Compliance Culture and Penalty Assessment

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Objectives

- Elements of a Culture of Compliance
- Types of Penalties
- Settlement Option
- Penalty Assessment Factors

Compliance Culture

Necessary elements of NERC compliance program:

- Promote compliance behavior
- Provide deterrence to future incidents
- Implement actions that will promptly correct behavior
- Disgorge benefits that may or may have accrued to a violator as a consequence of violating
- Visit upon a violator some portion of any damage its violation may or may have visited upon others

Penalty Assessment

Types of penalties:

- Monetary penalties
- Non-monetary sanctions
- Remedial actions
- Settlements

Settlements

- The option of settling is available at any point in the process.

- At no point within the processes and procedures, etc., described within the ERO Sanctions Guidelines is the option of settlement not available.

- Users should be proactively aware of the prospect of settlement at all times.

Penalty Assessment Factors

- **Violation risk factor (VRF)** – Potential reliability significance to the bulk power system (BPS)
  - Lower
  - Medium
  - High
- **Violation severity level (VSL)** – Degree to which compliance with a requirement was not achieved
  - Lower
  - Moderate
  - High
  - Severe

Application of Assessment Factors

- Based on FERC Policy Statement on Enforcement (Oct. 20, 2005; Docket No. PL06-1-000)
- Can reduce or increase the penalty
- Consistency between regions
- Taken into consideration:
  - Repetitive violations and compliance history
  - Complying with compliance directives
  - Intentional violations
  - Concealment
  - Presence and quality of a compliance program
  - Degree and quality of co-operation
  - Self-disclosure and voluntary corrective action
  - Extenuating circumstances

Violation History

- Repeat violations
- Number of repeat violations
- Whether corporate affiliates have previous violations
- Whether proactive steps of a mitigation plan would have avoided the violation

Compliance Directives

- Whether the violation occurred prior to the issuance of a compliance directive
- Whether there was time for the entity to comply with the directive
- Whether the entity has a defensible explanation for not complying with the directive
- Whether the entity acted in accordance with and in good faith to meet the requirement

Intentional Violation/Concealment

- Whether the violation was intentional for reliability reasons
- Whether the violation was intentional for economic reasons
- Whether activity was intended to conceal or resulted in concealment of violations
- Whether previous actions to conceal the violation occurred

Impediment

Whether the organization …

- Failed to respond to data requests
- Failed to produce documents and witnesses
- Intentionally misrepresented the nature or extent of the violation
- Claimed that records were unavailable when they were available
- Limited access to employees

Impediment (cont.)

Whether the organization …

- Inappropriately directed or influenced employees
- Counseled employees not to cooperate fully or openly
- Engaged in obstructive conduct during investigative testimony or interviews
- Failed to properly search computer hard drives for documents and electronic images
- Failed to provide documents in the way they were maintained in the normal course of business

Management Involvement

Whether management ...

- Appropriately censured
- Actively prohibited
- Had no knowledge or involvement
- Passively accepted
- Authorized or facilitated
- Ordered or directed

Internal Compliance Program

Whether the compliance program ...

- Was sufficiently resourced
- Was well documented
- Was widely disseminated in the company
- Had a named and staffed reliability compliance manager position
- Was supervised at a high level in the company
- Had independent access to CEO or board
- Had independence of operation and management.

Internal Compliance Program (cont.)

Whether the compliance program ...

- Was fully supported and participated in by senior management
- Was reviewed and modified sufficiently often
- Provided appropriate and sufficient training for all relevant staff
- Provided formal, internal self-auditing for compliance on a set periodic basis
- Included disciplinary action for employees involved in violations
- Included self-assessment and self-enforcement of internal controls to prevent re-occurrence of violations.

Self-Reporting

- Whether the company self-reported immediately
- Whether senior management actively participated and encouraged employees to provide information
- Whether the entity took immediate steps to address the violation
- Whether individuals with full knowledge of the matter are made available
- Whether the company volunteered its relevant findings relevant evidence
- Whether full scope of the violation disclosed

A self-report may not be a violation.

Self-Reporting

- Whether steps taken were identified by the entity once learning of the violation
- Whether the identity of all employees involved, including senior executives were provided
- Whether all documents evidencing the violation were provided
- Whether an entity self-evaluation, internal audit, or internal compliance program discover the violation
- Whether unjust profits are disgorged

A self-report may not be a violation.

Reliability Impact Assessment

- What are the reliability characteristics (reliability impact) of the entity or facility?
  - Immense
  - Large
  - Medium
  - Small
  - Minimal
- What is the BPS reliability situation “at the time of” the violation?
  - Critical
  - High Risk
  - Stressed
  - Normal
  - Lower Risk

Other Penalties

- The imposition of sanctions is not bound to monetary penalties.
- Non-monetary sanctions must be applied with the objective of promoting reliability and compliance with the reliability standards.
- Non-monetary sanctions may include:
  - Limitations on activities, functions, or operations.
  - Placing an entity on a reliability watch list.
  - Notification of boards of directors, regulators, and others.

Other Penalties (cont.)

- NERC or the Texas RE may issue remedial action directives to correct compliance with NERC or regional reliability standards and reduce or eliminate threats to the reliability of the bulk power system.
- Some examples are as follows:
  - Specifying operating or planning criteria, limits, or limitations.
  - Requiring specific system studies.
  - Defining operating practices or guidelines.
  - Requiring confirmation of data, practices or procedures. through inspection, testing, or other methods.
  - Requiring specific training for personnel.
  - Requiring development of specific operating plans.
  - Contractor required for internal audit.

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Questions?

You may also submit questions to information@texasre.org