



NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

November 13, 2009

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

**Re: NERC Notice of Penalty regarding AES Westover, LLC  
FERC Docket No. NP10-\_-000**

Dear Ms. Bose:

The North American Electric Reliability Corporation (NERC) hereby provides this Notice of Penalty<sup>1</sup> regarding AES Westover, LLC (AES Westover),<sup>2</sup> NERC Registry ID NCR07005,<sup>3</sup> 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)).<sup>4</sup>

As a result of an off-site Compliance Audit conducted between March 26, 2008 and April 15, 2008 (Audit), Northeast Power Coordinating Council, Inc. (NPCC) identified potential violations of Reliability Standard CIP-001-1 Requirement (R) 1, R2, R3 and R4 for AES Westover's failure to have a written procedure for dealing with sabotage events that included: (1) the recognition of, and making operating personnel aware of, possible sabotage events; (2) communicating information on sabotage events; (3) creating response guidelines for operating personnel; and (4) compiling communication contact lists. This Notice of Penalty is being filed with the Commission because, based on information from NPCC, NPCC and AES Westover 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 violations of CIP-001-1 R1, R2, R3 and R4. Pursuant to the Settlement Agreement, AES Westover neither admits nor denies the alleged violations, but has agreed to the proposed financial penalty of ten thousand dollars (\$10,000) to be assessed to AES Westover, in addition

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<sup>1</sup> *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).

<sup>2</sup> NERC notes that, concurrently with the filing of this Notice of Penalty filing, NERC is submitting seven Notices of Penalty regarding other AES entities in the Northeast Power Coordinating Council (NPCC) and ReliabilityFirst Corporation (RFC) Regions.

<sup>3</sup> Northeast Power Coordinating Council, Inc. confirmed that AES Westover was included on the NERC Compliance Registry on June 21, 2007 as a Generator Owner and Generator Operator. As a Generator Operator, AES Westover was subject to the requirements of NERC Reliability Standard CIP-001-1.

<sup>4</sup> See 18 C.F.R. § 39.7(c)(2).

to other remedies and actions to mitigate the instant violation and ensure future compliance under the terms and conditions of the Settlement Agreement. Accordingly, the alleged violations identified as NERC Violation Tracking Identification Numbers NPCC200800035, NPCC200800036, NPCC200800037 and NPCC200800038<sup>5</sup> are 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 September 9, 2009, by and between NPCC and AES Westover, 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 (2007), 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 Standard	Req. (R)	VRF	Total Penalty (\$)
NPCC	AES Westover, LLC	NOC-118	NPCC200800035	CIP-001-1	1	Medium	10,000
NPCC	AES Westover, LLC	NOC-118	NPCC200800036	CIP-001-1	2	Medium	
NPCC	AES Westover, LLC	NOC-118	NPCC200800037	CIP-001-1	3	Medium	
NPCC	AES Westover, LLC	NOC-118	NPCC200800038	CIP-001-1	4	Medium	

The purpose of Reliability Standard CIP-001-1 is to ensure that disturbances or unusual occurrences, suspected or determined to be caused by sabotage, shall be reported to the appropriate systems, governmental agencies and regulatory bodies.

CIP-001-1 R1 requires a Generator Operator, such as AES Westover, to have procedures for the recognition of and for making its operating personnel aware of sabotage events on its facilities and multi-site sabotage affecting larger portions of the Interconnection. CIP-001-1 R1 has a “Medium” Violation Risk Factor (VRF).

CIP-001-1 R2 requires a Generator Operator, such as AES Westover, to have procedures for the communication of information concerning sabotage events to appropriate parties in the Interconnection. CIP-001-1 R2 has a “Medium” VRF.

CIP-001-1 R3 requires a Generator Operator, such as AES Westover, to provide its operating personnel with sabotage response guidelines, including personnel to contact, for reporting disturbances due to sabotage events. CIP-001-1 R3 has a “Medium” VRF.

<sup>5</sup> NPCC’s Verification document incorrectly references these violations as NPCC200700035, NPCC200700036, NPCC200700037, and NPCC200700038.

CIP-001-1 R4 requires a Generator Operator, such as AES Westover, to establish communications contacts, as applicable, with local Federal Bureau of Investigation (FBI) or Royal Canadian Mounted Police officials and develop reporting procedures as appropriate to their circumstances. CIP-001-1 R4 has a "Medium" VRF.

#### CIP-001-1 R1, R2, R3 and R4

According to the Settlement Agreement, during the Audit NPCC auditors identified possible violations of CIP-001-1 R1, R2, R3 and R4 because AES Westover did not have a documented procedure in place on June 21, 2007. The NPCC auditors found that AES Westover's *Sabotage Reporting Procedure* document, provided to demonstrate AES Westover's compliance with NERC Reliability Standard CIP-001-1 R1, R2, R3 and R4, was dated February 10, 2008, and therefore was not in place at the time AES Westover became a Registered Entity on June 21, 2007.

For CIP-001-1 R1, R2 and R4, NPCC Compliance Staff concurred with the findings of the NPCC auditors and determined the duration of the alleged violations to be from June 21, 2007 when AES Westover was included on the NERC Compliance Registry, until February 10, 2008, when AES Westover mitigated the instant alleged violations. The violation duration for R3 was extended as discussed below.

#### CIP-001-1 R3

According to the Settlement Agreement, an additional potential violation of NERC Reliability Standard CIP-001-1 R3 was also identified during the Audit. The NPCC auditors found that AES Westover's *Sabotage Reporting Procedure* dated February 10, 2008 did not contain language providing its operating personnel with sabotage response guidelines, including personnel to contact, for reporting disturbances to sabotage events as required by R3.

During the Audit, AES Westover revised the *Sabotage Reporting Procedure*, which was signed by the AES Westover Plant Manager on April 6, 2008, to include language providing its operating personnel with sabotage response guidelines, including personnel to contact, for reporting disturbances to sabotage events, thereby bringing AES Westover into compliance with the requirements of CIP-001-1 R3.

For CIP-001-1 R3, NPCC Compliance Staff concurred with the findings of the NPCC auditors and determined the duration of the alleged violations to be from June 21, 2007 when AES Westover was included on the NERC Compliance Registry, until April 6, 2008, when AES Westover mitigated the instant alleged violation.

According to the Settlement Agreement, NPCC assessed a ten thousand dollar (\$10,000) monetary penalty for the alleged violations of CIP-001-1 R1, R2, R3 and R4, for the following reasons: (1) the alleged violations were first time alleged violations for AES Westover; (2) AES Westover cooperated with NPCC Staff during the investigation and no misrepresentation or concealment of facts was evident; (3) AES Westover agreed to expeditiously resolve this issue via settlement subsequent to receiving a Preliminary Notice of Alleged Violation but before

receiving a Notice of Alleged Violation and Proposed Penalty or Sanction from NPCC; and (4) AES Westover is implementing additional measures to protect against future violations of the same or similar requirements as noted in the Settlement Agreement and listed below. In addition, NPCC Staff concluded that the actual or foreseeable impact of the alleged violation on the reliability of the bulk power system was minimal because the violations were predominantly a documentation issue, and not a failure to perform, because AES Westover had an *Emergency Action Plan* in place on June 21, 2007.

Thus, NPCC determined that, in this instance, the financial penalty amount of ten thousand dollars (\$10,000) bears a reasonable relation to the seriousness and duration of the alleged violation. Furthermore, based on AES Westover's cooperation, expressed commitment to compliance and agreement to expeditiously reconcile this issue via settlement, NPCC determined that the penalty was appropriate.

### **Status of Mitigation Plan<sup>6</sup>**

On June 27, 2008 NPCC requested that AES Westover submit a Mitigation Plan to address the alleged violations of CIP-001-1 R1 through R4. AES Westover submitted its Mitigation Plan to NPCC on June 27, 2008, it was accepted by NPCC on July 31, 2008 and approved by NERC on June 30, 2009. The Mitigation Plan was designated as MIT-08-1803 and was submitted as non-public information to FERC on June 30, 2009 in accordance with FERC orders.

AES Westover's Mitigation Plan submitted on June 27, 2008 included AES Westover's *Sabotage Reporting Procedure* as evidence of AES Westover's compliance with CIP-001-1 R1, R2 and R4 as of February 10, 2008 and CIP-001-1 R3 as of April 6, 2008. AES Westover formally certified completion of its Mitigation Plan on May 12, 2009.<sup>7</sup>

NPCC Compliance Staff reviewed the *Sabotage Reporting Procedure* document submitted by AES Westover as evidence that it was in compliance with CIP-001-1 R1, R2, R3 and R4. NPCC Compliance Staff verified AES Westover's completion of its Mitigation Plan on July 31, 2008 and formally notified AES Westover of its verification of completion on May 22, 2009.

As part of the Settlement Agreement, AES Westover initiated efforts beyond the actions required by its Mitigation Plan in order to enhance its compliance program and prevent reoccurrence. Specifically, AES Westover committed to the following actions and completion dates:

#### **Compliance Program Enhancement Content**

Develop and implement a "Compliance Program Enhancement Outline" ("Compliance Program Enhancement"), a copy of which is attached to the Settlement Agreement as Attachment A. The Compliance Program Enhancement, put together as a result of the alleged violations, addresses program documentation, program dissemination, an enhanced training program, and a self-auditing program.

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<sup>6</sup> See 18 C.F.R § 39.7(d)(7).

<sup>7</sup> The Certification document was submitted on May 12, 2009, but incorrectly indicates that the Mitigation Plan was completed on July 14, 2008. The Mitigation Plan was completed on April 6, 2008.

**Compliance Program Enhancement Milestones:** According to the Settlement Agreement, AES Westover has taken the following actions at an initial cost of \$103,000:

Item	Completion Date	Status <sup>8</sup>
Project Kickoff Meeting with Consultant and AES Westover	September 16, 2008	Completed
Completion of On-line Repository for Program Documentation	October 31, 2008	Completed
Initial Review of Job Task Analysis	Week of December 1, 2008	Completed
Establish On-Line Training	January 30, 2009	Completed
Internal Audit	Week of June 15, 2009	Completed
Semi-Annual Status Report	June 30, 2009	Completed
Semi-Annual Status Report	Due December 15, 2009	

**Compliance Program Enhancement Reporting:** To facilitate NPCC's need to communicate the implementation status of this Agreement and provide accountability to NERC, AES Westover will provide updates, upon request by NPCC, using the forms and format in Attachment B to the Settlement Agreement semiannually for one year. This Compliance Program Enhancement will supplement the AES Ethics and Compliance Program currently in place.

### Statement Describing the Proposed Penalty, Sanction or Enforcement Action Imposed<sup>9</sup>

#### 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,<sup>10</sup> the NERC BOTCC reviewed the Settlement Agreement and supporting documentation on October 13, 2009. The NERC BOTCC approved the Settlement Agreement, including NPCC's imposition of a financial penalty of ten thousand dollars (\$10,000) against AES Westover, in addition to other actions to ensure future compliance required under the terms and conditions of the Settlement Agreement.<sup>11</sup> 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 violations at issue.

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

1. the alleged violations of CIP-001-1 R1, R2 and R4 were mitigated by AES Westover prior to commencement of the Audit;

<sup>8</sup> Verified by NPCC Staff.

<sup>9</sup> See 18 C.F.R § 39.7(d)(4).

<sup>10</sup> *North American Electric Reliability Corporation*, "Guidance Order on Reliability Notices of Penalty," 124 FERC ¶ 61,015 (2008).

<sup>11</sup> The NERC BOTCC notes that the registered entity does not receive direct or offset credit for money spent for actions to mitigate the violation or for any additional money spent above and beyond what is required to mitigate the violation.

2. the alleged violation of CIP-001-1 R3 was mitigated by AES Westover prior to the completion of the Audit;
3. AES Westover is implementing additional measures (detailed above) to protect against future violations of the same or similar requirements;
4. AES Westover had no prior violation of CIP-001-1 or any other Reliability Standards;
5. no misrepresentation or concealment of facts was evident;
6. the violation did not constitute a serious or substantial risk to the bulk power system for the reasons discussed above; and
7. AES Westover cooperated fully in the investigation.

For the foregoing reasons, the NERC BOTCC approved the Settlement Agreement and found that the proposed ten thousand dollar (\$10,000) financial penalty is appropriate for the violations and circumstances in question, and is consistent with NERC's goal to promote and ensure the 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.

#### **Attachments to be Included as Part of this Notice of Penalty**

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

- a) NPCC Compliance Audit Report (Public Version) dated April 15, 2008, included as Attachment a;
- b) Settlement Agreement by and between AES Westover and NPCC executed on September 9, 2009, included as Attachment b;
- c) Mitigation Plan designated as MIT-08-1803 submitted June 27, 2008, included as Attachment c;
- d) AES Westover's Certification of Completion of the Mitigation Plan dated May 12, 2009, included as Attachment d;
- e) NPCC's Verification of Completion of the Mitigation Plan dated May 22, 2009, included as Attachment e.

#### **A Form of Notice Suitable for Publication<sup>12</sup>**

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

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<sup>12</sup> 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:

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\*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.

NERC Notice of Penalty  
AES Westover, LLC  
November 13, 2009  
Page 8

## Conclusion

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

Respectfully submitted,

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Attachments