



September 16, 2010

Chairman Jon Wellinghoff

**STATEMENT**

## Statement of Chairman Jon Wellinghoff on Revised Penalty Guidelines

"Today the Commission is issuing a revised Policy Statement on Penalty Guidelines. Since the issuance of the March order on the Penalty Guidelines, staff has worked diligently to consider the statements and comments presented in the three conferences held in response to the initial policy statement, and the numerous written comments we received. I thank them for their hard work. Today's order makes several modifications to the guidelines to address concerns raised by industry. I continue to believe that these guidelines benefit both the Commission and industry by increasing fairness, consistency, and transparency in our enforcement program.

One of the changes I would like to highlight is that we have changed our methodology with respect to including loss of load in the Penalty Guidelines. The Federal Power Act requires us to take into consideration the seriousness of a Reliability Standard violation. To do this, we must consider loss of load in some way. However, in this order we determine that we need not attempt to conduct a specific, individualized assessment of the value of the loss of load as a measure of the harm from the violation. Instead, we will use the quantity of load lost as one measure of the seriousness of the violation. This will allow the Commission to take into consideration the harm of a violation without requiring a specific calculation of the value of lost load, which could be resource intensive both for the Commission and industry. I would like to emphasize that we are not imposing strict liability on a grid operator that sheds load. An operator's first responsibility is to comply with the Reliability Standards. The Penalty Guidelines do not penalize load shedding if done in compliance with the Reliability Standards, though we may take the loss of load into account in determining the risk posed by a violation of a Reliability Standard that gave rise to the load shedding.

After considering the comments, the Commission has also decided not to apply the Penalty Guidelines to any notice of penalty from the North American Electric Reliability Corp. In reviewing these notices of penalty, the Commission serves in an appellate role. I believe there are good arguments for and against applying the Penalty Guidelines to those few notices of penalty that the Commission decides to review. I am accepting today's proposed change because of the difficulty in clearly defining which notices of penalty are "out-of-ordinary" that they would warrant consideration under the Penalty Guidelines.

It is important to stress that the Commission will hold a technical conference one year from implementation of the modified Penalty Guidelines we issue today. This conference will provide the industry information on how the guidelines have worked in practice and will allow industry to ask the Commission any questions that have arisen. It will also allow the Commission to receive more input on the guidelines and how they are being implemented. At that time, the Commission will consider our experience and the input we receive and will be open to making further adjustments to the penalty guidelines.

As always, the Enforcement staff has done a tremendous job here."