



NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

March 31, 2009
Ms. Kimberly Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: NERC Notice of Penalty regarding Black River Generation, LLC, FERC Docket No. NP09-_-000

Dear Ms. Bose:

The North American Electric Reliability Corporation (NERC) hereby provides this Notice of Penalty¹ regarding Black River Generation, LLC, NERC Registry ID NCR07019,² in accordance with the Federal Energy Regulatory Commission's (Commission or FERC) rules, regulations and orders, as well as NERC Rules of Procedure including Appendix 4C (NERC Compliance Monitoring and Enforcement Program (CMEP)).³

Black River Generation, LLC self-certified non-compliance with Reliability Standard PRC-005-1 Requirement (R) 1 on June 24, 2007. This Notice of Penalty is being filed with the Commission because, based on information from Northeast Power Coordinating Council, Black River Generation, LLC does not dispute the violation of PRC-005-1 R1 and the proposed penalty of \$0 to be assessed to the Black River Generation, LLC. Accordingly, the violation identified as NERC Violation Tracking Identification Number NPCC200700001 is a Confirmed Violation, as that term is defined in the NERC Rules of Procedure and the CMEP.

¹ *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards* (Order No. 672), III FERC Stats. & Regs. ¶ 31,204 (2006); *Notice of New Docket Prefix "NP" for Notices of Penalty Filed by the North American Electric Reliability Corporation*, Docket No. RM05-30-000 (February 7, 2008). See also 18 C.F.R. Part 39 (2008). *Mandatory Reliability Standards for the Bulk-Power System*, FERC Stats. & Regs. ¶ 31,242 (2007) (Order No. 693), *reh'g denied*, 120 FERC ¶ 61,053 (2007) (Order No. 693-A).

² Northeast Power Coordinating Council confirmed that Black River Generation, LLC was included on the NERC Compliance Registry as a Generator Owner on June 21, 2007 and was subject to the requirements of PRC-005-1.

³ See 18 C.F.R § 39.7(c)(2).

Statement of Findings Underlying the Violations

This Notice of Penalty incorporates the findings and justifications set forth in the Notice of Confirmed Violation and Proposed Penalty or Sanction (NOCV) issued on February 14, 2008, and the Supplemental Record Information issued on October 21, 2008 by Northeast Power Coordinating Council. The details of the findings and basis for the penalty are set forth herein. This Notice of Penalty filing contains the basis for approval of this Notice of Penalty by the NERC Board of Trustees Compliance Committee (NERC BOTCC). In accordance with Section 39.7 of the Commission's regulations, 18 C.F.R. § 39.7 (2007), NERC provides the following summary table identifying each Reliability Standard violated by Black River Generation, LLC.

| Region | Registered Entity | NOC ID | NERC Violation ID | Reliability Std. | Req. (R) | VRF | Total Penalty (\$) |
|--------|-----------------------------|--------|-------------------|------------------|----------|------|--------------------|
| NPCC | Black River Generation, LLC | NOC-21 | NPCC200700001 | PRC-005-1 | 1 | High | 0 |

In summary, PRC-005-1 R1 requires an entity such as Black River Generation, LLC that owns a generation Protection System to have a Protection System maintenance and testing program for Protection Systems that affect the reliability of the bulk electric system. The program shall include: maintenance and testing intervals and their basis; and a summary of maintenance and testing procedures. PRC-005-1 R1 has a "High" Violation Risk Factor (VRF).

On June 24, 2007, Black River Generation, LLC self-certified that it was in violation of PRC-005-1 R1. Black River Generation, LLC asserted that it was testing and maintaining its Protection Systems, but it lacked the required documentation for a summary of their maintenance and testing procedures. On October 17, 2007, Black River Generation, LLC submitted a Mitigation Plan in which it stated that a summary procedure had been written to satisfy R1.2.⁴ On October 18, 2007, Black River Generation, LLC certified completion of the Mitigation Plan as of October 17, 2007, via the NPCC Mitigation Plan Closure Form indicating that it had included the summary of maintenance and testing procedures as part of its Protection System maintenance and testing program, thereby fulfilling PRC-005-1 R1. Northeast Power Coordinating Council verified the completion of the mitigation plan and determined the duration of the penalty to be from June 21, 2007 until October 17, 2007.⁵

Section 4.2.2 of the NERC Sanction Guidelines states that:

If the actual or foreseen impact of the violation is judged to be inconsequential by NERC or the regional entity and the violation is the first incidence of violation of the requirement in question by the violator, NERC or the regional entity may at its discretion:

⁴ The Mitigation Plan is incorrectly dated June 24, 2007.

⁵ Black River Generation, LLC self-certified the violations on June 24, 2007. Black River Generation, LLC was registered as a Generator Owner on June 21, 2007. Therefore, the violation period begins on the date of Black River Generation, LLC's registration and ends the date of completion of the Mitigation Plan. Black River Generation, LLC's certification of Mitigation Plan completion states that the mitigation was completed as of October 17, 2007. The certification itself was executed on October 18, 2007.

(i) set the Base Penalty Amount to a value it deems appropriate within the initial value range set above pursuant to Section 4.1, *or (ii) excuse the penalty for the violation (i.e. set the Base Penalty Amount to 0\$).*⁶

Northeast Power Coordinating Council determined to exercise its discretion, for this violation that occurred in 2007, to assess no penalty. Specifically, Northeast Power Coordinating Council, after reviewing Black River Generation, LLC's relay test records, determined the failure to include a summary of the maintenance and testing procedure was a documentation issue, because the relay maintenance on the generating facility was being performed. In reaching this decision, Northeast Power Coordinating Council determined (1) the violation occurred during the period of transition to mandatory standards during which the Commission authorized such discretion (*see* Order Nos. 693 and 693-A⁷); (2) relay maintenance and testing of the Generation Protection System was occurring, therefore the documentation violation did not put bulk power system reliability at serious or substantial risk because the Generation Protection System was being maintained; (3) the violation was the first incidence of violation by the newly registered entity; and (4) the period of the violation was in the year 2007 during which time the Commission encouraged focusing on the most serious violations.

Status of Mitigation Plan

Black River Generation, LLC's Mitigation Plan to address the referenced violation was submitted to Northeast Power Coordinating Council on October 17, 2007, accepted by Northeast Power Coordinating Council, October 17, 2007 and approved by NERC, April 30, 2008. The Mitigation Plan for the violation listed is designated as MIT-07-0540 and was submitted as non-public information to FERC on April 30, 2008 in accordance with FERC orders. Black River Generation, LLC certified to Northeast Power Coordinating Council October 18, 2007 that its Mitigation Plan was completed as of October 17, 2007. According to the letter dated December 1, 2008, Northeast Power Coordinating Council notified Black River Generation, LLC that Northeast Power Coordinating Council verified completion of the Mitigation Plan on October 17, 2007. In verifying completion of the Mitigation Plan, Northeast Power Coordinating Council stated that, on October 24, 2007, it reviewed the Black River Generation, LLC document: Standard Operating Procedure 0304-102 NERC PRC-005 Transmission and Generation Protection System Maintenance and Testing, Revision 1, dated October 11, 2007. This document was submitted in support of Black River Generation, LLC's Certification of Completion. Based upon its review, Northeast Power Coordinating Council determined that this document complied with the requirements of Reliability Standard PRC-005-1 R1 and verified that the Mitigation Plan was completed. In addition, Northeast Power Coordinating Council noted that, on September 12, 2008, it again reviewed the Black River Generation, LLC's relay maintenance and test records for its Generation Protection System and found that Black River Generation, LLC was testing and maintaining its protection systems and that it did have the required summary of their maintenance and testing procedures.

⁶ *See* Sanction Guidelines (emphasis added).

⁷ *See* n.1 *supra*.

Statement Describing the Proposed Penalty, Sanction or Enforcement Action Imposed

FERC Order Excerpts

In Order No. 693, the Commission provided guidance to NERC and the industry on the determination of penalties during the first six month period of mandatory and enforceable Reliability Standards:

222. . . . In light of commenters' concerns, including the fact that there are new aspects to the Reliability Standards and the proposed compliance program that will apply to all users, owners and operators of the Bulk-Power System, *the Commission directs the ERO and Regional Entities to focus their resources on the most serious violations during an initial period through December 31, 2007.* This thoughtful use of enforcement discretion should apply to all users, owners and operators of the Bulk-Power System, and not just those new to the program as originally proposed in the NOPR. This approach will allow the ERO, Regional Entities and other entities time to ensure that the compliance monitoring and enforcement processes work as intended and that all entities have time to implement new processes.

223. *By directing the ERO and Regional Entities to focus their resources on the most serious violations through the end of 2007, the ERO and Regional Entities will have the discretion necessary to assess penalties for such violations, while also having discretion to calculate a penalty without collecting the penalty if circumstances warrant.* Further, even if the ERO or a Regional Entity declines to assess a monetary penalty during the initial period, they are authorized to require remedial actions where a Reliability Standard has been violated. Furthermore, where the ERO uses its discretion and does not assess a penalty for a Reliability Standard violation, we encourage the ERO to establish a process to inform the user, owner or operator of the Bulk-Power System of the violation and the potential penalty that could have been assessed to such entity and how that penalty was calculated. We leave to the ERO's discretion the parameters of the notification process and the amount of resources to dedicate to this effort. Moreover, the Commission retains its power under section 215(e)(3) of the FPA to bring an enforcement action against a user, owner or operator of the Bulk-Power System.

224. *The Commission believes that the goal should be to ensure that, at the outset, the ERO and Regional Entities can assess a monetary penalty in a situation where, for example, an entity's non-compliance puts Bulk-Power System reliability at risk.* Requiring the ERO and Regional Entities to focus on the most serious violations will allow the industry time to adapt to the new regime while also protecting Bulk-Power System reliability by allowing the ERO or a Regional Entity *to take an enforcement action against an entity whose violation causes a significant disturbance.* Our approach strikes a reasonable balance in ensuring that the ERO and Regional Entities will be able to enforce mandatory Reliability

Standards in a timely manner, while still allowing users, owners and operators of the Bulk-Power System time to acquaint themselves with the new requirements and enforcement program. In addition, our approach ensures that all users, owners and operators of the Bulk-Power System take seriously mandatory, enforceable reliability standards at the earliest opportunity and before the 2007 summer peak season.⁸

Basis for Determination

Taking into consideration the Commission's direction in Order No. 693, the NERC Sanction Guidelines and the Commission's July 3, 2008 Guidance Order,⁹ the NERC BOTCC reviewed the NOCV and supporting documentation on October 27, 2008. The NERC BOTCC approved the assessment of a zero dollar (\$0) financial penalty against Black River Generation, LLC based upon Northeast Power Coordinating Council's findings and determinations, the NERC BOTCC's review of the applicable requirements of the Commission-approved Reliability Standards and the underlying facts and circumstances of the violation at issue.

In reaching this determination, the NERC BOTCC considered the following: (1) Black River Generation, LLC was a newly registered entity, registered by NERC on June 21, 2007; (2) the violation was self-certified on June 24, 2007; (3) the violation reflected a deficiency in documentation rather than the absence of a testing and maintenance program; (4) Black River Generation, LLC developed a Mitigation Plan during the period from self-certification and issuance by Northeast Power Coordinating Council to Black River Generation, LLC of the Preliminary Notice of Alleged Violation; (5) Black River Generation, LLC submitted and completed a Mitigation Plan within seven (7) days of receipt of the Preliminary Notice of Alleged Violation, which brought the documentation into compliance; (6) there were no repetitive violations; (7) Black River Generation, LLC was cooperative in the violation investigation; (8) there was no evidence that the violation was intentional; (9) Black River Generation, LLC accepted Northeast Power Coordinating Council's confirmation of the violation and the proposed penalty; and (10) the violation did not put the bulk power system reliability at serious or substantial risk, because it was a documentation issue.

Therefore, NERC believes that the proposed zero dollar penalty is appropriate and consistent with NERC's goal to ensure reliability of the bulk power system.

Pursuant to Order No. 693, the penalty will be effective upon expiration of the 30 day period following the filing of this Notice of Penalty with FERC, or, if FERC decides to review the penalty, upon final determination by FERC.

The Record of the Proceeding

The record of the proceeding includes the following documents and material:

⁸ Order No. 693 at PP 222-224 (emphasis added).

⁹ *North American Electric Reliability Corporation*, "Guidance Order on Reliability Notices of Penalty," 124 FERC ¶ 61,015 (2008).

- a) Black River Generation, LLC self-certification dated June 24, 2007;
- b) Preliminary Notice of Alleged Violation and Penalty or Sanction, dated October 10, 2007;
- c) Notice of Regionally Verified Violation, dated October 30, 2007;
- d) Notice of Confirmed Violation and Penalty or Sanction, dated February 14, 2008;
- e) Supplemental Record Information dated October 21, 2008;
- f) Mitigation Plan designated as MIT-07-0540, dated October 17, 2007, included as Attachment a;
- g) Black River Generation, LLC's Certification of Completion of the Mitigation Plan, dated October 2008 included as Attachment b; and
- h) Statement of Northeast Power Coordinating Council Compliance Enforcement Staff Regarding Completion of Mitigation Plan, dated December 1, 2008, included as Attachment c.

A Form of Notice Suitable for Publication

A copy of a notice suitable for publication is included in Attachment d.

Notices and Communications

Notices and communications with respect to this filing may be addressed to the following:

Rick Sergel
President and Chief Executive Officer
David N. Cook*
Vice President and General Counsel
North American Electric Reliability Corporation
116-390 Village Boulevard
Princeton, NJ 08540-5721
(609) 452-8060
(609) 452-9550 – facsimile
david.cook@nerc.net

David L. Coke*
Projects General Manager
Power Plant Management Services, LLC
7001 Boulevard 26 Suite 310
North Richland Hills, TX 76180
817-616-0750 (office)

Jeremy Snyder*
Plant Engineer
Black River Generation LLC.
PO Box 849
Fort Drum, NY 13602
315-773-2314 ext 258

*Persons to be included on the Commission's service list are indicated with an asterisk. NERC requests waiver of the Commission's rules and regulations to permit the inclusion of more than two people on the service list.

Rebecca J. Michael*
Assistant General Counsel
North American Electric Reliability Corporation
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Washington, D.C. 20005-3801
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President & Chief Executive Officer
Northeast Power Coordinating Council, Inc.
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Walter Cintron*
Manager of Compliance Enforcement
Northeast Power Coordinating Council, Inc.
1515 Broadway – 43 Floor
New York, N.Y. 10036-8901
212-840-1070
212-302-2782 – facsimile
wcintron@npcc.org

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Black River Generation, LLC
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Conclusion

NERC respectfully requests that the Commission accept this Notice of Penalty as compliant with its rules, regulations and orders.

Respectfully submitted,

Rick Sergel
President and Chief Executive Officer
David N. Cook
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North American Electric Reliability Corporation
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Princeton, NJ 08540-5721
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(202) 393-3955 – facsimile
rebecca.michael@nerc.net

cc: Black River Generation, LLC
Northeast Power Coordinating Council

Attachment(s)

Attachment a

**Mitigation Plan designated as
MIT-07-0540**



Mitigation Plan

Registered Entity Information

Company Name:

Company Address:

Mitigation Plan Point of Contact Person & Phone Number:

E-Mail:

Date Submitted: _____

Functions for Which Entity is Registered

Alleged or Confirmed Violation

Reliability Standard Number:

Requirement Number Violated with Corresponding Violation Risk Factor:

| Requirement Number | Violation Risk Factor |
|--------------------|-----------------------|
| R1 | |
| | |
| | |
| | |
| | |

Additional Detail or Description of Reliability Standard:

Cause of Alleged or Confirmed Violation:

Black River does not have summary of testing procedure as required in PRC-005

Action Plan to Correct the Alleged or Confirmed Violation:

Create a maintenance and testing document.

Action Plan to Prevent Recurrence of the Alleged or Confirmed Violation:

Anticipated Impact of the Mitigation Plan on the Bulk Power System Reliability:

Action Plan to Mitigate Any Increased Risk to the Reliability of the Bulk Power-System while the Mitigation Plan is Being Implemented:

Timetable for Completion:

Anticipated Completion Date:

Implementation Milestones & Due Dates (no more than three (3) months apart):

| Milestone Activity | Milestone Due Date |
|--------------------|--------------------|
| | |
| | |
| | |
| | |

Any Additional Information:

Officer Signature David Coke Date 6-24-07
(Electronic signature acceptable)

Name:

David Coke

Title:

Project General Manager

**FOR (REGIONAL RELIABILITY ORGANIZATION)
STAFF USE ONLY**

ENTITY NERC ID

VIOLATION ID

COMMENTS:

DATE APPROVED

APPROVED BY Walter Cintron

DATE REJECTED

REJECTED BY _____

REASON REJECTED:

For Regional entity Recordkeeping

Date of Violation

Method by which violation was detected:

Date of notification and sanction:

Data submitted as evidence of completion

Attachment b

Black River Generation, LLC's Certification of Completion of the Mitigation Plan

Power Plant Management Services, LLC
7001 Boulevard 26, Suite 310
North Richland Hills, Texas 76180
817-616-0750

Certification of a Completed Mitigation Plan

NPCC Violation Mitigation Plan Closure Form

Name of registered entity submitting certification: [David L. Coke](#)

Date of Certification: [October 17, 2007](#)

Name of Standard and the Requirement of which a violation was mitigated: [Standard PRC-005-1 – Transmission and Generation Protection System Maintenance and Testing Requirement R1.](#)

Date of completion of the mitigation plan: [October 17, 2007](#)

I certify that the mitigation plan for the above named violation has been completed on the date shown above and that all submitted information is complete and correct to the best of my knowledge.

Name: [David L. Coke](#)
Title: [Projects General Manager](#)
Entity: [Black River Generation, LLC](#)
Email: dcoke@ppmsllc.com
Phone: 817-616-0750

Executive Signature _____



Date _____

[10/18/2007](#)

Attachment c

Northeast Power Coordinating Council's Statements of Verification



NORTHEAST POWER COORDINATING COUNCIL, INC.
1515 BROADWAY, NEW YORK, NY 10036-8901 TELEPHONE: (212) 840-1070 FAX: (212) 302-2782

December 1, 2008

Mr. David Coke
Projects General Manager
Black River Generation, LLC.

Re: MIT-07-0540, Violation # NPCC200700001

This letter is to notify you that NPCC has verified the completion of the mitigation plan Black River Generation, LLC submitted on October 17, 2007 as indicated in my email to you on October 18, 2007.

Black River Generation has demonstrated compliance with PRC-005-1 R1.2 by providing a procedure incorporating a summary of its maintenance and testing program as required by NERC reliability standard PRC-005-1 Requirement 1.2.

NPCC thanks you for your cooperation in this matter and for improving the reliability of the bulk electric system.

Please do not hesitate to call if you have any questions regarding this issue.

Sincerely,

Walter Cintron
Manager, Compliance Enforcement
Tel: 212 840-1070
Fax: 212 302-2782

Attachment d

Notice of Filing

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Black River Generation, LLC

Docket No. NP09-____-000

NOTICE OF FILING
(March 31, 2009)

Take notice that on March 31, 2009, the North American Electric Reliability Corporation (NERC), filed a Notice of Penalty regarding Dynegy, Inc. in the Northeast Power Coordinating Council region.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, D.C. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: [BLANK]

Kimberly D. Bose,
Secretary