

# NERC

NORTH AMERICAN ELECTRIC  
RELIABILITY CORPORATION

December 12, 2008

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

Re: NERC Notice of Penalty regarding E.ON U.S. Services Inc., FERC Docket No. NP09-\_-000

Dear Ms. Bose:

The North American Electric Reliability Corporation (NERC) hereby provides this Notice of Penalty regarding E.ON U.S. Services Inc. (E.ON U.S.),<sup>1</sup> NERC Registry ID NCR01223,<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>

Prior to June 18, 2007, E.ON U.S. had established a Mitigation Plan with SERC Reliability Corporation to address earlier (2006 calendar year) violations of four requirements of two NERC Reliability Standards: EOP-008-0 Requirement (R) R1 and FAC-001-0 R1, R2 and R3. This Notice of Penalty is being filed with the Commission because, based on information from SERC Reliability Corporation, E.ON U.S. failed to complete the Mitigation Plan with respect to the violation of EOP-008-0 R1, in accordance with the Mitigation Plan as approved by SERC Reliability Corporation and NERC, in addition to failing to submit timely notification to SERC Reliability Corporation regarding completed mitigation for the violations of FAC-001-0 R1, R2 and R3 as required by the Mitigation Plan. SERC Reliability Corporation and E.ON U.S. entered into a Settlement Agreement executed by the parties as of May 23, 2008 in which E.ON U.S. and SERC Reliability Corporation agree to resolve all outstanding issues arising from a preliminary and non-public assessment resulting in SERC Reliability Corporation's determination and findings of Post-June 18, 2007 enforceable violations by E.ON U.S., and in

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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). See 18 C.F.R. § 39.7(d)(1).

<sup>2</sup> SERC Reliability Corporation confirmed that E.ON U.S. was included on the NERC Compliance Registry as a Balancing Authority and was subject to the requirements of NERC Reliability Standard EOP-008-0. In addition, SERC Reliability Corporation confirmed that E.ON U.S. was included on the NERC Compliance Registry as a Transmission Owner and was subject to the requirements of NERC Reliability Standard FAC-001-0.

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

which E.ON U.S. accepts the proposed penalty of \$235,000 to be assessed to E.ON U.S., in addition to the other remedies as discussed in the Settlement Agreement and this Notice of Penalty.

**Statement of Findings Underlying the Violation**

This Notice of Penalty incorporates by reference the findings and justifications set forth in the overall Settlement Agreement which consists of the original Settlement Agreement executed as of May 23, 2008, by and between SERC Reliability Corporation and E.ON U.S., which is included as Attachment a, and the Supplemental Record Information letter issued by SERC Reliability Corporation to E.ON U.S., dated September 22, 2008. The details of the findings and basis for the penalty are set forth in the Settlement Agreement. This Notice of Penalty filing contains the basis for approval of the Settlement Agreement by the NERC Board of Trustees Compliance Committee (NERC BOTCC or Committee). In accordance with Section 39.7 of the Commission’s regulations, 18 C.F.R. § 39.7 (2007), NERC provides the following summary table identifying the alleged violations of two reliability standards resolved by the Settlement Agreement.

NERC NOC ID	NERC ID*	Date of Violation	Reliability Standard	Requirement	VRF	Total Penalty (\$)
NOC-091	SERC200810001	6/18/2007	EOP-008-0	1	Medium	235,000
	SERC200810002	6/18/2007	FAC-001-0	1	Medium	
	SERC200810003	6/18/2007	FAC-001-0	2	Medium	
	SERC200810004	6/18/2007	FAC-001-0	3	Medium	

According to SERC Reliability Corporation, E.ON U.S. failed to complete the Mitigation Plan with respect to the violation of EOP-008-0 R1, in accordance with the Mitigation Plan as approved by SERC Reliability Corporation and NERC. In addition, E.ON U.S. Services, Inc. failed to submit timely notification to SERC Reliability Corporation regarding completed mitigation for the violations of FAC-001-0 R1, R2 and R3 as required by the Mitigation Plan. These alleged violations are described in greater detail below.

At issue here with respect to EOP-008-0 is the following requirement which E.ON U.S. failed to complete in a timely manner:

**R1.** Each Reliability Coordinator, Transmission Operator and Balancing Authority shall have a plan to continue reliability operations in the event its control center becomes inoperable. The contingency plan must meet the following requirements:

**R1.1.** The contingency plan shall not rely on data or voice communication from the primary control facility to be viable.

At issue with respect to FAC-001-0 are:

**R1.** The Transmission Owner shall document, maintain, and publish facility connection requirements to ensure compliance with NERC Reliability Standards and applicable Regional Reliability Organization, subregional, Power Pool, and individual Transmission Owner planning criteria and facility connection requirements. The Transmission Owner's facility connection requirements shall address connection requirements for:

**R1.1.** Generation facilities,

**R1.2.** Transmission facilities, and

**R1.3.** End-user facilities

**R2.** The Transmission Owner's facility connection requirements shall address, but are not limited to, the following items:

**R2.1.** Provide a written summary of its plans to achieve the required system performance as described above throughout the planning horizon:

**R2.1.1.** Procedures for coordinated joint studies of new facilities and their impacts on the interconnected transmission systems.

**R2.1.2.** Procedures for notification of new or modified facilities to others (those responsible for the reliability of the interconnected transmission systems) as soon as feasible.

**R2.1.3.** Voltage level and MW and MVAR capacity or demand at point of connection.

**R2.1.4.** Breaker duty and surge protection.

**R2.1.5.** System protection and coordination.

**R2.1.6.** Metering and telecommunications.

**R2.1.7.** Grounding and safety issues.

**R2.1.8.** Insulation and insulation coordination.

**R2.1.9.** Voltage, Reactive Power, and power factor control.

**R2.1.10.** Power quality impacts.

**R2.1.11.** Equipment Ratings.

**R2.1.12.** Synchronizing of facilities.

**R2.1.13.** Maintenance coordination.

**R2.1.14.** Operational issues (abnormal frequency and voltages).

**R2.1.15.** Inspection requirements for existing or new facilities.

**R2.1.16.** Communications and procedures during normal and emergency operating conditions.

**R3.** The Transmission Owner shall maintain and update its facility connection requirements as required. The Transmission Owner shall make documentation of these requirements available to the users of the transmission system, the Regional Reliability Organization, and NERC on request (five business days).

#### **Status of Mitigation Plan<sup>4</sup>**

E.ON U.S.'s failure to complete or to notify timely completion of the original pre-June 18, 2007 Mitigation Plans associated with the referenced violations is the basis for the Settlement Agreement and this Notice of Penalty filing. Subsequently, E.ON U.S. certified on February 13, 2008 and again verified by affidavit on March 12, 2008 that it had completed the Mitigation Plan associated with the violations of FAC-001-0 R1, R2 and R3 as of December 10, 2008. SERC Reliability Corporation reviewed the documentation provided by E.ON U.S. on March 4 and the affidavit provided on March 12, 2008 and verified that the Mitigation Plan for FAC-001-0 was, in fact, completed as of December 10, 2007, before the end of the Mitigation Plan period. SERC Reliability Corporation verified on March 14, 2008 that the Mitigation Plan for EOP-008-0 was completed.

#### **Statement Describing the Proposed Penalty, Sanction or Enforcement Action Imposed<sup>5</sup>**

With respect to EOP-008-0, SERC Reliability Corporation determined that E.ON U.S. failed to complete the associated pre-June 18, 2007 Mitigation Plan until March 14, 2008; accordingly, the duration of the violation of EOP-008-0 R1.1 was 270 days calculated from June 18, 2007 to March 14, 2008. Specifically, SERC Reliability Corporation requested certification by E.ON of completion of the Mitigation Plan on February 1, 2008. Instead of certifying completion, on February 8, 2008, E.ON U.S. provided a status of incomplete items, which were the installation of communication from six critical dual ported remote terminal units (RTUs) to both of its system control centers. After following up with E.ON U.S. on the status of the Mitigation Plans, SERC Reliability Corporation conducted an onsite review of the Mitigation Plan completion on March 4-5, 2008 and determined that E.ON U.S. had not completed installation of communications to critical generation, transmission and tie-line RTUs that did not have redundant telemetry into both of its system control centers in violation of R1.1 of Reliability Standard EOP-008-0. In addition, SERC Reliability Corporation staff determined that E.ON

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<sup>4</sup> See 18 C.F.R § 39.7(d)(7).

<sup>5</sup> See 18 C.F.R § 39.7(d)(4).

U.S.'s interim manual procedure for loss of primary control center functionality was insufficient to meet the requirement of R1.1 because E.ON U.S.'s training records presented to SERC Reliability Corporation staff did not contain sufficient evidence to demonstrate that required annual training had been completed for all of the field operations personnel required to execute the manual portion of E.ON U.S.'s loss of primary center plan that was in place pending completion of the RTU work. Therefore, SERC Reliability Corporation staff determined that E.ON U.S. had not adequately executed its Mitigation Plan and remained in violation of EOP-008-0 and successful completion of the Mitigation Plan was required to restore compliance.<sup>6</sup> E.ON U.S. submitted a certification of completion of the Mitigation Plan with respect to EOP-008-0 on March 14, 2008. SERC Reliability Corporation proposed to assess a penalty to E.ON U.S. for failure to satisfactorily complete the Mitigation Plan with respect to EOP-008-0 Requirement 1.1 until more than thirty days beyond the due date and for failing to notify SERC Reliability Corporation until February 8, 2008 of the status of completion.

With respect to the violations of FAC-001-0 R1-3, SERC Reliability Corporation ultimately found that E.ON U.S. had completed the associated mitigation on time by December 10, 2007, but failed to submit timely certification of completion of that mitigation; accordingly, the duration associated with this situation was 60 days calculated from December 10, 2007 to February 8, 2008, when E.ON U.S. certified completion of the Mitigation Plan.

SERC Reliability Corporation staff agreed to assess a penalty in the Settlement Agreement with E.ON U.S. at a total of \$235,000 in consideration of: E.ON U.S.'s candor and cooperation in resolving the issues throughout the investigation; E.ON U.S.'s commitment to host, finance and provide speakers for a reliability compliance workshop under the terms as described in the Settlement Agreement;<sup>7</sup> E.ON U.S.'s willingness to settle the alleged violations expeditiously via settlement; recognition that E.ON U.S. had achieved compliance with most of the Sub-Requirements of Requirement R1 of Reliability Standard EOP-008-0 according to the terms and deadlines in the Mitigation Plan. SERC Reliability Corporation staff also determined that these were not repetitive violations, that E.ON U.S. had no negative relevant compliance history, that there were no applicable compliance directives, and that there was no evidence that E.ON U.S. intended to commit the violations or attempted to conceal them after they occurred.

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<sup>6</sup> According to SERC Reliability Corporation, training is only relevant in the context of E.ON U.S.'s *interim, manual* procedure for loss of primary control center functionality, which E.ON was attempting to employ to meet the requirement of R1.1 "to have a contingency plan that did not rely on data or voice communication from the primary control facility to be viable." At the on-site compliance assessment on March 4-5, 2008, SERC Reliability Corporation staff reviewed E.ON U.S.'s manual procedure for loss of primary control center functionality and found that E.ON U.S.'s violation of R1.1 was not adequately mitigated by the existence of this manual procedure for alternate communications, principally because the individuals that would implement the manual procedure had not been adequately trained on the procedure. Therefore, according to SERC Reliability Corporation, the statements in the Settlement Agreement are intended to provide supporting evidence as to why completion of E.ON U.S.'s mitigation plan and the installation of the dual ported RTU's were essential to fully restore compliance with R1.1. With the dual ported communications systems installed, the issue of training on the manual procedure was rendered moot because the manual procedure is not needed for E.ON U.S. "to have a contingency plan that did not rely on data or voice communication from the primary control facility to be viable," because redundant communications links were established with both the primary and the back up control centers once the mitigation plan was completed.

<sup>7</sup> This reliability compliance workshop was held November 6, 2008 in Louisville, KY and was attended by 126 people.

## Basis for Determination

Taking into consideration the Commission's direction in Order No. 693 and the NERC Sanction Guidelines, the NERC BOTCC reviewed the Settlement Agreement and supporting documentation on April 24, 2008 prior to the issuance of the July 3, 2008 Order. On October 7, 2008, taking into consideration the Commission's July 3, 2008 Order, the NERC BOTCC approved the Settlement Agreement which resolves the alleged violations of SERC Reliability Corporation and the assessment of a financial penalty of \$235,000 against E.ON U.S., in addition to other remedies under the terms and conditions of the Settlement Agreement. In approving the Settlement Agreement, the Committee reviewed of the applicable requirements of the Commission-approved Reliability Standards, the underlying facts and circumstances of the violations<sup>8</sup> and the facts and circumstances of E.ON U.S.'s failure to fully complete its electric reliability organization (ERO)-approved<sup>9</sup> Mitigation Plan for the violations in accordance with that Mitigation Plan pursuant to the NERC Rules of Procedure and the CMEP.

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

- The violations giving rise to the present Settlement Agreement were initially pre-mandatory-era ("pre-June 18") violations of two then-voluntary NERC reliability standards, and were to be addressed via an E.ON U.S. Mitigation Plan that extended beyond June 18, 2007, when the standards involved became mandatory and enforceable in the United States. E.ON U.S.'s ERO-approved Mitigation Plan allowed E.ON U.S. the opportunity to complete mitigation of the noted pre-June 18 violations after June 18, 2007, without penalty if the plan was: (i) completed as approved; (ii) mitigated the violations in question; and, (iii) was completed by the plan's approved completion date.
- As the Settlement Agreement states, E.ON U.S. was aware that the completion date for the Mitigation Plan was December 31, 2007, and E.ON U.S. admits that it did not complete the plan by that date as required, as SERC Reliability Corporation alleged.
- Specifically regarding the EOP-008-0 violation, the timeline provided in the Settlement Agreement indicates that by the approved completion date of the plan, December 31, 2007, E.ON U.S. had not completed mitigation of its violation of R1.1 of the standard. Until full mitigation of E.ON U.S.'s violation of R1.1 was completed in mid-March 2008, E.ON U.S. may have been unnecessarily subjecting the reliability of the bulk power system to additional and reasonably-avoidable risk by virtue of having an incomplete backup facility and incomplete communications links. In the meantime, E.ON U.S.'s contingency plan for loss of its primary control center continued to rely on data or voice communication from the primary control facility to be viable.
- Regarding the FAC-001-0 violations, and notwithstanding that SERC Reliability Corporation ultimately determined that E.ON U.S. returned to compliance with the subject standard

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<sup>8</sup> *Mandatory Reliability Standards for the Bulk-Power System*, FERC Stats. & Regs. ¶ 31,242 (2007) (Order No. 693).

<sup>9</sup> The plan was accepted by SERC Reliability Corporation and approved by NERC as required by the FERC *Order Clarifying Procedures*, 119 FERC ¶ 61,274, Docket No. RR07-13-000 (June 13, 2007).



before the completion date of the Mitigation Plan, the Committee is concerned that full determination of whether E.ON U.S. had returned to compliance was not reached until SERC Reliability Corporation went on-site in early March 2008 for the specific purpose of assessing E.ON U.S.'s compliance to the standard and to EOP-008-0. In the opinion of the Committee both this activity and SERC Reliability Corporation's demand letter of February 1, 2008 should have been unnecessary and represent an unnecessary expenditure of ERO compliance monitoring and enforcement resources. E.ON U.S. could have and should have reported its return to compliance, with evidence thereof, with the FAC-001-0 standard to SERC Reliability Corporation, as required, by December 31, 2007.

- After E.ON U.S. failed to complete the Mitigation Plan on time with respect to the violation of EOP-008-0, and failed to submit timely notification to SERC Reliability Corporation regarding completed mitigation for the violations of FAC-001-0, SERC Reliability Corporation reviewed the facts and circumstances of the situation and determined that the referenced pre-June 18 violations should become post-June 18 enforceable violations and that E.ON U.S. should be sanctioned for them in accordance with the NERC Compliance Monitoring and Enforcement Program. Accordingly the present Settlement Agreement sanctions E.ON U.S. for, and is a result of, the failure by E.ON U.S. to complete its Mitigation Plan as approved by SERC Reliability Corporation and NERC, and to notify SERC Reliability Corporation of the same as required. The Committee concurs with the above actions by SERC Reliability Corporation. The Committee further concurs with SERC Reliability Corporation's determination that the start date of the violations as post-June 18 enforceable violations was June 18, 2007.
- The Committee accepts the proposed penalty of \$235,000 based on consideration of the following additional factors as described by SERC Reliability Corporation:
  - i. E.ON U.S.'s agreement to enter into the present Settlement Agreement.
  - ii. E.ON U.S.'s agreement to conduct an appropriate workshop focusing on compliance with reliability standards for the benefit of others in the industry.
  - iii. The following illustrative statements included by the parties to the Settlement Agreement in the text:
    - "E.ON U.S. did not communicate within its organization the priority of completing on time a Mitigation Plan that involves the reliability of the bulk power system." (Settlement Agreement at P 21, Part i.)
    - "In consideration of E.ON U.S.'s candor and cooperation in resolving these issues, its commitment above to host a compliance workshop, its actions taken and to be taken to improve its compliance program in response to this Agreement...." (Settlement Agreement at P 22.)
  - iv. E.ON U.S.'s history, cooperation, compliance culture, aggravating factors, mitigating factors and the violations' impact on the bulk power system. The aggravating factors include E.ON U.S.'s failure to complete the Mitigation Plan by the agreed-to deadline and E.ON U.S.'s failure to submit documentation regarding the closure of its Mitigation Plan in a timely manner. The mitigating factors include the following:

- SERC Reliability Corporation staff determined that these were not repetitive violations; E.ON U.S. had no negative relevant compliance history; there were no applicable compliance directives; and there was no evidence that E.ON U.S. intended to commit the violations or attempted to conceal them after they occurred.
- SERC Reliability Corporation staff also considered E.ON U.S.'s candor and cooperation in resolving these issues throughout the investigation.
- SERC Reliability Corporation considered E.ON U.S.'s commitment to host, finance and provide speakers for a reliability compliance workshop under the terms as described in the Settlement Agreement.
- SERC Reliability Corporation considered E.ON U.S.'s willingness to settle the violations expeditiously via settlement.
- SERC Reliability Corporation staff recognized that E.ON U.S. had achieved compliance with most of the sub-requirements of EOP-008-0 Requirement 1 pursuant to the deadlines established in the Mitigation Plan and had completed all of the Mitigation Plan requirements with respect to FAC-001-0 R1, R2 and R3 on time as required by the Mitigation Plan.

Therefore, NERC believes that the Settlement Agreement which includes a \$235,000 penalty and other remedies included in the Settlement Agreement are appropriate and consistent with NERC's goal to ensure reliability of the bulk power system.

Pursuant to Order No. 693, the penalty will be effective upon expiration of the thirty (30) day period following the filing of this Notice of Penalty with FERC, or, if FERC decides to review the penalty, upon final determination by FERC.

### **The Record of the Proceeding<sup>10</sup>**

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

- a) Settlement Agreement by and between E.ON U.S. and SERC Reliability Corporation, which is included in Attachment a; and
- b) Supplemental Information letter to E.ON U.S. from SERC Reliability Corporation, dated September 22, 2008.

### **A Form of Notice Suitable for Publication<sup>11</sup>**

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

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<sup>10</sup> See 18 C.F.R § 39.7(d)(5).

<sup>11</sup> See 18 C.F.R § 39.7(d)(6).



## Notices and Communications

Notices and communications with respect to this filing may be addressed to the following:

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\*Persons to be included on the Commission's service list are indicated with an asterisk. NERC requests waiver of the Commission's rules and regulations to

permit the inclusion of more than two  
people on the service list.

**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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President and Chief Executive Officer  
David N. Cook  
Vice President and General Counsel  
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/s/ Rebecca J. Michael  
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cc: E.ON U.S. Services Inc.  
SERC Reliability Corporation

Attachment(s)

**Attachment a**

**Settlement Agreement by and between**

**SERC Reliability Corporation**

**and**

**E.ON. U.S. Services Inc.**

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**SETTLEMENT AGREEMENT  
OF  
SERC RELIABILITY CORPORATION  
AND  
E.ON U.S. SERVICES INC.**

**I. Introduction**

1. SERC RELIABILITY CORPORATION (“SERC”) and E.ON U.S. SERVICES INC. (“E.ON U.S.”) enter into this Settlement Agreement (“Agreement”) to resolve all outstanding issues arising from a preliminary and non-public assessment resulting in SERC’s determination and findings, pursuant to the North American Electric Reliability Corporation (“NERC”) Rules of Procedure, of a violation by E.ON U.S. of the NERC Reliability Standards FAC-001-0 and EOP-008-0.

**II. Stipulation**

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

**Background**

3. E.ON U.S., headquartered in Louisville, Kentucky, is a subsidiary of E.ON U.S. LLC, which is a diversified energy services company also headquartered in Louisville, Kentucky. E.ON U.S. LLC owns and operates Louisville Gas and Electric Company, a regulated utility that serves approximately 318,000 natural gas and approximately 390,000 electric customers in Louisville and 16 surrounding counties, and Kentucky Utilities Company, a regulated electric utility in Lexington, Kentucky, U.S.A., that serves approximately 518,000 customers in 77 Kentucky counties and five counties in Virginia.
4. In addition to other assets, E.ON U.S. LLC owns Western Kentucky Energy, which operates and leases four coal-fired plants owned by Big Rivers Electric Corporation in Western Kentucky. E.ON U.S. has a joint generation capacity of approximately 7,600 MW and serves approximately 908,000 electricity customers and approximately 318,000 natural gas customers over a

transmission and distribution network covering some 27,000 square miles (70,000 square km). E.ON U.S. operates two control centers.

5. Prior to December 31, 2006 E.ON U.S. was a member of ReliabilityFirst Corporation (“ReliabilityFirst”), and thus was monitored for compliance with reliability standards by ReliabilityFirst. On January 1, 2007, E.ON U.S. became a member of SERC and on May 31, 2007 E.ON U.S. was listed in the Compliance Registry as a Registered Entity in SERC and has since been monitored for compliance with reliability standards by SERC.

### **Alleged Violations**

6. Regarding the violation of EOP-008-0 R1:
  - i. During December 4 through 6, 2006, ReliabilityFirst conducted a Compliance Audit of E.ON U.S. The ReliabilityFirst audit team identified a Level 3 Violation for EOP-008-0, Plans for Loss of Control Center Functionality. E.ON U.S. was found to be in violation of the following requirements of EOP-008-0: R1.1, R1.3, R1.5, R1.6, R1.7, and R1.8.
  - ii. A formal letter from ReliabilityFirst detailing the Standard Violations for EOP-008-0 was sent to E.ON U.S. on March 15, 2007, and E.ON U.S. was requested to confirm or dispute the findings. No response to this request was received as of April 30, 2007. Therefore, this violation was considered to be confirmed by E.ON U.S.’s failure to respond. In this same letter, E.ON U.S. was notified SERC would be responsible for monitoring and enforcing the terms of the Mitigation Plan as follows: “E.ON U.S. is now registered in the SERC region, all responsibilities for monitoring and tracking of E.ON U.S. compliance activities have been transferred to SERC. Therefore, a copy of the Mitigation Plan will be forwarded to SERC for approval and status tracking.”
  - iii. E.ON U.S. had an existing approved Mitigation Plan to address a pre-June 18, 2007 violation of EOP-008-0 for failure to have a contingency plan that did not rely on data or voice communication from the primary control facility to be viable. This Mitigation Plan was accepted by SERC on May 31, 2007 and was approved by NERC on December 13, 2007. The approved Mitigation Plan completion date was December 31, 2007. E.ON U.S. failed to submit either a request for extension or a certification of completion by this date. SERC requested certification of completion for the Mitigation Plan on February 1, 2008, more than 30 days after the end date of the Mitigation Plan. E.ON U.S. did not certify completion, but on February 8, 2008 provided a status of the incomplete items, which were the installation of communication from six critical dual ported remote terminal units (RTUs) to both of its system control centers.

- iv. On March 4-5, 2008, the SERC Compliance Enforcement Staff conducted an on-site compliance assessment of the status of the Mitigation Plan. The assessment determined: 1) E.ON U.S. had not satisfactorily completed the approved Mitigation Plan, in accordance with its terms, by the completion date, and 2) E.ON U.S.'s training records presented to SERC Compliance Enforcement Staff did not contain sufficient evidence to demonstrate that required annual training had been completed for all of the field operations personnel required to execute the manual portion of E.ON U.S.'s loss of primary center plan that was in place pending completion of the RTU work.
- v. E.ON U.S.'s document titled "Critical Facility\_Backup\_Telemetry Updated Completion Date.xls" indicates that six of the critical RTU sites were completed after the Mitigation Plan completion date of December 31, 2007. E.ON U.S.'s documents titled "Operator Backup Training Checklist.xls," and "NonDP\_Test of Dispatch Personnel to Critical Facilities \*\*\*.pdf" provided as documentation for EOP-008-0 training, do not show that all personnel required to execute the manual procedure for loss of primary control center pending completion of the RTU work had completed the annual required training.
- vi. E.ON U.S. submitted a certification of closure of the Mitigation Plan, and submitted suitable evidence of completion and compliance with the requirement, on March 14, 2008.
- vii. In assessing the proposed penalty and sanctions associated with the violation of EOP-008-0, SERC Compliance Enforcement Staff determined that E.ON U.S. did not satisfactorily complete its approved Mitigation Plan until more than 30 days beyond the completion date stated in the plan and that the status of E.ON U.S.'s Mitigation Plan was unknown to SERC until February 8, 2008. SERC Compliance Enforcement Staff concluded that E.ON U.S.'s failure to meet all the sub-requirements of the standard constitutes a violation of R1 of EOP-008-0 from June 18, 2007 through March 14, 2008.

7. Regarding the violation of FAC-001-0:

- i. During December 4 through 6, 2006, Reliability-First conducted a Compliance Audit of E.ON U.S. The audit team identified a Level 4 Violation of the requirements of FAC-001-0, Facility Connection Requirements. During the audit, no documentation was made available by E.ON U.S. to provide evidence of compliance with any requirements of FAC-001-0.
- ii. A formal letter detailing the findings of a Standard Violation for FAC-



001-0 was sent by ReliabilityFirst to E.ON U.S. on March 15, 2007, and E.ON U.S. confirmed the violation via an email on April 17, 2007 by Mr. Chuck Schram, E.ON U.S. Manager of Transmission Protection and Substations. Again, in this same letter, E.ON U.S. was notified SERC would be responsible for monitoring and enforcing the terms of the Mitigation Plan as follows: "E.ON U.S. is now registered in the SERC region, all responsibilities for monitoring and tracking of E.ON U.S. compliance activities have been transferred to SERC. Therefore, a copy of the Mitigation Plan will be forwarded to SERC for approval and status tracking."

- iii. E.ON U.S. had an existing approved Mitigation Plan to address a pre-June 18, 2007 alleged violation of FAC-001-0 for failure to have documented Facility Connection Requirements. This Mitigation Plan was accepted by SERC on May 31, 2007 and was approved by NERC on December 13, 2007. The approved Mitigation Plan completion date was December 31, 2007. E.ON U.S. failed to submit either a request for extension or a certification of completion by this date. Subsequently, E.ON U.S. submitted a certification of completion of the Mitigation Plan on February 13, 2008.
- iv. In its Mitigation Plan completion certification, E.ON U.S. stated that its Facility Connection Requirements documentation developed on December 10, 2007 had sufficient information on procedures for coordinating joint studies of new facilities for Transmission Facilities and End-user Facilities. However, E.ON U.S. stated its desire to improve its documentation to provide more clarity on procedures for notification of new or modified facilities with regard to transmission facilities.
- v. On March 4, 2008, the SERC Compliance Enforcement Staff conducted an on site compliance assessment of the status of the Mitigation Plan. The assessment determined that E.ON U.S. had a document which met the requirements of FAC-001-0.
- vi. E.ON U.S. claimed that the Facility Connection Requirements documentation and procedure existed and was in its possession by December 31, 2007, therefore the procedure was available upon request. E.ON U.S. certified via affidavit of March 12, 2008 that the procedure was maintained by December 31, 2007, but not posted until March 3, 2008. E.ON U.S. also certified that no requests were made for the documentation by users of the transmission system. SERC's Compliance Enforcement Staff reviewed E.ON U.S.'s documented procedure completed on December 10, 2007 and found the evidence, along with the affidavit, to be sufficient to demonstrate compliance with FAC-001-0 as of December 10, 2007, prior to the due date of the approved Mitigation Plan.



Furthermore, E.ON U.S. had offered that the manual portion of its loss of control center procedure pending completion of the RTU work satisfied the requirements of EOP-008. However, E.ON U.S.'s training records presented to SERC Compliance Enforcement Staff did not contain sufficient evidence to demonstrate that required annual training had been completed for all of the field operations personnel required to execute the manual portion of E.ON U.S.'s loss of primary center plan that was in place pending completion of the RTU work.

### **III. PARTIES' SEPARATE REPRESENTATIONS**

#### **STATEMENT OF SERC AND SUMMARY OF FINDINGS**

11. In regards to the evidence and circumstances described above with respect to EOP-008-0 R1.1, and further supported by SERC Compliance Enforcement Staff's on-site compliance assessment visit to E.ON U.S. on March 4-5, 2008, SERC finds that prior to March 14, 2008, E.ON U.S. had not completed installation of communications to critical generation, transmission, and tie-line RTUs that did not have redundant telemetry into both of its system control centers. The incomplete RTUs were identified on E.ON U.S.'s "Critical Facilities Equipment Requiring Backup Communications" sheet. On March 14, 2008, E.ON U.S. completed installation of the last remaining critical RTU that did not have redundant telemetry into both of its system control centers.
12. SERC Compliance Enforcement Staff also finds that, with respect to EOP-008-0 R1.6, E.ON U.S. had not trained all of the operating personnel required to execute its loss of primary control center contingency plans. The contingency plans involved dispatching operators to the critical transmission facilities without redundant telemetry. This finding was verified in E.ON U.S.'s "Operator Backup Training Checklist.xls," and "NonDP\_Test of Dispatch Personnel to Critical Facilities \*\*\*.pdf" documents. SERC Compliance Enforcement Staff also determined that E.ON U.S. did not satisfactorily complete its approved Mitigation Plan for EOP-008-0 due for completion by December 31, 2007, until more than 30 days beyond the completion date stated in the plan and that the status of E.ON U.S.'s Mitigation Plan was unknown to SERC until February 8, 2008.
13. In regards to the evidence and circumstances described above with respect to FAC-001-0, and further supported by SERC Compliance Enforcement Staff's on-site compliance assessment visit to E.ON U.S. on March 4-5, 2008, SERC finds that on February 8, 2008 and for some time preceding this date that E.ON U.S. was still augmenting its Facility Connection procedures for FAC-001-0 R2.1.1 and R2.1.2 to add clarity on procedures for notification of new or modified facilities with regard to transmission facilities. However, SERC Compliance Enforcement Staff assessed E.ON U.S.'s documentation

that was prepared in mid-December 2007 and concluded that this procedure was sufficient to meet the requirements of FAC-001-0 R2.1.1 and R2.1.2. SERC Compliance Enforcement Staff determined that E.ON U.S. did not timely submit a mitigation plan closure certification and did not provide satisfactory evidence supporting completion of its approved Mitigation Plan for FAC-001-0 until more than 30 days beyond the completion date stated in the plan. Furthermore, the status of E.ON U.S.'s Mitigation Plan was unknown to SERC until February 8, 2008 in the absence of the timely submittal of a Mitigation Plan closure form. E.ON U.S. subsequently certified via affidavit on March 12, 2008 that it was compliant with FAC-001-0 prior to December 31, 2007. SERC Compliance Enforcement Staff reviewed E.ON U.S.'s documented procedure completed on December 10, 2007 and found the evidence, along with the affidavit, to be sufficient to demonstrate compliance with FAC-001-0 as of December 10, 2007, prior to the due date of the approved Mitigation Plan.

14. SERC agrees that this Settlement Agreement is in the best interest of the parties and in the best interest of bulk power system reliability.

#### **STATEMENT OF E.ON U.S.**

15. E.ON U.S. neither admits nor denies a violation of EOP-008 or FAC-001.
16. With respect to FAC-001-0, E.ON U.S. states that it did not submit in a timely fashion, as required by NERC Compliance Monitoring and Enforcement Program §6.6, a "Certification of a Completed Mitigation Plan" form when E.ON U.S. fulfilled its mitigation plan obligations in December 2007. E.ON U.S. states that no party other than SERC inquired about or requested a copy of the facility connection documentation required by FAC-001-0 between June 18, 2007 and the date of this Settlement Agreement. E.ON U.S. also states that it would have made this documentation available within 5 days of a request from a third party, as required by FAC-001-0. Thus, E.ON U.S. believes that no third party was actually harmed by any possible unavailability of this FAC-001-0 documentation following June 18, 2007.
17. With respect to EOP-008-0, E.ON U.S. states that it did not complete all of its detailed obligations under its mitigation plan by December 31, 2007, which was the deadline for completing the mitigation plan. E.ON U.S. also states that it did not complete the final obligation under the mitigation plan until March 14, 2008. E.ON U.S., however, would note that by August 30, 2007 it had completed all but one category of the obligations under the mitigation plan, with the open category being a commitment to equip certain metering facilities with dual port capability. Documentation evidencing the completion of all categories of obligations under the mitigation plan, except for the dual porting activities, was presented to SERC on August 30, 2007. E.ON U.S. also states that the commitment to equip certain metering facilities with dual

port capability was a modernization effort, which is now completed, that was not required for E.ON U.S. to have an emergency operations plan to deal with a possible loss of one of the E.ON U.S. transmission control centers. E.ON U.S. states that at all times it had an emergency operations plan that did not harm the Bulk Electric System.

18. E.ON U.S. states that it did make a self-report to SERC in early 2008 of the issues that are the subject of this Settlement Agreement. E.ON U.S. also states that in no way does it believe the Bulk Electric System was harmed due to the failures to act identified by SERC as a consequence of those self-reports.

19. E.ON U.S. agrees that this Settlement 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**

20. SERC and E.ON U.S. agree that on and after the effective date of this Agreement, E.ON U.S. shall take the following actions:

- i. E.ON U.S. shall pay a monetary penalty of \$235,000.00 to SERC, via wire transfer to a SERC account that will be outlined in an invoice sent to E.ON U.S. Payment of this invoice will be made within twenty days after the receipt of the invoice, and SERC shall notify NERC if the payment is not received. SERC shall not send the invoice until both NERC and the Federal Energy Regulatory Commission (the "Commission") have approved this Settlement Agreement.
- ii. E.ON U.S. shall host a workshop in Louisville, Kentucky focusing on compliance with reliability standards:
  - a. The Workshop shall be scheduled for completion prior to January 2009.
  - b. The Workshop will be open to representatives from all SERC Registered Entities, as well as any SERC, NERC, or Commission representatives, and any utilities bordering E.ON U.S.'s control area that are not registered in SERC.
  - c. Workshop will be tentatively scheduled for one full day, with the possibility of expanding to a second full or partial day if sufficient agenda items of interest are developed.
  - d. E.ON U.S. and SERC shall jointly develop the specific presentation topics.
  - e. SERC shall have approval authority for workshop objectives and content.
  - f. The format will be a combination of panels and individual speakers.

- g. An objective of the Workshop is to have the program be more industry-driven in that the majority of the speakers/panelists would be industry participants.
- h. SERC will provide speakers/panelists for some of the presentations.
- i. E.ON U.S. would seek out industry participants as speakers.
- j. SERC may provide assistance to E.ON U.S. in identifying interested participants and speakers.
- k. Topics will include mitigation plans and issues surrounding them which may include the following, subject to agreement by SERC and E.ON U.S.:
  - i. NERC Rules of Procedure and Compliance Monitoring and Enforcement Program requirements for Mitigation Plans
  - ii. Additional SERC requirements for Mitigation Plans
  - iii. Processes for Mitigation Plan submittal, revisions, and periodic update
  - iv. Required Mitigation Plan content including actions to correct the alleged violation actions to prevent recurrence
  - v. Importance of timely completion of Mitigation Plans
- l. E.ON U.S. shall pay the overhead costs of hosting the meeting, covering such items as the meeting room, refreshments, and lunch for the participants.
- m. Participants will be responsible for their own travel, lodging and other expenses.

21. SERC Compliance Enforcement Staff determined a proposed penalty for the violations of FAC-001-0 and EOP-008-0, based on the following factors:

- i. E.ON U.S.'s failure to complete the approved Mitigation Plan for EOP-008 by the completion date set forth in the Mitigation Plan. The Mitigation Plan was completed 270 days following June 18<sup>th</sup>, 2007. E.ON U.S. did not communicate within its organization the priority of completing on time a Mitigation Plan that involves the reliability of the bulk power system.
- ii. E.ON U.S.'s failure to timely submit Mitigation Plan closure documentation and failure to provide evidence supporting closure of the Mitigation Plan by the approved completion date for the EOP-008 and FAC-001 Mitigation Plans.
- iii. E.ON U.S.'s history, cooperation, compliance culture, aggravating factors, mitigating factors and its impact on the bulk power system.

22. In consideration of E.ON U.S.'s candor and cooperation in resolving these issues, its commitment above to host a compliance workshop, its actions taken and to be taken to improve its compliance program in response to this Agreement, and recognizing that E.ON U.S. achieved compliance with most of the sub-requirements of R1 of EOP-008 Standard prior to December 31,



2007, SERC Compliance Enforcement Staff agreed to the penalty under this Agreement of \$235,000.00.

23. Failure to comply with any of the terms and conditions of this Settlement Agreement shall be deemed to be the same and/or additional violations and may subject E.ON U.S. to new or additional enforcement, penalty or sanction actions in accordance with the NERC Rules of Procedure.

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

## **V. ADDITIONAL TERMS**

25. The signatories to the Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of SERC or E.ON U.S. has been made to induce the signatories or any other party to enter into the Agreement.

26. SERC shall report the terms of all settlements of compliance matters to NERC. NERC will review the settlement for the purpose of evaluating its consistency with other settlements entered into for similar violations or under other, similar circumstances. Based on this review, NERC will either approve the settlement or reject the settlement and notify SERC and E.ON U.S. of changes to the settlement that would result in approval. If NERC rejects the settlement, NERC must provide specific written reasons for such rejection and SERC will attempt to negotiate a revised settlement agreement with E.ON U.S. 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 and (ii) publicly post the alleged violation and the terms provided for in the settlement.

27. The Agreement will be submitted to the Commission and will be subject to Commission review pursuant to section 39.7 of the Commission's regulations.

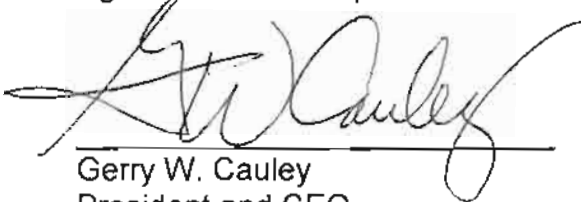
28. This Agreement shall become effective upon NERC and the Commission's approval of the Agreement.

29. E.ON U.S. agrees that this Agreement, when approved by NERC and the Commission, shall represent a final settlement of all matters set forth herein and E.ON U.S. waives its right to further hearings and appeal, unless and only to the extent that E.ON U.S. contends that any NERC or Commission

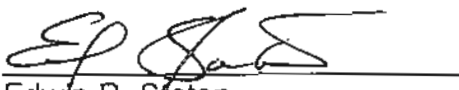
action on the Agreement contains one or more material modifications to the Agreement. SERC reserves all rights to initiate enforcement, penalty or sanction actions against E.ON U.S. in accordance with the NERC Rules of Procedure in the event that E.ON U.S. fails to comply with the mitigation plan and compliance program agreed to in this Agreement. In the event E.ON U.S. fails to comply with any of the stipulations, remedies, sanctions or additional terms, as set forth in this Agreement, SERC will initiate enforcement, penalty, or sanction actions against E.ON U.S. to the maximum extent allowed by the NERC Rules of Procedure, up to the maximum statutorily allowed penalty. E.ON U.S. shall retain all rights to defend against such enforcement actions, also according to the NERC Rules of Procedure.

30. 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.
31. 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.
32. The Agreement may be signed in counterparts.
33. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:

  
\_\_\_\_\_  
Gerry W. Cauley  
President and CEO  
SERC RELIABILITY CORPORATION

5/23/2008  
Date

  
\_\_\_\_\_  
Edwin R. Staton  
Director, Transmission  
E.ON U.S. SERVICES INC.

5/15/08  
Date

**Attachment b**

**Notice of Filing**

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

E.ON U.S. Services Inc.

Docket No. NP09-\_\_\_\_-000

NOTICE OF FILING  
(DATE)

Take notice that on December 12, 2008, the North American Electric Reliability Corporation (NERC), filed a Notice of Penalty regarding E.ON U.S. Services Inc. in the SERC Reliability Corporation region.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, D.C. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: [BLANK]

Kimberly D. Bose,  
Secretary