
**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**NORTH AMERICAN ELECTRIC) Docket No. NP10-18-000
RELIABILITY CORPORATION)
)
)**

**RESPONSE OF THE
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
AND THE WESTERN ELECTRICITY COORDINATING COUNCIL TO ORDER
INITIATING REVIEW OF NOTICE PENALTY**

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I. INTRODUCTION

The North American Electric Reliability Corporation (“NERC”)¹ and the Western Electricity Coordinating Council (“WECC”)² file these comments in response to the Federal Energy Regulatory Commission’s (“FERC” or the “Commission”) Order Initiating Review of Notice of Penalty, issued on February 26, 2010, regarding the Turlock Irrigation District (“Turlock”).³ As stated in the Order, the Commission, on its own motion, initiated a review of a proposed penalty in Docket No. NP10-18-000 to determine whether violations of other Reliability Standards or facts not disclosed in the Notice of Penalty may have contributed to Turlock’s loss of firm load on August 29, 2007.

The Commission seeks comments on any facts, aggravating factors, or mitigating factors relevant to Turlock’s alleged violation, and whether the proposed penalty amount is sufficient. Herein, NERC and WECC focus their response on the specific issues raised in the Order by the Commission.

¹ The Federal Energy Regulatory Commission (“FERC” or “Commission”) certified NERC as the electric reliability organization (“ERO”) in its order issued on July 20, 2006 in Docket No. RR06-1-000. *North American Electric Reliability Corporation*, “Order Certifying North American Electric Reliability Corporation as the Electric Reliability Organization and Ordering Compliance Filing,” 116 FERC ¶ 61,062 (July 20, 2006).

² WECC submitted a timely doc-less motion to intervene in this proceeding on March 18, 2010.

³ *North American Electric Reliability Corporation*, “Order Initiating Review of Notice of Penalty,” 130 FERC ¶ 61,151 (2010) (“Order”).

II. SUMMARY

The conclusion in the Notice of Penalty to accept the Settlement Agreement whereby Turlock agreed to pay a financial penalty of \$80,000 to resolve without further litigation in this matter was an appropriate one. Consideration of the questions the Commission raised in the February 26 Order does not lead to a different result with respect to the appropriate penalty. The instant case occurred just a few months after Reliability Standards became mandatory and enforceable, and it resulted in one of the early Compliance Violation Investigations (“CVI”). As the evidence in the Notice of Penalty and supplemental responses provided to date, including this instant response, make clear, a robust record was developed with respect to this matter even though certain other information was not reflected in the Settlement Agreement or the Notice of Penalty. NERC takes responsibility if the initial record made in support of the Settlement Agreement is insufficient. Based on what it knows now and has provided to the Commission in the supplemental responses, NERC continues to believe that the settlement and proposed penalty for this matter should stand. Nevertheless, additional guidance from the Commission on the thoroughness of the record in support of settlements would be useful for NERC, the Regional Entities, and the users, owners and operators of the bulk power system. Accordingly, the underlying facts of this case, as made clearer in these responses to the Commission’s questions, support approval of the Settlement Agreement as filed.

III. RESPONSE

On August 30, 2007, Turlock self-reported a possible violation of FAC-003-1.⁴ After a CVI, WECC concluded that there had been a violation of FAC-003-1. On November 13, 2009, NERC filed a Notice of Penalty with FERC, in Docket No. NP10-18-000, regarding a Settlement Agreement reached by and between WECC and Turlock. In its Order of February 26, 2010, the Commission requests certain additional information in support of the findings and proposed penalty.

As an initial matter, the Commission seeks clarification as to the scope of the record review by WECC and the NERC Board of Trustees Compliance Committee (“BOTCC”) with respect to the findings and proposed penalty. The violations at issue occurred in the early days of mandatory applicability and enforceability of NERC Reliability Standards. As a Section 201(f) entity, Turlock was a newly registered entity and one of the small entities, comparatively, in the WECC Interconnection. A CVI was initiated regarding the matters addressed by the Settlement Agreement, and NERC was apprised of developments from the outset. Following discovery of the violations, Turlock acted properly to mitigate the violations and to undertake additional actions to prevent further occurrence. WECC took into account all facts disclosed in the self-report, the CVI, and numerous other information sources in the record, as well as the NERC Sanction Guidelines, in pursuing the instant enforcement action and determining the proposed penalty. NERC staff and the NERC BOTCC reviewed the CVI report, other record documents and the Settlement Agreement, in approving the findings and proposed penalty.

⁴ The purpose of Reliability Standard FAC-003-1 is to improve the reliability of the electric transmission systems by preventing outages from vegetation located on transmission rights-of-way (ROW) and minimizing outages from vegetation located adjacent to ROW, maintaining clearances between transmission lines and vegetation on and along transmission ROW, and reporting vegetation-related outages of the transmission systems to the respective Regional Entities and NERC.

Information that was reviewed in preparation of this response has not changed NERC staff's or NERC BOTCC's view as to the appropriateness of the findings and the penalty for this matter.

NERC and WECC believe that the settlement reached in this matter, which included a financial penalty as well as mitigation measures and resulted in additional voluntary efforts undertaken by Turlock, optimizes the overall reliability benefit relative to the cost of an enforcement action. The benefit is measured in terms of effectuated reliability improvements and the impact on Turlock and the industry overall. Here, the penalty amount is properly tied to the seriousness of the violation and takes into account the actual loss of load that occurred for just over an hour period and the relevant factors of the NERC Sanction Guidelines. It evoked the proper response from the entity and therefore sends the right message to the industry regarding compliance responsibility and accountability. A penalty that substantially exceeds that which is supported by the record in accordance with the NERC Sanction Guidelines is not a good use of resources, becomes unduly punitive and may signal to the industry that litigation, rather than prompt resolution, should be pursued.

Most importantly, the Commission properly recognized that load shedding is not a violation of NERC Reliability Standards.⁵ Tying financial penalties to the fact or amount of load shed could create a perverse and harmful incentive to the industry not to shed load, in circumstances where load shedding is needed to preserve system reliability. NERC and the industry have worked for decades to provide operators the authority and confidence to shed load when needed to save the system. Penalizing this action could be very detrimental to reliability. NERC and WECC encourage the Commission not to make direct links between customer outages in a manner similar to that in which it would evaluate market manipulation and financial

⁵ February 26 Order at P 12.

damages. The amount of load lost should be a general consideration in reflecting upon the impact on system reliability, but nothing more.

For these reasons and those set forth below, NERC and WECC believe that the approach applied in reaching resolution of this complex matter resulted in a penalty amount that is supported by the record. To the extent that the Commission wishes to provide additional guidance on establishing appropriate penalties, NERC and WECC urge that such guidance have prospective application and that it not result in modification of the penalty set forth in the Settlement Agreement pending approval before the Commission.

The February 26 Order raised the following specific issues, to which NERC and WECC provide the following comments:

- 1) *The Commission directs NERC to explain and, if possible, reconcile the calculations of total lost load, as set forth in footnote 34.⁶*

In the settlement agreement with WECC, Turlock stipulated to 270 MW of lost load resulting from the August 29, 2007 incident. Yet, the sequence of events set forth in NERC's February 24, 2010 Supplemental filing could be read to suggest that 352 MW of load may have been lost, as noted in the February 26 Order.

Upon further review in response to the February 26 Order, NERC and WECC have concluded that the actual lost load totals 231 MW, which is less than the 270 MW stipulated

⁶ "Turlock stipulated to the 270 MW quantity of lost load in the settlement. However, a sequence of events in NERC's February 24 supplemental filing indicates that a greater quantity of load may have been lost for a period of time. Specifically, the sequence indicates that at an estimated 1353 Pacific Standard Time (i.e., 1:53 pm PST) on August 29, 2007, Modesto's and Turlock's automatic load shedding tripped approximately 81 MW and 73 MW of firm load, respectively and that 86 MW of load was "interrupted," for a possible initial total lost load of 240 MW. At 1359, Modesto restored 15 MW of firm load, but manually shed 35 MW of firm load at 1418, for an apparent net total at that time of 260 MW of load lost. At 1422, Modesto reported shedding an additional 50 MW and at 1438, Modesto manually shed 22 MW of firm load, for an apparent net total of 332 MW of load lost as of 1438. Turlock then shed 20 MW of firm load at 1445, for an apparent total maximum load lost of 352 MW for a short time until 1456, when Turlock restored 20 MW of firm load and 1457 when Modesto restored its firm load. NP10-18-000 Record, NERC February 24, 2010 Supplemental Filing at 2-3. We direct NERC to explain and, if possible, reconcile these calculations of total lost load." (*Internal footnote citations omitted.*)

amount and the 352 MW figure identified in footnote 34 of the Order. This difference is due to two instances of double counting with respect to 86 MW of additional load that was not shed by Turlock at 1353 and 50 MW of load that was not shed by Modesto at 1422. Subtracting these amounts (352 MW minus 136 MW) results in a figure of 216 MW which is the maximum amount of load that was lost at any one time on the system. Adding the 15 MW restored by Turlock at 1442 shows 231 MW of total system loss during the hour-long period.

2) *Second, the penalty amounts in other notices of penalty NERC has filed to date alleging FAC-003-1 R2 violations range from \$0 to \$250,000. . . While the record in this Notice notes the approximate number of customers who lost service as a result of Turlock's transmission outage, the Notice does not examine or attempt to quantify the actual harm caused by the load loss. Because the consequences of Turlock's FAC-003-1 R2 alleged violation are much more severe than those of the other filed violations of the same Standard and Requirement, the penalty against Turlock arguably should be higher than the highest penalty amount yet assessed for the same violation.*

In accordance with the NERC Sanction Guidelines, after determining the Base Penalty Range, WECC calculated the penalty based on the violation's potential risk to the reliability of the bulk power system ("BPS") under the specific circumstances presented by the case (reliability impact), and then applied mitigating and aggravating factors as appropriate. Among the factors considered was the actual load lost. However, lost load is not itself an aggravating factor that may be used to increase an entity's penalty. Moreover, the Commission noted that: "Load shedding is not, alone, a violation, and the Commission recognizes that load shedding may sometimes be necessary or required."⁷ Indeed, load shedding is used by registered entities to limit the impact of an outage by preventing it from cascading. If the Commission treats load shedding as an aggravating circumstance in this case, it may deter other registered entities from using load shedding in the future. This deterrence could have a negative impact on the reliability of the BPS. Finally, it is important to note, as discussed in more detail below, that the loss of

⁷ *Id.* at P 12.

load was not directly caused by the violation in question; and, therefore, is not, standing alone, an appropriate yardstick by which to evaluate the proposed penalty.

The facts uncovered during WECC's and other registered entities' investigations of this incident reveal that Turlock's violation of FAC-003 was not the only cause of the lost load. The mis-positioned relay switch also contributed to the resulting lost load. WECC appropriately penalized Turlock for its failure to properly maintain vegetation clearances and the reliability risk associated with that failure. This approach is consistent with that taken in a Mid-American Energy Company case ("MAEC") in which the company failed to correct a tree's encroachment beyond the entity's FAC-003-1 Clearance 2 distance because of a transposition error made when preparing the work order for the field work crew. Not long after the error the tree subsequently caused a trip of the line under which it was growing. MAEC incurred and was penalized for a violation of Reliability Standard FAC-003-1 R2 (FERC Docket No. NP08-2-000). However, the transposition error was not considered to be an aggravating factor to the penalty for the violation.

It is true that the actual dollar figure for the penalty assessed against Turlock is lower than the penalties assessed against Baltimore Gas and Electric ("BGE") and Commonwealth Edison Company ("ComEd"). However, there are distinguishing characteristics, including size and relative impact, and these factors were taken into consideration at the time of the penalty assessment.

Following issuance of the Commission's February 26 Order, WECC analyzed several additional measures relative to the size and impact of the entities. These after-the-fact evaluations and analyses are provided for additional comparative and illustrative purposes only and do not reflect how penalties were determined here or are determined in other cases. With these caveats, the first measure WECC considered was miles of transmission operated at 200 kV

and above since FAC-003 applies to all transmission lines operated at 200 kV and above. Turlock has approximately 62 total miles of transmission line operated at 200 kV and above. The particular line at issue in the instant case was 31 miles long. In comparison, BGE and ComEd have 538 and 1,623 miles of transmission line operated at 200 kV and above, respectively. Thus, the penalty per mile of transmission for Turlock could be read as \$1,290.32, whereas the BGE and ComEd penalties per mile of transmission are only \$334.33 and \$138.63, respectively.

WECC also analyzed total revenue and total assets. According to Turlock's Annual Report, in 2008, Turlock had \$336 million in total revenue and \$356 million in total assets. In comparison, BGE and ComEd had \$3.6 billion and \$6.1 billion in total revenue and \$6.45 billion and \$19.2 billion in total assets, respectively (Source: Constellation Energy Group, Inc. 2009 Form 10K and Exelon Corporation 2008 Form 10K). The following comparisons are provided for illustrative purposes and are not percentages. In order to simply get to whole numbers for ease of comparison and reference, WECC multiplied the penalty to revenue and penalty to asset ratios for all three entities by 100,000.

The penalty to revenue ratio multiplied by 100,000 for Turlock is 24, whereas the penalty to revenue ratio multiplied by 100,000 for BGE and ComEd are 5 and 4, respectively. With respect to total assets, the penalty to asset ratio multiplied by 100,000 for Turlock is 22, whereas the penalty to asset ratio multiplied by 100,000 for BGE and ComEd are 3 and 1, respectively.

These figures are provided in the chart below for ease of reference.

	<u>Miles Trans</u>	<u>Miles Trans. ≥ 200 kV</u>	<u>Penalty</u>	<u>Penalty Per Mile of ≥ 200 kV</u>
TID	2,300	62	80,000	\$1,290.32
BGE	24,000	538	180,000	\$334.57
ComEd	90,000	1,623	225,000	\$138.63

	<u>Total Assets</u>	<u>Total Revenue</u>	<u>Penalty</u>	<u>Penalty to Asset Ratio</u>	<u>Penalty to Asset Ratio x 100,000</u>	<u>Revenue Ratio</u>	<u>Penalty to Revenue Ratio x 100,000</u>
*BGE	6,450,000,000.00	3,579,000,000.00	\$ 180,000.00	0.000028	3	0.0000503	5
COMED	19,200,000,000.00	6,136,000,000.00	\$ 225,000.00	0.000012	1	0.0000367	4
TID	356,100,000.00	336,563,000.00	\$ 80,000.00	0.000225	22	0.0002377	24

*2009 Data (ComEd and TID are 2008)

As a result, and for the reasons set forth herein, it does not necessarily follow that the penalty against Turlock should be higher than the highest penalty amount yet assessed for the same violation. Rather, penalties should be assessed based on the particular facts and circumstances of a given case.

3) *Third, the Commission questions WECC's finding, which appears to be a mitigating factor affecting the agreed-upon penalty amount, that Turlock self-reported the FAC-003-1 R2 violation.[] Both Turlock and Modesto, which also shed load in response to the fault, were required to report the event as a reportable disturbance: Reliability Standard EOP-004-1 R3 and Attachment 1-EOP-004 require a registered entity to report certain disturbances including, among others, those that result in firm load shedding of 100 MW or more to maintain the reliability of the bulk electric system.[] Thus, it is not clear why Turlock should be credited with self-reporting with respect to FAC-003-1 R2.[]*

Although Turlock had the responsibility under EOP-004-1 R3 to report the loss of load to the Regional Entity and did so, Turlock had no independent duty to promptly self-report a

violation of FAC-003-1 to the WECC Compliance Department. Rather, Turlock could have included notification of the vegetation-related outage as part of its quarterly reporting requirements for sustained outages. Instead, Turlock self-reported the FAC-003-1 violation to the WECC Compliance Department on August 30, 2007.

Paragraphs 24 and 25 of the FERC Policy Statement on Enforcement, Docket No. PL06-1-000, issued October 20, 2005, make clear that self-report credit is appropriate when an entity self-reports a violation.⁸ NERC and WECC believe that an entity that provides a self-report, even following an event, should be given more credit than an entity that has an event and does not self-report. The amount of credit varies based on the facts specific to the violation, the entity's conduct and the nature and content of the self-report. In this case, Turlock timely acted to voluntarily disclose the FAC-003-1 violation, resulting in WECC's appropriate consideration of a self-report credit in this matter.

4) Fourth, nothing in the record of the Notice addresses the system conditions on the day of the fault. The consequences of the fault could be more severe than presented in the notice of penalty if they extend to aggravating, say, overloaded transmission lines or operating reserve deficiencies. The Commission notes that the fault occurred in August, when the weather tends to be hottest and system loads tend to be high. WECC and NERC should have inquired as to whether the California Independent System Operator (CAISO) issued Emergency Energy Alerts for that day and how the fault and consequential transmission outage may have exacerbated sensitive operating conditions on CAISO's portion of the Western Interconnection. The record does not examine potential externalities of the fault, however, beyond noting that the fault also resulted in Modesto dropping load.

The record addresses system conditions on the day of the fault. Turlock determined, and the CVI team confirmed, that the Walnut-Westley 230 kV Transmission Line was loaded between 30 percent and 33 percent of capacity at the time of the fault. (See Record of Evidence document titled "*Detailed Discussion of NERC Standard FAC-003-1 Turlock Irrigation District*")

⁸ *Enforcement of Statutes, Orders, Rules, and Regulations*, "Policy Statement on Enforcement," 113 FERC ¶ 61,068 (2005).

Compliance Investigation” page 2, paragraph 5. Also see *Turlock Irrigation District Compliance Violation Investigation Report, October 17, 2008* page 10, paragraph 6.)

The record addresses weather conditions on the day of the fault. Turlock determined, and the CVI team confirmed, that the ambient temperature at the time of the fault was 100 degrees and winds were light. (See Record of Evidence document titled “*Detailed Discussion of NERC Standard FAC-003-1 Turlock Irrigation District Compliance Investigation*” page 2, paragraph 5. Also see *Turlock Irrigation District Compliance Violation Investigation Report, October 17, 2008* page 10, paragraph 5.)

WECC concluded, and the CVI team confirmed, that the Turlock Balancing Area BES conditions and all adjoining Balancing Area (Sacramento Municipal Utility District (“SMUD”) and California Independent System Operator (“CAISO”)) BES conditions prior to the outage were within System Operating Limits. (See, e.g., Record of Evidence document titled “*WECC PRELIMINARY DISTURBANCE REPORT, DATE OF DISTURBANCE August 29, 2007, TIME OF DISTURBANCE 1353 PDT, STATUS BEFORE THE DISTURBANCE.*”)

The CVI team confirmed that neither Turlock as a Balancing Authority nor any other adjoining Balancing Authorities (SMUD and CAISO) issued any Emergency Energy Alerts (“EEAs”) on the date of the vegetation caused outage as a result of the outage. (See, e.g., Record of Evidence document titled “*WECC PRELIMINARY DISTURBANCE REPORT, DATE OF DISTURBANCE August 29, 2007, TIME OF DISTURBANCE 1353 PDT, STATUS BEFORE THE DISTURBANCE.*”) Towards this end, the CVI team contacted the California Mexico Reliability Coordinator (“CMRC”) by phone to confirm that no EEAs were issued on the date of the vegetation-caused outage. Moreover, the CVI team confirmed in a phone conversation with the CMRC that all Balancing Authority systems within the CMRC footprint were within System

Operating Conditions at the time of the vegetation-caused outage. The CMRC confirmation included operating conditions within the Turlock Balancing Authority area, the SMUD Balancing Authority area and the CAISO Balancing Authority area.

While the CAISO did issue a voluntary Stage One EEA on August 29, 2007 due to high temperatures and low hydro levels, this EEA did not commence until 1520 PDT (as noted in the CAISO News Release announcing the EEA), well after the restoration of all Modesto firm load at 1447 PDT and Turlock firm load at 1506 PDT (as noted in the WECC Preliminary Disturbance Report for this event). The CAISO had also issued a Flex Alert⁹ on August 28, 2007 applicable on August 29-30, 2007.

- 5) *Fifth, the mitigation and remedial efforts appear to be less rigorous than called for by the facts of this matter. Turlock's entire mitigation plan for FAC-003-1 R2, accepted by WECC and approved by NERC, included an emergency "tree-only" inspection of the particular line involved in the event, some related trimming, and refresher training for Turlock's field personnel on certain aspects of its vegetation management plan.[] The record indicates that field personnel failed, on at least two occasions, to spot vegetation within ten feet of a transmission line.[] The Commission would expect that proper mitigation would involve, at minimum, Turlock's re-evaluation of its procedures for inspecting and determining tree clearances to ensure that its methods are designed to avoid to the extent feasible the type of oversight that contributed to the fault. Yet we do not find anything in the Notice that indicates that Turlock took such a step.*

As noted in the Settlement Agreement and the Notice of Penalty, shortly after the August 29, 2007 outage, Turlock initiated an internal investigation to determine the underlying causes of this incident. On September 11, 2007, Turlock completed its internal investigation of the outage with the finding that it was the result of human error by the individual responsible for the two most recent patrols previous to the contact. WECC independently concluded that the underlying

⁹ According to the CAISO web site, the *Flex Alert Network* is a public education and notification system created in 2004 by **Flex Your Power**, the investor owned utilities, and the California Energy Commission to help manage summer peak-electricity demand. *Flex Alert Network* partners educate residents, businesses and local government about the key peak load-shift and peak conservation measures to take to lower demand and help mitigate low power reserve situations. Reserves can be low due to high peak demand, adverse weather and unplanned generation outages or transmission problems. <http://www.caiso.com/docs/2005/09/23/2005092311292416749.html>.

cause of the contact and the associated violation was not deficiency in Turlock's Transmission Vegetation Management Program ("TVMP") procedures but the human error noted. And, as noted in the Notice of Penalty, the responsible Turlock employee was disciplined appropriately in accordance with applicable Turlock employee performance and conduct policies and practices. Turlock also patrolled all of its transmission lines over 200 kV, as described in more detail in the comments submitted to the Commission by Turlock and implemented use of Light Detection and Ranging ("LiDar") technology, confirmation checks with respect to tree clearances and took preventative action to trim.

Notwithstanding that WECC confirmed that Turlock's TVMP was in compliance with Reliability Standard FAC-003-1 Turlock made some modifications to improve its TVMP procedures. Please refer to the Turlock's submitted comments in response to the February 26 Order for further detail and clarity on these actions.

NERC and WECC also respond to the following questions posed by the Commission:

18. While the Commission believes that, based on the foregoing, the penalty amount may be insufficient, the information provided on February 24, 2010 indicates that other factors may have contributed to the loss of firm load, and that other Reliability Standards may have been violated. *As noted above, information in NERC's supplemental filing, but not mentioned in the Notice, indicates why an apparent single contingency – the outage of the 230 kV Westley-Walnut transmission line – led to the unexpected result of a loss of load. While Turlock and WECC apparently were aware of these facts, the Notice did not mention them. There is no reference in the Notice to whether the NERC BOTCC was aware of or considered these facts in approving the settlement. This aspect of the loss of load could be an aggravating factor that would increase an appropriate penalty assessed to Turlock because Turlock presumably was responsible for the communication switch that was turned off at Turlock's Walnut station, disabling the primary protection communication. The Commission believes that consideration of this additional information may also have a material effect on the amount of the penalty. On the other hand, if Modesto's Parker relay scheme had not miscoordinated with Turlock's Westley relay scheme, the Westley-Parker line would have remained in service and load shedding would have been unnecessary. It is not clear whether Turlock should have known about the potential for miscoordination with Modesto's relay. Nor is it clear whether*

Turlock and Modesto checked after the August 29, 2007 loss of load whether there was any potential for other miscoordination between protection systems for their transmission facilities. It is also not clear whether Modesto filed a report and corrective action plan with WECC relating to the miscoordination with the Turlock relays, as could have been required by PRC-004-1, R3, or whether before August 29, 2007 Turlock and Modesto had coordinated protection systems on their major transmission lines, as required by PRC-001-1 R4.

Having reviewed and considered numerous reports and sources of information, WECC was indeed aware that the loss of the Westley-Walnut line contributed to the loss of load. WECC also recognizes that the communication switch in question was Turlock's responsibility. WECC appropriately penalized Turlock for its failure to properly maintain vegetation clearances and the reliability risk associated with that failure, including the fact that there was a loss of load.

WECC also determined that, prior to the outage incident, Modesto and Turlock had shared and reviewed protection system settings for the Westley-Parker and Westley-Walnut 230 kV lines as required by the relevant Reliability Standards. However after the incident, Turlock and Modesto conducted a study to review the protection devices for the transmission systems of both entities. This review led to the discovery of the communications switch error (specifically, the "permissive trip" switch handle for the communications channel was in the wrong position). This discovery resulted in improvements to the directional ground time settings at the Westley, Parker and Walnut Switchyards/Substations and other changes. The switch was placed into the correct operating position and relabeled to prevent future mistakes. Modesto reviewed the relay settings and proposed changes at Westley, Parker and Walnut to improve coordination. These proposed changes have now been implemented. In addition, the relay maintenance procedure for Walnut was modified and the Turlock technicians were trained regarding the position of the protection communication switch at Walnut. Turlock and Modesto reviewed the relay settings to improve coordination between Westley, Walnut, and Parker relays. The findings of this

investigation were documented in a report titled “Walnut – Westley 230 kv line August 29, 2007 Relay Report,” a copy of which was previously submitted to FERC in response to FERC’s request for information.

Overall system conditions and configuration are dynamic as load and generation changes over and around Turlock’s and Modesto’s locale of the BPS. This makes it difficult to implement static relay settings that will be optimum over the full range of anticipated system conditions.

WECC led CVIs of Turlock and Modesto, in which NERC personnel participated. The CVI teams determined that no violations of Reliability Standards PRC-004-1 R3 or PRC-001-1 R4 occurred.

The Commission seeks more information on two PRC requirements:

It is also not clear whether Modesto filed a report and corrective action plan with WECC relating to the miscoordination with the Turlock relays, as could have been required by PRC-004-1, R3, or whether before August 29, 2007 Turlock and Modesto had coordinated protection systems on their major transmission lines, as required by PRC-001-1 R4.¹⁰

NERC staff and NERC BOTCC did not consider the PRC-004-1 R3 or PRC-001-1 R4 issues because they were not part of the Settlement Agreement. As for PRC-001-1 R4, and based on the evidence now presented, both Turlock and Modesto confirmed that the settings for the 230 kV loop had been shared and reviewed by both entities. While there is evidence that Turlock and Modesto did coordinate what the proper settings would be, NERC now believes that Turlock appears to have failed to implement the agreed-upon switch position at some point and to have failed to communicate the switch change from the agreed-upon position in possible contravention of PRC-001-1. With respect to that possible violation of PRC-001-1, NERC believes that no change in the penalty is warranted given the size of the penalty and the

¹⁰ February 26 Order at P 18.

appropriate corrective actions, including mitigation measures and additional remediation and reliability enhancement efforts, that were taken.

Even if one assumes that the switch being in the wrong place resulted in a misoperation within the meaning of PRC-004, Modesto in fact analyzed the misoperation and took corrective action. Because of actions taken by Modesto described above, there was no need for Modesto to file an additional corrective action plan – it had already completed the necessary corrective actions. Therefore, there does not appear to be a violation of PRC-004-1 R3.

The NERC BOTCC also was aware of the lost load and the loss of the Westley-Walnut line and determined its treatment was appropriately reflected in the proposed penalty. Based on its prior determination with respect to MAEC's transposition error, the NERC BOTCC has confirmed that it would not have considered the switch in the wrong position to be an aggravating factor with respect to the FAC-003-1 violation that would warrant adjustment of the penalty. Moreover, the NERC BOTCC has confirmed that a possible violation of PRC-001-1 with respect to the switch position also would not warrant adjustment of the penalty.

IV. CONCLUSION

NERC's mission is to ensure the reliability of the BPS of North America. In carrying out that mission, NERC and the Regional Entities, including WECC, are seeking to create and enhance a culture of reliability improvement and reliability excellence among the users, owners and operators of the BPS. Individual decisions with respect to a given Notice of Penalty must be evaluated in the context of that overarching responsibility.

This case is a settlement, not a fully litigated case, pertaining to allegations that, on August 29, 2007, Turlock violated certain Reliability Standards and experienced a loss of load. While NERC and WECC are open to feedback from the Commission with respect to the findings

and proposed penalty, such feedback should have generic prospective applicability. WECC and NERC continue to believe that the penalty assessed in this case is appropriate under the facts presented. Therefore, NERC and WECC urge the Commission to accept the findings and proposed penalty and to not engage in further review of this matter consistent with the comments set forth herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all parties listed on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 18th day of March, 2010.

/s/ Rebecca J. Michael
Rebecca J. Michael

*Attorney for North American Electric
Reliability Corporation*