

**GUIDE DES SANCTIONS RELATIF
À L'APPLICATION DES NORMES DE
FIABILITÉ EN VIGUEUR AU QUÉBEC
(VERSION ANGLAISE)**

Sanction Guide for the Enforcement of the Reliability Standards in Effect in Québec

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1. PREAMBLE AND SCOPE

The *Sanction Guide for the Enforcement of the Reliability Standards in Effect in Québec* (the “**Guide**”) is established under the *Act respecting the Régie de l’énergie* (the “**Act**”).

The Guide also takes into account the Agreement on the Implementation of the Québec Reliability Standards Compliance Monitoring and Enforcement Program entered into on September 24, 2014 between the Régie de l’énergie du Québec (the “**Régie**”), the North American Electric Reliability Corporation (“**NERC**”) and the Northeast Power Coordinating Council, Inc. (“**NPCC**”) (the “**Agreement**”), as well as the Québec Reliability Standards Compliance Monitoring and Enforcement Program (QCMEP) in effect as of April 1, 2015.

The objective of the Guide is to provide the Régie with guidelines for imposing fair sanctions that are commensurate with the potential impacts of violations on the reliability of electric power transmission and to ensure registered entities a degree of transparency and predictability regarding sanctions that could be imposed by the Régie for violating a reliability standard.

The registered entities referred to in this Guide are identified in the Register of Entities Subject to Reliability Standards as approved by the Régie.

Although the Guide is not regulatory in scope, it proposes principles and criteria that the Régie, at its discretion, may consider in imposing sanctions when it has determined that a reliability standard has been violated. It also proposes a process that the Régie can follow to set the amount of financial penalties.

Adjustment criteria are also proposed to give the Régie the flexibility required to take into account particular circumstances. Rigid application of a sanction formula can thus be avoided.

The Régie may also consider sanctions imposed for similar violations while taking into account the unique facts and circumstances specific to a particular violation and the registered entity involved.

The criteria proposed in this Guide are not exhaustive. Other facets of such criteria or additional criteria may also be considered by the Régie in imposing appropriate sanctions based on the circumstances.

2. BASIC PRINCIPLES

The following paragraphs present and discuss the basic principles underlying why and how the Régie may, where applicable and at its discretion, impose sanctions for violations of requirements of the reliability standards in Québec.

The result of the process leading to the imposition of a sanction for a violation may be compared with the sanctions imposed for any other violation, so that the Régie can ensure uniform application of this Guide and acceptable consistency regarding the imposition of sanctions in Québec.

The Régie should strive to ensure the comparability of outcomes regarding the application of this Guide in the context of reliability standards applicable in Québec, and to promote a reasonable match between the seriousness of a violation and the sanctions imposed for it.

These are distinct but complementary principles. The order in which they are presented does not indicate their order of importance or precedence.

Sanctions are grouped into two categories:

- non-financial penalties and
- financial penalties.

The Régie retains full discretion regarding the choice between financial penalties and non-financial penalties for violations.

The Régie can, at its discretion, prefer non-financial penalties in order to promote behaviors ensuring that registered entities comply with the reliability standards.

Sanctions are necessary mechanisms for ensuring and promoting compliance with the reliability standards, in part because they:

- help promote compliance behaviors,
- act as a deterrent to prevent the appearance of future incidents, actions and situations of non-compliance caused by registered entities or others,
- allow to apply measures to ensure that non-compliance is promptly remedied.

2.1. SETTLEMENT REQUEST

At any time in the process toward imposing a sanction under the Act, a registered entity subject to a compliance investigation may propose and reach a settlement. Any provision of a settlement specifying financial or non-financial penalties may supersede the financial and non-financial penalties that would otherwise be determined by the Régie pursuant to this Guide.

2.2. REASONABLE RELATION TO VIOLATION

Any sanction imposed should:

- reasonably match the seriousness of the violation considering the issue of reliability;
- take into consideration the efforts of the registered entity to take necessary corrective actions in a timely manner;
- take into account the registered entity's reasonable diligence;
- take into consideration the specific circumstances of the registered entity;
- take into consideration the impact of the violation on electric power transmission.

2.3. USE OF SANCTIONS IMPOSITION CRITERIA

If it is proved that a registered entity has violated a reliability standard, the sanctions imposed for that particular violation shall take into consideration all of the facts and other pertinent information pertaining to the incident or situation in question. Subsection 4.3 of this Guide lists some adjustment criteria that the Régie may consider when imposing the sanction.

However, other criteria not mentioned herein may also be considered when the Régie imposes a sanction in its final decision.

2.4. MULTIPLE VIOLATIONS

A violation occurs when the Régie determines that a registered entity required to comply with a reliability standard requirement fails to do so.

The violation may involve more than one standard or several requirements of a single standard. Several individual violations related to an incident or situation of non-compliance may thus be taken into consideration when imposing sanctions.

The Régie may impose a separate sanction for each violation. As a general rule, however, for a number of violations related to a single act or a single occurrence, or for a number of unrelated violations determined at the same time, the Régie may impose a single sanction reasonably matching the overall seriousness of the violations in question.

Some entities that are subject to the reliability standards may assume responsibilities related to more than one function (for example, transmission owner, transmission operator, balancing authority, generator operator), and, as a result, certain requirements may apply to a registered entity responsible for several functions. If the same registered entity performs several functions, a specific violation shall be assessed against the registered entity, not against each function.

2.5. MATCHING SANCTION TO THE SERIOUSNESS OF THE VIOLATION

As discussed in subsection 2.2 above, the sanctions imposed following the violation of a reliability standard must reasonably match the seriousness of the violation in terms of reliability. The seriousness of a given violation by a registered entity can be assessed in light of the following:

- (i) the relevance of the violation risk factor associated with the violation;
- (ii) the characteristics of the registered entity's activities or system, particularly the importance and size of the registered entity's facilities in relation to electric power transmission and its reliability.

If the Régie in its final decision decides to reduce a financial penalty in light of the importance and size of the facilities subject to reliability standards, one or more non-financial penalties may be considered instead, pursuant to sub-sections 2.11, 2.12 and 2.13 of this Guide.

Points (i) and (ii) above are intended to emphasize that registered entities are sanctioned in proportion to the risk or consequences that their violation of reliability standards had or is having on electric power transmission reliability.

Thus, the sanctions imposed for violations of reliability standards shall reasonably match the seriousness of the violation, while considering the factors discussed in this subsection.

2.6. VIOLATION TIME HORIZON

For standards involving a longer time horizon, it normally takes longer to detect and remedy a non-compliance than for standards covering more immediate activities, such as next-day planning and same-day or real-time operations.

Using time as a dimension in imposing sanctions for violations allows for recognition of the more immediate nature and, consequently, the greater risk of the danger posed by certain non-compliances, as opposed to other lower-risk non-compliances posing a future danger if corrective actions are not taken.

The sanctions imposed for violating a reliability standard may consider the time horizon of the standard involved; violations of standards covering real-time activities or the effects of which occur in real time may generally incur greater sanctions than violations of standards with longer time horizons.

Time horizons specific to the requirements of a reliability standard are not reflected when determining violation risk factor or violation severity level. Thus, a violation's time horizon must be considered when imposing a sanction for the violation.

The time horizon to be considered and its impact on imposing a sanction for the violation are left to the Régie's discretion in its final decision, judging based on facts related to the violation.

2.7. FORCE MAJEURE

In the case of force majeure, sanctions must be waived.

2.8. CONCEALED OR INTENTIONAL VIOLATION

Sanctions imposed for violating a reliability standard should take into consideration any attempt by a registered entity to conceal the non-compliance for economic or other reasons, as well as intentional non-compliance for economic or other reasons, except when the purpose is clearly to avoid a more serious tangible threat to immediate electric power transmission reliability.

2.9. ECONOMIC REASON TO VIOLATE

A registered entity may face situations or circumstances where its compliance with the reliability standards would cause it to incur an economic loss or reduced economic gain that could be avoided by violating the standards.

If it is proved that a registered entity has intentionally committed a non-compliance for economic advantages, then that situation should be considered when imposing sanctions. Sanctions must be sufficient to assure that registered entities responsible for complying with the reliability standards do not find it attractive for economic reasons to commit or unduly risk a non-compliance with the reliability standards, or risk or cause incidents resulting from a non-compliance with the reliability standards.

2.10. ECONOMIC IMPACTS OF INTENTIONAL NON-COMPLIANCE

Intentional non-compliances for economic reasons are generally committed for the registered entity's potential gain, but they do not always result in the full potential gain being realized and may even result in damage or loss. However, irrespective of the outcome for the registered entity that made the choice to violate a standard for economic reasons, its actions put reliability at risk for other entities, most often without their knowledge or consent. If it is proved that a registered entity intentionally committed a non-compliance for economic reasons, the sanctions imposed on that entity should consider that such a decision was made; the absence or reduced size of any actual benefit received, or any damage ultimately sustained by the registered entity due to its decision, should have no influence on setting the amount of the sanction to be imposed.

2.11. NON-FINANCIAL PENALTIES

The Régie is not limited to imposing financial penalties; it may impose non-financial penalties.

2.12. NON-EXCLUSIVENESS OF FINANCIAL AND NON-FINANCIAL PENALTIES

A non-financial penalty may be imposed in lieu of or in addition to a financial penalty imposed for the same violation, and vice versa. Imposition of a financial or non-financial penalty for a given violation does not preclude the imposition of the other, provided that the combined sanctions reasonably match the seriousness of the violation.

2.13. MONETIZATION OF THE VALUE OF NON-FINANCIAL PENALTIES

Financial penalties imposed by the Régie shall be expressed in Canadian dollars. If the Régie intends to impose a non-financial penalty in lieu of or in addition to a financial penalty, the registered entity may demonstrate the monetary value that the sanction represents for it.

2.14. MAXIMUM LIMITATION ON AMOUNT OF A SANCTION

Financial and non-financial penalties are imposed on a registered entity by the Régie for violating requirements of the reliability standards. Unlike financial penalties, non-financial penalties may impose limitations or restrictions that may result in an economic or other loss by a registered entity.

Based on the adjustment criteria proposed in this Guide, the maximum amount of a sanction imposed by the Régie for violating a reliability standard cannot exceed \$500,000 per day.

2.15. FREQUENCY AND DURATION OF VIOLATIONS

Some reliability standards are not conducive to calculating financial penalties on a “per violation, per day” basis, but instead require financial penalties to be calculated on the basis of the frequency or duration of the violation. If the Régie in its final decision is of the view that a financial penalty is warranted, or where the Régie in its final decision monetizes a non-financial penalty (see subsection 2.13) for violation of such a standard, the Régie, at its discretion, sets the amount of the financial penalty or the monetary value of the non-financial penalty based on the following criteria:

- Multiple instances of a violation on one day

Some reliability standards by nature may give rise to a non-compliance to a given requirement by a registered entity several times on the same day. In such a case, if the Régie considers it appropriate, it may deem that multiple violations occurred on the same day, each of which is subject to a separate financial penalty.

- Cumulative effect over time

Certain requirements of the reliability standards are measured not on the basis of discrete acts but on the basis of cumulative acts over a given period. Reliability standards that fall into this category are generally those involving measurements based on averages over a given period. If such a standard has been violated, the notion of averaging performance over a given period of time leads to a difficulty since the following must be determined with reasonable accuracy:

- (i) the date of the violation and
- (ii) its duration.

The general rule in such cases is to consider that one violation has occurred per measurement period.

- Periodically monitored discrete violation

Certain reliability standards target discrete events that are only monitored periodically or reported on an exceptional basis. If a requirement of such a standard stipulates that a discrete event constitutes a non-compliance, then it may be deemed that:

- (i) a non-compliance arises when that event occurs;
- (ii) the non-compliance continues until the event has been remedied;
- (iii) the non-compliance began when the registered entity ceased to comply with the standard, regardless of the activity monitoring period, the date when the non-compliance was discovered and the date when it was reported.

For example, if a task required by a reliability standard has not been performed by the stipulated date, the Régie in its final decision may deem that a violation occurred on the first day of non-compliance, and each day thereafter, until compliance was restored. Similarly, if a discrete event occurs and the appropriate correctives actions are not taken on the day it occurs, the Régie may deem that a violation occurred on the day that non-compliance started and on all subsequent days until compliance was restored.

If a standard of this type is violated, the registered entity shall be subject to a financial penalty of up to \$500,000 per day.

The Régie is not obliged to impose the same financial penalty for each day that the registered entity was in violation of the reliability standard in question.

3. CRITERIA FOR NON-FINANCIAL PENALTIES

The Régie may consider all criteria described in this Guide, including the adjustment criteria in subsection 4.3 below, with necessary adaptation, when imposing non-financial penalties.

Such penalties may be imposed in order to promote reliability and compliance with reliability standards.

Non-financial penalties may include the following sanctions:

- issuing a letter of reprimand;
- placing a registered entity on a watch list compiled by the Régie of major violators of reliability standards;
- setting conditions for carrying on certain activities of the registered entity for the purpose of mitigating the violation.

4. CRITERIA FOR FINANCIAL PENALTIES

This section describes criteria to be considered and steps that the Régie may follow to set the amount of a financial penalty for a violation.¹

Step 1: The base financial penalty amount to be imposed for a given violation may be set pursuant to subsections 4.1 and 4.2 below.

Step 2: The base financial penalty amount determined in Step 1 may be reviewed pursuant to subsection 4.3 below. This will result in an adjustment to the amount of the financial penalty.

Step 3: The adjusted amount of the financial penalty determined in Step 2 may be reviewed pursuant to subsection 4.4 below. After this review, the final amount of the financial penalty will be set.

The amount of the financial penalty may be set based on the number of violations per day, unless the Régie deems it warranted to consider the frequency or duration of the violation. If that is the case, the amount of the financial penalty may be set pursuant to the criteria proposed in subsection 2.15 of this Guide.

¹ Though this section covers setting a single financial penalty for a single violation, the process can be applied when setting several distinct financial penalties or an aggregate financial penalty in the case of multiple interdependent violations.

4.1. INITIAL VALUE RANGE OF THE BASE FINANCIAL PENALTY AMOUNT

The Régie may determine the initial value range of the base financial penalty amount based on two factors related to the violation: the violation risk factor (VRF) attributed to the infringed requirement, and the violation severity level (VSL) associated with the violation.

The table in Schedule A presents, as guidelines, base financial penalty amounts that may be set by the Régie. They correspond to various combinations of the violation risk factor and the violation severity level.²

4.1.1. Violation risk factor

Each requirement in the reliability standards adopted by the Régie is assigned a violation risk factor. These factors are assigned to requirements to provide a clear, concise, comparative association between the non-compliance of a requirement and the expected or potential impact of the non-compliance on electric power transmission reliability.

Each requirement of a standard may have one of the following three violation risk factors: lower, medium or high.

4.1.2. Violation severity level

Violation severity levels are defined measurements of the degree to which a registered entity has violated a requirement of a reliability standard. Whereas violation risk factors are determined before a violation and indicate the relative potential impacts that non-compliances with each requirement could pose for electric power transmission reliability, violation severity level is determined after a non-compliance has been found and indicate how severely the registered entity actually violated the requirement(s) in question.

Each requirement may have one of the following four violation severity levels: lower, moderate, high or severe.

4.2. SETTING THE BASE FINANCIAL PENALTY AMOUNT

The Régie, at its discretion, sets the base financial penalty amount, when appropriate, if a violation occurs. The base financial penalty amount set for a violation may reach the upper end of the initial value range determined pursuant to subsection 4.1 above. However, the Régie may set the base financial penalty amount at or below the lower end of the initial value range on the basis of the following two factors regarding the violation and the registered entity:

² As explained in section 2.4, if there are several sufficiently interdependent violations, the Régie may set a single initial value range deemed appropriate for the individual VRF/VSL combinations of the violations.

- the relevance of the violation risk factor of the violation in question given the specific characteristics of the registered entity, and
- whether this is an inconsequential first violation by the registered entity of the reliability standards in question.

The amount set as a result of this review is the base financial penalty amount, and may be used as the reference value for possible adjustments pursuant to the criteria discussed in subsection 4.3 of this Guide.

4.2.1. Applicability of violation risk factors

A violation risk factor is assigned to each requirement of the standards as an indicator of the potential risk or harm to electric power transmission posed by the violation of the requirement by a registered entity required to comply with it. The Régie in its final decision may consider the registered entity's specific circumstances to determine if the violation in question actually produced the risk or harm anticipated by the VRF.

If the degree of risk or harm was not or would not have been produced, the Régie may set the base financial penalty at a value that:

- (i) it deems appropriate, and
- (ii) is within the initial value range determined pursuant to subsection 4.1 of this Guide.

4.2.2. First violation

If the Régie considers that the actual or anticipated impact of the violation is inconsequential and if this is the first violation of the requirement in question by the registered entity, the Régie may, at its discretion and subject to imposing a non-financial penalty:

- (i) set the base financial penalty amount at a value that it deems appropriate within the initial value range determined pursuant to subsection 4.1 above, or
- (ii) relieve the registered entity from paying a financial penalty for the violation (i.e., set the base financial penalty amount at \$0).

Such relief may not be granted to the registered entity if the Régie, in its final decision, determines that the registered entity has a poor compliance history; for example, if there were aggravating circumstances in one or more previous sanctions imposed on the registered entity.

Such relief may not be granted if the registered entity has concealed or attempted to conceal the non-compliance, if it failed or refused to comply with Régie decisions regarding compliance, or if it intentionally committed the non-compliance for a purpose other than a good faith effort to avoid a more serious tangible threat to immediate electric power transmission reliability.

4.3. APPLYING ADJUSTMENT CRITERIA

Adjustment criteria provide an opportunity to the Régie, in its final decision, to adjust the base financial penalty amount to reflect the particular facts and circumstances specific to each violation and registered entity.

The Régie may consider the following circumstances in its final decision:

- the duration and repetition of violations;
- the compliance file of the registered entity;
- the registered entity's failure to comply with Régie decisions related to compliance;
- self-reporting and measures it takes to remedy the non-compliance;
- the degree and quality of the registered entity's cooperation in the compliance investigation and application of measures to remedy the non-compliance, including the mitigation plan;
- the existence and quality of the registered entity's compliance program;
- the registered entity's proved concealment or attempt to conceal the non-compliance or information required for the compliance investigation;
- intentional violations for cause other than to avoid a demonstrably more serious tangible threat to immediate electric power transmission reliability;
- extenuating circumstances;
- any settlement existing to correct the non-compliance and, when applicable, the promptness in reaching the settlement;
- the monetary value of measures to remedy the non-compliance, including the mitigation plan;
- the Régie in its final decision may also consider other criteria that it deems relevant.

4.4. SETTING THE FINAL FINANCIAL PENALTY AMOUNT

At the written request of the registered entity, the Régie may review the amount of the financial penalty determined in Step 2 in light of relevant and verifiable information provided by the registered entity regarding its financial ability to pay the financial penalty. Upon completing its review, the Régie may:

- (i) reduce the financial penalty payable to an amount that the Régie deems appropriate;
- (ii) relieve the registered entity from paying the financial penalty; or
- (iii) maintain the financial penalty amount determined in Step 2.

If the financial penalty was reduced or waived, the Régie may consider imposing an appropriate non-financial penalty as a substitute or alternative for the financial penalty amount that was waived or the amount by which the financial penalty was reduced.

SCHEDULE A TABLE OF BASE FINANCIAL PENALTY AMOUNTS

The table below gives, as guidelines, base financial penalty amounts that the Régie may set and which correspond to combinations of violation risk factor and violation severity level.

Violation risk factor	Violation severity level							
	Lower (1)		Moderate (2)		High (3)		Severe (4)	
	Range limits (\$)		Range limits (\$)		Range limits (\$)		Range limits (\$)	
	Lower	Upper	Lower	Upper	Lower	Upper	Lower	Upper
Lower	500	1,500	1,000	4,000	1,500	8,000	2,500	15,000
Medium	1,000	15,000	2,000	50,000	3,000	100,000	5,000	150,000
High	2,000	60,000	4,000	150,000	6,000	300,000	10,000	500,000

NOTE: The table gives the financial penalty amount that may be applied for each day that a violation continues, subject to the provisions of subsection 2.15 of this Guide regarding the frequency and duration of violations.