



CONFIDENTIAL
ORDER NUMBER
R-37-22

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

British Columbia Hydro and Power Authority
Notice of Penalty for the Contravention of Mandatory Reliability Standards Identified as:

FAC-003-4 Requirement 2 - Violation ID: BCUC2019000681
FAC-003-4 Requirement 2 - Violation ID: BCUC2020000724
FAC-003-4 Requirement 2 - Violation ID: BCUC2020000725
FAC-003-4 Requirement 2 - Violation ID: BCUC2020000726
FAC-003-4 Requirement 2 - Violation ID: BCUC2020000733
FAC-003-4 Requirement 2 - Violation ID: BCUC2020000734
FAC-003-4 Requirement 2 - Violation ID: BCUC2020000735
FAC-003-3 Requirement 6 - Violation ID: BCUC2020000728

BEFORE:

R. I. Mason, Panel Chair
M. Kresivo, KC, Commissioner
E. B. Lockhart, Commissioner

on November 30, 2022

ORDER

WHEREAS:

- A. By confidential Order R-10-22, dated March 22, 2022, the British Columbia Utilities Commission (BCUC) confirmed the following British Columbia Hydro and Power Authority (BC Hydro) Alleged Violations (Confirmed Violations) and found each of the Confirmed Violations to be a contravention of a reliability standard adopted by the BCUC pursuant to the *Utilities Commission Act* (UCA);

Violation 1	FAC-003-4 R2	Violation ID BCUC2019000681
Violation 2	FAC-003-4 R2	Violation ID BCUC2020000724
Violation 3	FAC-003-4 R2	Violation ID BCUC2020000725
Violation 4	FAC-003-4 R2	Violation ID BCUC2020000726
Violation 5	FAC-003-4 R2	Violation ID BCUC2020000733
Violation 6	FAC-003-4 R2	Violation ID BCUC2020000734
Violation 7	FAC-003-4 R2	Violation ID BCUC2020000735
Violation 8	FAC-003-3 R6	Violation ID BCUC2020000728

- B. By Order R-11-22, dated March 23, 2022, the BCUC established a regulatory timetable for the review of BC Hydro's Confirmed Violations for the purposes of penalty determination. BC Hydro was directed to file its submissions on each Confirmed Violation and proposed penalty amounts using the criteria stipulated in section 109.2(3) of the UCA and any other matters;
- C. On April 29, 2022, BC Hydro filed submissions on each Confirmed Violation and proposed penalty amount using the criteria stipulated in section 109.2(3) of the UCA; and
- D. The BCUC has considered all the evidence and BC Hydro's submissions in this proceeding.

NOW THEREFORE pursuant to section 125.2(10) and Part 8.1 of the UCA and in accordance with the Compliance Monitoring Program, and for the Reasons for Decision attached to this order, the BCUC:

- 1. Determines that the limitation period for Violations 1, 2, 3, 4 and 8 identified as BCUC2019000681, BCUC2020000724, BCUC2020000725, BCUC2020000726 and BCUC2020000728, respectively, expired on June 18, 2022 and that the BCUC no longer has the jurisdiction to impose an administrative penalty on BC Hydro for these Confirmed Violations.
- 2. Issues to BC Hydro the attached confidential Notice of Penalty for Violations 5, 6 and 7 identified as BCUC2020000733, BCUC2020000734 and BCUC2020000735, respectively.
- 3. Orders BC Hydro to make full payment of the penalty amounts stipulated in the Notice of Penalty accompanying this order within 30 days of receipt.
- 4. Directs BC Hydro, in a compliance filing, to provide confirmation of payment of these penalty amounts within 15 days of making such payment.
- 5. Directs that this Confidential Order with Reasons for Decision and all related materials filed in this proceeding be held confidential until the BCUC determines otherwise.
- 6. Directs BC Hydro to file written submissions, with supporting reasons, within 30 days of the issuance of this Decision, with respect to confidentiality as described in Section 9 of the Reasons for Decision.

DATED at the City of Vancouver, in the Province of British Columbia, this 30th day of November 2022.

BY ORDER

Original signed by:

R. I. Mason
Commissioner

Attachment

CONFIDENTIAL
NOTICE OF PENALTY

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

British Columbia Hydro and Power Authority
Notice of Penalty
for the Contravention of Mandatory Reliability Standards
Identified as:

Violation 5	FAC-003-4 R2	Violation ID BCUC2020000733
Violation 6	FAC-003-4 R2	Violation ID BCUC2020000734
Violation 7	FAC-003-4 R2	Violation ID BCUC2020000735

Pursuant to section 125.2(10) and Part 8.1 of the *Utilities Commission Act* (UCA) and in accordance with the Compliance Monitoring Program and the Reasons for Decision attached, the British Columbia Utilities Commission (BCUC) hereby notifies British Columbia Hydro and Power Authority (BC Hydro) that:

1. The following administrative penalties are levied against BC Hydro for the contraventions of adopted reliability standards identified as:
 - Violation 5 – BCUC2020000733 - \$500,000
 - Violation 6 – BCUC2020000734 - \$500,000
 - Violation 7 – BCUC2020000735 - \$500,000
2. BC Hydro is ordered to make full payment of the penalty amounts stipulated in this Notice of Penalty within 30 days of receipt of this Notice of Penalty and the BCUC directs BC Hydro, in a compliance filing, to provide confirmation of payment of these penalty amounts within 15 days of making such payment.
3. BC Hydro may appeal this Notice of Penalty under section 101 of the UCA or apply for a reconsideration in writing under section 99 of the UCA addressed to:

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC V6Z 2N3

British Columbia Hydro and Power Authority

Penalties for the Confirmed Violations of Mandatory Reliability Standards:

**BCUC2019000681, BCUC2020000724, BCUC2020000725,
BCUC2020000726, BCUC2020000733, BCUC2020000734,
BCUC2020000735, BCUC2020000728**

~~Confidential~~ Reasons for Decision

November 30, 2022

Before:

R. I. Mason, Panel Chair
M. Kresivo, KC, Commissioner
E. B. Lockhart, Commissioner

Table of Contents

	Page no.
Executive Summary.....	4
1.0 Introduction	10
2.0 Legislative Framework	10
2.1 Reliability standards	10
2.2 Administrative Penalties	11
2.3 Timeline for Issuing Penalties.....	12
2.4 MRS Compliance Processes.....	12
2.4.1 Compliance Violation Investigation.....	12
2.4.2 Remedial Action Directives	12
2.4.1 Find, Fix, Track.....	13
2.4.2 Notice of Alleged Violation.....	14
3.0 MRS Program.....	14
3.1 Role of the Western Electricity Coordinating Council and the Adoption of Compliance Provisions	14
3.2 Assessment of Administrative Penalties	15
4.0 Background to this Proceeding	17
4.1 Prior to the filing of Notice of Alleged Violation CF1867	17
4.2 Filing of Notice of Alleged Violation CF1867	17
4.3 Process in this Proceeding.....	19
5.0 BC Hydro Concerns about Procedural Fairness	20
5.1 Alleged Procedural Unfairness	21
5.2 WECC Penalty Tool	22
6.0 Timeline for Issuing Penalties	25
7.0 Confirmed Violations identified in the Compliance Violation Investigation Report	27
7.1 Violation 1: BCUC2019000681 – FAC-003-4 R2.4 – Notice of Alleged Violation CF1867.....	28
7.1.1 Summary of Reliability Standard	28
7.1.2 Violation 1 Facts	28
7.2 Violation 2: BCUC2020000724 – FAC-003-4 R2.1 – Notice of Alleged Violation CF1867.....	29
7.2.1 Summary of Reliability Standard	29
7.2.2 Violation 2 Facts	29
7.3 Violation 3: BCUC2020000725 – FAC-003-4 R2.4 – Notice of Alleged Violation CF1867.....	30
7.3.1 Summary of Reliability Standard	30
7.3.2 Violation 3 Facts	30

7.4	Violation 4: BCUC2020000726 – FAC-003-4 R2.1 – Notice of Alleged Violation CF1867.....	31
7.4.1	Summary of Reliability Standard	31
7.4.2	Violation 4 Facts	31
7.5	Violation 8: BCUC2020000728 – FAC-003-3 R6 – Notice of Alleged Violation CF1867.....	32
7.5.1	Summary of Reliability Standard	32
7.5.2	Violation 8 Facts	32
8.0	Confirmed Violation Penalty Assessments	34
8.1	Violation 5: BCUC2020000733 – FAC-003-4 R2.4 – Notice of Alleged Violation CF1867.....	34
8.1.1	Summary of Reliability Standard	34
8.1.2	Basic facts of Violation 5	35
8.1.3	Consideration of Violation 5 under Section 109.2 of the UCA.....	36
8.1.4	Summary of UCA Factors Pertaining to Violation 5	41
8.1.5	Violation 5: Additional Factors	42
8.1.6	Penalty Consideration for Violation 5	44
8.2	Violation 6: BCUC2020000734 – FAC-003-4 R2.4 – Notice of Alleged Violation CF1867.....	45
8.2.1	Summary of Reliability Standard	45
8.2.2	Basic facts of Violation 6	45
8.2.3	Consideration of Violation 6 under section 109.2 of the UCA	46
8.2.4	Summary of UCA Factors Pertaining to Violation 6	52
8.2.5	Violation 6: Additional Factors	52
8.2.6	Penalty Consideration for Violation 6	53
8.3	Violation 7: BCUC2020000735 – FAC-003-4 R2.4 – Notice of Alleged Violation CF1867.....	54
8.3.1	Summary of Reliability Standard	54
8.3.2	Basic facts of Violation 7	54
8.3.3	Consideration of Violation 7 under section 109.2 of the UCA	55
8.3.4	Summary of UCA Factors Pertaining to Violation 7	61
8.3.5	Violation 7: Additional Factors	61
8.3.6	Penalty Consideration for Violation 7	62
9.0	Confidentiality	63

Executive Summary

This proceeding concerns eight violations (Violations) by British Columbia Hydro and Power Authority (BC Hydro) of Mandatory Reliability Standard (MRS) FAC-003, which relates to transmission vegetation management. The Panel addresses issues regarding procedural fairness with respect to how the investigation was conducted, whether the limitation period has expired with respect to five of the eight Violations, and the appropriate amount of administrative penalty to be assessed, if any, for three of the eight Violations.

The Violations were submitted to the British Columbia Utilities Commission (BCUC) by the administrator of its MRS program in BC, the Western Electricity Coordinating Council (WECC), as Notice of Alleged Violation CF1867 on May 21, 2021. Five of the eight Violations resulted from a compliance violation investigation conducted by WECC. The remaining three Violations were self-reported by BC Hydro. BC Hydro did not contest the eight Violations, which were all confirmed by BCUC Order R-10-22, dated March 22, 2022. The Violations are:

Violation 1	FAC-003-4 R2	Transmission Vegetation Management	Violation ID BCUC2019000681
Violation 2	FAC-003-4 R2	Transmission Vegetation Management	Violation ID BCUC2020000724
Violation 3	FAC-003-4 R2	Transmission Vegetation Management	Violation ID BCUC2020000725
Violation 4	FAC-003-4 R2	Transmission Vegetation Management	Violation ID BCUC2020000726
Violation 5	FAC-003-4 R2	Transmission Vegetation Management	Violation ID BCUC2020000733
Violation 6	FAC-003-4 R2	Transmission Vegetation Management	Violation ID BCUC2020000734
Violation 7	FAC-003-4 R2	Transmission Vegetation Management	Violation ID BCUC2020000735
Violation 8	FAC-003-3 R6	Vegetation Inspection	Violation ID BCUC2020000728

BC Hydro submits that while it is not attempting to avoid the consequences of its non-compliance with MRS standards, it has “significant procedural fairness concerns” with WECC’s enforcement of the Violations.¹ BC Hydro submits that WECC’s enforcement process “has fallen short of the requirements of procedural fairness because:

- WECC initially proposed penalties of over \$13 million, which, to BC Hydro’s knowledge, would be the largest penalty ever imposed for FAC-003 violations;
- When BC Hydro argued that WECC had gone beyond its authority in recommending such penalties, [footnote removed] WECC affirmed that it had evidence to support the penalty recommendations and that the penalties were appropriate in the circumstances. However, when the BCUC requested WECC to substantiate its penalty recommendations, WECC reduced the proposed penalty amounts by nearly \$10 million;

¹ Exhibit B-2, pp. 2-3.

- WECC has refused to provide the BCUC or BC Hydro with its penalty tool used to calculate proposed penalty amounts. BC Hydro submits that WECC's response amounts to an admission that it is denying BC Hydro the right to know the case it must meet and to make informed submissions on it; and
- WECC continues to revise the FAC-003 Notice of Alleged Violation and has materially changed the allegations against BC Hydro, including, in relation to the FAC-003 violations the BCUC has already confirmed."²

BC Hydro submits that the unfairness in this proceeding cannot be corrected by further process.³

The Panel observes the following regarding WECC's evidence with respect to the Violations:

- WECC's original Notice of Alleged Violation CF1867 contained errors and omissions that were corrected at BC Hydro's request.
- WECC states that the aggregate penalty recommendations in the Notice of Alleged Violation CF1867 being reduced by almost \$10 million to a new total proposed penalty amount of \$3.6 million was "due to lack of management oversight and ineffective internal controls."⁴
- In its second revision to the Notice of Alleged Violation, WECC newly includes an assertion that the recommended penalty amounts are in US dollars, whereas previously no currency was specified, leaving the Panel unsure of the currency of WECC's penalty recommendations prior to the revision.⁵

Taken together, these facts undermine the Panel's confidence in the process WECC used to determine its recommended penalty amounts for the Violations. As a result, the Panel gives no weight to WECC's recommended penalty amounts.

For the following reasons, the Panel rejects BC Hydro's submissions that Notice of Alleged Violation CF1867 is "not credible"⁶ and that the proceedings "cannot be corrected by further process"⁷:

- BC Hydro was presented with the case it had to meet in Notice of Alleged Violation CF1867, which sets out the facts in support of the Violations, and which was the basis for BC Hydro deciding not to contest that the Violations had occurred. The Panel is using the same facts set out in Notice of Alleged Violation CF1867 for determining the penalties associated with the Violations.
- Nothing in WECC's revisions to Notice of Alleged Violation CF1867 affected the case which BC Hydro chose not to contest. WECC's first revision to the Notice of Alleged Violation was filed after BC Hydro's decision not to contest the Violations, but did not change the facts in support of the Violations. WECC's second revision to the Notice of Alleged Violation contained changes to WECC's recommended penalty amounts, but again did not change the facts in support of the Violations.
- The Panel has determined that it gives no weight to WECC's recommended penalty amounts. As a result, WECC's recommended penalty amounts are not part of the case against BC Hydro.

² Exhibit B-2, p. 2.

³ Ibid.

⁴ Exhibit A2-10, p. 3.

⁵ Exhibit A2-9, p. 22.

⁶ Exhibit B-2, p. 10.

⁷ Ibid., p. 2.

BC Hydro has had an opportunity to respond to the case presented in the Notice of Alleged Violation CF1867. BC Hydro responded to Notice of Alleged Violation CF1867 one month after WECC had issued the notice and made no submission that it had not had an opportunity or sufficient time to respond. BC Hydro responded to the second revision to the Notice of Alleged Violation three weeks after that notice was issued. The Panel has granted BC Hydro two extensions to provide its response to the second revision to the Notice of Alleged Violation, including one granted on April 20, 2022, which was specifically requested by BC Hydro to allow it time to respond to issues of procedural unfairness.

Limitation Period

BC Hydro submits that, as of no later than June 18, 2022, the two-year limitation period for the issuance of a notice of administrative penalty set out in section 109.3 of the *Utilities Commission Act* (UCA) had expired for five of the eight Violations (Allegedly Expired Violations). BC Hydro submits that the acts or omissions alleged to constitute the Allegedly Expired Violations came to the attention of the BCUC Chair approximately 11 months before WECC issued Notice of Alleged Violation CF1867 on May 21, 2021, when WECC presented a Compliance Violation Investigation Report to the BCUC on June 18, 2020.⁸

BC Hydro submits that the Compliance Violation Investigation Report enumerated each of the Allegedly Expired Violations and presented a detailed set of factual findings to support the alleged contraventions, which were repeated in Notice of Alleged Violation CF1867.⁹ BC Hydro submits that WECC's revisions of the Notice of Alleged Violation did not include new facts or evidence, which could have re-started the limitation period. Therefore, according to BC Hydro, the limitation period began when WECC presented the Compliance Violation Investigation Report to the BCUC on June 18, 2020, and thus expired on June 18, 2022.¹⁰

The Allegedly Expired Violations are:¹¹

- Violation 1: BCUC2019000681
- Violation 2: BCUC2020000724
- Violation 3: BCUC2020000725
- Violation 4: BCUC2020000726
- Violation 8: BCUC2020000728

The Panel finds that the limitation period for the Allegedly Expired Violations expired on June 18, 2022 and further finds that the BCUC no longer has the jurisdiction to impose an administrative penalty on BC Hydro for the Allegedly Expired Violations.

In the Panel's view, the delivery of the Compliance Violation Investigation Report to the BCUC on June 18, 2020 was sufficient to meet the test that the "act or omission alleged to constitute the contravention" came to the attention of the chair of the BCUC because the Compliance Violation Investigation Report included the detailed findings and factual background to support what were at the time alleged contraventions.

The Panel finds that the limitation period for the three Violations that are not Allegedly Expired Violations (Remaining Violations) is May 21, 2023, and further finds that the BCUC has the jurisdiction to impose an administrative penalty on BC Hydro for the Remaining Violations. The Remaining Violations, summarized below,

⁸ Exhibit B-4, pp. 1-2.

⁹ Ibid., p. 2.

¹⁰ Ibid.

¹¹ Exhibit A2-4.

first came to the attention of the BCUC Chair when WECC filed Notice of Alleged Violation CF1867 with BC Hydro on May 21, 2021.

Violation 5

Violation 5 described in Notice of Alleged Violation CF1867 is a contravention involving one instance of violation of Reliability Standard FAC-003-4, which sets out the requirements BC Hydro must meet with regards to Transmission Vegetation Management.

Requirement FAC-003-4 R2 requires each applicable Transmission Owner and applicable Generator Owner to manage vegetation to prevent encroachments into the Minimum Vegetation Clearance Distance of its applicable line(s) which are not either an element of an Interconnection Reliability Operating Limit, or an element of a Major WECC Transfer Path.

Specifically, requirement FAC-003-4 R2.4 requires an Entity to manage vegetation to prevent an encroachment into the line Minimum Vegetation Clearance Distance that would cause a Sustained Outage.

On June 25, 2020, BC Hydro had two vegetation-related Sustained Outages on a 360 kV transmission line, identified as 3L15, caused by a Douglas Fir tree. These violations affected four spans of a 360 kV transmission line located at a dual circuit corridor with another 360 kV transmission line, identified as 3L13. The four spans were directly located between a generating station and a terminal substation. First, at 1:50 PM, an arcing Douglas Fir tree caused a Sustained Outage and tripped the associated generating station which was generating 202 MW at the time; the generation capacity was 240 MW. The first Sustained Outage lasted for 48 minutes. BC Hydro did not respond or take corrective action because it was not aware that the outage was vegetation related,¹² and at 2:30 PM BC Hydro re-energized 3L15. At 2:58 PM, 3L15 tripped again, resulting in a second Sustained Outage due to the Douglas Fir contacting the line. BC Hydro left the line out of service until June 26, 2020, when at 2:35 PM BC Hydro removed the Douglas Fir and returned the line to service. The second Sustained Outage lasted for 23 hours and 37 minutes. This violation began on June 25, 2020, when vegetation encroached on 3L15 and ended on June 26, 2020, when BC Hydro removed the Douglas Fir tree, for a total of two days.¹³

The Panel finds that an administrative penalty for Violation 5 is warranted because Violation 5 posed a serious risk to the Bulk Electric System.

The Panel finds that the appropriate administrative penalty for Violation 5 is \$500,000.

The Base Penalty Range for the Violation is \$0 to \$1,000,000 per day, based on the Violation Risk Factor of High for MRS Requirement FAC-003-4 R2 and the Violation Severity Level of Severe.

The Panel finds that the appropriate administrative penalty for the Violation should be in the middle of this range because, although BC Hydro has no previous administrative penalty for MRS Reliability Standard FAC-003-4, the Violation posed a serious risk to the Bulk Electric System. The Panel finds the middle of the range to be between 30 percent and 70 percent of the Base Penalty Range. The Panel further finds that the penalty for the Violation should be 50 percent of the Base Penalty Range, that is, \$500,000, because although BC Hydro self-reported the Violation and cooperated with the investigation, BC Hydro did not take adequate steps to prevent Violation 5 from occurring.

¹² Exhibit B-2, Appendix A, pp. 19 and 25.

¹³ Exhibit A2-9, Attachment 1, p. 13.

Violation 6

Violation 6 described in Notice of Alleged Violation CF1867 is a contravention involving one instance of violation of Reliability Standard FAC-003-4, which sets out the requirements BC Hydro must meet with regards to Transmission Vegetation Management.

Requirement FAC-003-4 R2 requires each applicable Transmission Owner and applicable Generator Owner to manage vegetation to prevent encroachments into the Minimum Vegetation Clearance Distance of its applicable line(s) which are not either an element of an Interconnection Reliability Operating Limit, or an element of a Major WECC Transfer Path.

Specifically, requirement FAC-003-4 R2.4 requires an Entity to manage vegetation to prevent an encroachment into the line Minimum Vegetation Clearance Distance that would cause a Sustained Outage.

On July 29, 2020, at 1:40 PM, a 287 kV transmission line, identified as 2L101, experienced a Sustained Outage due to a Red Alder tree encroaching into the Minimum Vegetation Clearance Distance. The tree was identified, and the line remained out of service until the tree could be removed on July 30, 2020, at 2:43 PM. The transmission line was a radial feed and located at a generation connection. The violation began on July 29, 2020, when the Red Alder tree encroachment into the Minimum Vegetation Clearance Distance led to a Sustained Outage and ended on July 30, 2020, when the tree at issue was removed, for a total of two days.¹⁴

The Panel finds that an administrative penalty for Violation 6 is warranted because Violation 6 posed a serious risk to the Bulk Electric System.

The Panel finds that the appropriate administrative penalty for Violation 6 is \$500,000.

The Base Penalty Range for the Violation is \$0 to \$1,000,000 per day, based on the Violation Risk Factor of High for MRS Requirement FAC-003-4 R2 and the Violation Severity Level of Severe.

The Panel finds that the appropriate administrative penalty for the Violation should be in the middle of this range because, although BC Hydro has no previous administrative penalty for MRS Reliability Standard FAC-003-4, the Violation posed a serious risk to the Bulk Electric System. The Panel finds the middle of the range to be between 30 percent and 70 percent of the Base Penalty Range. The Panel further finds that the penalty for the Violation should be 50 percent of the Base Penalty Range, that is, \$500,000, because although BC Hydro self-reported the Violation and cooperated with the investigation, BC Hydro did not take adequate steps to prevent Violation 6 from occurring.

Violation 7

Violation 7 described in Notice of Alleged Violation CF1867 is a contravention involving one instance of violation of Reliability Standard FAC-003-4, which sets out the requirements BC Hydro must meet with regards to Transmission Vegetation Management.

Requirement FAC-003-4 R2 requires each applicable Transmission Owner and applicable Generator Owner to manage vegetation to prevent encroachments into the Minimum Vegetation Clearance Distance of its applicable line(s) which are not either an element of an Interconnection Reliability Operating Limit, or an element of a Major WECC Transfer Path.

¹⁴ Exhibit A2-9, Attachment 1, p. 16.

Specifically, requirement FAC-003-4 R2.4 requires an Entity to manage vegetation to prevent an encroachment into the line Minimum Vegetation Clearance Distance that would cause a Sustained Outage.

On July 28, 2020 BC Hydro had a vegetation-related Sustained Outage on a 500 kV circuit at a three-circuit transmission corridor right of way that included two 500 kV circuits and one 230 kV circuit that were part of a large substation. The 500 kV transmission line, identified as 5L76, tripped at 3:25 PM due to a Black Cottonwood tree encroachment into the Minimum Vegetation Clearance Distance resulting in the Sustained Outage that ended at 3:31 PM, for a total of six minutes. BC Hydro removed the Black Cottonwood tree responsible for the Sustained Outage at 7:45 PM on July 29, 2020.¹⁵ BC Hydro's Vegetation Inspection conducted on May 19, 2019 identified the associated area for corrective action to be completed in 2020.¹⁶ This violation began on July 28, 2020 when a tree encroached and ended on July 29, 2020, when BC Hydro removed the tree, for a total of two days.¹⁷

On April 29, 2022, BC Hydro submitted its response to the proposed penalties set out in the Second Revised Notice of Alleged Violation and BC Hydro does not challenge the facts above provided by WECC.¹⁸

The Panel finds that an administrative penalty for Violation 7 is warranted because Violation 7 posed a serious risk to the Bulk Electric System.

The Panel finds that the appropriate administrative penalty for Violation 7 is \$500,000.

The Base Penalty Range for the Violation is \$0 to \$1,000,000 per day, based on the Violation Risk Factor of High for MRS Requirement FAC-003-4 R2 and the Violation Severity Level of Severe.

The Panel finds that the appropriate administrative penalty for the Violation should be in the middle of this range because, although BC Hydro has no previous administrative penalty for MRS Reliability Standard FAC-003-4, the Violation posed a serious risk to the Bulk Electric System. The Panel finds the middle of the range to be between 30 percent and 70 percent of the Base Penalty Range. The Panel further finds that the penalty for the Violation should be 50 percent of the Base Penalty Range, that is, \$500,000, because although BC Hydro self-reported the Violation and cooperated with the investigation, BC Hydro did not take adequate steps to prevent Violation 7 from occurring.

¹⁵ Exhibit A2-9, Attachment 1, p. 14.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Exhibit A2-5, Schedule A, Table 1, p. 4.

1.0 Introduction

This proceeding concerns the appropriate administrative penalties, if any, to be assessed against British Columbia Hydro and Power Authority (BC Hydro) under the Mandatory Reliability Standards (MRS) Program for violations of certain reliability standards and associated requirements (Requirements) adopted by the British Columbia Utilities Commission (BCUC) that apply to BC Hydro in respect of the Bulk Electric System.

In this decision the Panel addresses the following matters:

- the legislative framework for the BCUC’s jurisdiction to levy administrative penalties;
- the MRS Program in British Columbia (BC);
- the background to this penalty proceeding;
- procedural fairness issues raised by BC Hydro;
- the assessment of specific administrative penalties; and
- confidentiality of the penalty Decision.

2.0 Legislative Framework

2.1 Reliability standards

Section 125.2 (2) of the *Utilities Commission Act* (UCA) provides the BCUC with exclusive jurisdiction to determine whether a “reliability standard,” as defined in the UCA, is in the public interest and should be adopted in British Columbia.

The term “reliability standard” is defined in section 125.2 (1) of the UCA as:

a reliability standard, rule or code established by a standard-making body for the purpose of being a mandatory reliability standard for planning and operating the North American bulk electric system, and includes any substantial change to any of those standards, rules or codes.

Section 125.2 (1) of the UCA provides that the term “standard-making body” includes the Western Electricity Coordinating Council (WECC).

Section 125.2 (6) of the UCA states that the BCUC must, by order, adopt the reliability standards addressed in the report¹⁹ if the BCUC considers that the reliability standards are required to maintain or achieve consistency in BC with other jurisdictions that have adopted the reliability standards.

Section 8 of the UCA authorizes the BCUC to appoint or engage persons who have special or technical knowledge necessary to assist the BCUC in carrying out its functions. By Order G-123-09 dated October 15, 2009, the BCUC appointed WECC as the BCUC’s Administrator to assist in carrying out functions related to Reliability Standards as described in the Administrative Agreement established between the BCUC and WECC.

¹⁹ Report subject to Section 125.2 (3) of the UCA.

Order G-123-09 approved the Rules of Procedure for Reliability Standards in British Columbia (Rules) including a compliance monitoring program (Compliance Monitoring Program).²⁰ Section 2.2 of the Rules defines a Reliability Standard as follows:

A Reliability Standard as defined in section 125.2(1) of the *Utilities Commission Act* (UCA) that has been adopted by the Commission under section 125.2(6) of the UCA for application in British Columbia. A Reliability Standard normally consists of the following components: (i) Introduction; (ii) Requirements; and (iii) Measures. A Reliability Standard does not include Compliance Provisions.

Henceforth in the Decision, the capitalized term Reliability Standard applies as defined in the Rules.

The purpose of the FAC-003 Transmission Vegetation Management reliability standard is to maintain a reliable electric transmission system by using a defense-in-depth strategy to manage vegetation located on transmission rights of way and minimize encroachments from vegetation located adjacent to the rights of way, thus preventing the risk of those vegetation-related outages that could lead to cascading.²¹

2.2 Administrative Penalties

Section 109.1 (1) of the UCA provides that the BCUC may find that a person has contravened a reliability standard adopted by the BCUC.

Pursuant to section 109.2 (1) of the UCA, if the BCUC finds that a person has contravened a reliability standard, the BCUC may impose an administrative penalty on that person in an amount that does not exceed the prescribed limit.

Pursuant to section 3(4) of the Administrative Penalties Regulation²², the prescribed penalty limit is \$1,000,000 for corporations contravening a reliability standard adopted by the BCUC. Section 109.2 (2) of the UCA gives the BCUC discretion to impose separate administrative penalties, each not exceeding the prescribed limit, for each day the contravention continues.

Section 109.2 (3) of the UCA requires that, before the BCUC imposes an administrative penalty on a person, the BCUC, in addition to considering anything else the BCUC considers relevant, must consider the following factors:²³

(a) previous contraventions by, administrative penalties imposed on and orders issued to the following:

(i) the person;

[...]

(b) the gravity and magnitude of the contravention;

(c) the extent of the harm to others resulting from the contravention;

(d) whether the contravention was repeated or continuous;

(e) whether the contravention was deliberate;

²⁰ BCUC Order G-123-09 approved the Rules of Procedure for Reliability Standards in British Columbia (Rules).

²¹ FAC-003-4 Transmission Vegetation Management Reliability Standard as Attachment E to Order R-39-17, p. 292.

²² The Administrative Penalties Regulation was enacted by Order in Council No. 731 issued November 8, 2012.

²³ Section 109.2 (3) of the UCA.

- (f) any economic benefit derived by the person from the contravention;
- (g) the person's efforts to prevent and correct the contravention;
- (h) the cost of compliance with the provision contravened;
- (i) whether the person self-reported the contravention;
- (j) the degree and quality of cooperation during the commission's investigation;
- (k) any undue hardship that might arise from the amount of the penalty; and
- (l) any other matters prescribed by the Lieutenant Governor in Council.

These factors (a) through (l) above are collectively referred to as UCA Factors throughout the Decision.

Furthermore, section 109.2(3) of the UCA provides that in addition to being required to consider the UCA Factors, the Panel may consider anything else it considers relevant before imposing an administrative penalty. Such additional considerations are referred to in the Decision as Additional Factors.

2.3 Timeline for Issuing Penalties

Pursuant to section 109.8(1) of the UCA, the time limit for giving an entity registered in the MRS Program (Entity) notice under section 109.3 imposing an administrative penalty is two years after the date on which the act or omission alleged to constitute the contravention first came to the attention of the Chair of the BCUC.

Pursuant to Section 2.1 of the Penalty Guidelines, the date on which the act or omission alleged to constitute the contravention first came to the attention of the BCUC Chair is the date that a Notice of Alleged Violation is issued to an Entity, with a copy to the BCUC.²⁴

2.4 MRS Compliance Processes

All Entities are required to comply with Reliability Standards. The Compliance Monitoring Program provides processes for dealing with compliance with Reliability Standards adopted by the BCUC.

2.4.1 Compliance Violation Investigation

Pursuant to section 2.4 of the Compliance Monitoring Program, the BCUC or WECC as the Administrator, may initiate a compliance violation investigation at any time in response to a system disturbance, complaint or possible violation of a Reliability Standard identified by any other means (Compliance Violation Investigation).

2.4.2 Remedial Action Directives

Section 2.7 of the Compliance Monitoring Program provides that WECC may recommend the BCUC issue a remedial action directive to protect the reliability of the Bulk Power System from an imminent threat. The BCUC may, in its sole discretion, issue a remedial action directive pursuant to section 72 and section 73 of the UCA to protect the reliability of the Bulk Power System.

²⁴ BCUC, Penalty Guidelines for British Columbia Mandatory Reliability Standards, Section 2.1, p. 1.

Section 72 of the UCA provides that:

- (1) The commission has jurisdiction to inquire into, hear and determine an application by or on behalf of any party interested, complaining that a person constructing, maintaining, operating or controlling a public utility service or charged with a duty or power relating to that service, has done, is doing or has failed to do anything required by this Act or another general or special Act, or by a regulation, order, bylaw or direction made under any of them.
- (2) The commission has jurisdiction to inquire into, hear and determine an application by or on behalf of any party interested, requesting the commission to
 - (a) give a direction or approval which by law it may give, or
 - (b) approve, prohibit or require anything to which by any general or special Act, the commission's jurisdiction extends.

Section 73 of the UCA provides that:

- (1) The commission may order and require a person to do immediately or by a specified time and in the way ordered, so far as is not inconsistent with this Act, the regulations or another Act, anything that the person is or may be required or authorized to do under this Act or any other general or special Act and to which the commission's jurisdiction extends.
- (2) The commission may forbid and restrain the doing or continuing of anything contrary to or which may be forbidden or restrained under any Act, general or special, to which the commission's jurisdiction extends.

2.4.1 Find, Fix, Track

Pursuant to section 4.2 of the Compliance Monitoring Program, WECC will perform a find, fix, track (Find Fix, Track) review on a possible violation (Possible Violation) prior to considering the alleged violation (Alleged Violation) process. The Find, Fix, Track process is defined as “[a] process described in the Rules of Procedure for assessing and reporting Possible Violations that appear to the Administrator to pose a lesser risk to the bulk power system and/or Bulk Electric System.”²⁵ WECC is required to consider the following factors in its Find, Fix, Track review:

- 1) The underlying facts and circumstances (i.e., what happened, how, why, where and when);
- 2) The specific Reliability Standard(s) possibly violated;
- 3) Whether the Entity has mitigated or begun mitigation of the Possible Violation;
- 4) The Administrator’s assessment of potential and actual level of risk to reliability, including mitigating factors during the period of noncompliance;
- 5) Information that the Administrator may have about the perceived strength of the Entity’s compliance program, including preventive and corrective processes and procedures, internal controls and culture of compliance;
- 6) Information that the Administrator may have about the Entity’s compliance record; and
- 7) Whether aggravating factors are present.

²⁵ Rules of Procedure for Reliability Standards in British Columbia, by Order R-40-17 dated September 1, 2017, p. 2.

2.4.2 Notice of Alleged Violation

Pursuant to section 4.3 of the Compliance Monitoring Program, WECC may issue a Notice of Alleged Violation to the Entity, with a copy to the BCUC, once a Possible Violation is identified as an Alleged Violation. A Notice of Alleged Violation may list one or more Alleged Violations pertaining to Reliability Standards and a violation of each requirement associated with a Reliability Standard is considered a separate violation. In accordance with the Compliance Monitoring Program, a Notice of Alleged Violation also specifies the North American Electric Reliability Corporation (NERC) Violation Risk Factor and Violation Severity Level associated with each Alleged Violation which establish the base penalty range for the violation.

3.0 MRS Program

Pursuant to the legislative framework set out above, this section provides background information on the BC MRS Program.

Unless otherwise specifically defined in these Reasons for Decision, capitalized terms used herein bear the same meanings as set out in the NERC Glossary of Terms, adopted by the BCUC from time to time.

3.1 Role of the Western Electricity Coordinating Council and the Adoption of Compliance Provisions

By Order G-123-09, pursuant to section 8 of the UCA, the BCUC appointed WECC as its Administrator for the MRS Program. The BCUC and WECC entered into an administration agreement (Administration Agreement) dated October 8, 2009 (which was renewed in October 2014 and again in July 2019) whereby the BCUC granted WECC the authority to assist the BCUC with respect to functional registration of BC Entities and monitoring compliance of Reliability Standards adopted in BC. This grant of authority is restricted to the actions and obligations specified in the Administration Agreement as reflected in the Rules. Section 3 of the Administration Agreement provides that “WECC shall make recommendations to the BCUC regarding a violation(s) of the Reliability Standard(s) but shall not determine the disposition of the BCUC-approved Reliability Standards.” It goes on to state that “[n]othing in this Agreement delegates any of the BCUC’s statutory jurisdiction to WECC.”

Pursuant to Section 4.3.2(5) of the Compliance Monitoring Program, as the BCUC’s Administrator for the MRS Program, WECC provides a Notice of Alleged Violation addressed to a BC Entity and WECC’s risk assessment of each Alleged Violation, based on WECC’s assessment of the facts and evidence.

According to WECC, it considers various factors in its review of Possible and Alleged Violations. These factors include, but are not limited to²⁶:

- (1) Violation Risk Factor;
- (2) Violation Severity Level;
- (3) risk to the reliability of the Bulk Electric System, including the seriousness of the violation;
- (4) Violation Time Horizon;
- (5) the violation’s duration;
- (6) the Entity’s compliance history;

²⁶ Exhibit A2-9, p. 21.

- (7) the Entity's self-reports and voluntary corrective action;
- (8) the degree and quality of cooperation by the Entity in an audit or investigation process, and in any remedial action;
- (9) the quality of the Entity's compliance program;
- (10) any attempt by the Entity to conceal the violation or any related information;
- (11) whether the violation was intentional; and
- (12) any other relevant information or extenuating circumstances.

On September 16, 2013, the BCUC issued Order R-33-13 which ordered, amongst other things, that the Rules be revised to provide for the adoption of two NERC indicators, namely, Violation Risk Factor and Violation Severity Level as compliance provisions and for the incorporation of penalty ranges. Subsequently, by Order R-34-15, dated June 3, 2015, the BCUC adopted the NERC Violation Risk Factor and Violation Severity Level indicators as compliance provisions for Reliability Standards adopted in BC. These compliance provisions, included in Section D of each Reliability Standard or published separately by NERC, are considered in the assessment of penalties.

3.2 Assessment of Administrative Penalties

The factors governing the BCUC's determination of a penalty following confirmation of a violation are set out in section 109.2 of the UCA. In assessing the appropriate penalty, if any, the BCUC may also be guided but is not bound by the provisions of the Penalty Guidelines for BC Mandatory Reliability Standards (Penalty Guidelines) which were approved by Order R-28-16, dated June 23, 2016. The most recent revision of the Penalty Guidelines was approved by Order R-40-17, dated September 1, 2017.

The Penalty Guidelines include the BC penalty matrices (Penalty Matrix) setting out recommended minimum and maximum penalties (Base Penalty Range) consistent with section 3(4) of the Administrative Penalties Regulation.²⁷ The Penalty Guidelines set out one Penalty Matrix for Corporations and another for a director, officer or agent of a corporation. The recommended Base Penalty Range for a violation is determined by the combination of Violation Risk Factor and Violation Severity Level of that violation. Section 2.5 of the Penalty Guidelines states that BCUC's administrator (i.e., WECC) will consider the BC Penalty Matrix and identify in the Notice of Alleged Violation the Base Penalty Range that represents the seriousness of the violation.

In a report regarding an inquiry into potential adjustments to the MRS Program, the BCUC states that "[r]egardless of any matrix or listing of factors, the Commission retains the discretion to determine that an administrative penalty is not appropriate despite the finding of a contravention or to impose an amount of an administrative penalty to the maximum limit provided in the *Administrative Penalties Regulation*. In imposing a penalty, however, it must take into account the factors set out in section 109.2(3) of the UCA."²⁸

The Penalty Matrix for corporations is set out in Table 1 below.

²⁷ Administrative Penalties Regulation, BC Reg 316/2012.

²⁸ Order R-33-13, dated September 16, 2013, Report, p. 14.

Table 1: BC Penalty Matrix for a Corporation²⁹

	Violation Severity Level							
Violation Risk Factor	Lower		Moderate		High		Severe	
	Range Limits		Range Limits		Range Limits		Range Limits	
	Low	High	Low	High	Low	High	Low	High
Lower	\$0	\$3,000	\$0	\$7,500	\$0	\$15,000	\$0	\$25,000
Medium	\$0	\$30,000	\$0	\$100,000	\$0	\$200,000	\$0	\$335,000
High	\$0	\$125,000	\$0	\$300,000	\$0	\$625,000	\$0	\$1,000,000

As stated in section 2.3 of the Penalty Guidelines, the NERC Violation Risk Factor and Violation Severity Level that accompany each Reliability Standard adopted in BC will be used as compliance provisions in the MRS Program to consider the Base Penalty Range.

Each Reliability Standard Requirement has been assigned a Violation Risk Factor based on the expected or potential impact of the violation to the reliability of the Bulk Power System.³⁰ One of the three defined levels of Violation Risk Factor is assigned to each Reliability Standard Requirement³¹:

- High: “A requirement that, if violated, could directly cause or contribute to bulk electric system instability, separation, or a cascading sequence of failures, or could place the bulk electric system at an unacceptable risk of instability, separation, or cascading failures; or, a requirement in a planning time frame that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly cause or contribute to bulk electric system instability, separation, or a cascading sequence of failures, or could place the bulk electric system at an unacceptable risk of instability, separation, or cascading failures, or could hinder restoration to a normal condition.”
- Medium: “A requirement that, if violated, could directly affect the electrical state or the capability of the bulk electric system, or the ability to effectively monitor and control the bulk electric system. However, violation of a medium risk requirement is unlikely to lead to bulk electric system instability, separation, or cascading failures; or, a requirement in a planning time frame that, if violated, could, under emergency, abnormal, or restorative conditions anticipated by the preparations, directly and adversely affect the electrical state or capability of the bulk electric system, or the ability to effectively monitor, control, or restore the bulk electric system. However, violation of a medium risk requirement is unlikely, under emergency, abnormal, or restoration conditions anticipated by the preparations, to lead to bulk electric system instability, separation, or cascading failures, nor to hinder restoration to a normal condition.”
- Lower: “A requirement that is administrative in nature and a requirement that, if violated, would not be expected to adversely affect the electrical state or capability of the bulk electric system, or the ability to effectively monitor and control the bulk electric system; or, a requirement that is administrative in nature and a requirement in a planning time frame that, if violated, would not, under the emergency, abnormal, or restorative conditions anticipated by the preparations, be expected to adversely affect the

²⁹ Amounts may be imposed for each day the contravention continues, per Utilities Commission Act, RSBC 1996, Chapter 473, section 109.2(2).

³⁰ NERC Rules of Procedure, Appendix 4B Sanction Guidelines, effective January 19, 2021, p. 7.

³¹ NERC Violation Risk Factors, p. 1.

electrical state or capability of the bulk electric system, or the ability to effectively monitor, control, or restore the bulk electric system. A planning requirement that is administrative in nature.”

Violation Severity Levels are defined levels of the degree to which a Requirement of a Reliability Standard was violated. Whereas Violation Risk Factors are determined pre-violation and indicate the relative potential impacts that violations of each Reliability Standard could pose to the reliability of the Bulk Power System, Violation Severity Levels are assessed post-violation and are an indicator of the severity of the actual violation of the Reliability Standard(s) Requirement(s) in question.³² Violation Severity Levels have designations as described below³³:

Lower VSL	Moderate VSL	High VSL	Severe VSL
The performance or product measured did not meet a minor aspect of the requirement.	The performance or product measured did not meet a significant aspect of the requirement, but the majority of the requirement was met.	The performance or product measured did not meet a majority of the requirement, but did meet a significant aspect of the requirement.	The responsible entity failed to meet the performance of the requirement.

4.0 Background to this Proceeding

4.1 Prior to the filing of Notice of Alleged Violation CF1867

By Order R-18-19 dated September 9, 2019, the BCUC approved WECC’s recommendation to conduct a Compliance Violation Investigation of BC Hydro pertaining to the FAC-003 Reliability Standard. On May 15, 2020, WECC issued a non-public Compliance Violation Investigation report (Compliance Violation Investigation Report) finding seven Possible Violations of FAC-003-4. On June 19, 2020, WECC issued revised public and non-public versions of the Compliance Violation Investigation Report after BC Hydro made submissions on information included in the Compliance Violation Investigation Report.

After the Compliance Violation Report was issued, BC Hydro submitted three additional self-reports pertaining to Possible Violations of FAC-003-4 R2, increasing the total number of Possible Violations of FAC-003-4 to ten.³⁴

By Confidential Order R-1-21 dated January 20, 2021, pursuant to section 2.7 of the Compliance Monitoring Program, the BCUC issued a remedial action directive to BC Hydro for violations of reliability standard FAC-003-4 R2 regarding BC Hydro’s Vegetation Management Program (FAC-003 Remedial Action Directive).

By letter to the BCUC dated December 10, 2021, WECC confirmed that it had verified with BC Hydro that all work has been completed pursuant to the FAC-003 Remedial Action Directive as of November 10, 2021 and WECC has reasonable assurance that all requirements were met.

4.2 Filing of Notice of Alleged Violation CF1867

On May 21, 2021, WECC issued Notice of Alleged Violation CF1867 to BC Hydro citing ten Alleged Violations of Requirements under the FAC-003 Transmission Vegetation Management Mandatory Reliability Standard (Alleged Violations of FAC-003).

³² NERC Rules of Procedure, Appendix 4B Sanction Guidelines, effective January 19, 2021, p. 7.

³³ NERC Violation Severity Level Guidelines, p. 2.

³⁴ Exhibit A2-9, Attachment 1, p. 4.

On June 21, 2021, BC Hydro responded to Notice of Alleged Violation CF1867, in accordance with Section 4.4.2 of the Compliance Monitoring Program, stating that it does not contest eight of the ten Alleged Violations of FAC-003 (Uncontested Violations). The Uncontested Violations are all in respect of the Transmission Vegetation Management Mandatory Reliability Standard and associated MRS Requirements and are identified below:

Violation 1	FAC-003-4 R2	Transmission Vegetation Management	Violation ID BCUC2019000681
Violation 2	FAC-003-4 R2	Transmission Vegetation Management	Violation ID BCUC2020000724
Violation 3	FAC-003-4 R2	Transmission Vegetation Management	Violation ID BCUC2020000725
Violation 4	FAC-003-4 R2	Transmission Vegetation Management	Violation ID BCUC2020000726
Violation 5	FAC-003-4 R2	Transmission Vegetation Management	Violation ID BCUC2020000733
Violation 6	FAC-003-4 R2	Transmission Vegetation Management	Violation ID BCUC2020000734
Violation 7	FAC-003-4 R2	Transmission Vegetation Management	Violation ID BCUC2020000735
Violation 8	FAC-003-3 R6	Vegetation Inspection	Violation ID BCUC2020000728

BC Hydro submitted that while it does not contest eight of the ten Alleged Violations, it does raise issues with factual inaccuracies in Notice of Alleged Violation CF1867.³⁵ BC Hydro also states WECC did not present enough facts and evidence to support the original Notice of Alleged Violation CF1867 or to support the proposed penalty amounts that exceed the base penalty ranges established by the BCUC.³⁶

On August 20, 2021, WECC revised the Notice of Alleged Violation CF1867 in response to submissions made by BC Hydro on June 21, 2021 (First Revised Notice of Alleged Violation). WECC stated that it “affirms all the violations in [Notice of Alleged Violation] CF1867” and affirms that it has “sufficient evidence to support the [Notice of Alleged Violation] and believes the penalty recommendations are appropriate.” WECC states that the First Revised Notice of Alleged Violation corrects inaccurate violation discovery dates and provides further clarity in the proposed penalty section.³⁷

On September 17, 2021, BC Hydro responded to the First Revised Notice of Alleged Violation noting that while some errors and omissions were corrected, others were not, and repeated its earlier submissions.³⁸

The eight Uncontested Violations were subsequently confirmed by confidential BCUC Order R-10-22, dated March 22, 2022 (Violations).

³⁵ Exhibit A2-5, pp. 2-3.

³⁶ Ibid., p. 3.

³⁷ Exhibit A2-6; Exhibit A2-7.

³⁸ Exhibit A2-8, p. 2.

4.3 Process in this Proceeding

By Order R-11-22 dated March 23, 2022, the BCUC established a regulatory timetable for a confidential hearing process to review the Violations for the purpose of penalty determination.

On April 1, 2022, BC Hydro submitted a request for a two-week extension for filing its response for the penalty amounts of each Violation to April 22, 2022. Additionally, BC Hydro requested that the BCUC request WECC to provide its penalty tool and supporting information used to determine the proposed penalty amounts.

By Order R-16-22 dated April 5, 2022, the BCUC issued an amended regulatory timetable requesting WECC to provide its penalty tool and supporting information used to determine the proposed penalty amounts in the First Revised Notice of Alleged Violation by April 8, 2022. Additionally, the BCUC approved BC Hydro's two-week extension for its penalty submissions.

By letter dated April 8, 2022, WECC requested an extension, from April 8, 2022 to April 13, 2022, to submit its response to the BCUC's request for WECC's penalty tool and supporting information.

On April 8, 2022, WECC also filed a further revision of Notice of Alleged Violation CF1867 revising its recommended penalty amounts for each Violation (Second Revised Notice of Alleged Violation). WECC explained that it had discovered errors in its penalty recommendations, the largest of which was that it had "erroneously included an aggravating factor in the penalty calculations that was not included in the [Notice of Alleged Violations] and should not have been included in the penalty calculations." WECC states that the Second Revised Notice of Alleged Violation "does not include any changes to any facts or descriptions related to the Alleged Violations, it includes only corrected penalty recommendations and penalty rationale."³⁹

On April 13, 2022, WECC submitted its response to the BCUC's request for its penalty tool. While WECC declined to provide its penalty tool used to determine the proposed penalty amounts, it provided additional information regarding the factors used to determine its proposed penalty amounts and each factor's impact on those proposed penalty amounts.

By letter dated April 13, 2022, BC Hydro requested that the BCUC adjourn a number of its MRS enforcement proceedings, including this proceeding, to allow BC Hydro reasonable opportunity to consider and respond to the information provided by WECC concerning the facts and evidence contained in Notice of Alleged Violation CF1867 (Adjournment Request). BC Hydro requested an extension to file further submissions by April 29, 2022.

By letter dated April 20, 2022, the BCUC rejected BC Hydro's Adjournment Request, stating that WECC had made no changes to any of the facts or descriptions related to the Violations, and that BC Hydro had sufficient time to respond to evidence on the record. However, in the interest of procedural fairness, the BCUC amended the regulatory timetable to allow BC Hydro to make its submission by April 29, 2022.

On April 28, 2022, WECC wrote to the BCUC to explain the events and circumstances that led to the concerns raised by BC Hydro related to the process in which the revised Notices of Alleged Violations were issued and proposed penalties were revised.

On April 29, 2022, BC Hydro filed its submission on penalty amounts. In its submission, BC Hydro also addressed the Second Revised Notice of Alleged Violation and WECC's submission on its penalty tool dated April 13, 2022.

³⁹ Exhibit A2-9, Attachment 2, p. 1.

By letter dated May 5, 2022, the BCUC received a BC Hydro submission in which it requested that correspondence between the BCUC and WECC dated April 28, 2022, of which BC Hydro received copies, should be included in evidence and considered by the BCUC in this proceeding. BC Hydro submits that the letter includes relevant evidence that supports its concerns about the integrity and fairness of the Notice of Alleged Violations and this proceeding as set out in its April 29, 2022 submission.⁴⁰ The Panel determined that WECC's letter dated April 28, 2022 should be accepted as evidence in this proceeding.

5.0 BC Hydro Concerns about Procedural Fairness

In BC Hydro's April 29, 2022 submission on possible penalties to be determined for the Violations, it raises a number of concerns with respect to the process that has occurred in WECC's enforcement of the Violations. BC Hydro submits that while it is not attempting to avoid the consequences of its non-compliance with MRS, it has "significant procedural fairness concerns" with WECC's enforcement of the Violations. BC Hydro explains that WECC's recommended penalty amounts carry "significant weight" with the BCUC because of WECC's "unique expertise both in assessing a reasonable penalty and in advising what the penalty would likely be in the U.S." and WECC's special role insofar as it has been delegated administrative authority by the BCUC.⁴¹

BC Hydro submits that WECC's enforcement process "has fallen short of the requirements of procedural fairness because:

- WECC initially proposed penalties of over \$13 million, which, to BC Hydro's knowledge, would be the largest penalty ever imposed for FAC-003 violations;
- When BC Hydro argued that WECC had gone beyond its authority in recommending such penalties, [footnote removed] WECC affirmed that it had evidence to support the penalty recommendations and that the penalties were appropriate in the circumstances. However, when the BCUC requested WECC to substantiate its penalty recommendations, WECC reduced the proposed penalty amounts by nearly \$10 million;
- WECC has refused to provide the BCUC or BC Hydro with its penalty tool used to calculate proposed penalty amounts. BC Hydro submits that WECC's response amounts to an admission that it is denying BC Hydro the right to know the case it must meet and to make informed submissions on it; and
- WECC continues to revise the FAC-003 Notice of Alleged Violation and has materially changed the allegations against BC Hydro, including, in relation to the FAC-003 violations the BCUC has already confirmed."⁴²

BC Hydro states that WECC's filings of Notice of Alleged Violation revisions and its submission related to its BC Penalty Tool, call into question the remainder of the information and allegations set out in the original Notice of Alleged Violation CF1867 and Second Revised Notice of Alleged Violation. As a result, BC Hydro submits that the unfairness in this proceeding cannot be corrected by further process.⁴³

⁴⁰ Exhibit B-3, p. 1.

⁴¹ Exhibit B-2, pp. 2-3.

⁴² Ibid., p. 2.

⁴³ Exhibit B-2, p. 2.

5.1 Alleged Procedural Unfairness

BC Hydro submits that all administrative bodies acting under statutory authority have a “duty to comply with the rules of natural justice and to follow the rules of procedural fairness”, and that parties affected should “have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair, impartial, and open process, appropriate to the statutory, institutional, and social context of the decision.”⁴⁴

BC Hydro submits that its procedural fairness concerns relate to its right to know the case against it and that WECC’s enforcement of the notices of alleged violation has prejudiced BC Hydro’s ability to respond to the allegations against it. BC Hydro submits it had a reasonable expectation that WECC would set out the facts and evidence upon which it based its allegations and that WECC would set out the basis for its recommended penalty. Further, BC Hydro submits it is entitled to a transparent process, including a “complete understanding of how WECC arrived at its penalty recommendations,” and to a “higher degree of procedural fairness” because of the significance of the monetary penalties involved.⁴⁵

BC Hydro submits that WECC has not explained which aggravating factor was accidentally included in each of the recommended penalty calculations in Notice of Alleged Violation CF1867 and the First Revised Notice of Alleged Violation, nor has WECC explained how removing the factor in the Second Revised Notice of Alleged Violation resulted in a reduction of over \$10 million to the recommended aggregate penalty amount.⁴⁶ BC Hydro submits the fact that WECC reduced each recommended penalty suggests that WECC either made ten individual errors in calculations or did not apply the factors to each violation individually.⁴⁷

BC Hydro states that in the original Notice of Alleged Violation CF1867, WECC alleged with respect to Violation 8, that BC Hydro had failed to inspect more than 15 percent of its transmission lines. In the First Revised Notice of Alleged Violation, WECC changed the allegation for Violation 8 to “unconfirmed”. In the Second Revised Notice of Alleged Violation, WECC again changed the allegation for Violation 8 to say that more than 15 percent of BC Hydro’s applicable transmission lines “have annual vegetation work that is potentially uncompleted.”⁴⁸ BC Hydro submits that WECC “continues to revise the basis of the allegation and appears to have changed its interpretation of the Standard.” BC Hydro submits that this is especially concerning with respect to a violation that BC Hydro chose not to contest, that the BCUC has already confirmed, and where WECC has not provided any evidence to support its revised allegation.”⁴⁹

BC Hydro adds that on June 21, 2021, it noted that WECC’s proposed penalty amounts in the Notice of Alleged Violation CF1867 and First Revised Notice of Alleged Violation were “beyond WECC’s grant of authority under the Second Amended Administration Agreement between the BCUC and WECC and were not consistent with the MRS Rules of Procedure Penalty Guidelines.”⁵⁰ BC Hydro also notes that WECC also removed the statement “[t]hus, the proposed penalty amounts exceed the base penalty range” in the Second Revised Notice of Alleged Violation when WECC reduced the aggregate proposed penalty amount from \$13,144,920 to \$3,559,320.⁵¹

BC Hydro argues that despite WECC having multiple opportunities to issue accurate and complete Notices of Alleged Violations with appropriate penalty recommendations, WECC has issued a number of revisions which

⁴⁴ Ibid., p. 8.

⁴⁵ Ibid., pp. 8-9.

⁴⁶ Ibid., pp. 9-10.

⁴⁷ Ibid., p. 6.

⁴⁸ Ibid., pp. 5-7.

⁴⁹ Ibid., p. 7.

⁵⁰ Ibid., p. 5.

⁵¹ Exhibit B-2, p. 6.

fundamentally changed the allegations against BC Hydro and the recommended penalty amount. BC Hydro submits that this demonstrates that Notice of Alleged Violation CF1867 is not credible.⁵²

5.2 WECC Penalty Tool

On April 1, 2022, BC Hydro requested that WECC provide a copy of the penalty tool that is used to determine proposed penalties for MRS violations.⁵³ According to BC Hydro, the rules of procedural fairness entitle it to know the case it had to meet in order to make informed submissions, and this includes knowing any formula, guideline or supporting analysis the decision maker will rely upon in its assessment of penalties.⁵⁴

BC Hydro submits that the fact that the Panel requested WECC submit its penalty tool and supporting information for the proposed penalty amounts⁵⁵ indicates that the Panel was of the view that the penalty tool had probative value in assessing the reasonableness of the recommended penalty amounts. Further, BC Hydro submits that WECC's recommendations generally carry significant weight.⁵⁶

On April 13, 2022, WECC filed a letter in response to the BCUC's request and stated that the penalty tool is a proprietary tool and therefore not to be shared.⁵⁷ WECC stated that while it agreed that Entities ought to know the framework for how appropriate penalties are determined, they should not be provided with WECC's internal deliberative processes regarding its discretion in providing penalty recommendations as this type of deliberative process information is often considered privileged in governmental contexts to avoid deterring or "disincentivizing optimum government decision making." Specifically, WECC states that disclosure of the penalty tool and full knowledge of its inputs and calculations could be used by Entities to argue over the appropriate proposed penalty that bears a reasonable relation to the seriousness of the violation or make economic decisions to comply or not comply with a Reliability Standard.⁵⁸ WECC provided additional information regarding the factors used to determine the proposed penalty amounts in Notice of Alleged Violation CF1867 and each factor's impact on the proposed penalty amount.⁵⁹

BC Hydro notes that WECC had acknowledged that its penalty tool can arrive at a penalty recommendation outside of the base penalty ranges set out in the BCUC's Penalty Guidelines. BC Hydro submits that WECC justified the penalties being outside the penalty ranges in the original Notice of Alleged Violation CF1867 and the First Revised Notice of Alleged Violation as the alleged violations originally stated that there was a programmatic failure of BC Hydro's Transmission Vegetation Management Program.⁶⁰ However, when WECC issued the Second Revised Notice of Alleged Violation, it removed the aggravating factor it had erroneously included and removed the sentence indicating it was justified in proposing penalty amounts outside the Base Penalty Ranges. BC Hydro submits that WECC has neither provided the penalty tool nor explained how the aggravating factor allowed it to exceed the base penalty ranges. Therefore, BC Hydro states that the BCUC should not rely on any penalty calculations derived from a formula that allows WECC to exceed the BCUC's authorization.⁶¹

⁵² Ibid., p. 10.

⁵³ Exhibit B-1, p. 3.

⁵⁴ Exhibit B-2, p. 7.

⁵⁵ Exhibit A-3.

⁵⁶ Exhibit B-2, p. 8.

⁵⁷ Exhibit A2-2, p. 1.

⁵⁸ Ibid.

⁵⁹ Ibid., pp. 2-3.

⁶⁰ Exhibit B-2, pp. 10-11.

⁶¹ Exhibit B-2, p.11.

BC Hydro submits that the BCUC's request to WECC for the penalty tool appeared to result in WECC discovering errors in Notice of Alleged Violation CF1867, including errors in WECC's penalty recommendations.⁶² BC Hydro also states that it has a right to know how the factors are weighted in determining a penalty and to make submissions about the appropriate value for each factor considered.⁶³ BC Hydro argues that WECC's response is an admission that it is denying BC Hydro the case it must meet and to make informed submissions on it, thereby denying BC Hydro a transparent process.⁶⁴ BC Hydro therefore submits that the BCUC cannot rely on WECC's proposed penalty amounts or the basis that WECC has provided for the penalty amounts.⁶⁵

Panel Determination

While this proceeding concerns the determination of penalties associated with the Violations, BC Hydro raises concerns regarding the overall process, including the investigation and confirmation processes that led to this penalty proceeding. The Panel addresses here BC Hydro's concerns in their entirety, including the investigation and confirmation processes and this proceeding.

The Panel addresses each of the following matters raised by BC Hydro in its submission:

1. The weight to be given to WECC's recommended penalty amounts;
2. That WECC has not allowed BC Hydro to know the complete case being made against it;
3. That WECC has changed the allegation against BC Hydro made in Violation 8, including a change made after BC Hydro chose not to contest the allegation; and
4. That WECC exceeded its grant of authority from the BCUC by recommending a penalty higher than the BC Penalty Guidelines.

Weight to give WECC's penalty recommendations

WECC's proposed penalty amounts for the Violations are merely recommendations, and the Panel is not obligated to accept them.

While WECC is the BCUC's appointed MRS Program Administrator, and no doubt has "unique expertise both in assessing a reasonable penalty and in advising what the penalty would likely be in the U.S." as BC Hydro submits, the Panel observes the following regarding WECC's evidence with respect to the Violations:

- WECC's original Notice of Alleged Violation CF1867 contained errors and omissions that were corrected in the First Revised Notice of Alleged Violation at BC Hydro's request.
- WECC states that the aggregate penalty recommendations in the Notice of Alleged Violation CF1867 being reduced by almost \$10 million to a new total proposed penalty amount of \$3.6 million was "due to lack of management oversight and ineffective internal controls."⁶⁶
- In the Second Revised Notice of Alleged Violation, WECC newly includes an assertion that the recommended penalty amounts are in US dollars, whereas previously no currency was specified, leaving the Panel unsure of the currency of WECC's penalty recommendations prior to the Second Revised Notice of Alleged Violation.⁶⁷

⁶² Ibid., p. 8.

⁶³ Ibid., p. 10.

⁶⁴ Ibid., p. 10.

⁶⁵ Ibid., p. 11.

⁶⁶ Exhibit A2-10, p. 3.

⁶⁷ Exhibit A2-9, p. 22.

Taken together, these facts undermine the Panel's confidence in the process WECC used to determine its recommended penalty amounts for the Violations. As a result, the Panel gives no weight to WECC's recommended penalty amounts. For additional clarity, this determination only applies to WECC's recommended penalty amounts and not to the factors that WECC used to assess the penalty amounts, which the Panel considers in section 8 below.

In sections 7 and 8 below, the Panel reviews the evidence of WECC and BC Hydro and use its judgement to determine whether a penalty should be levied for each of the eight Violations, and if so the amount of such penalties.

Knowing the case to meet

The Panel finds that BC Hydro was presented with the case it had to meet in Notice of Alleged Violation CF1867. Notice of Alleged Violation CF1867 sets out the facts in support of the Violations, which were the basis for BC Hydro deciding not to contest that the Violations had occurred. The Panel is using the same facts set out in Notice of Alleged Violation CF1867 for determining the penalties associated with the Violations, so the case against BC Hydro has not changed since it decided not to contest the Violations.

The Panel finds that nothing in the revisions to Notice of Alleged Violation CF1867 affected the case, which BC Hydro did not contest. WECC's First Revised Notice of Alleged Violation was filed on August 20, 2021, after BC Hydro's decision not to contest the Violations. The First Revised Notice of Alleged Violation corrected inaccurate violation discovery dates and provided further clarity in the proposed penalty section, but did not change the facts in support of the Violations. WECC's Second Revised Notice of Alleged Violation, filed on April 2, 2022, contained changes to WECC's recommended penalty amounts, but again did not change the facts in support of the Violations. When BC Hydro responded to the First Revised Notice of Alleged Violation on September 17, 2021 and to the Second Revised Notice of Alleged Violation on April 29, 2022 it made no submission that the modifications to the original Notice of Alleged Violation would have caused it to contest any of the Violations.

The Panel accepts WECC's reasons for not providing the penalty tool as evidence in this proceeding. The penalty tool is a part of WECC's internal deliberative process, and it is inappropriate to share this with Entities. WECC has provided a description of the factors affecting each recommended penalty amount, including WECC's assessment of the Violation Risk Factor and Violation Severity Level of each Violation which together determine the Base Penalty range for each Violation. The Panel finds that WECC's description of the factors affecting each recommended penalty amount is sufficient to allow BC Hydro to make its submission on whether it considers the penalty amounts appropriate.

The Panel has determined that it gives no weight to WECC's recommended penalty amounts. As a result, WECC's recommended penalty amounts are not part of the case against BC Hydro.

The Panel further finds that BC Hydro has had an opportunity to respond to the case presented in the Notice of Alleged Violation CF1867. BC Hydro responded to Notice of Alleged Violation CF1867 on June 21, 2021, one month after WECC had issued the notice, and made no submission that it had not had an opportunity or sufficient time to respond. BC Hydro responded to the Second Revised Notice of Alleged Violation on April 29, 2022, three weeks after that notice was issued on April 8, 2022. The Panel has granted BC Hydro two extensions to provide its response to the Second Revised Notice of Alleged Violation, including one granted on April 20, 2022, which was specifically requested by BC Hydro to allow it time to respond to issues of procedural unfairness.

For the foregoing reasons, the Panel rejects BC Hydro's submissions that Notice of Alleged Violation CF1867 is "not credible"⁶⁸ and that the proceedings "cannot be corrected by further process."⁶⁹

The changing allegation made in Violation 8

With respect to BC Hydro's submission that WECC has twice changed the allegation against it for Violation 8, the Panel finds that the process by which Violation 8 was confirmed was conducted fairly. WECC's allegation that BC Hydro violated Reliability Standard FAC-003-3 R6 has not changed in either the first or the second revision to Notice of Alleged Violation CF1867. What WECC changed in the first revision and the second revision to Notice of Alleged Violation CF1867 is the degree to which BC Hydro violated that standard, which has consequences for the penalty range used for Violation 8, not the fact of the violation.

The Panel further finds that the process in this proceeding to determine the appropriate penalty for Violation 8 has been conducted fairly. BC Hydro has had the opportunity to address WECC's most recent revision to the Notice of Alleged Violation, dated April 8, 2022, and did so on April 29, 2022. As previously noted, the Panel granted BC Hydro's requested extension to April 29, 2022, specifically for the purpose of ensuring procedural fairness.

WECC allegedly exceeding its authority

The Panel makes no determination as to whether WECC exceeded its authority in recommending penalty amounts in excess of the BCUC's MRS Penalty Guidelines.

In its Second Revised Notice of Alleged Violation, WECC reduced its recommended penalty amounts for the Violations such that they are within the ranges set out in the BCUC's MRS Penalty Guidelines. The question of whether WECC had the authority to recommend the penalty amounts in its Notice of Alleged Violation CF1867 or its First Revised Notice of Alleged Violation, which have since been changed, is not relevant in this proceeding.

The Panel notes that WECC has no authority to impose an administrative penalty on an Entity in BC. WECC's role as the BCUC's MRS Program Administrator is to recommend penalty amounts for the BCUC's consideration, and it is a matter for the BCUC to impose an administrative penalty on an Entity if the circumstances demand one, after the BCUC has considered all the relevant evidence including WECC's penalty recommendation.

6.0 Timeline for Issuing Penalties

BC Hydro submits that, as of no later than June 18, 2022, the two-year limitation period for the issuance of a notice of administrative penalty has expired for seven of the ten Alleged Violations set out in Notice of Alleged Violation CF1867 (Allegedly Expired Violations). BC Hydro submits that the BCUC had knowledge of the acts or omissions alleged to constitute the Allegedly Expired Violations approximately 11 months before WECC issued Notice CF1867 on May 21, 2021.⁷⁰

⁶⁸ Exhibit B-2, p. 10.

⁶⁹ Ibid., p. 2.

⁷⁰ Exhibit B-4, p. 1.

BC Hydro notes that in September 2019, the BCUC, under signature of the BCUC Chair, ordered a Compliance Violation Investigation with respect to four vegetation-related incidents that occurred in May and June 2019, and that WECC conducted that investigation on behalf of the BCUC and presented a Compliance Violation Investigation Report to the BCUC on June 18, 2020.⁷¹

BC Hydro submits that the Compliance Violation Investigation Report enumerated each of the Allegedly Expired Violations and presented a detailed set of factual findings to support the alleged contraventions and that Notice CF1867 repeats the factual findings as outlined in the Compliance Violation Investigation Report and the latter is further attached as an appendix to Notice of Alleged Violation CF1867.⁷² BC Hydro submits that WECC's revisions of the Notice of Alleged Violation did not include new facts or evidence, which could have re-started the limitation period. Therefore, according to BC Hydro, the limitation period began when WECC presented the Compliance Violation Investigation Report to the BCUC on June 18, 2020, and thus expired two years later on June 18, 2022.⁷³

Of the seven Allegedly Expired Violations enumerated in the Compliance Violation Investigation Report, the following five were not contested by BC Hydro and were confirmed by confidential BCUC Order R-10-22, dated March 22, 2022 (Allegedly Expired Confirmed Violations):⁷⁴

- Violation 1: BCUC2019000681
- Violation 2: BCUC2020000724
- Violation 3: BCUC2020000725
- Violation 4: BCUC2020000726
- Violation 8: BCUC2020000728

BC Hydro submits that the BCUC's authority to impose administrative penalties is set out in Part 8.1 of the UCA and that the time limit for giving a notice under section 109.3 imposing an administrative penalty is two years after the date on which the act or omission alleged to constitute the contravention first came to the attention of the BCUC Chair. BC Hydro notes that, as per section 2.1 of the BCUC's MRS Penalty Guidelines, the BCUC deems the phrase "the date on which the act or omission alleged to constitute the contravention first came to the attention of the chair of the commission" to mean "the date that a [Notice of Alleged Violation] is issued to an Entity with copy to the Commission."⁷⁵

BC Hydro submits that there may be circumstances where the BCUC was aware of the act or omission alleged to constitute the contravention before the issuance of a Notice of Alleged Violation and when there is clear evidence that this has occurred, the date of issuance of a Notice of Alleged Violation cannot be used to postpone the limitation period.⁷⁶

BC Hydro submits that the date of issuance of Notice of Alleged Violation CF1867 is not material to the determination of the limitation period with respect to the Allegedly Expired Violations because WECC conducted a thorough investigation and determined that BC Hydro had seven Possible Violations, all of which were detailed

⁷¹ Ibid., pp. 1-2.

⁷² Ibid., p. 2.

⁷³ Ibid., p. 2.

⁷⁴ Exhibit A2-4.

⁷⁵ Exhibit B-4, p. 3.

⁷⁶ Ibid., p. 3.

in the Compliance Violation Investigation Report and provided to the BCUC and subsequently set out in Notice of Alleged Violation CF1867.⁷⁷ Accordingly, it is BC Hydro's position that the limitation period began on June 18, 2020 and expired on June 18, 2022 and that the BCUC no longer has the jurisdiction to issue administrative penalties against BC Hydro with respect to the five Allegedly Expired Confirmed Violations.⁷⁸

BC Hydro submits that while section 109.8 of the UCA requires the BCUC Chair to be informed of the underlying facts, relevant jurisprudence has confirmed that it is not necessary for a stated head to perform or be informed of a specific act, but rather, it is sufficient that responsible officials in his/her department are informed.⁷⁹

Panel Determination

The Panel finds that the limitation period for the Allegedly Expired Confirmed Violations expired on June 18, 2022 and further finds that the BCUC no longer has the jurisdiction to impose an administrative penalty on BC Hydro for the Allegedly Expired Confirmed Violations.

In the Panel's view, the delivery of the Compliance Violation Investigation Report to the BCUC on June 18, 2020 was sufficient to meet the test that the "act or omission alleged to constitute the contravention" came to the attention of the Chair of the BCUC because the Compliance Violation Investigation Report included the detailed findings and factual background to support what were at the time alleged contraventions.

The Panel finds that the subsequent delivery of the Notice of Alleged Violation to the BCUC on May 21, 2021 had no bearing on the limitation period. As explained above, the limitation period was triggered by the submission of the Compliance Violation Investigation Report to the BCUC, and the Panel finds that there was nothing in the subsequent Notice of Alleged Violation, such as new facts or allegations, that would restart the limitation period.

The Panel acknowledges that section 2.1 of the BCUC's MRS Penalty Guidelines provides that "the date that a [Notice of Alleged Violation] is issued to an Entity with copy to the [BCUC] is considered the date the act or omission alleged to constitute the contravention first came to the attention of the chair of the [BCUC]." In the Panel's view, this guideline is not applicable in the current circumstances as there is clear evidence that the Chair of the BCUC was made aware of the "act or omission alleged to constitute the contravention" when the Compliance Violation Investigation Report was delivered to the BCUC on June 18, 2020.

The Panel finds that the limitation period for the three Confirmed Violations that are not Allegedly Expired Confirmed Violations (Remaining Confirmed Violations) does not expire until May 21, 2023, and further finds that the BCUC has the jurisdiction to impose an administrative penalty on BC Hydro for the Remaining Confirmed Violations. The reason is that the Remaining Confirmed Violations did not come to the attention of the BCUC Chair until WECC filed Notice of Alleged Violation CF1867 in respect of those Violations with BC Hydro on May 21, 2021, with a copy to the BCUC.

7.0 Confirmed Violations identified in the Compliance Violation Investigation Report

In this section, the Panel addresses the five Confirmed Violations that were first reported to the BCUC in the Compliance Violation Investigation Report.

⁷⁷ Ibid., p. 6.

⁷⁸ Ibid., p. 6.

⁷⁹ Ibid., pp. 4-5.

7.1 Violation 1: BCUC2019000681 – FAC-003-4 R2.4 – Notice of Alleged Violation CF1867

7.1.1 Summary of Reliability Standard

Violation 1 described in Notice of Alleged Violation CF1867 is a contravention involving one instance of violation of Reliability Standard FAC-003-4, which sets out the Requirements BC Hydro must meet with regards to Transmission Vegetation Management.⁸⁰

Requirement FAC-003-4 R2 requires each applicable Transmission Owner and Generator Owner manage vegetation to prevent encroachments into the Minimum Vegetation Clearance Distance of its applicable line(s) which are not either an element of an Interconnection Reliability Operating Limit, or an element of a Major WECC Transfer Path.⁸¹

Specifically, Requirement FAC-003-4 R2.4 requires an Entity to manage vegetation to prevent an encroachment into the line Minimum Vegetation Clearance Distance that would cause a Sustained Outage.⁸²

Reliability Standard Requirement FAC-003-4 R2 has a Violation Risk Factor of High.

7.1.2 Violation 1 Facts

On August 21, 2019, BC Hydro self-reported possible non-compliance with FAC-003-4 R2, and this non-compliance was given WECC Violation number BCUC2019000681.⁸³

As self-reported by BC Hydro, WECC states that on May 22, 2019, BC Hydro experienced a Sustained Outage caused by a vegetation encroachment from a Western Hemlock tree into the Minimum Vegetation Clearing Distance on a 230kV transmission line identified as 2L09 which has a parallel line 230 kV transmission line; however, the parallel line was out of service for a planned outage and could not have provided redundancy for the Sustained Outage. BC Hydro found the tree with burned tips, which was determined to be evidence of the Sustained Outage. The Sustained Outage lasted 10 minutes, from 7:34 PM until 7:44 PM.⁸⁴

WECC assessed that the violation lasted for a total of three days. The violation began on May 22, 2019, when the Western Hemlock tree encroached the 230kV line that led to the 10-minute Sustained Outage and ended on May 24, 2019, when the line was placed out of service and BC Hydro removed the burned tree.⁸⁵

On June 21, 2021, BC Hydro submitted that it did not contest Violation 1.⁸⁶

Panel determination

The Panel found in section 6 above that the limitation period to impose an administrative penalty has expired and therefore the BCUC no longer has the jurisdiction to impose an administrative penalty on BC Hydro for this Violation. Therefore, the Panel makes no determination on whether an administrative penalty is warranted, or the appropriate amount for such a penalty.

⁸⁰ Exhibit A2-9, Attachment 1, p. 4.

⁸¹ Ibid., Attachment 1, pp. 2-3.

⁸² A Sustained Outage is an automatic outage with an outage duration of a minute or greater; Exhibit A2-9, Attachment 1, p. 3.

⁸³ Exhibit A2-9, Attachment 1, p. 4.

⁸⁴ Exhibit A2-9, Attachment 1, p. 4.

⁸⁵ Ibid.

⁸⁶ Exhibit A2-5, p. 2.

7.2 Violation 2: BCUC2020000724 – FAC-003-4 R2.1 – Notice of Alleged Violation CF1867

7.2.1 Summary of Reliability Standard

Violation 2 described in Notice of Alleged Violation CF1867 is a contravention involving one instance of violation of Reliability Standard FAC-003-4, which sets out the Requirements BC Hydro must meet with regards to Transmission Vegetation Management.

Requirement FAC-003-4 R2 requires each applicable Transmission Owner and applicable Generator Owner to manage vegetation to prevent encroachments into the Minimum Vegetation Clearance Distance of its applicable line(s) which are not either an element of an Interconnection Reliability Operating Limit, or an element of a Major WECC Transfer Path.

Specifically, requirement FAC-003-4 R2.1 requires an Entity to manage vegetation to prevent an encroachment into the Minimum Vegetation Clearance Distance.

Reliability Standard Requirement FAC-003-4 R2 has a Violation Risk Factor of High.

7.2.2 Violation 2 Facts

On August 21, 2019, BC Hydro self-reported possible non-compliance with FAC-003-4 R2, and this non-compliance was given Violation ID BCUC2020000724.⁸⁷

On June 4, 2019, at approximately 5:00 PM, BC Hydro had a vegetation encroachment into the Minimum Vegetation Clearance Distance from a Cottonwood Coppice tree on a different set of parallel 230 kV transmission lines than the Violation 1 incident. However, the affected parallel 230 kV transmission lines were connected to the same substation associated with the Violation 1 Sustained Outage. In this instance, the vegetation encroachment did not cause a Sustained Outage; however, the local fire department responded to a report from the public that a tree was on fire, and they contacted BC Hydro. The Cottonwood Coppice tree was removed by BC Hydro the same night under live line methods. The violation began when the vegetation encroachment occurred on June 4, 2019, at 5:00 PM and ended the same day when BC Hydro removed the tree, for a total of one day.⁸⁸

On June 21, 2021, BC Hydro submitted that it did not contest Violation 2.⁸⁹

Panel determination

The Panel found in section 6 above that the limitation period to impose an administrative penalty has expired and therefore the BCUC no longer has the jurisdiction to impose an administrative penalty on BC Hydro for this Violation. Therefore, the Panel makes no determination on whether an administrative penalty is warranted, or the appropriate amount for such a penalty.

⁸⁷ Exhibit A2-9, Attachment 1, p. 4.

⁸⁸ Ibid., Attachment 1, p. 6.

⁸⁹ Exhibit A2-5, p. 2.

7.3 Violation 3: BCUC2020000725 – FAC-003-4 R2.4 – Notice of Alleged Violation CF1867

7.3.1 Summary of Reliability Standard

Violation 3 described in Notice of Alleged Violation CF1867 is a contravention involving one instance of violation of Reliability Standard FAC-003-4, which sets out the requirements BC Hydro must meet with regards to Transmission Vegetation Management.

Requirement FAC-003-4 R2 requires each applicable Transmission Owner and applicable Generator Owner to manage vegetation to prevent encroachments into the Minimum Vegetation Clearance Distance of its applicable line(s) which are not either an element of an Interconnection Reliability Operating Limit, or an element of a Major WECC Transfer Path.

Specifically, requirement FAC-003-4 R2.4 requires an Entity to manage vegetation to prevent an encroachment into the line Minimum Vegetation Clearance Distance that would cause a Sustained Outage.

Reliability Standard Requirement FAC-003-4 R2 has a Violation Risk Factor of High.

7.3.2 Violation 3 Facts

On August 21, 2019, BC Hydro self-reported possible non-compliance with FAC-003-4 R2, and this non-compliance was given BCUC Violation ID BCUC2020000725.⁹⁰

On June 4, 2019, at 8:51 PM, BC Hydro experienced a vegetation related Sustained Outage caused by a Cherry tree encroachment into the Minimum Vegetation Clearance Distance on the same parallel 230 kV transmission lines and one span away from the Violation 1 Sustained Outage, and on the same day as the Violation 2 vegetation encroachment. The Sustained Outage ended at 8:54 PM, lasting a total of three minutes. The violation began on June 4, 2019, when the encroachment occurred and ended when BC Hydro removed the Cherry tree with the burnt top on June 6, 2019, which was determined to be the cause of the Sustained Outage, for a total of two days.⁹¹

On June 21, 2021, BC Hydro submitted that it did not contest Violation 3.⁹²

Panel determination

The Panel found in section 6 above that the limitation period to impose an administrative penalty has expired and therefore the BCUC no longer has the jurisdiction to impose an administrative penalty on BC Hydro for this Violation. Therefore, the Panel makes no determination on whether an administrative penalty is warranted, or the appropriate amount for such a penalty.

⁹⁰ Exhibit A2-9, Attachment 1, p. 4.

⁹¹ Ibid., Attachment 1, p. 7.

⁹² Exhibit A2-5, p. 2.

7.4 Violation 4: BCUC2020000726 – FAC-003-4 R2.1 – Notice of Alleged Violation CF1867

7.4.1 Summary of Reliability Standard

Violation 4 described in Notice of Alleged Violation CF1867 is a contravention involving one instance of violation of Reliability Standard FAC-003-4, which sets out the requirements BC Hydro must meet with regards to Transmission Vegetation Management.

Requirement FAC-003-4 R2 requires each applicable Transmission Owner and applicable Generator Owner to manage vegetation to prevent encroachments into the Minimum Vegetation Clearance Distance of its applicable line(s) which are not either an element of an Interconnection Reliability Operating Limit, or an element of a Major WECC Transfer Path.

Specifically, requirement FAC-003-4 R2.1 requires an Entity to prevent an encroachment into the Minimum Vegetation Clearance Distance.

Reliability Standard Requirement FAC-003-4 R2 has a Violation Risk Factor of High.

7.4.2 Violation 4 Facts

On August 21, 2019, BC Hydro self-reported possible non-compliance with FAC-003-4 R2, and this non-compliance was given BCUC Violation ID BCUC2020000726.⁹³

On June 7, 2019, at approximately 12:00 PM, BC Hydro experienced a vegetation encroachment into the Minimum Vegetation Clearance Distance by a Willow tree on the same 230 kV transmission lines as the Violation 2 vegetation encroachment and Violations 1 and 3 Sustained Outages. BC Hydro received a report that there was a small fire on the right of way of the 230 kV transmission line. BC Hydro quickly de-rated the 230 kV transmission line and found the Willow tree with a burnt top within the Minimum Vegetation Clearance Distance, which was determined to be the cause of the fire. The Willow tree with a burnt top was removed at 5 PM the same day. The violation began on June 7, 2019, when the vegetation encroached on a 230 kV transmission line and ended on June 7, 2019, when the Willow tree was removed, for a total of one day.⁹⁴

On June 21, 2021, BC Hydro submitted that it did not contest Violation 4.⁹⁵

Panel determination

The Panel found in section 6 above that the limitation period to impose an administrative penalty has expired and therefore the BCUC no longer has the jurisdiction to impose an administrative penalty on BC Hydro for this Violation. Therefore, the Panel makes no determination on whether an administrative penalty is warranted, or the appropriate amount for such a penalty.

⁹³ Exhibit A2-9, Attachment 1, p. 4.

⁹⁴ Ibid., Attachment 1, p. 11.

⁹⁵ Exhibit A2-5, p. 2.

7.5 Violation 8: BCUC2020000728 – FAC-003-3 R6 – Notice of Alleged Violation CF1867

7.5.1 Summary of Reliability Standard

Violation 8 described in Notice of Alleged Violation CF1867 is a contravention involving one instance of violation of Reliability Standard FAC-003-3, which sets out the requirements BC Hydro must meet with regards to Transmission Vegetation Inspections.

Requirement FAC-003-3 R6 requires each applicable Transmission Owner and applicable Generator Owner to perform a Vegetation Inspection of 100% of its applicable transmission lines (measured in units of choice – circuit, pole line, line miles or kilometers, etc.) at least once per calendar year and with no more than 18 calendar months between inspections on the same right of way.

Reliability Standard Requirement FAC-003-3 R6 has a Violation Risk Factor of Medium.

7.5.2 Violation 8 Facts

WECC conducted a Compliance Violation Investigation of BC Hydro on October 1, 2019, through May 15, 2020, finding possible non-compliance with FAC-003-3 R6. This non-compliance was given BCUC Violation ID BCUC2020000728.⁹⁶

The WECC Compliance Violation Investigation found that BC Hydro did not perform adequate vegetation inspections from September 28, 2017. The inspections did not account for the movement of applicable transmission line conductors under their Rating and all Rated Electrical Operating Conditions and/or the Inter-relationships between vegetation growth rates and vegetation control methods. Thus, BC Hydro did not adequately perform Vegetation Inspections to prevent encroachments into the Minimum Vegetation Clearance Distance that resulted in Sustained Outages and loss of load.⁹⁷

Specifically, WECC states that during a helicopter patrol on September 28, 2017, the BC Hydro employee who performed the patrol did not identify fast-growing vegetation on the respective 230 kV transmission lines that caused the Violation 1 and 3 Sustained Outages and the Violation 4 encroachment. A subsequent inspection on this transmission line on March 12, 2018, also failed to note the fast-growing vegetation on the same 230 kV transmission line. During a helicopter inspection on June 19, 2018, the inspectors did not identify the fast-growing vegetation, but they did note an opportunity for work for trees that appeared to be located on the edge or close to the ROW. The notes indicated that the vegetation was close to the limit of approach (1.5 meters) which indicated that the inspector did identify vegetation underneath the conductors. However, the inspection did not result in removing the vegetation that caused the Violation 4 encroachment. The ground patrol inspections from December 6, 2018, to March 22, 2019 showed that BC Hydro did not maintain inspection records for the area associated with the Violation 4 encroachment. During this period, the Vegetation Inspectors removed a tree, but not in the grove of trees that caused the Violation 3 Sustained Outage.⁹⁸

⁹⁶ Exhibit A2-9, Attachment 1, p. 4.

⁹⁷ Ibid., Attachment 1, p. 17.

⁹⁸ Exhibit A2-9, Attachment 1, p. 17.

Regarding the 230 kV transmission line associated with the Violation 2 encroachment; BC Hydro performed ground inspections from January 17, 2019, through March 8, 2019. On January 17, 2019, the ground patrol identified and removed vegetation within the right of way located directly adjacent to an energized conductor that required corrective actions. At the time, the ground patrol determined that the clearance distance appeared to be sufficient, however the patrol did not account for the movement of applicable transmission line conductors under their Rating and all Rated Electrical Operating Conditions and four months later a tree encroached onto this transmission line.⁹⁹

On November 18, 2019, during a ground patrol vegetation inspection of the 360 kV transmission line, vegetation was not correctly measured and later encroached into the Minimum Vegetation Clearance Distance causing a Sustained Outage on June 25, 2020.¹⁰⁰

In May 2019, BC Hydro's Vegetation Inspections identified the area on a 500 kV transmission line for treatment to be completed in 2020, but the contractor who performed the inspection was only qualified for trimming (slashing) work and not tree removal. Furthermore, the contractor did not identify that a certified tree faller was needed in the area and had incorrectly indicated that the work was completed. When BC Hydro completed an audit of the area, the Vegetation Coordinator was not able to access the specific location where a Sustained Outage occurred on July 28, 2020 due to flooding and concerns that access would have impacted the cultivated field. Then on July 28, 2020, during Vegetation Inspections implemented after Sustained Outages that occurred on June 25, 2020, another helicopter patrol did not identify this area as having an imminent threat of encroachment.¹⁰¹

Finally, on June 23, 2020, a helicopter patrol inspection did not identify the vegetation as needing imminent treatment on the 287 kV transmission line which later led to a Sustained Outage on July 29, 2020.¹⁰²

Thus, numerous inspections via both helicopter and ground patrols did not identify fast-growing vegetation that led to the Sustained Outages and vegetation encroachments in 2019 and 2020. Since BC Hydro did not perform an extent of condition review of its entire system, the BCUC issued a Remedial Action Directive pertaining to FAC-003-4 R2.¹⁰³

As a result, Violation 8 began on September 28, 2017, when BC Hydro did not effectively perform its Vegetation Inspections on 100% of its applicable transmission lines.¹⁰⁴ BC Hydro states that the violation was ongoing until the Remedial Action Directive was completed on October 29, 2021.¹⁰⁵

On June 21, 2021, BC Hydro submitted that it did not contest Violation 8.¹⁰⁶

Panel determination

The Panel found in section 6 above that the limitation period to impose an administrative penalty has expired and therefore the BCUC no longer has the jurisdiction to impose an administrative penalty on BC Hydro for this Violation. Therefore, the Panel makes no determination on whether an administrative penalty is warranted, or the appropriate amount for such a penalty.

⁹⁹ Ibid., Attachment 1, pp. 17-18.

¹⁰⁰ Ibid., Attachment 1, p. 18.

¹⁰¹ Exhibit A2-9, Attachment 1, p. 18.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Exhibit B-2, Appendix A, p. 26.

¹⁰⁶ Exhibit A2-5, p. 2.

8.0 Confirmed Violation Penalty Assessments

In this section the Panel addresses the three Confirmed Violations that were first reported to the BCUC in Notice CF1867.

BC Hydro submits that while it has provided a preliminary analysis of the factors set out in section 109.2(3) of the UCA as it applies to the FAC-003 violations, the analysis is subject to change based on any additional information provided by WECC in this proceeding. Further, BC Hydro states that it has not provided an assessment of any specific monetary values which may be associated with a particular violation but has provided its assessment of the appropriate penalty range.¹⁰⁷

8.1 Violation 5: BCUC2020000733 – FAC-003-4 R2.4 – Notice of Alleged Violation CF1867

8.1.1 Summary of Reliability Standard

Violation 5 described in Notice of Alleged Violation CF1867 is a contravention involving one instance of a violation of Reliability Standard FAC-003-4, which sets out the requirements BC Hydro must meet with regards to Transmission Vegetation Management.

Requirement FAC-003-4 R2 requires each applicable Transmission Owner and applicable Generator Owner to manage vegetation to prevent encroachments into the Minimum Vegetation Clearance Distance of its applicable line(s) which are not either an element of an Interconnection Reliability Operating Limit, or an element of a Major WECC Transfer Path.

Specifically, requirement FAC-003-4 R2.4 requires an Entity to manage vegetation to prevent an encroachment into the line Minimum Vegetation Clearance Distance that would cause a Sustained Outage.

Reliability Standard Requirement FAC-003-4 R2 has a Violation Risk Factor of High, and possible Violation Severity Levels of High or Severe.

The definitions of the Violation Severity Levels for Reliability Standard Requirement FAC-003-4 R2 are:¹⁰⁸

- High: “The responsible entity failed to manage vegetation to prevent encroachment into the MVCD [Minimum Vegetation Clearance Distance] of a line not identified as an element of an IROL [Interconnection Reliability Operating Limit] or Major WECC transfer path and encroachment into the MVCD [Minimum Vegetation Clearance Distance] as identified in FAC-003-4-Table 2 was observed in real time absent a Sustained Outage.”
- Severe: “The responsible entity failed to manage vegetation to prevent encroachment into the MVCD [Minimum Vegetation Clearance Distance] of a line not identified as an element of an IROL [Interconnection Reliability Operating Limit] or Major WECC transfer path and a vegetation-related Sustained Outage was caused by one of the following:
 - A fall-in from inside the active transmission line ROW [Right of Way];
 - Blowing together of applicable lines and vegetation located inside the active transmission line ROW [Right of Way]; or
 - A grow-in”

¹⁰⁷ Exhibit B-2, pp. 11-12.

¹⁰⁸ FAC-003-4 Transmission Vegetation Management Reliability Standard, as Attachment E to Order R-29-17, pp. 302-303.

8.1.2 Basic facts of Violation 5

The basic facts of Violation 5 are summarized in Table 2.¹⁰⁹

Table 2: Basic Facts of Violation 5

Reference	MRS Reliability Standard and Requirement	Violation Discovery Date	Violation Duration (days)	Violation Risk Factor	Base Penalty Range ¹¹⁰
BCUC2020000733	FAC-003-4 R2.4	June 25, 2020	2	High ¹¹¹	\$0 to \$1,000,000

Violation 5 Facts

On August 24, 2020, BC Hydro self-reported possible non-compliance with FAC-003-4 R2, and this non-compliance was given BCUC Violation ID BCUC2020000733.¹¹²

On June 25, 2020, BC Hydro had two vegetation-related Sustained Outages on a 360 kV transmission line, identified as 3L15, caused by a Douglas Fir tree. These violations affected four spans of a 360 kV transmission line located at a dual circuit corridor with another 360 kV transmission line, identified as 3L13. The four spans were directly located between a generating station and a terminal substation. First, at 1:50 PM, an arcing Douglas Fir tree caused a Sustained Outage and tripped the associated generating station which was generating 202 MW at the time; the generation capacity was 240 MW. The first Sustained Outage lasted for 48 minutes. BC Hydro did not respond or take corrective action because it was not aware that the outage was vegetation related,¹¹³ and at 2:30 PM BC Hydro re-energized 3L15. At 2:58 PM, 3L15 tripped again, resulting in a second Sustained Outage due to the Douglas Fir contacting the line. BC Hydro left the line out of service until June 26, 2020, when at 2:35 PM BC Hydro removed the Douglas Fir and returned the line to service. The second Sustained Outage lasted for 23 hours and 37 minutes. This violation began on June 25, 2020, when vegetation encroached on 3L15 and ended on June 26, 2020, when BC Hydro removed the Douglas Fir tree, for a total of two days.¹¹⁴

On April 29, 2022, BC Hydro submitted its response to the proposed penalties set out in the Second Revised Notice of Alleged Violation and does not challenge the facts above.¹¹⁵

Panel determination

The Panel accepts the above facts provided by WECC in the Second Revised Notice of Alleged Violation concerning Violation 5.

¹⁰⁹ Exhibit A2-9, Attachment 1, p. 2.

¹¹⁰ BCUC Penalty Guidelines for British Columbia Mandatory Reliability Standards, p. 2.

¹¹¹ Exhibit A2-9, Attachment 1, p. 23.

¹¹² Ibid., Attachment 1, p. 4.

¹¹³ Exhibit B-2, Appendix A, pp. 19-25.

¹¹⁴ Exhibit A2-9, Attachment 1, p. 12.

¹¹⁵ Exhibit A2-5, Schedule A, Table 1, pp. 4-5.

8.1.3 Consideration of Violation 5 under Section 109.2 of the UCA

(a) Previous Contraventions, Administrative Penalties Imposed and Orders Issued

Section 109.2(3)(a) of the UCA requires the Panel to consider the history of previous contraventions, administrative penalties and orders issued with respect to BC Hydro.

BC Hydro submits that while it has no previous FAC-003-4 R2 violations, it has had previous contraventions of Mandatory Reliability Standards and has received prior administrative penalties.¹¹⁶

Panel determination

The Panel finds that BC Hydro's previous contraventions of MRS Standards and its previous administrative penalties imposed as a result are neither an aggravating nor a mitigating factor with respect to Violation 5.

The Panel acknowledges that BC Hydro has had previous contraventions of Mandatory Reliability Standards and has received prior administrative penalties related to MRS violations, and notes that section 109.2(3)(a) of the UCA is not limited to considering previous contraventions and administrative penalties for the specific Reliability Standard or MRS Requirement which the violation contravenes.

However, there is no evidence in this proceeding that BC Hydro's previous contraventions of MRS Standards are relevant to Violation 5, and BC Hydro has no previous contraventions of MRS Standard FAC-003. Therefore, the Panel finds that BC Hydro's previous contraventions and administrative penalties imposed are not relevant to a determination of the penalty for Violation 5.

(b) Gravity and Magnitude of Contravention

WECC concluded that a Violation Severity Level of Severe was appropriate for Violation 5 because BC Hydro failed to manage vegetation to prevent encroachment into the Minimum Vegetation Clearance Distance of a line not identified as an element of an Interconnection Reliability Operating Limit or Major WECC transfer path and a vegetation related Sustained Outage was caused by a grow-in.¹¹⁷

WECC concluded Violation 5 posed a serious and substantial risk to the reliability of the Bulk Electric System for the following reasons:¹¹⁸

- Violation 5 resulted in two Sustained Outages on 3L15 that lasted for 48 minutes and 23 ½ hours, and could have caused the loss of one or more Bulk Electric System circuits;
- The fact that the first Sustained Outage resulted in a loss of 202 MW of generation when the generating unit tripped;
- The second Sustained Outage did not cause the loss of load but could have resulted in low voltage because of the loss of generation which provided voltage support; and
- WECC views that BC Hydro's ineffective internal controls to prevent or sufficiently compensate for this violation demonstrate another example of systemic problems in its FAC-003 program resulting in programmatic failure.

¹¹⁶ Exhibit B-2, Appendix A, p. 17.

¹¹⁷ Exhibit A2-9, Attachment 1, p. 24.

¹¹⁸ Ibid., Attachment 1, p. 14.

In BC Hydro's view, WECC's characterization of serious risk is not supported by evidence.¹¹⁹

Panel determination

The Panel finds that Violation 5 posed a serious risk to the Bulk Electric System and finds this to be an aggravating factor.

The only two possible Violation Severity Levels for Reliability Standard Requirement FAC-003-4 R2 are High and Severe. In this case, the evidence, uncontested by BC Hydro, is that the Douglas Fir grew in to the 3L15 right of way, which is one of the tests for whether the Violation Severity Level for Violation 5 is Severe. Therefore, we find that Violation 5 has a Violation Severity Level of Severe. Further, the first Sustained Outage caused a loss of 202 MW of generation, and although the Second Outage did not cause a loss of generation, it could have resulted in low voltage.

BC Hydro provides no reason why it submits that WECC's characterization of serious risk is "not supported by evidence". In the Panel's view, and for the reasons stated above, Violation 5 posed a serious risk to the Bulk Electric System.

(c) Extent of Harm to Others Resulting from the Contravention

WECC provides that harm did occur when BC Hydro failed to manage a Douglas Fir tree preventing encroachments into the Minimum Vegetation Clearance Distance of 3L15. The encroachment resulted in two vegetation-related Sustained Outages.¹²⁰

In BC Hydro's initial response to Notice CF1867, it noted an error regarding WECC's assessment of harm stating that there was no loss of load.¹²¹ BC Hydro subsequently agreed that the loss of 3L15, which also resulted in the tripping of 3L13, resulted in an actual load loss to the system of 202 MW.¹²²

BC Hydro submits there was no harm to others resulting from Violation 5, thus should be considered a mitigating factor.¹²³

Panel determination

The Panel finds that no harm to others was caused by Violation 5 and finds this to be neither an aggravating nor a mitigating factor.

In the Panel's view, WECC's evidence that two Sustained Outages occurred is not sufficient to demonstrate "harm to others" because WECC has provided no evidence that any people were harmed as a result of the Sustained Outages associated with Violation 5.

(d) Whether the Contravention was Repeated or Continuous

WECC states that BC Hydro does not have repeat violations of this Reliability Standard nor relevant negative compliance history. However, given the repeated failures to prevent and remediate vegetation encroachments and vegetation related Sustained Outages as the result of an ineffective Vegetation Management Program,

¹¹⁹ Exhibit B-2, Appendix A, p. 17.

¹²⁰ Exhibit A2-9, Attachment 1, p. 13.

¹²¹ Exhibit A2-5, Schedule A, p. 10.

¹²² Exhibit B-2, Appendix A, p. 25.

¹²³ Ibid., Appendix A, p. 18.

these violations constitute a programmatic failure of BC Hydro's Transmission Vegetation Management Program and FAC-003 program.

BC Hydro agrees that Violation 5 is a repeated contravention as it occurred after Violation 1 and that it was continuous because it continued for more than one day.¹²⁴

BC Hydro considers Violation 5 as continuous because it continued for more than one day.

Panel determination

The Panel finds that Violation 5 was continuous because it lasted for more than one day from the first encroachment at 1:50 pm on June 25, 2020 until the Douglas Fir was removed on June 26, 2020 but the fact that it was continuous is, on its own, neither aggravating nor mitigating because the time over which it was continuous was relatively short.

The Panel further finds that Violation 5 was repeated because it occurred after Violation 1, a separate vegetation encroachment that occurred on May 22, 2019.

The Panel finds that the repeated nature of Violation 5 is an aggravating factor because:

- Between May 22, 2019, the date of Violation 1, and June 25, 2020, the date of Violation 5, BC Hydro did not take sufficient steps to examine its vegetation and identify "at risk" trees such as the one that encroached on 3L15 and caused Violation 5; and
- This is despite WECC recommending a compliance violation investigation report and the BCUC accepting this recommendation on September 19, 2019.

(e) Whether the Contravention was Deliberate

BC Hydro submits that Violation 5 was not deliberate.¹²⁵

Panel determination

The Panel finds that Violation 5 was not a deliberate act on the part of BC Hydro because WECC presented no evidence that it was, and further finds this to be neither an aggravating nor a mitigating factor.

(f) Any Economic Benefit Derived from the Contravention

BC Hydro submits that it did not derive any economic benefit from Violation 5.¹²⁶

Panel determination

The Panel finds that BC Hydro did not derive any economic benefit from Violation 5 because WECC presented no evidence that it did, and further finds this to be neither an aggravating nor a mitigating factor.

¹²⁴ Exhibit B-2, Appendix A, p. 18.

¹²⁵ Ibid.

¹²⁶ Ibid.

(g) Efforts to Prevent and Correct the Contravention

Prevention

WECC attributes the root cause of this violation to lack of corrective action for a Douglas Fir tree that should have been removed but had been incorrectly measured during a previous Vegetation Inspection conducted on November 18, 2019. BC Hydro's systematic examination of vegetation conditions that were likely to pose a hazard to the transmission lines prior to the next planned maintenance or inspection was inadequate. Specifically, as the violation demonstrated, BC Hydro did not understand the vegetation growth rates and patterns for this Douglas Fir tree. Though BC Hydro had a well-documented Transmission Vegetation Management Program, in WECC's view BC Hydro did not provide adequate training for its staff to ensure that systematic measurement of vegetation and supervisory methods of the inspections were executed properly. Inexperienced field personnel partially implemented the procedures in the Transmission Vegetation Management Program and underestimated potential line sag and potential growth rate of vegetation. WECC assessed BC Hydro's failure to complete adequate Vegetation Inspections of its lines, as required by Reliability Standard FAC-003-4 R6, as the root cause of BC Hydro's systemic and programmatic failure to comply with FAC-003.¹²⁷

WECC submits that the mitigation steps for the 2019 Sustained Outages and vegetation encroachments (associated with Violations 1, 2, 3 and 4) were not effective in preventing Violation 5.¹²⁸

BC Hydro submits that with regard to prevention, prior to Violation 5, BC Hydro had a well-documented Transmission Vegetation Management Program in place to prevent such incidents. BC Hydro annually inspected the lines in question leading up to the incidents and relied on its patrollers and contractors to confirm that either no emergent work was required or that the necessary work had been performed.¹²⁹

Mitigation

BC Hydro submits that with regard to correction, it acted quickly to correct Violation 5. Additionally, BC Hydro undertook and continues to undertake widespread reform to its Transmission Vegetation Management Program to address the root causes of the incidents and has taken reasonable steps towards rectifying and preventing further contraventions.¹³⁰

BC Hydro states that immediately following Violation 5, the first incident that occurred in 2020, it initiated aerial patrols on all FAC-003 applicable circuits and dispatched vegetation maintenance crews to accelerate the completion of all planned work in the Lower Mainland and Southern Interior regions of the province. Follow-up work was identified for 233 sites and removal at all 233 sites was completed by October 2021.¹³¹

BC Hydro also disputes WECC's statement that "[BC Hydro] did not respond or take corrective action because it incorrectly assumed that the tree had burned clear and was no longer within the [Minimum Vegetation Clearance Distance], and at 2:30 PM [BC Hydro] re-energized the 360kV transmission line."¹³² This statement is based on an incorrect assumption that BC Hydro knew the first outage was caused by a vegetation encroachment incident. In fact, BC Hydro was not aware of the cause of this first outage until the second outage at 2:58 p.m. when BC Hydro observed flashover and kept the line out until the tree was removed. Once BC Hydro was aware that the incident was vegetation-related, BC Hydro moved promptly to correct the situation.¹³³

¹²⁷ Exhibit A2-9, Attachment 1, p. 13.

¹²⁸ Ibid., Attachment 1, p. 20.

¹²⁹ Exhibit B-2, Appendix A, p. 19.

¹³⁰ Ibid., Appendix A, p. 19.

¹³¹ Ibid.

¹³² Exhibit A2-9, Attachment 1, p. 13.

¹³³ Exhibit B-2, Appendix A, pp. 19-25.

As a result of the Violation 5 Sustained Outages, BC Hydro performed additional Vegetation Inspections via aerial and ground patrols across its system and identified 233 sites where vegetation was identified to be removed to avoid encroachments into the Minimum Vegetation Clearance Distance.¹³⁴

As discussed in Section 5 above, BC Hydro has conducted work required in the FAC-003 Remedial Action Directive.¹³⁵ In addition to the Remedial Action Directive, BC Hydro states that it also made significant efforts to prevent future contraventions through its Mitigation Plan activities.¹³⁶

Panel determination

The Panel finds that BC Hydro took adequate measures to correct Violation 5. However, the Panel further finds that BC Hydro took inadequate measures to prevent Violation 5 and finds this to be an aggravating factor.

BC Hydro's "well-documented Transmission Vegetation Management Program in place to prevent such incidents" did not prevent Violation 5 from occurring, which in the absence of an alternative explanation demonstrates that BC Hydro's program was inadequate. Further, as WECC has noted, the mitigation steps BC Hydro took as a result of earlier Sustained Outages in 2019 were not effective in preventing Violation 5.

In the Panel's view it is no defense that BC Hydro "relied on its patrollers and contractors to confirm that either no emergent work was required or that the necessary work had been performed." BC Hydro remains accountable for ensuring its compliance with MRS standards even if it assigns work to others.

(h) Cost of Compliance with the Provision Contravened

BC Hydro submits that cost of compliance was not a factor underlying BC Hydro's FAC-003 violations and that it has not historically tracked cost to comply with MRS on a standard-specific basis. BC Hydro states that it has invested more than \$8 million to-date to correct the FAC-003 violations and to improve its Transmission Vegetation Management Program to prevent this type of violation from occurring again.¹³⁷

Panel determination

The Panel finds that the cost of compliance was not a factor underlying Violation 5 because WECC presented no evidence that it was, and further finds this to be neither an aggravating nor a mitigating factor.

(i) Whether the Contravention was Self-Reported

WECC provides that BC Hydro submitted a self-report for Violation 5 on August 24, 2020.¹³⁸ BC Hydro confirms that it self-reported Violation 5 and submits that this should be considered a mitigating factor.¹³⁹

Panel determination

The Panel finds that BC Hydro self-reported Violation 5 and finds this to be a mitigating factor.

¹³⁴ Exhibit A2-9, Attachment 1, p. 20.

¹³⁵ Exhibit B-2, Appendix A, pp. 30-31.

¹³⁶ Ibid., Appendix A, p. 20.

¹³⁷ Ibid., Appendix A, p. 20.

¹³⁸ Exhibit A2-9, Attachment 1, p. 4.

¹³⁹ Exhibit B-2, Appendix A, p. 20.

(j) Degree and Quality of Cooperation during the BCUC's Investigation

BC Hydro submits that it has been cooperative and transparent with both WECC and the BCUC as it relates to Violation 5 and submits that this should be considered a mitigating factor.¹⁴⁰

The BCUC had issued a remedial action directive to BC Hydro and WECC states that BC Hydro was cooperative.¹⁴¹

Panel determination

The Panel finds BC Hydro's degree and quality of cooperation during the investigation to be a mitigating factor.

(k) Undue Hardship that Might Arise from the Amount of the Penalty

BC Hydro submits, if required to pay, that WECC's proposed penalty amount will not cause undue financial hardship.¹⁴²

Panel determination

The Panel finds that imposing a penalty on BC Hydro for Violation 5 would not cause undue hardship because the onus is on BC Hydro to demonstrate hardship and it has not done so, and further finds this to be neither an aggravating nor a mitigating factor.

(l) Other Matters Prescribed by the Lieutenant Governor in Council

BC Hydro submits it is not aware of any other matters that have been prescribed by the Lieutenant Governor in Council.¹⁴³

Panel determination

There are no other matters prescribed by the Lieutenant Governor in Council and therefore the Panel makes no finding relating to this factor

8.1.4 Summary of UCA Factors Pertaining to Violation 5

The Panel summarizes its findings relating to the UCA Factors pertaining to Violation 5 in Table 3.

Table 3: Summary of Findings pertaining to Violation 5

	Factors as per the UCA	Aggravating and / or Mitigating
a)	Previous contraventions, administrative penalties imposed, and orders issued	Neither
b)	Gravity and magnitude of contravention	Aggravating
c)	Extent of harm resulting from the contravention	Neither
d)	Whether the contravention was repeated or continuous	Neither
e)	Whether contravention was deliberate	Neither

¹⁴⁰ Ibid., Appendix A, p. 20.

¹⁴¹ Exhibit A2-9, Attachment 1, p. 25.

¹⁴² Exhibit B-2, Appendix A, p. 21.

¹⁴³ Ibid.

	Factors as per the UCA	Aggravating and / or Mitigating
f)	Any economic benefit derived from the contravention	Neither
g)	Efforts to prevent and correct contravention	Aggravating
h)	Cost of compliance with the provision contravened	Neither
i)	Whether contravention was self-reported	Mitigating
j)	Degree and quality of cooperation during BCUC's investigation	Mitigating
k)	Undue hardship that might arise from the amount of penalty	Neither
l)	Any other matters prescribed by the Lieutenant Governor in Council	No finding

8.1.5 Violation 5: Additional Factors

Pursuant to section 109.2 (3) of the UCA, the Panel may also consider anything else the Panel considers relevant in determining whether Violation 5 warrants an administrative penalty.

BC Hydro made submissions on additional factors with respect to the efforts it has undertaken as a result of the FAC-003 Remedial Action Directive and the mitigation plans BC Hydro developed in response to the Violations (Mitigation Plans). BC Hydro submits that when determining any penalty amount for each of the Confirmed Violations, the BCUC ought to give significant weight to the extensive investments BC Hydro has made to improve its vegetation management program.¹⁴⁴

Remedial Action Directive

BC Hydro notes that following WECC's recommendation, the BCUC issued a Remedial Action Directive in respect of BC Hydro's FAC-003-4 compliance.¹⁴⁵ BC Hydro submits that completing the Remedial Action Directive has provided it with a detailed assessment of the condition of its system, and the data collected through this exercise allows it to understand the vegetation risk to its system and address the risk accordingly.¹⁴⁶

Collaborating with WECC and BCUC

BC Hydro states that WECC and BC Hydro held regular in-person meetings to discuss progress toward the Remedial Action Directive, respond to questions and discuss any findings or risks that had been identified. BC Hydro also submitted weekly progress reports to the BCUC and WECC detailing progress for the 144 circuits (including percentage complete for each circuit, for each voltage class and total percentage complete). BC Hydro continued reporting to WECC as it progressed through the Remedial Action Directive work related to vegetation found at certain clearances outside of the Minimum Vegetation Clearance Distances. BC Hydro submits that no Minimum Vegetation Clearance Distances violations were found.¹⁴⁷

Inspections and Data Collection

BC Hydro submits that as a result of the Remedial Action Directive work, it now has a record of the minimum vegetation and minimum conductor clearances (i.e., the highest risk points), the growth rate and various other items such as average tree height and average tree age for each of its 144 Bulk Electric System circuits and

¹⁴⁴ Exhibit B-2, p. 31.

¹⁴⁵ Confidential BCUC Order R-1-21.

¹⁴⁶ Exhibit B-2, p. 31

¹⁴⁷ Exhibit B-2, Appendix A, p. 31.

33,322 spans. BC Hydro submitted dated photo evidence to WECC for every span and BC Hydro verified that data was collected for every span. BC Hydro submits that ground patrols are not always possible for each span due to remote terrain so for a portion of the system (approximately 1% or 300+ spans), helicopter access by highly trained workers was required in order to access the ground and collect measurements.¹⁴⁸

BC Hydro states that more than 90 patrollers worked to collect this information, the majority of whom were hired from eight consultant companies in the forestry sector, as well as three seconded full time BC Hydro employees. BC Hydro and the contractor companies each performed verification on the work output from the patrollers.¹⁴⁹

New Approach to Inspections

BC Hydro submits that the Remedial Action Directive and Mitigation Plans have improved how BC Hydro is approaching vegetation management. BC Hydro states that as part of its FAC-003 R6 Mitigation Plan, it will conduct an additional inspection of the entire system between April 1, 2022 and March 31, 2023. This inspection will provide updated visibility on all spans and will confirm where work has been completed, that the risks identified from the previous year's inspections have been resolved and that clearances are safe. The patrols will inform the timing and location of future work in annual and long-term plans using confirmed growth measurements of target vegetation. BC Hydro states that it has also been improving its patrol tool and data repository system (i.e., VEGNET).¹⁵⁰

BC Hydro also submits that it has increased its vegetation management budget to enable more spans to be safely and effectively inspected by ground patrol. In addition, by using LiDAR modelling of the FAC-003 applicable circuits, patrollers will have improved ability to assess vegetation risks and have access to information in a field portable data collection system that will facilitate data entry and internal control review.¹⁵¹

Mitigation Plans

BC Hydro submits that it has collaborated with WECC to develop three Mitigation Plans for the Confirmed Violations. Through its Mitigation Plan activities to-date, BC Hydro has undertaken significant work towards rectifying and preventing further contraventions. This has included:¹⁵²

- Vegetation staff training and verification of competencies;
- Revisions to BC Hydro standards and procedures;
- Updating supervision and evaluation controls;
- Improvements to Vegetation Management Tools, including VEGNET and our patrol dashboard to integrate quality assurance and quality control;
- Process improvements in relation to the communication of vegetation conditions likely to cause a fault to the control center without delay; and
- A project schedule to complete LiDAR for all circuits subject to FAC-003-4.

¹⁴⁸ Ibid., Appendix A, p. 32.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Ibid., Appendix A, p. 33.

¹⁵² Ibid.

Panel Determination

The Panel acknowledges that BC Hydro has made considerable effort to improve its compliance with the MRS Standards on vegetation management. However, this effort should have taken place before Violation 5 occurred and before the BCUC was compelled to issue the FAC-003 Remedial Action Directive to BC Hydro, not after. Therefore, the Panel does not consider BC Hydro's post-contravention compliance efforts to be a mitigating factor.

8.1.6 Penalty Consideration for Violation 5

BC Hydro submits that the Penalty Guidelines require WECC to recommend a penalty that is both within the base penalty ranges and commensurate with a similar situation in other regions of the Western Interconnection. BC Hydro states that WECC provides NERC proposed penalty amounts (NERC Proposed Penalty Amounts) that WECC says would apply "if these serious Alleged Violations were assessed in the United States, with all things being equal"¹⁵³ but does not provide further support for the NERC Proposed Penalty Amounts. BC Hydro submits that these NERC Proposed Penalty Amounts reflect the same procedural fairness concerns that BC Hydro has outlined above (discussed in section 5.1). BC Hydro submits that WECC's proposed penalty amounts exceed every FAC-003 penalty issued by NERC between 2015 and 2020, and as a result are not commensurate with similar situations in other regions of the Western Interconnection.¹⁵⁴

BC Hydro submits that the evidence demonstrates that any administrative penalty considered with respect to Violation 5 should be "at the low end of the applicable range."¹⁵⁵

Panel Determination

The Panel finds that an administrative penalty for Violation 5 is warranted because Violation 5 posed a serious risk to the Bulk Electric System.

The Panel finds that the appropriate administrative penalty for Violation 5 is \$500,000.

The Base Penalty Range for the Violation is \$0 to \$1,000,000 per day, based on the Violation Risk Factor of High for MRS Requirement FAC-003-4 R2 and the Violation Severity Level of Severe.

The Panel finds that the appropriate administrative penalty for the Violation should be in the middle of this range because, although BC Hydro has no previous administrative penalty for MRS Reliability Standard FAC-003-4, the Violation posed a serious risk to the Bulk Electric System. The Panel finds the middle of the range to be between 30 percent and 70 percent of the Base Penalty Range. The Panel further finds that the penalty for the Violation should be 50 percent of the Base Penalty Range, that is, \$500,000, because although BC Hydro self-reported the Violation and cooperated with the investigation, BC Hydro did not take adequate steps to prevent Violation 5.

The Panel declines to exercise its discretion to levy a daily penalty for each day that the Violation continued because there are no circumstances to justify this level of penalty.

¹⁵³ Exhibit A2-9, Attachment 1, Attachment 1, p. 22.

¹⁵⁴ Exhibit B-2, Appendix A, p. 34.

¹⁵⁵ Ibid.

8.2 Violation 6: BCUC2020000734 – FAC-003-4 R2.4 – Notice of Alleged Violation CF1867

8.2.1 Summary of Reliability Standard

Violation 6 described in Notice of Alleged Violation CF1867 is a contravention involving one instance of violation of Reliability Standard FAC-003-4, which sets out the requirements BC Hydro must meet with regards to Transmission Vegetation Management.

Requirement FAC-003-4 R2 requires each applicable Transmission Owner and applicable Generator Owner to manage vegetation to prevent encroachments into the Minimum Vegetation Clearance Distance of its applicable line(s) which are not either an element of an Interconnection Reliability Operating Limit, or an element of a Major WECC Transfer Path.

Specifically, requirement FAC-003-4 R2.4 requires an Entity to manage vegetation to prevent an encroachment into the line Minimum Vegetation Clearance Distance that would cause a Sustained Outage.

Reliability Standard Requirement FAC-003-4 R2 has a Violation Risk Factor of High, and possible Violation Severity Levels of High or Severe.

The definitions of the Violation Severity Levels for Reliability Standard Requirement FAC-003-4 R2 are:¹⁵⁶

- High: “The responsible entity failed to manage vegetation to prevent encroachment into the MVCD [Minimum Vegetation Clearance Distance] of a line not identified as an element of an IROL [Interconnection Reliability Operating Limit] or Major WECC transfer path and encroachment into the MVCD [Minimum Vegetation Clearance Distance] as identified in FAC-003-4-Table 2 was observed in real time absent a Sustained Outage.”
- Severe: “The responsible entity failed to manage vegetation to prevent encroachment into the MVCD [Minimum Vegetation Clearance Distance] of a line not identified as an element of an IROL [Interconnection Reliability Operating Limit] or Major WECC transfer path and a vegetation-related Sustained Outage was caused by one of the following:
 - A fall-in from inside the active transmission line ROW [Right of Way];
 - Blowing together of applicable lines and vegetation located inside the active transmission line ROW [Right of Way]; or
 - A grow-in”

8.2.2 Basic facts of Violation 6

The basic facts of Violation 6 are summarized in Table 4.¹⁵⁷

¹⁵⁶ FAC-003-4 Transmission Vegetation Management Reliability Standard, as Attachment E to Order R-29-17, pp. 302-303.

¹⁵⁷ Exhibit A2-9.

Table 4: Basic Facts of Violation 6

Reference	MRS Reliability Standard and Requirement	Violation Discovery Date	Violation Duration (days)	Violation Risk Factor	Base Penalty Range ¹⁵⁸
BCUC2020000734	FAC-003-4 R2.4	July 29, 2020	2	High ¹⁵⁹	\$0 to \$1,000,000

Violation 6 Facts

On September 14, 2020, BC Hydro self-reported possible non-compliance with FAC-003-4 R2, and this non-compliance was given BCUC Violation ID BCUC2020000734.¹⁶⁰

On July 29, 2020, at 1:40 PM, a 287 kV transmission line, identified as 2L101, experienced a Sustained Outage due to a Red Alder tree encroaching into the Minimum Vegetation Clearance Distance. The tree was identified, and the line remained out of service until the tree could be removed on July 30, 2020, at 2:43 PM. The transmission line was a radial feed and located at a generation connection. The violation began on July 29, 2020, when the Red Alder tree encroachment into the Minimum Vegetation Clearance Distance led to a Sustained Outage and ended on July 30, 2020, when the tree at issue was removed, for a total of two days.¹⁶¹

On April 29, 2022, BC Hydro submitted its response to the proposed penalties set out in the Second Revised Notice of Alleged Violation and does not challenge the facts above provided by WECC.¹⁶²

Panel determination

The Panel accepts the above facts provided by WECC in the Second Revised Notice of Alleged Violation concerning Violation 6.

8.2.3 Consideration of Violation 6 under section 109.2 of the UCA

(a) Previous Contraventions, Administrative Penalties Imposed and Orders Issued

Section 109.2(3)(a) of the UCA requires the Panel to consider the history of previous contraventions, administrative penalties and orders issued with respect to BC Hydro.

BC Hydro submits that while it has no previous FAC-003-4 R2 violations, it has had previous contraventions of Mandatory Reliability Standards and has received prior administrative penalties.¹⁶³

¹⁵⁸ BCUC Penalty Guidelines for British Columbia Mandatory Reliability Standards, p. 2.

¹⁵⁹ Exhibit A2-9, Attachment 1, p. 23.

¹⁶⁰ Ibid., Attachment 1, p. 4.

¹⁶¹ Ibid., Attachment 1, p. 15.

¹⁶² Exhibit A2-5, Schedule A, Table 1, p. 4.

¹⁶³ Exhibit B-2, Appendix A, p. 17.

Panel determination

The Panel finds that BC Hydro's previous contraventions of MRS Standards and its previous administrative penalties imposed as a result are neither an aggravating nor a mitigating factor with respect to Violation 6.

The Panel acknowledges that BC Hydro has had previous contraventions of Mandatory Reliability Standards and has received prior administrative penalties related to MRS violations, and notes that section 109.2(3)(a) of the UCA is not limited to considering previous contraventions and administrative penalties for the specific Reliability Standard or MRS Requirement which the violation contravenes.

However, there is no evidence in this proceeding that BC Hydro's previous contraventions of MRS Standards are relevant to Violation 6, and BC Hydro has no previous contraventions of MRS Standard FAC-003. Therefore, the Panel finds that BC Hydro's previous contraventions and administrative penalties imposed are not relevant to a determination of the penalty for Violation 6.

(b) Gravity and Magnitude of Contravention

WECC concluded Violation 6 posed a serious risk to the reliability of the Bulk Electric System and concluded that its Violation Severity Level was Severe. WECC states that the 287 kV transmission line provided for a local load of up to 50 MW, had a connection for 53 MW of generation and 8 MW of generation for an Independent Power Producer. Violation 6 could have resulted in the loss of 50 MW of generation due to the radial feed structure of the 287 kV transmission line to a nearby township, and the ability to use generation resources of 61 MW back to a 500 kV tie substation. However, a mitigating factor was that the generation normally used for peak load was online when the affected 287 kV transmission line into the local township tripped. WECC also submits that BC Hydro's ineffective internal controls to prevent or sufficiently compensate for this violation demonstrates another example of systemic problems in its FAC-003 program resulting in programmatic failure.¹⁶⁴

In BC Hydro's view, WECC's characterization of serious risk is not supported by evidence.¹⁶⁵

Panel determination

The Panel finds that Violation 6 posed a serious risk to the Bulk Electric System and finds this to be an aggravating factor.

The only two possible Violation Severity Levels for Reliability Standard Requirement FAC-003-4 R2 are High and Severe. In this case, the evidence, uncontested by BC Hydro, is that the Red Alder tree grew in to the 2L101 right of way, which is one of the tests for whether the Violation Severity Level for Violation 6 is Severe. Therefore, we find that Violation 6 has a Violation Severity Level of Severe.

BC Hydro provides no reason why it submits that WECC's characterization of serious risk is "not supported by evidence". In the Panel's view, and for the reasons stated above, Violation 6 posed a serious risk to the Bulk Electric System.

¹⁶⁴ Exhibit A2-9, Attachment 1, pp. 16-17.

¹⁶⁵ Exhibit B-2, Appendix A, p. 17.

(c) Extent of Harm to Others Resulting from the Contravention

WECC submits that harm occurred when BC Hydro failed to prevent a Red Adler tree from encroaching into the Minimum Vegetation Clearance Distance of the affected 287 kV transmission line, causing a vegetation-related Sustained Outage.¹⁶⁶

BC Hydro states that prior to the outage, BC Hydro generation was online but not running, thus there was no outage to the Prince Rupert area and there was no impact to the Bulk Electric System.¹⁶⁷ BC Hydro submits there was no harm to others resulting from Violation 6, thus should be considered a mitigating factor.¹⁶⁸

Panel determination

The Panel finds that no harm to others was caused by Violation 6 and finds this to be neither an aggravating nor a mitigating factor.

In the Panel's view, WECC's evidence that a Sustained Outage occurred is not sufficient to demonstrate "harm to others" because WECC has provided no evidence that any people were harmed as a result of the Sustained Outage associated with Violation 6.

(d) Whether the Contravention was Repeated or Continuous

WECC states that BC Hydro does not have repeat violations of this Reliability Standard nor relevant negative compliance history. However, given the repeated failures to prevent and remediate vegetation encroachments and vegetation related Sustained Outages as the result of an ineffective Vegetation Management Program, these violations constitute a programmatic failure of BC Hydro's Transmission Vegetation Management Program and FAC-003 program.

BC Hydro agrees that Violation 6 is a repeated contravention as it occurred after Violation 1 and that Violation 6 is continuous because it continued for more than one day.¹⁶⁹

BC Hydro considers Violation 6 as continuous because it continued for more than one day.

Panel determination

The Panel finds that Violation 6 was continuous because it lasted for more than one day from the encroachment at 1:40 pm on July 29, 2020 until the Red Alder tree was removed on July 30, 2020 at 2:43 pm but the fact that it was continuous is, on its own, neither aggravating nor mitigating because the time over which it was continuous was limited.

The Panel further finds that Violation 6 was repeated because it occurred after Violation 1, a separate vegetation encroachment that occurred on May 22, 2019.

¹⁶⁶ Exhibit A2-9, Attachment 1, p. 16.

¹⁶⁷ Exhibit A2-5, Schedule A, p. 11.

¹⁶⁸ Exhibit B-2, Appendix A, p. 18.

¹⁶⁹ Exhibit B-1, Appendix A, p. 18.

The Panel finds that the repeated nature of Violation 6 is an aggravating factor because:

- Between May 22, 2019, the date of Violation 1, and July 29, 2020, the date of Violation 6, BC Hydro did not take sufficient steps to examine its vegetation and identify “at risk” trees such as the one that caused Violation 6; and
- This is despite WECC recommending a compliance violation investigation report and the BCUC accepting this recommendation on September 19, 2019.

(e) Whether the Contravention was Deliberate

BC Hydro submits that Violation 6 was not deliberate.¹⁷⁰

Panel determination

The Panel finds that Violation 6 was not a deliberate act on the part of BC Hydro because WECC presented no evidence that it was, and further finds this to be neither an aggravating nor a mitigating factor.

(f) Any Economic Benefit Derived from the Contravention

BC Hydro submits that it did not derive any economic benefit from Violation 6.¹⁷¹

Panel determination

The Panel finds that BC Hydro did not derive any financial benefit from Violation 6 because WECC presented no evidence that it did, and further finds this to be neither an aggravating nor a mitigating factor.

(g) Efforts to Prevent and Correct the Contravention

Prevention

WECC attributes the root cause of this violation to BC Hydro’s inadequate systematic examination of vegetation conditions that were likely to pose a hazard to the transmission lines prior to the next planned maintenance or inspection. In this instance, BC Hydro only implemented aerial patrols, which had limited BC Hydro’s ability to identify grow-ins under the lines. The aerial patrol flew directly over the lines, instead of Vegetation inspections that evaluate vegetation from the ground, which caused BC Hydro’s inability to properly evaluate the depth and distance of the vegetation from the Minimum Vegetation Clearance Distance. The trimming should have occurred every three years in the area, but this tree had not been trimmed in eight years. WECC assessed that BC Hydro’s failure to complete adequate Vegetation Inspections of its applicable lines, as required by Reliability Standard FAC-003-4 R6, as the root cause of BC Hydro’s systemic and programmatic failure with FAC-003.¹⁷²

BC Hydro submits that with regard to prevention, prior to Violation 6, BC Hydro had a well-documented Transmission Vegetation Management Program in place to prevent such incidents. BC Hydro annually inspected the lines in question leading up to the incidents and relied on its patrollers and contractors to confirm that either no emergent work was required or that the necessary work had been performed.¹⁷³

¹⁷⁰ Exhibit B-2, Appendix A, p. 18.

¹⁷¹ Ibid.

¹⁷² Exhibit A2-9, Attachment 1, p. 16.

¹⁷³ Exhibit B-2, Appendix A, p. 19.

Mitigation

BC Hydro submits that with regard to correction, it acted quickly to correct Violation 6. Additionally, BC Hydro undertook and continues to undertake widespread reform to its Transmission Vegetation Management Program to address the root causes of the incidents and has taken reasonable steps towards rectifying and preventing further contraventions.¹⁷⁴

WECC submits that the mitigation steps for the 2019 Sustained Outages and vegetation encroachments (associated with Violations 1, 2, 3 and 4) were not effective in preventing the vegetation-related encroachments and Sustained Outage that occurred on July 29, 2020 (Violation 6). As a result of the Violation 5 Sustained Outages BC Hydro performed additional Vegetation Inspections via aerial and ground patrols across its system and identified 233 sites where vegetation was identified to be removed to avoid encroachments into the Minimum Vegetation Clearance Distance. However, these inspections were not effective in preventing the subsequent vegetation related encroachments and Sustained Outages in 2020.¹⁷⁵

As discussed in Section 5 above, BC Hydro has conducted work required in the FAC-003 Remedial Action Directive.¹⁷⁶ In addition to the Remedial Action Directive, BC Hydro states that it also made significant efforts to prevent future contraventions through its Mitigation Plan activities.¹⁷⁷

Panel determination

The Panel finds that BC Hydro took adequate measures to correct Violation 6. However, the Panel further finds that BC Hydro took inadequate measures to prevent Violation 6 and finds this to be an aggravating factor.

BC Hydro's "well-documented Transmission Vegetation Management Program in place to prevent such incidents" did not prevent Violation 6 from occurring, which in the absence of an alternative explanation demonstrates that BC Hydro's program was inadequate. Specifically, in this instance BC Hydro's use of aerial patrols limited its ability to identify grow-ins under the lines, which could have been identified from inspections that evaluate vegetation from the ground.

In the Panel's view it is no defense that BC Hydro "relied on its patrollers and contractors to confirm that either no emergent work was required or that the necessary work had been performed." BC Hydro remains accountable for ensuring its compliance with MRS standards even if it assigns work to others.

(h) Cost of Compliance with the Provision Contravened

BC Hydro submit that cost of compliance was not a factor underlying BC Hydro's FAC-003 violations and that it has not historically tracked cost to comply with MRS on a standard-specific basis. BC Hydro states that it has invested over \$8 million to-date to correct the FAC-003 violations and to improve its Transmission Vegetation Management Program to prevent this type of violation from occurring again.¹⁷⁸

¹⁷⁴ Ibid.

¹⁷⁵ Exhibit A2-9, Attachment 1, p. 20.

¹⁷⁶ Exhibit B-2, Appendix A, pp. 30-31.

¹⁷⁷ Ibid., Appendix A, p. 20.

¹⁷⁸ Exhibit B-2, Appendix A, p. 20

Panel determination

The Panel finds that the cost of compliance was not a factor underlying Violation 6 because WECC presented no evidence that it was, and further finds this to be neither an aggravating nor a mitigating factor.

(i) Whether the Contravention was Self-Reported

WECC provides that BC Hydro submitted a self-report for Violation 6 on September 14, 2020.¹⁷⁹ BC Hydro confirms that it self-reported Violation 6 and submits that this should be considered a mitigating factor.¹⁸⁰

Panel determination

The Panel finds that BC Hydro self-reported Violation 6 and finds this to be a mitigating factor.

(j) Degree and Quality of Cooperation during the BCUC's Investigation

BC Hydro submits that it has been cooperative and transparent with both WECC and the BCUC as it relates to Violation 6.¹⁸¹

The BCUC had issued a remedial action directive to BC Hydro and WECC states that BC Hydro was cooperative.¹⁸²

BC Hydro submits that this cooperation and transparency should be considered a mitigating factor.¹⁸³

Panel determination

The Panel finds BC Hydro's degree and quality of cooperation during the investigation to be a mitigating factor.

(k) Undue Hardship that Might Arise from the Amount of the Penalty

BC Hydro submits, if required to pay, that WECC's proposed penalty amount will not cause undue financial hardship.¹⁸⁴

Panel determination

The Panel finds that imposing a penalty on BC Hydro for Violation 6 would not cause undue hardship because the onus is on BC Hydro to demonstrate hardship and it has not done so, and further finds this to be neither an aggravating nor a mitigating factor.

(l) Other Matters Prescribed by the Lieutenant Governor in Council

BC Hydro submits it is not aware of any other matters that have been prescribed by the Lieutenant Governor in Council.¹⁸⁵

¹⁷⁹ Exhibit A2-9, Attachment 1, p. 4.

¹⁸⁰ Exhibit B-2, Appendix A, p. 20.

¹⁸¹ Ibid.

¹⁸² Exhibit A2-9, Attachment 1, p. 25.

¹⁸³ Exhibit B-2, Appendix A, p. 21.

¹⁸⁴ Exhibit B-2, Appendix A, p. 21.

¹⁸⁵ Ibid.

Panel determination

There are no other matters prescribed by the Lieutenant Governor in Council and therefore the Panel makes no finding relating to this factor.

8.2.4 Summary of UCA Factors Pertaining to Violation 6

The Panel summarizes its findings relating to the UCA Factors pertaining to Violation 6 in Table 5.

Table 5: Summary of Findings pertaining to Violation 6

	Factors as per the UCA	Aggravating and / or Mitigating
a)	Previous contraventions, administrative penalties imposed, and orders issued	Neither
b)	Gravity and magnitude of contravention	Aggravating
c)	Extent of harm resulting from the contravention	Neither
d)	Whether the contravention was repeated or continuous	Aggravating
e)	Whether contravention was deliberate	Neither
f)	Any economic benefit derived from the contravention	Neither
g)	Efforts to prevent and correct contravention	Aggravating
h)	Cost of compliance with the provision contravened	Neither
i)	Whether contravention was self-reported	Mitigating
j)	Degree and quality of cooperation during BCUC's investigation	Mitigating
k)	Undue hardship that might arise from Penalty the amount of penalty	Neither
l)	Any other matters prescribed by the Lieutenant Governor in Council	No finding

8.2.5 Violation 6: Additional Factors

Pursuant to section 109.2(3) of the UCA, the Panel may also consider anything else it considers relevant in determining whether Violation 6 warrants an administrative penalty.

Section 8.1.5 of this Decision describes BC Hydro's submissions of the additional factors for Panel consideration when determining any penalty amount for each and all of the Confirmed Violations, including Violation 6. Specifically, BC Hydro addresses (i) BC Hydro's completion of the Remedial Action Directive; (ii) BC Hydro's efforts as a result of the FAC-003 Remedial Action Directive and FAC-003 Mitigation Plans; and (iii) BC Hydro's degree of cooperation with WECC and with the BCUC.

Panel determination

For the same reasons as provided in section 8.1.5 above, the Panel does not consider BC Hydro's post-contravention compliance efforts to be a mitigating factor.

8.2.6 Penalty Consideration for Violation 6

BC Hydro submits that the Penalty Guidelines require WECC to recommend a penalty that is both within the base penalty ranges and commensurate with a similar situation in other regions of the Western Interconnection. BC Hydro states that WECC provides NERC proposed penalty amounts (NERC Proposed Penalty Amounts) that WECC says would apply "if these serious Alleged Violations were assessed in the United States, with all things being equal"¹⁸⁶ but does not provide further support for the NERC Proposed Penalty Amounts. BC Hydro submits that these NERC Proposed Penalty Amounts reflect the same procedural fairness concerns that BC Hydro has outlined above (discussed in section 5.1). BC Hydro submits that WECC's proposed penalty amounts exceed every FAC-003 penalty issued by NERC between 2015 and 2020, and as a result are not commensurate with similar situations in other regions of the Western Interconnection.¹⁸⁷

BC Hydro submits that the evidence demonstrates that any administrative penalty considered with respect to Violation 6 should be "at the low end of the applicable range."¹⁸⁸

Panel determination

The Panel finds that an administrative penalty for Violation 6 is warranted because Violation 6 posed a serious risk to the Bulk Electric System.

The Panel finds that the appropriate administrative penalty for Violation 6 is \$500,000.

The Base Penalty Range for the Violation is \$0 to \$1,000,000 per day, based on the Violation Risk Factor of High for MRS Requirement FAC-003-4 R2 and the Violation Severity Level of Severe.

The Panel finds that the appropriate administrative penalty for the Violation should be in the middle of this range because, although BC Hydro has no previous administrative penalty for MRS Reliability Standard FAC-003-4, the Violation posed a serious risk to the Bulk Electric System. The Panel finds the middle of the range to be between 30 percent and 70 percent of the Base Penalty Range. The Panel further finds that the penalty for the Violation should be 50 percent of the Base Penalty Range, that is, \$500,000, because although BC Hydro self-reported the Violation and cooperated with the investigation, BC Hydro did not take adequate steps to prevent Violation 6 from occurring.

The Panel declines to exercise its discretion to levy a daily penalty for each day that the Violation continued because there are no circumstances to justify this level of penalty.

¹⁸⁶ Exhibit A2-9, Attachment 1, Attachment 1, p. 22.

¹⁸⁷ Exhibit B-2, Appendix A, p. 34.

¹⁸⁸ Ibid.

8.3 Violation 7: BCUC2020000735 – FAC-003-4 R2.4 – Notice of Alleged Violation CF1867

8.3.1 Summary of Reliability Standard

Violation 7 described in Notice of Alleged Violation CF1867 is a contravention involving one instance of violation of Reliability Standard FAC-003-4, which sets out the requirements BC Hydro must meet with regards to Transmission Vegetation Management.

Requirement FAC-003-4 R2 requires each applicable Transmission Owner and applicable Generator Owner to manage vegetation to prevent encroachments into the Minimum Vegetation Clearance Distance of its applicable line(s) which are not either an element of an Interconnection Reliability Operating Limit, or an element of a Major WECC Transfer Path.

Specifically, requirement FAC-003-4 R2.4 requires an Entity to manage vegetation to prevent an encroachment into the line Minimum Vegetation Clearance Distance that would cause a Sustained Outage.

Reliability Standard Requirement FAC-003-4 R2 has a Violation Risk Factor of High, and possible Violation Severity Levels of High or Severe.

The definitions of the Violation Severity Levels for Reliability Standard Requirement FAC-003-4 R2 are:¹⁸⁹

- High: “The responsible entity failed to manage vegetation to prevent encroachment into the MVCD [Minimum Vegetation Clearance Distance] of a line not identified as an element of an IROL [Interconnection Reliability Operating Limit] or Major WECC transfer path and encroachment into the MVCD [Minimum Vegetation Clearance Distance] as identified in FAC-003-4-Table 2 was observed in real time absent a Sustained Outage.”
- Severe: “The responsible entity failed to manage vegetation to prevent encroachment into the MVCD [Minimum Vegetation Clearance Distance] of a line not identified as an element of an IROL [Interconnection Reliability Operating Limit] or Major WECC transfer path and a vegetation-related Sustained Outage was caused by one of the following:
 - A fall-in from inside the active transmission line ROW [Right of Way];
 - Blowing together of applicable lines and vegetation located inside the active transmission line ROW [Right of Way]; or
 - A grow-in”

8.3.2 Basic facts of Violation 7

The basic facts of Violation 7 are summarized in Table 6.¹⁹⁰

¹⁸⁹ FAC-003-4 Transmission Vegetation Management Reliability Standard, as Attachment E to Order R-29-17, pp. 302-303.

¹⁹⁰ Exhibit A2-9, Attachment 1, p. 23.

Table 6: Basic Facts of Violation 7

Reference	MRS Reliability Standard and Requirement	Violation Discovery Date	Violation Duration (days)	Violation Risk Factor	Base Penalty Range ¹⁹¹
BCUC2020000735	FAC-003-4 R2.4	July 28, 2020	1	High ¹⁹²	\$0 to \$1,000,000

Violation 7 Facts

On September 14, 2020, BC Hydro self-reported possible non-compliance with FAC-003-4 R2, and this non-compliance was given BCUC Violation ID BCUC2020000735.¹⁹³

On July 28, 2020 BC Hydro had a vegetation-related Sustained Outage on a 500 kV circuit at a three-circuit transmission corridor right of way that included two 500 kV circuits and one 230 kV circuit that were part of a large substation. The 500 kV transmission line, identified as 5L76, tripped at 3:25 PM due to a Black Cottonwood tree encroachment into the Minimum Vegetation Clearance Distance resulting in the Sustained Outage that ended at 3:31 PM, for a total of six minutes. BC Hydro removed the Black Cottonwood tree responsible for the Sustained Outage at 7:45 PM on July 29, 2020.¹⁹⁴ BC Hydro's Vegetation Inspection conducted on May 19, 2019 identified the associated area for corrective action to be completed in 2020.¹⁹⁵

This Violation began on July 28, 2020 when a tree encroached at 3:25 PM and ended on July 29, 2020 at 7:25 PM, when BC Hydro removed the tree¹⁹⁶, for a total of two days.

On April 29, 2022, BC Hydro submitted its response to the proposed penalties set out in the Second Revised Notice of Alleged Violation and BC Hydro does not challenge the facts above provided by WECC.¹⁹⁷

Panel determination

The Panel accepts the above facts provided by WECC in the Second Revised Notice of Alleged Violation concerning Violation 7.

8.3.3 Consideration of Violation 7 under section 109.2 of the UCA

(a) Previous Contraventions Administrative Penalties Imposed and Orders Issued

Section 109.2(3)(a) of the UCA requires the Panel to consider the history of previous contraventions, administrative penalties and orders issued with respect to BC Hydro.

¹⁹¹ BCUC Penalty Guidelines for British Columbia Mandatory Reliability Standards, p. 2.

¹⁹² Exhibit A2-9, Attachment 1, p. 15.

¹⁹³ Ibid., Attachment 1, p. 4.

¹⁹⁴ Ibid., Attachment 1, p. 14.

¹⁹⁵ Ibid.

¹⁹⁶ Ibid.

¹⁹⁷ Exhibit A2-5, Schedule A, Table 1, p. 4.

BC Hydro submits that while it has no previous FAC-003-4 R2 violations, it has had previous contraventions of Mandatory Reliability Standards and has received prior administrative penalties.¹⁹⁸

Panel determination

The Panel finds that BC Hydro's previous contraventions of MRS Standards and its previous administrative penalties imposed as a result are neither an aggravating nor a mitigating factor with respect to Violation 7.

The Panel acknowledges that BC Hydro has had previous contraventions of Mandatory Reliability Standards and has received prior administrative penalties related to MRS violations, and notes that section 109.2(3)(a) of the UCA is not limited to considering previous contraventions and administrative penalties for the specific Reliability Standard or MRS Requirement which the Violation contravenes.

However, there is no evidence in this proceeding that BC Hydro's previous contraventions of MRS Standards are relevant to Violation 7, and BC Hydro has no previous contraventions of MRS Standard FAC-003. Therefore, the Panel finds that BC Hydro's previous contraventions and administrative penalties imposed are not relevant to a determination of the penalty for Violation 7.

(b) Gravity and Magnitude of Contravention

WECC concluded Violation 7 posed a serious and substantial risk to the reliability of the Bulk Electric System and therefore determined its severity level should be Severe. WECC states that Violation 7 could have resulted in the loss of one or more Bulk Electric System circuits or the loss of generation. Additionally, the failure could have resulted in the separation and islanding of over 2500 MW of generation, the loss of 58 MW of Independent Power Producer generation, and the loss of 25 MW of load which could have caused BC Hydro to declare an Energy Emergency Alert along with the possibility of post-contingency voltage issues if the parallel 500 kV line been in maintenance or forced out of service. WECC also submits that BC Hydro's ineffective internal controls to prevent or sufficiently compensate for this violation demonstrates another example of systemic problems in its FAC-003 program resulting in programmatic failure.¹⁹⁹

In BC Hydro's view, WECC's characterization of serious risk is not supported by evidence.²⁰⁰

Panel determination

The Panel finds that Violation 7 posed a serious risk to the Bulk Electric System and finds this to be an aggravating factor.

The only two possible Violation Severity Levels for Reliability Standard Requirement FAC-003-4 R2 are High and Severe. In this case, the evidence, uncontested by BC Hydro, is that the Black Cottonwood tree grew in to the 5L76 right of way, which is one of the tests for whether the Violation Severity Level for Violation 7 is Severe. Therefore, we find that Violation 7 has a Violation Severity Level of Severe.

¹⁹⁸ Exhibit B-2, Appendix A, p. 17.

¹⁹⁹ Exhibit A2-9, Attachment 1, p. 15.

²⁰⁰ Exhibit B-2, Appendix A, p. 17.

(c) Extent of Harm to Others Resulting from the Contravention

WECC submits harm did occur when BC Hydro failed to prevent a Black Cottonwood tree from encroaching into the Minimum Vegetation Clearance Distance of its applicable 500 kV transmission line that caused a six-minute vegetation-related Sustained Outage, as required by FAC-003-4 R2.2.²⁰¹

BC Hydro states that there was no loss of load and generation as a result of this forced outage and the impact to the Bulk Electric System was minimal.²⁰² BC Hydro submits there was no harm to others resulting from Violation 7, thus should be considered a mitigating factor.²⁰³

Panel determination

The Panel finds that no harm to others was caused by Violation 7 and finds this to be neither an aggravating nor a mitigating factor.

In the Panel's view, WECC's evidence that a Sustained Outage occurred is not sufficient to demonstrate "harm to others" because WECC has provided no evidence that any people were harmed as a result of the Sustained Outage associated with Violation 7.

(d) Whether the Contravention was Repeated or Continuous

BC Hydro submits that Violation 7 is a repeated contravention as it occurred after Violation 1 and considers Violation 7 to be continuous because it continued for more than one day.²⁰⁴

Panel determination

The Panel finds that Violation 7 was continuous because it lasted for more than one day from the first encroachment at 3:25 pm on July 28, 2020 until the Black Cottonwood tree was removed at 7:45 pm on July 29, 2020. However, the fact that it was continuous is, on its own, neither aggravating nor mitigating because the time over which it was continuous was limited.

The Panel further finds that Violation 7 was repeated because it occurred after Violation 1, a separate vegetation encroachment that occurred on May 22, 2019.

The Panel finds that the repeated nature of Violation 7 is an aggravating factor because:

- Between May 22, 2019, the date of Violation 1, and July 28, 2020, the date of Violation 7, BC Hydro did not take sufficient steps to examine its vegetation and identify "at risk" trees such as the one that caused Violation 7; and
- This is despite WECC recommending a compliance violation investigation report and the BCUC accepting this recommendation on September 19, 2019.

(e) Whether the Contravention was Deliberate

BC Hydro submits that Violation 7 was not deliberate.²⁰⁵

²⁰¹ Exhibit A2-9, Attachment 1, p. 15.

²⁰² Exhibit A2-5, Schedule A, p. 11.

²⁰³ Exhibit B-2, Appendix A, p. 18.

²⁰⁴ Ibid.

²⁰⁵ Ibid.

Panel determination

The Panel finds that Violation 7 was not a deliberate act on the part of BC Hydro because WECC presented no evidence that it was, and further finds this to be neither an aggravating nor a mitigating factor.

(f) Any Economic Benefit Derived from the Contravention

BC Hydro submits that it did not derive any economic benefit from Violation 7.²⁰⁶

Panel determination

The Panel finds that BC Hydro did not derive any financial benefit from Violation 7 because WECC presented no evidence that it did, and further finds this to be neither an aggravating nor a mitigating factor.

(g) Efforts to Prevent and Correct the Contravention

Prevention

WECC attributed the root cause of this violation to lack of corrective action for a Black Cottonwood tree that should have been removed when it was identified as needing corrective action by a previous Vegetation Inspection conducted in May 19, 2019. The contractor who performed the inspection was only qualified for trimming (slashing) work and not tree removal. Furthermore, the contractor did not identify that a certified tree faller was needed in the area and had incorrectly indicated that the work was completed. When BC Hydro completed an audit of the area identified as needing corrective action, the Vegetation Coordinator was not able to access the specific location where the Sustained Outage later occurred on July 28, 2020, due to flooding and concerns that access would have impacted the cultivated field. Then on July 28, 2020, during Vegetation Inspections implemented after the June 25, 2020, encroachments and Sustained Outages, another helicopter patrol did not identify this area as having an imminent threat of encroachment.²⁰⁷

BC Hydro's systematic examination of vegetation conditions that were likely to pose a hazard to the transmission lines prior to the next planned maintenance or inspection were inadequate. Specifically, as demonstrated by the violation, BC Hydro did not understand the vegetation growth rates and patterns for this Black Cottonwood tree. Though, BC Hydro had a well-documented Transmission Vegetation Management Program, BC Hydro did not provide adequate training for its staff to ensure that systematic measurement of vegetation and supervisory methods of the inspections were executed properly. Inexperienced field personnel partially implemented the procedures in the Transmission Vegetation Management Program and underestimated potential line sag and potential growth rate of vegetation. WECC assessed BC Hydro's BC Hydro's failure to complete adequate Vegetation Inspections of its applicable lines, as required by Reliability Standard FAC-003-4 R6, as the root cause of BC Hydro's systemic and programmatic failure with FAC-003.²⁰⁸

BC Hydro submits that with regard to prevention, prior to Violation 7, BC Hydro had a well-documented Transmission Vegetation Management Program in place to prevent such incidents. BC Hydro annually inspected the lines in question leading up to the incidents and relied on its patrollers and contractors to confirm that either no emergent work was required or that the necessary work had been performed.²⁰⁹

²⁰⁶ Ibid.

²⁰⁷ Exhibit A2-9, Attachment 1, p. 14.

²⁰⁸ Exhibit A2-9, Attachment 1, p. 5.

²⁰⁹ Exhibit B-2, Appendix A, p. 19.

Mitigation

BC Hydro submits that it acted quickly to correct Violation 7. Additionally, BC Hydro undertook and continues to undertake widespread reform to its Transmission Vegetation Management Program to address the root causes of the incidents and has taken reasonable steps towards rectifying and preventing further contraventions.²¹⁰

WECC submits that the mitigation steps for the 2019 Sustained Outages and vegetation encroachments (associated with Violations 1, 2, 3 and 4) were not effective in preventing the vegetation-related encroachments and Sustained Outage that occurred on July 28, 2020. As a result of the Violation 5 Sustained Outages, BC Hydro performed additional Vegetation Inspections via aerial and ground patrols across its system and identified 233 sites where vegetation was identified to be removed to avoid encroachments into the Minimum Vegetation Clearance Distance. However, these inspections were not effective in preventing the subsequent vegetation related encroachments and Sustained Outages in 2020.²¹¹

As discussed in Section 5 above, BC Hydro has conducted work required in the FAC-003 Remedial Action Directive.²¹² In addition to the Remedial Action Directive, BC Hydro states that it also made significant efforts to prevent future contraventions through its Mitigation Plan activities.²¹³

Panel determination

The Panel finds that BC Hydro took adequate measures to correct Violation 7. However, the Panel further finds that BC Hydro took inadequate measures to prevent Violation 7 and finds this to be an aggravating factor.

BC Hydro's "well-documented Transmission Vegetation Management Program in place to prevent such incidents" did not prevent Violation 7 from occurring, which in the absence of an alternative explanation demonstrates that BC Hydro's program was inadequate. Further, the Black Cottonwood tree that caused Violation 7 was identified as needing corrective action in 2019, yet BC Hydro failed to take action that could have prevented Violation 7 occurring.

In the Panel's view it is no defense that BC Hydro "relied on its patrollers and contractors to confirm that either no emergent work was required or that the necessary work had been performed." BC Hydro remains accountable for ensuring its compliance with MRS standards even if it assigns work to others.

(h) Cost of Compliance with the Provision Contravened

BC Hydro submit that cost of compliance was not a factor underlying BC Hydro's FAC-003 violations and that it has not historically tracked cost to comply with MRS on a standard-specific basis. BC Hydro states that it has invested over \$8 million to-date to correct the FAC-003 violations and to improve its Transmission Vegetation Management Program to prevent this type of violation from occurring again.²¹⁴

Panel determination

The Panel finds that the cost of compliance was not a factor underlying Violation 7 because WECC presented no evidence that it was, and further finds this to be neither an aggravating nor a mitigating factor.

²¹⁰ Ibid., Appendix A, p. 19.

²¹¹ Exhibit A2-9, Attachment 1, p. 20.

²¹² Exhibit B-2, Appendix A, pp. 30-31.

²¹³ Ibid., Appendix A, p. 20.

²¹⁴ Exhibit B-2, Appendix A, p. 20

(i) Whether the Contravention was Self-Reported

WECC provides that BC Hydro submitted a self-report for Violation 7 on September 14, 2020.²¹⁵ BC Hydro confirms that it self-reported Violation 7 and submits that this should be considered a mitigating factor.²¹⁶

Panel determination

The Panel finds that BC Hydro self-reported Violation 7 and finds this to be a mitigating factor.

(j) Degree and Quality of Cooperation during the BCUC's Investigation

BC Hydro submits that it has been cooperative and transparent with both WECC and the BCUC as it relates to Violation 7.²¹⁷

The BCUC had issued a Remedial Action Directive to BC Hydro and WECC states that BC Hydro was cooperative.²¹⁸

BC Hydro submits that this cooperation and transparency should be considered a mitigating factor.²¹⁹

Panel determination

The Panel finds BC Hydro's degree and quality of cooperation during the investigation to be a mitigating factor.

(k) Undue Hardship that Might Arise from the Amount of the Penalty

BC Hydro submits, if required to pay, it confirms that WECC's proposed penalty amount will not cause undue financial hardship.²²⁰

Panel determination

The Panel finds that imposing a penalty on BC Hydro for Violation 7 would not cause undue hardship because the onus is on BC Hydro to demonstrate hardship and it has not done so, and further finds this to be neither an aggravating nor a mitigating factor.

(l) Other Matters Prescribed by the Lieutenant Governor in Council

BC Hydro submits it is not aware of any other matters that have been prescribed by the Lieutenant Governor in Council.²²¹

Panel determination

There are no other matters prescribed by the Lieutenant Governor in Council and therefore the Panel makes no finding relating to this factor.

²¹⁵ Exhibit A2-9, Attachment 1, p. 4.

²¹⁶ Exhibit B-2, Appendix A, p. 20.

²¹⁷ Ibid.

²¹⁸ Exhibit A2-9, Attachment 1, p. 25.

²¹⁹ Exhibit B-2, Appendix A, p. 21.

²²⁰ Ibid.

²²¹ Ibid.

8.3.4 Summary of UCA Factors Pertaining to Violation 7

The Panel summarizes its findings relating to the UCA Factors pertaining to Violation 7 in Table 7.

Table 7: Summary of Findings pertaining to Violation 7

	Factors as per the UCA	Aggravating and / or Mitigating
a)	Previous contraventions, administrative penalties imposed, and orders issued	Neither
b)	Gravity and magnitude of contravention	Aggravating
c)	Extent of harm resulting from the contravention	Neither
d)	Whether the contravention was repeated or continuous	Aggravating
e)	Whether contravention was deliberate	Neither
f)	Any economic benefit derived from the contravention	Neither
g)	Efforts to prevent and correct contravention	Aggravating
h)	Cost of compliance with the provision contravened	Neither
i)	Whether contravention was self-reported	Mitigating
j)	Degree and quality of cooperation during BCUC's investigation	Mitigating
k)	Undue hardship that might arise from the amount of penalty	Neither
l)	Any other matters prescribed by the Lieutenant Governor in Council	No finding

8.3.5 Violation 7: Additional Factors

Pursuant to section 109.2 (3) of the UCA, the Panel may also consider anything else the Panel considers relevant in its consideration of whether Violation 7 warrants an administrative penalty.

Section 8.1.5 of this Decision describes BC Hydro's submissions of the additional factors for Panel consideration when determining any penalty amount for each and all of the Confirmed Violations, including Violation 7. Specifically, BC Hydro addresses (i) BC Hydro's completion of the Remedial Action Directive; (ii) BC Hydro's efforts as a result of the FAC-003 Remedial Action Directive and FAC-003 Mitigation Plans; and (iii) BC Hydro's degree of cooperation with WECC and with the BCUC.

Panel Determination

For the same reasons as provided in section 8.1.5 above, the Panel does not consider BC Hydro's post-contravention compliance efforts to be a mitigating factor.

8.3.6 Penalty Consideration for Violation 7

BC Hydro submits that the Penalty Guidelines require WECC to recommend a penalty that is both within the base penalty ranges and commensurate with a similar situation in other regions of the Western Interconnection. BC Hydro states that WECC provides NERC proposed penalty amounts (NERC Proposed Penalty Amounts) that WECC says would apply “if these serious Alleged Violations were assessed in the United States, with all things being equal”²²² but does not provide further support for the NERC Proposed Penalty Amounts. BC Hydro submits that these NERC Proposed Penalty Amounts reflect the same procedural fairness concerns that BC Hydro has outlined above (discussed in section 5.1). BC Hydro submits that WECC’s proposed penalty amounts exceed every FAC-003 penalty issued by NERC between 2015 and 2020, and as a result are not commensurate with similar situations in other regions of the Western Interconnection.²²³

BC Hydro submits that the evidence demonstrates that any administrative penalty considered with respect to Violation 7 should be “at the low end of the applicable range.”²²⁴

Panel Determination

The Panel finds that an administrative penalty for Violation 7 is warranted because Violation 7 posed a serious risk to the Bulk Electric System.

The Panel finds that the appropriate administrative penalty for Violation 7 is \$500,000.

The Base Penalty Range for the Violation is \$0 to \$1,000,000 per day, based on the Violation Risk Factor of High for MRS Requirement FAC-003-4 R2 and the Violation Severity Level of Severe.

The Panel finds that the appropriate administrative penalty for the Violation should be in the middle of this range because, although BC Hydro has no previous administrative penalty for MRS Reliability Standard FAC-003-4, the Violation posed a serious risk to the Bulk Electric System. The Panel finds the middle of the range to be between 30 percent and 70 percent of the Base Penalty Range. The Panel further finds that the penalty for the Violation should be 50 percent of the Base Penalty Range, that is, \$500,000, because although BC Hydro self-reported the violation and cooperated with the investigation, BC Hydro did not take adequate steps to prevent Violation 7 from occurring.

The Panel declines to exercise its discretion to levy a daily penalty for each day that the Violation continued because there are no circumstances to justify this level of penalty.

²²² Exhibit A2-9, Attachment 1, Attachment 1, p. 22.

²²³ Exhibit B-2, Appendix A, p. 34.

²²⁴ Ibid., Appendix A, p. 34.

9.0 Confidentiality

Pursuant to the Compliance Monitoring Program, a Notice of Alleged Violation will be treated as confidential unless or until the BCUC confirms the Alleged Violation(s) and the BCUC considers that disclosure would not relate to a cyber-security incident or otherwise jeopardize the security of the Bulk Power System.²²⁵

The Penalty Guidelines state: “The Commission may treat as confidential any Notice of Penalty or disclosures relating to cyber-security incidents or other incidents which could otherwise jeopardize the security of the bulk power system.”²²⁶

In Confidential Order R-10-22, dated March 22, 2022, the BCUC directed all compliance materials related to the FAC-003 violations would be held confidential until the BCUC determines otherwise.

Section 109.3(2) of the UCA provides:

If the commission imposes an administrative penalty on a person, the commission may make public the reasons for and the amount of the penalty.

Accordingly, **BC Hydro is directed to make a submission to the Panel, within 30 days of the issuance of this Decision, on whether any of the following should be made public (Confidential Materials):**

- **The compliance materials, which include the following:**
 - **Confidential Order R-10-22 dated March 22, 2022 confirming the Violations;**
 - **Second Revised Notice of Alleged Violation;**
 - **The Compliance Violation Investigation Report;**
 - **BC Hydro’s responses to Notice of Alleged Violation CF1867 and the First Revised Notice of Alleged Violation; and**
 - **Materials and evidence filed in this proceeding.**
- **The Notice of Penalty for the Violations;**
- **This Order R-37-22; and**
- **These Reasons for Decision.**

BC Hydro is further directed to provide in its submission:

- **Reasons for its proposed confidentiality treatment, and in particular whether it considers that disclosure of the Confidential Materials would jeopardize the security of the Bulk Electric System; and**
- **Any proposed redactions that it considers should be made to the Confidential Materials before they are made public.**

²²⁵ Rules of Procedure for Reliability Standards in British Columbia, Appendix 2: Compliance Monitoring Program, by Order R-40-17 dated September 1, 2017, p. 14.

²²⁶ Rules of Procedure for Reliability Standards in British Columbia, Appendix 3: Penalty Guidelines for British Columbia Mandatory Reliability Standards, by Order R-40-17 dated September 1, 2017, p. 9.