

Steps 1 & 2: Identify and Adjust Violation Level** (Violation Level resulting from Steps 1 & 2 corresponds to dollar amount in Violation Level Penalty Table)

Violations of Commission-Approved Electric Reliability Standards Base Violation Level = 6	Violations Involving Fraud, Anti-Competitive Conduct, and Other Rule, Tariff or Order Base Violation Level = 6	Intentional or Reckless Misrepresentations and False Statements to Commission or Staff Base Violation Level = 18																																				
<p>Adjust Base Violation Level According to 2 Factors. Apply only single greatest point increase to Base Violation Level.</p> <p>1) <u>Risk of Harm and Type of Harm Posed by Violation:</u></p> <table border="1"> <thead> <tr> <th>Risk/Harm Points</th> <th>Minor Harm</th> <th>Substantial Harm</th> <th>Major Harm</th> <th>Extreme Harm</th> </tr> </thead> <tbody> <tr> <td>Low Risk</td> <td>+ 0</td> <td>+ 5</td> <td>+ 13</td> <td>+ 22</td> </tr> <tr> <td>Moderate Risk</td> <td>+ 5</td> <td>+ 8</td> <td>+ 18</td> <td>+ 24</td> </tr> <tr> <td>High Risk</td> <td>+ 8</td> <td>+ 13</td> <td>+ 22</td> <td>+ 26</td> </tr> </tbody> </table> <p><u>Examples:</u></p> <ul style="list-style-type: none"> Violation creates low risk of substantial harm: + 5 Violation creates high risk of extreme harm: + 26 <p>2) <u>Loss of Firm Load Caused by Violation:</u></p> <ul style="list-style-type: none"> less than 10 MWh lost = + 0 10 or more MWh lost = + 6 20 or more MWh lost = + 8 50 or more MWh lost = + 11 100 or more MWh lost = + 13 250 or more MWh lost = + 16 500 or more MWh lost = + 19 1000 or more MWh lost = + 22 2500 or more MWh lost = + 26 5000 or more MWh lost = + 29 10000 or more MWh lost = + 32 	Risk/Harm Points	Minor Harm	Substantial Harm	Major Harm	Extreme Harm	Low Risk	+ 0	+ 5	+ 13	+ 22	Moderate Risk	+ 5	+ 8	+ 18	+ 24	High Risk	+ 8	+ 13	+ 22	+ 26	<p>Adjust Base Violation Level According to 3 Factors.</p> <p>1) <u>Financial Loss Caused by Violation.</u> If loss exceeds \$5k, increase the Violation Level according to loss as follows:</p> <table border="0"> <tr> <td>over \$5 k = + 2</td> <td>over \$2.5 M = + 18</td> </tr> <tr> <td>over \$10 k = + 4</td> <td>over \$7.0 M = + 20</td> </tr> <tr> <td>over \$30 k = + 6</td> <td>over \$20 M = + 22</td> </tr> <tr> <td>over \$70 k = + 8</td> <td>over \$50 M = + 24</td> </tr> <tr> <td>over \$120 k = + 10</td> <td>over \$100 M = + 26</td> </tr> <tr> <td>over \$200 k = + 12</td> <td>over \$200 M = + 28</td> </tr> <tr> <td>over \$400 k = + 14</td> <td>over \$400 M = + 30</td> </tr> <tr> <td>over \$1.0 M = + 16</td> <td></td> </tr> </table> <p>2) <u>Volume or Duration of Violation.</u> If more than one of the following applies, use only the one with the greatest point value:</p> <ul style="list-style-type: none"> More than 70k MMBtu/ 10k MWh: + 2 More than 140k MMBtu/ 20k MWh: + 4 More than 700k MMBtu/ 100k MWh: + 6 More than 10 days: + 2 More than 50 days: + 4 More than 250 days: + 6 <p>3) <u>Threat to Market Transparency.</u></p> <ul style="list-style-type: none"> Increase Violation Level to 16 if conduct seriously threatened market transparency. 	over \$5 k = + 2	over \$2.5 M = + 18	over \$10 k = + 4	over \$7.0 M = + 20	over \$30 k = + 6	over \$20 M = + 22	over \$70 k = + 8	over \$50 M = + 24	over \$120 k = + 10	over \$100 M = + 26	over \$200 k = + 12	over \$200 M = + 28	over \$400 k = + 14	over \$400 M = + 30	over \$1.0 M = + 16		<p>Adjust Base Violation Level According to 2 Factors.</p> <p>1) <u>If the Violation:</u></p> <ul style="list-style-type: none"> Resulted in substantial interference with administration of justice, then: + 3 <p>2) <u>If the Violation:</u></p> <ul style="list-style-type: none"> Involved destruction, alteration, fabrication of substantial number of records, documents, or tangible objects, or Involved selection of any essential or especially probative record, document, or tangible object to destroy or alter, or Was otherwise extensive in scope, planning or preparation, then: + 2
Risk/Harm Points	Minor Harm	Substantial Harm	Major Harm	Extreme Harm																																		
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Factors That May Decrease Culpability Score

- Effective Compliance Program ("ECP"):
 - Subtract up to 3 points (- 3) if entity had in place at time of the violation an ECP, as ECP is defined in Chapter 1, Part B, Section 2 of the FERC Penalty Guidelines, *Revised Policy Statement on Penalty Guidelines*, pp. 92-96. FERC will award partial credit to entities with ECPs that do not meet all definitions/requirements in Chapter 1, Part B, Section 2. (- 3 points possible)
 - Do not, however, subtract any points if the entity unreasonably delayed reporting the violations to appropriate government authorities.
- Self-reporting, Cooperation, Avoidance of Trial-Type Hearing, and Acceptance of Responsibility:
 - Subtract 2 points (- 2) if the entity reported the violation to the Commission (a) prior to an imminent threat of disclosure or government investigation and (b) within a reasonably prompt time after becoming aware of the violation.
 - Subtract 1 point (- 1) if entity exhibited full cooperation in the investigation.
 - Subtract 1 point (- 1) if entity resolved the matter without need for a trial-type hearing.
 - Subtract 1 point (- 1) if entity clearly demonstrated recognition and affirmative acceptance of responsibility for its violation.

Violation Level Penalty Table

0-6	\$5,000
7	\$7,500
8	\$10,000
9	\$15,000
10	\$20,000
11	\$30,000
12	\$40,000
13	\$60,000
14	\$85,000
15	\$125,000
16	\$175,000
17	\$250,000
18	\$350,000
19	\$500,000
20	\$650,000
21	\$910,000
22	\$1,200,000
23	\$1,600,000
24	\$2,100,000
25	\$2,800,000
26	\$3,700,000
27	\$4,800,000
28	\$6,300,000
29	\$8,100,000
30	\$10,500,000
31	\$13,500,000
32	\$17,500,000
33	\$22,000,000
34	\$28,500,000
35	\$36,000,000
36	\$45,500,000
37	\$57,500,000
38+	\$72,500,000

Minimum and Maximum Multipliers		
Culpability Sc.	Min. Multiplier	Max. Multiplier
10 +	2.00	4.00
9	1.80	3.60
8	1.60	3.20
7	1.40	2.80
6	1.20	2.40
5	1.00	2.00
4	0.80	1.60
3	0.60	1.20
2	0.40	0.80
1	0.20	0.40
0 or less	0.05	0.20

Step 3: Determine Base Penalty

- The **Base Penalty**, which is determined according to the process in this box, is a dollar amount that will be used in Step 5 to create a minimum and maximum penalty range.
- The **Base Penalty** is determined by identifying the **greater of**:
 - The dollar amount listed in the Violation Level Penalty Table associated with the Violation Level from Steps 1 & 2; or
 - The pecuniary gain to the violator resulting from the violation; or
 - The pecuniary loss caused by the violator.

Step 4: Determine Culpability Score***

- The universal base **Culpability Score** is 5. This number may increase or decrease depending on the applicability of the factors listed below (and further explained in accompanying boxes).
- Final **Culpability Score** (5 ± points from factors) correlates to Minimum and Maximum Multipliers.
- Factors That May Increase Culpability Score, if Applicable:
 - Size of entity and level of management knowledge/tolerance of violation. (+ up to 5 points)
 - Prior history of similar violations by the entity. (+ up to 2 points)
 - Violation of a Commission order. (+ 2 points)
 - Obstruction of justice. (+ 3 points)
- Factors That May Decrease Culpability Score, if Applicable:
 - Effective compliance program. (- up to 3 points)
 - Self-reporting, cooperation, avoidance of trial-type evidentiary hearing, and acceptance of responsibility. (- up to 5 points)

*** Chapter 1, Part C of FERC Penalty Guidelines, *Revised Policy Statement on Penalty Guidelines*, pp. 98-103.

Step 5: Determine the Penalty Range

Minimum Penalty = **Base Penalty** from Step 3 x **Minimum Multiplier** that corresponds with **Culpability Score**.
 Maximum Penalty = **Base Penalty** from Step 3 x **Maximum Multiplier** that corresponds with **Culpability Score**.

Notes: The penalty amount will automatically be capped at the maximum statutory level for any violation. A penalty may be reduced if that payment would impair the entity's ability to disgorge profits or substantially jeopardize its continued viability.

* FERC reserves the right to depart from the Penalty Guidelines where it deems appropriate and Enforcement staff has discretion to close investigations and self-reports without sanctions.

** Chapter 2 of FERC Penalty Guidelines, *Revised Policy Statement on Penalty Guidelines*, pp. 105-113.

Factors That May Increase Culpability Score

- Size of Entity and Level of Management Knowledge/Tolerance of Violation: If more than one of the following applies, use only the one with the greatest number of points:
 - Add 5 points (+ 5) if:
 - Entity had 5,000 or more employees (*i.e.*, 5,000+) and (i) an individual within high-level personnel of the entity participated in, condoned, or was willfully ignorant of (*i.e.*, "acted culpably regarding") the violation; or (ii) tolerance of the violation by substantial authority personnel was pervasive throughout the entity; or
 - The unit of the entity within which the violation was committed had 5,000+ and (i) an individual within high-level personnel of the unit acted culpably regarding the violation; or (ii) tolerance of the violation by substantial authority personnel was pervasive throughout such unit.
 - Add 4 points (+ 4) if:
 - Entity had 1,000+ and (i) an individual within high-level personnel acted culpably regarding the violation; or (ii) tolerance of the violation by substantial authority personnel was pervasive; or
 - The unit of the entity within which the violation was committed had 1,000+ and (i) an individual within high-level personnel of the unit acted culpably regarding the violation; or (ii) tolerance of the violation by substantial authority personnel was pervasive throughout such unit.
 - Add 3 points (+ 3) if:
 - Entity had 200+ and an individual within high-level personnel of the entity acted culpably regarding the violation; or (ii) tolerance of the violation by substantial authority personnel was pervasive; or
 - The unit of the entity within which the violation was committed had 200+ and (i) an individual within high-level personnel of the unit acted culpably regarding the violation; or (ii) tolerance of the violation by substantial authority personnel was pervasive throughout such unit.
 - Add 2 points (+ 2) if the entity had 50+ and an individual within substantial authority personnel acted culpably regarding the violation.
 - Add 1 point (+ 1) if the entity had 10+ and an individual within substantial authority personnel acted culpably regarding the violation.
- Prior History: Add 1 point (+ 1) if entity committed any part of the instant violation less than 10 years after a prior FERC adjudication of any violation, or less than 10 years after finding of similar misconduct by another agency. Add another point (+ 1) if above conduct was less than 5 years after prior adjudicated violation, instead of less than 10 years after. (+ 2 points possible)
- Violation of an Order: Add 2 points (+ 2) if instant violation also violated a prior order or injunction directed at the specific entity by FERC or another govt. agency that adjudicates similar matters as FERC.
- Obstruction of Justice: Add 3 points (+ 3) if entity willfully obstructed, attempted to obstruct, or aided, abetted or encouraged obstruction of justice during investigation or resolution of the instant violation, or if entity knowingly failed to take reasonable steps to prevent such conduct.