

**ADVICE OF THE
WESTERN INTERCONNECTION REGIONAL ADVISORY BODY
TO THE FEDERAL ENERGY REGULATORY COMMISSION REGARDING THE
FERC POLICY STATEMENT ON PENALTY GUIDELINES ISSUED MARCH 18, 2010**

Pursuant to Section 215(j) of the Federal Power Act, the Western Interconnection Regional Advisory Body (WIRAB) submits the following advice to FERC regarding its “Policy Statement on Penalty Guidelines”, issued March 18, 2010. On April 15, 2010, after conducting three workshops on the penalty guidelines in Washington, D.C., Houston, and San Francisco, FERC issued its proposed guidelines for public comment.

WIRAB appreciates FERC’s stated purpose to add greater fairness, consistency, and transparency to its civil penalty determinations in the electric, natural gas, hydroelectric and oil pipeline industries within its jurisdiction. However, we believe that the proposed guidelines: have no clear relationship to the underlying goal of reliability; include elements that could adversely affect reliability; would complicate and confuse the existing standards enforcement regime; and could prove costly for consumers.

Therefore, we do not support the use of the proposed guidelines for any violation of Section 215 (bulk electricity system reliability). Rather, we recommend that FERC support and encourage the continuing refinement of the existing standards enforcement process.

WIRAB offers the following observations:

1. In application to the bulk electric system, the proposed guidelines focus more on compliance rather than the overall Section 215 objective of reliability. The proposed guidelines outline a relatively mechanistic calculation of penalties based on violation level and culpability score (paragraph #37). There is no connection made between the penalty and the overall risk to the reliability of the bulk power system.

WIRAB is concerned that these guidelines may actually degrade system reliability. For example, while the threat of a severe penalty can be expected to cause those who could be subject to it to take the reliability standards seriously, as FERC intends, it also will reduce the willingness of those subject to such penalties to freely share information with the Western Electricity Coordinating Council, the North American Electric Reliability Council, and other registered entities, if doing so could increase the possibility of a penalty being assessed. Yet the sharing of such information can be very important to the goal of system reliability. In certain cases, it can be more important than the collection of penalties when violations occur.

Further, WIRAB believes that few, if any, violations of reliability standards will occur as a result of intentional fraudulent or criminal behavior. Yet the sentencing guidelines are geared to deter that kind of conduct. WIRAB encourages FERC to engage with industry in more of a partnership to achieve reliability rather than rely on a strict punishment regime.

In contrast to the proposed guidelines, the existing (currently developing) system connects compliance with the overall reliability goal. Each of 1,400 requirements and sub-requirements is assigned a “violation risk (to reliability) factor,” reflecting the collective judgment of industry experts. Based on systematic inquiry by regional entities, each violation is assigned a “violation severity level.” Then, entity-specific factors are considered in penalty negotiations. This process also responds to FERC’s objective to promote consistency by basing penalty calculations on a set of uniform factors that are weighted similarly for similar types of violations and similar types of violators (paragraph #28).

2. Use of the proposed guidelines could complicate and confuse the existing standards enforcement regime. WIRAB is concerned that the proposed guidelines would likely add confusion, complication and cost to an already complex standards-compliance-enforcement regime in the bulk electric system. Under its policy statement, FERC would apply its guidelines in “out-of-ordinary” cases (paragraph #64), essentially adding a new and different enforcement regime to that applicable in “ordinary” cases.

Presumably, NERC enforcement actions comprise the universe of “ordinary” cases. However, it is unclear whether a FERC review of a NERC notice of penalty (such as the FERC February 26, 2010 order initiating review of NERC’s penalty against Turlock Irrigation District) would make a case “out-of-ordinary”, or whether a case would become “out-of-ordinary” only if FERC initiated the investigation.

3. In focusing on avoiding loss of load, the base penalty calculation could inadvertently degrade reliability. To calculate the base penalty, the guidelines would use the value of loss of load for most violations involving an outage. (Paragraph 42 states that the base penalty shall be the greatest of three factors, the third of which is “the pecuniary loss from the violation caused by the organization.”) This would have perverse effects in the bulk power system, in which load shedding may be a necessary step to avoid impacts to the larger system, and to speed recovery.

Further complicating the incentives embedded in the guidelines is FERC’s admonition that penalties will be increased if load that should have been shed is not shed in the event of a disturbance. This may have the perverse impact of *increasing* the number of outages so that system operators will not later be second-guessed about whether they *should have* shed load but did not.

4. The level of penalties proposed for Section 215 violations could damage the ability of entities to provide reliable generation-transmission-distribution service at competitive prices and adversely affect the goal of expanding renewable generation. Based on “Example Four” (paragraph #56, regarding a violation of FAC-003-1, Requirement 2), it appears that the level of proposed penalties for a Section 215 violation could bankrupt smaller entities, unnecessarily increase cost to consumers, and divert organizational focus away from important goals such as reliable system operation and the development of renewable generation.

If utilities were subject to consequential damages for lost load, they would attempt to hedge that risk through the purchase of insurance. Premiums paid for that insurance would be very costly, and the costs would be passed through to customers through utility rates. Customers would ultimately bear the costs, without receiving clear reliability benefits.

WIRAB Recommendation

- **WIRAB recommends that FERC should not adopt the proposed guidelines for violations of Section 215 of the Federal Power Act.**
- **WIRAB recommends that FERC should support and encourage the refinement of the existing Section 215 standards development and enforcement process.**

Dated this 14th day of June, 2010.

Respectfully submitted,

A handwritten signature in black ink that reads "John F. Savage". The signature is written in a cursive, flowing style.

John Savage, Chairman
Western Interconnection Regional Advisory Body