



September 16, 2010

Commissioner John R. Norris

FEDERAL ENERGY REGULATORY COMMISSION

STATEMENT

Docket Nos. PL10-4-000

Item No. M-1

Statement of Commissioner John R. Norris on Revised Penalty Guidelines

"When we first issued the Penalty Guidelines in March, industry, and the public strongly advocated for an opportunity to provide input. We heard the message loud and clear and suspended the Penalty Guidelines to provide a comment period for industry and the public to let us know what they were thinking.

In today's Revised Policy Statement on Penalty Guidelines, we have made a concerted effort to listen to the concerns raised and address them. We did not make every change that was requested, but we made many of them. Taking comments made this process a better one and, as a result, the product is better.

I am proud to support these Penalty Guidelines and thank Commission staff for all their hard work. It took many long hours for staff to comprehensively review the comments we received and to prepare the Revised Policy Statement and Penalty Guidelines. The resulting Penalty Guidelines provide something that has long been needed in our Enforcement program - a clear, consistent, transparent process for how the Commission assesses penalties. This takes the guessing game out of the Commission's assessment of penalties, and I think that is a good thing for everyone involved.

I also want to emphasize that, despite using the Criminal Sentencing Guidelines as a model, we were in no way seeking to *criminalize* violations of our statutes, rules, and regulations. I have heard this concern from many in industry, especially in the reliability context. I want to make clear - and the Revised Policy Statement makes clear - that this was never our intent.

Additionally, many of the comments we heard from industry focused around the application of the Penalty Guidelines to reliability matters. We have made some major changes with respect to those areas that I wanted to briefly highlight.

First, we clarify that the Commission will not apply the Penalty Guidelines to our review of NERC's Notices of Penalty (NOPs). We will, however, apply them to the Commission's Part 1b investigations of enforcement actions. Why did we take this step? From my perspective, we do so in order to provide clarity and consistency in the Commission's assessment of Reliability Standards violations. By clearly stating that we will not apply the Penalty Guidelines to the NOPs, we ensure consistency in the review of penalties that come to us for review from NERC. In doing so we have eliminated the lingering questions raised in our initial Policy Statement with respect to how the Commission will define "out-of-the-ordinary circumstances" when applying the Penalty Guidelines to NOPs.

However, I continue to believe that it is appropriate to apply the Penalty Guidelines to our own investigations of reliability violations. In section 215 of the Federal Power Act,¹ Congress gave the Commission a distinct responsibility to investigate compliance with the reliability standards on our own motion when necessary. Using our Penalty Guidelines recognizes this important responsibility, and ensures that a single consistent set of guidelines will apply in these instances, as they will in the case of NOPs.

¹ 16 U.S.C. § 824o (2006).



Second, we have lowered the base level for reliability violations from 16 to 6. I believe this is a good compromise. Setting the level at six creates comparability with violations of other Commission requirements, while raising the risk of harm adjustments recognizes the seriousness of reliability violations.

Third, I have heard a lot of concerns from industry over the last few months about the initial Penalty Guidelines' intent to conduct an individualized assessment of the monetary value of the loss of load resulting from a violation of a Reliability Standard. We have heard arguments that this kind of assessment would create a chilling effect, discouraging operators from shedding load when it is necessary to prevent a larger, cascading outage. We took these concerns to heart. The Revised Penalty Guidelines will consider the quantity of load lost, in MWh, as a measure of the seriousness of the violation. I know that some will continue to be uneasy that this could still discourage operators from shedding load, but I believe this change strikes an appropriate balance between the need to ensure that we do not provide a disincentive for operators to shed load when required by the Reliability Standards, and the need to fulfill our statutory obligation to consider the seriousness of violations.

Finally, I want to emphasize that this is not the last time we are going to consider these issues. We have directed Enforcement staff to hold a technical conference one year from issuance of the modified Penalty Guidelines to discuss implementation issues. This will give us a chance to check back in with industry and the public and see how things are working.

Thanks again to the team. I am happy to vote for this order."