



December 12, 2008

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

Re: NERC Notice of Penalty regarding Edgecombe Operating Services, LLC, FERC Docket No. NP09-_000

Dear Ms. Bose:

The North American Electric Reliability Corporation (NERC) hereby provides this Notice of Penalty regarding Edgecombe Operating Services LLC (Edgecombe),¹ NERC Registry ID NCR01229,² 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

This Notice of Penalty is being filed with the Commission because, based on information from SERC Reliability Corporation, Edgecombe failed to submit a forecast of expected real power output to assist in operations planning, as requested by the Balancing Authority, each day for the three-day weekend of January 18-20, 2008,⁴ in violation of Requirement (R) 15 of Reliability Standard TOP-002-2, which states that "Generation Operators shall, at the request of the Balancing Authority or Transmission Operator, provide a forecast of expected real power output to assist in operations planning (*e.g.*, a seven-day forecast of real output)."

SERC Reliability Corporation and Edgecombe have entered into a Settlement Agreement in which Edgecombe has accepted the violation and the proposed penalty of \$3,000 to be assessed to Edgecombe, in addition to other remedies which include mitigation actions under the terms and conditions of the Settlement Agreement, at issue in this Notice of Penalty. Accordingly, 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 (2008). *Mandatory Reliability Standards for the Bulk-Power System*, FERC Stats. & Regs. ¶ 31,242 (2007) (Order No. 693). See 18 C.F.R. § 39.7(d)(1).

² SERC Reliability Corporation confirmed that Edgecombe was listed on the NERC Compliance Registry as a Generator Operator and was subject to the requirements of NERC Reliability Standard TOP-002-2.

³ See 18 C.F.R. § 39.7(c)(2).

⁴ Martin Luther King Day Holiday was Monday, January 20, 2008.

violation identified as NERC Violation Tracking Identification Number SERC200800091 is a Confirmed Violation, as that term is defined in the NERC Rules of Procedure and the CMEP.

Statement of Findings Underlying the Violation

This Notice of Penalty incorporates the findings and justifications set forth in the overall Settlement Agreement which consists of the original Settlement Agreement executed as of July 2, 2008, by and between SERC Reliability Corporation and Edgecombe, which is included as Attachment a, and the Supplemental Record Information letter issued by SERC Reliability Corporation to Edgecombe, dated September 22, 2008. The details of the findings and basis for the penalty are set forth in the Settlement Agreement. 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 the alleged violation of one Reliability Standard resolved by the Settlement Agreement, as discussed in greater detail below.

NERC NOC ID	NERC Violation ID	Date(s) of Violation	Reliability Standard	Requirement	VRF	Total Penalty (\$)
NOC-094	SERC200800091	1/18/2008 to 1/20/2008	TOP-002-2	15	Lower	3,000

Reliability Standard TOP-002-2 R15 states that “Generation Operators shall, at the request of the Balancing Authority or Transmission Operator, provide a forecast of expected real power output to assist in operations planning (*e.g.*, a seven-day forecast of real output).” According to the Settlement Agreement, Edgecombe’s Balancing Authority requires Edgecombe to submit a Non-Utility Generator (NUG) Daily Status Report that includes a rolling eight-day forecast of plant operations to be submitted prior to 06:00 a.m. each day in addition to any verbal notifications of potential or actual forced outages or derates and available capacity. The request for submittal of the NUG Daily Status Report has been in place since May 1, 2005.

According to the Settlement Agreement, Edgecombe failed to submit a forecast of expected real power output to assist in operations planning, as requested by the Balancing Authority, each day for the three-day weekend of January 18-20, 2008, by not sending in its NUG Daily Status Report.

Once it discovered its failure to submit the required reports, Edgecombe submitted all three missing reports on Monday morning, January 21, 2008. Subsequently, on January 28, 2008, Edgecombe self-reported the violation. Edgecombe also included as part of its self-report a proposed Mitigation Plan to ensure that Edgecombe would not inadvertently fail to submit the eight day notification in the future.

The Settlement Agreement states that, although Edgecombe failed to submit the NUG Daily Status Report as required for the three days, Edgecombe did provide the Balancing Authority with daily notices of the plant's availability and available Net Electric Output for January 18-20, 2008 in the reports submitted immediately before and after the three-day oversight.

Status of Mitigation Plan⁵

Edgecombe submitted a mitigation plan, dated January 28, 2008, for the subject violation. The plan was accepted by SERC Reliability Corporation's Board Compliance Committee on April 22, 2008 and approved by NERC on May 21, 2008, and was submitted as non-public information to the Commission on May 21, 2008 in accordance with the relevant Commission order.

Edgecombe certified on February 27, 2008 that the subject Mitigation Plan was completed as of February 21, 2008. On April 11, 2008, SERC Reliability Corporation completed its review of the evidence submitted by Edgecombe in support of its certification of completion of the subject mitigation plan. SERC reviewed the following evidence of mitigation plan completion provided by Edgecombe: A notice from Edgecombe's Balancing Authority dated April 22, 2005 detailing reporting expectations; copies of Edgecombe's submittals of its reports upon discovery of the failure to submit over the weekend; and a copy of Edgecombe's revised procedure document highlighting changes to implement actions to prevent recurrence and completion of training on the revised procedure. SERC Reliability Corporation verified that, in its professional judgment, all required actions in the mitigation plan had been completed and that Edgecombe was in compliance with the subject reliability standard requirement.

Statement Describing the Proposed Penalty, Sanction or Enforcement Action Imposed⁶

According to the Settlement Agreement, Edgecombe discovered the failure to submit the NUG Daily Status Reports on January 21, 2008, one day after the last alleged violation. That same day, Edgecombe submitted the missing NUG Daily Status Reports. SERC Reliability Corporation staff took into consideration Edgecombe's immediate mitigation efforts and the short length of time during which the reports were not submitted. Consistent with Section 4.3 of the NERC Sanction Guidelines, SERC Reliability Corporation staff considered the promptness with which Edgecombe mitigated the violations after their discovery, self-reported the possible violations to SERC Reliability Corporation, submitted a Mitigation Plan to prevent future recurrences, and completed the proposed Mitigation Plan. Given these mitigating factors, SERC Reliability Corporation staff determined that a penalty of \$3,000 would be an appropriate monetary sanction for the violation spanning the three days of January 18-20, 2008. It did so based on consideration of Edgecombe's admission of the violation, cooperation with the investigation, commitment to Reliability Standards compliance, and agreement to expeditiously resolve the alleged violation via settlement.

⁵ See 18 C.F.R § 39.7(d)(7).

⁶ See 18 C.F.R § 39.7(d)(4).

Basis for Determination

Taking into consideration the Commission's direction in Order No. 693 and the NERC Sanction Guidelines, the NERC BOTCC reviewed the Settlement Agreement and supporting documentation on October 7, 2008 at which time the NERC BOTCC approved the Settlement Agreement which resolves the alleged violations of SERC Reliability Corporation and the assessment of a financial penalty of \$3,000 against Edgecombe, in addition to the other mitigation actions taken by Edgecombe as discussed in the Settlement Agreement. In doing so, the NERC BOTCC reviewed the applicable requirements of the Commission-approved Reliability Standards, as well as the underlying facts and circumstances of the violations.⁷

Specifically, in approving the Settlement Agreement, which fully resolves the alleged violations as described therein, the NERC BOTCC considered the following:

- The violation was self-reported.
- Edgecombe acted quickly to both rectify the immediate situation and to put in place procedures to prevent a reoccurrence.
- The delay in submitting the reports involved posed insignificant risk because: (i) Edgecombe provided the Balancing Authority with daily notices of plant availability and available Net Electric Output for the three days at issue; (ii) there were no days for which a forecast of expected real power output had not been provided; and (iii) the oversight pertained to a 115 MW single generating facility.

According to SERC, there were no repetitive violations, no negative relevant compliance history and no applicable compliance directives. SERC Reliability Corporation also indicated that it did not identify concerns with Edgecombe's compliance plan.

Therefore, NERC believes that the proposed \$3,000 penalty and other corrective actions taken by Edgecombe to promptly provide the reports and put in place measures to avoid future reoccurrences as set forth included in the Settlement Agreement are 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 thirty (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 Proceeding⁸

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

⁷ *Mandatory Reliability Standards for the Bulk-Power System*, FERC Stats. & Regs. ¶ 31,242 (2007) (Order No. 693).

⁸ See 18 C.F.R. § 39.7(d)(5).

- a) Settlement Agreement by and between Edgecombe and SERC Reliability Corporation, which is included as Attachment a; and
- b) Supplemental Record Information letter issued by SERC Reliability Corporation to Edgecombe Operating Services, LLC on September 22, 2008.

A Form of Notice Suitable for Publication⁹

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

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
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⁹ See 18 C.F.R § 39.7(d)(6).

Kenneth B. Keels, Jr.*
Manager of Compliance Enforcement
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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.

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
Vice President and General Counsel
North American Electric Reliability Corporation
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rebecca.michael@nerc.net

cc: Edgecombe Operating Services, LLC
SERC Reliability Corporation

Attachment(s)

Attachment a

Settlement Agreement by and between

SERC Reliability Corporation

and

Edgecombe Operating Services, LLC

**SETTLEMENT AGREEMENT
OF
SERC RELIABILITY CORPORATION
AND
EDGECOMBE OPERATING SERVICES, LLC**

I. Introduction

1. SERC RELIABILITY CORPORATION (“SERC”) and EDGECOMBE OPERATING SERVICES, LLC (“EOS”) enter into this Settlement Agreement (“Agreement”) to resolve all outstanding issues arising from a preliminary and non-public assessment resulting in SERC’s determination and findings, pursuant to the North American Electric Reliability Corporation (“NERC”) Rules of Procedure, of an alleged violation by EOS of the NERC Reliability Standard TOP-002-2, Requirement R15.

II. Stipulation

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

Background

3. EDGECOMBE OPERATING SERVICES, LLC is an indirect wholly owned subsidiary of Cogentrix Energy, LLC (Cogentrix). Cogentrix is headquartered in Charlotte, North Carolina and owns and operates a number of electric generating facilities throughout the United States. Cogentrix utilizes both proven and emerging technologies, combined with innovative management and operational procedures to serve the energy supply needs of its public utility, power marketer, and industrial customers.
4. EDGECOMBE OPERATING SERVICES, LLC is a Delaware limited liability company and operator of the Rocky Mount Generating facility, a 115.5 MW coal fired power plant located near Rocky Mount, North Carolina, owned by Edgecombe Genco, LLC. Rocky Mount is located in northeast North Carolina and in Edgecombe County.

Alleged Violation

5. On January 28, 2008, EOS self-reported a possible violation of TOP-002-2 Normal Operations Planning, R15.
6. SERC Compliance Enforcement Staff confirmed that EOS was listed on the NERC Compliance Registry as a Generator Operator and that EOS, therefore was subject to the Requirements of NERC Standard TOP-002-2.
7. SERC Compliance Enforcement Staff conducted a Compliance Assessment and reviewed the evidence submitted by EOS. SERC Compliance Enforcement Staff confirmed that EOS had been requested by its Balancing Authority to submit daily a rolling eight-day forecast of plant operations by way of a "NUG Daily Status Report" form. The NUG Daily Status Report includes available capacity, reason for derate or outage and expected date and time for the Facility to return to dependable capacity.
8. TOP-002-2 R15 states that "Generation Operators shall, at the request of the Balancing Authority or Transmission Operator, provide a forecast of expected real power output to assist in operations planning (e.g., a seven-day forecast of real output)". EOS's Balancing Authority requires the NUG Daily Status Report to be submitted prior to 06:00 AM each day in addition to any verbal notifications of potential or actual forced outages or derates and available capacity. The request for submittal of the NUG Daily Status Report has been in place since May 1, 2005.
9. SERC Compliance Enforcement Staff concluded that EOS failed to submit a forecast of expected real power output to assist in operations planning, as requested by the Balancing Authority, by not sending the NUG Daily Status Report to the Balancing Authority each day for the three-day weekend of January 18-20, 2008.
10. In assessing the proposed penalty and sanctions associated with the violation of TOP-002-2, SERC Compliance Enforcement Staff determined that EOS self-reported the item, submitted a Mitigation Plan on January 28, 2008, and fully executed all corrective actions by February 21, 2008, ahead of the Mitigation Plan's approved completion date.
11. SERC Compliance Enforcement Staff issued a Notice of Alleged Violation and Proposed Penalty or Sanction detailing the Alleged Violation of TOP-002-2 to EOS on April 10, 2008, and requested EOS to confirm or contest the findings.

III. PARTIES' SEPARATE REPRESENTATIONS

STATEMENT OF SERC AND SUMMARY OF FINDINGS

12. During the weekend of January 18-20, 2008, NUG Daily Status Reports required to be submitted daily to EOS's Balancing Authority were not transmitted. Once EOS discovered the failure to submit three required reports, one per day for January 18-20 2008, EOS submitted all three missing reports on Monday morning, January 21, 2008. EOS took corrective action, self-reported the possible violation, and timely submitted a Mitigation Plan to prevent recurrence.
13. Based on the facts set forth in section 12 above, SERC Compliance Enforcement Staff determined that an Alleged Violation of TOP-002-2 R15 occurred.
14. SERC agrees that this Settlement Agreement is in the best interest of the parties and in the best interest of Bulk Power System reliability.

STATEMENT OF EDGEcombe

15. EOS admits that the facts set forth and agreed to by the parties for purposes of this Agreement constitute a violation of TOP-002-2 R15.

As self-reported by EOS, on Friday, Saturday and Sunday, January 18, 19 and 20, 2008 EOS did not provide the Balancing Authority with an eight-day forecast of the plant's availability as required by TOP-002-2. Because the omission occurred on a weekend, it was not realized until Monday, January 21, at which point EOS promptly provided the missing forecasts as required. Despite the absence of the eight-day forecast, EOS did provide the Balancing Authority with daily notices of the plant's availability and available Net Electric Output (NEO) for January 18, 19 and 20, 2008.

EOS promptly formulated and implemented a Mitigation Plan to ensure that EOS will not inadvertently fail to submit the eight day notification in the future. This proposed Mitigation Plan was included in the Self-Report/Complaint Form Template submitted to SERC on January 28, 2008.

EOS is an indirect subsidiary of Cogentrix Energy, LLC ("Cogentrix"). Cogentrix has taken a leading role among independent power producers in participating in the formulation and implementation of the new Reliability Standards adopted by NERC and SERC. Cogentrix has implemented a comprehensive compliance program at all of its plants to provide reasonable assurance that its plants are in compliance with applicable reliability standards. SERC recently completed compliance audits at two of these plants, Spruance Genco, LLC, and James River Cogeneration Company.

Both plants received very positive audit reports. EOS's compliance plan is identical in all material respects to those at the Spruance and James River facilities.

EOS believes that the failure to submit eight-day availability forecasts as required is "an inconsequential first violation" of TOP-002-2 for which SERC should impose no penalty, as permitted by Section 4.2.2 of the NERC Sanction Guidelines. This result is further supported by (1) the violations time horizon, which presents a far lesser risk and impact than would the failure to submit next day availability schedules; (2) EOS's specific circumstances as a very small component of Bulk Power System; (3) EOS's prompt self-disclosure and implementation of corrective measures; (4) the degree and quality of EOS's cooperation with SERC; and (5) the quality of EOS's compliance program.

16. EOS does not contest the alleged violation. EOS has agreed to enter into this Agreement with SERC 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. EOS agrees that this agreement is in the best interest of the parties and in the best interest of maintaining a reliable electric infrastructure.

IV. MITIGATING ACTIONS, REMEDIES AND SANCTIONS

17. For purposes of settling any and all disputes arising from SERC Compliance Enforcement Staff's assessment into the matters reported by EOS in its Self Report, SERC and EOS agree that on and after the effective date of this Agreement, EOS shall take the following action:
 - i. EOS shall pay a monetary penalty of \$3000.00 to SERC, via wire transfer to a SERC account that will be outlined in an invoice sent to EOS. Payment of this invoice will be made within twenty days after the receipt of the invoice, and SERC shall notify NERC if the payment is not received. SERC shall not send the invoice until both NERC and the Federal Energy Regulatory Commission (the "Commission") have approved this Settlement Agreement.
18. Based on EOS's cooperation, commitment to compliance, and agreement to expeditiously reconcile this issue via settlement, SERC Compliance Enforcement Staff agreed to assess the penalty of \$3000.00.
19. Failure to comply with any of the terms and conditions of this Agreement shall be deemed to be the same and/or additional violation and may subject EOS to new or additional enforcement, penalty or sanction actions in accordance with the NERC Rules of Procedure.

20. If EOS does not make the monetary penalty payment above at the times agreed by the parties, interest payable to SERC will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii) from the date that payment is due, in addition to the penalty specified above.

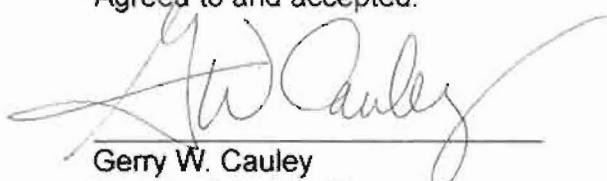
V. ADDITIONAL TERMS

21. The signatories to this Agreement agree that they enter into this 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 SERC or EOS has been made to induce the signatories or any other party to enter into this Agreement.
22. SERC 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 SERC and EOS of changes to the settlement that would result in approval. If NERC rejects the settlement, NERC must provide specific written reasons for such rejection and SERC will attempt to negotiate a revised settlement agreement with EOS, 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.
23. This Agreement shall become effective upon NERC and 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.
24. EOS agrees that this Agreement, when approved by NERC and the Commission, shall represent a final settlement of all matters set forth herein and EOS waives its right to further hearings and appeal, unless and only to the extent that EOS contends that any NERC or Commission action on the Agreement contains one or more material modifications to the Agreement. SERC reserves all rights to initiate enforcement, penalty or sanction actions against EOS in accordance with the NERC Rules of Procedure in the event that EOS fails to comply with the mitigation plan and compliance program agreed to in this Agreement. In the event EOS fails to comply with any of the stipulations, remedies, sanctions, or additional terms, as set forth in this Agreement, SERC will initiate enforcement, penalty, or sanction actions against EOS to the maximum extent allowed by the NERC Rules of Procedure, up to the maximum statutorily allowed penalty. EOS shall retain all rights to defend against such enforcement actions, also according to the NERC Rules of Procedure.

all rights to defend against such enforcement actions, also according to the NERC Rules of Procedure.

25. 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 this Agreement on the entity's behalf.
26. The undersigned representative of each party affirms that he or she has read this Agreement, that all of the matters set forth in this Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that this 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.
27. This Agreement may be signed in counterparts.
28. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:

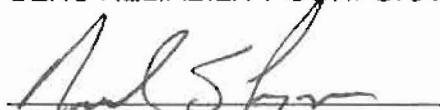


Gerry W. Cauley
President and CEO
SERC RELIABILITY CORPORATION

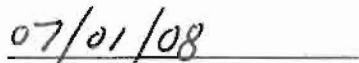


7/2/2008

Date



Richard S. Frymyer
General Manager
EDGECOMBE OPERATING SERVICES, LLC



07/01/08

Date

Attachment b
Notice of Filing

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Edgecombe Operating Services, LLC

Docket No. NP09-___-000

NOTICE OF FILING
(DATE)

Take notice that on December 12, 2008, the North American Electric Reliability Corporation (NERC), filed a Notice of Penalty regarding Edgecombe Operating Services, LLC in the SERC Reliability Corporation 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