

in the record submitted by the Electric Reliability Organization.

(3) Application to the Commission for review, or the initiation of review by the Commission on its own motion, shall not operate as a stay of such penalty unless the Commission otherwise orders upon its own motion or upon application by the user, owner or operator that is the subject of such penalty.

(4) Any answer, intervention or comment to an application for review of a penalty imposed under this part must be filed within twenty (20) days after the application is filed, unless otherwise ordered by the Commission.

(5) In any proceeding to review a penalty imposed under this part, the Commission, after public notice and opportunity for hearing (which hearing may consist solely of the record before the Electric Reliability Organization or Regional Entity and the opportunity for the presentation of supporting reasons to affirm, modify, or set aside the penalty), will by order affirm, set aside, or modify the penalty or may remand the determination of a violation or the form or amount of the penalty to the Electric Reliability Organization for further consideration. The Commission may establish a hearing before an administrative law judge or initiate such further procedures as it determines to be appropriate, before issuing such an order. In the case of a remand to the Electric Reliability Organization, the Electric Reliability Organization may remand the matter to a Regional Entity for further consideration and resubmittal through the Electric Reliability Organization to the Commission.

(6) The Commission will take action on an application for review of a penalty within sixty (60) days of the date the application is filed unless the Commission determines on a case-by-case basis that an alternative expedited procedure is appropriate.

(7) A proceeding for Commission review of a penalty for violation of a Reliability Standard will be public unless the Commission determines that a non-public proceeding is necessary and lawful, including a proceeding involving a Cybersecurity Incident. For a non-public proceeding, the user, owner or

operator of the Bulk-Power System that is the subject of the penalty will be given timely notice and an opportunity for hearing and the public will not be notified and the public will not be allowed to participate.

(f) On its own motion or upon complaint, the Commission may order compliance with a Reliability Standard and may impose a penalty against a user, owner or operator of the Bulk-Power System, if the Commission finds, after public notice and opportunity for hearing, that the user, owner or operator of the Bulk-Power System has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a Reliability Standard.

(g) Any penalty imposed for the violation of a Reliability Standard shall bear a reasonable relation to the seriousness of the violation and shall take into consideration efforts of such user, owner or operator of the Bulk-Power System to remedy the violation in a timely manner.

(1) The penalty imposed may be a monetary or a non-monetary penalty and may include, but is not limited to, a limitation on an activity, function, operation, or other appropriate sanction, including being added to a reliability watch list composed of major violators that is established by the Electric Reliability Organization, a Regional Entity or the Commission.

(2) The Electric Reliability Organization shall submit for Commission approval penalty guidelines that set forth a range of penalties for the violation of Reliability Standards. A penalty imposed by the Electric Reliability Organization or a Regional Entity must be within the range set forth in the penalty guidelines.

§ 39.8 Delegation to a Regional Entity.

(a) The Electric Reliability Organization may enter into an agreement to delegate authority to a Regional Entity for the purpose of proposing Reliability Standards to the Electric Reliability Organization and enforcing Reliability Standards under § 39.7.

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(b) After notice and opportunity for comment, the Commission may approve a delegation agreement. A delegation agreement shall not be effective until it is approved by the Commission.

(c) The Electric Reliability Organization shall file a delegation agreement. Such filing shall include a statement demonstrating that:

(1) The Regional Entity is governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board;

(2) The Regional Entity otherwise satisfies the provisions of section 215(c) of the Federal Power Act; and

(3) The agreement promotes effective and efficient administration of Bulk-Power System reliability.

(d) The Commission may modify such delegation.

(e) The Electric Reliability Organization shall and the Commission will rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of Bulk-Power System reliability and should be approved.

(f) An entity seeking to enter into a delegation agreement that is unable to reach an agreement with the Electric Reliability Organization within 180 days after proposing a delegation agreement to the Electric Reliability Organization may apply to the Commission to assign to it the Electric Reliability Organization's authority to enforce Reliability Standards within its region. The entity must demonstrate in its application that it meets the requirements of paragraph (c) of this section and that continued negotiations with the Electric Reliability Organization would not likely result in an appropriate delegation agreement within a reasonable period of time. After notice and opportunity for hearing, the Commission may designate the entity as a Regional Entity and assign enforcement authority to it.

(g) An application pursuant to paragraph (f) of this section must state:

(1) Whether the Commission's Dispute Resolution Service, or other alternative dispute resolution procedures were used, or why these procedures were not used; and

(2) Whether the Regional Entity believes that alternative dispute resolution under the Commission's supervision could successfully resolve the disputes regarding the terms of the delegation agreement.

§ 39.9 Enforcement of Commission Rules and Orders.

(a) The Commission may take such action as is necessary and appropriate against the Electric Reliability Organization or a Regional Entity to ensure compliance with a Reliability Standard or any Commission order affecting the Electric Reliability Organization or a Regional Entity, including, but not limited to:

(1) After notice and opportunity for hearing, imposition of civil penalties under the Federal Power Act.

(2) After notice and opportunity for hearing, suspension or decertification of the Commission's certification to be the Electric Reliability Organization.

(3) After notice and opportunity for hearing, suspension or rescission of the Commission's approval of an agreement to delegate certain Electric Reliability Organization authorities to a Regional Entity.

(b) The Commission may periodically audit the Electric Reliability Organization's performance under this part.

§ 39.10 Changes to an Electric Reliability Organization Rule or Regional Entity Rule.

(a) The Electric Reliability Organization shall file with the Commission for approval any proposed Electric Reliability Organization Rule or Rule change. A Regional Entity shall submit a Regional Entity Rule or Rule change to the Electric Reliability Organization and, if approved by the Electric Reliability Organization, the Electric Reliability Organization shall file the proposed Regional Entity Rule or Rule change with the Commission for approval. Any filing by the Electric Reliability Organization shall be accompanied by an explanation of the basis and purpose for the Rule or Rule change, together with a description of the proceedings conducted by the Electric Reliability Organization or Regional Entity to develop the proposal.