



NERC Enforcement: Recent Violations and Penalties

Bruder, Gentile & Marcoux, L.L.P.
The Fifteenth Annual FERC Briefing:
Conducting Public Utility Business in Uncertain
Times
March 5, 2009

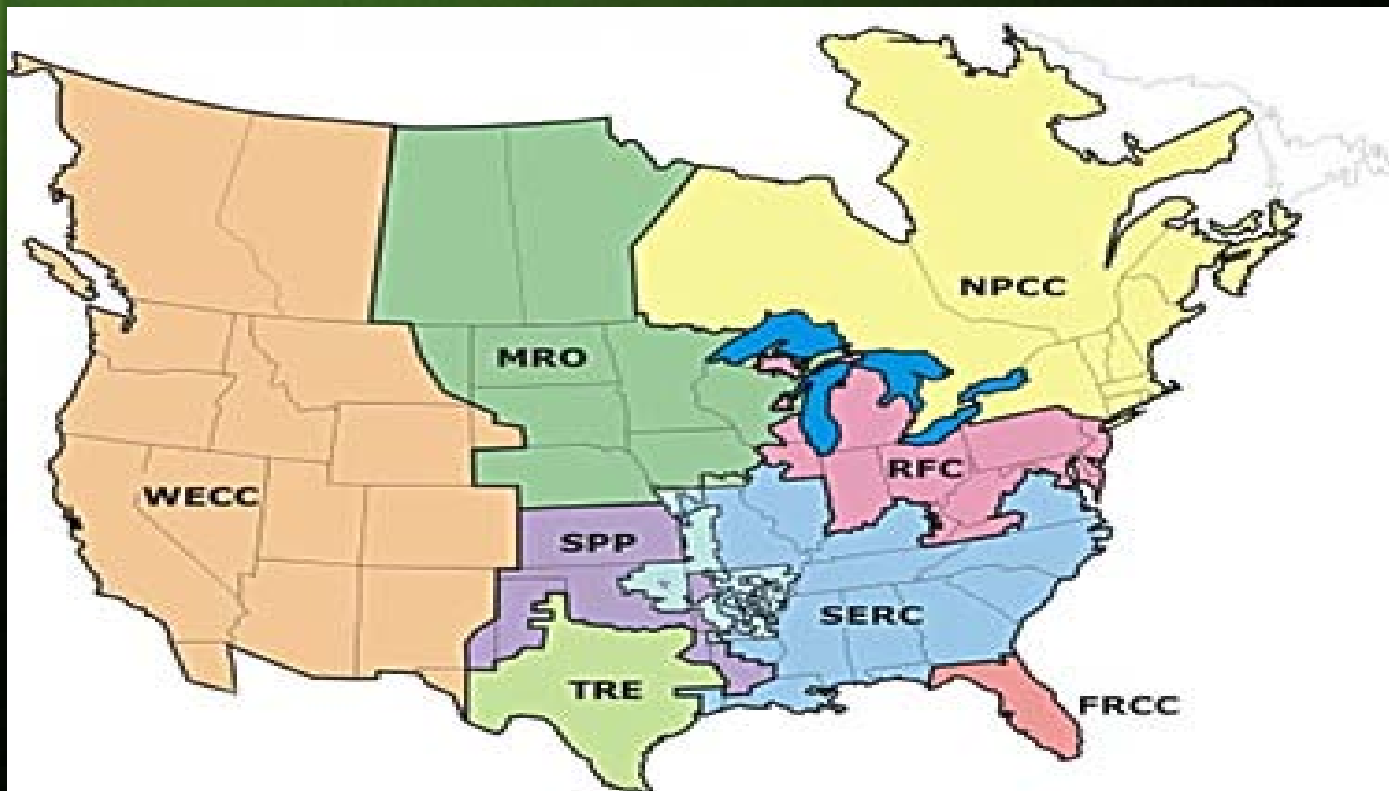
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Enforcement Objectives

- Penalties may be assessed against owners, operators, and users of the Bulk Power System who do not comply with NERC Reliability Standards.
- NERC's enforcement objectives include:
 - Promoting compliance;
 - Deterring future incidents;
 - Encouraging actions to promptly correct behavior; and
 - Disgorgement of benefits that may or may have accrued as a result of the violation.

Role of Regional Entities

- NERC's regional entities have first-line responsibility for compliance monitoring and enforcement.



Determining Penalty Amounts

- A penalty shall (i) bear a reasonable relationship to the seriousness of the violation; and (ii) take into consideration the efforts of the user, owner or operator to remedy the violation in a timely manner.
- Presence of aggravating factors may increase or expand the penalty.
- Presence of mitigating factors may decrease penalty amount or result in no monetary penalty.



Determining Severity of Violation

- Violation Risk Factor – Each reliability standard is assigned a VRF based on the expected or potential impact of the violation to the reliability of the bulk power system.
- Violation Severity Level – VSL measures the degree to which the Violator violated a requirement of a reliability standard.

Base Amount of Penalty

Violation Severity Level								
Violation Risk Factor	Lower		Moderate		High		Severe	
	Range Limits		Range Limits		Range Limits		Range Limits	
	Low	High	Low	High	Low	High	Low	High
Lower	\$ 1,000	\$ 3,000	\$ 2,000	\$ 7,500	\$ 3,000	\$ 15,000	\$ 5,000	\$ 25,000
Medium	\$ 2,000	\$ 30,000	\$ 4,000	\$ 100,000	\$ 6,000	\$ 200,000	\$ 10,000	\$ 335,000
Higher	\$ 4,000	\$ 125,000	\$ 8,000	\$ 300,000	\$ 8,000	\$ 625,000	\$ 20,000	\$ 1,000,000

Maximum Penalty

- Maximum Penalty of \$1,000,000 Per Day Per Violation.

Penalty Adjustment Factors

- Repeat violations and consideration of violator's compliance history
- "Violation Reset Time Period" – period of time of continued operations without recurrence of violation
- Failure to comply with directive of NERC or Regional Entity
- Self-disclosure of violation

Penalty Adjustment Factors (continued)

- Degree and quality of cooperation in investigation of violation
- Presence and quality of compliance program
- Attempts to conceal violation
- Intentional violations
- Extenuating circumstances



Non-Monetary Sanctions

- Limitations placed on activities, functions or operations of violator
- Inclusion of violator on a “Reliability Watch List”
- Enforcement action may include both monetary penalties and non-monetary sanctions

Violator's Size and Ability to Pay

- Violator part of cooperative or joint action agency
- Violator part of corporate family
- Violator as shell entity



Violation Case Studies

Types of Violations:

- Vegetation management
- Failure to plan or train
- Failure to maintain proper documentation
- Failure to conduct reliability analyses

June 2008 – February 2009:

- 51 Enforcement Actions
- Range of Penalties: \$0 - \$235,000
- 42 of 51 Enforcement Actions resulted in penalties of \$0



City of Conway

Reliability Standard Violated	Description of Violation	Mitigating Factors
PER-002-000 (R3)	Failure to have set of defined training objectives essential for Balancing Authority personnel to apply during normal, emergency and restoration conditions	<p>Occurred during transition to mandatory standards</p> <p>Violation deemed not to put the bulk power system reliability at serious or substantial risk</p> <p>Mitigation plan put in place to prevent future violation</p> <p>No applicable compliance directives</p> <p>Cooperation in investigation, no negative compliance history, unintentional violation</p>

Penalty = \$0

E.ON U.S. Service

Reliability Standard Violated	Description of Violation	Mitigating Factors
EOP-008-0 (R1)	Failure to have adequate plan for continuation of reliability operations	Cooperation during investigation
FAC-001-0 (R1, R2, R3)	Improper documentation of facility connection requirements	Institution of compliance workshops Expeditious settlement No repetitive violations No negative compliance history Violation not intentional

Penalty = \$235,000

Duke Energy Carolinas

Reliability Standard Violated	Description of Violation	Mitigating Factors
FAC-003-1 (R2)	Failure to maintain appropriate clearance between a tree and a conductor in accordance with Vegetation Management Plan	Self-reported Agreement to conduct more frequent aerial patrols and implement new technology for vegetation management

Penalty = \$50,000

Baltimore Gas & Electric

Reliability Standard Violated	Description of Violation	Mitigating Factors
FAC-003-1 (R2)	Failure to maintain appropriate clearance between a tree and a conductor in accordance with Vegetation Management Plan	Self-reported Cooperated during investigation Acted immediately to mitigate and correct violation Did not contest violation

Penalty = \$180,000

Conclusion

- Penalty determinations are subject to review by FERC.
- In the absence of an application for review of a penalty or motion or other action by FERC, penalty is affirmed by operation of law after expiration of 30-day period.