



NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION

April 28, 2010

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

**Re: NERC Notice of Penalty regarding Dunkirk Power LLC
FERC Docket No. NP10-_-000**

Dear Ms. Bose:

The North American Electric Reliability Corporation (NERC) hereby provides this Notice of Penalty¹ regarding Dunkirk Power LLC (Dunkirk),² NERC Registry ID# NCR07068,³ 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)).⁴

On September 26, 2008, after NPCC issued notice of an upcoming Spot Check to Dunkirk, Dunkirk self-reported a possible violation of VAR-002-1 Requirement (R) 3.1 to Northeast Power Coordinating Council, Inc. (NPCC) for Dunkirk's failure to notify its Transmission Operator within 30 minutes of a status change in an automatic voltage regulator (AVR). This Notice of Penalty is being filed with the Commission because NPCC and Dunkirk have entered into a Settlement Agreement to resolve all outstanding issues arising from a preliminary and non-public assessment resulting in NPCC's determination and findings of the enforceable alleged violation of VAR-002-1 R3.1. According to the Settlement Agreement, Dunkirk neither admits nor denies the alleged violation, but has agreed to the proposed penalty of two thousand dollars (\$2,000) to be assessed to Dunkirk, in addition to other remedies and actions to mitigate the

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 (2010). *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 Also concurrently being filed are two Notices of Penalty designated as NOC-464 and NOC-465 regarding separate Settlement Agreements between Northeast Power Coordinating Council, Inc. and two other NRG Energy subsidiaries, for alleged violations of VAR-002-1 R3.1.

³ Northeast Power Coordinating Council, Inc. confirmed that Dunkirk was included on the NERC Compliance Registry as a Generator Operator and as a Generator Owner on June 21, 2007. As a Generator Operator, Dunkirk is subject to VAR-002-1 R3.

⁴ See 18 C.F.R. § 39.7(c)(2).

instant alleged violation and facilitate future compliance under the terms and conditions of the Settlement Agreement. Accordingly, the alleged violation identified as NERC Violation Tracking Identification Number NPCC200800044 is being filed in accordance with the NERC Rules of Procedure and the CMEP.

Statement of Findings Underlying the Alleged Violation

This Notice of Penalty incorporates the findings and justifications set forth in the Settlement Agreement executed on January 13, 2010, by and between NPCC and Dunkirk, which is included as Attachment b. The details of the findings and basis for the penalty are set forth in the Settlement Agreement and herein. This Notice of Penalty filing contains the basis for approval of the Settlement Agreement 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 (2010), NERC provides the following summary table identifying each alleged violation of a Reliability Standard resolved by the Settlement Agreement, as discussed in greater detail below.

Region	Registered Entity	NOC ID	NERC Violation ID	Reliability Std.	Req. (R)	VRF	Total Penalty (\$)
NPCC	Dunkirk Power LLC	463	NPCC200800044	VAR-002-1 ⁵	3.1	Medium	2,000

VAR-002-1

The purpose of Reliability Standard VAR-002-1 is to ensure generators provide reactive and voltage control necessary to ensure voltage levels, reactive flows, and reactive resources are maintained within applicable Facility Ratings to protect equipment and the reliable operation of the Interconnection.

VAR-002-1 R3 requires a Generator Operator, such as Dunkirk, to notify its associated Transmission Operator as soon as practical, but within 30 minutes of any of the following: (R3.1) a status or capability change on any generator Reactive Power resource, including the status of each AVR and power system stabilizer and the expected duration of the change in status or capability; and (R3.2) a status or capability change on any other Reactive Power resources under the Generator Operator's control and expected duration of the change in status or capability. VAR-002-1 R3 has a "Medium" Violation Risk Factor (VRF).

On September 26, 2008, following an internal review of Dunkirk by its parent company, NRG Energy's Regulatory Compliance Group, Dunkirk self-reported a possible violation of VAR-

⁵ VAR-002-1a was the version that was effective on January 16, 2008, the time of alleged violation. VAR-002-1 was enforceable from June 18, 2007 through August 27, 2008. VAR-002-1a was approved by the Commission and became enforceable on August 28, 2008. VAR-002-1.1a is the current enforceable Standard as of May 13, 2009. The subsequent interpretations provide clarity regarding the responsibilities of a registered entity and do not change the meaning or language of the original NERC Reliability Standard and its requirements. For consistency in this filing, the original NERC Reliability Standard, VAR-002-1, is used throughout.

002-1 R3.1 for its failure to notify its Transmission Operator within 30 minutes of a change in an AVR.⁶

On January 16, 2008, at 1825 hours, a Dunkirk Operator switched an erratic AVR to manual mode and removed it from service for electrical maintenance. The Operator expected the duration for the switch to manual mode to be less than 30 minutes; however, the repair was insufficient to return the AVR to service at that time. Dunkirk's report to its Transmission Operator of a change in an AVR status occurred 12 hours later, on January 17, 2008 at 0630. Maintenance on the AVR was subsequently performed and the AVR was returned to service on January 18, 2008 at 1520 hours. Dunkirk notified its Transmission Operator of the AVR's return to service as required by the Standard.

NPCC determined that Dunkirk had an alleged violation of VAR-002-1 R3.1 because Dunkirk did not notify its Transmission Operator within the required 30 minute limit specified by the Standard for a status or capability change of each AVR. NPCC further determined the duration of the alleged violation to be from January 16, 2008, the date the AVR was removed from service without notification to Dunkirk's Transmission Operator, through January 17, 2008, 12 hours later, when Dunkirk mitigated the violation by notifying its Transmission Operator of the change in its AVR status. The Mitigation Plan was completed on October 1, 2008.

NPCC Compliance Staff concluded that the alleged violation did not pose a serious or substantial risk to the reliability of the transmission system because the voltage for the transmission system was being monitored and maintained by the Generator Operator (Dunkirk) consistent with the required voltage schedule.

Regional Entity's Basis for Penalty

According to the Settlement Agreement, NPCC has assessed a penalty of two thousand dollars (\$2,000) for the referenced alleged violation. In reaching this determination, NPCC considered the following factors:

- (1) The alleged violation was reported by Dunkirk after NPCC had issued a notice of an upcoming Spot Check to Dunkirk;
- (2) this alleged violation constituted Dunkirk's first occurrence of a violation of NERC Reliability Standards;
- (3) NPCC reported Dunkirk was cooperative throughout the compliance enforcement process;
- (4) there was no evidence of any attempt to conceal a violation nor evidence of intent to do so; and
- (5) NPCC determined that the alleged violation did not pose a serious or substantial risk to the bulk power system, as discussed above.

⁶ All of NRG's facilities in the NPCC Region communicate changes in AVR status to required parties through the NRG Power Marketing LLC.

After consideration of the above factors, NPCC determined that, in this instance, the penalty amount of two thousand dollars (\$2,000) is appropriate and bears a reasonable relation to the seriousness and duration of the alleged violation.

Status of Mitigation Plan⁷

Dunkirk's approved Mitigation Plan to address its alleged violation of VAR-002-1 R3.1 was submitted to NPCC on October 2, 2008,^{8,9} stating that it had been completed on October 1, 2008. The Mitigation Plan was accepted by NPCC on October 31, 2008 and approved by NERC on November 6, 2008. The Mitigation Plan for this alleged violation is designated as MIT-08-1102 and was submitted as non-public information to FERC on November 6, 2008 in accordance with FERC orders.

Dunkirk's Mitigation Plan stated that it had completed the below actions:

1. All operators reviewed NERC Reliability Standards reporting requirements by February 15, 2008;
2. Placards had been attached at each AVR Control Switch stating NERC reporting requirements by February 15, 2008; and
3. Refresher training on the corporate policy OCC-004 on "Voltage Control" had been completed by Dunkirk Plant Operations by July 9, 2008 with the exception of one operator who completed this training on October 1, 2008.

Dunkirk certified on December 11, 2008¹⁰ that the above Mitigation Plan requirements were completed on October 1, 2008. As evidence of completion of its Mitigation Plan, Dunkirk submitted the following:

1. an internal memo issued verifying training administered to Dunkirk operators on proper notification for change of status of unit AVRs.
2. photos of AVR Placards on Units 1, 2, 3 and 4; and
3. a completion document for refresher training of Corporate Policy OCC-004 – "Voltage Control."

On February 9, 2009, after NPCC's review of Dunkirk's submitted evidence, NPCC verified that Dunkirk's Mitigation Plan was completed on October 1, 2008 and notified Dunkirk in a letter dated March 9, 2009¹¹ that it was in compliance with VAR-002-1 R3.1.

⁷ See 18 C.F.R § 39.7(d)(7).

⁸ Dunkirk also submitted a draft Mitigation Plan on September 26, 2008. Consequently, the October 2, 2008 Mitigation Plan is labeled "Revision 1." Additionally, the Settlement Agreement (Page 2, Paragraph 8) incorrectly states that the Mitigation Plan was submitted on October 2, 2009.

⁹ The Settlement Agreement, paragraph 19, states that the final Mitigation Plan was submitted on November 5, 2008 because NRG submitted an updated Mitigation Plan that included the NERC violation ID number on it. The October 2, 2008 MP submittal did not have the NERC violation ID number on it. That was the only change on the Mitigation Plan.

¹⁰ Dunkirk's certification document is dated December 10, 2008 and is signed on December 11, 2008.

Statement Describing the Proposed Penalty, Sanction or Enforcement Action Imposed¹²

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,¹³ the NERC BOTCC reviewed the Settlement Agreement and supporting documentation on March 10, 2010. The NERC BOTCC approved the Settlement Agreement, including NPCC's imposition of a financial penalty, assessing a penalty of two thousand dollars (\$2,000) against Dunkirk and other actions to facilitate future compliance required under the terms and conditions of the Settlement Agreement. In approving the Settlement Agreement, the NERC BOTCC reviewed the applicable requirements of the Commission-approved Reliability Standards and the underlying facts and circumstances of the alleged violation at issue.

In reaching this determination, the NERC BOTCC considered the following factors:

- (1) The alleged violation was reported by Dunkirk after the NPCC issued a notice of an upcoming Spot Check to Dunkirk;
- (2) this alleged violation constituted Dunkirk's first occurrence of a violation of NERC Reliability Standards;
- (3) NPCC reported Dunkirk was cooperative throughout the compliance enforcement process;
- (4) there was no evidence of any attempt to conceal a violation nor evidence of intent to do so; and
- (5) NPCC determined that the alleged violation did not pose a serious or substantial risk to the bulk power system, as discussed above.

For the foregoing reasons, the NERC BOTCC approves the Settlement Agreement and believes that the proposed penalty of two thousand dollars (\$2,000) is appropriate for the alleged violation and circumstances in question, and is consistent with NERC's goal to promote and 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.

¹¹ NPCC's verification document incorrectly states that NPCC verified Dunkirk's completion of the Mitigation Plan that was submitted on September 26, 2008.

¹² See 18 C.F.R § 39.7(d)(4).

¹³ *North American Electric Reliability Corporation*, "Guidance Order on Reliability Notices of Penalty," 124 FERC ¶ 61,015 (2008).

Attachments to be Included as Part of this Notice of Penalty

The attachments to be included as part of this Notice of Penalty are the following documents and material:

- a) Dunkirk's Self-Report for VAR-002-1 R3.1 dated September 26, 2008, included as Attachment a;
- b) Settlement Agreement by and between NPCC and Dunkirk executed January 13, 2010, included as Attachment b;
- c) Dunkirk's Mitigation Plan designated as MIT-08-1102 for VAR-002-1 R3.1, submitted October 2, 2008, included as Attachment c;
- d) Dunkirk's Certification of Completion of the Mitigation Plan for VAR-002-1 R3.1, submitted December 11, 2008, included as Attachment d; and
- e) NPCC's Verification of Completion of the Mitigation Plan for VAR-002-1 R3.1, dated March 9, 2009, included as Attachment e.

A Form of Notice Suitable for Publication¹⁴

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

¹⁴ See 18 C.F.R § 39.7(d)(6).

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, N.J. 08540-5721 (609) 452-8060 (609) 452-9550 – facsimile gerry.cauley@nerc.net david.cook@nerc.net</p> <p>Christopher O’Hara* Assistant General Counsel- Regulatory Compliance Officer NRG Energy, Inc. 211 Carnegie Center Princeton, New Jersey 08540 (609) 524-4601 Chris.Ohara@nrgenergy.com</p> <p>Patricia Lynch* Director of Regulatory Compliance NRG Energy, Inc. 211 Carnegie Center Princeton, New Jersey 08540 (609) 524-5147 (609) 524-4501 – facsimile patricia.lynch@nrgenergy.com</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 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</p> <p>Edward A. Schwerdt* President and Chief Executive Officer Northeast Power Coordinating Council, Inc. 1040 Avenue of the Americas-10th Fl. New York, N.Y. 10018-3703 (212) 840-1070 (212) 302-2782 – facsimile eschwerdt@npcc.org</p> <p>Stanley E. Kopman* Assistant Vice President of Compliance Northeast Power Coordinating Council, Inc. 1040 Avenue of the Americas-10th Fl. New York, N.Y. 10018-3703 (212) 840-1070 (212) 302-2782 – facsimile skopman@npcc.org</p> <p>Walter Cintron* Manager of Compliance Enforcement Northeast Power Coordinating Council, Inc. 1040 Avenue of the Americas-10th Fl. New York, N.Y. 10018-3703 (212) 840-1070 (212) 302-2782 – facsimile wcintron@npcc.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,

Gerald W. Cauley
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David N. Cook
Vice President and General Counsel
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cc: Dunkirk Power LLC
Northeast Power Coordinating Council, Inc.

Attachments

Attachment a

**Dunkirk's Self-Report for VAR-002-1 R3.1 dated
September 26, 2008**

VAR-002-1 Self Report (GOP)[Return To Search Results](#)

Attachments (1)

This form was marked as ready for authorized signatory approval on 9/26/2008.

* Required Fields

Status: Read Only**Technical Contact*** |

The information in this submittal is designated as "Confidential". As such, it may include trade secrets, commercial or financial information that the submitter believes is commercially valuable and does not customarily disclose to the public. Disclosure of this information to the public could reasonably be expected to cause substantial competitive harm to the submitter. NPCC will disclose this information to NERC and other third parties, only as required, and in accordance with established procedures pursuant to section 1500 of the NERC rules of procedure.

As an authorized representative of **Dunkirk Power LLC** , I certify the following:

Dunkirk Power LLC is **Not in Compliance** with the following Requirements of NERC Reliability Standard VAR-002-1 (indicated by checkmark) but is in compliance with all other Requirements of the standard. Dunkirk Power LLC has self-assessed its Non-Compliance Level/Violation Severity Level for NERC Reliability Standard VAR-002-1 as

Check all requirements for which Dunkirk Power LLC is Not in Compliance:

- R1.** The Generator Operator shall operate each generator connected to the interconnected transmission system in the automatic voltage control mode (automatic voltage regulator in service and controlling voltage) unless the Generator Operator has notified the Transmission Operator..
- R2.** Unless exempted by the Transmission Operator, each Generator Operator shall maintain the generator voltage or Reactive Power output (within applicable Facility Ratings1) as directed by the Transmission Operator.
 - R2.1.** When a generator's automatic voltage regulator is out of service, the Generator Operator shall use an alternative method to control the generator voltage and reactive output to meet the voltage or Reactive Power schedule directed by the Transmission Operator.
 - R2.2.** When directed to modify voltage, the Generator Operator shall comply or provide an explanation of why the schedule cannot be met.
- R3.** Each Generator Operator shall notify its associated Transmission Operator as soon as practical, but within 30 minutes of any of the following:
 - R3.1.** A status or capability change on any generator Reactive Power resource, including the status of each automatic voltage regulator and power system stabilizer and the expected duration of the change in status or capability.
 - R3.2.** A status or capability change on any other Reactive Power resources under the Generator Operator's control and the expected duration of the change in status or capability.
- R5.** After consultation with the Transmission Operator regarding necessary step-up transformer tap changes, the Generator Owner shall ensure that transformer tap positions are changed according to the specifications provided by the Transmission Operator, unless such action would violate safety, an equipment rating, a regulatory requirement, or a statutory requirement. This requirement is for informational purposes only.
 - R5.1.** If the Generator Operator can't comply with the Transmission Operator's specifications, the Generator Operator shall notify the Transmission Operator and shall provide the technical justification.

Date of Violation



Reason for

the non-compliance

AVR removed from service and operator failed to notify TOP within the required 30 minute interval.

Reliability Impact Statement

TOP was notified in a delayed fashion and maintenance was completed on the AVR.

Mitigation Plan Included?

Yes No

Additional Comments:

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Ready for Authorized Signatory Approval

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Attachment b

Settlement Agreement by and between NPCC and Dunkirk executed January 13, 2010

**SETTLEMENT AGREEMENT
OF
DUNKIRK POWER L.L.C.
AND
NORTHEAST POWER COORDINATING COUNCIL, INC.**

I. INTRODUCTION

1. Dunkirk Power L.L.C. (“DUNKIRK”) and Northeast Power Coordinating Council, Inc. (“NPCC”) enter into this Settlement Agreement (“Agreement”) to resolve all outstanding issues arising from a preliminary and non-public assessment of an alleged violation by DUNKIRK of NERC Reliability Standard VAR-002-1, pursuant to the North American Electric Reliability Corporation (“NERC”) Rules of Procedure.

II. STIPULATION

2. The facts stipulated herein are stipulated solely for the purpose of resolving between DUNKIRK and NPCC the matters discussed herein and do not constitute stipulations or admissions for any other purpose. DUNKIRK and NPCC hereby stipulate and agree to the following:

A. Background

3. DUNKIRK is a registered Generator Owner and Generator Operator in New York that was registered on June 21, 2007. DUNKIRK owns and operates a 530 MW coal-fired generating facility located in Dunkirk, New York.

B. Alleged Violation(s)

4. NERC Reliability Standard VAR-002-1 Generator Operation for Maintaining Network Voltage Schedules was written with the purpose of ensuring that generators provide reactive and voltage control necessary to ensure voltage levels, reactive flows, and reactive resources are maintained within applicable Facility Ratings to protect equipment and the reliable operation of the Interconnection. The standard requires that:

R3. Each Generator Operator shall notify its associated Transmission Operator as soon as practical, but within 30 minutes of the following:

R3.1 A status or capability change on any generator Reactive Power resource, including the status of each automatic voltage regulator and power system stabilizer and the expected duration of the change in status and capability.

5. VAR-002-1 Reliability Standard Requirement 3.1 has a “Medium” Violation Risk Factor (VRF).

C. Summary of Findings

6. The NRG Regulatory Compliance group, in its review of past evidence to support compliance to VAR002, discovered a potential violation at this facility and proceeded to perform an extensive review of all NRG facilities in NPCC. On September 26, 2008, DUNKIRK self-reported a potential violation with NERC Reliability Standard VAR-002-1, Requirement 3.1. The self-report explained that on January 16, 2008 at 1825 hours, DUNKIRK removed a defective Automatic Voltage Regulator (AVR) from service for electrical maintenance and that DUNKIRK did not notify the Transmission Operator of the change in status for 12 hours. The Auto Voltage Regulator was repaired and placed back in service on January 18, 2008 at 1520 hours.
7. NPCC confirmed DUNKIRK'S NERC Registration Status as a Generator Owner and Generator Operator thereby subjecting DUNKIRK to the Requirements of NERC Reliability Standard VAR-002-1. NPCC staff reviewed the evidence submitted by DUNKIRK to confirm the violation self-reported by DUNKIRK. Specifically, NPCC reviewed the events of January 16, 2008 and found sufficient evidence to support a finding that DUNKIRK was non-compliant with Requirement 3.1 because DUNKIRK failed to report an AVR change in status within the 30 minute time interval specified in VAR-002-1.
8. DUNKIRK submitted its Mitigation Plan to NPCC initially on September 26, 2008. The final accepted Mitigation Plan was submitted on October 2, 2009. In its Mitigation Plan, DUNKIRK committed to implementing new procedures for complying with NERC Reliability Standard VAR-002-1, including the installation of signage on the AVR mode control switch to remind generator operators to notify the Transmission Operator within the required 30 minute time interval after an AVR status change and to conduct remedial training for the entire DUNKIRK operating staff on the corporate policy. These Mitigation corrective actions were completed and implemented as of October 1, 2008. On December 11, 2008, DUNKIRK certified that the Mitigation Plan was completed as of October 1, 2008, and NPCC verified it was completed on March 9, 2009.¹

¹ NPCC Compliance Staff verified completion of the Mitigation Plan with DUNKIRK on February 9, 2009 although the signed document for verification was completed on March 9, 2009.

9. NPCC issued a Preliminary Notice of Alleged Violation on October 2, 2008, identifying the alleged violation of NERC Reliability Standard VAR-002-1 Requirement 3.1 for a period of approximately 12 hours.
10. On October 2, 2008, DUNKIRK requested settlement discussions with NPCC to address the alleged violation of NERC Reliability Standard VAR-002-1 Requirement 3.1.
11. Throughout the settlement process, DUNKIRK has cooperated fully with NPCC.
12. After review of the evidence submitted by DUNKIRK, NPCC Compliance Staff concluded that the violation did not pose a serious or substantial risk to the reliability of the transmission system as the voltage schedule for the transmission system was being maintained by the Generator Operator.

III. PARTIES' SEPARATE REPRESENTATIONS

A. Statement of NPCC

13. DUNKIRK self-reported a potential violation of NERC Reliability Standard VAR-002-1 Requirement 3.1 on September 26, 2008. After reviewing all the evidence, the NPCC Compliance Staff confirmed DUNKIRK was non-compliant with VAR-002-1 Requirement 3.1 because, on January 16, 2008, DUNKIRK notified the Transmission Operator 12 hours after placing the defective AVR in manual for electrical maintenance, which was not within the required 30 minute time interval following an AVR status change. DUNKIRK submitted the Mitigation Plan with the self-report to demonstrate how the violation would be corrected. On December 11, 2008, DUNKIRK certified that its mitigation plan was completed on October 1, 2008, and NPCC verified it completed on March 9, 2009.²
14. NPCC agrees that this Agreement is in the best interest of the parties and in the best interest of bulk power system reliability.

B. Statement of DUNKIRK

16. DUNKIRK neither admits nor denies that the facts set forth herein, and agreed to by the parties for the purposes of this Agreement, constitute violations of VAR-002-1. However, after reviewing the events of January 16, 2008 with

² NPCC Compliance Staff verified completion of the plan with DUNKIRK on February 9, 2009 although the signed document for verification was completed on March 9, 2009.

respect to compliance with VAR-002-1, Requirement 3, DUNKIRK identified a number of improvements to its AVR reporting methodologies that will improve the reliability of the bulk power system and has voluntarily re-trained its plant employees and strengthened its guidance to employees regarding proper reporting of changes of status in AVR availability.

17. DUNKIRK has agreed to enter into this Agreement with NPCC to avoid extended litigation with respect to the matters described or referred to herein, to avoid uncertainty, and to effectuate a complete and final resolution of the issues set forth herein. DUNKIRK agrees that this Agreement is in the best interest of the parties and is in the best interest of bulk power system reliability.
18. For purposes of this Agreement, DUNKIRK has agreed to a penalty payment in the amount of \$2,000 ("Payment") in addition to the additional terms and conditions set forth in Section V.

IV. MITIGATING ACTIONS, REMEDIES AND SANCTIONS

19. On September 26, 2008 submitted a Mitigation Plan to NPCC.. The final accepted Mitigation Plan was submitted on November 5, 2008. For purposes of settling any and all disputes arising from NPCC's investigation into the self-report by DUNKIRK, DUNKIRK has taken the following actions:

Activity	Dates completed ³
i. Reviewed NERC reporting Requirements pertaining to NERC Reliability Standard VAR-002-1 with all of the DUNKIRK operational staff.	February 15, 2008
ii. Installed signage on the AVR mode control switch to remind operators to notify the Transmission Operator within the required 30 minute time interval after an AVR status change.	February 15, 2008
iii. Provided remedial training to the entire DUNKIRK operating staff on the corporate policy and procedure related to NERC Reliability Standard VAR-002-1 to address the potential violation.	October 1, 2008

³ These activities were certified complete by Dunkirk on December 11, 2008 and NPCC verified them to be complete on March 9, 2009.

i. **Payment to NPCC**

20. Based on DUNKIRK's mitigation of the alleged violations DUNKIRK agrees to pay \$2,000 (the Payment) to NPCC. In agreeing with the Payment, NPCC has taken into consideration DUNKIRK's cooperation exhibited during the self-report investigation, its willingness to provide the information necessary to conform to the NERC Rules of Procedure, and its cooperation and commitment in this settlement process. NPCC has determined that the lack of reporting the AVR status changes to the Transmission Operator resulted in no real time voltage changes in the Transmission Operators voltage schedule and resulted in minimal risk to the Bulk Electric System. NPCC Compliance Staff has determined that the \$2,000 penalty bears a reasonable relation to the seriousness of the violation.

ii. **Timing of Payment**

21. DUNKIRK shall remit the Payment to NPCC, via wire transfer to an account to be identified by NPCC ("NPCC Account"). By the later of (i) twenty days after this Agreement is either approved by the Commission or by operation of law and (ii) twenty days after NPCC provides DUNKIRK the NPCC Account, DUNKIRK shall remit the Payment. NPCC shall notify NERC if the payment is not timely received. If DUNKIRK does not remit the Payment by the required date, interest payable to NPCC will begin to accrue pursuant to FERC's regulations at 18 C.F.R. § 35.19a(a)(2)(iii) from the date that payment is due, and shall be payable in addition to the Payment.

iii. **Failure to Comply with this Agreement**

22. Failure to make a timely penalty payment or to comply with any of the terms and conditions agreed to herein, or any other conditions of this Settlement Agreement, shall be deemed to be either the same alleged violations that initiated this Settlement and/or additional violation(s) and may subject DUNKIRK to new or additional enforcement, penalty or sanction actions in accordance with the NERC Rules of Procedure.

23. It is understood that NPCC staff shall track the progress of mitigation plans and any other remedies of this Agreement, including, but not limited to site inspection, interviews, and request other documentation to validate progress and/or completion of the mitigation plans and any other remedies of this Agreement. NPCC shall reasonably coordinate its review and information requests with DUNKIRK related to this Agreement.

V. ADDITIONAL TERMS

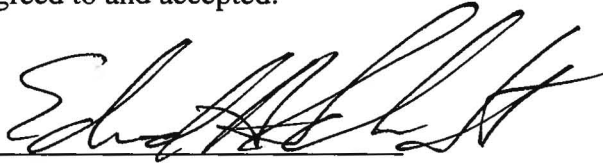
24. The signatories to the Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of NPCC or DUNKIRK has been made to induce the signatories or any other party to enter into the Agreement.
25. NPCC shall report the terms of all settlements of compliance matters to NERC. NERC will review the settlement for the purpose of evaluating its consistency with other settlements entered into for similar violations or under other, similar circumstances. Based on this review, NERC will either approve the settlement or reject the settlement and notify the Regional Entity and the Registered Entity of changes to the settlement that would result in approval. If NERC rejects the settlement, NERC will provide specific written reasons for such rejection and the NPCC will attempt to negotiate a revised settlement agreement with DUNKIRK including any changes to the settlement specified by NERC. If a settlement cannot be reached, the enforcement process shall continue to conclusion. If NERC approves the settlement, NERC will (i) report the approved settlement to the Commission for the Commission's review and approval by order or operation of law and (ii) publicly post the alleged violation and the terms provided for in the settlement.
26. DUNKIRK consents to the use of NPCC's determinations, findings, and conclusions set forth in this Agreement for the purpose of assessing the factors, including the factor of determining the company's history of violations, in accordance with the NERC Sanction Guidelines and applicable Commission orders and policy statements. Such use may be in any enforcement action or compliance proceeding undertaken by NERC and/or Regional Entity; provided, however, that DUNKIRK does not consent to the use of the specific acts set forth in this Agreement as the sole basis for any other action or proceeding brought by NERC and/or NPCC, nor does DUNKIRK consent to the use of this Agreement by any other party in any other action or proceeding.
27. This Agreement shall become effective upon the Commission's approval of the Agreement by order or operation of law as submitted to it or as modified in a manner acceptable to the parties.
28. DUNKIRK agrees that this Agreement, when approved by NERC and the Commission, shall represent a final settlement of all matters set forth herein and DUNKIRK waives its right to further hearings and appeal, unless and only to the extent that DUNKIRK contends that any NERC or Commission action on the Agreement contains one or more material modifications to the Agreement NPCC reserves all rights to initiate enforcement, penalty or sanction actions against DUNKIRK, in accordance with the NERC Rules of Procedure, in the event that DUNKIRK fails to comply with the mitigation plan and compliance program agreed to in this Agreement. In the event DUNKIRK fails to comply with any of the stipulations, remedies, sanctions or additional terms, as set forth in this

Agreement, NPCC will initiate enforcement, penalty, or sanction actions against DUNKIRK to the maximum extent allowed by the NERC Rules of Procedure, up to the maximum statutorily allowed penalty. DUNKIRK shall retain all rights to defend against such enforcement actions, also according to the NERC Rules of Procedure.

29. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf.
30. The undersigned representative of each party affirms that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by such party in express reliance on those representations, provided, however, that such affirmation by each party's representative shall not apply to the other party's statements of position set forth in Section III of this Agreement.
31. The Agreement may be signed in counterparts.
32. This agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

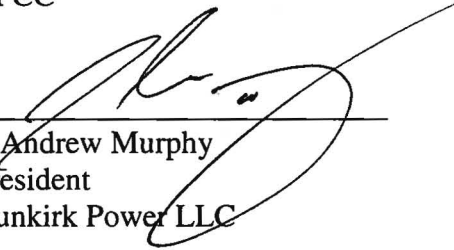
*Remainder of page intentionally blank.
Signatures to be affixed to the following page*

Agreed to and accepted:



Edward A. Schwerdt
President & CEO
NPCC

11/13/10
Date



J. Andrew Murphy
President
Dunkirk Power LLC

11/7/2010
Date

Attachment c

Dunkirk's Mitigation Plan designated as MIT-08-1102 for VAR-002-1 R3.1, submitted October 2, 2008



Mitigation Plan Submittal Form

Date this Mitigation Plan is being submitted: 10/2/08 (revision 1)

Section A: Compliance Notices & Mitigation Plan Requirements

- A.1 Notices and requirements applicable to Mitigation Plans and this Submittal Form are set forth in "Attachment A - Compliance Notices & Mitigation Plan Requirements" to this form.
- A.2 I have reviewed Attachment A and understand that this Mitigation Plan Submittal Form will not be accepted unless this box is checked.

Section B: Registered Entity Information

- B.1 Identify your organization:

Company Name: Dunkirk Power, LLC.
Company Address: 106 Point Drive North, Dunkirk, NY 14048
NERC Compliance Registry ID: NCR07068

- B.2 Identify the individual in your organization who will be the Entity Contact regarding this Mitigation Plan.

Name: William M. Vogel, Jr.
Title: Operations Manager
Email: Bill.Vogel@nrenergy.com
Phone: 716-673-6364

Section C: Identification of Alleged or Confirmed Violation(s) Associated with this Mitigation Plan

- C.1 This Mitigation Plan is associated with the following Alleged or Confirmed violation(s) of the reliability standard listed below.

Applicable Standard, Requirement(s) and dates:

NERC Violation ID #	Reliability Standard	Requirement Number	Violation Risk Factor	Alleged or Confirmed Violation Date ^(*)	Method of Detection (e.g., Audit, Self-report, Investigation)
	VAR-002-1	R3.1	Medium	01/16/2008	Self-Report



NPCC, Inc.

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

(* Note: The Alleged or Confirmed Violation Date shall be expressly specified by Registered Entity, and subject to modification by [RE acronym], as: (i) the date the Alleged or Confirmed violation occurred; (ii) the date that the Alleged or Confirmed violation was self-reported; or (iii) the date that the Alleged or Confirmed violation has been deemed to have occurred on by [RE acronym]. Questions regarding the date to use should be directed to the [RE acronym] contact identified in Section G of this form.

C.2 Identify the cause of the Alleged or Confirmed violation(s) identified above. Additional detailed information may be provided as an attachment:

Operator switched erratic AVR to manual for electrical maintenance, with anticipated duration less than 30 minutes. Expected repair was insufficient to return AVR to service at that time. The TOP was not notified within the required 30 minute limit.

Provide any additional relevant information regarding the Alleged or Confirmed violations associated with this Mitigation Plan. Additional detailed information may be provided as an attachment:

The reporting of the removal of the AVR from service to the Transmission Operator was delayed by 12 hours. Maintenance on the AVR was subsequently performed and returned to service the following day.

Section D: Details of Proposed Mitigation Plan

Mitigation Plan Contents

D.1 Identify and describe the action plan, including specific tasks and actions that your organization is proposing to undertake, or which it undertook if this Mitigation Plan has been completed, to correct the Alleged or Confirmed violations identified above in Part C.1 of this form. Additional detailed information may be provided as an attachment:

- All operators reviewed reporting requirements for NERC by 2/15/2008.
- Placards placed at each AVR Control Switch stating NERC reporting requirements by 2/15/2008.
- Refresher training on the corporate policy OCC-004 on "Voltage Control" was completed by Dunkirk Plant Operations by July 9, 2008 with the exception of one operator who completed this training on October 1, 2008.

Mitigation Plan Timeline and Milestones

D.2 Provide the date by which full implementation of the Mitigation Plan will be, or has been, completed with respect to the Alleged or Confirmed violations



identified above. State whether the Mitigation Plan has been fully implemented:

Mitigation Plan has been fully implemented as of October 1, 2008

* Attached pictures of placards that were placed at each AVR Control Switch

D.3 Enter Milestone Activities, with due dates, that your organization is proposing, or has completed, for this Mitigation Plan:

Milestone Activity	Proposed/Actual Completion Date* (shall not be more than 3 months apart)
Reviewed NERC reporting requirements with all operators	2/15/2008
Placed placards on each AVR Control Switch stating NERC reporting requirements	2/15/2008
Refresher training on corporate policy	October 1, 2008

(* Note: Implementation milestones no more than three (3) months apart are permissible only for Mitigation Plans with expected completion dates more than three (3) months from the date of submission. Additional violations could be determined for not completing work associated with accepted milestones.

Section D: Interim and Future Reliability Risk

Abatement of Interim BPS Reliability Risk

E.1 While your organization is implementing this Mitigation Plan the reliability of the Bulk Power System (BPS) may remain at higher risk or be otherwise negatively impacted until the plan is successfully completed. To the extent they are, or may be, known or anticipated: (i) identify any such risks or impacts; and (ii) discuss any actions that your organization is planning to take to mitigate this increased risk to the reliability of the BPS. Additional detailed information may be provided as an attachment:

Immediate corrective action was completed as of 2/15/2008.
Plant personnel were instructed to report AVR change in status immediately resulting in no interim risk.

Prevention of Future BPS Reliability Risk

E.2 Describe how successful completion of this Mitigation Plan will prevent or minimize the probability that your organization incurs further risk or Alleged violations of the same or similar reliability standards requirements in the future. Additional detailed information may be provided as an attachment:



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Operator review, combined with physical reminder at each control switch location has resulted in demonstrated improvement in compliance recording.



Section E: Authorization

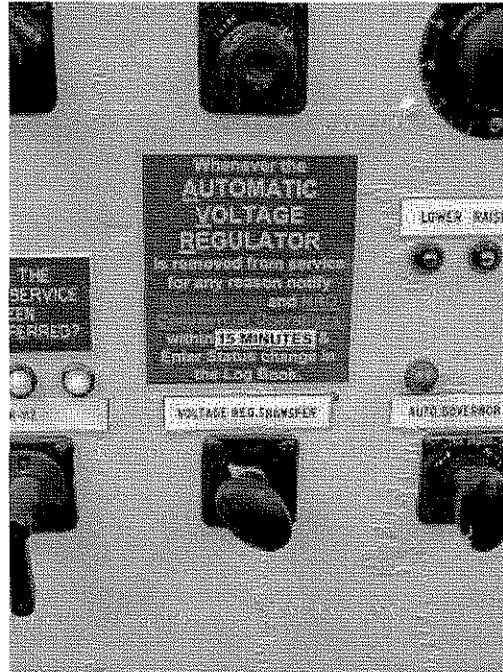
An authorized individual must sign and date this Mitigation Plan Submittal Form. By doing so, this individual, on behalf of your organization:

- a) Submits this Mitigation Plan for acceptance by [NPCC] and approval by NERC, and
- b) If applicable, certifies that this Mitigation Plan was completed on or before the date provided as the 'Date of Completion of the Mitigation Plan' on this form, and
- c) Acknowledges:
 1. I am Michael Bramnick of [NRG Energy Inc.].
 2. I am qualified to sign this Mitigation Plan on behalf of [Dunkirk Power LLC].
 3. I understand [Dunkirk Power LLC's] obligations to comply with Mitigation Plan requirements and ERO remedial action directives as well as ERO documents, including, but not limited to, the NERC Rules of Procedure, including Appendix 4(C) (Compliance Monitoring and Enforcement Program of the North American Electric Reliability Corporation" (NERC CMEP)).
 3. I have read and am familiar with the contents of this Mitigation Plan.
 4. [Dunkirk Power LLC agrees to comply with, this Mitigation Plan, including the timetable completion date, as accepted by [NPCC] and approved by NERC.

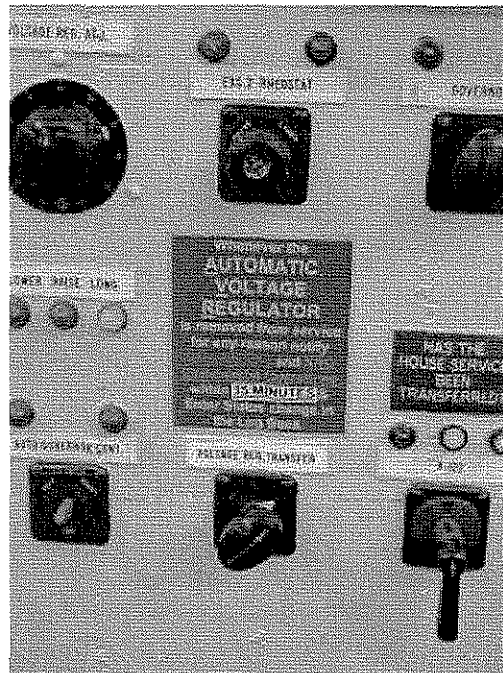
Authorized Individual Signature

A handwritten signature in black ink, appearing to read 'Michael Bramnick', written over a horizontal line.

Name (Print): Michael Bramnick
Title: Deputy General Counsel and Chief Compliance Officer
Date: October 2, 2008 Revision 1



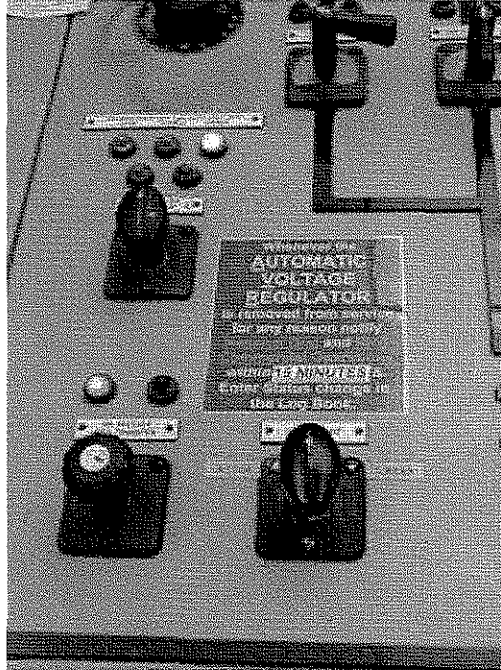
Unit 1 AVR Placard



Unit 2 AVR Placard



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Unit 3 AVR Placard



Unit 4 AVR Placard

Attachment d

**Dunkirk's Certification of Completion of the
Mitigation Plan for VAR-002-1 R3.1, submitted
December 11, 2008**



NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540

Phone: 609.524.4500

Fax: 609.524.4501

Certification of a Completed Mitigation Plan

NPCC Violation Mitigation Plan Closure Form Dunkirk Power LLC NCR#07068 VIOLATION #NPCC200800044

Name of registered entity submitting certification: Dunkirk Power LLC

Date of Certification: December 10, 2008

Name of Standard and the Requirement of which a violation was mitigated: VAR-002-1 R3.1

Date of completion of the mitigation plan: October 1, 2008

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.
Please provide any additional information required for NPCC to verify completion of the mitigation plan.

Name: Michael Bramnick
Title: Deputy General Counsel and Chief Compliance Officer
Entity: Dunkirk Power LLC
Email: Michael.bramnick@nrgenergy.com
Phone: 609-524-4598

Executive Signature

Date

12/11/08

NOTE: All the activities listed in the Mitigation Plan that was submitted for Dunkirk Power LLC on November 5, 2008 were complete at time of submission. Enclosed please find evidence of mitigation completion.

Attachment e

NPCC's Verification of Completion of the Mitigation Plan for VAR-002-1 R3.1, dated March 9, 2009



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

Confidential

March 9, 2009

Ms. Patricia Lynch
Director of Regulatory Compliance
NRG Energy, Inc.
211 Carnegie Center
Princeton, New Jersey 08540

Re: Mitigation Plan Tracking # MIT-08-1102, NERC Violation # NPCC200800044

This letter is to notify you that on February 9, 2009, NPCC has verified the completion of the mitigation plan Dunkirk Power LLC submitted on September 26, 2008.

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
wcintron@npcc.org

Attachment f

Notice of Filing

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Dunkirk Power LLC Docket

No. NP10-____-000

NOTICE OF FILING
April 28, 2010

Take notice that on April 28, 2010, the North American Electric Reliability Corporation (NERC) filed a Notice of Penalty regarding Dunkirk Power LLC in the Northeast Power Coordinating Council, Inc. 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