NERC
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

November 9, 2010

VIA ELECTRONIC FILING

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

Re: NERC Supplemental Notice of Penalty filing regarding Kiowa Power Partners, LLC and revised Settlement Agreement, FERC Docket No. NP10-149-000

Dear Ms. Bose:

On July 30, 2010, the North American Electric Reliability Corporation ("NERC") submitted a Settlement Agreement between Texas Reliability Entity, Inc. ("Texas RE") and Kiowa Power Partners, LLC ("Kiowa") in a Notice of Penalty regarding a violation of Reliability Standard FAC-003-1 Requirement (R) 2.

On August 27, 2010, the Director of Enforcement of the Federal Energy Regulatory Commission ("Commission" or "FERC") issued a data and document request, which directed NERC and Texas RE to submit additional information no later than September 17, 2010, regarding the July 30, 2010 Notice of Penalty.[1] An extension of time was ultimately granted to and including November 8, 2010 to allow NERC and Texas RE to complete the review of responsive data and to finalize and file the data request response. NERC and Texas RE submitted the data responses on November 8, 2010.

By this filing NERC submits a revised Settlement Agreement that supersedes the prior filed Settlement Agreement and includes additional violations of Reliability Standards FAC-008-1 R1 and FAC-009-1 R1. The violations of FAC-008-1 R1 and FAC-009-1 R1 have both been mitigated. The revised assessed penalty amount for the three violations is $28,000.

Basis for Revised Settlement Agreement

As discussed below, the two additional violations were identified by Texas RE as it reviewed information in preparation of its response to the request for information issued in this docket. Included as part of this filing are clean and redlined

[1] *North American Electric Reliability Corporation*, 132 FERC ¶ 62,139 (2010).

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versions of the revised Settlement Agreement and Disposition Documents for each of the violations.

FAC-008-1 R1

In preparing its responses to the data request, Texas RE reviewed Kiowa's Facility Ratings Methodology, facility ratings, and communications of the facility ratings to Electric Reliability Council of Texas, Inc. ("ERCOT"). Texas RE determined that, at the time of the August 1 and 3, 2008 ground faults, Kiowa had documented Facility Ratings Methodologies dated May 18, 2007 (Initial), March 19, 2008 (Revision 1), and Kiowa currently also has a documented Facility Ratings Methodology dated September 13, 2010 (Revision 2). FAC-008-1 R1 requires that the Transmission Owner and Generator Owner shall each document its current methodology used for developing Facility Ratings (Facility Ratings Methodology) of its solely and jointly owned Facilities.

Texas RE concluded that the May 18, 2007 Facility Ratings Methodology failed to state that Kiowa addressed its requirements as a Transmission Owner. Therefore, Texas RE has determined that the May 18, 2007 Facility Ratings Methodology was not compliant with FAC-008-1 R1. Based upon its review of the later effective Facility Ratings Methodology, Texas RE determined that Kiowa's March 19, 2008 methodology was compliant with FAC-008-1 R1, and that Kiowa continued to make improvements in documenting its Facility Ratings Methodology with its revised and improved September 13, 2010 Facility Ratings Methodology, which also is compliant with FAC-008-1 R1.

As part of its record review for the data request response, Texas RE confirmed that Kiowa considered clearance or line sag, conductor operating temperatures and clearances, conductor motion, right of way issues, lightning performance and insulation, insulator swing and environmental factors as part of its Facility Ratings Methodology. Kiowa's line design criteria included a 26-foot clearance, but on August 5, 2008, Kiowa discovered that, because of the misplacement of the pole, the actual (as-built) line sag in this span was as low as 22 feet. In reviewing the reliable operation of the circuit, among other things, Kiowa's design consultant advised Kiowa that until the additional pole was installed, the line would meet NESC clearances, so long as the ambient temperature remained at approximately 95 degrees (assuming full plant output and dual circuit-normal operation). The consultant further advised Kiowa that based upon historic weather conditions, the line should experience very few hours with excessive sag. Based upon this information and observation of actual clearances, Kiowa did not re-rate its facility rating prior to the installation of the additional pole, but it did arrange for the September 12, 2008 plant outage to allow the installation of the pole as quickly as the new pole and other materials could be delivered and a construction crew mobilized, in advance of its scheduled November outage. Kiowa also took safety precautions to notify the property owner of the additional sag and to post placard warnings on the owner's restricted access game farm to warn personnel of overhead high voltage lines.

The duration of the FAC-008-1 R1 violation was determined to be from June 18, 2007 to March 19, 2008.

FAC-009-1 R1

With respect to the FAC-009-1 violation, that standard requires that the Transmission Owner and Generator Owner shall each establish facility ratings for its solely and jointly owned facilities that are consistent with the associated Facility Ratings Methodology. Texas RE determined that Kiowa's above actions constitute a violation of FAC-009-1 R1, because Kiowa's established rating was not consistent with the design criteria of a 26-foot clearance under its Facility Ratings Methodology. Kiowa corrected this violation when it installed the additional pole on September 12, 2008.

Accordingly, the violation duration was determined to be from June 18, 2007 to September 12, 2008.

Mitigation Action Summary

Kiowa mitigated its violation of FAC-008-1 on March 19, 2008, when it corrected its Facility Ratings Methodology to state that Kiowa addressed its requirements as a Transmission Owner and to include consideration of the transmission design criteria. Kiowa mitigated its violation of FAC-009-1 on September 12, 2008, when it installed the intermediate transmission pole, as part of its mitigation plan to alleviate the excess sagging of the line.

Therefore, no further mitigation actions are required.

BOTCC Consideration

The NERC BOTCC reviewed the revised Settlement Agreement and supporting documentation on November 2, 2010. The NERC BOTCC approved the revised assessment of a twenty-eight thousand dollar ($28,000) financial penalty against Kiowa based upon Texas RE'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 violation at issue.

Conclusion

NERC respectfully requests that the Commission accept the attached revised Settlement Agreement and additional Disposition Documents as supplements to the Notice of Penalty in Docket No. NP10-149-000 and find that they are compliant with its rules, regulations and orders.

Respectfully submitted,

/s/ *Rebecca J. Michael*

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Enclosure: Attachments

cc: Official service list in Docket No. NP10-149-000

Revised Settlement Agreement between Texas Reliability Entity, Inc. and Kiowa Power Partners, LLC dated November 8, 2010
(clean version)

TEXAS RELIABILITY ENTITY

SETTLEMENT AGREEMENT
OF
TEXAS RELIABILITY ENTITY, INC.
AND
KIOWA POWER PARTNERS, LLC

I. Introduction

1. North American Electric Reliability Corporation (NERC) delegated authority to Texas Reliability Entity, Inc. to become the regional entity for the Electric Reliability Council of Texas, Inc. (ERCOT) region effective July 1, 2010, pursuant to Section 215(e)(4) of the Federal Power Act. NERC also delegated to Texas Reliability Entity, Inc. the authority and responsibility for the continuation of all compliance monitoring and enforcement activities that it had previously delegated to Texas Regional Entity (a division of ERCOT). The term "Texas RE" is used herein to refer to both Texas Regional Entity and Texas Reliability Entity, Inc.

2. Texas RE and Kiowa Power Partners, LLC ("Kiowa") enter into this Settlement Agreement ("Agreement") to resolve all outstanding issues arising from Texas RE's determination and findings, pursuant to the NERC Rules of Procedure, of violation by Kiowa of the following NERC Reliability Standards from a Periodic Data Submittal reported on September 15, 2008: FAC-003-1, Requirement 2 (R2), FAC-009-1, Requirement 1(R1), and FAC-008-1, Requirement 1 (R1).

II. Stipulation

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

A. Background

4. Kiowa is a Delaware limited liability company qualified to do business in the state of Oklahoma. Kiowa's home office is located in Omaha, Nebraska. Kiowa owns a 1220 MW combined cycle, gas-fired electric generation station located in Pittsburg County, Oklahoma. Electricity generated from Kiowa's facility is tolled under an electricity manufacturing agreement with its sole customer Shell Energy North America for resale.

5. Kiowa was registered on the NERC Compliance Registry for the Transmission Owner function for its facilities on June 28, 2007 and has been continuously registered as such through the date of this Agreement. The ERCOT region portion of the Generator Interconnection Facility contains nineteen circuit miles (4.5 miles of which are owned by Kiowa); nine miles of dual circuit and one mile of single circuit. There are no other plants, other than the station located in Pittsburg County, Oklahoma, connected to these circuits.

6. Texas RE received a Periodic Data Submittal from Kiowa on September 15, 2008, regarding two (2) circuit faults reported as part of its Vegetation Management

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Program. As a registered Transmission Owner, Kiowa was subject to the Requirements of NERC Reliability Standard FAC-003-1, including R2, NERC Reliability Standard FAC-009-1, including R1, and NERC Reliability Standard FAC-008-1, including R1, from June 28, 2007 through the date of the Periodic Data Submittal.

7. Texas RE requested additional information regarding the circumstances of the faults, the discovery process, details of the fault location, and the circuit-loading at the times of both faults.

8. On November 17, 2008, Kiowa submitted additional information regarding the specific characteristics of the faults as requested. Texas RE reviewed the Periodic Data Submittal and the additional information in its analysis.

9. During its review of this matter, Texas RE also requested and received from Kiowa additional information regarding Kiowa's Facility Ratings Methodology and facility ratings from it registration date to the present and Kiowa's actions after the faults.

10. Kiowa notified Texas RE that after it discovered on August 4, 2008 a 17-18 foot tall tree that had caused faults on one of the dual circuit transmission lines due to sag in the line because of the installation of a transmission pole in the incorrect location, it removed the tree on August 5, 2008. Kiowa had also retained a design consultant on August 12, 2008 to begin its review of the as-built transmission line and make recommendations regarding the timing and details of recommended corrections. Kiowa ordered a new pole, which was installed on September 12, 2008, in advance of Kiowa's previously scheduled November outage.

B. Alleged Violations

11. During the review of the Periodic Data Submittal and additional information, Texas RE determined that Kiowa did not properly execute its Vegetation Management Program, resulting in two (2) instances of ground faults, which in turn, resulted in one (1) alleged violation of the NERC Reliability Standard FAC-003-1, R2.

12. On November 17, 2008, Texas RE sent Kiowa a Preliminary Notice of Alleged Violation ("PNAV") notifying Kiowa that it had allegedly violated NERC Reliability Standard FAC-003-1, R2.

13. FAC-003-1, R2 requires that the Transmission Owner shall create and implement an annual plan for vegetation management work to ensure the reliability of the system. The plan shall describe the methods used, such as manual clearing, mechanical clearing, herbicide treatment, or other actions. The plan should be flexible enough to adjust to changing conditions, taking into consideration anticipated growth of vegetation and all other environmental factors that may have an impact on the reliability of the transmission systems. Adjustments to the plan shall be documented as they occur. The plan should take into consideration the time required to obtain permissions or permits from landowners or regulatory authorities. Each Transmission Owner shall have systems and procedures for documenting and tracking the planned vegetation management work and ensuring that the vegetation management work was completed according to work specifications. This Requirement has a "High" Violation Risk Factor ("VRF").

14. The first of the two (2) ground faults occurred on August 1, 2008. The first fault occurred on the C Phase of a 345 kV Kiowa transmission line located in Northern

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Texas. At the time, the circuit was loaded at 588 MW The resulting outage lasted approximately 6 hours and limited plant output to approximately 1,000 MW. After a visual inspection revealed no obvious contacts of vegetation in regard to the circuit at the suspected fault location, the circuit was re-energized. A second fault occurred on August 3, 2008, again on the C Phase of the same circuit. At the time, the circuit was loaded at 593 MW. The resulting outage lasted approximately 1.5 hours and limited plant output to approximately 1,000 MW. The second event occurred at the same location as the prior event which had been investigated for vegetation with no corrective actions identified. Investigation of the suspected location did not reveal any damage. Discussions with the contractor led to a decision to reclose breaker if the alarm cleared normally, which it did. Digital Fault Recording data investigated on August 4, 2008, revealed the Fault Location to be 6.4 miles north of the Kiowa Switching Station in Savoy, TX. The cause of the fault was identified to be a tree located directly under the C Phase of the circuit. The tree was immediately removed on August 5, 2008.

15. Previously, in April 2008, the subject tree had been estimated to be 13-14 feet tall and was flagged as a priority two (2) work case, to be addressed after all priority one (1) cases. Kiowa's Clearance 2 requirement for this line is 10 feet. At the time of the April 2008 inspection, this span had a clearance greater than 10 feet to vegetation (while loaded to 500 MW per circuit with a ~1200 MW total maximum capability on a 58 F cool day). However, at an on-site investigation, after the aforementioned faults, the span in question was found to be sagging down to 22 feet above the ground, while it was designed for a clearance of 26 feet. At the August 5, 2008 on-site inspection, the line was dispatched to MAX (~1172MW - 586 MW per circuit). The tree was estimated to be 17-18 feet tall at the time of the faults. After reviewing the site, Kiowa determined that one of the transmission poles was out of place. The pole location was determined to be incorrect by a design engineer's review of the site against design data. The pole had been built 100 feet too far south, causing it to be farther away from the adjacent pole than designed, which resulted in the excess sagging. The proper spacing of the poles should have been 862 feet but instead was 962 feet.

16. Texas RE has reviewed the Periodic Data Submittal, and has determined that although there were two (2) instances of ground faults, these faults were symptomatic of a single instance of an improperly executed Vegetation Management Program. As such, these faults will be treated as a single violation of FAC-003-1, R2.

17. FAC-008-1 R1 requires that the Transmission Owner and Generator Owner shall each document its current methodology used for developing Facility Ratings (Facility Ratings Methodology) of its solely and jointly owned Facilities. This Requirement has a "Lower" Violation Risk Factor ("VRF").

18. In Texas RE's review of Kiowa's Facility Ratings Methodology, facility ratings, and communications of the facility ratings to ERCOT, it determined that, at the time of the above-described ground faults, Kiowa had documented Facility Ratings Methodologies dated May 18, 2007 (Initial), March 19, 2008 (Revision 1), and Kiowa currently also has a documented Facility Ratings Methodology dated September 13, 2010 (Revision 2). The May 18, 2007 Facility Ratings Methodology failed to state that Kiowa addressed its requirements as a Transmission Owner. Texas RE has determined that the May 18, 2007 Facility Ratings Methodology was not compliant with FAC-008-1, R1. Texas RE determined that Kiowa's March 19,

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2008 methodology was compliant with FAC-008-1, R1, and that Kiowa continued to make improvements in documenting its Facility Ratings Methodology with its revised and improved September 13, 2010 Facility Ratings Methodology, which is also compliant with FAC-008-1, R1.

19. FAC-009-1 requires that the Transmission Owner and Generator Owner shall each establish facility ratings for its solely and jointly owned Facilities that are consistent with the associated Facility Ratings Methodology. This Requirement has a "Medium" VRF.

20. Texas RE confirmed that Kiowa considered clearance or line sag, conductor operating temperatures and clearances, conductor motion, right of way issues, lightning performance and insulation, insulator swing and environmental factors as part of its Facility Ratings Methodology. Kiowa's line design criteria included a 26-foot clearance, but on August 5, 2008, Kiowa discovered that, because of the misplacement of the pole, the actual (as-built) line sag in this span was as low as 22 feet. In reviewing the reliable operation of the circuit, among other things, Kiowa's design consultant advised Kiowa that until the additional pole was installed, the line would meet NESC clearances, so long as the ambient temperature remained at approximately 95 degrees (assuming full plant output and dual circuit-normal operation). The consultant further advised Kiowa that based upon historic weather conditions, the line should experience very few hours with excessive sag. Based upon this information and observation of actual clearances, Kiowa did not re-rate the line prior to the installation of the additional pole, but it did arrange for the September 12, 2008 plant outage to allow the installation of the pole as quickly as the new pole and other materials could be delivered and a construction crew mobilized, in advance of its scheduled November outage. Kiowa also took safety precautions to notify the property owner of the additional sag and to post placard warnings on the owner's restricted access game farm to warn personnel of overhead high voltage lines.

21. Texas RE determined that this constitutes a violation of FAC-009-1, R1, because Kiowa's established rating was not consistent with the design criteria of a 26-foot clearance under its Facility Ratings Methodology. Kiowa corrected and mitigated this violation when it installed the additional pole on September 12, 2008.

22. During Texas RE's analysis, Kiowa has been cooperative with Texas RE, responding to all of Texas RE's requests for information in a timely manner, and has often met or exceeded expectations. Kiowa also chose to install an additional pole to correct for the sag due to the improperly placed pole as soon as the materials could be obtained and a construction crew mobilized, and in advance of its November scheduled outage. Furthermore, Kiowa has demonstrated an exemplary reliability compliance program.

23. With regard to the violations of FAC-003-1, R2, FAC-008-1, R1, and FAC-009-1, R1, Texas RE considered the following factors in analyzing an appropriate penalty to assess: (a) Kiowa's cooperation during the discovery process, (b) Kiowa's appropriate culture of compliance, including staffing with a Reliability Compliance Manager, (c) Kiowa undertaking action to evaluate the reliable operation of the circuit until the additional pole could be installed while taking necessary safety precautions with the property owner, and (d) the fact that the FAC-008-1, R1 violation is a documentation violation.

24. Under these circumstance and given that Kiowa is performing the additional steps to enhance reliability in ERCOT through the actions outlined below, Texas RE has

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assessed Kiowa twenty-eight thousand dollars ($28,000.00) in monetary penalties for the alleged violations.

III. PARTIES' SEPARATE REPRESENTATIONS

C. STATEMENTS OF TEXAS RE AND SUMMARY OF FINDINGS

25. During its review of the September 15, 2008 Periodic Data Submittal from Kiowa and the November 17, 2008 additional information, Texas RE found one (1) violation of NERC Reliability Standard FAC-003-1, R2. The violation was in regard to Kiowa's inability to properly execute their Vegetation Management Program. This alleged violation occurred between August 1, 2008 and August 4, 2008 and was issued NERC Violation #: TRE200800063.

26. During its review of Kiowa's Facility Ratings Methodology and facility ratings, Texas RE found violations of NERC Reliability Standards FAC-008-1, R1 and FAC-009-1, R1.

27. Texas RE and Kiowa, with NERC's approval, have entered into an agreed upon Mitigation Plan, which is attached hereto at Exhibit B. Kiowa corrected its Facility Ratings Methodology, mitigating its FAC-008, R1 violation, on March 19, 2008. On September 12, 2008, by correcting the clearance and sag, Kiowa's ratings were consistent with the associated Facility Ratings Methodology.

28. Texas RE agrees that this Agreement is in the best interest of the parties and in the best interest of bulk power system reliability.

D. STATEMENTS OF KIOWA

29. Kiowa neither admits nor denies that the facts set forth and agreed to by the parties for purposes of this Agreement constitute violations of FAC-003-1, R2, FAC-008, R1, and/or FAC-009-1, R1.

30. Kiowa does not contest the alleged violations of FAC-003-1, R2, FAC-008, R1, and/or FAC-009-1, R1, or proposed penalties for such violations, and Kiowa corrected its Facility Ratings Methodology and agreed to submit and implement a Mitigation Plan for the FAC-003, R2 violation. Kiowa had already corrected its Facility Ratings Methodology on March 19, 2008, and Kiowa submitted its formal Mitigation Plan on November 20, 2008 and formally certified that it completed the Mitigation Plan on March 4, 2009.

31. Kiowa neither agrees nor disagrees to the claim of an alleged violations of FAC-003-1, R2, FAC-008-1, R1, and/or FAC-009-1, R1 and has entered into this Agreement with Texas RE to resolve the alleged violations to avoid extended litigation and potential uncertainty regarding the matters described herein, and to effectuate a complete and final resolution of the issues set forth herein. Kiowa 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

32. Kiowa corrected its Facility Ratings Methodology and, therefore has mitigated its violation under FAC-008-1 R1. Kiowa corrected its Facility Ratings Methodology, by

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including consideration of the transmission design criteria, in its revised March 19, 2008 methodology. Kiowa has agreed to and has already completed a Mitigation Plan for the FAC-003-1, R2. The actions completed as part of the Mitigation Plan for FAC-003-1, R2 also mitigated the violation of FAC-009-1, R1. As discussed above, on August 4, 2008, Kiowa took action to locate the source and cause of the ground faults, and remedied the problem by removing the tree that caused the faults on the circuit. On August 6, 2008, Kiowa performed a more comprehensive investigation into the underlying cause of the faults and determined that the span on which the fault occurred had its southern pole out of place, being located 100 feet too far to the south. This resulted in a span longer than designed, allowing sagging on the circuit in excess of what was considered in the Facility Ratings Methodology. On September 12, 2008, Kiowa took a forced outage to install an intermediate transmission pole at the faults' location, which would alleviate the excess sagging.

33. In arriving at the penalty amount, Texas RE considered that Kiowa acted quickly, taking actions above and beyond merely removing the vegetation by a) immediately mobilizing a contractor to order the necessary materials and plan the installation of the new pole, b) coordinating the installation of the new pole with the affected land owner, c) undertaking action to evaluate the reliable operation of the circuit until the additional pole could be installed while taking necessary safety precautions with the property owner, and d) working with Kiowa's tolling counterparty to take a nine hour forced outage prior to its Fall scheduled outage in order to install an intermediate pole in the transmission line span. This outage was at additional expense to Kiowa and associated counterparties of between $150,000 and $175,000. Texas RE also considered that the installation of this pole eliminated the excess sag condition responsible for the vegetation-related event that would not have occurred but for the excess sag created by the contractor constructing the southern pole of the span in an incorrect location. In addition, Kiowa has agreed to develop and present training at two upcoming Texas RE compliance workshops. One presentation will focus on the Report from the Ad Hoc Group for Generator Requirements at the Transmission Interface ("Report"). The Report, which addresses issues of potential reliability gaps, registration compliance, and standards revisions in connection with Generator Owner and Generator Operator facilities up to the transmission interface, has wide-spread industry implications. The training will provide a forum for Generator Owners and Generator Operators to understand the issues and the process being undertaken by the Ad Hoc Group. Kiowa has also agreed to provide a presentation at an upcoming Texas RE compliance workshop about Kiowa's and Tenaska's (Kiowa's parent company) multi-reliability region compliance program and culture of compliance with the purpose of sharing lessons learned and corporate best practices. Texas RE compliance workshops are attended by Generator Operators, Generator Owners, transmission/distribution service providers, ERCOT ISO and the Public Utility Commission of Texas. Texas RE sponsors and hosts the workshops bi-yearly to allow market participants, within the region, to learn more about compliance.

34. For purposes of settling any and all disputes, Texas RE and Kiowa agree that after the effective date of this Agreement, Kiowa will pay to Texas RE a monetary penalty in the amount of $28,000.00 for the alleged violations.

35. Kiowa shall pay to Texas RE the penalty of $28,000.00 within twenty (20) days after receipt of an invoice from Texas RE to be issued after this Agreement is either approved by NERC and approved by the Federal Energy Regulatory Commission

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(the Commission) through an Order or by operation of law. Texas RE shall notify NERC if the payment is not timely received.

36. Any failure by Kiowa 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 Agreement shall be deemed to be either the same alleged violation that initiated this Settlement and/or additional violation(s) and may subject Kiowa to new or additional enforcement, penalty or sanction actions in accordance with the NERC Rules of Procedure.

37. If Kiowa does not make the monetary penalty payment above by the date agreed by the parties herein, interest payable to Texas RE 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

38. Texas RE 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 Texas RE and Kiowa 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 Texas RE will attempt to negotiate a revised settlement agreement with Kiowa 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 violations and the terms provided for in the settlement.

39. This Agreement shall become effective upon NERC approval 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.

40. Kiowa agrees that this Agreement, when approved by NERC and the Commission, shall represent a final settlement of all matters set forth herein and Kiowa waives its right to further hearings and appeal, unless and only to the extent that Kiowa contends that any NERC or Commission action on the Agreement contains one or more material modifications to the Agreement. Texas RE reserves all rights to initiate enforcement, penalty or sanction actions against Kiowa in accordance with the NERC Rules of Procedure in the event that Kiowa fails to comply with the mitigation plan and compliance program agreed to in this Agreement. In the event Kiowa fails to comply with any of the stipulations, remedies, sanctions or additional terms, as set forth in this Agreement, Texas RE will initiate enforcement, penalty, or sanction actions against Kiowa to the maximum extent allowed by the NERC Rules of Procedure, up to the maximum statutorily allowed penalty. Kiowa shall retain all rights to defend against such enforcement actions, also according to the NERC Rules of Procedure.

41. Kiowa consents to the use of Texas RE'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

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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 Texas RE; provided, however, that Kiowa 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 Texas RE, nor does Kiowa consent to the use of this Agreement by any other party in any other action or proceeding.

42. 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.

43. 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.

44. The Agreement may be signed in counterparts.

45. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:

11/8/10

Larry D. Grimm
President & Chief Executive Officer
Texas Reliability Entity, Inc.

Date

11/8/10

Todd S. Jonas
Vice President, Operations
Tenaska Oklahoma, Inc. Managing Member
Kiowa Power Partners, LLC

Date

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Revised Settlement Agreement between Texas Reliability Entity, Inc. and Kiowa Power Partners, LLC dated November 8, 2010 (redline version comparing the November 8, 2010 Settlement Agreement with the original April 12, 2010 Settlement Agreement)

SETTLEMENT AGREEMENT
OF
TEXAS ~~REGIONAL~~RELIABILITY ENTITY, INC.
AND
KIOWA POWER PARTNERS, LLC

I. Introduction

1. ~~Texas Regional Entity ("Texas RE")~~North American Electric Reliability Corporation (NERC) delegated authority to Texas Reliability Entity, Inc. to become the regional entity for the Electric Reliability Council of Texas, Inc. (ERCOT) region effective July 1, 2010, pursuant to Section 215(e)(4) of the Federal Power Act. NERC also delegated to Texas Reliability Entity, Inc. the authority and responsibility for the continuation of all compliance monitoring and enforcement activities that it had previously delegated to Texas Regional Entity (a division of ~~Electric Reliability Council of Texas, Inc.~~ERCOT). The term "Texas RE" is used herein to refer to both Texas Regional Entity and Texas Reliability Entity, Inc.

~~1.~~2. Texas RE and Kiowa Power Partners, LLC ("Kiowa") enter into this Settlement Agreement ("Agreement") to resolve all outstanding issues arising from Texas RE's determination and findings, pursuant to the ~~North American Electric Reliability Corporation ("~~NERC~~")~~ Rules of Procedure, of ~~a~~ violation by Kiowa of the following NERC Reliability ~~Standard FAC-003-1, Requirement 2 (R2)~~Standards from a Periodic Data Submittal reported on September 15, 2008~~.~~: FAC-003-1, Requirement 2 (R2), FAC-009-1, Requirement 1(R1), and FAC-008-1, Requirement 1 (R1).

II. Stipulation

~~2.~~3. The facts stipulated herein are stipulated solely for the purpose of resolving between Texas RE and Kiowa the matters discussed herein and do not constitute stipulations or admissions for any other purpose. Texas RE and Kiowa hereby stipulate and agree to the following:

A. Background

~~3.~~4. Kiowa is a Delaware limited liability company qualified to do business in the state of Oklahoma. Kiowa's home office is located in Omaha, Nebraska. Kiowa owns a 1220 MW combined cycle, gas-fired electric generation station located in Pittsburg County, Oklahoma. Electricity generated from Kiowa's facility is tolled under an electricity manufacturing agreement with its sole customer Shell Energy North America for resale.

~~4.~~5. Kiowa was registered on the NERC Compliance Registry for the Transmission Owner function for its facilities on June 28, 2007 and has been continuously

registered as such through the date of this Agreement. The ERCOT region portion of the Generator Interconnection Facility contains nineteen circuit miles; nine miles of dual circuit and one mile of single circuit. There are no other plants, other than the station located in Pittsburg County, Oklahoma, connected to these circuits.

~~5.~~6. Texas RE received a Periodic Data Submittal from Kiowa on September 15, 2008, regarding two (2) circuit faults reported as part of its Vegetation Management Program. As a registered Transmission Owner, Kiowa was subject to the Requirements of NERC Reliability Standard FAC-003-1, including R2, NERC Reliability Standard FAC-009-1, including R1, and NERC Reliability Standard FAC-008-1, including R1, from June 28, 2007 through the date of the Periodic Data Submittal.

~~6.~~7. Texas RE requested additional information regarding the circumstances of the faults, the discovery process, details of the fault location, and the circuit-loading at the times of both faults.

~~7.~~8. On November 17, 2008, Kiowa submitted additional information regarding the specific characteristics of the faults as requested. Texas RE reviewed the Periodic Data Submittal and the additional information in its analysis.

9. During its review of this matter, Texas RE also requested and received from Kiowa additional information regarding Kiowa's Facility Ratings Methodology and facility ratings from it registration date to the present and Kiowa's actions after the faults.

10. Kiowa notified Texas RE that after it discovered on August 4, 2008 a 17-18 foot tall tree that had caused faults on one of the dual circuit transmission lines due to sag in the line because of the installation of a transmission pole in the incorrect location, it removed the tree on August 5, 2008. Kiowa had also retained a design consultant on August 12, 2008 to begin its review of the as-built transmission line and make recommendations regarding the timing and details of recommended corrections. Kiowa ordered a new pole, which was installed on September 12, 2008, in advance of Kiowa's previously scheduled November outage.

B. Alleged Violations

~~8.~~11. During the review of the Periodic Data Submittal and additional information, Texas RE determined that Kiowa did not properly execute its Vegetation Management Program, resulting in two (2) instances of ground faults, which in turn, resulted in one (1) alleged violation of the NERC Reliability Standard FAC-003-1, R2.

~~9.~~12. On November 17, 2008, Texas RE sent Kiowa a Preliminary Notice of Alleged Violation ("PNAV") notifying Kiowa that it had allegedly violated NERC Reliability Standard FAC-003-1, R2.

~~10.~~13. FAC-003-1, R2 requires that the Transmission Owner shall create and implement an annual plan for vegetation management work to ensure the reliability of the system. The plan shall describe the methods used, such as manual clearing,

mechanical clearing, herbicide treatment, or other actions. The plan should be flexible enough to adjust to changing conditions, taking into consideration anticipated growth of vegetation and all other environmental factors that may have an impact on the reliability of the transmission systems. Adjustments to the plan shall be documented as they occur. The plan should take into consideration the time required to obtain permissions or permits from landowners or regulatory authorities. Each Transmission Owner shall have systems and procedures for documenting and tracking the planned vegetation management work and ensuring that the vegetation management work was completed according to work specifications. This Requirement has a "High" Violation Risk Factor ("VRF").

~~11.~~14. The first of the two (2) ground faults occurred on August 1, 2008. The first fault occurred on the C Phase of a 345 kV Kiowa transmission line located in Northern Texas. At the time, the circuit was loaded at 588 MW The resulting outage lasted approximately 6 hours and limited plant output to approximately 1,000 MW. After a visual inspection revealed no obvious contacts of vegetation in regard to the circuit at the suspected fault location, the circuit was re-energized. A second fault occurred on August 3, 2008, again on the C Phase of the same circuit. At the time, the circuit was loaded at 593 MW. The resulting outage lasted approximately 1.5 hours and limited plant output to approximately 1,000 MW. The second event occurred at the same location as the prior event which had been investigated for vegetation with no corrective actions identified. Investigation of the suspected location did not reveal any damage. Discussions with the contractor led to a decision to reclose breaker if the alarm cleared normally, which it did. Digital Fault Recording data investigated on August 4, 2008, revealed the Fault Location to be 6.4 miles north of the Kiowa Switching Station in Savoy, TX. The cause of the fault was identified to be a tree located directly under the C Phase of the circuit. The tree was immediately removed~~.~~ on August 5, 2008.

~~12.~~15. Previously, in April 2008, the subject tree had been estimated to be 13-14 feet tall and was flagged as a priority two (2) work case, to be addressed after all priority one (1) cases. Kiowa's Clearance 2 requirement for this line is 10 feet. At the time of the April 2008 inspection, this span had a clearance greater than 10 feet to vegetation (while loaded to 500 MW per circuit with a ~1200 MW total maximum capability on a 58 F cool day). However, at an on-site investigation, after the aforementioned faults, the span in question was found to be sagging down to 22 feet above the ground, while it was designed for a clearance of 26 feet. At the August 5, 2008 on-site inspection, the line was dispatched to MAX (~1172MW - 586 MW per circuit). The tree was estimated to be 17-18 feet tall at the time of ~~contact.~~the faults. After reviewing the site, Kiowa determined that one of the transmission poles was out of place. The pole location was determined to be incorrect by a design engineer's review of the site against design data. The pole had been built 100 feet too far south, causing it to be farther away from the adjacent pole than designed, which resulted in the excess sagging. The proper spacing of the poles should have been 862 feet but instead was 962 feet.

~~13.~~16. Texas RE has reviewed the Periodic Data Submittal, and has determined that although there were two (2) instances of ground faults, these faults were symptomatic of a single instance of an improperly executed Vegetation Management Program. As such, these faults will be treated as a single violation of FAC-003-1, R2.

17. FAC-008-1 R1 requires that the Transmission Owner and Generator Owner shall each document its current methodology used for developing Facility Ratings (Facility Ratings Methodology) of its solely and jointly owned Facilities. This Requirement has a "Lower" Violation Risk Factor ("VRF").

18. In Texas RE's review of Kiowa's Facility Ratings Methodology, facility ratings, and communications of the facility ratings to ERCOT, it determined that, at the time of the above-described ground faults, Kiowa had documented Facility Ratings Methodologies dated May 18, 2007 (Initial), March 19, 2008 (Revision 1), and Kiowa currently also has a documented Facility Ratings Methodology dated September 13, 2010 (Revision 2). The May 18, 2007 Facility Ratings Methodology failed to state that Kiowa addressed its requirements as a Transmission Owner. Texas RE has determined that the May 18, 2007 Facility Ratings Methodology was not compliant with FAC-008-1, R1. Texas RE determined that Kiowa's March 19, 2008 methodology was compliant with FAC-008-1, R1, and that Kiowa continued to make improvements in documenting its Facility Ratings Methodology with its revised and improved September 13, 2010 Facility Ratings Methodology, which is also compliant with FAC-008-1, R1.

19. FAC-009-1 requires that the Transmission Owner and Generator Owner shall each establish facility ratings for its solely and jointly owned Facilities that are consistent with the associated Facility Ratings Methodology. This Requirement has a "Medium" VRF.

20. Texas RE confirmed that Kiowa considered clearance or line sag, conductor operating temperatures and clearances, conductor motion, right of way issues, lightning performance and insulation, insulator swing and environmental factors as part of its Facility Ratings Methodology. Kiowa's line design criteria included a 26-foot clearance, but on August 5, 2008, Kiowa discovered that, because of the misplacement of the pole, the actual (as-built) line sag in this span was as low as 22 feet. In reviewing the reliable operation of the circuit, among other things, Kiowa's design consultant advised Kiowa that until the additional pole was installed, the line would meet NESC clearances, so long as the ambient temperature remained at approximately 95 degrees (assuming full plant output and dual circuit-normal operation). The consultant further advised Kiowa that based upon historic weather conditions, the line should experience very few hours with excessive sag. Based upon this information and observation of actual clearances, Kiowa did not re-rate its facility rating prior to the installation of the additional pole, but it did arrange for the September 12, 2008 plant outage to allow the installation of the pole as quickly as the new pole and other materials could be delivered and a construction crew mobilized, in advance of its scheduled November outage. Kiowa also took safety

precautions to notify the property owner of the additional sag and to post placard warnings on the owner's restricted access game farm to warn personnel of overhead high voltage lines.

21. Texas RE determined that this constitutes a violation of FAC-009-1, R1, because Kiowa's established rating was not consistent with the design criteria of a 26-foot clearance under its Facility Ratings Methodology. Kiowa corrected and mitigated this violation when it installed the additional pole on September 12, 2008.

~~14.~~22. During Texas RE's analysis, Kiowa has been cooperative with Texas RE, responding to all of Texas RE's requests for information in a timely manner, and has often met or exceeded expectations. Kiowa also chose to install an additional pole to correct for the sag due to the improperly placed pole as soon as the materials could be obtained and a construction crew mobilized, and in advance of its November scheduled outage. Furthermore, Kiowa has demonstrated an exemplary reliability compliance program.

~~15.~~23. ~~*In*~~With regard to the ~~*violation*~~violations of FAC-003-1, R2, FAC-008-1, R1, and FAC-009-1, R1, Texas RE considered the following factors in analyzing an appropriate penalty to assess: (a) Kiowa's cooperation during the discovery process ~~and~~, (b) Kiowa's appropriate culture of compliance, including staffing with a Reliability Compliance Manager, (c) Kiowa undertaking action to evaluate the reliable operation of the circuit until the additional pole could be installed while taking necessary safety precautions with the property owner, and (d) the fact that the FAC-008-1, R1 violation is a documentation violation.

~~16.~~24. Under these circumstance and given that Kiowa is performing the additional steps to enhance reliability in ERCOT through the actions outlined below, Texas RE has ~~*decided to assess*~~ assessed Kiowa twenty-~~five~~eight thousand dollars ($~~*25*~~28,000.00) in monetary penalties for the alleged ~~*violation*~~violations.

III. PARTIES' SEPARATE REPRESENTATIONS

C. STATEMENTS OF TEXAS RE AND SUMMARY OF FINDINGS

~~17.~~25. During its review of the September 15, 2008 Periodic Data Submittal from Kiowa and the November 17, 2008 additional information, Texas RE found one (1) violation of NERC Reliability Standard FAC-003-1, R2. The violation was in regard to Kiowa's inability to properly execute their Vegetation Management Program. This alleged violation occurred between August 1, 2008 and August 4, 2008 and was issued NERC Violation #: TRE200800063.

26. During its review of Kiowa's Facility Ratings Methodology and facility ratings, Texas RE found violations of NERC Reliability Standards FAC-008-1, R1 and FAC-009-1, R1.

~~18.~~27. Texas RE and Kiowa, with NERC's approval, have entered into an agreed upon Mitigation Plan, which is attached hereto at Exhibit B. Kiowa corrected its Facility Ratings Methodology, mitigating its FAC-008, R1 violation, on March 19, 2008. On September 12, 2008, by correcting the clearance and sag, Kiowa's ratings were consistent with the associated Facility Ratings Methodology.

~~19.~~28. Texas RE agrees that this Agreement is in the best interest of the parties and in the best interest of bulk power system reliability.

D. STATEMENTS OF KIOWA

~~20.~~29. Kiowa neither admits nor denies that the facts set forth and agreed to by the parties for purposes of this Agreement constitute ~~a violation~~violations of FAC-003-1, R2, FAC-008, R1, and/or FAC-009-1, R1.

~~21.~~30. Kiowa does not contest the alleged ~~violation~~violations of FAC-003-1, R2, FAC-008, R1, and/or FAC-009-1, R1, or proposed ~~penalty~~penalties for such ~~violation~~violations, and Kiowa corrected its Facility Ratings Methodology and agreed to submit and implement a Mitigation Plan~~.~~ for the FAC-003, R2 violation. Kiowa had already corrected its Facility Ratings Methodology on March 19, 2008, and Kiowa submitted its formal Mitigation Plan on November 20, 2008 and formally certified that it completed the Mitigation Plan on March 4, 2009.

~~22.~~31. Kiowa neither agrees nor disagrees to the claim of an alleged ~~violation~~violations of FAC-003-1, R2, FAC-008-1, R1, and/or FAC-009-1, R1 and has entered into ~~the Settlement~~this Agreement with Texas RE to resolve the alleged ~~violation and~~violations to avoid extended litigation and potential uncertainty regarding the matters described herein, and to effectuate a complete and final resolution of the issues set forth herein. Kiowa 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

~~23.~~32. Kiowa corrected its Facility Rating Methodology and, therefore has mitigated its ~~Facility Rating Methodology~~ violation under FAC-008-1 R1 ~~on March 19, 2008 and~~. Kiowa corrected its Facility Rating Methodology, by including consideration of the transmission design criteria, in its revised March 19, 2008 methodology. Kiowa has agreed to and has already completed a Mitigation Plan~~.~~ for the FAC-003-1, R2. The actions completed as part of the Mitigation Plan for FAC-003-1, R2 also mitigated the violation of ~~and~~ FAC-009-1, R1 ~~alleged violations~~. As discussed above, on August 4, 2008, Kiowa took action to locate the source and cause of the ground faults, and remedied the problem by removing the tree ~~contacting~~that caused the faults on the circuit. On August 6, 2008, Kiowa performed a more comprehensive investigation into the underlying cause of the faults and determined that the span on which the fault occurred had its southern pole out of place, being located 100 feet too far to the south. This resulted in a span longer than designed, allowing sagging

on the circuit in excess of what was ~~contemplated in Kiowa's Vegetation Management Program.~~considered in the Facility Ratings Methodology. On September 12, 2008, Kiowa took a forced outage to install an intermediate transmission pole at the faults' location, which would alleviate the excess sagging. ~~Kiowa corrected its Facility Rating Methodology, by including consideration of the transmission design criteria, in its revised March 19, 2008 methodology.~~

~~24.~~33. In arriving at the penalty amount, Texas RE considered that Kiowa ~~had~~ acted quickly, taking actions above and beyond merely removing the vegetation by a) immediately mobilizing a contractor to order the necessary materials and plan the installation of the new pole, b) coordinating the installation of the new pole with the affected land owner, c) undertaking action to evaluate the reliable operation of the circuit until the additional pole could be installed while taking necessary safety precautions with the property owner, and ~~c~~d) working with Kiowa's tolling counterparty to take a nine hour forced outage prior to its Fall scheduled outage in order to install an intermediate pole in the transmission line span. This outage was at additional expense to Kiowa and associated counterparties of between $150,000 and $175,000. Texas RE also considered that the installation of this pole eliminated the excess sag condition responsible for the vegetation-related event that would not have occurred but for the excess sag created by the contractor constructing the southern pole of the span in an incorrect location. In addition, Kiowa has agreed to develop and present training at two upcoming Texas RE compliance workshops. One presentation will focus on the Report from the Ad Hoc Group for Generator Requirements at the Transmission Interface ("Report"). The Report, which addresses issues of potential reliability gaps, registration compliance, and standards revisions in connection with Generator Owner and Generator Operator facilities up to the transmission interface, has wide-spread industry implications. The training will provide a forum for Generator Owners and Generator Operators to understand the issues and the process being undertaken by the Ad Hoc Group. Kiowa has also agreed to provide a presentation at an upcoming Texas RE compliance workshop about Kiowa's and Tenaska's (Kiowa's parent company) multi-reliability region compliance program and culture of compliance with the purpose of sharing lessons learned and corporate best practices. Texas RE compliance workshops are attended by Generator Operators, Generator Owners, transmission/distribution service providers, ERCOT ISO and the Public Utility Commission of Texas. Texas RE sponsors and hosts the workshops bi-yearly to allow market participants, within the region, to learn more about compliance.

~~25.~~34. For purposes of settling any and all disputes, Texas RE and Kiowa agree that after the effective date of this Agreement, Kiowa will pay to Texas RE a monetary penalty in the amount of $~~25~~28,000.00 for the alleged violations.

~~26.~~35. Kiowa shall pay to Texas RE the penalty of $~~25~~28,000.00 within twenty (20) days after receipt of an invoice from Texas RE to be issued after this Agreement is either approved by NERC and approved by the Federal Energy Regulatory Commission (the Commission) through an Order or by operation of law. Texas RE shall notify NERC if the payment is not timely received.

~~27.~~36. Any failure by Kiowa 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 Agreement shall be deemed to be either the same alleged violation that initiated this Settlement and/or additional violation(s) and may subject Kiowa to new or additional enforcement, penalty or sanction actions in accordance with the NERC Rules of Procedure.

~~28.~~37. If Kiowa does not make the monetary penalty payment above by the date agreed by the parties herein, interest payable to Texas RE 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

~~29.~~38. Texas RE 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 Texas RE and Kiowa 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 Texas RE will attempt to negotiate a revised settlement agreement with Kiowa 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~~violations and the terms provided for in the settlement.

~~30.~~39. This Agreement shall become effective upon NERC approval 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.

~~31.~~40. Kiowa agrees that this Agreement, when approved by NERC and the Commission, shall represent a final settlement of all matters set forth herein and Kiowa waives its right to further hearings and appeal, unless and only to the extent that Kiowa contends that any NERC or Commission action on the Agreement contains one or more material modifications to the Agreement. Texas RE reserves all rights to initiate enforcement, penalty or sanction actions against Kiowa in accordance with the NERC Rules of Procedure in the event that Kiowa fails to comply with the mitigation plan and compliance program agreed to in this Agreement. In the event Kiowa fails to comply with any of the stipulations, remedies, sanctions or additional terms, as set forth in this Agreement, Texas RE will initiate enforcement, penalty, or sanction actions against Kiowa to the maximum extent allowed by the NERC Rules of Procedure, up to the maximum statutorily allowed penalty. Kiowa shall retain all rights to defend against such enforcement actions, also according to the NERC Rules of Procedure.

~~32.~~41. Kiowa consents to the use of Texas RE'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 Texas RE; provided, however, that Kiowa 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 Texas RE, nor does Kiowa consent to the use of this Agreement by any other party in any other action or proceeding.

~~33.~~42. 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.

~~34.~~43. 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.

~~35.~~44. The Agreement may be signed in counterparts.

~~36.~~45. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:

Larry D. Grimm Date
~~CEO~~President & Chief ~~Compliance~~Executive Officer
Texas ~~Regional Entity, a division of~~
~~Electric~~ Reliability ~~Council of Texas~~Entity, Inc.

Todd S. Jonas Date
Vice President, Operations
Tenaska Oklahoma, Inc. Managing Member
Kiowa Power Partners, LLC

Disposition Document for FAC-008-1 R1

DISPOSITION OF VIOLATION
Dated November 8, 2010

NERC TRACKING NO.	REGIONAL ENTITY TRACKING NO.
TRE200800115	TRE201000115

I. VIOLATION INFORMATION

RELIABILITY STANDARD	REQUIREMENT(S)	SUB-REQUIREMENT(S)	VRF(S)	VSL(S)
FAC-008-1	**1**		**Lower**[1]	**Severe**

VIOLATION APPLIES TO THE FOLLOWING FUNCTIONS:

BA	DP	GO	GOP	IA	LSE	PA	PSE	RC	RP	RSG	TO	TOP	TP	TSP
											X			

PURPOSE OF THE RELIABILITY STANDARD AND TEXT OF RELIABILITY STANDARD AND REQUIREMENT(S)/SUB-REQUIREMENT(S)

The purpose statement of FAC-008-1 provides: "To ensure that Facility Ratings used in the reliable planning and operation of the Bulk Electric System (BES) are determined based on an established methodology or methodologies."

FAC-008-1 R1 provides:

R1. The Transmission Owner and Generator Owner shall each document its current methodology used for developing Facility Ratings (Facility Ratings Methodology) of its solely and jointly owned Facilities. The methodology shall include all of the following:

> **R1.1. A statement that a Facility Rating shall equal the most limiting applicable Equipment Rating of the individual equipment that comprises that Facility.**
>
> **R1.2. The method by which the Rating (of major BES equipment that comprises a Facility) is determined.**

[1] FAC-008-1 R1, R1.3 and R1.3.5 each have a "Lower" VRF; R1.1, R1.2, R1.2.1, R1.2.2, R1.3.1-4 each have a "Medium" VRF. When NERC filed VRFs it originally assigned FAC-008-1 R1.1, R1.2, R1.2.1 and R1.2.2 "Lower" VRFs. The Commission approved the VRFs as filed; however, it directed NERC to submit modifications. NERC submitted the modified "Medium" VRFs and on February 6, 2008, the Commission approved the modified "Medium" VRFs. Therefore, the "Lower" VRFs for FAC-008-1 R1.1, R1.2, R1.2.1 and R1.2.2 were in effect from June 18, 2007 until February 6, 2008 when the "Medium" VRFs became effective.

R1.2.1. The scope of equipment addressed shall include, but not be limited to, generators, transmission conductors, transformers, relay protective devices, terminal equipment, and series and shunt compensation devices.

R1.2.2. The scope of Ratings addressed shall include, as a minimum, both Normal and Emergency Ratings.

R1.3. Consideration of the following:

R1.3.1. Ratings provided by equipment manufacturers.

R1.3.2. Design criteria (e.g., including applicable references to industry Rating practices such as manufacturer's warranty, IEEE, ANSI or other standards).

R1.3.3. Ambient conditions.

R1.3.4. Operating limitations.

R1.3.5. Other assumptions.

VIOLATION DESCRIPTION

After Kiowa's Periodic Data Submittal submitted on September 15, 2008 identified a violation of FAC-003-1 R2, Texas RE reviewed Kiowa's Facility Ratings Methodology.[2] Texas RE determined that, at the time of the ground faults described in the FAC-003-1 R2 violation, Kiowa had documented Facility Ratings Methodologies dated May 18, 2007 (Initial), March 19, 2008 (Revision 1), and Kiowa currently also has a documented Facility Ratings Methodology dated September 13, 2010 (Revision 2). The May 18, 2007 Facility Ratings Methodology failed to state that Kiowa addressed its requirements as a Transmission Owner, and therefore, Texas RE determined that the May 18, 2007 Facility Ratings Methodology was not compliant with FAC-008-1 R1. Texas RE determined that Kiowa's March 19, 2008 methodology was compliant with FAC-008-1 R1, and Kiowa continued to make improvements in documenting its Facility Ratings Methodology with its revised and improved September 13, 2010 Facility Ratings Methodology, which was also compliant with FAC-008-1 R1.

RELIABILITY IMPACT STATEMENT- POTENTIAL AND ACTUAL

Texas RE determined that the violation did not pose a serious or substantial risk to the reliability of the bulk power system (BPS) because, had Kiowa's Facility Rating been incorrectly established and, as a result, created a loss of Kiowa's transmission line, the loss of Kiowa's single transmission line would isolate Kiowa's generation plant and the only effect on the grid would be the loss of the 1220 MW provided by Kiowa, which could be purchased on the spot market. Additionally, Kiowa's

[2] Texas RE re-reviewed Kiowa's Facility Ratings Methodology in response to questions issued by FERC after the Notice of Penalty for the FAC-003-1 R2 violation was filed to determine if Kiowa was fully compliant with FAC-008-1 R1.

violation was for a gap in compliance for the limited time under the May 18, 2007 Facility Ratings Methodology, and Kiowa has had a compliant Facility Ratings Methodology since March 19, 2008.

II. DISCOVERY INFORMATION

METHOD OF DISCOVERY

SELF-REPORT	☐
SELF-CERTIFICATION	☐
COMPLIANCE AUDIT	☐
COMPLIANCE VIOLATION INVESTIGATION	☐
SPOT CHECK	☐
COMPLAINT	☐
PERIODIC DATA SUBMITTAL	☒
EXCEPTION REPORTING	☐

DURATION DATE(S) **6/28/07 (when Kiowa was included on the NERC Compliance Registry as a Transmission Owner) through 3/19/08 (when Kiowa had a compliant Facility Ratings Methodology)**

DATE DISCOVERED BY OR REPORTED TO REGIONAL ENTITY **9/15/08**

IS THE VIOLATION STILL OCCURRING	YES	☐	NO	☒
IF YES, EXPLAIN				
REMEDIAL ACTION DIRECTIVE ISSUED	YES	☐	NO	☒
PRE TO POST JUNE 18, 2007 VIOLATION	YES	☐	NO	☒

III. MITIGATION INFORMATION[3]

FOR FINAL ACCEPTED MITIGATION PLAN:

MITIGATION PLAN NO.	**N/A**
DATE SUBMITTED TO REGIONAL ENTITY	**N/A**
DATE ACCEPTED BY REGIONAL ENTITY	**N/A**
DATE APPROVED BY NERC	**N/A**
DATE PROVIDED TO FERC	**N/A**

IDENTIFY AND EXPLAIN ALL PRIOR VERSIONS THAT WERE ACCEPTED OR REJECTED, IF APPLICABLE
N/A

[3] Kiowa's violation of FAC-008-1 R1 was for a gap in compliance and Kiowa was in compliance with the Standard at the time the violation was discovered. Therefore, no further action was needed to mitigate the violation. Kiowa did not submit a Mitigation Plan; rather, Kiowa's mitigating actions were addressed in the Settlement Agreement.

MITIGATION PLAN COMPLETED YES ☒ NO ☐

EXPECTED COMPLETION DATE **N/A**
EXTENSIONS GRANTED **N/A**
ACTUAL COMPLETION DATE **N/A**

DATE OF CERTIFICATION LETTER **N/A**
CERTIFIED COMPLETE BY REGISTERED ENTITY AS OF **N/A**

DATE OF VERIFICATION LETTER **N/A**
VERIFIED COMPLETE BY REGIONAL ENTITY AS OF **N/A**

ACTIONS TAKEN TO MITIGATE THE ISSUE AND PREVENT RECURRENCE
Kiowa's violation of FAC-008-1 R1 was mitigated when it implemented a revised Facility Ratings Methodology on March 19, 2008.

LIST OF EVIDENCE REVIEWED BY REGIONAL ENTITY TO EVALUATE COMPLETION OF MITIGATION PLAN OR MILESTONES (FOR CASES IN WHICH MITIGATION IS NOT YET COMPLETED, LIST EVIDENCE REVIEWED FOR COMPLETED MILESTONES)
Kiowa submitted its *Facility Ratings Methodology, Revision 1* dated March 19, 2008.

EXHIBITS:

SOURCE DOCUMENT
N/A

MITIGATION PLAN
N/A

CERTIFICATION BY REGISTERED ENTITY
N/A

VERIFICATION BY REGIONAL ENTITY
N/A

Disposition Document for FAC-009-1 R1

DISPOSITION OF VIOLATION
Dated November 8, 2010

NERC TRACKING NO.	REGIONAL ENTITY TRACKING NO.
TRE200800116	TRE201000116

I. VIOLATION INFORMATION

RELIABILITY STANDARD	REQUIREMENT(S)	SUB-REQUIREMENT(S)	VRF(S)	VSL(S)
FAC-009-1	**1**		**Medium**	**Lower**

VIOLATION APPLIES TO THE FOLLOWING FUNCTIONS:

BA	DP	GO	GOP	IA	LSE	PA	PSE	RC	RP	RSG	TO	TOP	TP	TSP
											X			

PURPOSE OF THE RELIABILITY STANDARD AND TEXT OF RELIABILITY STANDARD AND REQUIREMENT(S)/SUB-REQUIREMENT(S)

The purpose statement of FAC-009-1 provides: "To ensure that Facility Ratings used in the reliable planning and operation of the Bulk Electric System (BES) are determined based on an established methodology or methodologies."

FAC-009-1 R1 provides: "The Transmission Owner and Generator Owner shall each establish Facility Ratings for its solely and jointly owned Facilities that are consistent with the associated Facility Ratings Methodology."

VIOLATION DESCRIPTION

After Kiowa's Periodic Data Submittal submitted on September 15, 2008 identified a violation of FAC-003-1 R2, Texas RE reviewed Kiowa's Facility Ratings and communications of the Facility Ratings to the Electric Reliability Council of Texas, Inc. (ERCOT).[1] Texas RE confirmed that Kiowa considered clearance or line sag, conductor operating temperatures and clearances, conductor motion, right of way issues, lightning performance and insulation, insulator swing and environmental factors as part of its Facility Ratings Methodology. Kiowa's line design criteria included a 26-foot clearance, but on August 5, 2008, as detailed in the Periodic Data Submittal, Kiowa discovered that, because of the misplacement of the pole, the actual (as-built) line sag in this span was as low as 22 feet.

[1] Texas RE re-reviewed Kiowa's Facility Ratings and communications in response to questions issued by FERC after the Notice of Penalty for the FAC-003-1 R2 violation was filed to determine if Kiowa was fully compliant with FAC-009-1 R1.

In reviewing the reliable operation of the circuit, among other things, Kiowa's design consultant advised Kiowa that until the additional pole was installed, the line would meet National Electrical Safety Code (NESC) clearances, so long as the ambient temperature remained at approximately 95 degrees (assuming full plant output and dual circuit-normal operation). The consultant further advised Kiowa that based upon historic weather conditions, the line should experience very few hours with excessive sag. Based upon this information and observation of actual clearances, Kiowa did not re-rate its Facility Rating prior to the installation of the additional pole, but it did arrange for the September 12, 2008 plant outage to allow the installation of the pole as quickly as the new pole and other materials could be delivered and a construction crew mobilized, in advance of its scheduled November outage. Kiowa also took safety precautions to notify the property owner of the additional sag and to post placard warnings on the owner's restricted access game farm to warn personnel of overhead high voltage lines.

Texas RE determined that this constituted a violation of FAC-009-1 R1 because Kiowa's established rating was not consistent with the design criteria of a 26-foot clearance under its Facility Ratings Methodology.

RELIABILITY IMPACT STATEMENT- POTENTIAL AND ACTUAL

Texas RE determined that the violation did not pose a serious or substantial risk to the reliability of the bulk power system (BPS) because a loss of Kiowa's single transmission line would isolate Kiowa's generation plant, and the only effect on the grid would be the loss of the 1220 MW provided by Kiowa which would be purchased on the spot market.

II. DISCOVERY INFORMATION

METHOD OF DISCOVERY

SELF-REPORT	☐
SELF-CERTIFICATION	☐
COMPLIANCE AUDIT	☐
COMPLIANCE VIOLATION INVESTIGATION	☐
SPOT CHECK	☐
COMPLAINT	☐
PERIODIC DATA SUBMITTAL	☒
EXCEPTION REPORTING	☐

DURATION DATE(S) **6/28/07 (when Kiowa was included on the NERC Compliance Registry as a Transmission Owner) through 9/12/08 (when Kiowa installed the additional pole that mitigated the violation)**

DATE DISCOVERED BY OR REPORTED TO REGIONAL ENTITY **9/15/08**

IS THE VIOLATION STILL OCCURRING YES ☐ NO ☒
IF YES, EXPLAIN

REMEDIAL ACTION DIRECTIVE ISSUED YES ☐ NO ☒
PRE TO POST JUNE 18, 2007 VIOLATION YES ☐ NO ☒

III. MITIGATION INFORMATION[2]

FOR FINAL ACCEPTED MITIGATION PLAN:
MITIGATION PLAN NO. **N/A**
DATE SUBMITTED TO REGIONAL ENTITY **N/A**
DATE ACCEPTED BY REGIONAL ENTITY **N/A**
DATE APPROVED BY NERC **N/A**
DATE PROVIDED TO FERC **N/A**

IDENTIFY AND EXPLAIN ALL PRIOR VERSIONS THAT WERE ACCEPTED OR REJECTED, IF APPLICABLE
N/A

MITIGATION PLAN COMPLETED YES ☐ NO ☐

EXPECTED COMPLETION DATE **N/A**
EXTENSIONS GRANTED **N/A**
ACTUAL COMPLETION DATE **N/A**

DATE OF CERTIFICATION LETTER **N/A**
CERTIFIED COMPLETE BY REGISTERED ENTITY AS OF **N/A**

DATE OF VERIFICATION LETTER **N/A**
VERIFIED COMPLETE BY REGIONAL ENTITY AS OF **N/A**

ACTIONS TAKEN TO MITIGATE THE ISSUE AND PREVENT RECURRENCE
Kiowa corrected and mitigated the violation of FAC-009-1 R1 when it installed the additional pole on September 12, 2008.

LIST OF EVIDENCE REVIEWED BY REGIONAL ENTITY TO EVALUATE COMPLETION OF MITIGATION PLAN OR MILESTONES (FOR CASES IN WHICH MITIGATION IS NOT YET COMPLETED, LIST EVIDENCE REVIEWED FOR COMPLETED MILESTONES)

[2] Although Kiowa's Mitigation Plan for FAC-003-1 R2 did not specifically address the violation of FAC-009-1 R1, the FAC-009-1 R1 violation was mitigated through the actions in the FAC-003-1 R2 Mitigation Plan. Therefore, Kiowa did not submit a separate Mitigation Plan for FAC-009-1 R1.

1. **Texas RE conducted an on-site inspection, on July 28, 2009, to verify that an additional pole was installed to shorten the span where the faults occurred; and**
2. **line design data, line construction data, and surveys of installed equipment.**

EXHIBITS:

SOURCE DOCUMENT

MITIGATION PLAN
N/A

CERTIFICATION BY REGISTERED ENTITY
N/A

VERIFICATION BY REGIONAL ENTITY
N/A