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## ATTACHMENTS

**Attachment 1:** Proposed Agreement Between Northeast Power Coordinating Council, Inc. and Western Electricity Coordinating Council Concerning Compliance Monitoring and Enforcement of WECC Registered Functions

**Attachment 2:** Current Agreement Between North American Electric Reliability Corporation and Western Electricity Coordinating Council Concerning Compliance Monitoring and Enforcement of WECC Registered Functions (for information)

**Attachment 3:** Agreement Concerning Termination of “Agreement Between North American Electric Reliability Corporation and Western Electricity Coordinating Council Concerning Compliance Monitoring and Enforcement of WECC Registered Functions”

**Attachment 4A:** Proposed Revised Amended and Restated Delegation Agreement between NERC and Northeast Power Coordinating Council, Inc. – Clean version

**Attachment 4B:** Proposed Revised Amended and Restated Delegation Agreement between NERC and Northeast Power Coordinating Council, Inc. – Redlined version

**Attachment 5A:** Proposed Revised Amended and Restated Delegation Agreement between NERC and Western Electricity Coordinating Council – Clean version

**Attachment 5B:** Proposed Revised Amended and Restated Delegation Agreement between NERC and Western Electricity Coordinating Council – Redlined version

**Attachment 6:** Resolution of the NERC Board of Trustees approving the NPCC-WECC CEA Agreement, the NERC-WECC Termination Agreement, the Amendments to the NPCC Delegation Agreement and the Amendment to the WECC Delegation Agreement

## **I. INTRODUCTION**

The North American Electric Reliability Corporation (“NERC”) provides notice of

- (1) An “Agreement Between Northeast Power Coordinating Council, Inc. and Western Electricity Coordinating Council Concerning Compliance Monitoring and Enforcement of WECC Registered Functions” (the “NPCC-WECC CEA Agreement”), **Attachment 1** to this Petition;
- (2) Amendments to the Amended and Restated Delegation Agreement between NERC and Northeast Power Coordinating Council, Inc. (“NPCC”; such Agreement, the “NPCC RDA”), shown in **Attachment 4B** to this Petition; and
- (3) An amendment to the Amended and Restated Delegation Agreement between NERC and Western Electricity Coordinating Council (“WECC”; such Agreement, the “WECC RDA”), shown in **Attachment 5B** to this Petition.

NERC also provides notice of an “Agreement Concerning Termination of ‘Agreement Between North American Electric Reliability Corporation and Western Electricity Coordinating Council Concerning Compliance Monitoring and Enforcement of WECC Registered Functions’” (the “NERC-WECC Termination Agreement”), **Attachment 3** to this Petition.

The purpose of the NPCC-WECC CEA Agreement, the amendments to the NPCC RDA and the WECC RDA, and the NERC-WECC Termination Agreement, is to provide for NPCC to assume responsibility for performing Regional Entity compliance monitoring and enforcement program (“CMEP”) functions with respect to those reliability functions for which WECC is the registered entity within the United States portion of the WECC Region.<sup>1</sup> Currently, NERC acts as the Compliance Enforcement Authority (“CEA”) for the WECC Registered Functions in the U.S. portion of the WECC Region, pursuant to an “Agreement Between North American Electric Reliability Corporation and Western Electricity Coordinating Council Concerning Compliance

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<sup>1</sup> The “WECC Region” is the geographic area described in Exhibit A to the WECC RDA. WECC is registered on the NERC Compliance Registry for the reliability functions of Reliability Coordinator (“RC”) and Interchange Authority (“IA”) in the WECC Region (the “WECC Registered Functions”).

Monitoring and Enforcement of WECC Registered Functions” entered into effective January 1, 2009 (the “NERC-WECC CEA Agreement”), **Attachment 2** to this Petition. Pursuant to the NPCC-WECC CEA Agreement and the NERC-WECC Termination Agreement, NPCC will succeed NERC as the CEA with respect to the WECC Registered Functions in the U.S portion of the WECC Region.

This petition includes the following attachments:

**Attachment 1** is the proposed NPCC-WECC CEA Agreement.

**Attachment 2** is the current NERC-WECC CEA Agreement, which is included as an attachment for ease of reference.

**Attachment 3** is the NERC-WECC Termination Agreement.

**Attachments 4A and 4B** are clean and redlined versions of the amended NPCC RDA.<sup>2</sup>

**Attachments 5A and 5B** are clean and redlined versions of the amended WECC RDA.

**Attachment 6** is the resolution of the NERC Board of Trustees approving the NPCC-WECC CEA Agreement, the NERC-WECC Termination Agreement and the amendments to the NPCC RDA and the WECC RDA.

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<sup>2</sup> The proposed amendments to the NPCC RDA consist of the addition of new Section 6(j), the addition of text to Exhibit A, and the addition of new Section 9 to Exhibit E.

## **II. NOTICES AND COMMUNICATIONS**

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

Gerald W. Cauley  
President and Chief Executive Officer  
David N. Cook  
Senior Vice President and General Counsel  
North American Electric Reliability  
Corporation  
116-390 Village Boulevard  
Princeton, NJ 08540-5721  
(609) 452-8060  
(609) 452-9550 – facsimile  
[david.cook@nerc.net](mailto:david.cook@nerc.net)

Rebecca J. Michael  
Associate General Counsel for Corporate  
and Regulatory Matters  
North American Electric Reliability  
Corporation  
1120 G Street, N.W., Suite 990  
Washington, D.C. 20005-3801  
(202) 393-3998  
(202) 393-3955 – facsimile  
[rebecca.michael@nerc.net](mailto:rebecca.michael@nerc.net)

## **III. PROPOSED NPCC-WECC CEA AGREEMENT, NERC-WECC TERMINATION AGREEMENT AND DELEGATION AGREEMENT AMENDMENTS**

### **A. NPCC-WECC CEA Agreement**

Currently, NERC acts as the CEA for the WECC Registered Functions, pursuant to the NERC-WECC CEA Agreement. NERC and WECC entered into the NERC-WECC CEA Agreement effective January 1, 2009, in order to address FERC’s concerns about a perceived lack of independence in WECC’s performance, as the Regional Entity for the WECC Region, of the CMEP responsibilities over the reliability functions for which WECC is a registered entity.<sup>3</sup>

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<sup>3</sup> See *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060 (2007) (“April 19, 2007 Order”), at PP 453 - 456; *Order Addressing Revised Delegation Agreements*, 122 FERC ¶ 61,245 (2008) (“March 21, 2008 Order”), at P 226; *Status Report of the North American Electric Reliability Corporation and Western Electricity Coordinating Council in Response to Paragraph 226 of March 21, 2008 Commission Order*, filed September 22, 2008 in Docket Nos. RR06-1-012 and RR07-7-002; *Further Status Report of the North American Electric Reliability Corporation and Western Electricity Coordinating Council in Response to Paragraph 226 of March 21, 2008 Commission Order*, filed November 21, 2008 in Docket Nos. RR06-018 and RR07-7-006 (“Further Status Report,” submitting the NERC-WECC CEA Agreement); and the Commission’s letter Order dated February 17, 2009 accepting the Further Status Report (“February 17, 2009 Order”).

Specifically, in the April 19, 2007 Order (which approved the initial Delegation Agreements between NERC and the Regional Entities), FERC directed WECC to address the lack of separation between its compliance department and its registered RC function, and noted that if WECC wished, it could use NERC to oversee the CMEP functions as they related to WECC's compliance with reliability standards.<sup>4</sup> In the March 21, 2008 Order, FERC stated:

We accept WECC's proposal regarding the separation of its compliance and reliability coordinator functions as an interim measure, i.e., until additional measures can be put in place that will ensure that WECC does not monitor compliance of its own operations. If NERC continues to be unable to assume an expanded role regarding these matters, NERC and WECC will be required to assign this role to (i) another Regional Entity; or (ii) a third party who reports directly to NERC and who is approved by NERC and the Commission.<sup>5</sup>

Although NERC has acted as the CEA for the WECC Registered Functions since January 1, 2009, pursuant to the NERC-WECC CEA Agreement, NPCC and WECC (with NERC's participation) have now negotiated the proposed NPCC-WECC CEA Agreement (**Attachment 1** to this Petition), pursuant to which NPCC would take over performance of the CEA responsibilities with respect to the WECC Registered Functions in the U.S. portion of the WECC Region. Having NPCC act as the CEA for the WECC Registered Functions will be consistent with the option provided in P 226 of the March 21, 2008 Order that “. . . NERC and WECC will be required to assign this role to (i) another Regional Entity . . . .”

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<sup>4</sup> April 19, 2007 Order at PP 453 and 456. At the time of the April 19, 2007 Order, WECC's only registered function in the WECC Region was as the RC. Subsequently, WECC also became the registered IA in all Balancing Authority (“BA”) Areas in the U.S. portion of the WECC Region. Exhibit B to the NPCC-WECC CEA Agreement lists the BA Areas in the U.S. portion of the WECC Region for which WECC is registered as the IA. Section 5 of the Agreement provides for Exhibit B to be revised if there are changes in the BA Areas for which WECC is registered as the IA.

<sup>5</sup> March 21, 2008 Order at P 226.

Further, another Regional Entity, SERC Reliability Corporation (“SERC”) is already acting as the CEA with respect to the reliability functions for which two other Regional Entities, the Florida Reliability Coordinating Council (“FRCC”) and the Southwest Power Pool, Inc. (“SPP”) are the registered entities in their respective regions, pursuant to agreements (the “SERC-FRCC CEA Agreement” and the “SERC-SPP CEA Agreement”) that have been approved by FERC.<sup>6</sup> Thus, there is precedent for one Regional Entity acting as the CEA with respect to reliability functions for which another Regional Entity is a registered entity.

The proposed NPCC-WECC CEA Agreement has been developed to follow closely the existing, approved SERC-FRCC CEA Agreement and SERC-SPP CEA Agreement.<sup>7</sup> The NPCC-WECC CEA Agreement provides for NPCC to be responsible for performing the full range of CMEP activities with respect to the WECC Registered Functions.

The Initial Term of the NPCC-WECC CEA Agreement, as specified in §7(a), is from its Effective Date to December 31, 2014.<sup>8</sup> The NERC-WECC CEA Agreement specifies that its Initial Term ends on December 31, 2013; however, in light of the fact that NPCC will be taking over the CEA responsibilities for the WECC Registered Functions effective January 1, 2012 (assuming the Commission approves the requested Effective Date), NPCC, WECC and NERC concluded that the Initial Term of the NPCC-WECC CEA Agreement should run to December 31, 2014, resulting in an Initial Term of three years. The NPCC-WECC CEA Agreement will

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<sup>6</sup> The Commission initially approved the SERC-FRCC CEA Agreement and the SERC-SPP CEA Agreement in an Order issued July 12, 2010. *Order Conditionally Accepting Compliance Monitoring and Enforcement Program Agreements and Revised Delegation Agreements, and Ordering Compliance Filing*, 132 FERC ¶ 61,024 (2010) (“SERC CEA Agreements Order”).

<sup>7</sup> The SERC-FRCC CEA Agreement and SERC-SPP CEA Agreement were developed to follow closely the NERC-WECC CEA Agreement.

<sup>8</sup> Capitalized terms used in this description of the NPCC-WECC CEA Agreement are defined terms in the NPCC-WECC CEA Agreement.



not automatically renew at the end of the Initial Term, but rather, as provided in §7(b), will only be renewed with the express approval of NERC and FERC:

This Agreement shall not automatically renew at the end of the Initial Term without the express approval of NERC and the Commission. If either NPCC or WECC does not plan to seek approval for renewal of the agreement, that Party must give written notice to the other Party at least one (1) year prior to the end of the Initial Term. In the event NPCC and WECC intend to renew the Agreement, they shall make a joint filing to NERC not later than April 1, 2014 requesting approval of the renewal. In the event of termination of the Agreement, NPCC will work with WECC and NERC to transfer responsibility for any compliance activities in progress to the entity that will be the CEA for the WECC Registered Functions.

This provision tracks the Renewal Terms provisions of the current SERC-FRCC CEA Agreement and SERC-SPP CEA Agreement and is consistent with FERC's directive in the SERC CEA Agreements Order that the SERC-FRCC CEA Agreement and SERC-SPP CEA Agreement should not automatically renew at the end of their Initial Terms, but rather should be subject to re-evaluation at the end of their Initial Terms prior to renewal.<sup>9</sup> Section 7(b) of the NPCC-WECC CEA Agreement, quoted above, provides a procedure by which continuation of the Agreement can be evaluated by NERC and FERC in a timely manner prior to the end of the Initial Term.

Section 1 of the NPCC-WECC CEA Agreement sets forth NPCC's CMEP responsibilities with respect to the WECC Registered Functions:

**1. Responsibilities of NPCC**

(a) Beginning on the Effective Date, NPCC will perform all responsibilities of the CEA as specified in the NERC CMEP, Appendix 4C to the

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<sup>9</sup> SERC CEA Agreement Order at P 27 ("Because the effectiveness of such CMEP arrangements has not yet been tested, the Commission finds it is necessary to modify the CMEP Agreements by removing the automatic renewal provisions, subject to our re-evaluation and re-approval following the initial term, scheduled to end on December 31, 2012. This opportunity for re-evaluation and re-approval will provide the Commission, NERC, and the parties to the CMEP Agreements with an essential opportunity to consider issues that may arise from these CMEP arrangements, after assessing their effectiveness for an initial period of time, prior to renewal.")

NERC Rules of Procedure (“ROP”), as amended from time to time (the “NERC CMEP”), with respect to the WECC Registered Functions.

(b) Without limiting the scope of NPCC’s responsibilities as stated in Subsection 1(a), NPCC agrees to perform the following activities:

(1) Administer all compliance processes in Section 3.0 of the NERC CMEP with respect to the WECC Registered Functions, in accordance with the NERC Annual CMEP Implementation Plan required by Section 4.1 of the NERC CMEP for each year. If at any time, WECC’s registration status changes, NPCC will monitor the Registered Functions for which WECC is registered at that time.

(2) Lead all compliance audits and compliance investigations of the WECC Registered Functions.

(i) NPCC shall conduct a scheduled compliance audit of the WECC Registered Functions in accordance with the frequency established by NERC. As WECC is currently registered, NPCC will audit the WECC RC function at least once every three (3) years and shall conduct a scheduled compliance audit of the WECC IA function at least once every six (6) years.

(ii) Scheduled compliance audits of the WECC Registered Functions shall include all actively-monitored standards in accordance with the NERC Annual CMEP Implementation Plan.

(iii) As required by the NERC ROP, all compliance audits of the WECC RC function shall be conducted on site. Such audits will be conducted at the WECC RC Center (RCC) in Vancouver, Washington. However, upon timely notice as specified in the NERC CMEP, site visits may also be conducted at the WECC RCC in Loveland, Colorado. Spot checks or other compliance monitoring methods may be completed off site.

(iv) The Parties anticipate compliance audits of the WECC IA function will be conducted off-site. However, NPCC reserves the right to conduct compliance monitoring activities of the WECC IA function on-site as it deems necessary and in accordance with the CMEP.

(3) Determine if notices of alleged violations and proposed penalties or sanctions should be issued with respect to a WECC Registered Function, and calculate or determine any proposed penalties or sanctions in accordance with the NERC *Sanction Guidelines*.

(4) Administer processes as specified in Section 5.0 of the NERC CMEP with respect to any notices of alleged violations and proposed penalties or sanctions issued with respect to the WECC Registered Functions including, but not limited to conducting settlement negotiations for any such alleged violations.

(5) Review and approve proposed Mitigation Plans submitted with respect to a WECC Registered Function, and monitor implementation and completion of approved Mitigation Plans, in accordance with Section 6.0 of the NERC CMEP.

(6) Determine if Remedial Action Directives should be issued with respect to a WECC Registered Function, and issue such Remedial Action Directives if determined to be necessary, in accordance with Section 7.0 of the NERC CMEP.

(7) Conduct settlement negotiations for any violations of Reliability Standards discovered by NPCC per this agreement, if requested by WECC, in accordance with Section 5.6 of the NERC CMEP.

(8) Provide due process hearings with respect to notices of alleged violations, proposed penalties and sanctions, disputed Mitigation Plans, and disputed Remedial Action Directives with respect to a WECC Registered Function, as requested by WECC, in accordance with Attachment 2, Hearing Procedures, to the NERC CMEP.

(c) Compliance audit teams, compliance investigation teams, and review teams for self-certifications, spot check responses, periodic data submittals, self-reports, exception reports and complaints submitted with respect to, or relating to, a WECC Registered Function shall not include any employees of WECC, but may include employees of other Regional Entities, NERC and Commission staff members. Provided, that in accordance with Section 2(c) of this Agreement, NPCC may request and obtain technical advice and assistance from WECC employees, acting in a consulting or advisory capacity, who are not employed in a WECC Registered Function or performing activities in support of a WECC Registered Function.

Section 4 of the NPCC-WECC CEA Agreement provides for the transfer from NERC to NPCC of responsibilities for CMEP activities with respect to the WECC Registered Functions that are in progress on the Effective Date:

(a) Upon the Effective Date, the NERC-WECC CEA Agreement shall be terminated pursuant to a separate termination agreement between NERC and WECC; provided that any obligations of WECC under the NERC-WECC CEA

Agreement that have not been completed as of the Effective Date shall survive the termination of the NERC-WECC CEA Agreement and shall be timely completed by WECC in accordance with the terms of the NERC-WECC CEA Agreement.

(b) Upon the Effective Date, responsibility for being the CEA with respect to the WECC Registered Functions shall be transferred to and assumed by NPCC.

(c) Upon the Effective Date, NPCC shall assume full responsibility, as the CEA, for completion of all compliance processes with respect to the WECC Registered Functions that are in progress as of the Effective Date, including without limiting the foregoing, (i) completion and issuance of reports of compliance audits and compliance investigations of the WECC Registered Functions, (ii) completion of review of, and issuance of any findings or reports concerning, any self-certifications, spot-checks, periodic data submittals, self-reports, exception reports or complaints, submitted with respect to, or pertaining to, a WECC Registered Function, (iii) determination of whether any notice of alleged violations and/or proposed penalties or sanctions should be issued with respect to a WECC Registered Function as a result of any such compliance processes, (iv) processing of any notices of alleged violations and/or proposed penalties or sanctions that were issued before the Effective Date, or are issued after the Effective Date as the result of compliance processes conducted before the Effective Date, and (v) review, approval and monitoring of implementation and completion of any Mitigation Plans required with respect to a WECC Registered Function as the result of compliance processes conducted before the Effective Date.

Section 2(c) of the NPCC-WECC CEA Agreement specifies that NPCC may request, and WECC shall provide, subject-matter experts (“SMEs”) to provide technical advice and assistance to NPCC, in NPCC’s discretion, in carrying out the CMEP responsibilities with respect to the WECC Registered Functions. However, no SME provided by WECC may be employed in a WECC Registered Function or performing activities in support of a WECC Registered Function:

(c) WECC, acting in its delegated role as a Regional Entity, shall provide subject-matter experts (“SME”) as requested by NPCC to provide technical advice and assistance to NPCC, in NPCC’s discretion, in carrying out the CMEP with respect to the WECC Registered Functions. A SME provided by WECC may be an employee of WECC or an industry volunteer, provided that no SME provided by WECC may be employed by WECC in a WECC Registered Function or performing activities in support of a WECC Registered Function. The Parties agree that SMEs provided by WECC shall only be used by NPCC in a consulting or advisory capacity to provide expertise and advice on technical matters pertaining to the WECC Registered Functions, shall have no decision-

making responsibilities with respect to any compliance processes or compliance enforcement matters, and shall not be a member of any compliance audit team, compliance investigation team, or review team for self-certifications, spot check responses, periodic data submittals, self-reports, exception reports or complaints submitted by or relating to a WECC Registered Function.

Sections 2(d) and 6 specify the means by which NPCC will be compensated by WECC for performing the CMEP responsibilities for the WECC Registered Functions. NPCC is to be compensated for both its direct costs and an appropriate allocation of its General and Administrative costs. Section 2(d) states that WECC “shall reimburse NPCC the actual, reasonable costs of NPCC’s performance of the CMEP with respect to the WECC Registered Functions, including an appropriate allocation of NPCC’s General and Administrative costs, in accordance with Section 6 of this Agreement.” Sections 6(a)-(d) specify the means by which NPCC’s compensation will be determined through December 31, 2012, and for subsequent years. For the period from the Effective Date through December 31, 2012, NPCC and WECC agreed on a compensation of \$18,000 per quarter, to be pro-rated for any partial quarter. For years subsequent to 2012, the annual compensation is to be determined as specified in § 6(b). The determination of the annual compensation is integrated with the annual NERC and Regional Entity business planning and budgeting process (including approval by NERC and by the Commission); and is intended to result in NPCC’s costs (including allocated General and Administrative costs) for performing CMEP responsibilities with respect to the WECC Registered Functions (i) being excluded from the calculation of NPCC’s assessments to load-serving entities (“LSE”) in the NPCC Region and (ii) being included in WECC’s assessments to LSE in the WECC Region. Section 6(b) states as follows:

(b) Compensation for Years Subsequent to 2012.

(i) In its annual Business Plans and Budgets submitted to NERC and the Commission for the year 2013 and subsequent years within the term of this Agreement, NPCC shall identify a portion of its CMEP budget, including an

appropriate allocation of NPCC's General and Administrative Costs (the "WECC Registered Functions CMEP Budget"), that is attributable to the performance of the CMEP with respect to the WECC Registered Functions. NPCC's allocation of resources to the performance of its obligations under this Agreement and the corresponding budgeted amount shall be subject to approval by NERC and by the Commission as part of their overall approval of NPCC's business plan and budget. The amount of NPCC's proposed WECC Registered Functions CMEP Budget shall also be included in WECC's business plan and budget that is submitted to NERC and to the Commission for approval. The amount of the WECC Registered Functions CMEP Budget for each year, as approved by the Commission, (i) shall be excluded from the calculation of NPCC's assessments to Load Serving Entities ("LSEs") in the NPCC Region for each such year, and (ii) shall be included in the calculation of WECC's assessments to LSEs in the WECC Region for each such year. NPCC shall invoice WECC for the amount of the WECC Registered Functions CMEP Budget in four equal quarterly amounts during each year, with the invoices to be issued by NPCC to WECC on or about January 1, April 1, July 1 and October 1 and to be paid by WECC by check or electronic funds transfer to NPCC within twenty (20) business days following the date of the invoice.

In addition, §6(c) of the NPCC-WECC CEA Agreement provides for an annual reconciliation of NPCC's budgeted to actual costs (including allocated General and Administrative costs) and a billing adjustment to WECC to reflect any difference:

(c) Reconciliation of Costs.

No later than 90 days after the end of a budget-year, NPCC shall provide to WECC a statement of actual expenses incurred by NPCC in the fulfillment of NPCC's responsibilities under this agreement for that budget-year. The statement shall disclose the actual costs of labor, travel and meetings, and all other direct costs, as well as NPCC's allocation of its actual General and Administrative Costs. The statement shall summarize the reasons for any variances as compared to the budget amount. NPCC shall provide supporting documentation for the final statement upon request by WECC. The total variance for the concluded budget year shall be incorporated as a compensating adjustment in both the NPCC and WECC budgets in the second year following the budget-year and, as approved by NERC and the Commission, reflected in the quarterly invoices from NPCC to WECC and quarterly payments by WECC to NPCC in such year.

Finally with respect to compensation, §6(d) provides for the possibility for NPCC to issue a supplemental invoice to WECC during the year if NPCC's actual costs of performing its CMEP responsibilities under the Agreement exceeds budgeted funding by more than 10 percent:

(d) Supplemental Invoice.

If during any budget-year, including 2012, the actual cost of performing NPCC's responsibilities under this agreement exceeds the budgeted funding by more than ten (10) percent (for example as may be necessitated by the conduct of a compliance violation investigation or hearing), NPCC shall have the right to issue supplemental invoices to WECC to recover in full all actual costs incurred above the budgeted funding. Upon receipt of such a supplemental invoice, WECC shall pay the full amount of the invoice by check or electronic funds transfer to NPCC within sixty (60) days.

Section 3 of the NPCC-WECC CEA Agreement addresses the disposition of any penalties paid by WECC with respect to a WECC Registered Function as a result of NPCC's CMEP activities:

In accordance with Section 9(j), and Section 5 of Exhibit E, of the NERC-WECC Delegation Agreement, any penalties to be paid by WECC for violations of Reliability Standards by a WECC Registered Function, shall be transmitted to NERC, to be used by NERC as a general offset to NERC's budget for its activities as the Electric Reliability Organization under the Federal Power Act for the following year, in accordance with the *NERC Accounting, Financial Statement and Budgetary Treatment of Penalties Imposed and Received for Violations of Reliability Standards*.<sup>10</sup>

This is the same application of penalty monies assessed against and paid by the FRCC Member Services Division or SPP in connection with their registered entity functions provided for in the SERC-FRCC CEA Agreement and the SERC-SPP CEA Agreement, respectively. FERC approved this application of penalty monies paid by a Regional Entity performing a registered entity function, *i.e.*, that the penalty monies are to be paid to NERC and used by NERC as a general offset to its budget for its ERO activities in the following year, in the Order on Rehearing

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<sup>10</sup> Section 9(j) of the WECC RDA, effective January 1, 2011, states in part: "Exhibit E to this Agreement sets forth . . . the mechanism by which WECC shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of WECC." Section 5, "Application of Penalties," of Exhibit E to the WECC RDA states in part: "Except as otherwise approved by the Commission, any penalty monies received by NERC from an operational function or division or affiliated entity of WECC shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year."

of the SERC CEA Agreements Order.<sup>11</sup> This is also the same application of penalty monies paid by WECC for violations of reliability standards by a WECC Registered Function that is provided for in the NERC-WECC CEA Agreement.<sup>12</sup>

Section 8 of the NPCC-WECC CEA Agreement specifies that the Agreement, and the responsibilities of NPCC and WECC under it, are effective and binding only within the portion of the WECC Region (as described in Exhibit A to the Agreement) that is within the U.S. with respect to the WECC RC function and those BA Areas within the U.S. listed on Exhibit B to the Agreement with respect to the WECC IA function.

Finally, Sections 9 through 19 of the NPCC-WECC CEA Agreement are commercial terms and conditions that have been taken from, or adapted from comparable provisions in, the NERC-WECC, SERC-FRCC and SERC-SPP CEA Agreements.

In addition to participating with NPCC and WECC in the development of, and ultimately approving, the proposed NPCC-WECC CEA Agreement, NERC has also reviewed the proposed resources, plans and operations of NPCC to serve as the CEA for the WECC Registered Functions, and has concluded that NPCC will satisfy the requirements for serving as the CEA for the WECC Registered Functions within the WECC Region. Pursuant to the NPCC RDA, NPCC is the Regional Entity for the geographic region described in Exhibit A to the NPCC RDA (the “NPCC Region”), and performs the CMEP responsibilities with respect to registered entities within the NPCC Region. As a result of acting as the CEA for the NPCC Region, NPCC has developed organizational expertise, staffing, resources and experience in Regional Entity CMEP functions which it can utilize effectively to perform the CMEP responsibilities for the WECC

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<sup>11</sup> *North American Electric Reliability Corporation, Order Granting Rehearing and Accepting Filing*, 133 FERC ¶ 61,190 (2010), at PP 11-15 and 17-20.

<sup>12</sup> See §3 of the NERC-WECC CEA Agreement, **Attachment 2** to this Petition.



Registered Functions within the U.S. portion of the WECC Region. Further, through the annual business planning and budgeting process, NERC will be able to review and verify that NPCC is planning and budgeting for sufficient resources to appropriately carry out its CMEP responsibilities with respect to both the registered entities in the NPCC Region and the WECC Registered Functions. Finally, although NPCC will only be acting as the CEA for the WECC Registered Functions specifically for the U.S. portion of the WECC Region, that fact that NPCC, like WECC, is a cross-border Regional Entity makes NPCC particularly well-suited to assume the CMEP responsibilities for the WECC Registered Functions.

NERC gave consideration as to whether it should continue to act as the CEA for the WECC Registered Functions, pursuant to the NERC-WECC CEA Agreement, rather than approve NPCC taking over as the CEA for the WECC Registered Functions. However, NERC concluded that, overall, it is a more efficient use of ERO resources for another Regional Entity, rather than NERC, to act as the CEA with respect to reliability functions for which a Regional Entity is the registered entity. In the overall ERO structure, pursuant to the delegation agreements, it is the Regional Entities, rather than NERC, that perform the front line CMEP activities with respect to registered entities' compliance with applicable reliability standards, with NERC acting in an oversight and supervisory role. Acting as the CEA for the WECC Registered Functions, pursuant to the NERC-WECC CEA Agreement, is the only instance in which NERC is currently performing front line CMEP responsibilities over a registered entity. NERC concluded, therefore, that it will be more efficient and effective for NPCC, which has established and is executing a fully operational compliance monitoring and enforcement program

for the NPCC Region, to take over the CMEP responsibilities for the WECC Registered Functions.<sup>13</sup>

**B. NERC-WECC Termination Agreement**

NERC and WECC entered into the NERC-WECC Termination Agreement, **Attachment 3** to this Petition, to provide for an orderly termination of NERC's responsibilities under the NERC-WECC CEA Agreement as the CEA for the WECC Registered Functions and an orderly transitioning of those responsibilities to NPCC.<sup>14</sup> NERC is submitting the NERC-WECC Termination Agreement with this Petition for the Commission's review in connection with its consideration of the NPCC-WECC CEA Agreement, and for the Commission's approval if and to the extent such approval is deemed necessary.

Sections 1 and 2 of the NERC-WECC Termination Agreement provide for the NERC-WECC CEA Agreement to terminate on the same date as the Effective Date of the NPCC-WECC CEA Agreement (the "Termination Effective Date"), following approval by the NERC Board of Trustees and FERC, and subject to the responsibilities of NERC and WECC to perform any of their respective obligations under the NERC-WECC CEA Agreement or the NERC-WECC Termination Agreement that require action after such date. The key provision of the NERC-WECC Termination Agreement regarding transfer and transition of the CMEP responsibilities for the WECC Registered Functions from NERC to NPCC is §3:

3. (a) Upon the Termination Effective Date, NPCC shall assume full responsibility, as the CEA, for completion of all compliance processes with

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<sup>13</sup> Prior to implementation of the SERC-FRCC CEA Agreement, NERC was performing the CMEP responsibilities with respect to the reliability functions for which the FRCC Member Services Division is the registered entity, but NERC concluded that these CMEP responsibilities should be taken over by another Regional Entity, SERC.

<sup>14</sup> A copy of the NERC-WECC CEA Agreement has been included as **Attachment 2** to this Petition.

respect to the WECC Registered Functions that are in progress as of the Termination Effective Date, including without limiting the foregoing, (i) completion and issuance of reports of compliance audits and compliance investigations of the WECC Registered Functions, (ii) completion of review of, and issuance of any findings or reports concerning, any self-certifications, spot-checks, periodic data submittals, self-reports, exception reports or complaints, submitted with respect to, or pertaining to, a WECC Registered Function, (iii) determination of whether any notice of alleged violations and/or proposed penalties or sanctions should be issued with respect to a WECC Registered Function as a result of any such compliance processes, (iv) processing of any notices of alleged violations and/or proposed penalties or sanctions that were issued before the Effective Date, or are issued after the Effective Date as the result of compliance processes conducted before the Effective Date, and (v) review, approval and monitoring of implementation and completion of any Mitigation Plans required with respect to a WECC Registered Function as the result of compliance processes conducted before the Effective Date. *Provided*, that NPCC shall not assume responsibility, and NERC shall retain responsibility, for the conduct and completion of any settlement negotiations that were initiated on or before April 30, 2011 and have not been completed as of the Termination Effective Date pertaining to any notices of alleged violations that have been issued with respect to, or any investigations concerning, a WECC Registered Function.

(b) NERC shall work cooperatively with NPCC to effectuate the transfer to NPCC of NERC's responsibilities as the CEA with respect to the WECC Registered Functions, in accordance with Section 3(a).

(c) On the Termination Effective Date or as soon as practicable thereafter, NERC shall transfer to NPCC all documents, records, files and other information necessary for NPCC to assume responsibility, as the CEA, for completion of all compliance processes with respect to the WECC Registered Functions that are in progress as of the Termination Effective Date.

(d) NERC and WECC agree that this Section 3 supersedes and takes precedence over the provisions of the last paragraph of Section 7 of the NERC-WECC CEA Agreement.<sup>15</sup>

The provision in §3(a) that NPCC shall not assume responsibility, and NERC shall retain responsibility, for the conduct and completion of any settlement negotiations that were initiated

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<sup>15</sup> The last paragraph of §7 of the NERC-WECC CEA Agreement states that "in the event of an Early Termination [of the Agreement], NERC shall be responsible for completion of all compliance processes that are in progress as of the date of Early Termination, in the same manner as described in Section 4 of this Agreement with respect to compliance processes that are in progress as of the Effective Date."

on or before April 30, 2011 and have not been completed as of the Termination Effective Date, pertaining to any notices of alleged violations that have been issued with respect to, or any investigations concerning, a WECC Registered Function, has been included in the NERC-WECC Termination Agreement because it would not be efficient or productive for NERC to turn over to NPCC responsibility for in-progress settlement negotiations to which NERC and WECC have already devoted significant efforts.

Finally, §4 of the NERC-WECC Termination Agreement establishes a procedure for reviewing, determining and settling any amounts due between NERC and WECC with respect to NERC's performance of the CMEP responsibilities for the WECC Registered Functions and any previous payments:

4. Within sixty (60) days following the Termination Effective Date, NERC and WECC shall jointly review the previous billings by NERC and payments by WECC with respect to NERC's activities under the NERC-WECC CEA Agreement, and shall reach agreement on a final invoice covering NERC's activities under the NERC-WECC CEA Agreement through the Termination Effective Date. WECC shall pay NERC, or NERC shall pay WECC, as the case may be, any net amounts owed by WECC to NERC or by NERC to WECC as reflected in the final invoice, within thirty (30) days following the date of the final invoice.

**C. Amendments to the NPCC Delegation Agreement and the WECC Delegation Agreement Associated with the NPCC-WECC CEA Agreement**

**1. Amendments to the NPCC Delegation Agreement**

Three amendments are proposed to the NPCC RDA in connection with NPCC's entry into the NPCC-WECC CEA Agreement. These amendments are similar to amendments that were made to the delegation agreement between NERC and SERC in connection with SERC's

entry in to the SERC-FRCC CEA Agreement and the SERC-SPP CEA Agreement. The amendments are shown in legislative style in **Attachment 4B** to this Petition.<sup>16</sup>

First, a new subsection 6(j) is proposed to be added to the NPCC RDA, stating:

NPCC may also perform compliance monitoring and enforcement activities outside of the Region shown on Exhibit A, on behalf of NERC and/or other Regional Entities, such activities to be undertaken pursuant to a contract between NPCC and such other Regional Entity that is approved by NERC and the Commission.

Second, the following, similar text is proposed to be added to Exhibit A – Geographic Area to the NPCC RDA, following the map of the NPCC Region:

NPCC may also perform compliance monitoring and enforcement activities outside of the Region shown above, on behalf of NERC and/or other Regional Entities, such activities undertaken pursuant to a contract between NPCC and such other Regional Entity that is approved by NERC and the Commission.

Third, a new §9 is proposed to be added to Exhibit E to the NPCC RDA, to prescribe the budgeting and funding of costs associated with NPCC’s performance of CMEP responsibilities with respect to the registered functions of another Regional Entity:

9. Costs Associated with Cross-Regional Compliance Monitoring and Enforcement

The costs associated with any Cross-Regional Compliance Monitoring and Enforcement performed by NPCC pursuant to section 6(j) of this Agreement with respect to registered functions of another Regional Entity are to be funded by payments from the Regional Entity contracting with NPCC for such services, in accordance with the contract between NPCC and the other Regional Entity. Where such a contract has been entered into, NPCC will include a description of the resources it has budgeted to perform such services, and its estimated costs (including appropriate allocation of NPCC’s General and Administrative costs) to

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<sup>16</sup> **Attachments 4A** and **4B** to this Petition, the clean and redlined versions, respectively, of the NPCC RDA with the proposed amendments, are based on the NPCC RDA filed with FERC on February 18, 2011 in Docket No. RR10-11-003 (*Compliance Filing of the North American Electric Reliability Corporation in Response to October 21, 2010 Commission Order* (“February 18, 2011 Compliance Filing”), Attachments 4A and 4B), with the additional amendments proposed in this Petition.

perform such services, in each budget year, in NPCC's annual business plan and budget that is submitted to NERC and the Commission for approval.

## **2. Amendment to the WECC Delegation Agreement**

One amendment is proposed to the WECC RDA in connection with WECC's entry into the NPCC-WECC CEA Agreement. The amendment is shown in legislative style in **Attachment 5B** to this Petition.<sup>17</sup> Specifically, the following text is proposed to be added to Exhibit A to the WECC RDA:

Within the WECC region compliance monitoring and enforcement functions with respect to reliability functions for which WECC is a registered entity are performed by the Northeast Power Coordinating Council, Inc. (NPCC) pursuant to an agreement between NPCC and WECC dated (date).

Comparable amendments were made to Exhibit A of the delegation agreements between NERC and FRCC and NERC and SPP in connection with FRCC's and SPP's entry into the SERC-FRCC CEA Agreement and the SERC-SPP CEA Agreement.

## **IV. REGIONAL ENTITY AND NERC APPROVALS**

The NPCC Board of Directors approved the NPCC-WECC CEA Agreement and the proposed amendments to the NPCC RDA on May 3, 2011. The WECC Board of Directors approved the NPCC-WECC CEA Agreement, the NERC-WECC Termination Agreement and the proposed amendment to the WECC RDA, on May 5, 2011. The NERC Board of Trustees approved the NPCC-WECC CEA Agreement, the NERC-WECC Termination Agreement, the proposed amendments to the NPCC RDA and the proposed amendment to the WECC RDA, at its meeting on May 11, 2011. **Attachment 6** to this Petition is a copy of the resolutions of the NERC Board approving the NPCC-WECC CEA Agreement, the NERC-WECC Termination

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<sup>17</sup> **Attachments 5A** and **5B** to this Petition, the clean and redlined versions, respectively, of the WECC RDA with the proposed amendment, are based on the WECC RDA filed with FERC in the February 18, 2011 Compliance Filing, Attachments 9A and 9B, with the additional amendment proposed in this Petition.

Agreement, the proposed amendments to the NPCC RDA and the proposed amendment to the WECC RDA.

Respectfully submitted,

Gerald W. Cauley  
President and Chief Executive Officer  
David N. Cook  
Senior Vice President and General Counsel  
North American Electric Reliability  
Corporation  
116-390 Village Boulevard  
Princeton, NJ 08540-5721  
(609) 452-8060  
(609) 452-9550 – facsimile  
[david.cook@nerc.net](mailto:david.cook@nerc.net)

/s/ Rebecca J. Michael  
Rebecca J. Michael  
Associate General Counsel for Corporate  
and Regulatory Matters  
North American Electric Reliability  
Corporation  
1120 G Street, N.W., Suite 990  
Washington, D.C. 20005-3801  
(202) 393-3998  
(202) 393-3955 – facsimile  
[rebecca.michael@nerc.net](mailto:rebecca.michael@nerc.net)

## **ATTACHMENTS 1 – 6**

(Available on the NERC Website at

[http://www.nerc.com/fileUploads/File/Filings/Attachments WECC-NPCC Agrmt.pdf](http://www.nerc.com/fileUploads/File/Filings/Attachments_WECC-NPCC_Agrmt.pdf))