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## FERC Modifies Penalty Guidelines for Enforcement Cases

The Federal Energy Regulatory Commission (FERC) today enhanced its enforcement program by modifying its Penalty Guidelines after carefully considering a broad range of comments and recommendations submitted by industry. The modified Penalty Guidelines will ensure fairness, consistency and transparency in all FERC civil penalty decisions.

The modified Penalty Guidelines will apply to penalties FERC assesses for violations of its requirements, though FERC retains discretion to depart from them when it deems appropriate, and Enforcement staff continues to have discretion to close investigations and self-reports for violations that do not warrant sanctions. The modified Penalty Guidelines will apply to violations of the Reliability Standards, but not to the Commission's review of notices of penalty submitted by the North American Electric Reliability Corp.

FERC affirmed its use of the U.S. Sentencing Guidelines as an appropriate model for the penalty guidelines. The Commission said the Sentencing Guidelines provide an effective analytical model that fits Commission purposes because they focus on the same factors that are at the heart of FERC's enforcement authority, such as the seriousness of the violation and efforts to remedy the violation.

The modified penalty guidelines will base penalties on the same factors as those in existing enforcement policy statements, but will be applied with more focus by assigning specific and transparent weight to each factor. Organizations will now know with more certainty how each factor will be applied.

Among other things, the modified Penalty Guidelines:

- reduce the base violation level for reliability violations from 16 to six;
- eliminate individualized assessments of the monetary value of losses of load that result from reliability violations, but use the quantity of load lost, in megawatt hours, as one measure of the seriousness of a given violation;
- give partial compliance credit to organizations that have effective compliance programs yet do not meet every requirement listed in the Penalty Guidelines;
- unbundle the mitigation credits for self-reports, cooperation, avoidance of trial-type hearings, and acceptance of responsibility; and
- limit violations for misrepresentations and false statements to instances of intentional acts or acts carried out with a reckless disregard for the truth.

The modified Penalty Guidelines will apply to all future violations and any pending investigation where FERC's Enforcement staff has not entered into settlement negotiations. Enforcement staff will convene a technical conference one year from implementation of the modified Penalty Guidelines to discuss how they have worked in practice and to invite comments and questions from industry on their implementation.

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