



Reply to
Attention of:

DEPARTMENT OF THE ARMY
SOUTHWESTERN DIVISION, CORPS OF ENGINEERS
1100 COMMERCE STREET
DALLAS, TEXAS 75242-0216
November 20, 2007

Office of Counsel

Ms. Rashida Williams
ERCOT
By email to treselfcert@ercot.com

Dear Ms. Williams:

This letter is in response to the November 14, 2007, "Notice of Alleged Violation and Proposed Penalty or Sanction" we received from Mr. Lane Robinson in your office.

In light of the letter dated May 11, 2007, from Mr. John Paul Woodley, Jr., Assistant Secretary of the Army (Civil Works), to Mr. Joseph T. Kelliher, Chairman, Federal Energy Regulatory Commission, the compliance Self-Reporting data was provided on a voluntary basis and this submission does not constitute entity registration or a recognition of jurisdiction by the United States Army Corps of Engineers. I direct you to the letter from my office dated October 3, 2007, which sets forth that the U.S. Army Corps of Engineers (USACE) "is not in a position to register with our respective reliability organizations." While USACE could submit a preliminary mitigation plan, USACE is currently in the process of developing a national policy to address submitting mitigation plans. To avoid substantial changes to preliminary mitigation plans as a result of the forthcoming national policy, a mitigation plan for this non-compliance will not be submitted until this national policy has been completed.

In the spirit of our dedication to voluntarily conform to the reliability standards contained in the 2005 Energy Policy Act, the Southwestern Division of the USACE plans to request the funds needed to comply with the Act in its annual budgets. To the extent our current appropriations allow us to comply with the Act, we will do so. However, we are mindful of the need to act in accordance with the Anti-Deficiency Act, which provides for civil and criminal penalties for those who expend funds of the United States when those funds have not been duly appropriated and authorized by the Congress.

If you have any questions, please do not hesitate to call Ms. Dava-Kay Kaitala at (469) 487-7015.

Sincerely,

A handwritten signature in black ink, reading "Morris A. Tanner, Jr.", is positioned above the typed name.

Morris A. Tanner, Jr.
Division Counsel



Reply to
Attention of:

DEPARTMENT OF THE ARMY
SOUTHWESTERN DIVISION, CORPS OF ENGINEERS
1100 COMMERCE STREET
DALLAS, TEXAS 75242-0216
January 25, 2008

Office of Counsel

Ms. Rashida Williams
ERCOT
By email to treselfcert@ercot.com

Dear Ms. Williams:

This letter is in response to the January 17, 2008, "Notice of Alleged Violation and Proposed Penalty or Sanction" we received from Mr. Lane Robinson in your office.

In reviewing the correspondence between Mr. John Paul Woodley, Jr., Assistant Secretary of the Army (Civil Works), and Mr. Joseph T. Kelliher, Chairman, Federal Energy Regulatory Commission, it is clear that our agencies fundamentally disagree in our interpretations of whether the 2005 Energy Policy Act authorizes ERCOT to impose mandatory standards on a federal agency and whether it may assess penalties for failure to adhere to those standards.

Despite this fundamental disagreement, as we have stated in our earlier correspondence, we understand the need to improve system reliability which led Congress to pass the legislation in question. Therefore, we intend to make all reasonable efforts to voluntarily comply with your reliability standards while remaining within the funding level provided by the Congress.

At this time, the Southwestern Division (SWD) is awaiting national policy guidance regarding the submission of compliance plans. Until we receive that guidance, we are not in a position to submit such a plan. We anticipate that the national guidance should be finalized in late March or early April of this year.

While we are awaiting receipt of this national policy guidance, we are actively working on a draft regional compliance plan. We project that we will be able to provide a final regional compliance plan by October of this year.

We look forward to a continuing cooperative effort with you in this important national effort improve system reliability.

The SWD initial point of contact for hydropower matters is Mr. Sherman Jones. He may be reached at (469) 487-7043 or by email at Sherman.R.Jones@usace.army.mil.

Sincerely,

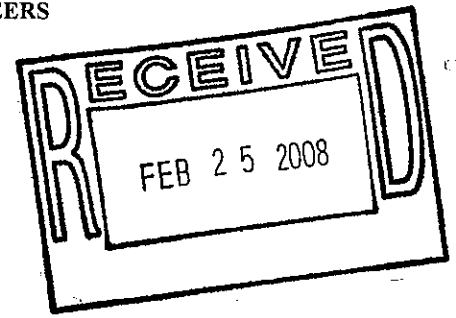
A handwritten signature in black ink, reading "Morris A. Tanner Jr.", is written over a horizontal line.

Morris A. Tanner, Jr.
Division Counsel



Reply to
Attention of:

DEPARTMENT OF THE ARMY
SOUTHWESTERN DIVISION, CORPS OF ENGINEERS
1100 COMMERCE STREET
DALLAS, TEXAS 75242-0216
February 22, 2008



Office of Counsel

Mr. David Hilt
Mr. Tim Kucey
North American Electric Reliability Corporation
116-390 Village Boulevard
Princeton, NJ 08540

Dear Messrs. Hilt and Kucey:

This letter is in response to the February 20, 2008, "Notice of Confirmed Violation and Proposed Penalty or Sanction" this agency received from Mr. Lane Robinson in the Texas Regional Entity ("TRE").

In the letter at issue, TRE states:

Texas RE is issuing this Notice of Confirmed Violation and Proposed Penalty or Sanction, because U.S. Army Corps of Engineers does not dispute the Alleged Violation and the proposed penalty or sanction set forth in the previously issued Notice of Alleged Violation and Proposed Penalty or Sanction, or U.S. Army Corps of Engineers did not respond to the previously issued Notice of Alleged Violation and Proposed Penalty or Sanction within thirty (30) days of its receipt, or a settlement has been reached with U.S. Army Corps of Engineers, or a decision has been entered finding a violation and all appeals have been concluded.

These statements are false. The U.S. Army Corps of Engineers ("Corps") does dispute the alleged violations because the 2005 Energy Policy Act ("the Act") does not apply to the Corps. Further, the Corps did respond to the Notice of Alleged violation and Proposed Penalty within 30 days of receipt, and reiterated our belief that the Act is inapplicable to the Corps. Further, within 30 days we provided a mitigation plan, showing how we would voluntarily comply with the Act to the extent allowed by our funding. Further, we have not entered into any sort of settlement with the TRE, and as far as the Corps knows, no decision has been entered finding a violation.

In reviewing the correspondence between Mr. John Paul Woodley, Jr., Assistant Secretary of the Army (Civil Works), and Mr. Joseph T. Kelliher, Chairman, Federal Energy Regulatory Commission, it is clear that our agencies fundamentally disagree in our interpretations of whether the Act authorizes any regional entity to impose mandatory standards on the Corps and whether it may assess penalties for failure to adhere to those standards. The Act does not contain a clear, unequivocally expressed waiver of sovereign immunity, which is necessary for any entity to exercise this kind of jurisdiction over a federal agency.

Despite this fundamental disagreement, as we have stated in our earlier correspondence, we understand the need to improve system reliability which led Congress to pass the legislation in question. Therefore, we intend to make all reasonable efforts to voluntarily comply with your reliability standards while remaining within the funding level provided by the Congress. In our most recent budget, we have requested funds that will allow us to begin bringing our facilities into compliance with the standards at issue. Should these funds be provided by Congress, we plan to continue our voluntary compliance with the standards to the extent allowed by those funds.

We look forward to a continuing cooperative effort with you in this important national effort improve system reliability.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Morris A. Tanner, Jr.", written in a cursive style.

Morris A. Tanner, Jr.
Division Counsel