool is a part of its internal deliberative process, and the Panel finds that it is inappropriate to share this with Entities. WECC has provided a description of the factors affecting the recommended penalty amount, including WECC's assessment of the Violation Risk Factor and Violation Severity Level of the Violation which together determine the Base Penalty range for the Violation. The Panel finds that WECC's description of the factors affecting the recommended penalty amount is sufficient to allow BC Hydro to make its submission on whether it considers the penalty amount appropriate.

For the foregoing reasons, the Panel rejects BC Hydro's submission that it has been denied access to information required for it to know and understand the case against it.

Weight to Give WECC's Penalty Recommendations

WECC's proposed penalty amount for the Violation is merely a recommendation, and the Panel is not obligated to accept it.

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The Panel observes the following regarding WECC's evidence with respect to the Violation:

- WECC has not explained [REDACTED];
- WECC has not explained how the withdrawal of the alleged Historical Violations affected the recommended penalty amount;
- WECC admits that the cause of its withdrawal of the alleged Historical Violations was “a lack of familiarity with BC entity-specific compliance history treatment”;⁷⁰ and
- [REDACTED]

Taken together, these facts undermine the Panel's confidence in the process WECC used to determine its recommended penalty amount for the Violation. As a result, the Panel gives no weight to WECC's recommended penalty amount. For additional clarity, this only applies to WECC's recommended penalty amount and not to the factors that WECC used to assess the penalty amount, which the Panel considers in Section 6.

Administration of the Compliance Monitoring Program

BC Hydro submits that the following demonstrates that it has not received a fair process (Issues): 72

1) [REDACTED]

2) WECC has indicated it delayed issuing the FAC-008 Notice of Alleged Violation by six to nine months (depending on whether November 2019 or February 2020 are viewed as the key dates);

3) Despite a request from the BCUC, WECC has declined to provide its penalty tool it uses to determine recommended penalties, arguing that BC Hydro may use the tool to challenge the recommended penalties; and

4) In contemplating when to issue Notice CF1374, WECC considered that “it could get [BC Hydro’s] attention to see a penalty amount associated with their violation and behavior.”

⁷³ While WECC's management competence does not meet the Panel's expectations, the basic facts of the Violation are not disputed by BC Hydro and BC Hydro has had sufficient opportunity to know the case against it and to respond to it, as we noted above.

⁷⁰ Exhibit A2-4, p. 2.

71 *Ibid.*

⁷² Exhibit B-2, p. 10.

⁷³ Exhibit A2-4, p. 2.

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With respect to Issue 2, the Panel determined above that WECC did not unreasonably delay the issuance of Notice CF1374 from the time the draft was prepared in November 2019 to the date it was issued on August 21, 2020. For this reason, the Panel further finds that Issue 2 does not demonstrate that the process BC Hydro received was unfair.

With respect to Issue 3, the Panel found above that it is inappropriate for WECC to share its penalty tool with Entities. For this reason, the Panel further finds that Issue 3 does not demonstrate that the process BC Hydro received was unfair.

With respect to Issue 4, in the Panel's view WECC's comment in its internal correspondence that "it could get [BC Hydro's] attention" with "a penalty amount associated with their violation and behavior" inappropriately conflated the roles of investigator and overseer of the mitigation efforts. However, there is no suggestion that the case presented by WECC in Notice CF1374 was less than truthful, and, as the Panel finds above, BC Hydro knew the case against it, has had the opportunity to respond, and did not contest the Alleged Violation. Further, as previously noted, the Panel gives no weight to WECC's penalty recommendations. For these reasons, the Panel finds that WECC's comment in its internal correspondence does not demonstrate that BC Hydro did not receive fair process.

For the foregoing reasons, the Panel finds that WECC's actions do not demonstrate a biased administration of the Compliance Monitoring Program as alleged by BC Hydro.

6.0 Violation Assessment

The Panel addresses the UCA Factors before turning to any Additional Factors that may be relevant in order to determine whether to impose an administrative penalty in respect of the Violation and, if a penalty is warranted, the appropriate amount of that penalty.

BC Hydro submits that while it has provided the BCUC with information regarding WECC's revised penalty recommendation amount using the criteria stipulated in section 109.2(3) of the UCA, it provided this information without fully knowing the case it is required to meet and where further information from WECC may be required. Accordingly, BC Hydro states that its analysis is subject to change based on any additional information provided by WECC.

6.1 Violation BCUC2017000621 – FAC-008-3 R6 – Notice of Alleged Violation CF1374

6.1.1 Summary of the Reliability Standard

Violation BCUC2017000621 described in Notice CF1374 is a contravention involving one instance of a violation of Reliability Standard FAC-008-3 Requirement 6, which sets out the requirements BC Hydro must meet with regards to Facility Ratings.

Requirement FAC-008-3 R6 requires each Transmission Owner and Generator Owner to have Facility Ratings for its solely and jointly owned Facilities that are consistent with the associated Facility Ratings methodology or documentation for determining its Facility Ratings.⁷⁴

MRS Reliability Standard Requirement FAC-008-3 R6 has a Violation Risk Factor of Medium, and possible Violation Severity Levels of Lower, Moderate, High or Severe.

⁷⁴ Exhibit A-2-5-1, Attachment 1, p. 1.

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The definitions of the Violation Severity Levels for MRS Reliability Standard Requirement FAC-008-3 R6 are:⁷⁵

- Lower: "The responsible entity failed to establish Facility Ratings consistent with the associated Facility Ratings methodology or documentation for determining the Facility Ratings for 5% or less of its solely owned and jointly owned Facilities."
- Moderate: "The responsible entity failed to establish Facility Ratings consistent with the associated Facility Ratings methodology or documentation for determining the Facility Ratings for more than 5% or more, but less than up to (and including) 10% of its solely owned and jointly owned Facilities."
- High: "The responsible entity failed to establish Facility Ratings consistent with the associated Facility Ratings methodology or documentation for determining the Facility Ratings for more than 10% up to (and including) 15% of its solely owned and jointly owned Facilities."
- Severe: "The responsible entity failed to establish Facility Ratings consistent with the associated Facility Ratings methodology or documentation for determining the Facility Ratings for more than 15% of its solely owned and jointly owned Facilities."

6.1.2 Basic Facts of Violation 1

The basic facts of Violation BCUC2017000621 are summarized in Table 3:

Table 3: Basic Facts of Violation 1

Reference	MRS Reliability Standard and Requirement	Violation Discovery Date	Violation Risk Factor	Violation Severity Level	Base Penalty Range
BCUC2017000621	FAC-008-3 R6	September 28, 2017 ⁷⁶	Medium ⁷⁷	Severe ⁷⁸	\$0 to \$355,000 ⁷⁹

Violation Assessment

WECC states that the alleged violation began on August 1, 2015 when the Standard became mandatory and enforceable and is expected to be remediated by July 1, 2022.

From October 2, 2017 through October 13, 2017, WECC conducted a Compliance Audit of BC Hydro. During the Compliance Audit, WECC states that BC Hydro failed to provide evidence that its Facility Ratings for its solely and jointly owned Facilities were consistent with the associated Facility Ratings methodology or documentation for determining its Facility Ratings.⁸⁰

WECC issued a Data Request to BC Hydro as part of the Compliance Audit. In its response, BC Hydro:

⁷⁵ FAC-003-4 Transmission Vegetation Management Reliability Standard, as Attachment E to Order R-29-17, pp. 302–303.

⁷⁶ Ibid.

⁷⁷ Ibid., Attachment 1, p. 8.

⁷⁸ Ibid..

⁷⁹ BCUC Penalty Guidelines for British Columbia Mandatory Reliability Standards, p. 2.

⁸⁰ Exhibit A2-5-1, Attachment 1, p. 1.

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- 1) Identified wave traps as potentially the most limiting element for three transmission lines; however, these wave traps were not in service at the time of the Compliance Audit;
- 2) Did not identify wave traps at three substations; and
- 3) Did not have a full inventory of wave traps in its Facility Ratings for its entire system.⁸¹

WECC states that during the Compliance Audit BC Hydro also identified additional equipment with unknown Facility Ratings that required field verification to determine the correct Facility Ratings. BC Hydro initiated a review of all its transmission lines subject to the Standard; 271 transmission lines and approximately 4,800 series Elements. BC Hydro completed a review on March 16, 2018 based on operating as-built single line diagrams and concluded that three disconnect switches and four wave traps were missing equipment ratings.⁸²

WECC states that on November 8, 2018, BC Hydro conducted an additional review of the affected transmission lines and series Elements and determined that 33 transmission lines had equipment where the most limiting ratings were not recorded in the Facility Ratings documentation. As well, operating on-line as-built diagrams were missing equipment ratings and that equipment data pertaining to Facility Ratings was hosted in various databases, thus BC Hydro relied on undocumented institutional knowledge and a laborious manual process to retrieve this data.⁸³

WECC states that during the process of remediating and mitigating the deficiencies discovered in the Compliance Audit and BC Hydro's additional review on November 8, 2018, BC Hydro discovered a number of Facilities that had transformer capabilities limited by other equipment, such as bus and disconnect switches that were not indicated as such in the Facility Ratings. As well, Facilities with shunt reactors had other equipment rated lower than the Facility Ratings of the reactors. WECC states that BC Hydro also identified transmission Facilities which did not have Facility Ratings that reflected all the series Elements. In addition, for 165 solely-owned Facilities and 10 jointly-owned transmission lines BC Hydro found that legacy conductor rating evidence was incomplete.⁸⁴

WECC attributes the root cause of these issues to BC Hydro "not having fully documented controls for ensuring that its personnel followed its documented Facility Rating methodology and documentation process." WECC states that, in the past, relying on a legacy process for updating its Facility Ratings, BC Hydro "did not effectively communicate changes on its system, resulting in equipment ratings not being collected and recorded."⁸⁵

WECC considers the Violation Time Horizon for MRS Requirement FAC-008-3 R6 to be "Operations Planning" and that 48 hours to 90 days is a reasonable timeframe for how long it should take an Entity to remediate a violation of such an MRS Requirement.⁸⁶

WECC states that BC Hydro has submitted a Mitigation Plan at this time; however, BC Hydro "has not demonstrated its commitment to the reliability of the [Bulk Electric System] in meeting the deadlines and

⁸¹ Ibid.

⁸² Ibid., Attachment 1, p. 2.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid., Attachment 1, p. 8.

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milestones of the Mitigation Plan,” but in fact, BC Hydro “intends to extend its mitigation plan an additional two years, to July 1, 2022.”⁸⁷

Panel Determination

The Panel accepts the above facts provided by WECC, which are not contested by BC Hydro.

6.1.3 Consideration of Violation BCUC2017000621 under section 109.2 of the UCA

Before imposing an administrative penalty on a person, the Panel must consider each of the UCA Factors as it pertains to the Confirmed Violation. The Panel’s considerations of the UCA Factors pertaining to Violation BCUC2017000621 are set out below.

(a) Previous Contraventions, Administrative Penalties Imposed and Orders Issued

Section 109.2(3)(a) of the UCA requires the Panel to consider the history of previous contraventions, administrative penalties and orders issued with respect to BC Hydro.

WECC initially stated that BC Hydro had a history of non-compliance with MRS Standard FAC-008.⁸⁸ However, WECC subsequently states that BC Hydro’s previous FAC-008 compliance history was “during the initial period” (i.e. between the period of June 4, 2009 and November 1, 2010, when the BCUC determined that Entities would not be found to be in breach of adopted Reliability Standards that are mitigated by November 1, 2010⁸⁹ [Initial Period]) and should not have been included in Notice CF1374 as a “relevant repeat violation,” nor aggravated the penalty.⁹⁰

BC Hydro submits that while it has no previous FAC-008-3 R6 violations, it has had previous contraventions of Mandatory Reliability Standards and has received prior administrative penalties.⁹¹

Panel Determination

The Panel finds that BC Hydro’s previous contraventions of MRS Standards and its previous administrative penalties imposed as a result are neither an aggravating nor a mitigating factor with respect to the Violation.

The Panel acknowledges that BC Hydro has had previous contraventions of Mandatory Reliability Standards and has received prior administrative penalties related to MRS violations, and notes that section 109.2(3)(a) of the UCA is not limited to considering previous contraventions and administrative penalties for the specific Reliability Standard or MRS Requirement which the violation contravenes.

However, there is no evidence in this proceeding that BC Hydro’s previous contraventions of MRS Standards are relevant to the Violation. The Panel notes that BC Hydro has no previous contraventions of MRS Standard FAC-008, as its previous compliance history with MRS Standard FAC-008 was during the Initial Period and thus is not considered a contravention. Therefore, the Panel finds that BC Hydro’s previous contraventions and administrative penalties imposed are not relevant to a determination of the penalty for the Violation.

⁸⁷ Ibid.

⁸⁸ Exhibit A2-6, Attachment 1, p. 8.

⁸⁹ BCUC Order G-67-09 dated June 4, 2009.

⁹⁰ Exhibit A2-2, p. 1.

⁹¹ Exhibit B-2, Appendix A, p. 15.

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(b) Gravity and Magnitude of Contravention

WECC has considered BC Hydro's size, location and applicable factors and concludes that this Violation posed a "serious risk" to the reliability of the Bulk Electric System.⁹² WECC has also assessed the Violation Severity Level as "Severe" because BC Hydro's mitigation and remediation are not complete and "the number of Facility Ratings inconsistent with the associated Facility Ratings methodology or documentation has not yet been determined."⁹³

WECC states that BC Hydro's entire system includes a network of 11,800 miles of transmission lines made up of approximately 2,000 miles of 69kV transmission lines, 3,000 miles of 138kV transmission lines, 2,300 miles of 230kV transmission lines, 400 miles of 287kV transmission lines, 150 miles of 360kV transmission lines, and 3,500 miles of 500kV transmission lines. BC Hydro owns two 500 kV lines and one 230 kV line that are part of a WECC Major Transfer Path. BC Hydro also has one other 500 kV line and two 138 kV lines that are part of another WECC Major Transfer Path affected by this alleged violation.⁹⁴

WECC states that failure to accurately calculate Facility Ratings or have missing Facility Ratings could have led to Elements being operated at higher limits than they are rated to handle safely and reliably. As well, incorrect Facility Ratings could have led to mistakes in system models for Operations Planning, which could have resulted in damage to equipment due to overloading and possible cascading outages of Bulk Electric System Elements.⁹⁵

BC Hydro submits that the Violation Risk Factor and Violation Severity Levels are not the only factors that should inform the view of the gravity and magnitude of a violation.⁹⁶ BC Hydro believes it had a number of systems and processes in place that were consistent with good utility practice for managing ratings and reduced the potential gravity and magnitude of the potential impacts that could have arisen from the violation, including:⁹⁷

- As-Built Information – transmission lines as-built rating verifications are completed using LiDAR and field surveys after major projects and as needed. Stations as-built drawings/ratings are verified by a professional engineer for all new installations. The records and drawings are kept in a centralized drawing and records management system. The records created at the time of installation are then utilized for subsequent inspections and modifications of the station;
- Inspections – BC Hydro has established inspection programs for all elements of the Bulk Electric System, including the scheduled inspections and maintenance of the stations equipment, and the inspections of the transmission lines;
- Engineering Standards – BC Hydro relies on industry and internal standards to design transmission lines and stations. BC Hydro's internal standards call for a higher level of equipment rating and line clearance that assures greater reliability and resilience;
- Encroachment Management – BC Hydro has dedicated engineering resources that work with the public to manage encroachments to avoid impacts to line clearances while allowing compatible uses of our rights of way;

⁹² Exhibit A2-5-1, Attachment 1, p. 8.

⁹³ Ibid.

⁹⁴ Ibid., Attachment 1, p. 3.

⁹⁵ Ibid.

⁹⁶ Exhibit B-2, Appendix A, p. 15.

⁹⁷ Ibid., Appendix A, pp. 15–17.

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- Station Equipment Defect Management – equipment identified with defects that either forces the equipment out of service or is temporarily de-rated is managed through the Control Room Operating Window system. The prioritization and resolution of defects is managed through work management systems;
- Clearance Mitigation – when clearance violations are identified, several work programs may be used for mitigation. Individual defects may be addressed by raising structures, relocating structures, recontouring under the conductor, or vegetation clearing; and
- Coordination with Neighbouring Utilities – BC Hydro has existing processes for the coordination and communication with our neighbouring utilities and the owners of jointly owned facilities, as well as with the Reliability Coordinators. The major neighbouring utilities include FortisBC Electric, Bonneville Power Administration, and the Alberta Electric System Operator.

Panel Determination

The Panel finds that the Violation posed a serious risk to the Bulk Electric System and finds this to be an aggravating factor.

BC Hydro failed to maintain proper Facility Ratings documentation, demonstrated by BC Hydro identifying 33 of its transmission lines that had equipment where the most limiting ratings were not properly recorded. The Panel accepts WECC's assessment that incorrect Facility Ratings "could have led to mistakes in system models for Operations Planning, which could have resulted in damage to equipment due to overloading and possible cascading outages of Bulk Electric System Elements."

Further, the Panel accepts WECC's assessment that the root cause of the Violation was that BC Hydro did not have "fully documented controls for ensuring that its personnel followed its documented Facility Rating methodology and documentation process" and as a result "did not effectively communicate changes on its system, resulting in equipment ratings not being collected and recorded."⁹⁸

For the foregoing reasons, the Panel finds that the Violation posed a serious risk to the Bulk Electric System.

The Panel does not agree with BC Hydro that the systems and processes it had in place mitigate the seriousness of the Violation. We accept WECC's views that when relying on its "legacy process for updating its Facility Ratings," BC Hydro "did not effectively communicate changes on its system, resulting in equipment ratings not being collected and recorded." Further, the deficiencies in BC Hydro's record-keeping systems were only discovered as a result of a WECC Compliance Audit, not as a result of any control aspect of BC Hydro's "legacy process." Taken together, these facts demonstrate to the Panel that the systems and processes BC Hydro had in place were inadequate.

(c) Extent of Harm to Others Resulting from the Contravention

BC Hydro submits there was no harm to others resulting from this Violation, thus should be considered a mitigating factor.⁹⁹

⁹⁸ Exhibit A2-5-1, Attachment 1, p. 2.

⁹⁹ Exhibit B-2, Appendix A, p. 17.

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Panel Determination

The Panel finds that no harm to others was caused by the Violation and finds this to be neither an aggravating nor a mitigating factor.

(d) Whether the Contravention was Repeated or Continuous

WECC submits that this Violation began on August 1, 2015 when the Reliability Standard became mandatory and enforceable and is expected to be remediated by July 1, 2022.¹⁰⁰

BC Hydro submits that this Violation would be considered continuous because it continued for more than one day.¹⁰¹

Panel Determination

The Panel finds that the Violation was continuous because it lasted for more than one day. The BCUC has previously established that this is the criterion for determining whether a contravention is continuous.¹⁰²

The continuous nature of the Violation is aggravating because of the length of time it took BC Hydro to establish the full extent of the Violation once it had been identified in WECC's Compliance Audit, and the length of time BC Hydro has taken to complete its remediation and mitigation efforts.

BC Hydro learned of its non-compliance with MRS Standard FAC-008-03 from the Compliance Audit report finding conducted in October 2017 and is not expected to complete its remediation and mitigation activities until July 1, 2022,¹⁰³ which is 56 months after BC Hydro learned of its non-compliance.

The Panel finds that 56 months is too long for BC Hydro to be unsure of its Facility Ratings information and to develop and implement adequate processes for determining its Facility Ratings, given the risk to the Bulk Electric System noted in Section 6.1.3 (b) above, and as a result the continuous nature of the Violation is an aggravating factor.

(e) Whether the Contravention was Deliberate

WECC states there was no evidence that BC Hydro's violation of FAC-008-3 R6 was intentional.¹⁰⁴

BC Hydro submits that this Violation was not deliberate.¹⁰⁵

Panel Determination

The Panel finds that the Violation was not a deliberate act on the part of BC Hydro because there is no evidence that the Violation was deliberate, and further finds this to be neither an aggravating nor a mitigating factor.

¹⁰⁰ Exhibit A2-5-1, Attachment 1, p. 2.

¹⁰¹ Exhibit B-2, Appendix A, p. 17.

¹⁰² Confidential Order R-15-20, p. 19.

¹⁰³ Exhibit A2-5-1, Attachment 1, p. 5.

¹⁰⁴ Ibid., Attachment 1, p. 8.

¹⁰⁵ Exhibit B-2, Appendix A, p. 17.

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(f) Any Economic Benefit Derived from the Contravention

BC Hydro submits that it did not derive any economic benefit from this Violation.¹⁰⁶

Panel Determination

The Panel finds that BC Hydro did not derive any financial benefit from the Violation because there is no evidence that it did, and further finds this to be neither an aggravating nor a mitigating factor.

(g) Efforts to Prevent and Correct the Contravention

Prevention

WECC states that BC Hydro did not implement effective detective, preventative or compensating controls.¹⁰⁷

WECC attributes the root cause of the Violation to BC Hydro not having fully documented controls for ensuring that its personnel followed its documented Facility Rating methodology and documentation process. Specifically, BC Hydro relied on a legacy process for updating its Facility Ratings. A Commissioning Notice of Energization was issued to the Control Center via an operating order (Operating Order), but the Commissioning Notice of Energization was only used to record the most limiting element at the time of the change and did not account for all series Elements used to make the Facility Ratings determination prior to energization. BC Hydro did not effectively communicate changes on its system, resulting in equipment ratings not being collected and recorded. The Operating Order was inadequate because it did not include sufficient instructions on the actions, roles, and responsibilities regarding Facility Ratings determination, documentation, and acceptance for operations.¹⁰⁸

BC Hydro acknowledges that the BCUC does not consider “efforts to prevent the same contravention being repeated after the fact to be efforts to prevent the specific contravention from occurring in the first place.” However, it submits that it had systems and processes in place that sought to prevent violations of FAC-008-3 R6 and relied on legacy practices of updating facility ratings from commissioning forms in the System Operating Order 5T-10 and updating the Operating One-Line Diagrams. However, as evidenced by BC Hydro’s mitigation work, there were areas in need of improvement, which it is in the process of undertaking.¹⁰⁹

Correction

WECC states that BC Hydro has not completed its mitigation but has implemented compensating measures to address interim risk.¹¹⁰

With respect to mitigation, WECC states that BC Hydro has updated the Facility Ratings for three identified transmission lines with unknown wave trap ratings. BC Hydro has also completed reviews of FAC-008-3 in-scope transmission lines to determine whether there are any other transmission lines with unknown equipment ratings and update missing Facility Ratings accordingly and reviewed and updated Facility Ratings for all transmission lines 100kV and above.¹¹¹

¹⁰⁶ Exhibit B-2, Appendix A, p. 17.

¹⁰⁷ Exhibit A2-5-1, Attachment 1, p. 3.

¹⁰⁸ Ibid., Attachment 1, p. 2.

¹⁰⁹ Exhibit B-2, Appendix A, p. 17.

¹¹⁰ Exhibit A2-5-1, Attachment 1, p. 4.

¹¹¹ Ibid., Attachment 1, p. 5.

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WECC states that BC Hydro has outstanding mitigation actions and expects completion of the mitigation plan by July 1, 2022.¹¹²

BC Hydro submits that its mitigation measures demonstrate that it has taken considerable steps to correct the Violation by revising processes and procedures and updating facility ratings for in-scope facilities. These actions not only help prevent future contraventions, but also correct the contravention underlying this Violation.¹¹³

Panel Determination

The Panel finds that BC Hydro took inadequate measures to prevent and correct the Violation and finds this to be an aggravating factor.

The systems and processes that BC Hydro had in place did not prevent the Violation from occurring. As noted above, BC Hydro “did not effectively communicate changes on its system, resulting in equipment ratings not being collected and recorded,” and BC Hydro’s systems and processes did not enable it to identify the deficiencies itself, but rather they were uncovered during a WECC Compliance Audit. Further, BC Hydro acknowledges that it had “areas in need of improvement.”¹¹⁴

The Panel acknowledges that BC Hydro has taken action to correct the Violation. However, WECC assesses that a reasonable timeframe for remediating a violation of MRS Requirement FAC-008-3 R6 is 48 hours to 90 days, and as the Panel noted in Section 6.1.3(d) above, BC Hydro is expected to complete its mitigation activities 56 months after first becoming aware of its non-compliance with MRS Standard FAC-008-3 on September 28, 2017. The Panel finds that 56 months is too long to remediate a violation of MRS Requirement FAC-008-3 R6 given the risk to the Bulk Electric System, and as a result, the Panel finds that BC Hydro’s inadequate measures to prevent and correct the Violation are an aggravating factor.

(h) Cost of Compliance with the Provision Contravened

BC Hydro submits that the cost of compliance was not a factor underlying BC Hydro’s FAC-003 violations and that it has not historically tracked the cost to comply with MRS on a standard-specific basis. BC Hydro states that it has invested over \$15 million to-date to correct the Violation and to prevent this type of violation from occurring again.¹¹⁵

Panel Determination

The Panel finds that the cost of compliance was not a factor underlying the Violation because there is no evidence that it was, and further finds this to be neither an aggravating nor a mitigating factor.

(i) Whether the Contravention was Self-Reported

WECC states that the Violation was identified through a Compliance Audit conducted between October 2, 2017 and October 13, 2017.¹¹⁶ BC Hydro confirms that this Violation was identified by WECC during BC Hydro’s 2017 on-site audit.¹¹⁷

¹¹² Ibid.

¹¹³ Exhibit B-2, Appendix A, p. 17.

¹¹⁴ Ibid.

¹¹⁵ Ibid., Appendix A, pp. 17–18.

¹¹⁶ Exhibit A2-5-1, Attachment 1, p. 1.

¹¹⁷ Exhibit B-2, Appendix A, p. 18.

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Panel Determination

The Panel finds that BC Hydro did not self-report the Violation and finds this to be neither an aggravating nor a mitigating factor.

As indicated above, the Violation was found as part of an audit by WECC and BC Hydro did not self-report the violation. However, there was no evidence before the Panel to indicate that BC Hydro was aware of the Violation, but failed to report it. Therefore, the Panel finds that the failure to report is neither a mitigating nor an aggravating factor.

(j) Degree and Quality of Cooperation During the BCUC's Investigation

WECC submits that its enforcement process consisted of reviewing all evidence concerning this Violation submitted by BC Hydro to ensure that the nature and scope of the Violation was fully understood. Additionally, to effectively process this Violation and issue a Notice of Alleged Violation, WECC needed to gather all the necessary information concerning the extent of condition, root cause, and risk to the reliability of the Bulk Electric System posed by the Violation.¹¹⁸

WECC states that on January 4, 2018, it contacted BC Hydro requesting a status update of the Facility Ratings extent of condition verification. By February 9, 2018, BC Hydro had confirmed that it reviewed 174 out of 275 lines and found 7/3068 Elements with missing ratings. On February 15, 2018, BC Hydro stated that it was working on the mitigation plan and including the remaining ratings verifications in the mitigation plan. WECC submits that it did not receive the extent of condition information in full until June 30, 2020.¹¹⁹

On November 14, 2018, BC Hydro submitted the first version of the FAC-008-3 R6 Mitigation Plan with a proposed completion date of December 31, 2019 (Mitigation Plan Version 1).¹²⁰ WECC submits that BC Hydro did not submit evidence, provide milestone details or upload supporting documentation for Mitigation Plan Version 1 nor did BC Hydro submit an attestation of mitigation plan completion (Attestation) by the proposed completion date. On February 10, 2020, WECC states it called and emailed BC Hydro with a request to discuss the status of the Attestation but BC Hydro was initially unresponsive.¹²¹ On April 24, 2020, after two extension requests from BC Hydro, the BCUC approved a revised proposed completion of Mitigation Plan Version 1 to June 30, 2020.¹²² By June 30, 2020, WECC states that BC Hydro had not provided milestone details and did not submit evidence or upload supporting documentation for Mitigation Plan Version 1.¹²³ WECC states that BC Hydro has not demonstrated its commitment to the reliability of the Bulk Electric System in meeting the deadlines and milestones of Mitigation Plan Version 1. In fact, BC Hydro intends to extend its mitigation plan an additional two years, to July 1, 2022.¹²⁴

WECC states that on February 19, 2020, it scheduled a meeting for February 25, 2020 with BC Hydro to discuss WECC's expectations for evidence requirements regarding a revised version of BC Hydro's FAC-008-3 R6 mitigation plan (Mitigation Plan Version 2), but on the morning of the meeting, BC Hydro cancelled the meeting stating it would not have any meetings with WECC until after its new Chief Compliance Officer has met with WECC in early

¹¹⁸ Exhibit A2-5, WECC Response to BC Hydro Comments and Revised Notice of Alleged Violation dated June 8, 2022, p. 2.

¹¹⁹ Exhibit A2-2, pp. 2-3.

¹²⁰ BCUC Order R-11-19, dated May 19, 2019.

¹²¹ Exhibit A2-2, p. 3.

¹²² Exhibit A2-2-1, WECC FAC-008-3 R6 Evidence Supporting Materials, pp. 20-21.

¹²³ Exhibit A2-2, p. 4.

¹²⁴ Exhibit A2-5-1, p. 8.

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March.¹²⁵ On April 9, 2020 and June 10, 2020, WECC emailed BC Hydro to arrange a meeting to discuss evidence requirements and interim risks of Mitigation Plan Version 2.¹²⁶ On July 28, 2020, WECC discussed mitigation with BC Hydro. BC Hydro requested that it submit Mitigation Plan Version 2 by September 30, 2020 but WECC set a deadline of August 5, 2020 for WECC review and final submission by August 31, 2020.¹²⁷ By August 31, 2020, BC Hydro submitted Mitigation Plan Version 2 with a proposed completion date of July 1, 2022.¹²⁸



BC Hydro submits that while it initially could have improved its coordination and timeliness of response, BC Hydro has been transparent and cooperative with the BCUC and WECC during the investigation of this Violation.¹³⁰

Panel Determination

The Panel finds BC Hydro's degree and quality of cooperation during the investigation to be neither a mitigating nor an aggravating factor.

The Panel is not impressed with the timeliness of BC Hydro's cooperation during the investigation. The Panel accepts WECC's evidence that BC Hydro did not provide timely evidence of the extent of the condition information or suitable mitigation plans, and notes above that BC Hydro expects to complete its mitigation activities 56 months after first becoming aware of the Violation. BC Hydro itself acknowledges it "initially could have improved its coordination and timeliness of response." However, the Panel also acknowledges that while not timely, BC Hydro has been transparent during the investigation and is now completing its Mitigation Plan activities.

(k) Undue Hardship that might Arise from the Amount of the Penalty

BC Hydro confirms that, if required to pay, WECC's proposed penalty amount of \$255,000 will not cause undue financial hardship.¹³¹

Panel Determination

The Panel finds that imposing a penalty on BC Hydro for the Violation would not cause undue hardship because there is no evidence that it would, and further finds this to be neither an aggravating nor a mitigating factor.

(l) Other Matters Prescribed by the Lieutenant Governor in Council

BC Hydro submits it is not aware of any other matters that have been prescribed by the Lieutenant Governor in Council.¹³²

¹²⁵ Ibid., pp. 12–13.

¹²⁶ Ibid., p. 18.

¹²⁷ Exhibit A2-2, p. 4.

¹²⁸ Ibid.

¹²⁹ Ibid., p. 3.

¹³⁰ Exhibit B-2, Appendix A, p. 18.

¹³¹ Ibid.

¹³² Ibid.

Panel Discussion

There are no other matters prescribed by the Lieutenant Governor in Council and therefore the Panel makes no finding relating to this factor.

6.1.4 Summary of UCA Factors Pertaining to Violation BCUC2017000621

The Panel summarizes its findings relating to the UCA Factors pertaining to Violation 1 in Table 4.

Table 4: Summary of Findings pertaining to the Violation

Factors as per the UCA	Aggravating and / or Mitigating
Previous contraventions, administrative penalties imposed, and orders issued	Neither aggravating nor mitigating
Gravity and magnitude of contravention	Aggravating
Extent of harm resulting from the contravention	Neither aggravating nor mitigating
Whether the contravention was repeated or continuous	Aggravating
Whether contravention was deliberate	Neither aggravating nor mitigating
Any economic benefit derived from the contravention	Neither aggravating nor mitigating
Efforts to prevent and correct contravention	Aggravating
Cost of compliance with the provision contravened	Neither aggravating nor mitigating
Whether contravention was self-reported	Neither aggravating nor mitigating
Degree and quality of cooperation during BCUC's investigation	Neither aggravating nor mitigating
Undue hardship that might arise from the amount of penalty	Neither aggravating nor mitigating
Any other matters prescribed by the Lieutenant Governor in Council	No finding

6.1.5 Additional Factors

Pursuant to UCA section 109.2(3), the Panel may also consider anything else it considers relevant before imposing an administrative penalty.

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BC Hydro made submissions on additional factors with respect to the efforts it has undertaken as a result of its significant post contravention compliance efforts.¹³³

BC Hydro submits that to date, it has invested over \$15 million to complete its mitigation plan and to take actions across its Facility Rating program to prevent this type of violation from occurring again. BC Hydro adds that administrative penalties are not meant to be punitive but are instead meant to incent a change in behaviour and protect the public. BC Hydro submits it has thoroughly reviewed and considered its Facility Rating program and has undertaken all necessary changes to address the underlying causes of this Violation, and as a result, this factor should be given significant weight in determining any administrative penalty amount.¹³⁴

Panel Determination

The Panel acknowledges that BC Hydro has undertaken considerable effort to reach a state of compliance with the MRS Standards on Facility Ratings. However, this effort should have taken place before BC Hydro's non-compliance was uncovered during a WECC Compliance Audit. Further, WECC's assessment is that a reasonable amount of time to remediate such a violation is 48 hours to 90 days. BC Hydro's mitigation activities are expected to be complete on July 1, 2022, 56 months after first becoming aware of its non-compliance with MRS Standard FAC-008-3 in October 2017. Therefore, the Panel does not consider BC Hydro's post contravention compliance efforts to be a mitigating factor.

6.1.6 Penalty Consideration for Violation BCUC2017000621

BC Hydro submits that any administrative penalty assessed for this Violation should be \$0 given the significant resources it has expended to improve its FAC-008 compliance program to prevent future violations of this Requirement.¹³⁵

Panel Determination

The Panel finds that an administrative penalty for the Violation is warranted. The Violation posed a serious risk to the Bulk Electric System and BC Hydro took too long to provide evidence of the extent of condition of the Violation and submit and execute appropriate mitigation plans.

The Panel finds the appropriate administrative penalty for the Violation is \$167,500.

The Base Penalty Range for the Violation is \$0 to \$335,000 per day, based on the Violation Risk Factor of Medium for MRS Requirement FAC-008-3 R6 and the Violation Severity Level of Severe.

The Panel finds that the appropriate administrative penalty for the Violation should be in the middle of this range because, although BC Hydro has no previous administrative penalty for MRS Reliability Standard FAC-008-3, the Violation posed a serious risk to the Bulk Electric System. The Panel finds the middle of the range to be between 30 percent and 70 percent of the Base Penalty Range. The Panel finds that the penalty for the Violation should be 50 percent of the Base Penalty Range, that is, \$167,500, because BC Hydro took too long to mitigate the Violation and there were no mitigating factors.

The Panel declines to exercise its discretion to levy a daily penalty for each day that the Violation continued.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

7.0 Confidentiality

Pursuant to the Compliance Monitoring Program, a Notice of Alleged Violation will be treated as confidential unless or until the BCUC confirms the Alleged Violation(s) and the BCUC considers that disclosure would not relate to a cyber-security incident or otherwise jeopardize the security of the Bulk Power System.¹³⁶

The Penalty Guidelines state: "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."¹³⁷

In Confidential Order R-3-22, dated January 18, 2022, the BCUC directed that the following materials would be held confidential until the BCUC determines otherwise (Compliance Materials):

- Revised Notice CF1374;
- All materials exchanged between the parties leading up to the Notice CF1374, including material from the BCUC, BC Hydro and WECC;
- BC Hydro's response to Notice CF1374 dated September 18, 2020; and
- Materials and evidence filed in the confirmation proceeding for the Violation.

Section 109.3(2) of the UCA provides:

If the commission imposes an administrative penalty on a person, the commission may make public the reasons for and the amount of the penalty.

Accordingly, **BC Hydro is directed to make a submission to the Panel, within 30 days of the issuance of this Decision, on whether any of the following should be made public (Confidential Materials):**

- **The Compliance Materials;**
- **The Notice of Penalty for the Violation**
- **This Order R-24-22**
- **These Reasons for Decision.**

BC Hydro is further directed to provide in its submission:

- **Reasons for its proposed confidentiality treatment, and in particular whether it considers that disclosure of the Confidential Materials would jeopardize the security of the Bulk Electric System; and**
- **Any proposed redactions that it considers should be made to the Confidential Materials before they are made public.**

¹³⁶ Rules of Procedure for Reliability Standards in British Columbia, Appendix 2: Compliance Monitoring Program, by Order R-40-17 dated September 1, 2017, p. 14.

¹³⁷ Rules of Procedure for Reliability Standards in British Columbia, Appendix 3: Penalty Guidelines for British Columbia Mandatory Reliability Standards, by Order R-40-17 dated September 1, 2017, p. 9.