



NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

June 24, 2009  
Ms. Kimberly Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Re: NERC Notice of Penalty regarding U.S. Army Corps of Engineers-  
Omaha District, FERC Docket No. NP09-\_-000

Dear Ms. Bose:

The North American Electric Reliability Corporation (NERC) hereby provides this Notice of Penalty<sup>1</sup> regarding the U.S. Army Corps of Engineers-Omaha District, NERC Registry ID: NCR00978,<sup>2</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>3</sup>

U.S. Army Corps of Engineers-Omaha District (COE-OD) self-certified on October 23, 2007 non-compliance with Reliability Standards FAC-009-1, Requirement (R) 1 and R2; and PRC-005-1, R1 and R2 for six of its Generators. This Notice of Penalty is being filed with the Commission because, based on information from Midwest Reliability Organization (MRO), COE-OD does not dispute the violations and the proposed penalty of zero dollars (\$0) to be assessed to COE-OD.<sup>4</sup> Accordingly, the violations identified as NERC Violation Tracking Identification Numbers MRO200700014, MRO200700015, MRO200700017, MRO200700018 respectively, are Confirmed Violations, as that term is defined in the NERC Rules of Procedure and the CMEP.

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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).

<sup>2</sup> MRO confirmed that U.S. Army Corps of Engineers-Omaha District was included on the NERC Compliance Registry as of May 30, 2007 and was subject to the requirements of the NERC Reliability Standards set forth herein.

<sup>3</sup> *See* 18 C.F.R. § 39.7(c)(2).

<sup>4</sup> Although COE—Omaha has not raised a jurisdictional issue in this case, COE-Tulsa has asserted that the COE is not subject to mandatory Reliability Standards under Section 215 of the Federal Power Act in NOC-052, filed contemporaneously with this notice of penalty. For the reasons stated in NOC-052, the COE is subject to mandatory Reliability Standards and enforcement under Section 215.

### Statement of Findings Underlying the Violations

This Notice of Penalty incorporates the findings and justifications set forth in the Notice of Confirmed Violation and Proposed Penalty or Sanction (NOCV) issued on April 16, 2008, and the Supplemental Record Information letters issued on October 9, 2008 and November 7, 2008 by MRO. The details of the findings and basis for the penalty are set forth herein. This Notice of Penalty filing contains the basis for approval of this Notice of Penalty by the NERC Board of Trustees Compliance Committee (NERC BOTCC). In accordance with Section 39.7 of the Commission's regulations, 18 C.F.R. § 39.7 (2007), NERC provides the following summary table identifying each Reliability Standard violated by COE-OD.

Region	Registered Entity	NOC ID	NERC Violation ID	Reliability Std.	Req. (R)	VRF	Total Penalty (\$)
MRO	COE-OD	NOC058	MRO200700014	FAC-009-1	1	MEDIUM	\$0
MRO	COE-OD	NOC058	MRO200700015	FAC-009-1	2	MEDIUM	
MRO	COE-OD	NOC058	MRO200700017	PRC-005-1	1	HIGH	
MRO	COE-OD	NOC058	MRO200700018	PRC-005-1	2	HIGH	

FAC-009-1 requires a registered entity to establish and communicate facility ratings and ensure that these facility ratings are determined based on an established methodology or methodologies. FAC-009-1, R1 specifically obligates a Generator Owner such as COE-OD to establish Facility Ratings for solely and jointly owned Facilities that are consistent with the associated Facility Ratings Methodology. During the 2007 annual self-certification, COE-OD self-certified non-compliance with FAC-009-1, R1 because, although it had an internally approved Facilities Rating methodology, the methodology was not fully compliant with the specific requirements set forth in the Reliability Standard. COE-OD noted that, for fiscal year 2007, COE-OD funded engineering efforts to complete facilities ratings in response to the mandatory standards on four (4) of its six (6) generation stations by January 1, 2008, and the ratings were completed on schedule. COE-OD noted that, because the facilities were not documented in the format required by the Facility Ratings Methodology, COE-OD was non-compliant with the Reliability Standard. COE-OD further self-certified that a pending budget request for the remaining 2 facilities prevented compliance with FAC-009-1, R1 for these two facilities. FAC-009-1, R1 has a "Medium" Violation Risk Factor ("VRF"). MRO determined to exercise its discretion for this violation that occurred in 2007, and to assess no penalty for the violation of this requirement of the referenced Reliability Standard. MRO found that COE-OD had a Facility Ratings Methodology in place, although it did not comply with all aspects of the referenced Reliability Standard. In addition, because COE-OD has had a Facility Ratings methodology, and the design and construction of the facilities was fully coordinated with the Transmission Operator/Transmission Owner, MRO found that this violation was not a violation that put bulk power system reliability at serious or substantial risk.

FAC-009-1, R2 requires a Generator Owner such as COE-OD to provide Facility Ratings for its solely and jointly owned Facilities that are existing Facilities, new Facilities, for modifications to existing Facilities and for re-ratings of existing Facilities to its associated Reliability Coordinator(s), Planning Authority(ies), Transmission Planner(s), and Transmission Operator(s)

as scheduled by such requesting entities. During the 2007 annual self-certification, COE-OD reported non-compliance with Reliability Standard FAC-009-1, R2. Because COE-OD did not have a compliant facilities rating methodology in accordance with FAC-009-1, R1, it was unable to provide these Facility Ratings to the Reliability Coordinator, Planning Authority, Transmission Provider, Transmission Owner, and/or Transmission Operator, as required in Reliability Standard FAC-009-1, R2. FAC-009-1, R2 has a “Medium” VRF. MRO determined to exercise its discretion for this violation, and to assess no penalty for this violation. MRO found that, while COE-OD had a Facility Ratings Methodology in place, it did not meet the specific requirements in accordance with this Reliability Standard. Because COE-OD had a methodology in place and did not have any unfilled requests by the Reliability Coordinator, Planning Authority, Transmission Planner, and/or Transmission Operator, MRO found that this violation did not put bulk power system reliability at serious or substantial risk.

PRC-005-1 requires that all generation Protection Systems affecting the reliability of the Bulk Electric System be maintained and tested. PRC-005-1, R1 specifically requires each Generator Owner that owns a generation Protection System to have a Protection System maintenance and testing program for Protection Systems that affect the reliability of the Bulk Electric System in place that includes: 1) the maintenance and testing system and their basis, and 2) a summary of maintenance and testing procedures.

During the 2007 annual self-certification, COE-OD reported non-compliance with PRC-005-1, R1, because, although it had a program for testing and maintenance, the basis of the program was not adequately identified and testing procedures were not completely documented. COE-OD reported that, although testing and maintenance were being conducted according to the existing program, the program documentation was deficient and therefore did not satisfy R1 of the Standard. At the time of the self-certification, COE-OD provided copies of two program documents describing its Protective System Maintenance and Testing Program; undated Chapter 07 entitled “Hydropower” and an April 30, 2001 document entitled “Hydropower Test and Evaluation Function.” COE-OD explained that these documents had not been revised or updated to reflect the referenced requirement of the NERC Reliability Standards.

PRC-005-1, R1 has a “High” VRF. MRO determined to exercise its discretion for this violation, and to assess no penalty for this violation. MRO reviewed two program documents describing COE-OD’s Protective System Maintenance and Testing Program and determined that the violation was a documentation deficiency, because the existing documents did not contain the required elements of PRC-005-1, R1. On February 5, 2008, COE-OD submitted a Mitigation Plan and included the Omaha District Standard Operating Procedure PRC-005-1 effective February 1, 2008, which included the required elements of the applicable Reliability Standard. Upon its review of this Operating Procedure, MRO verified that this revised document included the required elements of PRC-005-1, R1. Accordingly, MRO determined that the violation did not put bulk power system reliability at serious or substantial risk and assessed no penalty, because COE-OD had a program for testing and maintenance, but the basis of the program was not adequately identified and testing procedures were not completely documented.

PRC-005-1, R2 requires each Generator Owner that owns a generation Protection System to provide documentation of its Protection System maintenance and testing program and the

implementation of that program to its Regional Reliability Organization on request (within 30 calendar days). R2 further states that the Generator Owner that owns a generation Protection System must provide: 1) Evidence Protection System devices were maintained and tested within the defined intervals, and 2) The date each Protection System device was last tested/maintained.

During the 2007 annual self-certification, COE-OD reported non-compliance with PRC-005-1, R2, because not all facilities were current with the testing schedules and there were instances where testing documentation was inadequate or incomplete. Although COE-OD provided additional information stating that testing and maintenance of protection systems was occurring, it was not completed by the date the annual self-certification was due. In this case, MRO considered that, although a request for the testing and maintenance schedules was not made by the regional reliability organization, COE-OD could not have provided the test records had they been asked for them because the facts of the case demonstrate that the entity was behind on its relay testing. Specifically, MRO found that testing and maintenance were being conducted but that COE-OD was not current with its testing schedules and in some instances the testing documentation was inadequate or incomplete. COE-OD operates 6 facilities; 2 of which were behind schedule for some devices. Approximately 58 devices (24 at one facility and 34 at the other facility) representing 5% of COE-OD's 1,099 Protection Devices were not maintained and tested on schedule.

PRC-005-1, R2 has a "High VRF. MRO determined to exercise its discretion and assess no penalty for this violation because maintenance and testing required by this Reliability Standard was being conducted, but was behind schedule for a small percentage of devices at two facilities. The violations occurred during 2007 and COE-OD operated under approved Mitigation Plans to correct the violations, which were completed on time. Therefore, penalties that would have accrued during the period the Mitigation Plans were in place were held in abeyance and were ultimately obviated due to timely completion of the Mitigation Plans. As a result, MRO determined that the violation did not put bulk power system reliability at serious or substantial risk.

MRO determined that the violation by COE-OD of FAC-009-1, R1 and R2, and PRC-005-1, R1 and R2 began on June 18, 2007, the mandatory and effective date of the applicable NERC reliability standards. MRO determined that COE-OD was fully compliant with Reliability Standards PRC-005-1, R1 as of February 5, 2008, PRC-005-1, R2 as of May 1, 2008 and FAC-009-1, R1 and R2 as of June 30, 2008.

### **Status of Mitigation Plans<sup>5</sup>**

COE-OD submitted three Mitigation Plans to address the referenced violations on February 5, 2008. Mitigation Plan MIT-07-0449 (for violations MRO200700014 and MRO 200700015 – FAC-009-1, R1 and R2), was accepted by MRO on March 17, 2008, was approved by NERC on March 20, 2008, and was submitted to FERC as non-public information on March 20, 2008, in accordance with FERC orders.

COE-OD identified the cause of the violations of FAC-009, R1 and R2 in Mitigation Plan MIT-07-0449 as a result of COE-OD's failure to complete Facility Ratings reports for four Missouri River Main Stem power plants (Gavins Point, Fort Randall, Big Bend, and Oahe power plants). COE-OD reported that the required reports were in draft form at the time it filed its Mitigation Plan but were awaiting review by project staff. Additionally, COE-OD reported that work had recently been initiated on reports for the remaining two power plants. COE-OD stated in its Mitigation Plan that all violations of FAC-009-1 would be rectified when COE-OD prepared the final versions of the Facility Ratings reports and would then provide them to the Western Area Power Administration. COE-OD certified completion of the Mitigation Plan on June 30, 2008. MRO reviewed the Facility Rating Methodology submitted by COE-OD for all six of its Generators and verified that COE-OD was fully compliant with the Mitigation Plan on June 30, 2008.

Mitigation Plan MIT-07-0450 (for violation MRO200700017—PRC-005-1, R1) was accepted by MRO on March 17, 2008, was approved by NERC on March 20, 2008, and was submitted to FERC as non-public information on March 20, 2008, in accordance with FERC orders.

In Mitigation Plan MIT-07-0450, COE-OD certified that COE-OD has a program for testing and maintenance of protection systems, but that the program did not cover all systems identified in the NERC criteria, the basis of the program was not adequately identified, and complete documentation of the testing procedures were not available. COE-OD developed a revised protective system maintenance and testing program as required by PRC-005-1, R1 in its Mitigation Plan, and it certified, on February 5, 2008, completion of this Mitigation Plan as of February 5, 2008, when the revised Program document became effective. On April 21, 2008, MRO reviewed the revised Protection System Maintenance and Testing Program documentation COE-OD submitted in support of its Certification of Completion, and verified that the Mitigation Plan was completed.

Mitigation Plan MIT-07-0451 (for violation MRO200700018), was accepted by MRO on March 17, 2008, was approved by NERC on March 20, 2008, and was submitted to FERC as non-public information on March 20, 2008, in accordance with FERC orders.

In Mitigation Plan MIT-07-0451, COE-OD stated that four of its facilities (Fort Peck, Garrison, Big Bend and Gavins Point) were currently in compliance with PRC-005-1, R2, but that the remaining two facilities (Oahe and Fort Randall) were behind schedule for some devices. In order to comply with the Reliability Standards, COE-OD stated that the Maintenance and

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<sup>5</sup> See 18 C.F.R § 39.7(d)(7).



Operations supervisors at all six generating stations would inventory all protective system maintenance and testing requirements for incorporation into a unified tracking system and would document that system, along with current status, and upload it to the MRO-CDMS prior to May 1, 2008. COE-OD further indicated that it would provide verification that maintenance and testing was on schedule by June 30, 2008, thereby bringing itself into compliance with the requirement of PRC-005-1 R2. COE-OD certified completion of the Mitigation Plan on June 30, 2008. MRO utilized a random sampling program and requested testing and maintenance records for certain identified elements at each of the six facilities. On March 16, 2009, MRO reviewed the maintenance and test records and verified the Mitigation Plan was complete.

### **Statement Describing the Proposed Penalty, Sanction or Enforcement Action Imposed<sup>6</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, the NERC BOTCC reviewed the NOCV and supporting documentation on February 8, 2009. The BOTCC approved the assessment of a zero dollar (\$0) penalty against COE-OD based upon MRO's findings and determinations, the NERC BOTCC's review of the applicable requirements of the Commission-approved Reliability Standards and the underlying facts and circumstances of the violations at issue.

In reaching this determination, the NERC BOTCC considered the following: (1) the violations occurred in 2007, were reported in 2007, and were corrected in 2007 and 2008. While the violations occurred during 2007, COE-OD operated under approved Mitigation Plans through 2008 to correct the violations, which were completed on time. Therefore, penalties that would have accrued during the period the Mitigation Plans were in place were held in abeyance and were ultimately obviated due to timely completion of the Mitigation Plans; (2) the violations of PRC-005 were a failure to perform the action required by the Reliability Standard because the registered entity was testing its system protection devices, but was behind schedule on approximately 5% of the required devices; (3) the violations were a failure to appropriately document, as required by the Reliability Standards, the Facilities Ratings Methodology and the distribution Protection System and Maintenance Testing Program; (4) this was the first offense by COE-OD of the referenced Reliability Standards and their requirements; (5) there were no repetitive violations by COE-OD and COE-OD took corrective action to self-certify and mitigate the non-compliance; (6) COE-OD was cooperative in the violation investigation by MRO and did not contest MRO's confirmation of the violation and the proposed penalty; (7) the violations were deemed by MRO not to be violations that put bulk power system reliability at serious or substantial risk because, while deficient, there were documented Facility Ratings methodology and testing and maintenance programs in place; and (8) the Mitigation Plans were completed as verified by MRO.

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

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<sup>6</sup> See 18 C.F.R § 39.7(d)(4).

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.

#### **Attachments Included as Part of the Notice of Penalty**

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

1. 2007 Self-Certification Worksheet, Corps of Engineers, dated October 23, 2007, included as Attachment a;
2. Mitigation Plan Submittal Form, MR0200700014 and MR0200700015, dated February 5, 2008, included as Attachment b;
3. Mitigation Plan Submittal Form, MR0200700017 and Certification of Completion, including Omaha District Standard Operating Procedure PRC-005-1, dated February 5, 2008, included as Attachment c;
4. Mitigation Plan Submittal Form, MR0200700018, dated February 5, 2008, included as Attachment d;
5. Verification of Completion of Mitigation Plan from MRO, dated April 21, 2008 (MRO 200700017), included as Attachment e;
6. Omaha District Mitigation Milestone Report, dated May 1, 2008, included as Attachment f;
7. Certification of Completion of Mitigation Plans from COE-OD (for MRO200700014, MRO200700015, and MRO200700018), dated June 30, 2008, included as Attachment g; and
8. Verification of Completion of Mitigation Plans (MRO200700014, MRO200700015, and MRO200700018) from MRO, included as Attachment h.

#### **A Form of Notice Suitable for Publication**

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

## 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.

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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,

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cc: U.S. Army Corps of Engineers-Omaha District  
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Attachment(s)