

**NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION**

**ATTACHMENT 3**

**TO**

**THREE-YEAR ERO PERFORMANCE ASSESSMENT**

**NERC EVALUATION OF REGIONAL ENTITIES**

**July 9, 2009**

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## I. INTRODUCTION

Prior to the formation of the ERO, NERC (then the North American Electric Reliability Council) operated as a voluntary organization with its only members being the Regional Reliability Councils. The Regional Reliability Councils consisted of industry participants in the region participating on a voluntary basis. The NERC Board of Trustees comprised representatives of the Regional Reliability Councils, who were executives and managers of electric utilities and other electric industry participants in the region. Funding was voluntary from the members of the regions to fund both regional and NERC operations. This mode of operation existed essentially since the formation of NERC in 1968 and even earlier, since some regional councils pre-dated the formation of NERC. In that model, NERC served its members in many functions and the regional councils had a great deal of say in the day-to-day operation of NERC; the operation of the Regional Reliability Councils was directed by their members.

In anticipation of becoming the ERO, NERC moved to an independent Board of Trustees in 2001. With the certification of NERC as the ERO, the previous relationship with the Regional Reliability Councils changed significantly. The Regional Reliability Councils, which became Regional Entities, remained members of NERC, but they were joined by hundreds of other NERC members in 10 different stakeholder sectors. Under NERC's Rules of Procedure, funding for both NERC and most regional activities comes through NERC. And within the U.S., the role of the Regional Entities became one of carrying out authorities delegated by NERC through a delegation agreement approved by the FERC. Three of the Regional Entities (NPCC, MRO, and WECC) also have responsibilities in Canada, as the bulk power system spans the international border. A portion of Baja California Norte, Mexico, is also within the Western Interconnection.

Section 215 contemplates delegation of compliance and enforcement to Regional Entities. As the ERO, NERC has delegated certain authorities to eight Regional Entities. These authorities include: (i) regional standards development; (ii) compliance monitoring and enforcement, including registration of organizations; and (iii) other services in support of NERC's statutory reliability functions including reliability assessments, event analysis, and training and education activities. The implementation of the ERO's statutory responsibilities through the delegation agreements has generally been successful. The Regional Entities' greatest efforts to date have been in the organization registration and compliance monitoring and enforcement programs. The current term of the delegation agreements runs through May 2010.

This Attachment is divided into evaluations of the performance of the Regional Entities regarding regional standards development, compliance monitoring and enforcement, and reliability assessments. These are three key tasks delegated to the Regional Entities by NERC, as the ERO, through the Commission approved delegation agreements. The report encompasses descriptive and statistical data on the Regional Entities' organization and performance; comments received from stakeholders in NERC's stakeholder survey; and NERC's evaluation of the Regional Entities' performance and areas for improvement.

All the Regional Entities meet the governance requirements under Section 215, but each Regional Entity meets those requirements in a different manner. Some of the Regional Entities

also perform functions in addition to those delegated to them by NERC (non-statutory functions). The following table summarizes important characteristics of the Regional Entities.

**Table 1 - Comparison of NERC Regional Entities – 2009**

(Regions marked with an asterisk (\*) are cross-border in nature, i.e., their responsibilities extend to jurisdictions in Canada and/or Mexico in addition to the United States.)

Region	Board Makeup	Non Delegated Activities	Registered Entities	Registered Functions	2009 Budget Statutory FTE	2009 Budget Non Statutory FTEs	2009 Budget Compliance FTEs	2009 Statutory Budget	2009 Non-Statutory Budget
FRCC	Stakeholder	Registered as a Reliability Coordinator and Planning Authority; other member services	70	240	18.34	9.15	9.26	\$3,977,868	\$3,361,112
MRO*	Stakeholder	None	117	433	26.5	0	10	\$6,405,724	\$0
NPCC*	Hybrid (Independent Chair)	Criteria Development	268	544	27.2	2.8	9	\$10,008,885	\$1,012,790
Reliability First	Hybrid (3 of 14 Members are Independent Members)	None	357	674	44	0	23	\$11,434,201	0
SERC	Stakeholder	None	226	636	43	0	21.5	\$10,095,546	0
SPP	3 Independent Trustees – Part of SPP Inc. which is a Registered Entity	SPP Inc. is a Reliability Coordinator, Transmission Service Provider, Interconnection Authority, Reserve Sharing Group, Planning Authority, and Transmission Planner.	115	378	17.2#	0	6#	\$7,123,827	0

Region	Board Makeup	Non Delegated Activities	Registered Entities	Registered Functions	2009 Budget Statutory FTE	2009 Budget Non Statutory FTEs	2009 Budget Compliance FTEs	2009 Statutory Budget	2009 Non-Statutory Budget
Texas RE	Hybrid - 16 members which include five independent members TRE is a Division of ERCOT Inc.	Texas RE investigates, audits, and reports on compliance with the ERCOT Region reliability-based Protocols and Operating Guides (Protocols) for the Public Utility Commission of Texas (PUCT).	218	340	26.95	5.05	14.15	\$6,167,024	\$871,997
WECC*	Hybrid – 32 member Board, 7 of which are non-affiliated. Four are from state government or regulatory bodies. Four are from the 2 Canadian provinces, one is from the CFE in Mexico, and 4 represent end users. The	WECC serves as the Reliability Coordinator and Interchange Authority for the Western Interconnect and operates the Western Renewable Energy Generation Information System	467	1250	140 (54 for RC)	4	30	\$38,691,767 of which \$21,201,021 is to fund the WECC Reliability Coordinator	\$798,197

Region	Board Makeup	Non Delegated Activities	Registered Entities	Registered Functions	2009 Budget Statutory FTE	2009 Budget Non Statutory FTEs	2009 Budget Compliance FTEs	2009 Statutory Budget	2009 Non-Statutory Budget
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balance is comprised of 12 entities either owning or operating transmission or involved in the electric industry in the Western Interconnection.

# SPP RE staffing numbers do not include 2.0 FTE contractors in Compliance.

## **II. DEVELOPMENT OF REGIONAL RELIABILITY STANDARDS**

As of May 31, 2009, there has been limited activity by Regional Entities in regional standards development. Only one Regional Entity, WECC, has completed the development, and obtained NERC and FERC approvals, of any regional reliability standards. WECC has developed several regional reliability standards that are either more stringent than, or address areas not addressed in, the corresponding NERC continent-wide reliability standards. These standards are included on the NERC web site with all the continent-wide standards that have been approved by the NERC Board. FRCC, MRO, ReliabilityFirst, SERC, SPP RE and Texas RE all have regional standards at various stages of development, but none of these regional standards projects has advanced to the point of obtaining NERC and FERC approval.

### **A. Issues Identified by Stakeholders**

Because there has been relatively little activity to develop regional reliability standards, there were few comments provided by stakeholders regarding regional performance related to standards development. The issues identified are overarching in nature and include those discussed in the following subsections.

#### **Issue: Regional Criteria, Guides, and Supplements**

Regional guidelines, criteria and supplements and their status within the region regarding monitoring and enforcement were identified as an issue by some industry stakeholders. Some stakeholders are not clear if these documents are informational in nature or have some level of materiality in the context of the NERC reliability standards. Some of the confusion stems from work not being completed on the “fill-in-the-blank” standards that FERC identified in Order No. 693. Regional Entities will need to determine and communicate the status of these various documents in their respective regions. For these criteria, guides, and supplements to be mandatory and enforceable under the Federal Power Act, they will need to be developed into regional reliability standards, including approval by NERC and then by the Commission. In addition, NERC and the Regional Entities will need to place a higher priority on completing work on the fill-in-the-blank standards.

#### **Issue: Developing Regional Reliability Standards and Timing with NERC Standards**

Some stakeholders stated their belief that Regional Entities should refrain from developing regional reliability standards until NERC has finished its development of a standard on the subject matter. Such an approach allows for the North American standard to be completed and the stakeholders in the region to assess the need for a regional reliability standard that would either be more stringent than, or on a subject not covered by, the NERC reliability standard. This issue falls in the broader category of



prioritization of standards development activity and should be addressed jointly by NERC and the Regional Entities.

**Issue: Fill-in-the-Blank Reliability Standards**

When FERC approved NERC’s Version 0 Reliability Standards in May 2007, it withheld approval of several “fill-in-the-blank” standards pending completion of these “fill-in-the-blank” standards by NERC and the Regional Entities. These standards require Regional Entities to develop specific requirements in order to implement the NERC reliability standard within each region. For example, NERC standards require the implementation of an underfrequency load shedding program. However, the standard requires the region to define the specific details of the load shedding requirements within the region. Neither the NERC work on the fill-in-the-blank standards or the Regional work has been completed. Several stakeholders commented on the need to complete this effort in order to eliminate the potential gap in reliability and provide certainty to the registered entities on the application of these standards. Currently, fifteen of twenty-four fill-in-the-blank standards are actively being addressed by NERC Standard Drafting Teams with completion anticipated in early 2010. The remaining nine are included in projects slated to commence in 2010. This issue falls in the broader category of prioritization of standards development activity and should be addressed jointly by NERC and the Regional Entities.

**Issue: Open and Inclusive Standards Development Processes**

For the Regional Entities that have undertaken regional standards development activities, stakeholders commented on the openness of the process and the ability of smaller entities to participate effectively in the standards development process. Smaller entities stated that, due to limited staffing and resources, they often have difficulty providing staff to participate on drafting teams and committees. This issue is not limited to regional standards development programs, but also applies to the NERC standards development process. There are no easy solutions. Use of representatives from trade associations and other support groups can help provide a means through which the input of smaller entities can be brought to the standards development process. NERC continually monitors the participation by smaller entities in standards development activities.

**B. NERC Views of Regional Entity Performance Regarding Regional Standards Development**

Since certification as the ERO, NERC has exercised its Rules of Procedure regarding Regional Entity standards development processes with WECC, MRO, and ReliabilityFirst. Therefore, the observations that follow are limited to these engagements. In this timeframe, WECC has submitted 16 regional standards, MRO has submitted 4 regional standards, and ReliabilityFirst has submitted 2 regional standards for NERC approval. Although the experience to date is limited, it is possible to draw on that experience and describe points of emphasis for regional standards development

processes from this point forward. As with much of the programs that NERC and the Regional Entities have implemented under Section 215, the start-up phases took a huge effort and it is not yet over. Over time, practices and procedures have improved, and they will continue to do so.

- **Concise Statement of Basis and Purpose.** Regional Entities should include with their request for NERC to approve a regional standard a concise statement of the basis and purpose of the regional standard. This statement will facilitate both NERC review and the filing with FERC and other applicable governmental authorities.
- **Criteria for Regional Reliability Standards.** The criteria for having a regional reliability standard are that the regional standard is either more stringent than the NERC continent-wide standard (which includes the situation where a regional standard addresses an issue that a NERC standard does not) or that the regional standard is necessitated by physical differences in the system.<sup>1</sup> Because NERC, and later FERC, will evaluate the regional standard using those criteria, it is important for Regional Entities to include a clear description and discussion of how the regional standard meets those criteria at the time the Regional Entity requests NERC approval of the regional standard.
- **Quality Assurance.** Regional Entities should focus attention to the quality of the standards produced through their standards development processes, ensuring the requirements are enforceable, address a single main idea, and are concise and clear on expectations, and that compliance-related elements are also focused similarly.
- **Developmental Record.** Regional Entities should compile and make readily available to NERC the complete developmental record of the regional standard.
- **Consistency of Glossary Terms.** The Regional Entities need to be mindful that proposed glossary terms do not conflict with terms already existing in the NERC *Glossary of Terms Used in Reliability Standards* or with those developed by other Regional Entities.
- **VRFs and VSLs.** Regional reliability standards become enforceable as Reliability Standards under Section 215 of the Federal Power Act in the U.S. once they are approved by FERC. Therefore, regional reliability standards must meet the requirements set out by FERC for approval of such standards. That includes having Violation Risk Factors and Violation Severity Levels that meet the criteria FERC has set out in its various orders. Regional Entities should ensure that VRFs and VSLs meeting those criteria are included in the regional standards filing materials at the time Regional Entity asks NERC to approve the standards.

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<sup>1</sup> NERC Rules of Procedure §312.1.

- **Communications.** Regional Entities should strive to improve communications with stakeholders about standards development activities. This is especially important given the number of smaller entities that may have an interest in standards development activity, but may lack the resources to actively participate in standards development activities in multiple regions. WECC has made recent improvements to its website in this regard.
- **Comment Processes.** The comment process could be improved by requesting stakeholders to comment on specific areas of focus in the proposed standards instead of just offering a generalized opportunity to express comments on the standard in its entirety and as a whole. Further, because of the number of entities that participate in multiple regions, the Regional Entities should develop and use a common system and commenting forms for all standards development activity. It is also useful for Regional Entities to include, in the record of standard development, summary information that indicates how many total comments were received and the break-down by segment or sector and to monitor participation trends and engagement by smaller entities.

**Regional Reliability Standards Working Group.** A Regional Reliability Standards Working Group (RRSWG) has been formed consisting of NERC staff and Regional Entity standards staff. Among its accomplishments the group:

- provided input to the original version of the NERC standards development plan
- developed the NERC Evaluation Procedure (the procedure that outlines the specific approval steps in the evaluation of a regional reliability standard)
- cross checks regional standards under development for consistency across regions, and
- monitors and discusses continent-wide standards issues that potentially impact the Regional Entities' standards development processes such as the modification of the variance language in the NERC Rules of Procedure.

The RRSWG continues to add valuable input into the standards development process.

### **III. COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM**

#### **A. Overview**

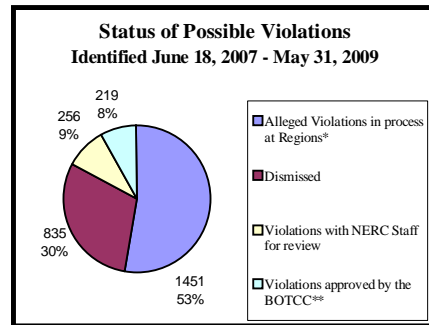
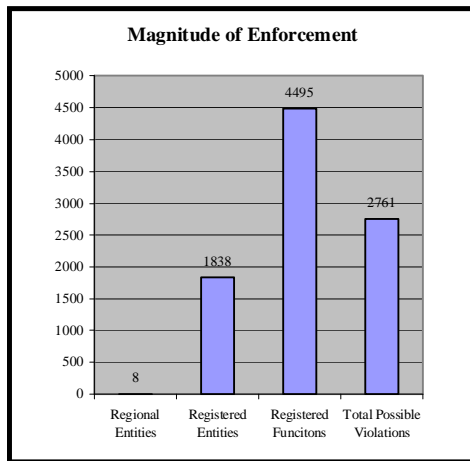
The transition from voluntary to mandatory standards has been a step change in how the electricity industry deals with adherence to reliability standards. The Regional Entities have spent the large majority of their efforts in the past three years in implementing the uniform Compliance Monitoring and Enforcement Program (CMEP). While a number of improvements can and should be made, overall, the Regional Entities' implementation of the program has been generally successful, especially given the significant increase in the number of entities subject to mandatory standards and the volume of activities associated with compliance and enforcement. Regional Entities have identified over 1,800 registered entities that are responsible for one or more reliability functions as compared to approximately 300 in the voluntary regime. The clarity in accountability that comes from registering particular entities for particular functions marks a significant step forward in improving the reliability of the bulk power system. The Regional Entities have established compliance monitoring programs that include all the methods of monitoring for compliance specified in the NERC uniform CMEP. The Regional Entities conduct regional workshops, with NERC participation, to support the registered entities' understanding of compliance requirements. The discovery of alleged violations and mitigation of violations have been successful.

Prior to June 18, 2007, NERC allowed registered entities to self-report violations and provide mitigation plans. In return, if the mitigation plan was completed on schedule NERC would not find the entity in violation of the reliability standard (for the same noncompliance) when it became mandatory and enforceable. During the pre-June 18, 2007 period, registered entities reported over 5,100 separate violations of reliability standards. Of these, over 1800 were determined by the Regional Entities not to be violations. Registered entities completed mitigation of the remaining 3,300 violations generally before the end of 2007. This unexpected volume of self-reported reliability standards violations created a very large amount of work for the Regional Entities prior to and after the reliability standards became mandatory, just at the time the Regional Entities were starting up their regional compliance monitoring and enforcement programs. Regional Entities and NERC successfully processed these self-reported violations and associated mitigation plans. Each report of violation and the associated mitigation plan in the United States was provided to the Commission. The Regional Entities and NERC cataloged, processed, and tracked each violation and its associated mitigation plan to completion, and only a small number of these pre-June 2007 mitigation plans are still open.

Since reliability standards became mandatory and enforceable, NERC has received from the Regional Entities reports of 2,761 allegations of violations of approved reliability standards. Each of these allegations of violations that occurred in the United States has been reported to the Commission. Many of these possible violations have been dismissed after investigation, resulting in a total of 1,926 alleged violations to be processed. Registered entities have developed and submitted to the Regional Entities

mitigation plans covering 1,714 of these alleged violations; of these, the mitigation plans for 1,567 alleged violations have been accepted by the Regional Entity and approved by NERC. The effort to collect, catalog, and process each of these alleged violations and mitigation plans cannot be overlooked; the regional programs have been successful in accomplishing these important tasks.

However, the effort is not complete. Of the 1,926 alleged violations that have been identified by the Regional Entities, only 475 violations have been provided as a Notice of Confirmed Violation (NOCV) or Settlement to NERC Staff for review and BOTCC approval. Of the 475, 219 have been approved by the BOTCC. The data in the following charts is as of May 31, 2009:



\*States 1 & 2 Plus Settlement Agreements at Regions.  
 \*\*Violations with NERC Staff for review and Violations approved by BOTCC relates to States 3 & 4 of the Compliance Violations Statistics Report, but provides a different split than the buckets provided in the report.

A number of improvements should be made. The Regional Entities efforts for violation identification have been commendable but improvement is needed in the speed of processing alleged violations and the companion mitigation plans through to completion. Although there will always be some backlog due to the need to provide registered entities due process, the fact that only one-quarter of the alleged violations identified by the Regional Entities have been submitted to NERC staff for review is a concern. The backlog issue is discussed in more detail below and in **Attachment 2**.

The NERC *Sanction Guidelines* allow for some discretion in establishing penalty amounts and recognize that a monetary penalty must be assessed and structured in such a way that a user, owner or operator of the bulk power system does not consider its imposition as simply an economic choice or a cost of doing business. The *Sanction Guidelines* provide that the penalty must have a relationship to the seriousness of the specific violation, and first violations, violations for a failure to document, violations where the registered entity has had a culture of compliance, among other factual scenarios, have been assessed minor penalties, as is becoming visible as more of the filed penalties become public. However, under the *Sanction Guidelines*, situations involving

repeated violations, violations that pose a serious or substantial risk to the bulk power system and violations that are made either in a culture of non-compliance or as economic decisions to not comply, will be considered more serious, resulting in a higher penalty<sup>2</sup>.

NERC and the Regional Entities, as a whole, also have limited experience to date with compliance violation investigations for the enforceable standards. NERC has communicated to those Regional Entities conducting compliance violation investigations the need for improvement in the thoroughness of evidence-gathering and review of evidence and for investigation depth and application of the reliability standards in specific situations. NERC has also conducted workshops aimed at better preparing regional entity staff to conduct CVIs.

With enforcement actions, the Regional Entities must improve on the thoroughness and accuracy of the information provided in the NOCVs and Settlement Agreements submitted to NERC Staff for review. Many of the NOCVs and Settlement Agreements submitted by the Regional Entities to date have required additional work by the Regional Entity to meet NERC's expectations and the requirements of the Commission orders. In some cases, a Regional Entity has identified the violation as documentation related, but subsequent review by NERC determined that the registered entity actually failed to perform some portion of the substantive requirements in the standard. In other cases, registered entities' certifications were found not to be supported by the submitted documentation. The Regional Entities have commented, accurately, that the level of detail and breadth of support FERC is requiring to support a notice of penalty has changed over time. NERC has provided training with respect to FERC's changing expectations and will work with the Regional Entities to continue to focus efforts on compiling and submitting documentation and other information to support notices of confirmed violations and penalties that will meet FERC's requirements.

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<sup>2</sup> NERC Sanction Guidelines, Sections 3.9 and 4

**B. Evaluation of Individual Regional Entity Performance**

The following section provides statistical information and calculated performance metrics related to Regional Entity performance of the CMEP and other compliance activities. The information is as of May 31, 2009. Because these statistics and calculated performance metrics reflect averages over a nearly two-year period, they do not adequately show trends in performance over that period.

NERC plans to add to and refine these statistics and performance metrics over time based on input from Regional Entities and other stakeholders, and to incorporate them, as appropriate, in revised delegation agreements.

Considering the short time period the mandatory compliance enforcement program has been in place, it is not surprising that there are actions the Regional Entities can take to improve their performance. As the compliance enforcement effort is still in its nascent stage, there are data points that are not known and there are no baselines for trend analysis. Comparing and contrasting the Regional Entities' performance ranges and medians provides a method by which to evaluate relative performance among the Regional Entities, taking into consideration various factors affecting each Region. NERC's observations are derived from the Regional Entities' performance data in processing alleged violations, staffing levels and workload demands. Summarized data is provided in the tables that follow. Unless otherwise indicated, all data is as of May 31, 2009.

Regional Entity Compliance Program Statistics and Performance Metrics

Region	Compliance FTEs	Registered Entities	Registered Functions	Number of Violations				Number of Violations recommended for a non-zero penalty since June 18, 2007	Violations submitted to NERC Staff as a NOCV or Settlement for review	Number of violations submitted to NERC Staff that have been approved by the BOTCC*	Violation Processing Time			
				Total Possible Violations including Dismissals	Number of Canadian Violations	Dismissals	Alleged Violations excluding Dismissals				Avg Time to determine if a Possible Violation is an Alleged Violation	Avg Time to report an Alleged Violation to NERC	Number of Violations that did not receive a NAVAPS for more than 100 days	Number of Violations that did not receive a NAVAPS for more than 300 days
FRCC	9.3	70	240	183	0	15	168	0	51	2	18.69	36.62	4	2
MRO	10.0	117	433	97	6	20	77	6	47	34	17.27	9.07	0	0
NPCC	9.0	268	544	72	5	9	63	12	29	13	25.7	8.69	0	0
ReliabilityFirst	23.0	357	674	142	0	17	125	7	20	9	25.02	9.44	34	1
SERC	21.5	226	636	282	0	43	239	40	122	110	10.39	7.55	21	19
SPP	8.0	115	378	78	0	1	77	1	47	8	44.7	12.55	11	0
TRE	14.2	218	340	68	0	4	64	3	33	32	18.42	2.53	18	0
WECC	30.0	467	1250	1839	2	726	1113	31	126	11	54.26	18.33	433	161
<b>Total or Average</b>	<b>15.6</b>	<b>1838</b>	<b>4495</b>	<b>2761</b>	<b>13</b>	<b>835</b>	<b>1926</b>	<b>100</b>	<b>475</b>	<b>219</b>	<b>26.8</b>	<b>13.1</b>	<b>521</b>	<b>183</b>

Data as of May 31, 2009  
\*Includes closed violations

Region	Percent of Total Possible Violations that are Dismissed	Identification		Violation Type		Performance Ratios			Staff Ratios					
		Alleged Violations per Registered Function	Percent of Violations submitted to NERC that were recommended for a Non-zero Penalty since June 18, 2007	Percent of Active* Alleged Violations deriving from Failure to Perform	Percent of Active* Alleged Violations deriving from Failure to Document	Percent of Alleged Violations submitted to NERC as a NOCV or Settlement for review	Percent of Violations submitted to NERC Staff for review that have been approved by the BOTCC	Percent of Alleged Violations that have been approved by the BOTCC	Registered Entities Per FTE	Registered Functions Per FTE	Possible Violations (including dismissals) Per FTE	Alleged Violations (excluding dismissals) Per FTE	Number of Violations submitted to NERC as a NOCV or Settlement for review per FTE	Number of BOTCC Approved Violations per FTE
FRCC	8%	0.70	0%	55%	45%	30%	4%	1%	6.7	12.8	19.8	18.1	5.5	0.22
MRO	21%	0.18	13%	62%	38%	61%	72%	44%	11.6	42.5	9.7	7.7	4.7	3.40
NPCC	13%	0.12	41%	33%	67%	46%	45%	21%	30.8	62.6	8.0	7.0	3.2	1.44
ReliabilityFirst	12%	0.19	35%	67%	33%	16%	45%	7%	15.4	29.2	6.2	5.4	0.9	0.39
SERC	15%	0.38	33%	54%	46%	51%	90%	46%	10.5	28.4	13.1	11.1	5.7	5.12
SPP	1%	0.20	2%	72%	28%	61%	17%	10%	18.5	60.7	9.8	9.6	5.9	1.00
TRE	6%	0.19	9%	81%	19%	52%	97%	50%	15.0	23.0	4.8	4.5	2.3	2.26
WECC	39%	0.89	25%	54%	46%	11%	9%	1%	15.8	42.0	61.3	37.1	4.2	0.37
<b>Average</b>	<b>14%</b>	<b>0.35</b>	<b>20%</b>	<b>60%</b>	<b>40%</b>	<b>41%</b>	<b>47%</b>	<b>23%</b>	<b>15.54</b>	<b>37.65</b>	<b>16.58</b>	<b>12.58</b>	<b>4.05</b>	<b>1.77</b>

\*FERC enforceable alleged violations not completely closed



**FRCC**

<b>Alleged Violations per Registered Function</b>	<b>Registered Functions per FTE</b>	<b>Percent of Active Alleged Violations Deriving from Failure to Perform</b>	<b>Percent of Alleged Violations Submitted to NERC as a NOCV or Settlement for Review</b>	<b>Average Time to Determine if a Possible Violation is an Alleged Violation (days)</b>	<b>Percent of Alleged Violations Approved by the BOTCC</b>
<b>0.70 (2)</b>	<b>12.8 (1)</b>	<b>55% (4)</b>	<b>30% (6)</b>	<b>18.7 (3)</b>	<b>1% (7)</b>

*Note: The statistics and performance metrics shown in the table above, and in similar tables for the other Regional Entities, are followed by a number in parentheses ( ) that represents the relative ranking of that statistic or metric among the eight Regional Entities. These rankings represent only the order in which the various statistics or metrics place each Regional Entity compared to the others.*

FRCC is currently registered as the Reliability Coordinator (RC) and Planning Authority (PA) for its region. FRCC uses Florida Power & Light as its RC agent. As a registered entity, FRCC's RC and PA functions are subject to compliance monitoring by NERC per the delegation agreement and are subject to compliance violation investigations should events occur in FRCC that warrant such investigations.

FRCC is the smallest region in terms of registered entities (70) and registered functions (240.) As of May 31, 2009, FRCC has reported 183 Possible Violations of reliability standards, 15 of which were subsequently dismissed. FRCC's 168 Alleged Violations make it third in terms of number of Alleged Violations. FRCC's ratio of Alleged Violations per Registered Function (0.70) is second highest among Regions.

FRCC has confirmed 51 (30%) of its Alleged Violations and submitted them to NERC Staff in the form of either a NOCV or Settlement Agreement for review. FRCC has achieved NERC BOTCC approval of two of these, representing a 1% completion rate over the last 2 years, placing FRCC last in terms of percent of Alleged Violations processed through to BOTCC approval. To date, FRCC has not recommended any non-zero dollar penalties and no Alleged Violations have been contested.

It has taken FRCC an average of nearly 19 days to determine whether a Possible Violation qualifies as an Alleged Violation, and an average of nearly 37 days to report that Alleged Violation to NERC, which is twice the average time of any other Region. FRCC has had four violations that have not received a NAVAPS for more than 100 days, including two that have not received a NAVAPS for more than 300 days.

Of its 168 active<sup>3</sup> Alleged Violations, FRCC has identified 55% to be derived from failure to perform requirements of reliability standards (versus failure to document requirements). FRCC has not recommended any non-zero dollar penalties, even for violations related to a failure to perform the requirements of the standards.

FRCC has had manpower shortages that have challenged its ability to process violations and at times has led to a significant backlog. During 2007 and 2008, NERC staff provided support at the FRCC offices for several weeks to assist with various processing stages, including mitigation plan review and verification. SERC has also recently provided support to FRCC to complete certain tasks.

FRCC has increased its Compliance Program staffing and has 9.3 direct FTEs dedicated to compliance and organization registration as reported in the 2009 budget and 12.8 Registered Functions per FTE, which is now the lowest number of Registered Functions per FTE among the Regions.

FRCC used nine volunteers on its audits of registered entities in 2007 and 2008; for 2009, FRCC reports it is using only FRCC compliance staff. While FRCC can engage its compliance committee for technical matters related to compliance if desired, the Commission requires a quarterly report from FRCC regarding compliance matters presented to its compliance committee.

FRCC has not had the opportunity to conduct any Compliance Violation Investigations (CVIs) to date. NERC initiated a CVI in FRCC in 2008 since FRCC was not able to participate in the investigation of the February 2008 significant power outage in FRCC due to FRCC's registration as the RC and PA for the region.

#### Overall Effectiveness

FRCC ranks third in number of Possible Violations and, as inferred by its low rate of dismissals, FRCC (and the registered entities that self-reported violations) have been accurate in their identifications. However, FRCC needs to improve its timeliness in: 1) reporting alleged violations to NERC, 2) issuing NAVAPS, 3) confirming violations and issuing NOCVs or entering into settlement agreements, and 4) obtaining BOTCC approval of confirmed violations. NERC will work with FRCC to help it improve performance in these areas. FRCC plans to increase its staffing by more than three FTEs for 2010, which is expected to help in this area.

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<sup>3</sup> For purposes of these evaluations, “active” Alleged Violations are defined as the total number of FERC enforceable Alleged Violations (*i.e.*, allegations of violations less dismissals), *less* Alleged Violations that have not been fully processed to closure, including verified completion of mitigation plans and collection of any penalty dollars.

**MRO**

<b>Alleged Violations per Registered Function</b>	<b>Registered Functions per FTE</b>	<b>Percent of Active Alleged Violations Deriving from Failure to Perform</b>	<b>Percent of Alleged Violations Submitted to NERC as a NOCV or Settlement for Review</b>	<b>Average Time to Determine if a Possible Violation is an Alleged Violation</b>	<b>Percent of Alleged Violations Approved by the BOTCC</b>
<b>0.18 (7)</b>	<b>42.5 (6)</b>	<b>62% (5)</b>	<b>61% (1)</b>	<b>17.3 (2)</b>	<b>44% (3)</b>

MRO is a cross-border Regional Entity encompassing Manitoba and Saskatchewan in Canada, and MRO and NERC have agreements with applicable governmental and entities in these provinces. MRO has six joint registration organizations and has encouraged this form of registration given the number of jointly-owned facilities in its regional footprint.

MRO is the third smallest region in terms of number of registered entities (117) and is fourth in size based on registered functions (433). MRO is fifth in terms of FTEs committed to the compliance enforcement program, as shown in its 2009 budget.

As of May 31, 2009, MRO has reported 97 Possible Violations (including 6 from Canadian entities) with 20 dismissals. MRO's ratio of Alleged Violations per Registered Function (0.18) is second lowest among the Regions. There has been a high level of self-reporting within MRO.

MRO has confirmed 47 (61%) of its Alleged Violations and submitted them to NERC Staff in the form of either an NOCV or Settlement Agreement for review. MRO has achieved BOTCC approval of 34 of these submittals, placing MRO as the third highest in percentage of Alleged Violations approved by the NERC BOTCC (44%). To date, MRO has recommended non-zero dollar penalties for six violations, which represents 13% of the violations submitted to NERC Staff for review, and none of its notices of Alleged Violations have been contested. (One registered entity initially contested two violations and subsequently accepted the Alleged Violations and proposed penalty without a hearing convened; therefore, the challenge was withdrawn by the registered entity.)

MRO has taken, on average, about 17 days from the time it identifies a Possible Violation to determine if an Alleged Violation exists and, on average, 9 days to report that Alleged Violation to NERC. Both of these metrics are relatively good, placing MRO second and fourth in these categories, respectively. MRO has issued NAVAPS for all its Alleged Violations in less than 100 days.

Of the Active Violations in MRO, 62% were derived from failure to perform requirements of reliability standards, and 38% from a failure to document.

MRO has the third lowest ratio of Registered Functions per FTE among the Regions.

MRO has not had the opportunity to lead any CVIs to date, so there is no basis for evaluating its performance in this area. (The investigation of the September 18, 2007 event was transferred to NERC as the event involved entities operating in multiple Regional Entities.) MRO has conducted six incident reviews (inquiries), which are informal investigations. No incident inquiries have resulted in a CVI; one incident inquiry resulted in an Alleged Violation.

MRO is not affiliated with any bulk power system owners, operators or users. MRO has adopted and implemented the uniform CMEP as approved by the Commission, which provides for fair and impartial procedures for enforcing Reliability Standards. Additionally, MRO adopted other procedures to address potential conflicts, including a prohibition on stakeholders and registered entities participating in compliance and enforcement decisions of MRO or related activities including the conduct of discovery methods. A separate committee of the MRO Board acts as the Hearing Body, consistent with the uniform CMEP.

MRO does use its own processes that are not reviewed and approved by NERC in several areas. One such process is the incident inquiry process to triage certain issues, which is more informal than the NERC Compliance Inquiry process, with Regional input, which allows for data retention holds and information that is submitted under oath. Also, MRO originally developed a compliance information system approximately eight years ago called the Compliance Data Management System (current version 4.0) and is one of the two Regional Entities using this system, which is now owned and managed by a third-party vendor.

#### Overall Effectiveness

In summary, NERC sees MRO as an effective Regional Entity as demonstrated by several performance metrics. MRO is timely in determining whether a Possible Violation is an Alleged Violation, reporting the Alleged Violation to NERC and issuing a NAVAPS.

Areas for improvement include providing accurate statements of fact for each violation and assessing penalties according to the facts of each situation pursuant to FERC orders. In addition, NERC encourages MRO to assess non-zero penalties where appropriate.

NERC continues to seek consistency and uniformity of compliance activities across the Regions and has some concerns about the methods employed by MRO in some cases. While these methods appear effective, they are not always consistent with NERC practice. NERC will work with MRO to modify its practices to ensure consistency with other Regions and NERC as long as such changes do not detract from MRO's demonstrated performance.

**NPCC**

<b>Alleged Violations per Registered Function</b>	<b>Registered Functions per FTE</b>	<b>Percent of Active Alleged Violations Deriving from Failure to Perform</b>	<b>Percent of Alleged Violations Submitted to NERC as a NOCV or Settlement for Review</b>	<b>Average Time to Determine if a Possible Violation is an Alleged Violation</b>	<b>Percent of Alleged Violations Approved by the BOTCC</b>
<b>0.12 (8)</b>	<b>62.6 (8)</b>	<b>33% (1)</b>	<b>46% (5)</b>	<b>25.7 (6)</b>	<b>21% (4)</b>

NPCC is a cross border Regional Entity encompassing New York and New England in the U.S. as well as Nova Scotia, New Brunswick, Quebec, and Ontario in Canada.

NPCC is the third largest Region in terms of registered entities (268) and the fourth largest in terms of registered functions (544). As of May 31, 2009, NPCC has reported 72 Possible Violations of reliability standards (5 of which are from Canadian entities), with nine dismissals. NPCC ranks eighth in terms of number of Alleged Violations reported (63). NPCC's ratio of Alleged Violations per Registered Function (0.12) is the lowest among the Regions.

NPCC has confirmed 29 (46%) of its Alleged Violations and submitted them to NERC in the form of either a NOCV or Settlement Agreement for review. NPCC has achieved BOTCC approval of thirteen of these submittals, placing NPCC fourth among the Regions for percentage of Alleged Violations approved by the BOTCC. To date, NPCC has recommended non-zero dollar penalties for 12 Alleged Violations, which is 41% of the Alleged Violations NPCC has submitted to NERC for review. One-third of NPCC's Active Violations are derived from a failure to perform requirements of reliability standards, while two-thirds are a result of a failure to document as required.

NPCC on average has taken about 26 days from the time it finds a Possible Violation to determine if an Alleged Violation exists, which is the third longest among the Regions. However, NPCC has taken, on average, only about nine days (the third shortest time among the Regions) to report Alleged Violations to NERC. NPCC has also issued NAVAPS for all its Alleged Violations in less than 100 days.

NPCC has nine FTEs dedicated to compliance activities in the 2009 budget. NPCC also uses contract resources to augment its staff on compliance audits. NPCC is seventh in terms of FTEs committed to the compliance program. NPCC has the highest ratio of Registered Functions per FTE (62.6) among the Regions.

NPCC spent considerable time and effort on the initial process to register bulk-power system owners, operators, and users. Its efforts included a high level of confirmation of the registered entities' functional responsibilities. NPCC is currently in the process of reviewing and possibly revising its definition of the Bulk Electric System. Expansion of the definition may

result in additional registered entities and associated functions, which may place additional burden on NPCC compliance staff resources.

NPCC procedures provide for use of its compliance committee for technical review of compliance matters. FERC has required NPCC to report each such request and its outcome. To date, NPCC has not used this process.

NPCC has conducted two Compliance Violation Investigations. The first was related to a June 27, 2007 event and the second was initiated on August 8, 2008. The first CVI was closed in November of 2007. The second CVI is currently in the final phase and a draft CVI report has been issued. NPCC, like all Regional Entities has very limited experience with investigations of enforceable standards and NERC has communicated to NPCC concerns that NPCC’s evidence gathering process and depth and thoroughness of its review of evidence should be improved. NERC considers this issue to be transitional.

NPCC has also closed investigations over the objections of NERC and FERC, and was also initially reluctant to issue remedial action directives but has since taken that action.

Overall Effectiveness

In summary, NERC views NPCC as a relatively effective Regional Entity that is processing and completing identified violations in a timely manner. NPCC is also demonstrating a willingness to assess non-zero penalties. NPCC has conducted 2 CVIs. NPCC is using the same data management system as NERC and the majority of the Regional Entities.

NERC has a concern regarding the low level of Alleged Violations per Registered Function in NPCC and whether NPCC is identifying all the violations that are occurring, specifically failures to perform requirements of reliability standards. NERC will continue to work with NPCC to improve the thoroughness of its CVI process.

ReliabilityFirst

<b>Alleged Violations per Registered Function</b>	<b>Registered Functions per FTE</b>	<b>Percent of Active Alleged Violations Deriving from Failure to Perform</b>	<b>Percent of Alleged Violations Submitted to NERC as a NOCV or Settlement for Review</b>	<b>Average Time to Determine if a Possible Violation is an Alleged Violation</b>	<b>Percent of Alleged Violations Approved by the BOTCC</b>
<b>0.19 (5)</b>	<b>29.2 (4)</b>	<b>67% (6)</b>	<b>16% (7)</b>	<b>25.0 (5)</b>	<b>7% (6)</b>

ReliabilityFirst is the second largest Region in terms of registered entities (357) and in terms of registered functions (674.) ReliabilityFirst has reported 142 Possible Violations of reliability standards, placing it fourth in this category, with 17 dismissals (12%).

ReliabilityFirst's ratio of Alleged Violations per Registered Function (0.19) falls somewhat below the average of the Regions. Of its 125 Active Violations, ReliabilityFirst identified 67% as violations caused by a failure to perform requirements of reliability standards; which places ReliabilityFirst at the third highest percentage in this category.

ReliabilityFirst has confirmed 20 (16%) of its Alleged Violations and submitted them to NERC Staff in the form of either a NOCV or Settlement Agreement for review. ReliabilityFirst has achieved BOTCC approval of nine of these submittals, representing a 7% completion rate over the last 2 years and placing ReliabilityFirst sixth out of the eight Regions. To date, ReliabilityFirst has recommended non-zero dollar penalties for seven violations. ReliabilityFirst was the first Regional Entity to submit, and obtain NERC and FERC approval of, a non-zero financial penalty for a violation of a Reliability Standard. One registered entity contested Alleged Violations of reliability standards within ReliabilityFirst but the matter moved to settlement discussions; a settlement was recently submitted to NERC for approval.

ReliabilityFirst on average has taken 25 days from the time it finds a Possible Violation to determine if an Alleged Violation exists and about 10 days to report an Alleged Violation to NERC. Of its 125 Alleged Violations, ReliabilityFirst has 34 violations that did not receive a NAVAPS for more than 100 days, including 1 violation that did not receive a NAVAPS for more than 300 days.

ReliabilityFirst has 23 FTEs dedicated to compliance activities in the 2009 budget. ReliabilityFirst is second in terms of total FTEs committed to the compliance program and has the fourth highest ratio of Registered Functions per FTE, at 29.2.

ReliabilityFirst has initiated three Compliance Violation Investigations. While none have been closed, one is in the final phase and a draft report has been provided to NERC. ReliabilityFirst asked NERC to initiate a CVI for one additional event due to limited ReliabilityFirst resources available to conduct the additional CVI.

#### Overall Effectiveness

In summary, ReliabilityFirst is below the regional average in the percent of Alleged Violations submitted to NERC as a NOCV or Settlement for review, average in the time to determine if a Possible Violation is an Alleged Violation, and better than average in the time to report an Alleged Violation to NERC. ReliabilityFirst does have a relatively high number of violations that have not received a NAVAPS for more than 100 days and one violation that has not received a NAVAPS for more than 300 days

ReliabilityFirst has processed mitigation plans for all of the Alleged and Confirmed Violations within the Region. The ReliabilityFirst Compliance Program has been independently audited by NERC and its outside auditing firm, with no material deficiencies found. ReliabilityFirst does need to find ways to increase the efficiency with which it conducts its enforcement activities, and NERC will work with ReliabilityFirst to identify and implement necessary improvements.

**SERC**

<b>Alleged Violations per Registered Function</b>	<b>Registered Functions per FTE</b>	<b>Percent of Active Alleged Violations Deriving from Failure to Perform</b>	<b>Percent of Alleged Violations Submitted to NERC as a NOCV or Settlement for Review</b>	<b>Average Time to Determine if a Possible Violation is an Alleged Violation</b>	<b>Percent of Alleged Violations Approved by the BOTCC</b>
<b>0.38 (3)</b>	<b>28.4 (3)</b>	<b>54% (2)</b>	<b>51% (4)</b>	<b>10.4 (1)</b>	<b>46% (2)</b>

SERC is the fourth largest Region in terms of registered entities (226) and third largest in terms of registered functions (636.) As of May 31, 2009, SERC reported 282 Possible Violations of reliability standards, placing it second in that category, with 43 dismissals. SERC's ratio of Alleged Violations to Registered Functions (0.38) is about average among the Regions. SERC's Active Violations are divided approximately evenly between violations resulting from a failure to perform requirements of reliability standards (54%) and a failure to document (46%).

SERC has confirmed 122 of its Alleged Violations (51%) and submitted them to NERC in the form of either a NOCV or Settlement Agreement for review. SERC has achieved BOTCC approval of 110 of these submittals, placing SERC second highest in percentage of Alleged Violations approved by the BOTCC. To date, SERC has recommended non-zero dollar penalties for 40 violations.

SERC on average has taken about ten days (the shortest time among the Regions) from the time it finds a Possible Violation to determine if an Alleged Violation exists and about eight days (the second shortest time among the Regions) to report an Alleged Violation to NERC. SERC has 21 violations that did not receive a NAVAPS for more than 100 days and 19 of those did not receive a NAVAPS for more than 300 days.

With 21.5 dedicated compliance FTEs in its 2009 budget, SERC is third in terms of FTEs committed to the compliance program, and is third lowest in the ratio of Registered Functions per FTE at 28.4. SERC continues to use industry volunteer subject matter experts on compliance audits to augment its staff.

SERC has established a Board Compliance Committee. SERC compliance staff works independently, without guidance or interaction with the Board Compliance Committee, to complete all of the steps in the Regional Entity compliance process except final approval before submittal to NERC. The steps conducted independently by compliance staff include evaluating whether a sufficient basis exists for an Alleged Violation, issuing a NOAV, confirming a violation, developing proposed sanctions and penalties, negotiating settlements, and reviewing mitigation plans for acceptability. During this time, SERC compliance staff does not consult with the Board Compliance Committee and all information regarding a particular Alleged Violation remains confidential with the compliance staff only. At the conclusion of the staff's work, prior



to filing with NERC, the staff conducts a final review of the Confirmed Violations, penalties and sanctions, and mitigation plans with the Board Compliance Committee and the committee approves the submittal of the actions produced by staff to NERC. From time to time, the Board Compliance Committee may remand a proposed action to staff for further work. But at no time does the committee become involved in determining the outcomes related to a violation or penalty. Final approval of SERC compliance actions by the Board Compliance Committee is a means of acknowledging SERC’s submittals of compliance actions are submittals of the SERC Reliability Corporation and not simply the opinions of individual staff members.

SERC has opened one CVI for an event within SERC.

Overall Effectiveness

In summary, while there is no prescriptive method for determining staffing levels, SERC appears to have staffed well with 1 dedicated FTE per every 28.4 Registered Functions. SERC is first in number of violations processed to BOTCC approval per FTE. SERC’s Active Violations are about evenly divided between violations caused by failure to perform requirements and violations caused by failure to document. SERC is timely in its determination if a Possible Violation is an Alleged Violation and in reporting Alleged Violations to NERC. The one area where SERC has not been timely is in cases where a NAVAPS has not been issued for 100 days and, in some cases, for more than 300 days. SERC has recommended non-zero penalties for 40 violations (33% of those submitted to NERC Staff for review).

SERC was the second Regional Entity to have its Compliance Program audited by NERC, and no material deficiencies were found in SERC’s practices. NERC views SERC as a very effective Regional Entity. NERC looks to SERC to improve upon its current good practices and to specifically improve upon its timeliness in issuing NAVAPS. NERC will work with SERC to share its good practices across the other Regions, with the aim of improving the output and efficiency of all regional compliance programs.

SPP

<b>Alleged Violations per Registered Function</b>	<b>Registered Functions per FTE</b>	<b>Percent of Active Alleged Violations Deriving from Failure to Perform</b>	<b>Percent of Alleged Violations Submitted to NERC as a NOCV or Settlement for Review</b>	<b>Average Time to Determine if a Possible Violation is an Alleged Violation</b>	<b>Percent of Alleged Violations Approved by the BOTCC</b>
<b>0.20 (4)</b>	<b>60.7 (7)</b>	<b>72% (7)</b>	<b>61% (1)</b>	<b>44.7 (7)</b>	<b>10% (5)</b>

SPP RE is the seventh largest Region in terms of registered entities (115) and sixth largest in terms of registered functions (378.) SPP RE has reported 78 Possible Violations of reliability standards, placing it sixth among the Regions in this category, with only 1 dismissal.

SPP's ratio of Alleged Violations per Registered Functions (0.20) is slightly below the average among the Regions. SPP RE's Active Violations are heavily weighted toward violations that result from a failure to perform requirements of reliability standards (72%).

SPP RE has confirmed 47 (61%) of its Alleged Violations and submitted them to NERC Staff in the form of either a NOCV or Settlement Agreement for review. SPP RE has achieved BOTCC approval of eight of these submittals, placing SPP RE among the four Regions with the lowest percentage of Alleged Violations approved by the BOTCC. SPP RE has recommended a non-zero dollar penalty for one violation.

SPP RE on average has taken about 45 days from the time it finds a Possible Violation to determine if an Alleged Violation exists and about 13 days to report an Alleged Violation to NERC. SPP RE has 11 violations that did not receive a NAVAPS for more than 100 days.

With eight compliance FTEs in its 2009 budget, SPP RE is eighth in terms of FTEs committed to the compliance program and, with a ratio of 60.7 Registered Functions per FTE, has the second highest ratio among the Regions.

SPP RE has not opened or conducted any CVIs to date. However, NERC is conducting one CVI within SPP due to a potential conflict of interest for SPP RE.

SPP RE is one of the two regions using the Compliance Data Management System, now owned and managed by a third-party software vendor.

NERC and FERC have had issues with the depth and thoroughness of SPP RE's audits, and issues have arisen with SPP RE's sharing information with FERC. NERC notes that there have been events within the SPP RE footprint that NERC and FERC became aware of with which SPP RE had no knowledge.

### Overall Effectiveness

NERC has found SPP RE to be one of the less effective Regional Entities in administering its compliance program to date. SPP RE is the second slowest to determine if a Possible Violation is an Alleged Violation. While SPP RE is the second highest in percentage of Alleged Violations submitted to NERC for review, only 17% of those have been approved by the BOTCC. Of SPP RE's Active Violations, the majority have resulted from a failure to perform requirements of standards. SPP RE has recommended a non-zero penalty for only one of the 47 violations submitted to NERC Staff for review.

NERC commends SPP RE for its ability to accurately identify high risk violations. However, NERC is concerned about SPP RE's ability to timely process Alleged Violations to completion, and its situational awareness capabilities. NERC will continue to monitor SPP RE and suggest necessary improvements to its compliance and enforcement processes.

**Texas RE**

<b>Alleged Violations per Registered Function</b>	<b>Registered Functions per FTE</b>	<b>Percent of Active Alleged Violations Deriving from Failure to Perform</b>	<b>Percent of Alleged Violations Submitted to NERC as a NOCV or Settlement for Review</b>	<b>Average Time to Determine if a Possible Violation is an Alleged Violation</b>	<b>Percent of Alleged Violations Approved by the BOTCC</b>
<b>0.19 (5)</b>	<b>23.0 (2)</b>	<b>81% (8)</b>	<b>52% (3)</b>	<b>18.4 (3)</b>	<b>50% (1)</b>

Texas Regional Entity is the fifth largest Region in terms of registered entities (218) and seventh largest in terms of registered functions (340.) As of May 31, 2009, Texas Regional Entity has reported 68 Possible Violations of reliability standards, placing it eighth in this category, with 4 dismissals. Texas Regional Entity's ratio of Alleged Violations to Registered Functions (0.19) is below the average of the Regions. Texas Regional Entity's Active Violations are weighted heavily toward violations resulting from a failure to perform requirements of reliability standards (81%) and it is the Region with the highest percentage in this category.

Texas Regional Entity has confirmed 33 (52%) of its Alleged Violations and submitted them to NERC in the form of either a NOCV or Settlement Agreement for review. TRE has achieved BOTCC approval of 32 of these submittals, placing it first in percentage of Alleged Violations approved by the BOTCC. To date, Texas Regional Entity has recommended non-zero dollar penalties for three (9%) of the violations submitted to NERC.

Texas Regional Entity, on average, has taken 18 days from the time it finds a Possible Violation to determine if an Alleged Violation exists and only about three days (the shortest time across all Regions) to report an Alleged Violation to NERC. Texas Regional Entity has 18 violations that did not receive a NAVAPS for more than 100 days.

Texas Regional Entity is a division of ERCOT, Inc. NERC has led compliance audits and any compliance violation investigations of ERCOT. Within Texas Regional Entity, contested Alleged Violations are to be heard by the Texas Public Utility Commission. To date, no Alleged Violations have been contested.

On May 16, 2008 Texas Regional Entity initiated a CVI in regards to the ERCOT wind event. Texas Regional Entity's initial focus was on approximately 20 generation operators, including wind plants. This CVI included a number of entities to be investigated. NERC's observation is that Texas Regional Entity has been conducting a thorough CVI. Texas Regional Entity has faced challenges in driving completion of this CVI, as there was difficulty in finding concurrent time frames to meet and discuss evidence and other work responsibilities. Completion of this CVI has been delayed several times due to staff unavailability while assigned to audits. This is the only CVI Texas has conducted.

Overall Effectiveness

NERC rates Texas Regional Entity as an effective Regional Entity. It has the second lowest number of Registered Functions per FTE, and its ratio of Alleged Violations per Registered Function is 0.19.

NERC commends Texas Regional Entity for its focus on identifying the higher risk violations that result from failure to perform requirements of reliability standards. NERC has questions about the contrast between the high percentage of “failure to perform” violations and low number of violations recommended for a non-zero penalty. NERC will work with TRE to gain a better understanding of this situation.

Texas Regional Entity excels in getting the alleged violations processed through completion with 97% of the violations submitted to NERC for review now approved by the BOTCC.

WECC

<b>Alleged Violations per Registered Function</b>	<b>Registered Functions per FTE</b>	<b>Percent of Active Alleged Violations Deriving from Failure to Perform</b>	<b>Percent of Alleged Violations Submitted to NERC as a NOCV or Settlement for Review</b>	<b>Average Time to Determine if a Possible Violation is an Alleged Violation</b>	<b>Percent of Alleged Violations Approved by the BOTCC</b>
<b>0.89 (1)</b>	<b>42.0 (5)</b>	<b>54% (2)</b>	<b>11% (8)</b>	<b>54.3 (8)</b>	<b>1% (7)</b>

WECC is the largest Region in terms of registered entities (467) and registered functions (1250). WECC initially implemented the compliance monitoring and enforcement program based on the efforts undertaken in WECC’s predecessor Reliability Management System. To date, WECC has reported 1839 Possible Violations of reliability standards, with 726 dismissals. This is the highest number of Possible Violations reported by any Region. WECC’s ratio of Alleged Violations to Registered Functions (0.89) is high in comparison to the other Regions.

WECC has confirmed 126 (11%) of its Alleged Violations and submitted them to NERC in the form of either a NOCV or Settlement Agreement for review. WECC has achieved BOTCC approval of eleven of these submittals, placing it eighth in percent of Alleged Violations approved by the BOTCC. It should be noted that eight of WECC’s eleven violations processed through to BOTCC approval were completed since March 2009. To date, WECC has recommended non-zero dollar penalties for 31 (25%) of the 126 violations submitted to NERC for review.

WECC on average has taken over 54 days (the longest time among the Regions) from the time it finds a Possible Violation to determine if an Alleged Violation exists and over 18 days to

report an Alleged Violation to NERC.<sup>4</sup> WECC has 434 violations that did not receive a NAVAPS for more than 100 days, and of those, 161 did not receive a NAVAPS for more than 300 days.

With 30 compliance FTEs in its 2009 budget, WECC is first in terms of FTEs committed to the Compliance Program and, at 42 Registered Functions per FTE, WECC has the fourth highest ratio of Registered Functions per FTE.

WECC conducts the most compliance outreach activities of any Region with multiple compliance program workshops and a regularly scheduled open-mike call for registered entities, and has a Western Interconnection Compliance Forum as well as a Compliance Users Group. Nonetheless, WECC received the most stakeholder comments of any Regional Entity related to its compliance monitoring and enforcement program. Many of the comments related to the speed of processing and unresponsiveness of the Regional Entity to questions by registered entities.

Data reporting and management has been challenging in WECC with the extensive volume of potential violations reported. Earlier data reporting and management issues have been resolved, and WECC has committed to the portal system used by NERC and six other Regional Entities.

WECC serves as the Reliability Coordinator (RC) for the Western Interconnection and the Interchange Authority (IA) for the U.S. portion of the Western Interconnection. NERC has entered into an agreement with WECC to serve as the Compliance Enforcement Authority for the RC and IA functions for which WECC is a registered entity.

WECC has had limited success in conducting CVIs. CVIs were opened by WECC on August 29, 2007 and September 7, 2007 and have been completed. However in one CVI, WECC concluded there was insufficient information to determine whether a violation occurred. NERC has directed WECC to make a final determination if a violation occurred or conclude that no violation occurred. On February 14, 2008 WECC opened a CVI in regards to a system disturbance. Due to potential conflicts of interest with WECC reliability coordinators, NERC has assumed the responsibility for this CVI. Finally, on April 11, 2008 WECC opened a CVI in regards to a self reported violation. NERC has not received a final CVI report from WECC in regards to this CVI. With the extensive compliance activities in WECC, managing the time lines and conducting CVIs has presented challenges to WECC.

Due to the large backlog of violation processing, WECC cancelled all compliance audits during the fourth quarter of 2008 without coordinating this action with NERC. This will require WECC to increase its audit efforts in 2009 and 2010 to complete audits of all Balancing Authorities and Transmission Operators on the three-year cycle as required by the NERC Rules of Procedure and the delegation agreement. WECC also took several other unilateral actions, including: opting to rely solely on the certification of a registered entity as the verification of the

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<sup>4</sup> WECC reports about 20 violations have been re-entered in the system because of entities purchasing other entities.

completion of mitigation plans; implementing proposed agreements between WECC and certain registered entities regarding compliance obligations; and issuing compliance bulletins providing independent interpretations of, or guidance related to, certain requirements of NERC reliability standards. NERC will work closely with WECC's new director of compliance to address these issues.

#### Overall Effectiveness

NERC has found WECC to be one of the less effective Regional Entities in carrying out the compliance enforcement program to date. The Active Violations in the WECC region are split fairly evenly between violations resulting from a failure to perform requirements (54%) and violations resulting from a failure to document performance (46%). WECC experienced a large volume of initial violation self reports between July 2007 and July 2008 and has been attempting to bring these Alleged Violations to completion. WECC has a long way to go to complete this effort, with only 11 violations out of 1,113 post-June 18, 2007 Alleged Violations approved by the BOTCC.

However, more recently, during April and May, 2009, WECC has made significant strides toward improvement, and while it is not yet noticeable in the statistics, NERC recognizes and applauds this effort. Observed improvements have included greater success in processing WECC's backlog of violations, as noted by the recent increase in violations approved by the BOTCC and through other efforts to reduce the number of outstanding violations. NERC encourages WECC to continue its efforts in this regard. NERC also suggests that WECC create a stronger separation of its compliance encouragement efforts (training, workshops, etc) from its enforcement activities; examine its staffing level and compliance processes, and stay focused on reducing its backlog of Alleged Violations and processing violations to completion.

**C. Issues Concerning All Regional Entities**

The key issues identified by stakeholders and by NERC concerning the Regional Entity compliance programs are discussed below as well as in **Attachment 2**.

**Issue: Consistency and Oversight by the ERO**

Numerous stakeholder comments pointed to the need for NERC to take a stronger leadership role in eliminating differences among Regional Entities and to ensure uniformity and consistency across all regions. Some commenters stated that participation of NERC personnel in audits helps promote inter-regional consistency; some suggested additional presence by NERC staff on compliance audits.

Prior to certification of NERC as the ERO, NERC and the regional reliability councils had established compliance monitoring programs based on the voluntary regime. While this helped prepare NERC and the regions for the task ahead, these programs were operated as autonomous regional programs with very limited reporting to NERC beyond high-level annual program results. Each of these programs had been developed by the regional reliability councils and their members for the purpose of preparing for mandatory standards. When these programs were developed, NERC and the regions had little experience with monitoring compliance and much was learned by initially allowing a great deal of flexibility in the implementation of the programs.

With the certification of NERC as the ERO, the Commission, NERC, the Regional Entities and the industry sought to have a single, uniform, and consistent compliance monitoring and enforcement program established across North America. Stakeholders expressed interest in two kinds of consistency. First, consistency of process; this is especially important for larger entities with business in multiple regions, where significant improvements can be made with common forms and procedures. Second, consistency of result; the same requirement should be interpreted the same way in each region, and similarly situated entities should be treated the same for violations of the same requirement.<sup>5</sup> The currently effective delegation agreements provide a general framework for the regional compliance monitoring and enforcement programs, but they do not do as much as they could to ensure the consistency, effectiveness, and efficiency that NERC, stakeholders, and the Regional Entities themselves desire. The current delegation agreements expire in May 2010. NERC and the Regional Entities will have the opportunity to address these issues on a systematic basis in the renegotiation of those agreements.

**Issue: Reliability Standard Audit Worksheets**

NERC developed a series of Reliability Standard Audit Worksheets (RSAWs) to provide a common basis for auditors to conduct audits in eight separate Regional Entities. These audit worksheets were provided to the Regional Entities and the industry to serve as guides for auditing and to help identify the types of evidence needed to support compliance. Registered Entities are encouraged to use the RSAWs in their internal compliance programs and to prepare

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<sup>5</sup> This consistency of result should always be a goal to be pursued, but especially in enforcement cases, facts matter; differences in facts can lead to different results.

for compliance audits conducted by the Regional Entities, and are required by some Regional Entities to complete the questions in the RSAWs and submit the responses to the Regional Entity prior to the commencement of an audit. The RSAWs are not definitive as noted in their disclaimer, but rather guidance, and registered entities should be able to present alternative evidence of compliance.

NERC has undertaken an initiative to review and update the current Reliability Standard Audit Worksheets and create new Reliability Standard Audit Worksheets for standards and requirements that need them. This effort will bring a higher level of consistency and uniformity in compliance audits, as well as address other concerns that registered entities have raised concerning the form and organization of the RSAWs. It should also allay concerns raised by stakeholders that the tools that Regional Entity and NERC auditors rely upon to audit compliance should not extend beyond the terms of the Commission-approved standards.

**Issue: Compliance Reporting and Data Management**

NERC and the Regional Entities implemented the mandatory Compliance Monitoring and Enforcement Program on June 18, 2007 with a series of data management tools based on a variety of data platforms and tools. These tools were generally extensions of the tools in existence prior to the standards becoming mandatory. Generally, the data collection tools have served their purpose in the early stages of program implementation to collect and report compliance information. However, since these tools were not developed on a single platform and from a single vision, data and document management has not been as effective among the Regional Entities and NERC as it could be. While a number of enhancements have been made to these data management systems and future consolidations are planned to improve efficiency, a single central data hub concept has not been implemented.

The ERO's data management and records must be developed and maintained as a central data hub for compliance information with a seamless flow of data from and, as appropriate, to, all Regional Entities, registered entities, and regulators. The entire platform should be developed on a common data base to provide redundancy of information. For example, when an entity is alleged to have violated a standard in one region, the ability to quickly review the entity's performance across NERC with regard to reliability standard violations should be available to all regions. Such a system requires a single data hub and the use of a single platform across all entities.

NERC and the Regional Entities have work underway to develop a centralized data hub that can accommodate the existing systems being used by the Regions. Six of the regions and NERC are committed to a single vendor system. Two regions utilize a separate platform for the collection of data from the registered entities. Such a system will enable NERC and the regions to quickly obtain information about registered entities and their performance in every region in which they perform a registered function. Further, some registered entities have expressed a desire for a single reporting system to improve consistency in application of the programs and to avoid the need to train their personnel to work with multiple reporting systems and schedules. Some stakeholder comments highlighted issues with reporting compliance information to the Regional Entities. Recent changes in reporting software and tools and those underway should



help improve the reporting and management of compliance data and information from the registered entities and to regulatory authorities. The work to improve data management and records must continue. The development and maintenance of such tools should also be considered as the delegation agreements are renegotiated in the coming months to determine if a system funded at the NERC level and a users group including the regions should be established.

**Issue: Communication Management**

Stakeholder comments identified communication of “lessons learned” and other information regarding compliance as an issue. NERC has suggested the development of a knowledge management or information management platform where such information would reside and be fully searchable by anyone seeking information related to compliance with reliability standards. However, additional budgeted funding will be necessary to proceed with this project. In the meantime, NERC has undertaken an effort to implement and update a Q&A web site to provide some key information, and is working to consolidate information provided by the Regional Entities into a single, NERC endorsed collection of information related to compliance.

As stated earlier, NERC has also undertaken an initiative to review and update the current Reliability Standard Audit Worksheets and create new Reliability Standard Audit Worksheets for standards and requirements where no such worksheets existed before.

Communication of compliance program expectations, results, trends, and information is an effort within NERC itself, currently coordinated by NERC’s Manager of Communications. However, little has been done to coordinate the communications conducted by the Regional Entities. Regional Entities have conducted compliance workshops for their constituents and in some cases have engaged NERC staff as a presenter to provide an overall ERO perspective. Additionally, several Regional Entities have begun to make presentations regarding the ERO and regional compliance programs at national seminars.

The Regional Entities have also developed a website where information is provided regarding compliance with the standards, application of the standards, and in some cases interpretation of the standards through the “lessons learned” during audits. To make that material useful to all stakeholders, especially those with business in multiple regions, NERC and the Regional Entities will need to develop mechanisms to ensure that the material is properly reviewed for consistency with other interpretations and applications of the Reliability Standards. Once such material is posted for use by stakeholders, the Regional Entities will be able to make use of the posted material in a consistent manner.

NERC and the Regional Entities need to work together on a more coordinated corporate communication strategy for compliance in which Regional Entity communications are coordinated for content and consistency with NERC’s objectives. Such a communication strategy will need to address communication with the industry, regulators, and internal staff including the Regional Entities and must include the NERC website for compliance information. Consideration should be given to including provisions on coordination of corporate communication plans in the next generation of the delegation agreements.

**Issue: Backlog, Volume of Work, and Output**

Many commenters expressed their concerns regarding the volume of work facing the Regional Entities and NERC as well as the desire to see violations, settlements and mitigation plans processed to completion, and therefore made public, in a more expeditious manner. Having enforcement actions completed and made public provides valuable lessons learned to the industry stakeholders and provides guidance for improving reliability performance. While increasing the output of the compliance program is primarily a resource issue, other steps can be taken to improve speed and output, as discussed below. It is fair to say, however, that neither NERC nor the Regional Entities were prepared for the volume of compliance work that has emerged in the wake of the standards becoming mandatory and enforceable on June 18, 2007, particularly in combination with the substantial number of self-reported violations that were submitted by entities for the pre-June 18, 2007 period. Beginning with the self-reported violations from the pre-June 18, 2007 period, NERC and the Regional Entities have been inundated with self-reports of, and findings of alleged violations of reliability standards.

**Issues: Overall Volume of Work and Compliance Program Outputs**

Specific issues related to the backlog, overall volume of work and the outputs of the compliance program are described below.

**Prioritization**

With the number of violations reported in the first 24 months of mandatory reliability standards, prioritization of the violations by NERC and the Regional Entities is necessary. Prioritizing based on the risk to reliability or the violation risk factor is one method; however, a registered entity is likely to want to process all of its violations in a single settlement agreement or other enforcement action. Such an approach would allow the Regional Entities to move a large block of their backlog through the process if a settlement offer were to be proffered for all the violations a given registered entity has in the process; however, such a method would require agreement between the registered entity and the Regional Entity. Similarly, NERC encourages multi-regional settlements for registered entities crossing several Regions as a means to bundle-up administratively several violations.

**Documentation Related Violations**

Approximately 44% of all standard violations to date are documentation violations, meaning that the entity is performing the task required by the standard (including having a required document), but may not have documented evidence to demonstrate compliance. Processing these violations along with the non-documentation violations can result in a less efficient program and slower average processing time due to the sheer volume of documentation violations. Documentation is necessary to demonstrate compliance to the Compliance Enforcement Authority and a lack of documentation reflects negatively on the registered entity's internal compliance program. Each requirement in the standard is given a Violation Risk Factor and many of the documentation requirements are assigned a 'lower' violation risk factor.

As part of the review of the standards it is fair to question if all documentation requirements in a standard should rise to the level of being an enforceable requirement in the standard. This review should be part of the Reliability Standards Development Plan.

Identifying and removing from standards any requirements related to documentation that are not necessary will reduce the volume of work and focus the compliance monitoring and enforcement activities on those requirements of the standards where an entity is required to perform a function or a task. These more important requirements that need to be retained in the standards include having certain documents such as a system restoration plan or an emergency operations plan. The compliance administration elements could then include the data retention requirements and documentation necessary to demonstrate compliance.

### **Discretion in Processing Alleged Violations**

The processing of each alleged violation of a reliability standard carries with it full due process for the registered entity in accordance with the process steps included in the CMEP. Processing all alleged violations in this manner is inefficient and may not be an effective use of resources, particularly for those violations of much less significance to the reliability of the bulk-power system. Twenty-four months have provided insufficient experience to assess which reliability standards could be classed as having little or no impact on bulk-power system reliability, and for which, therefore, the Compliance Enforcement Authority should have greater discretion to determine whether a notice of alleged violation and a proposed penalty should be assessed and processed for a noncompliance. However, as noted earlier, there are a number of violations that are classed as documentation related. As mentioned earlier, a more effective, but longer term, solution may be to assess if these requirements should be mandatory and enforceable as requirements in the standards in the first place. However, the ability to report and track resolution through mitigation of administrative or less severe violations, rather than prosecute all violations, may provide significant benefits to the industry and those who enforce standards. Alternatively, a “speeding ticket” or “warning ticket” type of notice would afford increased efficiency while maintaining program integrity.

### **Short Form Settlement Agreement**

NERC and the Regional Entities have developed a pro-forma settlement agreement to be used for a set of standards and requirements where the entity is performing the necessary task, but certain documentation may be missing or incomplete. This agreement would be a shorter version of the standard settlement agreement with pre-programmed terms and conditions to expedite processing.

For a pre-defined set of reliability standard requirements and for a given set of circumstances, a pro-forma settlement agreement can be presented to the registered entity stating the terms and conditions of the settlement. Use of the pro-forma settlement agreement eliminates some of the administrative process to bring a violation to the filing stage. However, the Commission may need to accept an abbreviated record for such a filing. At this time, there are only a limited number of the current reliability standard violations in the queue that would be

eligible for such treatment. Nonetheless, NERC still believes that such a process will be useful to process certain violations more quickly.

**Discretion to Report and Track Lower Risk Violations, Rather than Prosecute All Violations**

Suggestions have been made that NERC should have the discretion to report and track lower-risk violations through mitigation, but not seek a formal Notice of Penalty for all violations. The ability to report non-serious and documentation-related violations to the Commission, rather than seek formal filing through Notice of Penalty, would increase process throughput, perhaps without adversely affecting bulk power system reliability, and provide more resources on more significant violations. This concept, similar to the Nuclear Regulatory Commission’s “non-cited violations” approach, would eliminate all processing of the alleged violation and only record the warning as being issued.

Issuing a warning would not be materially different than issuing a Notice of Confirmed Violation or settlement agreement as described above with a zero dollar penalty, with one exception: under the NERC *Sanction Guidelines*, in the event of future violations by the registered entity, the fact that the entity had previously committed violations is a factor taken into account in determining whether the penalty assessed should be increased over the base penalty amount for the violation. It would still be necessary to keep track of the warnings across all the Regional Entities. If an entity began to accumulate warnings, it would be a signal that more serious intervention might be needed.

NERC does not believe that a separate process for issuing warnings is warranted at this time. As with the pro-forma settlement agreement, mitigation of the alleged violation would be necessary and tracking the warnings issued would be required so that Regional Entities and NERC would be aware if the registered entity had previously been issued a warning. Such tracking would need to be conducted across all regions where the registered entity operates and would need to track whether the registered entity had received numerous prior “warnings,” including multiple warnings concerning the same standard and/or requirement. The process would require considerable reporting and oversight to ensure fair, appropriate, and consistent application and to meet regulators’ expectations. NERC does not see significant efficiency gains with such a process at this time.

**Enforcement and Mitigation Processes**

Enforcement and mitigation activities are currently carried out in the eight Regional Entities with NERC oversight, review, and approvals at the end of each of these processes. Regional Entities have performed well in identifying alleged violations as well as reviewing and accepting mitigation plans to address the shortcomings identified by the alleged violation. (Each mitigation plan must be submitted to the Regional Entity for acceptance and then submitted to NERC for approval. NERC has 30 days to approve or remand a mitigation plan once received from the Regional Entity (unless NERC extends the review period)).

Enforcement actions are initiated by the Regional Entity pursuant to the CMEP. The variability of time required to process enforcement actions, and of the results, has been greater than desired. However, no two violations are exactly the same in all their circumstances, so registered entities should expect some variability in enforcement actions. NERC believes that more training, more experience and more filings will reduce the band of variability in the future. NERC reviews and approves all enforcement actions once the Regional Entity believes it has completed all of the work associated with the violation. NERC is in the best position to assure consistency in enforcement actions.

Processing allegations of violations requires significant effort on the parts of all involved. The process begins in discovery. The Regional Entity completes an assessment and validation of the facts surrounding the violation and, if appropriate, issues a NAVAPS. To date, under the Rules of Procedure, NERC’s role on these notices has been limited although some Regions have requested early involvement from NERC. At this time, NERC has no process review of the initial notice or the record of the proceedings. The Regional Entity and the Registered Entity may also enter into settlement discussions at any time. Once the violation is confirmed or addressed through settlement at the Regional Entity, NERC receives the Notice of Confirmed Violation or settlement agreement from the Regional Entity for consideration. This is the first point at which, under the Rules of Procedure, NERC sees the record developed or documents supporting the violation.

The following is a simplified diagram of the process steps.

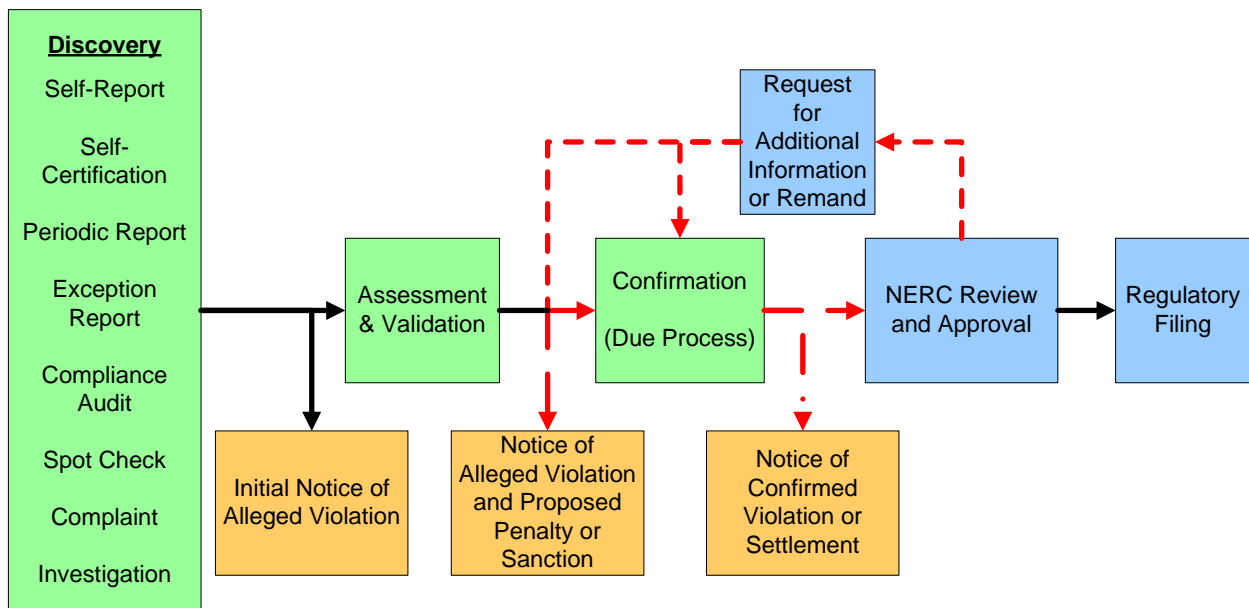


Figure 1 - Abbreviated Compliance Process Steps

The green boxes represent activities of the Regional Entities, the blue boxes those of NERC, and the tan boxes are the notices that go to a registered entity. NERC does not become involved with the establishment of the record of the proceeding until the end of the process. At that point,

NERC staff reviews all enforcement actions for completeness, accuracy, consistency, and conformance to the Commission orders for U.S. enforcement actions.

This process, as presently implemented, has required multiple loops back to the Regional Entities as enforcement actions are reviewed by NERC and sent back to the Regional Entities for additional work. In almost every case considered to date, additional information has been required from the Regional Entity to process the confirmed violation or settlement agreement to meet the objectives of NERC and the requirements of the Commission. (The Commission's July 3, 2008 Penalty Notice Guidance Order also played an important role in necessitating multiple reviews of each case.<sup>6</sup>) These loops have also necessitated reissuance of notices of alleged violation and proposed penalty or sanction to allow the registered entity fair due process rights to the content of the notices or revised enforcement actions. These steps, depicted by the red lines in the diagram, are highly inefficient for all parties including NERC, the Regional Entities, and registered entities, and have created significant delay in processing the alleged violations, consequently increasing the backlog.

Regional Entities play a key role with the discovery of alleged violations of the reliability standards and serve as the key interface between the registered entities and the ERO. However, efficiency could be gained by streamlining the interactions between the Regional Entities and NERC to eliminate the many loops back through the process in developing an adequate record and determining proposed penalties. As discussed in Attachment 2, NERC will provide the option for Regional Entities to ask for help and advice in advance of filing Notices of Confirmed Violation, Notices of Penalty, settlement agreements and mitigation plans with NERC. The Regional Entities would continue to conduct the field work necessary to discover and process the violation, but would have the opportunity to engage NERC in the development of the Notice of Confirmed Violation, Notice of Penalty or Sanction, and any settlement agreements, prior to issuance. Alternatively, Regional Entities themselves will need to take on additional responsibility to ensure that their collective actions achieve the consistency and efficiency that those subject to the reliability standards desire and deserve. NERC expects to consider these issues in negotiating the next generation of the delegation agreements.

**Issue: Multi-Region Registered Entities**

Some stakeholders who operate in multiple regions expressed concerns related to the duplication of effort on their part and the Regional Entities for monitoring compliance and enforcing the reliability standards. Their desire would be for the Regional Entities and NERC to identify a single Regional Entity or NERC to carry out the compliance monitoring and enforcement program for their organization. Such an approach would eliminate the need to train their staff on multiple reporting forms and schedules as well as the possibility of inconsistent and duplicate compliance findings. This approach is being used with some Registered Entities.

In the first 24 months of mandatory standards, it became apparent that a number of registered entities are operating in multiple Regional Entity footprints. Those registered entities expressed concerns about duplication of audits and other CMEP processes, training their staff on

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<sup>6</sup> Guidance Order on Reliability Notices of Penalty, 124 FERC ¶61,015 (2008).

each of the Regional Entity reporting and monitoring processes, and consistency in application across multiple Regional Entities. The Regional Entities have also expressed concerns about findings made in neighboring regions establishing precedent in their region and the need to share information. Duplication of effort by multiple Regional Entities is highly inefficient and may result in multiple registrations that could be unnecessary. Further, entities have from time-to-time moved to another region based on markets available or cost structure within the region. The CMEP is to be implemented uniformly and while small cost differentials may exist, it would be expected that the costs to execute the compliance programs would be very similar across all Regional Entities.

Funding of the CMEP is not dependent on membership of registered entities in the Regional Entity, and would have little effect on the Regional Entity budgets since funding is based on load serving entities operating in the Regional Entity footprint. Most of the registered entities operating in multiple Regional Entity footprints are reliability coordinators, generation owners, and generation operators.

The Regional Entities are currently working to develop a formal, written process to allow coordination of audits and compliance reporting for those registered entities operating in multiple Regional Entities. In addition, there is a need to coordinate enforcement actions among the affected Regional Entities. However, a more efficient outcome might be to assign a registered entity operating in more than one region to a single Regional Entity (subject to NERC oversight), eliminating the need for such a coordination agreement and eliminating the possibility of duplication. Such a process would promote the maximum efficiency with regards to the application of the CMEP to registered entities.

**Issue: Training and Education**

NERC received numerous comments from stakeholders related to increasing training for auditors to ensure consistent application of reliability standards by compliance audit teams across the Regional Entities and for additional educational opportunities for registered entities specifically on compliance and demonstrating compliance with the reliability standards.

**Regional Entity and NERC Training**

NERC's Rules of Procedure require all Regional Entity and NERC staff participating on a compliance audit or compliance violation investigation to complete the requisite NERC or NERC-approved training. NERC provides training in classroom settings for all audit team leaders and web-based training for audit team members. The Regional Entities also have established separate training for auditors to supplement the NERC training. The Regional Entities and NERC desire additional training and for better coordination in the development of training materials and curriculum.

As the NERC CMEP moves into the third year of enforcing mandatory standards, NERC will reevaluate the overall training provided. One consideration is the development and delivery of the training materials. Presently, NERC staff develops and deliver the training for compliance auditors. NERC Training and Education is considering a process of developing the necessary

training objectives and using contract training organizations augmented by NERC subject matter expertise for the development of specific training materials and course work along with delivery of the course work and certification of those trained. Training should be enhanced and expanded to provide training on enhanced subject matter to increase the knowledge and expertise of those conducting compliance audits and investigations.

Registered entities continue to express a need for increased consistency in application of the reliability standards by NERC and the Regional Entities during audits, investigations, and other compliance activities. Consistency can be achieved through improved and increased training for NERC and Regional Entity staff.

### **Registered Entity Training**

Stakeholders have also expressed an increased need for education related to compliance with reliability standards and demonstration of compliance to auditors. Stakeholders have specifically requested that the training given to compliance auditors should also be made available to registered entities to help them understand what auditors are looking for to demonstrate compliance with standards. If additional education of the industry stakeholders by NERC is desired, additional funding will be necessary to provide expanded educational opportunities. This issue is discussed in more detail in **Attachment 2**.



#### **IV. RELIABILITY ASSESSMENTS**

NERC works closely with the Regional Entities in collecting and analyzing data and information to prepare its seasonal, long-term, and special reliability assessments. This process, in which NERC has been engaged since 1970, has evolved considerably over the nearly 40 years, with particularly significant improvements since NERC became the ERO. The following list of issues provides specific performance information and areas for improvement identified by NERC for the Regional Entities with respect to reliability assessments.

##### **Issue: Data Checking and Validation**

- Continue the development and use of more robust "portal" systems and other automatic data collection processes for gathering data from registered entities to increase accuracy and efficiency and to minimize errors
- Develop independent ways to validate long-term supply data, especially in those areas with short-term forward capacity markets
- Ensure that data provided fully supports what has been requested
- Engage NERC staff with potential data issues prior to reporting

##### **Issue: Reliability Assessment Processes and Procedures**

- Actively engage in Reliability Assessment Subcommittee peer-review process
- Proactive involvement in NERC committees and subgroups
- Increase involvement of stakeholders
- Increase RE/NERC staff coordination
- Provide sufficient staff support for comprehensive studies
- Ensure flexibility related to the type of data being requested by NERC
- Rely less on subregions and ISO/RTOs for performing reliability self-assessments and modeling
- Continue to support improvements to Reliability Assessment Guidebook

##### **Issue: Stakeholder/Member Involvement**

- Actively engage NERC in regional coordination meetings
- Increase involvement of members
- Promote contributions by regional subject matter experts
- Ensure that market confidential data does not inhibit comprehensive and complete assessment of reliability
- Increase the involvement of stakeholders, including subgroup membership in assessment
- Engage in more interconnection-wide transmission planning studies

##### **Issue: Overall Quality and Timeliness**

- Improve quality of data, especially in areas served by organized markets

- Ensure that market rules do not decrease ability for on-time submissions
- Provide sufficient RE staff resources and improve data collection processes for more timely submissions
- Minimize the amount of data corrections and updates
- Commitment to completeness and well-documented self-assessments

**V. TOPICS FROM APRIL 19, 2007 COMMISSION ORDER**

In its Order issued April 19, 2007, in which it initially approved NERC's delegation agreements with the eight Regional Entities, the Commission directed NERC to address two topics, concerning (i) the SPP RE governance structure and independence from the SPP RTO, and (ii) the stakeholder voting structure of the WECC standards development procedure, in its initial three-year performance report.<sup>7</sup> Because discussion of these two topics does not fit neatly into the organization of NERC's evaluation of the individual Regional Entities, NERC is addressing these two topics in this separate section.

**A. SPP RE Governance Structure and Independence**

In PP 401-402 of the *Delegation Agreement Order*, the Commission stated:

401. SPP represents that the SPP Regional Entity governance structure satisfies the requirements of Governance Criterion 4, *i.e.*, that the SPP Regional Entity will have established rules that assure balance in its decision-making committees and subordinate organizational structures and assure no two industry sectors can control any action and no one industry sector can veto any action. However, it is unclear whether SPP's quorum and voting requirements will allow for this balance. Specifically, SPP Bylaw, section 3.8 provides that a quorum for a meeting of the markets and operations committee or the members committee will be those members present. Section 3.9, moreover, establishes only two voting sectors: the transmission owning members sector and the transmission using members sector.

402. While we acknowledge that these protocols may be sufficient to meet the minimum requirements of our standards, we intend to closely monitor the activities and workings of the SPP committees and subordinate structures and to provide additional guidance and directives, as may be necessary. We also expect the ERO to address the effectiveness of these provisions and identify any related concerns and recommendations in the ERO's first performance assessment, which must include an analysis of Regional Entity effectiveness. [footnote omitted]

Ordering paragraph (D) of the *Delegation Agreements Order* stated that the three-year performance assessment report should address "the effectiveness of the SPP bylaws in ensuring an adequate separation of functions as between the SPP RTO and the SPP Regional Entity trustees."

While the cited SPP, Inc. Bylaws provisions specifically, and the SPP RE governance structure and independence from the SPP RTO generally, were legitimate subjects for monitoring and further review at the time of the *Delegation Agreements Order* (particularly in

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<sup>7</sup>*Order Accepting ERO Compliance Filing, Accepting ERO/Regional Entity Delegation Agreements, and Accepting Regional Entity 2007 Business Plans*, 119 FERC ¶ 61,060 (2007) (*Delegation Agreements Order*), at PP 401-402 and 474-475.

light of the corporate relationship between the SPP RTO and SPP RE), a number of developments and analyses since that time have substantially mitigated any concerns in this area.

First, the SPP, Inc. Bylaws (which are part of Exhibit B to the NERC-SPP delegation agreement) have subsequently been amended in numerous respects, including a set of amendments that has been approved by the NERC Board of Trustees and is presently before the Commission.<sup>8</sup> As approved by the NERC Board, amended §3.8 and §3.9 of the SPP, Inc. Bylaws would read as follows:

### **3.8 Quorum**

The quorum for a meeting of the Markets and Operations Policy Committee or the membership shall be those Members present. The quorum for any other Organizational Group or task force shall be one-half of the representatives thereof, but not less than three representatives; provided that a lesser number may adjourn the meeting to a later time. The quorum for a meeting must be established and maintained throughout the meeting in order for the Organizational Group(s) to take any binding actions(s). Notwithstanding the above, any actions taken before a quorum is lost are considered valid and binding. A proxy will serve to meet the quorum requirements as described in Section 3.2 *proxy* of these Bylaws.

### **3.9 Voting**

#### **3.9.1 Markets and Operations Policy Committee and Membership**

Upon joining, Members shall be assigned to one of two Membership sectors for the sole purpose of voting on matters before the Markets and Operations Policy Committee or the Membership: Transmission Owning Members, or Transmission Using Members. Each sector votes separately with the result for that sector being a percent of approving votes to the total number of Members voting. An action is approved if the average of these two percentages is at least sixty-six percent. If no Members are present within a sector, the single present sector-voting ratio will determine approval. Unless otherwise stated in these Bylaws, the Markets and Operations Policy Committee or the Membership may determine to vote on an issue by email. The outcome of any email vote must be recorded in the minutes for the group.

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<sup>8</sup> See *Petition of the North American Electric Reliability Corporation for Approval of Proposed Revisions to the Bylaws of Southwest Power Pool, Inc.*, filed May 21, 2009 and presently pending before the Commission in Docket No. RR09-4-000. NERC and SPP recognize that those proposed SPP, Inc. Bylaws amendments relating to SPP's Regional Entity responsibilities must be approved by the Commission as Regional Entity rules before becoming effective. See *Order on Rehearing*, 120 FERC ¶61,260 (2007), at PP 16-20.

### 3.9.2 Organizational Groups and Task Forces

Each representative of an Organizational Group or Task Force shall have one vote. A simple majority of participants present or represented by proxy and voting shall be required for approval of an action for all other Organizational Groups and Task Force action(s). Unless otherwise stated in these Bylaws, an Organizational Group or Task Force may determine to vote on an issue by email. The outcome of any email vote must be recorded in the minutes for the group.

If an Organizational Group is acting as a Standards Development Team as defined in Section 9.5 *Regional Reliability Standards Process* of these Bylaws, it will vote in accordance with the SPP Standards Development Process as approved by FERC.

Section 9.5 of the SPP, Inc. Bylaws (included in §9.0, Regional Entity Function), states that:

When an SPP working group or task force is considering an SPP Regional Reliability Standard, it will be designated the Standards Development Team (SDT) for that Standard in accordance with the SPP Regional Entity Standards Development Process Manual. For purposes of the SDT, participation and voting will be open to any interested party in accordance with the Standards Development Process and without regard to membership status in SPP.

Under the SPP RE Standards Development Process (which is included in Exhibit C to the NERC-SPP delegation agreement), the Registered Ballot Body has five voting segments: Transmission, Generation, Marketer/Broker, Distribution/Load Serving Entity, and End User and Public Interest. Further, membership in SPP is not a requirement for any participation in the SPP RE standards development process, including for registration in the Registered Ballot Body and voting on proposed regional standards.

Second, in a subsequent order issued December 19, 2008, in which the Commission, among other things, approved proposed amendments to the SPP, Inc. Bylaws, the Commission directed NERC and SPP RE to submit a further compliance filing addressing lingering concerns that “the SPP Markets and Operation Committee and SPP Board of Directors/Members Committee have the opportunity to significantly delay, if not terminate, a draft regional Reliability Standard after the SPP Regional Entity Ballot Body has affirmatively voted on the standard.”<sup>9</sup> NERC and SPP RE addressed this directive in a February 17, 2009 compliance filing, providing a detailed discussion demonstrating that the concerns expressed by the Commission were not well founded.<sup>10</sup> The compliance filing pointed out that pursuant to the SPP RE Standards Development Procedure Manual, the roles of the SPP Markets and Operations Policy Committee and of the SPP, Inc. Board of Directors and Members in the standards

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<sup>9</sup> *Order Accepting Compliance Filings, Subject to Conditions*, 125 FERC ¶61,330 (2008) (December 19, 2008 Order), at PP 108-110.

<sup>10</sup> *Compliance Filing of the North American Electric Reliability Corporation*, filed February 17, 2009, in Docket Nos. RR06-01-021 *et al.*, at pages 23-27.

development process are advisory only; and that the SPP RE Trustees have the sole authority to approve a standard developed by a Standard Drafting Team for submission to NERC, including the authority to submit a proposed standard to NERC for approval even though the SPP Market and Operations Policy Committee, the SPP, Inc. Board and/or the SPP, Inc. Members' Committee has issued a negative report, or conducted a negative advisory vote, on the standard.

On June 1, 2009, the Commission issued an Order on the February 17, 2009 compliance filing, in which the Commission summarized NERC's and SPP RE's response to PP 108-110 of the December 19, 2008 Order, but stated, "At this time, we will not rule on the adequacy of NERC's and SPP's response to the December 19 Order. Instead, we preserve the right to address this matter in the proceeding addressing NERC's first performance assessment."<sup>11</sup> NERC believes the discussion in the February 17, 2009 is responsive to the topic of SPP RE governance structure and independence from the SPP RTO raised in the *Delegation Agreements Order*, as well as to the specific directive of PP 108-110 of the December 19, 2008 Order. Accordingly, NERC asks the Commission to consider the discussion at pages 23-27 of the February 17, 2009 compliance filing as part of NERC's response to PP 401-402 and ordering paragraph (D) of the *Delegation Agreements Order*.

Third, during 2008 the Commission conducted an audit of SPP, with a focus on (among other topics) the sufficiency of separation between SPP's RTO functions and its Regional Entity functions. The Commission's audit report included a number of findings and recommendations on this topic, including:

- SPP, Inc. has not had a "strong" separation between its RTO and regional entity functions as required by Commission orders
  - RTO management had supervisory control over Regional Entity employees, including influence over the hiring and compensation of those employees.
  - RTO employees had influence over NERC compliance monitoring and enforcement policies.
  - RTO management had the ability to influence the Regional Entity's expenditures.
  - RTO employees have received confidential Regional Entity compliance information.
- SPP RE trustees' oversight of the Regional Entity functions could be improved to prevent conflicts of interest and to further ensure the Regional Entity's independence.

To ensure SPP RE's independence and adequate separation from the SPP RTO functions, Commission audit staff made a number of recommendations that SPP has implemented, including hiring of a full-time Regional Entity General Manager to oversee all delegated functions of the SPP RE and serve as its primary representative to NERC; elimination of all reporting relationships between SPP RE employees and RTO employees; and a process requiring review and approval by the SPP RE General Manager of all time charged by SPP shared staff employees to the Regional Entity before the Regional Entity is required to reimburse SPP for

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<sup>11</sup> *Order on Compliance Filing*, 127 FERC ¶ 61,209 (2009), at PP 20-26.

these charges; and giving the SPP RE General Manager sole authority to approve withdrawals from the SPP RE bank account.

In its Order addressing the staff audit report, the Commission found that there will be an appropriate separation as between SPP's RTO and Regional Entity functions, subject to the following actions, among others: (i) the retention, by SPP, of a full-time Regional Entity manager to oversee all delegated functions of the Regional Entity and to serve as SPP RE's primary representative to NERC; (ii) authorization, on the part of the SPP RE managers and trustees, to approve unbudgeted expenses; (iii) authorization, on the part of the SPP RE manager, to authorize withdrawals from the SPP RE bank account, consistent with the SPP RE budget; and (iv) authorization, on the part of the SPP RE, to account for funds available to the Regional Entity and to address discrepancies resulting from an audit, bank account reconciliation, or internal reviews of the Regional Entity's segregated funds.<sup>12</sup> The amended SPP, Inc. Bylaws that were recently approved by the NERC Board and are now before the Commission for approval expressly provide for the SPP RE General Manager position and the General Manager's reporting relationship (*i.e.*, to the SPP RE Board of Trustees), authority and responsibilities.

Fourth, through a series of actions that have been reviewed by the Commission, including amendments to Exhibit E to the NERC-SPP delegation agreement and revisions to SPP finance and accounting processes and procedures, SPP has taken actions to ensure that SPP RE revenues, expenditures and funds are properly recorded and accounted for (in accordance with the NERC System of Accounts) and are appropriately segregated from the revenues, expenditures and funds of SPP, Inc. The current version of the SPP RE delegation agreement, including revised Exhibit E, was accepted by the Commission in the December 19, 2008 Order and in an Order on Rehearing issued March 25, 2009.<sup>13</sup> In an Order issued June 29, 2009 concerning a filing made by NERC on April 1, 2009, the Commission accepted the demonstration submitted by NERC and SPP RE in the April 1, 2009 filing of the processes and procedures by which SPP shared staff costs and indirect costs are allocated to SPP RE statutory activities and approved for payment. The Commission stated:

The Commission is satisfied with SPP's explanation of the processes by which the shared employee costs and indirect costs are allocated to the SPP-RE statutory activities. The Commission is also satisfied with the SPP-RE General Manager approval process of the actual hours shared employees work on SPP-RE business.<sup>14</sup>

Additionally, in a letter order issued June 30, 2009, in Docket RR07-16-006, the Commission accepted an April 6, 2009 compliance filing of NERC in which it was demonstrated that SPP RE had performed a reconciliation of its system of accounts with the NERC System of Accounts in accordance with §8(e) of the NERC-SPP delegation agreement.

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<sup>12</sup> See *Southwest Power Pool*, 126 FERC ¶ 61,045 (2009).

<sup>13</sup> December 19, 2008 Order at P 1 and ordering paragraph (A); *Order on Rehearing*, 126 FERC ¶ 61,270 (2009), P 16-18.

<sup>14</sup> *Order Conditionally Accepting Compliance Filing*, 127 FERC ¶ 61,307 (2009), at P 22.

**B. Voting Structure for WECC Standards Development Procedure**

In PP 474-475 of the *Delegation Agreements Order*, the Commission stated:

474. NERC, in its transmittal letter, expresses concern that the multiple stakeholder classes typical in other Regional Entities are, in WECC, combined into two broad classes and that, as such, it is unclear whether the WECC voting model, at the committee and subordinate structure level, satisfies the FPA section 215 requirement regarding the need for a balance of stakeholder interests. However, we agree with WECC that its choice of transmission provider and transmission customer classes for committee voting can be considered fair and balanced under the circumstances presented here. In fact, both classes represent a sufficiently broad range of participants. In addition, both classes must approve a recommendation for it to pass and both classes have an equal ability to block a recommendation.

475. While we acknowledge NERC's concern regarding the potential for interest groups within each class to control the vote of the class, in theory, we will not withhold approval on this basis alone given the overall acceptability of WECC's governance structure, as discussed in connection with its Exhibit B submittals; and the transitional circumstances presented by WECC's filing. We do not foreclose the possibility of revisiting this issue, if necessary, in the future. Further, we expect NERC to address the effectiveness of WECC's stakeholder voting structure in the ERO performance assessment.

Ordering paragraph (D) of the *Delegation Agreements Order* stated that the three-year performance assessment report should address "the effectiveness of WECC's stakeholder voting structure as it relates to the standards development process."

NERC notes that the directive in P 475 and ordering paragraph (D) of the *Delegation Agreement Order* was triggered by concerns raised by NERC concerning the stakeholder voting structure for the WECC standards development process. As with the SPP RE governance structure issue, subsequent developments and experience have served to substantially mitigate NERC's original concerns.

Under the currently-effective "Process for Developing and Approving WECC Standards" (Exhibit C to the NERC-WECC delegation agreement), which has been amended subsequent to the *Delegation Agreement Order* in respects relevant to these concerns, development of and voting on WECC regional standards is conducted by the applicable WECC Standing Committee, subject to ultimate approval of the WECC Board. The WECC standards development process further provides that decision-making and voting is to be conducted in accordance with the WECC Bylaws (Exhibit B to the NERC-WECC delegation agreement), in particular §8.5 (Procedures for Committee Decision-Making) and §8.6 (Procedures for Developing and Voting on Reliability Standards). The WECC Bylaws have also been amended subsequent to the *Delegation Agreement Order* in respects relevant to these concerns, including the addition of



current §8.6 as a new provision. Section 8.6.1 of the WECC Bylaws specifies that all WECC Members and “Participating Stakeholders” may participate in standards development activities including voting. A “Participating Stakeholder,” defined in §3.21 of the WECC Bylaws, is “Any person or entity that is not a WECC Member, but is an interested stakeholder and has applied and been granted, pursuant to Section 8.6.2, the participation and voting rights set forth in Section 8.6.1.” Section 8.6.2 specifies the process for obtaining “Participating Stakeholder” status.” Section 8.5.5 of the WECC Bylaws provides for three classes of membership for purposes of voting: (i) Transmission Provider Members or Participating Stakeholders, (ii) Transmission Customer Members of Participating Stakeholders, and (iii) States and Provincial Members. The specific voting and approval requirements are specified in §8.5.5.2 of the WECC Bylaws:

Except as provided in Section 4.5.2, each committee member and Participating Stakeholder (if any) will have one vote. In order for a recommendation to be made to the Board, such recommendations must receive a simple majority of both: 1) committee members and Participating Stakeholders (if any) present and voting for the Transmission Provider Class; and 2) committee Members and Participating Stakeholders (if any) present and voting from the Transmission Customer Class.

WECC has submitted for NERC Board approval a total of 16 regional standards that have been successfully developed and approved through the WECC standards development process. This far exceeds the number of regional standards developed and submitted for NERC Board approval by any other Regional Entity. Nine of these WECC regional standards have been approved by the NERC Board, filed with the Commission for approval, and approved by the Commission. WECC is the only Regional Entity that has developed any regional standards through to approval by the Commission. Thus, experience to date has shown that the WECC processes for developing and voting on proposed regional standards, including the stakeholder voting structure, have not impeded development and approval of WECC regional standards. WECC’s success in producing 16 regional standards that have been approved at the Regional Entity level, nine of which have been approved by the NERC Board and the Commission, demonstrates the effectiveness of WECC’s standards development process including its stakeholder voting structure.