

July 6, 2010

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

**Re: NERC Notice of Penalty,
FERC Docket No. NP10-_-000**

Dear Ms. Bose:

The North American Electric Reliability Corporation (NERC) hereby provides this Notice of Penalty¹, which includes one (1) Non-Public Exhibit pertaining to a NERC Registered Entity. The Notice of Penalty set forth in the Non-Public Exhibit contains, in whole or in part, violations of the CIP-002 through CIP-009 Reliability Standards. This filing is submitted 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)).²

The Non-Public Exhibit identifies the Reliability Standards at issue, the basis for the violation and the impact to reliability, and the ultimate disposition. A summary is set forth below:

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). *See* 18 C.F.R § 39.7(c)(2).

² *See* 18 C.F.R § 39.7(c)(2).

NERC Violation ID*	Reliability Std.	Req. (R)	Approved VRF ³	Basis for Violation	Total Penalty (\$)
SPP200800054	CIP-004-1	3.2	Medium	<p>Prior to the effective date of the Reliability Standard at issue, the Entity performed background checks of its employees at the time of employment, but did not update each personnel risk assessment at least every seven years after the initial personnel risk assessments were performed for personnel with authorized cyber or authorized unescorted physical access rights to Critical Cyber Assets. The required updates for thirty-three personnel risk assessments were not completed by the enforcement date of the Reliability Standard.</p> <p>The Registered Entity mitigated this violation by completing the updated personnel risk assessments for the applicable federal and government contract employees. In addition, the Registered Entity created a policy, which prohibits personnel from working until completing a personnel risk assessment. The Registered Entity developed a list of positions requiring the updated personnel risk assessment. Also, it established a reminder system to ensure employees requiring updated personnel risk assessments are identified and a subsequent personnel risk assessment is timely performed.</p>	0 ⁴

*Due to the confidential nature of the CIP-002 through CIP-009 violations, the Registered Entity name is not identified.

³ Violation Risk Factors (VRF) are the current FERC approved assignments for the Reliability Standards.

⁴ On June 3, 2009, the Registered Entity submitted a response to the Notice of Confirmed Violation stating that it “does not contest the violation and fully appreciates that no penalty has been proposed;” however, the Registered Entity further asserted that neither NERC nor FERC has clear and express authority to impose a penalty upon the Registered Entity if a penalty is proposed in the future on this or any other violation. The Registered Entity claims that Section 215 (e) of the FPA does not contain a provision clearly and expressly waiving its sovereign immunity for the purposes of imposing penalties. In an order issued on October 15, 2009 regarding a different entity, the Commission upheld its authority pursuant to Section 215 of the FPA to require that federal entities comply with mandatory, Commission-approved Reliability Standards. *North American Electric Reliability Corporation*, 129 FERC ¶ 61,033 at P 30 (2009), *order on reh’g*, 130 FERC ¶ 61,002 (2010). The Commission declined to address arguments regarding the issue of waiver of sovereign immunity with regard to mandatory penalties, because no monetary penalties were assessed. *North American Electric Reliability Corporation*, 129 FERC ¶ 61,033 at P 31, *order on reh’g*, 130 FERC ¶ 61,002 at PP 24-29 n51. The instant Notice of Penalty involves a \$0 penalty. Because no monetary penalty is assessed, the issue of the authority to assess and collect penalties remains preserved for another day.

Request for Confidential Treatment

Information in and certain attachments to the instant Notice of Penalty include privileged and confidential information as defined by the Commission's regulations at 18 C.F.R. Part 388 and orders, as well as NERC Rules of Procedure including the NERC CMEP Appendix 4C. Specifically, this includes non-public information related to certain Reliability Standard violations, certain Regional Entity investigative files, Registered Entity sensitive business and confidential information exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552, and should be withheld from public disclosure.

In accordance with the Commission's Rules of Practice and Procedure, 18 C.F.R. § 388.112, a non-public version of the information redacted from the public filing is being provided under separate cover.

Because certain of the attached documents are deemed "confidential" by NERC, Registered Entities and Regional Entities, NERC requests that the confidential, non-public information be provided special treatment in accordance with the above regulation.

Notices and Communications

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

<p>Gerald W. Cauley President and Chief Executive Officer David N. Cook* Vice President and General Counsel North American Electric Reliability Corporation 116-390 Village Boulevard Princeton, New Jersey 08540-5721 (609)452-8060 (609) 452-9550 – facsimile gerry.cauley@nerc.net david.cook@nerc.net</p> <p>Stacy Dochoda* General Manager Southwest Power Pool Regional Entity 16101 La Grande, Ste 103 Little Rock, AR 72223 (501) 688-1730 (501) 821-8726 - facsimile sdochoda@spp.org</p> <p>*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.</p>	<p>Rebecca J. Michael* Assistant General Counsel Holly A. Hawkins* Attorney V. Davis Smith* Attorney (admitted in IN; not admitted in D.C. or NJ) North American Electric Reliability Corporation 1120 G Street, N.W. Suite 990 Washington, D.C. 20005-3801 (202) 393-3998 (202) 393-3955 – facsimile rebecca.michael@nerc.net holly.hawkins@nerc.net davis.smith@nerc.net</p> <p>Joe Gertsch* Manager, Enforcement Southwest Power Pool Regional Entity 16101 La Grande, Ste 103 Little Rock, AR 72223 (501) 688-1672 (501) 821-8726 - facsimile jgertsch@spp.org</p>
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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,

/s/ Rebecca J. Michael

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