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NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION

DRAFT ATTACHMENT 2

TO

**FIVE-YEAR
ELECTRIC RELIABILITY ORGANIZATION
PERFORMANCE ASSESSMENT REPORT**

JOINT REGIONAL ENTITY SELF-ASSESSMENT

JULY 21, 2014

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INTRODUCTION

The Regional Entities are pleased to have the opportunity to submit jointly a self-assessment of their performance for 2009-2013, to the Federal Energy Regulatory Commission (“Commission” or “FERC”), as part of the Five-Year Electric Reliability Organization (“ERO”) Performance Assessment prepared by the North American Electric Reliability Corporation (“NERC”).¹ While their corporate structures may vary, the Regional Entities are uniformly committed to working together and with the ERO to ensure the reliability of the Bulk Power System (“BPS”) in the U.S., and, where applicable, in Canada and Mexico. They are likewise dedicated to create seamless implementation of the law and policies administered by the Commission and the ERO. In light of the commonality of these overarching objectives, under the leadership of the Regional Entity Management Group (“REMG”), the Regional Entities prepared this 2014 Joint Regional Entity Self-Assessment (“JRESA”), which they respectfully request that the Commission accept.

The main purpose of this self-assessment is to demonstrate that the Regional Entities continued during the assessment period to satisfy the statutory and regulatory criteria for certification as part of the ERO. In this regard, in its order accepting the ERO’s Three-Year Performance Assessment, the Commission explicitly directed that future assessments of the Regional Entities include a separate section assessing each Regional Entity’s satisfaction of those criteria.² This self-assessment also provides an update on issues and concerns raised in the 2009 JRESA, specifically with respect to regional Reliability Standards, organization registration and certification, the compliance monitoring and enforcement program, and additional statutory functions.³

¹ The Regional Entities are Florida Reliability Coordinating Council, Inc. (“FRCC”), Midwest Reliability Organization (“MRO”), Northeast Power Coordinating Council, Inc. (“NPCC”), ReliabilityFirst Corporation (“RFC”), SERC Reliability Corporation (“SERC”), Southwest Power Pool Regional Entity (“SPP RE”) - an independent and functionally separate division of Southwest Power Pool, Inc., Texas Reliability Entity, Inc. (“Texas RE” or “TRE”), and Western Electricity Coordinating Council (“WECC”). A description of each of the individual Regional Entities can be found at Appendix A.

² See *North American Electric Reliability Corporation*, Order on the Electric Reliability Organization’s Three-Year Performance Assessment, 132 FERC ¶ 61,217 (2010), at P 36. The Commission also discussed specific concerns regarding each of the individual Regional Entities in the order on the three year assessment. *Id.* PP 198-244. The responses of the individual Regional Entities to those concerns can be found at Appendix B.

³ The instant self-assessment will not repeat the discussion on the framework of self-regulation and delegation, found at pages 12-18 of the 2009 Joint Regional Entity Self-Assessment (“2009 JRESA”), as that discussion was more appropriate for an assessment of the initiation of the reliability paradigm; however, opportunities to improve that structure are discussed *infra* pages 6-8.

Satisfaction of Statutory and Regulatory Criteria

Section 215(e) (4) of the Federal Power Act (FPA), 16 U.S.C. § 824o (e) (4), as reiterated in Section 39.8 of the Commission’s regulations, 18 C.F.R. § 39.8 (2013), provides that a Regional Entity must satisfy the following criteria to be delegated “authority for the purpose of proposing reliability standards to the ERO and enforcing reliability standards:”

1. The Regional Entity is governed by an independent board, a balanced stakeholder board or a combination independent and balanced stakeholder board.
2. The Regional Entity meets the requirements otherwise applicable to the ERO in FPA Section 215(c)(1)(2), 16 U.S.C. § 824o(c)(1)(2), namely that it (a) has the ability to develop and enforce reliability standards that provide for an adequate level of reliability of the bulk-power system; and (b) has established rules that (i) assure its independence of the users and owners and operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors and balanced decision-making in any ERO committee or subordinate organization structure, (ii) allocate equitably reasonable dues, fees, and other charges among end users for all activities, (iii) provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties, (iv) provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties, and (v) provide for taking appropriate steps to gain recognition in Canada and Mexico.
3. The Regional Entity operates under a delegation agreement that promotes effective and efficient administration of bulk-power system reliability.

Each of the eight Regional Entities continued to satisfy the statutory and regulatory criteria during the assessment period, as demonstrated with specificity on Appendix C and summarized briefly here.

The Regional Entities met the first criterion by being governed by an independent board (SPP RE and WECC (as of January 1, 2014)), a balanced stakeholder board (FRCC and SERC), or a combination independent and balanced stakeholder board (MRO (as of January 1, 2013), NPCC, RFC, TRE, and WECC (during the assessment period)).

The Regional Entities fulfilled the next requirement to develop and enforce reliability standards that provide an adequate level of reliability of the BPS by working closely with NERC and stakeholders in the development of continent-wide standards and in the implementation and improvement of the Compliance Monitoring and Enforcement Program (“CMEP”). In particular, although each Regional Entity had a regional Reliability Standards Development Procedure (“RRSDP”), with the exception of WECC, they developed few Regional Standards during the assessment period. They preferred to support NERC’s efforts to develop continent-wide standards and focus their resources primarily on monitoring compliance with, and enforcement of, the mandatory reliability standards. Illustratively, during the assessment period, the Regional Entities conducted 2,358 compliance audits and 1,612 compliance spot checks, and

processed 4,740 self-reports. They discovered nearly 6,900 violations or possible violations of the mandatory Reliability Standards, and submitted through NERC 5,128 confirmed violations in 633 Notices of Penalty (“NOPs”) to the Commission. They also explored ways to approach their compliance and enforcement responsibilities with a greater emphasis on measuring the risk of noncompliance on the reliability of the BPS. In this regard, in collaboration with NERC, they developed the Reliability Assurance Initiative (“RAI”).⁴

The Regional Entities also established rules to ensure impartiality in the conduct of their business and due process in the performance of their compliance and enforcement functions, and, where applicable, took the appropriate steps to gain recognition in and otherwise work with entities in Canada and Mexico. To start with, they followed the NERC Rules of Procedure (“ROP”), as approved by the Commission, and adopted additional procedures and policies for their own areas. Thus, for example, they all relied on NERC ROP *Sanction Guidelines*, **Appendix 4B**, CMEP, **Appendix 4C**, and *Hearing Procedures*, Attachment 2 to **Appendix 4C** to carry out their compliance, enforcement, and hearing responsibilities fairly and impartially. They augmented those rules with policies and procedures to prevent conflicts of interest in the operation of their boards of directors or trustees, the exercise of their statutory duties, and the activities of their employees and contractors. They also followed NERC’s lead, again as approved by the Commission, in equitably recovering their funding from end users through a formula based on net energy for load (“NEL”), and developed annual business plans and budgets for Commission approval to assure that they properly and adequately accounted for those funds. As noted, while they generally forwent the development of Regional Reliability Standards during the assessment period, the Regional Entities participated in the development and improvement of the NERC Reliability Standards while maintaining their regional Reliability Standards Development Procedures in the event they were needed. Finally, three of the Regional Entities with international footprints—MRO, NPCC, and WECC—made appropriate arrangements with Canadian border provincial authorities and utilities to coordinate the oversight of Canadian and U.S. reliability efforts, and WECC entered into a memorandum of understanding (“MOU”) with the Mexican energy regulator under which WECC acts as a compliance monitor for certain activities in Baja California, Mexico.

Finally, the Regional Entities satisfied the statutory and regulatory criterion for maintaining their delegated authority by operating under agreements with NERC that promoted effective and efficient administration of BPS reliability. As described by the Commission when it first approved NERC’s delegation agreements with the Regional Entities (“Delegation Agreements”) in 2007, NERC delegated authority under those agreements to the Regional Entities to audit, investigate, and otherwise ensure that users, owners, and operators of the BPS comply with NERC’s mandatory Reliability Standards, subject to ERO oversight.⁵ The agreements further addressed Regional Reliability Standards development, registration of entities

⁴ Regional activity and actions in regard to standards development and the CMEP, in particular the RAI, are discussed later in greater detail under those headings.

⁵ See *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060, *order on reh’g*, 120 FERC ¶ 61,260 (2007).

that must comply with Reliability Standards, and other services supporting NERC's functions, including reliability assessments, event analysis, and training and education. In October 2010, the Commission again approved (revised) Delegation Agreements between NERC and each of the eight Regional Entities.⁶ Subsequently, the Commission also approved other changes to specific regional agreements.⁷ In brief, the Regional Entities functioned during the assessment period under Delegation Agreements with NERC that were comprehensively reviewed and ultimately approved by the Commission to promote effective and efficient administration of BPS reliability.

As a separate but related matter, each of the Regional Entities underwent at least one extensive audit by the Commission staff during the assessment period. Most of these audits evaluated the Regional Entities' budget formulation, administration, and execution, and focused on the costs and resources used to achieve program objectives in fulfilling the duties delegated to them by the ERO under FPA Section 215.⁸ The Final Audit Reports concluded that the Regional Entities had policies, procedures, and controls that facilitated their carrying out, in an effective and efficient manner, their responsibilities under their Delegation Agreements and Bylaws, as well as their budget obligations. Several other audits more closely examined the structures of the regional organizations, and made recommendations in particular with respect to separation of functions.⁹ In all of these proceedings, during the assessment period, the Regional Entities completed or were in the process of completing the corrective actions suggested by the Commission or its staff. The Regional Entities believe that the overall conclusions and recommendations in the Regional Entity audits underscore that they satisfied the statutory and regulatory criteria for maintaining the authority delegated to them by the ERO.¹⁰

⁶ See *North American Electric Reliability Corporation*, 133 FERC ¶ 61,061 (2010), *order on reh'g*, 134 FERC ¶ 61,179, *order on compliance filing*, 137 FERC ¶ 61,028 (2011).

⁷ See, e.g. Delegated Letter Orders in Docket Nos. RR13-7-000 (Aug. 19, 2013) (TRE), RR13-5-000 (June 12, 2013) (MRO), RR12-12-000 (Oct. 24, 2012) (RFC), RR12-4-000 (June 12, 2012) (FRCC), and RR12-2-000 (March 1, 2012) (WECC).

⁸ See Delegated Letter Orders and Final Audit Reports issued in FERC Docket Nos. FA12-14-000 (May 9, 2013) (MRO), FA12-7-000 (May 9, 2013) (RFC), PA12-10-000 (June 28, 2013) (NPCC), FA12-6-000 (June 11, 2013) (SERC), PA11-2-000 (October 5, 2011) (SPP RE), and PA12-9-000 (July 10, 2013) (WECC).

⁹ See *Florida Reliability Coordinating Council, Inc.*, 131 FERC ¶ 61,262 (2010); *Western Electricity Coordination Council*, 132 FERC ¶ 61,149 (2010); *Texas Regional Entity*, 130 FERC ¶ 61,025 (2010).

¹⁰ NERC also audited the Regional Entities during the assessment period, in accordance with the Commission's direction in Order No. 672. See *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204 (2006), at P 773. Specifically, NERC developed a program to audit the Regional Entities' adherence to the NERC ROP, the CMEP, and the requirements of the Regional Delegation Agreements. See generally

Achievements

Closely intertwined in the Regional Entities' satisfaction of the statutory and regulatory certification criteria during the assessment period were their achievements as individual organizations and as a group united by common goals. Their individual achievements are partly set forth on Appendix C, and discussed or referenced throughout this document. Their joint achievements are, by definition, likewise discussed throughout this document. These achievements in particular reflect the work and oversight of the REMG, an organization composed of the executives of the eight Regional Entities to provide strategic guidance in the execution of their Delegation Agreements, consistent with maintaining and enhancing reliability across North America for the benefit of all BPS users, owners, and operators. The REMG aims to attain that objective by promoting information sharing, transparency, and consistency with and among the Regional Entities while assuring efficient and effective use of resources to execute their delegated functions. In addition, the REMG combines the Regional Entities' efforts with the ERO Executive Management Group ("ERO EMG"), which was chartered originally in April 2010, and likewise dedicated to provide guidance and direction in the execution of the Delegation Agreements.

As particularly relevant to the rest of this self-assessment, in the summer of 2012, the REMG held its first strategic retreat, and decided upon three priorities: (1) to ensure that their work, especially in the audit area, follows professional standards and as a result fosters consistency among the Regional Entities; (2) to reserve enforcement for serious matters, rather than using enforcement for every corrective action resulting from a violation; and (3) to scale their work towards risk to reliability and move away from a prescriptive, mechanical approach. Soon after this retreat, as discussed in greater detail below, the Regional Entities took steps to make these priorities a reality. With NERC's participation, they engaged a third party consulting firm to perform a review of the Regional Entities' auditing practices, to identify areas to improve consistency among the Regional Entities, and to increase the rigor in the conduct of their work. Within a relatively short time, by the end of the assessment period, NERC and the Regional Entities made substantial progress on implementing the consulting firm's major recommendations to develop a standardized audit process checklist, to publish an auditor handbook, and to create an audit training program around these tools. The Regional Entities also worked closely with NERC and the registered entities to pursue the related second and third priorities of reserving enforcement for serious matters and directing their compliance and enforcement efforts to identifying risk to the BPS. In this regard, they continued to examine ways to improve the timeliness and effectiveness of their CMEP processes, including improvements in self-reporting and enhancements to the Find, Fix, Track and Report ("FFT") program, and prepared analyses and initiated pilot programs to find better ways to gauge the risk that registered entities posed to reliability, and to scale their monitoring and enforcement efforts accordingly. As a result, the Regional Entities believe that a solid foundation was laid during the

<http://www.nerc.com/pa/comp/Audits%20of%20Regional%20Entities%20DL/Forms/AllItems.aspx> (last accessed on February 11, 2014).

assessment period to advance to the next phase of the ERO Enterprise's maturation as captured conceptually in the RAI.¹¹

Improvement Opportunities

Notwithstanding the solid foundation for the continued effective functioning of the ERO Enterprise, the Regional Entities, in tandem with NERC, are committed to exploring ways to improve their operations and their contribution to the reliability of the BPS. In this regard, they have identified certain elements essential to improved operations of the ERO Enterprise on which they plan to focus in the months ahead. Specifically, they plan to pursue: (1) clarifying and refining roles and responsibilities; (2) coordinating strategic planning and operational decision-making; (3) continuing to improve consistency; (4) sharing tools and infrastructure for delegated functions; and (5) coordinating communications.

The undertaking to clarify and refine roles and responsibilities is especially important to the Regional Entities as it is critical to the smooth operation of the self-regulated model. At its core, the ERO Enterprise must exercise effective and well-coordinated reliability oversight that mitigates reliability risks to the BPS. Accordingly, NERC and the Regional Entities have identified objectives on which they will concentrate to clarify and refine roles and responsibilities within the ERO Enterprise. For example, NERC will consider including in its review of Regional Entity business plans adequacy of resources and alignment of the plans for achieving delegated function objectives and outcomes described in the three-year plan. For their part, the Regional Entities will work in a coordinated fashion to support NERC in the development of comprehensive functional program designs and controls; adapt existing regional programs for delegated functions to conform to emerging program designs provided by NERC; and ensure Regional Entity staffs meet qualification and training requirements.

In addition, NERC and the Regional Entities will strive to better coordinate their strategic and business planning, *e.g.*, by developing and maintaining a joint three-year strategic plan for the ERO Enterprise describing the goals and deliverables for statutory functions, a plan that should guide the development of each Regional Entity's annual business plans. Along the same lines, NERC and Regional Entities intend to develop and transparently report results based on a common set of performance measures focused on BPS reliability outcomes and effectiveness of the statutory programs. Furthermore, they hope to better coordinate operational decision-making within the ERO Enterprise.

Lastly, at this time, NERC and the Regional Entities plan to focus on better achieving consistency, sharing tools and infrastructure for delegated functions, and coordinating external and cross-ERO Enterprise communications. Specifically, with NERC leading, the ERO Enterprise will explore developing a core set of methods, practices, procedures, and tools to support unified implementation of the major statutory functions of NERC. The Regional Entities

¹¹ Toward the end of the assessment period, the reliability community began to use the expression "ERO Enterprise" to represent the combined efforts of NERC and the Regional Entities.

and NERC will also examine developing ERO Enterprise IT Applications, where appropriate, to support common processes, to enhance the efficiency and effectiveness of Regional Entities' practices, to increase the consistency of the interface with registered entities, and to facilitate NERC's oversight function. Finally, all parties of the ERO Enterprise plan to continue the joint board coordination to ensure oversight and accountability of all elements of the enterprise, and to continue refining and expanding coordinated outreach to government entities in the U.S. and Canada, stakeholders, and media.

The Regional Entities believe that this coordinated effort with NERC to improve the self-regulation model will result in more clarity around the roles and responsibilities between them and among them which in turn will lead to better coordination of goals, more uniform work processes and tools, and performance measures across the enterprise, along with an understanding that all parties comprising the ERO Enterprise must be vested in each other's success. These improvements will also create higher levels of productivity, less duplication, and greater efficiency in the oversight and execution of statutory functions and mitigation of BPS reliability risks. The Regional Entities look forward to working with NERC and the stakeholders in their continual pursuit of opportunities to improve their operations that will promote the reliability of the nation's BPS.

Regional Reliability Standards

The 2009 JRESA provided a brief overview of the regional Reliability Standards process and scope, and reviewed what had been achieved to date.¹² The following provides an update on that overview and review and additional information on the Regional Entities' progress in developing regional Reliability Standards.

Regional Reliability Standards Processes

FPA Section 215(d), 16 U.S.C. § 824o (d), requires the ERO to develop mandatory and enforceable Reliability Standards that are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by NERC, subject to Commission oversight, or by the Commission independently. A Regional Entity may also develop a Reliability Standard for Commission approval to be effective in that region only. In Order No. 672, the Commission stated that:

As a general matter, we will accept the following two types of regional differences, provided they are otherwise just, reasonable, not unduly discriminatory or preferential and in the public interest, as required under the statute: (1) a regional difference that is more stringent than the continent-wide Reliability Standard, including a regional difference that addresses matters that the continent-wide Reliability Standard does not; and (2) a regional Reliability

¹² See 2009 JRESA, at pp. 19-20.

Standard that is necessitated by a physical difference in the Bulk-Power System.^[13]

In addition, FPA Section 215(d) (3), 15 U.S.C. § 824o (d) (3), provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.¹⁴

In October 2010, as noted earlier, the Commission approved revised Delegation Agreements between NERC and each of the eight Regional Entities.¹⁵ As relevant here, Exhibit C to the revised Delegation Agreements includes each Regional Entity's current RRSDP.¹⁶ These procedures provide the process that each Regional Entity uses to develop regional Reliability Standards that are proposed to NERC for adoption, and, where applicable, regional variances if the Regional Entity is organized on an interconnect-wide basis. While the RRSDP's are not identical, each contains important common attributes that advance the development of regional Reliability Standards consistent with the objective of a uniform reliability program.¹⁷ Illustratively, participation in the development of a regional Reliability Standard must be open to all organizations that are directly and materially affected by the Regional Entity's system, with no constraints based on financial capability, technical expertise or membership in the organization. The RRSDP must strive to have an appropriate balance of interests and may not be

¹³ *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204, at P 291, *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

¹⁴ *See also* 18 C.F.R. § 39.5(b) (2013).

¹⁵ *See North American Electric Reliability Corporation*, 133 FERC ¶ 61,061 (2010).

¹⁶ *See* <http://www.nerc.com/AboutNERC/Pages/Regional-Entity-Delegation-Agreements.aspx> (last accessed February 27, 2014).

¹⁷ The Regional Entities regularly review their RRSDPs to ensure they are adequate to develop regional Reliability Standards consistent with the Commission's directives. *See, e.g., North American Electric Reliability Corporation*, Delegated Letter Order, Docket No. RR12-12-000 (Oct. 24, 2012) (approving modification to RFC's RRSDP to bring the procedures into closer conformity with the NERC ROP *Standard Processes Manual* at **Appendix 3A**); *North American Electric Reliability Corporation*, Delegated Letter Order, Docket No. RR12-2-000 (March 1, 2012) (approving modifications to the *WECC Reliability Standards Development Procedures* allowing the formation of a WECC Standards Committee and a WECC Ballot Body to allow meaningful participation in the regional Reliability Standards development process by all persons who represent WECC Members in any forum, not just those persons who represent their Member entity in a particular WECC standing committee).

dominated by any two interest categories and no single interest category can defeat a matter. All entities with a direct and material interest in the BPS in the Region may participate by expressing a position and its basis, having that position considered, and having the right to appeal. The RRSDP must also provide for reasonable notice and opportunity for public comment, and provide that all actions material to the development of any standards be transparent.¹⁸ Under these circumstances, it can be fairly stated that during the assessment period, each of the Regional Entities fulfilled the obligation to provide an open, fair, balanced, and inclusive process for the development of regional Reliability Standards as demonstrated by the approval of those processes at the Commission, NERC, and regional levels.

NERC understandably focuses on the development of continent-wide standards as consistent with the goal of a reliable BPS, and, from the inception of the program, the Commission, NERC, and the Regional Entities anticipated that the Regional Entities would develop relatively few regional standards to address unique situations with specific or more stringent requirements in a particular interconnection or geographic region which the continent-wide standards may not address. In fact, that has been proven to be the case. Since the Commission issued Order No. 693 in 2007, outside of WECC, the Commission has approved only seven regional Reliability Standards.¹⁹ The regional Reliability Standards in effect as of the end of the assessment period are listed on Table 1.

| Regional Reliability Standards – Table 1 | |
|---|--|
| Regional Entity | Regional Reliability Standards (Description) FERC Docket Number, Citation |
| FRCC | None |
| MRO | None |
| NPCC | PRC-002-NPCC-01 (Disturbance Monitoring Equipment) RD11-8-000, 137 FERC ¶ 61,043 (2011). PRC-006-NPCC-01 (Automatic Underfrequency Load Shedding) RM12-12-000, Order No. 775, 142 FERC ¶ 61,128 (2013). |

¹⁸ In this regard, NERC maintains on its website a current overview of Regional Standards under development, with detailed information on the status of the proceeding. See <http://www.nerc.com/pa/Stand/Pages/RegionalReliabilityStandardsUnderDevelopment.aspx> (last accessed on February 11, 2014).

¹⁹ WECC developed the most regional standards because of a mandatory program it had in place prior to the approval of NERC as the ERO and the delegation to WECC. Under this program (called the Reliability Management System), WECC was required to translate existing reliability criteria into regional mandatory standards. See, e.g., *North American Electric Reliability Corporation*, 119 FERC ¶ 61,260 (2007) (describing the RMS and approving WECC-BAL-STD-002-0, WECC-IRO-STD-006-0, WECC-PRC-STD-001-1, WECC-PRC-STD-003-1, WECC-PRC-STD-005-1, WECC-TOP-STD-007-0, WECC-VAR-STD-002a-1, and WECC-VAR-STD-002b-1).

| Regional Reliability Standards – Table 1 | |
|---|--|
| Regional Entity | Regional Reliability Standards (Description) FERC Docket Number, Citation |
| RFC | BAL-502-RFC-02 (Planning Resource Adequacy Analysis, Assessment and Documentation) RM10-10-000, Order No. 747, 134 FERC ¶ 61,212 (2011). |
| SERC | PRC-006-SERC-01 (Automatic Underfrequency Load Shedding Requirements) RM12-9-000, Order No. 772, 141 FERC ¶ 61,243 (2012). |
| SPPRE | None |
| TRE | CIP-001-2a (Regional Variance) (Cyber Security – Sabotage Reporting) RD11-6-000, Delegated Letter Order, August 2, 2011. IRO-006-TRE-1 (Transmission Loading Relief) RD12-1-000, 139 FERC ¶ 61,169 (2012). BAL-001-TRE-1 (Real Power Balancing Control) RD13-12-000, 146 FERC ¶ 61,025 (2014). |
| WECC | FAC-501-WECC-1 (Transmission Maintenance) VAR-002-WECC-1 (Automatic Voltage Regulators) VAR-501-WECC-1 (Power System Stabilizer) PRC-004-WECC-1 (Protection System and Remedial Action Scheme Misoperation) RM09-9-000, Order No. 751, 135 FERC ¶ 61,061 (2011). IRO-006-WECC-1 (Qualified Transfer Path Unscheduled Flow Relief) RM09-19-000, Order No. 746, 134 FERC ¶ 61,199 (2011). BAL-004-WECC-01 (Automatic Time Error Correction) RM08-12-000, Order No. 723, 127 FERC ¶ 61,176 (2009). TOP-007-WECC-1 (System Operating Limits) RM09-14-000, Order No. 752, 135 FERC ¶ 61,062 (2011). BAL-002-WECC-2 (Contingence Reserve) (replacing BAL-STD-002-2) RM13-13-000, Order No. 789, 145 FERC ¶ 61,141 (2013). |

Indeed, while the Regional Entities believe that they should still have the authority to develop regional Reliability Standards under the conditions laid out by the Commission and maintain their RRSDP’s accordingly, with the exception of WECC, they are no longer actively engaged in developing regional standards.²⁰ Rather, they prefer to avoid duplicating NERC

²⁰ Illustratively, during the assessment period, FRCC stayed work on four regional standards (PRC-003-FRCC-01, PRC-002-FRCC-01, PRC-006-FRCC-01, and PRC-024-FRCC-01) in large part because of related activities at the national level. MRO developed four regional standards,

efforts, and concentrate their relevant resources on working with NERC and stakeholders to develop clear, reasonable, and technically sound continent-wide standards in a timely and efficient manner, and to ensure that regional concerns are addressed in the continent-wide standards. To this end, and as further discussed later under “Prioritization of Standards Work,” the Regional Entities are actively encouraging awareness and participation in the NERC standards process by stakeholders in their areas, by educational outreach efforts, and through participation in the NERC Standards Committee and related subcommittees. They also have standards committees or groups that analyze the draft ERO standards to determine their quality and effectiveness, and to ensure the reliability objective is adequate and cost effective.

Regional Fill-in-the Blank Standards and Regional Criteria

The 2009 JRESA agreed with stakeholders’ concerns about the effect on reliability of the outstanding and incomplete “fill-in-the-blank” reliability standards projects.²¹ During the assessment period, the ERO Enterprise made considerable progress to respond to the Commission’s directives on those standards. This was accomplished in large part by greater collaboration and cooperation between NERC and the Regional Entities. Furthermore, the Regional Entities believe now that the appropriate resolution to the issue of fill-in-the-blank standards is the timely development of continent-wide NERC Reliability Standards.²²

but found them unnecessary before even submitting them to the BOT. RFC worked on a number of regional standards (*e.g.*, MOD-024-RFC-01, MOD-025-RFC-01, EOP-007-RFC-01, and PRC-002-RFC-01) that it subsequently, using its RRS DP, converted to Regional Criteria, which are essentially RFC board-approved good utility practices. In August 2012, RFC also suspended work on drafting efforts for PRC-006-RFC-01 and PRC-012-RFC-01. SPP RE developed one BOT-approved regional standard (PRC-006-SPP-01), but withdrew the FERC filing in August 2013, because a continent-wide standard eliminated the need for it.

In contrast, WECC maintained and continued to develop regional standards during the assessment period for two primary reasons—the Western Interconnection has some unique characteristics and concerns, and several of the current WECC regional Reliability Standards projects are required by the initial FERC orders approving the WECC Regional Reliability Standards as part of the transition from the Reliability Management System program. See *supra* note 19. See generally <http://www.wecc.biz/Standards/Development/Pages/default.aspx> (last accessed on February 11, 2014).

²¹ As explained in the 2009 JRESA (at p. 19), when the Commission approved 83 reliability standards in Order No. 693, it withheld a decision on certain standards that referred to Regional requirements that were not specifically noted within the standards. These were referred to as “fill-in-the-blank,” meaning the entity had to refer to a Regional document for the answer of what level of performance was required.

²² In this regard, for example, the Commission’s approval of PRC-006-1 addressed an area of significant concern with respect to under-frequency load shedding. See *Automatic Underfrequency Load Shedding and Load Shedding Plans Reliability Standards*, Order No. 763, 139 FERC ¶ 61,098 (2012).

Accordingly, as a general matter, the Regional Entities are no longer planning to develop Regional Reliability Standards to address the “fill-in-the blank” standards; however, they may pursue any unaddressed reliability gaps that new continent-wide standards may not cover.

Prioritization of Standards Work

While NERC is responsible in the first instance to develop the continent-wide standards, the Regional Entities clearly have a stake in that process, because they are ultimately responsible for enforcing compliance with those standards. Accordingly, during the assessment period, the Regional Entities supported NERC in response to the Commission’s concerns to increase the efficiency and effectiveness of the standards development process and to improve the quality of the resulting standards. As now discussed, the Regional Entities are encouraged by the advances that NERC made in this regard.

First, the Regional Entities support NERC’s objective to transform the current set of reliability standards in 2014-2015 to high quality, technically sound, results-based, cost-effective standards, which collectively will help ensure the reliable operation of the North American BPS. They especially appreciate NERC’s piloting of the Cost Effective Analysis Process (“CEAP”), which is intended to evaluate the cost effectiveness of standards under development.

Second, the Regional Entities appreciate NERC’s development of a Standards Weekly Bulletin, which helps the registered entities and other stakeholders to keep apprised of standards development. Along the same lines, the Regional Entities believe that the quarterly Analyses of NERC Standards Process Results are also very helpful for a better understanding of, and provides insight to, the development of continent-wide standards.²³

Third, the Regional Entities are encouraged by the Commission’s approval of revisions to the NERC *Standard Processes Manual*, **ROP Appendix 3A**, finding that those revisions are reasonable and allow for greater flexibility and efficiency in the process.²⁴ The Commission highlighted that the revisions recognize the need for highly qualified standards drafting teams that include technical writers, legal and compliance resources, and rigorous and highly trained project management.²⁵ The Regional Entities, which are in daily contact with the stakeholders who must deal with the intricacies of compliance with the standards, agree that well-trained personnel are needed to ensure the quality and effectiveness of the mandatory standards, and believe that NERC has made significant strides to achieve that objective.

²³ NERC submits these analyses pursuant to FERC directives, including the order on the three-year assessment. *See Order on the Electric Reliability Organization’s Three-Year Performance Assessment*, 132 FERC ¶ 61,217 (2010), at P 85.

²⁴ *See North American Electric Reliability Corporation*, 143 FERC ¶ 61,273 (2013), at P 18.

²⁵ *Id.*

Fourth, the Regional Entities are encouraged by NERC's response to the Commission's March 2012 invitation to suggest retirement of requirements within standards, and the Commission's approval of NERC's proposal to withdraw 34 requirements within 19 Reliability Standards, and the additional withdrawal of 41 Commission directives that NERC develop modifications to Reliability Standards.²⁶ These actions signal a cooperative effort that will help alleviate some of the complexity and frustration that has plagued the development of standards for many years and ease compliance burdens on the registered entities. Along the same lines, the Regional Entities commend NERC's creation of the Standards Independent Experts Review Project in 2012. During the assessment period, this group assessed the current non-Critical Infrastructure Protection ("CIP") Reliability Standards to determine which requirements should be retired and to grade the remaining requirements for content and quality. More important, this group identified gaps where risks to reliability are not adequately addressed in the current set of standards, including outage coordination, governor frequency response, situational awareness models, and clear three-part communications.

Finally, the Regional Entities commend the NERC Board of Trustees ("NERC Board") for forming the Reliability Issues Steering Committee ("RISC") in August 2012. Through its efforts, RISC is helping to move the ERO Enterprise toward a more efficient standards development program and a sensible prioritization of the work to produce reasonable and effective standards and identify any emerging risks to reliability.

Organization Registration and Certification

The 2009 JRESA discussed the subject of compliance registry within the context of the CMEP.²⁷ While the topic fits there, it also lends itself to a separate discussion, as set out below.

Organization Registration

The Regional Entities and NERC are required to identify and register all entities that meet the criteria as laid out in the NERC ROP *Statement of Compliance Registry Criteria, Appendix 5B*).²⁸ The Regional Entities review and evaluate registration requests and changes and make registration recommendations to NERC when a request or change may affect the

²⁶ See *Electric Reliability Organization Proposal to Retire Requirements in Reliability Standards*, Order No. 788, 145 FERC ¶ 61,147 (2013).

²⁷ See 2009 JRESA, at pp. 21-23. The 2009 JRESA used the term "Compliance Registry" whereas this section will use the current term "Organization Registration" and also discuss Organization Certification.

²⁸ See http://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/Appendix_5B_RegistrationCriteria_20121220.pdf (last accessed February 11, 2014). See generally ROP Section 500, http://www.nerc.com/FilingsOrders/us/RuleOfProcedureDL/NERC_ROP_Effective_20140130.pdf (last accessed February 11, 2014).

NERC Compliance Registry (“NCR”). NERC is responsible for registering those entities and establishing and maintaining the NCR of the BPS owners, operators, and users that are subject to approved Reliability Standards.²⁹

As pointed out in the 2009 Joint Regional Entity Self-Assessment, the registration of BPS users, owners and operators has been a very successful aspect of the Regional Entities’ obligation to monitor and enforce the reliability standards.³⁰ The Regional Entities believe that continued to be the case during the assessment period, as evidenced by the acceptance by the vast majority of the registered entities of their inclusion in the NCR. Indeed, as of December 31, 2013, relatively few registered entities (47), out of over 1,850 registered entities in the U.S., appealed their registrations by the Regional Entities to the NERC Board, and only nine of those appeals were filed after January 1, 2009.³¹ The NERC Board upheld the Regional Entities’ decisions, except in one case, and remanded aspects of another appeal directing the Regional Entity to consider whether two entities should be jointly registered.³² And in two instances, the NERC Board simply asked the Regional Entity to supply more information on an entity’s status.³³ Most important, as of December 31, 2013, only eleven registered entities appealed the NERC BOT decisions upholding the Regional Entities’ registrations to the Commission.³⁴

²⁹ See <http://www.nerc.com/pa/comp/Pages/Registration-and-Certification.aspx> (last accessed February 14, 2014).

³⁰ See 2009 JRESA, at p. 21.

³¹ The number “47” does not refer to the actual number of appeals. Twenty-two of the 47 registrants were involved in just eight appeals of FRCC registrations, five of which concerned the same types of county resource recovery facilities. (No appeal of an FRCC registration has been filed since January 1, 2009.) The other appeals to the BOT were filed regarding the registration decisions of MRO (1), RFC (8), SERC (6), SPP RE (1), TRE (4), and WECC (5). See <http://www.nerc.com/pa/comp/Pages/Decisions-on-Appeals.aspx> (last accessed February 11, 2014).

³² In NERC Docket RA080012, on January 16, 2013, the BOT remanded to SERC the issue of whether Louisiana Generating should be registered as a Distribution Provider. In NERC Docket RA080002, on August 19, 2008, the BOT remanded to RFC an appeal of Cordova Energy Co, LLC, to consider whether Cordova and Constellation Energy Commodities Group, Inc. should be jointly registered.

³³ The BOT directed these requests to SERC regarding the U.S. Army Corps of Engineers-Ft. Worth District (in NERC Docket RA080011) and the North Carolina Electric Membership Corporation (in NERC Docket RA080007).

³⁴ The Commission denied four, granted six, and denied in part and granted in part one of those appeals.

See the following orders where the Commission denied registrants’ appeals: *City of Holland*, Michigan Board of Public Works, 139 FERC ¶ 61,055 (2012), *order on reh’g*, 145 FERC ¶

While some individual registration cases were challenging, the organization registration program remained steady during the assessment period. The means by which new registered entities were discovered, for example, were similar to the original means, including self-registrations, compliance audits, public websites, Independent System Operator (“ISO”) and Regional Transmission Organization (“RTO”) memberships (where relevant), information provided by other registered entities, exchange of information between Regional Entities (e.g., through the Regional Registration and Certification Functional Group), Energy Information Administration data, questionnaires, and, of course, word of mouth. The average time to process uncontested entity requests to register or de-register for a function (measured from the time the entity makes the request to the time the request is approved by NERC) likewise stayed the same, or even improved, during that period, taking as little time as three to five business days, or longer up to 90 days if complications arose, such as entity trying to change its registration during an audit. The greatest, albeit not that great, movement within the program was the changes in the

61,054 (2013 (denying appeal of RFC’s decision to register entity as a transmission owner and a transmission operator), *appeal pending sub. nom. City of Holland, Michigan Board of Public Works v. FERC*, No. 13-1306 (D.C. Cir. Dec. 16, 2013); *Cedar Creek Wind Energy, LLC and Milford Wind Corridor Phase I, LLC*, 135 FERC ¶ 61, 241 (2011), *order on reh’g*, 137 FERC ¶ 61,141 (2011), *order on compliance filing*, 139 FERC ¶ 61,214 (2012) (denying appeal of two entities of their registration by WECC as transmission owners and transmission operators); *Southeastern Power Administration*, 125 FERC ¶ 61,294 (2008) (affirming SERC’s registration of SEPA as a transmission operator and resource planner).

See the following orders where the Commission granted registrants’ appeals: *South Louisiana Electric Cooperative Association*, 144 FERC ¶ 61,050 (2013), *order on reh’g*, 145 FERC ¶ 61,232 (2013) (granting appeal of entity registered by SERC as a distribution provider and load-serving entity for lack of sufficient document); *Direct Energy Services, LLC, Sempra Energy Solutions LLC, and Strategic Energy, L.L.C.*, 121 FERC ¶ 61,274 (2007), *order on compliance filing*, 123 FERC ¶ 61,016 (2008) (granting appeals of three entities which objected to their registration as load serving entities and directing NERC to submit a plan to address a possible gap in reliability because of inconsistent registration of certain types of entities); *Mosaic Fertilizer, LLC and City of Tampa, Florida*, 121 FERC ¶ 61,058 (2007) (remanding case to NERC for reconsideration of FRCC’s registration or to provide further explanation for underlying decision).

See the following orders where the Commission denied in part and granted in part a registrant’s appeal: *U.S. Department of Energy, Portsmouth/Paducah Project Office*, 139 FERC ¶ 61,054, *order on reh’g*, 141 FERC ¶ 61,108 (2012) (granting the appeal of DOE and finding that its Portsmouth facility should not be registered as a load-serving entity on the basis of the evidence submitted) (Commissioner Norris dissenting); *U.S. Department of Energy, Portsmouth/Paducah Project Office*, 124 FERC ¶ 61,072 (2008) (affirming RFC’s registration of DOE facility as a transmission owner, transmission operator and distribution provider, but remanding to NERC the issue of whether it functions as a load-serving entity).

number of functions (as opposed to entities) for which entities are registered, as reflected on Table 2.

| Trends in the Activation and Deactivation of Functions – Table 2 | | | | | |
|---|----------------------------|-------------|-----------------------------|-------------|--|
| Regional Entity | Registered Entities | | Registered Functions | | Trends in the Activation and Deactivation of Functions in the Regions during Assessment Period |
| | 2009 | 2013 | 2009 | 2013 | |
| FRCC | 71 | 69 | 240 | 244 | FRCC processed approximately 20 function activations, most of which were associated with changes to generating facility functional responsibilities such as a vendor accepting Generator Owner (“GO”) and Generator Operator (“GOP”) compliance responsibilities and new JRO’s; 14 function deactivations, most of which were associated with the same generation functional responsibility change and with Distributor Provider (DP) functional responsibilities being accepted by a G&T; and 10 entity name changes. |
| MRO | 118 | 134 | 435 | 453 | MRO, which had registered 435 functions as of 1/1/09, had 453 registered functions at year-end 2013, for an increase of four percent. |
| NPCC | 287 | 301 | 576 | 602 | The number of registered entities in NPCC fluctuated slightly during the assessment period. At the end of the period, the number had risen to 301. The ultimate increase in the number of entities was due to the number of new GOs, GOPs, and Purchasing-Selling Entities (“PSEs”) outpacing the delisting of GOs, GOPs, and PSEs. |
| RFC | 358 | 343 | 677 | 686 | <p>RFC experienced very little change in the registration of new entities, and hence functions, during the assessment period. The majority of registry work involved name or ownership changes.</p> <p>A notable trend during the assessment period was the deactivation of GOs and GOPs that owned or operated blackstart resources. This deactivation may have occurred due to the compliance obligations and costs associated with owning and operating blackstart resources. RFC is concerned by this trend, as it appears that the costs of compliance may be creating a perverse incentive for registered entities to dispose of blackstart resources, which are important to BES reliability.</p> |

| Trends in the Activation and Deactivation of Functions – Table 2 | | | | | |
|---|----------------------------|-------------|-----------------------------|-------------|--|
| Regional Entity | Registered Entities | | Registered Functions | | Trends in the Activation and Deactivation of Functions in the Regions during Assessment Period |
| | 2009 | 2013 | 2009 | 2013 | |
| SERC | 227 | 244 | 643 | 694 | <p>SERC continued to see considerable change associated with PSE and GO/GOP functions, mostly due to changes in ownership or corporate structure. SERC also registered several new wind farms and a few new generating facilities. SERC’s deactivations typically occurred when there was a change in ownership of an asset. Several BAs were deactivated in December 2013 as a result of integration into the MISO BA. Name changes occurred regularly.</p> <p>SERC anticipates most DP/Load Serving Entities (“LSE”) connected via radial tie lines to request deactivation following the BES definition revisions and FERC’s South Louisiana Electric Cooperative Association decision.</p> <p>SERC noted a particular challenge with deactivation—the inability to deactivate a registered entity that has an open enforcement action. There appears to be no mechanism to transfer a function to an acquiring registered entity, even if the new owner has agreed to accept the compliance responsibility and mitigation of the prior issues. During the assessment period, SERC’s Compliance Database Management Functional Group began seeking a solution to this limitation.</p> |
| SPP RE | 117 | 140 | 379 | 438 | <p>SPP RE registered 117 new functions and deactivated 66 functions during the assessment period. Over half of the activations were GO and GOP, due in large part (60%) to construction of new generation. A large majority of the de-activations were due to sales and mergers, which also led to some name changes.</p> |
| TRE | 216 | 224 | 337 | 440 | <p>TRE registered 37 percent of the entities in the ERCOT region for at least two functions. Registration deactivations occurred only for the GO, GOP, LSE, PSE and Transmission Owner (“TO”) functions, the majority of which occurred during 2011 and 2012, and consisted mostly of the GO, GOP and PSE functions.</p> |

| Trends in the Activation and Deactivation of Functions – Table 2 | | | | | |
|---|----------------------------|-------------|-----------------------------|-------------|--|
| Regional Entity | Registered Entities | | Registered Functions | | Trends in the Activation and Deactivation of Functions in the Regions during Assessment Period |
| | 2009 | 2013 | 2009 | 2013 | |
| WECC | 471 | 474 | 1,258 | 1,250 | Since January 1, 2010, WECC processed 239 registration requests, all of which were accepted and approved by NERC. WECC is forecasting that most DP/LSE connected via radial tie lines will request deactivation following the BES definition revisions. To help prepare for this anticipated influx, WECC introduced business process management (BPM) software for the WECC Compliance Registration Process in 2013. Entities now complete a Web-based Registration Form on the WECC.biz site that requires the entity to provide additional information and answer specific questions based on their request. The system delivers the information to a WECC Engineer for review while updates are provided automatically to the applicant via template emails. Everything from the original application to the engineer’s review notes and correspondence emails are managed by the system thereby decreasing the processing time. |
| TOTALS | 1,865 | 1,929 | 4,545 | 4,807 | |

Another important part of the Regional Entities’ organization registration functions pertains to the Joint Registration Organization (“JRO”) and Coordinated Function Registration (“CFR”), both of which are intended to define the responsibilities and accountability among entities separately registered for the same function. Revisions to NERC ROP Rule 507 and the addition of Rule 508, approved by the Commission on June 10, 2010, helped to clarify the operations of both types of registrations during the assessment period.³⁵

Specifically, ROP Rule 507 allows an entity to register as a JRO on behalf of one or more of its members or related entities for one or more functions for which such members or related entities would otherwise be required to register, and, thereby, accept on behalf of such members or related entities all compliance responsibility for that function or those functions including all reporting requirements. Many of the registered entities that use the Rule 507 process are cooperatives, municipalities, and other publicly owned utilities. For example, the Illinois Municipal Electric Agency is a JRO in RFC, and accordingly is registered as a DP, LSE, and TO

³⁵ See *North American Electric Reliability Corporation*, Delegated Letter Order, Docket No. RR10-8-000 (June 10, 2010).

on behalf of certain of its municipal members.³⁶ As of end of the assessment period, all but two (NPCC and WECC) of the Regional Entities had registered a total of 30 JROs.³⁷ Otherwise, after the initial implementation, the program was fairly static, with few entities registering as JROs or changing their JRO status. For example, during the assessment period, FRCC processed four JRO changes; FRCC, SERC, and TRE registered a few JROs; MRO registered one new JRO; and SPP RE registered no new JROs.

NERC ROP Rule 508 allows multiple entities to register using a Coordinated Function Registration (“CFR”) for one or more Reliability Standard(s) or for one or more Requirements or sub-Requirements with particular Reliability Standard(s) applicable to a specific function. The Registration of the CFR is the complete Registration for each entity, and each entity must take full compliance responsibility for those standards or requirements or sub-requirements it has registered for in the CFR. For example, in 2010, TRE registered 13 entities as TOPs through CFR agreements. Each CFR is an agreement between ERCOT ISO and one other transmission entity that allocates responsibility for TOP requirements between ERCOT ISO and that entity. The CFRs are updated regularly to account for changes in the body of applicable NERC standards.³⁸

As of end of the assessment period, 184 registered entities took advantage of coordinating their registered functions pursuant to Rule 508.³⁹ This represented 44 coordination agreements in all Regional Entities but one (FRCC), some of which crossed regional lines. For example, one CFR involved 31 registered entities located in three different Regional Entities (MRO, RFC, and SERC). TRE had the largest number of registered entities (73) in the CFR program with 17 CFR arrangements. As was true for the JROs, with the exception of TRE, there was little activity in the CFR program during the assessment period. For example, MRO saw only one JRO convert to a CFR; SPP RE had just one new CFR register; NPCC had two new CFRs register; RFC and SERC had a few new CFRs register; and WECC had three new CFR changes. In TRE, in 2010, 60 entities were registered as LSEs in a CFR agreement, and 14 entities were certified and registered as TOPs in a CFR agreement with ERCOT ISO. Since that time, TRE accepted additional CFR registrations.

³⁶ See

http://www.nerc.com/pa/comp/Audit%20Repots%20DL/2013_public RFC MRRE IMEA.pdf.

³⁷ See the Excel spread sheet found at <http://www.nerc.com/pa/comp/Pages/Registration-and-Certification.aspx> (last accessed on February 11, 2014).

³⁸ To assist in this process, each Regional Entity’s website includes a link to NERC’s website to access its CFR Registration Standards Applicability List. See <http://www.nerc.com/pa/comp/Pages/Registration-and-Certification.aspx> (last accessed August 18, 2013).

³⁹ See *supra* note 36.

Notwithstanding the Regional Entities' overall success in registering entities to ensure sufficient coverage of the BPS, the 2009 JRESA listed five areas where improvements could be made to the process of organization registration.⁴⁰ As now discussed, in the Regional Entities' opinion, these areas were largely and appropriately resolved during the assessment period by FERC-approved changes to the NERC ROP and by other Commission actions, or were overtaken or resolved by other events or activities.

(1) The Scope of the Registration Criteria

FERC-approved changes to NERC ROP **Appendix 5B** addressed, at least in part, the issue of whether the registration criteria appropriately capture the users, owners, and operators of the BPS to ensure reliability. The current (effective December 20, 2012) and expected (effective July 1, 2014) versions of the *Statement of Compliance Registry Criteria* (contained in ROP **Appendix 5B**) reflect review by NERC and the Regional Entities, in consultation with the stakeholders. This review aimed to determine if there should be a different threshold for materiality to the reliability of the BES and to determine if the compliance resources could be better prioritized by changes to the registration criteria.⁴¹ Along these same lines, the Regional Entities supported the efforts of the Registration and Certification Functional Group, working with the NERC Board-appointed Compliance and Certification Committee's Organization Registration and Certification Subcommittee, to develop proposed changes to the registry criteria.

Also, during the assessment period, the ERO's activities to address the scope of the registration criteria became entwined with the Order No. 773 proceeding, in which the Commission modified the BES definition to remove regional discretion, and established a bright-line threshold that includes all facilities operated at or above 100 kV.⁴² Order No. 773 also approved revisions to the NERC ROP to create an exception process to add elements to, or remove elements from, the BES on a case-by-case basis, and established a process pursuant to which an entity may seek a determination by the Commission whether facilities are "used in local distribution" as set forth in the FPA. As relevant here, while recognizing that the

⁴⁰ See 2009 JRESA, at pp. 21-23.

⁴¹ See *North American Electric Reliability Corporation*, 141 FERC ¶ 61,241 (2012) (approving revisions to NERC ROP).

⁴² See *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, Order No. 773, 141 FERC ¶ 61,236 (2012), *order on reh'g and clarification*, Order No. 773-A, 143 FERC ¶ 61,053 (2013), *order on reh'g and clarification*, 144 FERC ¶ 61,174 (2013); see also *Revision to Electric Reliability Organization Definition of Bulk Electric System*, Order No. 743, 133 FERC ¶ 61,150 (2010), *order on reh'g*, Order No. 732-A, 134 FERC ¶ 61,210 (2011). On June 6, 2013, the Commission extended the effective date of the new definition, until July 1, 2014. See *Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, Order Granting Extension of Time, 143 FERC ¶ 61,231 (2013), *order on reh'g*, 146 FERC ¶ 61,070 (2014).

registration criteria and the BES definition have different applications (to entities and facilities, respectively), the Regional Entities believe that Order No. 773 addresses many of the concerns that were raised in 2009. The new BES definition and exception process, for example, may resolve the issue of small entities whose facilities are not necessary for the reliable operation of the BES. Finally, when the new BES definition is finalized, the Regional Entities plan to work with NERC to review and offer corresponding revisions to the *Statement of Compliance Registry Criteria* in NERC ROP **Appendix 5B**, and develop an application and data base for the BES definition exception process (BESnet) to promote efficiency and consistency in the implementation of the new definition.

(2) Re-examination of Functional Model Definitions

The 2009 JRESA noted commenters' concerns about the Functional Model, namely that it is conceptual whereas registered entities have (for historical or business reasons) often aligned their operations differently.⁴³ To address these concerns, that Self-Assessment discussed increasing the granularity of registration so it would focus on the requirement level, instead of the standard level, but it also recognized that redefining the terms of various functions may be impractical as it would unlikely resolve the immense diversity of organizational structures in the industry. While NERC and the Regional Entities spent some time at first to examine these ideas, they appropriately put the exercise on hold during the assessment period in light of the significant amount of work required to create and implement the new BES definition and the Exception Process. Also, the Order No. 773 effort may serve the same purpose and provide an increase in granularity as contemplated by the suggestions made in 2009 to revisit the Functional Model. Finally, NERC and the Regional Entities plan to start in 2014, to review and clarify relationships between the functional model and the NERC ROP Registration and Certification directives (including Registry Criteria).

(3) Oversight of Multi-Regional Entities

As pointed out in the 2009 JRESA, there are instances where an entity owns or operates BES facilities in two or more regions and thus is subject to multiple compliance programs, and there are businesses that have operations in all eight Regional Entities. To address the challenges raised by these situations, several of the Regional Entities partnered during the assessment period to coordinate more effectively their compliance and enforcement efforts with respect to multi-regional registered entities ("MRRE"). In particular, they developed a "lead region" model, in which the Regional Entities decide which one will lead the compliance and enforcement efforts for a given MRRE. For example, RFC, MRO, and SERC agreed that RFC would be the lead Regional Entity for Mid-continent Independent System Operator ("MISO") due to the location of its headquarters and load, and the complex seams issues between the MISO and PJM Interconnection markets, while RFC and MRO agreed that MRO would be the lead Region for American Transmission Company ("ATC") due to the majority of ATC's transmission being

⁴³ See

http://www.nerc.com/pa/Stand/Functional%20Model%20Archive%201/Functional_Model_V5_Final_2009Dec1.pdf (last accessed on February 11, 2014). The Functional Model is not approved by the Commission, and is not used by every Regional Entity.

located within MRO's footprint.

(4) Transfer of Registered Entities between Regional Entities

Changes to NERC ROP Rule 1208, approved by the Commission during the assessment period, on October 21, 2010, adequately addressed the issue of the appropriate conditions for the transfer of a registered entity from one Regional Entity to another.⁴⁴ In the order approving the changes, the Commission agreed with NERC that a registered entity does not have a right to choose the Regional Entity that will be its Compliance Enforcement Authority.⁴⁵ The Commission explained:

In addition, as the Commission stated in Order No. 672, it is important that the footprint of a Regional Entity makes sense from a reliability perspective and does not overlap with another regional footprint. The Commission explained that any change in size, scope or configuration of a Regional Entity would constitute an amendment to the Delegation Agreement, and any such amendment would be subject to review by the ERO and approval by the Commission. This process, under which the Commission must approve any change to the boundary of a Regional Entity to which the ERO has agreed, indicates that boundary changes should be carefully considered and should serve to improve the effectiveness or efficiency of the Regional Entities' and NERC's administration of reliability, and should not merely benefit an individual registered entity.^[46]

The Regional Entities believe that ROP Rule 1208 will assist them in maintaining a more stable structure for enforcing the reliability standards, and will therefore promote consistency of results.

(5) Applicability of Reliability Standards to Federal Entities

The Commission's orders with respect to Southeastern Power Administration, the U.S. Army Corps of Engineers, and the Southwestern Power Administration generally resolved the related issues of the registration status of U.S. government agencies, compliance by those agencies with the reliability standards, and the application of penalties to those agencies found in violation of the reliability standards.⁴⁷ These decisions will greatly assist the Regional Entities in

⁴⁴ See *North American Electric Reliability Corporation*, 133 FERC ¶ 61,061 (2010) (approving revised Delegation Agreements and changes to ROP, including section 1208 governing Regional Entity transfer requests); see also *Nebraska Public Power District, et al.*, 136 FERC ¶ 61,047, order on reh'g, 137 FERC ¶ 61,144 (2011) (denying NPPD's request to transfer from MRO to SPP RE).

⁴⁵ 133 FERC ¶ 61,061, at P 72.

⁴⁶ *Id.*

⁴⁷ See *Southeastern Power Administration*, 125 FERC ¶ 61,294 (2008) (affirming SERC's registration of SEPA as a transmission operator and resource planner); *North American Electric Reliability Corporation*, 133 FERC ¶ 61,214 (2010), order on reh'g, 137 FERC ¶ 61,044 (2011);

their efforts to ensure that such major users, owners and operators of the BES are held accountable for their actions regarding the reliability of that system.⁴⁸

Organization Certification

Organization Certification is the process by which NERC and the Regional Entities ensure that an applicant to be a Reliability Coordinator (RC), Balancing Authority (BA), or Transmission Operator (TOP) has the tools, processes, training, and procedures to demonstrate its ability to meet the Requirements and sub-Requirements of all of the Reliability Standards applicable to the function(s) for which it is applying, thereby demonstrating the ability to become certified and then operational. The specific requirements for this process are found in the NERC ROP Organization Registration and Certification Programs (Section 500), and *Organization Registration and Certification Manual (Appendix 5A)*, and are also set out in the *ERO Certification and Review Procedures* manual (dated December 18, 2013).⁴⁹ Accordingly, the Regional Entities must organize certification teams that are subject to certain training requirements to ensure the accuracy of the certifications.⁵⁰ As is true of the registration process generally, the organization certification process ran smoothly during the assessment period. In that time, the Regional Entities certified 53 entities, conducted 68 reviews, and received only three objections to a Regional Entity’s certification team’s decision.⁵¹

North American Electric Reliability Corporation, 129 FERC ¶ 61,033 (2009), *order dismissing reh’g*, 130 FERC ¶ 61,002 (2010) (collectively, affirming TRE’s and SPP RE’s decisions to register the U.S. Army Corps of Engineers and finding that any other federal entity that uses, owns or operates the BPS must comply with mandatory Reliability Standards); *North American Electric Reliability Corporation*, 140 FERC ¶ 61,048, *order on reh’g*, 141 FERC ¶ 61,242 (2012) (finding that SWPA was liable for a \$19,500 penalty imposed by SPP RE for violating reliability standards), *appeal pending sub nom. Southwestern Power Administration, et al. v. FERC*, No. 13-1033 (D.C. Cir. Feb. 15, 2013).

⁴⁸ The implication of these decisions on the Regional Entities’ workload is apparent from the statistics in NERC’s May 8, 2013 publication on “Key Compliance Enforcement Trends.” At that time, there were 419 open federal entity possible violations under review, of which 373 or 89% were “on hold” because the legal issues had not been resolved. Fortunately, the registered entities had mitigated or were in the process of mitigating 86 percent of the possible violations.

⁴⁹ See <http://www.nerc.com/pa/comp/Pages/Organization-Certification.aspx> (last accessed on February 27, 2014).

⁵⁰ *Id.* pp. 5-6

⁵¹ These numbers break down by Regional Entity as follows:

| | FRCC | MRO | NPCC | RFC | SERC | SPP | TRE | WECC |
|--------------------------|------|-----|------|-----|------|-----|-----|------|
| Number of Certifications | 0 | 1 | 3 | 5 | 10 | 3 | 18 | 13 |
| Number of Reviews | 4 | 7 | 4 | 11 | 17 | 4 | 4 | 17 |
| Number of Appeals | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 2 |

Compliance Monitoring and Enforcement Program

The 2009 JRESA discussed the Regional Entities' implementation of the CMEP, covering ten topics—compliance registry, consistency and use of discretion in application of penalties, CMEP consistency, compliance audit consistency, consistency in interpretation of reliability standards, compliance caseload backlog, treatment of minor violations, compliance information management tools, compliance process transparency (within the ERO and the Regional Entities and between the ERO and its registrants), and the hearings and appeals process.⁵² The following updates that discussion, and provides additional information on the Regional Entities' progress to implement and improve the CMEP.⁵³

Development and Status of the Compliance Monitoring and Enforcement Program

During the assessment period, the Regional Entities made significant progress and improvements in the implementation of the CMEP. This is important because the CMEP represents the Regional Entities' primary responsibility under the FPA and the Commission's regulations. FPA Section 215(a) (7), 16 U.S.C. § 824o (a) (7), defines "regional entity" in the first instance as "an entity having enforcement authority" under the relevant statutory provisions. Section 39.1 of the Commission's regulations, 18 C.F.R. § 39.1, repeats that definition. Accordingly, during the assessment period, the Regional Entities devoted the majority of their resources to oversee compliance with and enforcement of the mandatory reliability standards.

The Commission explained NERC's and the Regional Entities' roles in regard to the CMEP in its 2007 order accepting the initial Delegation Agreements and approving the original formulation of the CMEP.⁵⁴ In brief, NERC relies on the Regional Entities to enforce the NERC Reliability Standards with BES owners, operators, and users through approved regional Delegation Agreements. Regional Entities are responsible for monitoring compliance of the registered entities within their regional boundaries, assuring mitigation of all violations of approved Reliability Standards, and assessing penalties and sanctions for failure to comply. For that purpose, the CMEP specifies monitoring processes, including compliance audits, self-certification, spot checking, investigations, self-reporting, periodic data submittals, and complaints.⁵⁵ It also includes procedures for enforcement actions, mitigation of violations, and

⁵² See 2009 JRESA, at pp. 21-31.

⁵³ The update to the section on Compliance Registry, included in the CMEP discussion in the 2009 JRESA, is found in the previous section of this self-assessment.

⁵⁴ See *North American Electric Reliability Corporation, et al.*, Order Accepting ERO Compliance Filing, Accepting ERO/Regional Entity Delegation Agreements, and Accepting Regional Entity 2007 Business Plans, 119 FERC ¶ 61,060 (2007).

⁵⁵ Early in the program, the monitoring processes also included "exception reporting," which was eliminated by a change in NERC's ROP, approved by the Commission in December 2012. See

remedial action directives, data retention, and confidentiality matters. In addition, the CMEP obligates each Regional Entity to establish and maintain a hearing body to conduct and render hearings concerning disputes over findings of alleged violations, proposed penalties and mitigation plans.⁵⁶

The Regional Entities have unwaveringly taken their compliance monitoring and enforcement responsibilities very seriously. In the beginning, they especially relied on their experience in conducting audits, and worked closely with NERC and the Commission's enforcement staff to structure their enforcement activities to ensure that the registered entities complied with the reliability standards. In addition, they increased their staffs to have adequate resources. More resources were necessary in part because the Regional Entities, while recognizing that they had discretion to determine appropriate remedies, conducted their enforcement programs with the understanding that they should investigate every possible violation of a standard or one of its requirements and compile a record sufficient to support any remedy chosen for a violation.⁵⁷ This was true regardless of the severity of the violations or the risk they posed to reliability. This was true even if the violations were simply a matter of documentation deficiencies.

No one in the reliability community, including FERC and NERC staff and the personnel at the Regional Entities and the registered entities, anticipated the number of violations that the Regional Entities would ultimately discover. When the 2009 JRESA was submitted to the Commission, the Regional Entities had amassed a significant backlog of over 1,700 violations. Clearly, as NERC and the Regional Entities recognized, this was an unacceptable situation. Within the following year, after many discussions and meetings between and among FERC, NERC, and Regional staffs, and stakeholders, NERC and the Regional Entities were on their way to figuring out how to reduce that backlog, and, more to the point, to address the overarching issue of how much discretion the Regional Entities could exercise in the implementation of the CMEP.

In Fall 2009, several months after NERC had submitted its Three-Year ERO Performance Assessment, the Commission took three actions that set the stage for NERC and the Regional Entities to improve their implementation of the CMEP: (1) it provided further guidance on filing proposed penalties, and stated the agency's willingness to consider an abbreviated format for

North American Electric Reliability Corporation, Order Conditionally Approving Revisions to North American Electric Reliability Corporation Rules of Procedure, 141 FERC ¶ 61,241 (2012).

⁵⁶ See 119 FERC ¶ 61,060 (2007), at P 26.

⁵⁷ See generally *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Statement of Administrative Policy on Processing Reliability Notices of Penalty and Order Revising Statement in Order No. 672, 123 FERC ¶ 61,046 (2008); Guidance on Filing Reliability Notices of Penalty, 124 FERC ¶ 61,015 (2008).

submitting certain types of NOPs;⁵⁸ (2) it issued Order No. 728, which delegated to the FERC Enforcement Director authority to allow routine NOPs to become effective and to stay the effectiveness of NOPs when it was necessary to seek further information;⁵⁹ and (3) it issued an order allowing 564 proposed penalties (labeled the “omnibus filing”) to become effective by operation of law.⁶⁰

In 2009-2012, the Commission issued additional orders providing direction to the members of the reliability community on what was expected of them and what they could expect from the Commission. These orders covered a variety of issues, including the importance of a mitigation record,⁶¹ the implications of a registered entity’s repeat violations and violations by its affiliates,⁶² the Regional Entities’ responsibility to examine a registered entity’s compliance program when determining an appropriate remedy,⁶³ the need for Regional Entities to consider load loss and harm to customers resulting from violations of Reliability Standards in their penalty assessments for these violations,⁶⁴ and the recovery of penalties from third-parties doing business in RTOs and ISOs.⁶⁵

⁵⁸ See Further Guidance Order on Filing of Reliability Notices of Penalty, 129 FERC ¶ 61,069 (2009).

⁵⁹ See Delegations for Notices of Penalty, Order No. 728, 129 FERC ¶ 61,094 (2009). Subsequently, the Commission transferred the delegation from the Director of the Office of Enforcement to the Director of the Office of Electric Reliability. See Delegation of Authority Regarding Consideration of Notice of Penalty, Order No. 795, 146 FERC ¶ 61,083 (2014).

⁶⁰ See *North American Electric Reliability Corporation*, Order on Omnibus Notice of Penalty Filing, 129 FERC ¶ 61,119 (2009).

⁶¹ See *North American Electric Reliability Corporation*, Order Accepting Notices Of Penalty, 126 FERC ¶ 61,014 (2009).

⁶² See *North American Electric Reliability Corporation*, Notice of No Further Review and Guidance Order, 132 FERC ¶ 61,182 (2010).

⁶³ See Delegated Letter Order, 133 FERC ¶ 62,037 (2010). See also *North American Electric Reliability Corporation*, 134 FERC ¶ 61,146 (2011).

⁶⁴ See *Northern American Electric Reliability Corporation*, 134 FERC ¶ 61,209 (2011), *order on reh’g and clarification*, 139 FERC ¶ 61,248 (2012).

⁶⁵ See *Reliability Standard Compliance and Enforcement in Regions with Regional Transmission Organizations or Independent System Operators*, Order Providing Guidance on Recovery of Reliability Penalty Costs by Regional Transmission Organizations and Independent System Operators, 122 FERC ¶ 61,247 (2008); see also *PJM Interconnection, L.L.C.*, Order Accepting Tariff Revisions and Requiring Compliance Filing, 124 FERC ¶ 61,260 (2008) and *Midwest Independent Transmission Operator, Inc.*, Order Conditionally Accepting Proposed Tariff Revisions, 128 FERC ¶ 61,229 (2009).

The omnibus filing eventually led to the Regional Entities' compiling processed violations on spreadsheets entitled Administrative Citation NOPs, an approach approved by the Commission in March 2011.⁶⁶ The Commission's statements at that time provide the status of NERC's and the Regional Entities' implementation of the CMEP:

The Commission recognizes that NERC and the Regional Entities expend substantial efforts and resources monitoring compliance with the Reliability Standards and building adequate records to support findings of violations for Commission review. On numerous occasions, the Commission has encouraged NERC and the Regional Entities to develop flexible approaches and more streamlined processes to achieve efficiency in the enforcement process, especially with regard to more minor violations. NERC has adopted an Abbreviated Notice of Penalty format and a Deficiency Notice of Penalty format that have been successful at increasing efficiency. Based upon this filing, we believe that NERC's Administrative Citation Notice format will be a successful tool in improving efficiency of NERC's enforcement process, thereby reducing the time and resources expended by the Regional Entities, NERC, and Commission staff while still achieving transparency and consistency in penalty determinations for violations that are appropriate for this format. We also commend NERC for promptly following through with its intent to institute the Administrative Citation process.

We encourage NERC's continued use of the Administrative Citation Notices of Penalty format. We also encourage, particularly in the early stages of this process, the ongoing consultation between our staff and NERC prior to filing to determine what violations are appropriate for inclusion in an Administrative Citation Notice of Penalty and the appropriate amount of detail and description necessary to ensure that the Administrative Citation process continues to be a success.^[67]

Six months later, in September 2011, Administrative Citation NOPs transitioned into Spreadsheet Notices of Penalty (or "SNOP"). Candidates for inclusion in an SNOP are those violations that posed minimal or moderate risk to the reliability of the BPS. In all cases, the SNOP sets forth whether the violations have been mitigated, certified by the respective Registered entities as mitigated, and verified by the Regional Entity as having been mitigated. During the assessment period, the Regional Entities processed and submitted through NERC 5,128 confirmed violations in NOPs to the Commission, using the Administrative Citation NOP format for 296 and the SNOP format for 1,428 of those violations. For the 27 months from

⁶⁶ See *North American Electric Reliability Corporation*, Notice of No Further Review of Initial Administrative Citation Notice Of Penalty, 134 FERC ¶ 61,157 (2011).

⁶⁷ *Id.* PP 7-8 (footnotes omitted).

September 30, 2011 to December 31, 2013, the use of SNOPs alone represented 58% of the total number of NOPs submitted to the Commission.⁶⁸

The next phase in the evolution of the ERO Enterprise’s implementation of the CMEP is reflected in the FFT program, which started as the centerpiece of NERC’s Compliance Enforcement Initiative (“CEI”). Details of this program during the assessment period are found primarily in two Commission orders—one issued in March 2012 and one issued in June 2013—and the NERC filings addressed by those orders.⁶⁹ Candidates for FFT treatment are possible violations that pose minimal or moderate risk to reliability and have been fixed. A certification of completion of the mitigation activities is submitted, at least within 90 days from the date the FFT is filed or posted, by the respective registered entity for every FFT submission.⁷⁰

Again, the Commission’s statements in these FFT orders are evidence of the progress made by NERC and the Regional Entities in the implementation of the CMEP. In the March 2012 order, the Commission explained,

While the FFT initiative represents a significant change in the paradigm for monitoring and enforcing compliance with Reliability Standards, we agree with NERC that this change is warranted at this time. After several years of experience with the current program, we agree that NERC and the Regional Entities should have the flexibility to more efficiently process and track lesser risk violations in order to focus their resources on issues that pose the greatest risk to reliability.[⁷¹]

In its June 2013 order, the Commission found, “[b]ased on the information provided in NERC’s filing... the FFT program is improving the ability of NERC and its Regional Entities to more efficiently process lesser-risk possible violations, enabling them to reduce the backlog of

⁶⁸ See <http://www.nerc.com/pa/comp/CE/Pages/Enforcement-and-Mitigation.aspx> (last accessed February 11, 2014).

⁶⁹ See *North American Electric Reliability Corporation*, Order Accepting with Conditions the Electric Reliability Organization’s Petition Requesting Approval of New Enforcement Mechanisms and Requiring Compliance Filing, 138 FERC ¶ 61,193 (2012); *North American Electric Reliability Corporation*, Order on Compliance Filing, 143 FERC ¶ 61,253 (2013).

⁷⁰ Originally, as approved by the Commission, the FFT program only pertained to possible violations with minimum risk; however, in the June 2013 order, the Commission approved NERC’s proposal to expand coverage to possible violations that pose moderate risk to reliability, subject to NERC’s submitting a report by June 20, 2014, justifying a continuation of the expansion of the program. The Commission likewise approved NERC’s proposal to allow FFT treatment even before mitigation is completed provided it is completed within 90 days of the time when the FFT is filed or posted. See 143 FERC ¶ 61,253, at PP 32-34, 36-37.

⁷¹ 138 FERC ¶ 61,193, at P 2 (footnote omitted).

pending enforcement cases and focus on issues of greater importance to bulk-power system reliability.”⁷² Notably, in that order, the Commission explained that its staff had reviewed a sample of 100 FFT issues out of approximately 820 FFT issues filed with the Commission between September 2011 and September 2012, and determined that the Regional Entities properly treated those possible violations under the FFT program.⁷³

As recognized by the Commission, the Regional Entities generally believe that the FFT program significantly improved the processing of violations of the reliability standards during the assessment period, and enabled them to focus resources and attention on more serious and complex matters.⁷⁴ During the assessment period, they processed total of 1,762 possible violations using the FFT procedures, which, in 2012 and 2013, respectively, represented 48% and 43% the total number of violations and possible violations processed by the Regional Entities. In addition, the FFT program had a positive impact on processing time, which was a major concern identified by the registered entities in 2009. In this regard, between January 1, 2012 and September 30, 2013, the average time for disposing of FFTs was 7.4 months as compared to 10.7 months for SNOPs and 13.1 months for NOPs.⁷⁵

The Commission spoke favorably of the FFT program after its review in 2013, and encouraged NERC to continue to improve the program and report back to the Commission by June 20, 2014. Specifically, the Commission directed NERC to monitor the Regional Entities’ eligibility determinations; requested more specificity regarding the FFT program’s impact on BPS reliability; encouraged NERC to continue to work with the Regional Entities to improve and better coordinate their risk assessments; and stressed that NERC should continue its outreach to the Regional Entities to encourage the use of self-reports by the registered entities.⁷⁶ For their part, to a certain extent in response to the Commission’s review, the Regional Entities elicited from focus groups other specific issues that they believed needed to be addressed in general or in certain Regional Entities as NERC and they continued to refine the program. These included

⁷² 143 FERC ¶ 61,253, at P 27.

⁷³ *Id.* P 31. Between December 6 and December 16, 2013, in Docket No. RC11-6-000, *et al.*, all eight Regional Entities responded to the Commission’s Annual FFT Survey to collect data on the effectiveness and efficiency of the FFT program. Each response included data, correspondence, and other supporting information used by the Regional staffs to evaluate and conclude that the previously submitted possible violations identified by FERC staff qualified for FFT treatment. The Commission’s response to these filings was still pending at the end of the assessment period.

⁷⁴ See Attachment A to NERC’s Report in Docket No. RC11-6-004, for information from each Regional Entity on the impact of the FFT program on its region. See also 143 FERC ¶ 61,253, at PP 8-9 (describing the information gleaned from Attachment A).

⁷⁵ See *Key Compliance and Enforcement Metrics and Trends*, Compliance Committee Meeting, November 6, 2013, at slide. 5.

⁷⁶ See 143 FERC ¶ 61,253, at PP 28-30.

overall processing time, the full mitigation plan requirement, insufficient information on content and process, no centralized information collection (particularly for multi-region registered entities), and inadequate communication during the process. The Regional Entities are committed to continue working closely with NERC and registered entities to address these issues and to bring about continuous improvement in the FFT program and related efforts.⁷⁷

The ERO Enterprise's next advancement in CMEP implementation is the RAI. Started in late 2012, the RAI is intended to transform the current compliance and enforcement program into one that is forward-looking, focuses on high reliability risk areas, simplifies compliance for registered entities, and creates alternative paths outside of enforcement to resolve minor matters. Accordingly, the RAI has three main goals:

- Develop enforcement incentives to recognize positive behavior that contribute to higher accountability and improved performance and discourage poor performance;
- Design and scope compliance programs that recognize risk to reliability, including consideration of an entity's management controls and corrective action programs used to meet the reliability standards; and
- Reduce unnecessary compliance and enforcement activities while gaining efficiencies.

As much if not more than any CMEP project undertaken since 2007, the RAI is a collaborative and coordinated effort of the ERO, the Regional Entities, and the registered entities, without regard to ownership, but rather with an objective of working on a common set of deliverables.

A statement made at the July 9, 2013 FERC Reliability Technical Conference accurately portrays the situation in which the Regional Entities find themselves daily in their efforts to enforce the reliability standards, and serves as a backdrop to the RAI:

Simply put, we know the current zero tolerance approach is not sustainable for the long term....[O]ur current processes tend to be backward-looking, and we need to

⁷⁷ Indicative of the progress made to date is reflected in the Key Compliance Monitoring Index ("KCMI") compiled by NERC, which reported that as of the end of 2012, 5,115 confirmed violations were processed for the period beginning June 18, 2007. Of these violations, 85 percent had minimal impact to reliability, 13 percent had moderate impact, and 2 percent had serious impact. Furthermore, the five-year assessment of the KCMI indicated that the risk to BPS reliability based on the number of violations of NERC Reliability Standards trended lower from 2008 to 2012. See NERC *State of Reliability 2013* (May 2013), http://www.nerc.com/pa/RAPA/PA/Performance%20Analysis%20DL/2013_SOR_May%2015.pdf, at p. 6.

move to a space where we're more forward-looking to really assess an entity's ability to stay in compliance and meet or exceed the liability standards.^[78]

As further discussed at the conference, the RAI would not allow "small stuff" to be "swept under the rug." The "small stuff" matters. The expectation is that the registered entities would have management practices in place to resolve the "small stuff" before it becomes a reliability risk in the form of a material violation of a Reliability Standard. To this end, the Regional Entities would look to how well a registered entity meets the reliability objectives of the standards, and whether any identified violations rise to the level that needs enforcement. It would allow Regional Entities to, among other things, better tailor the scope of audits and other compliance monitoring activities based on an entity's risk (*e.g.*, size, complexity of operations, and effectiveness of internal controls).⁷⁹ It would also provide for the determination of the nature of enforcement actions to be based on risk and the presence of internal controls. For example, a single missing record (out of hundreds) for maintaining and testing protection systems that is proactively identified and recorded by the registered entity as part of its normal management practices might not rise to an enforcement matter. While the matter would be part of the entity's compliance record, it would likely not require an enforcement filing. Traditional methods of enforcement and application of penalties, however, would still be used in connection with matters that pose a serious or substantial risk to the BPS. For those matters, the full NOP or SNOP would remain available.⁸⁰

Starting in March 2013, several Regional Entities and registered entities became engaged in pilot programs as the initial steps towards full RAI implementation. In this regard, the Regional Entities appreciate that the Commission has previously recognized the value of pilot projects, pointing out that "[n]o matter how good the data suggesting that a regulatory change should be made, there is no substitute for reviewing the actual results of a regulatory action."⁸¹ With this in mind, each pilot project endeavored to further define the risk-based approach and develop effective tools, training, procedures, and policies to allow the ERO Enterprise to deploy these concepts in a consistent manner across all Regional Entities. The ERO Enterprise intends

⁷⁸ Testimony of Mark Rossi, Senior Vice President and Chief Operating Officer, NERC, Transcript of Reliability Conference (July 9, 2013), Docket Nos. AD13-6-000, *et al.*, at p. 86.

⁷⁹ *Id.* pp. 86-87.

⁸⁰ See Reliability Assurance Initiative, *White Paper [No. 5 -] Change State Element No. 4 - Redesign of the Enforcement Strategy* (March 13, 2013), at p. 4, located at <http://www.nerc.com/pa/comp/Pages/Reliability-Assurance-Initiative.aspx> (last accessed on February 27, 2014).

⁸¹ Order No. 637, FERC Stats. & Regs. ¶ 31,091 (2000), at p. 31,279. The U.S. Court of Appeals for the D.C. Circuit agrees: "For at least 30 years this court has given special deference to agency development of such experiments, precisely because of the advantages of data developed in the real world." *Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission*, 285 F.3d 18, 24 (D.C. Cir. 2001).

to keep the Commission apprised of the progress of the pilot projects, and will make appropriate revisions and submit any necessary filings with the Commission to establish a common framework throughout the ERO Enterprise.

In sum, in the ERO Enterprise's opinion, there are significant benefits to be gained through the RAI program, including better alignment to a culture of reliability. RAI would give credit to entities that demonstrate strong management practices and a culture of complying with the reliability standards. Similarly, the program would focus compliance monitoring on areas that pose the greatest risk to reliability, thereby enabling and encouraging an entity to address areas of higher risk by strengthening management practices around those risks. This in turn should result in a more effective program addressing risks to reliability consistent with internal control approaches used in other areas of the corporation.⁸²

Along with developing the RAI toward the end of the assessment period, NERC and the Regional Entities focused on three other major areas: (1) the development of a single ERO-wide audit process checklist and associated auditor handbook to ensure the use of more consistent processes and procedures by the staff in the field; (2) the implementation of the FFT enhancements approved by the Commission in its June 20, 2013 order in Docket No. RC11-06-004; and (3) the improvement in the self-reporting processes, including reducing the burden and cost of self-reporting. The Regional Entities, as part of the ERO Enterprise, made the following progress in each of these areas:

(1) Development of single ERO-wide audit process checklist and associated auditor handbook

As the Regional Entities recognized in 2009, work was needed to ensure the consistency of Compliance Audits.⁸³ Accordingly, as discussed below, they worked on numerous projects within their own regions and across regions to improve their major tool to ensure compliance with the mandatory reliability standards. As relevant here, in September 2012, the Regional Entities engaged an outside firm to assess the current state of regional compliance audit procedures and underlying processes, and make recommendations that could lead to more consistent audit practices across the Regional Entities and better position them to adapt to future regulatory changes and demands. This engagement dovetailed with the development of the white papers and other conceptual documents underlying the RAI, and naturally became part of the larger effort to revisit the CMEP paradigm. The outside firm produced its assessment

⁸² See generally <http://www.nerc.com/pa/comp/Pages/Reliability-Assurance-Initiative.aspx> (last accessed on February 14, 2014). In this regard, the Regional Entities appreciate the Commission's recognition of the RAI's potential benefit. Toward the end of the assessment period, the Commission noted that "...the [RAI] process when fully developed may afford a consistent, informed approach that provides incentives for entities to develop robust internal control programs." *Version 5 Critical Infrastructure Protection Reliability Standards*, Order No. 791, 145 FERC ¶ 61,160 (2013), *reh'g pending*, at P 73 (footnote omitted).

⁸³ See 2009 JRESA, at p. 25.

(referred to as the Third-Party Assessment) in February 2013, and recommended that the Regional Entities:

- Develop a single set of standardized audit methodology documents to be used across the ERO, after aligning their existing audit methodologies;
- Deploy a pilot program to assess and implement the standardized audit checklist; and
- Roll out a robust training program to provide the audit community with sufficient growth opportunities and ultimately guide auditors in the interpretation and optimal application of the audit guidance and checklist.

Subsequently, with NERC's support and cooperation, during the assessment period, the Regional Entities produced a standard audit process checklist and completed the first version of a common auditor handbook to support the checklist. Also, certain Regional Entity staffs participated in pilot or comparable programs to see how the audit process checklist worked in the field, and collaborated with their colleagues in other Regional Entities to fashion appropriate training materials. The Regional Entities firmly believe that the use of the audit process checklist and handbook will create a standardized process that will improve efficiencies and drive consistency while ensuring that audits conform to professional auditing standards, particularly the Generally Accepted Government Accounting Standards ("GAGAS").

(2) Implementation of FFT enhancements

As noted earlier, in the June 2013 FFT order, the Commission approved, with conditions, four enhancements to the FFT program.⁸⁴ The Commission permitted an expansion of the program by allowing FFT treatment for a "limited pool" of possible violations involving moderate (in addition to minimal) risk, subject to NERC's filing a report by June 20, 2014, justifying the continuation of the expanded FFT program; allowed the inclusion of possible violations as FFTs even if the mitigation was not yet completed, provided the mitigation was completed within 90 days from the date the FFT is filed or posted; permitted the Regional Entities to publicly post FFTs on a common website on the last business day of each month instead of NERC submitting a monthly informational filing to the Commission; and agreed with NERC's proposal to review a representative sample of FFTs during the 60-day window following the Regional Entities' monthly posting of FFTs on NERC's website instead of reviewing each FFT before public posting. In July 2013, immediately after the issuance of the June 2013 order, the Regional Entities began implementing the approved FFT enhancement applicable to them. Specifically, they included FFTs where mitigating activities had not yet been completed, submitted monthly FFT compilations to NERC for posting on its website, and evaluated possible violations involving moderate risk for processing as FFTs.⁸⁵

⁸⁴ See 143 FERC ¶ 61,253 (2013). The Commission rejected one of NERC's proposals, to eliminate senior officer certification. *Id.* P 17.

⁸⁵ See <http://www.nerc.com/pa/comp/Pages/Enforcement-and-Mitigation.aspx> (last accessed on February 11, 2014) for the FFT postings.

(3) Improvement in the self-reporting process

As NERC President and CEO Gerry Cauley pointed out at the July 9, 2013 FERC Technical Conference, two-thirds of all violations at that time were self-reported.⁸⁶ Nevertheless, at that conference and in other forums such as the FERC FFT proceedings and NERC and regional meetings with the registered entities, the need to improve the self-report process was often stressed. Accordingly, the Regional Entities took steps to meet that need. To start with, as mentioned earlier, they identified areas for potential improvements. These included a lack of sufficient information on content in self-reports both in the details of the violation and the risk assessment information. In addition, there was a perception in certain cases of a lack of centralized information collection (particularly for multi-region registered entities), and the registered entity complaints on the combination of long overall processing time and a lack of communication throughout the process.

Next, the Regional Entities worked together, with NERC, and with a focus group of registered entities to start putting in place enhancements to the self-report process.⁸⁷ These included:

- Additional guidance on processing and the content of self-reports;
- Points of contact at the Regional Entity for additional guidance;
- An improved intake form that has the capability of augmenting information and cross-referencing information already provided, and a centralized process for multi-regional registered entities; and
- Aggregation of minimal risk issues by selected registered entities in selected Regional Entities to allow training on risk assessment and mitigation development.

Significantly, by the end of the self-assessment period, with input from the industry focus group, NERC and the Regional Entities completed a draft of the *ERO Enterprise Self-Report User Guide*, which was posted for broader stakeholder comment in January 2014. As explained in the posting, this user guide should provide registered entities with valuable information and

⁸⁶ See Transcript of Reliability Conference (July 9, 2013), Docket Nos. AD13-6-000, *et al.*, at p. 135. Self-reports in this context also includes self-certifications.

⁸⁷ NERC and the Regional Entities already provide direction on the preparation of self-reports. See, e.g., <http://www.nerc.com/files/NERC%20Guidance%20on%20%20Self-Reports.pdf> (last accessed on February 11, 2014); <http://www.texasre.org/compliance/selfreport/Pages/Default.aspx> last accessed on February 11, 2014); <http://www.serc1.org/Application/ContentPageView.aspx?ContentId=62> (last accessed on February 11, 2014).

insight on what to do to facilitate disposition of possible noncompliance by the ERO Enterprise.⁸⁸

Updates to the 2009 Joint Regional Entity Self-Assessment

As described above, the 2009 JRESA addressed nine separate CMEP topics, in addition to the compliance registry. Four involved achieving consistency within the program (consistency and use of discretion in application of penalties, CMEP consistency, consistency in interpretation of reliability standards, and compliance audit consistency), four dealt with enforcement issues (caseload backlog, treatment of minor violations, information management tools, and process transparency), and one reviewed the hearing and appeals process. Because the previous discussion on the progress made by NERC and the Regional Entities on streamlining and improving the CMEP addresses or otherwise touches on most of these topics, the following will not repeat relevant parts of that discussion here. Rather, it will provide updates to specific topics and issues that were raised by the Commission, NERC, the Regional Entities themselves, or stakeholders, in 2009. The discussion is organized under the topics of: (1) Consistency; (2) Compliance Monitoring; (3) Enforcement; and (4) Hearings and Appeals.

Consistency

In the 2009 JRESA, the Regional Entities identified consistency as an overarching issue in their discussion of the CMEP. That discussion, of course, reflects their recognition that the Commission has repeatedly tasked NERC to ensure consistency of compliance across the Regional Entities, and the NERC ROP explicitly provide that NERC must have a program to monitor the compliance enforcement efforts of each Regional Entity to achieve that objective. Accordingly, in 2009, the Regional Entities examined the issue from several different perspectives. Taken as a whole, these examinations break down into an understanding of the concept of consistency as a general matter and the efforts of the Regional Entities to achieve consistency within their own regions and across regions. To reiterate, what is now described is in addition or complementary to the ERO Enterprise's efforts to develop the RAI.

Consistency as a General Matter

The Regional Entities are committed to working within their own areas, across regions, and with NERC to meet the Commission's expectation that their compliance monitoring and enforcement endeavors adhere to the same principles, course, and form. That said, they also are aware, and urge the Commission and NERC to recognize, that consistency does not necessarily mean exactness in results. Indeed, the adoption of a risk-based approach to the CMEP, as introduced in NERC's 2011 through 2013 annual CMEP Implementation Plan,⁸⁹ will naturally

⁸⁸ See <http://www.nerc.com/pa/comp/Pages/Reliability-Assurance-Initiative.aspx> (last accessed on February 27, 2014).

⁸⁹ See, e.g., *ERO Compliance Monitoring and Enforcement Program 2013 Implementation Plan* (revised December 27, 2012) at <http://www.nerc.com/pa/comp/Resources/Pages/default.aspx?View={cb5b1d3f-f5b7-421d-8266-0bcf6a06fc08}&SortField=Date&SortDir=A>

result in different treatment of different entities and different outcomes of compliance and enforcement activities. Specifically, for example, penalty consistency does not mean the same penalty for specific alleged violations across all Regional Entities, because the risk posed by a specific alleged violation varies depending on the characteristics of the Regional Entity's footprint, the registered entity and its geographical location and interconnection, as well as other pertinent facts and circumstances. Instead, in the Regional Entities' opinion, penalty consistency must focus on the need for a uniform methodology to ensure that the penalty for each violation (1) is consistent with the risk posed by that violation, and (2) encourages the appropriate behavior to improve the reliability of the BES.

Consistency of Remedies *Within* the Regions

While sensitive to consistency in their work generally, the Regional Entities expended considerable resources and paid special attention during the assessment period to ensure that their determinations on appropriate remedies for violations of the mandatory reliability standards were consistent within their own regions. For that purpose, they all used internal case management systems, which were similar in that they involved methodical comparisons of the violations to actual penalties assessed for violations of the same or similar standards or requirements within the Regional Entity; directed their staffs to coordinate and otherwise participate in regular meetings of the regional stakeholder compliance committees; required review or "sign off" by senior regional managers; and stressed internal training and regular communications with and outreach to their registered entities. They also developed other specific means for achieving the objective of consistent remedial determinations, such as compiling and posting Frequently Asked Questions ("FAQs"), using surveys, involving technical experts to address risk and harm, assigning a single point of contact for each registered entity, and separating their compliance and enforcement staffs.

Consistency of Remedies and Other Matters *Across* the Regions

The Regional Entities made substantial progress during the assessment period to improve CMEP consistency by increasing their interaction with each other. Notable accomplishments in this regard were made by the REMG, which proactively and persistently stressed the importance of information sharing, transparency, and consistency within and among Regional Entities, and working collaboratively with NERC. In addition, as mentioned earlier, several of the Regional Entities partnered to coordinate more effectively their compliance and enforcement efforts with respect to MRRE. In this regard, they developed a "lead region" model, in which the Regional Entities decide which one will lead the compliance and enforcement efforts for a given MRRE.⁹⁰ Further, the Regional staffs regularly met with each other to promote consistency with CMEP processes and provide subject matter experts, as needed, to the same end, and conducted

sc (last accessed on February 27, 2014).

⁹⁰ For example, RFC, MRO, and SERC agreed that RFC would be the lead Region for Mid-continent Independent System Operator ("MISO"), while RFC and MRO agreed that MRO would be the lead Regional Entity for American Transmission Company ("ATC").

compliance workshops to which the registered entities from other regions were welcomed. They also collaborated on improving data management tools and the various forms used by the Regional Entities and the registered entities, including the self-report and the self-certification forms and, as discussed in greater detail below, the RSAWs.

Finally, and as apparent from the previous discussion of the developments in the CMEP during the assessment period, the Regional staffs actively participated in NERC-led committees, task forces, and working groups. For example, the Regional Entities actively participated during the assessment period in the Enforcement Sanctions and Mitigation Working Group (“ESMWG”). This group reviews one or two Regional enforcement processes during an in-person meeting, and then shares its review to help identify best practices and highlight areas where consistency could be improved. NERC Enforcement staff also participates in these meetings and is present for discussions regarding variations in approach to enforcement and mitigation responsibilities. Additionally, the ESMWG conducts periodic “risk assessment” exercises whereby each Region is asked to review particular fact patterns and descriptions of mitigating activities and assign the appropriate level of risk. Regions are further asked to highlight any assumptions that are made or to identify additional information that would assist in the assignment of the risk posed by the particular facts and circumstances. Not only do these exercises provide value in driving consistency in assessment of risk, they highlight areas of improvement in the drafting of descriptions of violations, mitigating activities, and risk assessments. By becoming involved in in-depth analyses and discussions of potential and actual risk, the Regional Entities aim to continuously improve the final enforcement product.

Compliance Monitoring

During the assessment period, the Regional Entities steadfastly used their major tool to monitor compliance with the mandatory Reliability Standards—compliance audits of the registered entities. They also used other compliance monitoring tools, including spot checks, self-reports, self-certifications, and periodic data submittals. The Regional Entities’ extensive compliance monitoring efforts, specifically with respect to compliance audits, spot checks, and self-reports, can be seen on Table 3.⁹¹

| Compliance Monitoring Activities – Table 3 | | | | | | | | | |
|---|------|-------------|------------|-------------|------------|-------------|--------------|------------|-------------|
| | | FRCC | MRO | NPCC | RFC | SERC | SPPRE | TRE | WECC |
| Compliance Audits | 2009 | 22 | 25 | 66 | 49 | 55 | 46 | 24 | 90 |
| | 2010 | 19 | 20 | 56 | 52 | 49 | 47 | 50 | 92 |
| | 2011 | 20 | 18 | 68 | 84 | 79 | 92 | 53 | 101 |
| | 2012 | 34 | 18 | 56 | 99 | 73 | 72 | 74 | 150 |

⁹¹ The CMEP also once included Exception Reporting, which was removed by the revisions to the NERC ROP, approved by the Commission on December 20, 2012. See 141 FERC ¶ 61,241 (2102). The Regional Entities review self-certifications for all registered entities at least once annually. Some Regional Entities also require monthly self-certifications for certain standards and requirements. Periodic data submittals happen continuously, with certain information due to the Regional Entities on a monthly basis, other data on a quarterly basis.

| Compliance Monitoring Activities – Table 3 | | | | | | | | | |
|--|------|------|-----|------|-------|------|-------|-----|-------|
| | | FRCC | MRO | NPCC | RFC | SERC | SPPRE | TRE | WECC |
| | 2013 | 22 | 21 | 78 | 90 | 55 | 42 | 64 | 165 |
| Total | | 117 | 102 | 324 | 374 | 279 | 299 | 265 | 598 |
| Spot Checks | 2009 | 40 | 64 | 40 | 147 | 45 | 90 | 1 | 8 |
| | 2010 | 12 | 27 | 51 | 57 | 24 | 14 | 53 | 32 |
| | 2011 | 61 | 8 | 30 | 30 | 11 | 17 | 45 | 16 |
| | 2012 | 5 | 1 | 120 | 3 | 0 | 6 | 43 | 0 |
| | 2013 | 5 | 0 | 483 | 2 | 0 | 3 | 12 | 6 |
| Total | | 123 | 100 | 724 | 239 | 80 | 130 | 154 | 62 |
| Self-Reports | 2009 | 73 | 12 | 31 | 56 | 92 | 54 | 8 | 313 |
| | 2010 | 63 | 44 | 75 | 264 | 194 | 106 | 88 | 140 |
| | 2011 | 80 | 90 | 120 | 262 | 208 | 154 | 105 | 220 |
| | 2012 | 30 | 50 | 90 | 325 | 211 | 83 | 76 | 184 |
| | 2013 | 21 | 60 | 78 | 240 | 216 | 109 | 73 | 162 |
| Total | | 267 | 256 | 344 | 1,147 | 852 | 505 | 350 | 1,019 |

The 2009 JRESA primarily focused on Compliance Audits, and the following discussion will be tailored accordingly. Importantly, during the assessment period, the Regional Entities completed the first 3-year cycle of such audits for registered entities (registered in 2007 or 2008) performing the RC, BA, and TOP functions on schedule in 2010, and the 6-year cycle for those registered entities not performing one of the three certified functions on schedule in 2013. Some Regional Entities also completed a portion of the second 3-year audits during the assessment period.

The 2009 JRESA touched mainly on three topics related to Compliance Audits—the effectiveness of the Reliability Standards Audit Worksheets (“RSAWs”), the adequacy of audit training, and the status of NERC and FERC observers in regional audits. These will be taken up in turn.

Reliability Standards Audit Worksheets

As a general matter, the Regional Entities believe that RSAWs are helpful in their conduct of compliance audits. For example, they provide a means for recording the conduct of the audit, including detailed auditor notes and findings, and can be linked to the registered entity’s evidence that can then be more easily reviewed. Registered entities appear to appreciate them, and use them extensively to prepare for an audit. Nevertheless, all of the Regional Entities believe that the RSAWs could be improved, and are pleased that their staffs are involved in the task force for that purpose. They are concerned, among other things, that the RSAWs attempt to meet multiple diverse needs, with the result being that no need is met fully or effectively; lack sufficient detail or granularity to be effective in guiding the conduct of the audit; constitute nothing more at times than a restatement of the requirement and provide little meaningful guidance to the auditor or the audited entity; and are generally cumbersome to use. As a consequence, some of the Regional Entities have developed alternate or supplemental tools to augment the RSAWs, *e.g.*, with detailed data requests and inventory workbooks. Of course, in

the Regional Entities' opinion, the audit process checklist and auditor handbook, described earlier, will help alleviate many of the Regional Entities' current concerns.

Adequacy of Audit Training

Without question, the Regional Entities are mindful of the importance of adequate audit training, both of their own staffs and for their registered entities. Accordingly, during the assessment period, they routinely encouraged, if not required, their staffs to attend or otherwise participate in relevant training sponsored by NERC (e.g., semi-annual ERO auditor workshops, GAGAS performance audit training, fundamentals of audits training, audit team leader training, compliance investigations training, *Crucial Conversations* training, and gathering quality evidence on-line training) or provided by third-party vendors; conducted their own in-house training; and regularly held compliance workshops for their registered entities.⁹² In addition, they stressed the importance of their staffs continuing their education in specialized areas, such as cybersecurity, and maintaining or adding to their professional accreditations. As a result, the Regional Entities are confident that during the assessment period they assembled highly trained and professional audit staffs, which some of them supplemented with outside consultants with corresponding qualifications and credentials and with industry subject matter experts, to carry out their compliance monitoring obligations.⁹³

The Regional Entities will steadfastly continue these efforts, which complement and otherwise support the development of the RAI. In this regard, the Third-Party Assessment suggested ways for improving auditor training, which are currently under active consideration by the ERO Enterprise. These suggestions include: (1) understanding and inventorying audit training over the past 2-3 years; (2) identifying initial pockets of excellence that could be leveraged; (3) preparing an initial listing and profile of known trainings and certifications that should be embedded within an on-going training program; (4) reconfirming and defining key trainings that include content related to auditing and understanding the technical aspects of the NERC requirements; (5) determining which professional certifications are best suited for audit professionals; (6) developing a program that includes all desired training and certifications; (7) assigning a target audience, delivery method, importance, approximate course length and frequency for each item in the training program; (8) establishing a method to track employee completion which will report data on progress per employee, office and region; (9) developing a process for proactive monitoring and continued improvements in the current training program; (10) creating individual annual training requirements for each employee based on gaps in their current skill sets and their expressed interests; and (11) tracking training and certification completion status and periodically reporting progress.

⁹² A good overview of NERC's training can be found in its filing submitted in compliance with the Commission's initial order on the FFT program in Docket No. RC11-6-003, on October 12, 2012, and accepted by Delegated Letter Order, on February 25, 2013.

⁹³ The Regional Entities' Cyber Infrastructure Protection auditor qualifications are discussed in greater detail later under "Additional Statutory Functions."

Status of NERC and FERC Observers in Regional Audits

The final compliance audit topic addressed in the 2009 JRESA concerned the uncertainty of the scope of participation by NERC and FERC observers in regional audits, even though as a general matter the Regional Entities found benefit in the observers’ feedback. The Regional Entities believe that this uncertainty was largely resolved during the assessment period by Commission-approved changes to the NERC ROP **Appendix 4C**, Section 3.1.5.3, which clearly sets forth the role of audit observers, stating that “[c]ompliance Audit observers and attendees are not Compliance Audit team members and do not participate in conducting the Compliance Audit or in making Compliance Audit findings and determinations.”⁹⁴

Enforcement

The 2009 JRESA touched on four specific enforcement-related topics in addition to issues of consistency—caseload backlog, treatment of minor violations, process transparency, and information management tools. As these topics overlap with each other and previously discussed topics, the following will combine the updates. As an initial matter, the Regional Entities want to stress that they continue to view communication and transparency in the enforcement process to be imperative to ensure a fair and effective implementation of the CMEP. They also believe that the RAI is a positive step in that direction, and are committed to working with NERC and other members of the reliability community to make RAI a reality to advance BES reliability. In particular, RAI will support the goal of approaching the enforcement of the reliability standards on the basis of risk, as the initiative calls for evaluating registered entities’ internal controls and processes, an evaluation that will enable the Regional Entities to create risk profiles. Once known, those risk profiles will assist the Regional Entities in both their compliance monitoring and enforcement activities, and eventually help reduce the time to final resolution of compliance issues.

The Regional Entities experienced a significant increase in the number of new violations discovered during the assessment period, in large part because of the introduction of the CIP mandatory Reliability Standards in 2010. Indeed, NERC reported that the number of violations consistently trended upward during the assessment period, generally for all Regional Entities, and that CIP Reliability Standards were consistently the most frequently violated since 2010.⁹⁵ This trend can be seen by Regional Entity on Table 4. In brief, of the 8,978 new violations, 5,273 or 59% were CIP violations.

| New Violations during Assessment Period – Table 4 | | | | | | |
|--|-------|-------------|-------------|-------------|-------------|-------------|
| | | 2009 | 2010 | 2011 | 2012 | 2013 |
| FRCC | Total | 183 | 104 | 135 | 69 | 61 |

⁹⁴ See 141 FERC ¶ 61,241 (2012).

⁹⁵ See Key Compliance Metrics and Trends, <http://www.nerc.com/gov/bot/BOTCC/Compliance%20Committee%202013/Presentations%20--%20February%205,%202014.pdf>, at slide 15 (last accessed on February 11, 2014).

| New Violations during Assessment Period – Table 4 | | | | | | |
|---|------------|-------|-------|-------|-------|-------|
| | | 2009 | 2010 | 2011 | 2012 | 2013 |
| | <i>CIP</i> | 24 | 58 | 95 | 32 | 26 |
| MRO | Total | 63 | 105 | 198 | 180 | 147 |
| | <i>CIP</i> | 12 | 40 | 146 | 142 | 96 |
| NPCC | Total | 45 | 116 | 147 | 267 | 104 |
| | <i>CIP</i> | 0 | 50 | 110 | 141 | 62 |
| RFC | Total | 169 | 453 | 514 | 549 | 665 |
| | <i>CIP</i> | 61 | 286 | 364 | 360 | 560 |
| SERC | Total | 195 | 303 | 307 | 300 | 284 |
| | <i>CIP</i> | 73 | 169 | 199 | 209 | 226 |
| SPPRE | Total | 102 | 173 | 292 | 256 | 191 |
| | <i>CIP</i> | 53 | 79 | 191 | 121 | 126 |
| TRE | Total | 38 | 157 | 434 | 215 | 256 |
| | <i>CIP</i> | 4 | 72 | 230 | 138 | 200 |
| WECC | Total | 467 | 414 | 325 | 357 | 301 |
| | <i>CIP</i> | 136 | 274 | 181 | 175 | 188 |
| TOTALS | Total | 1,262 | 1,825 | 2,358 | 2,194 | 1,339 |
| | <i>CIP</i> | 363 | 1,028 | 1,518 | 1,318 | 1,046 |

Notwithstanding the generally steady increase in new violations during the assessment period, the Regional Entities were able to meet their objectives, stated in the 2009 JRESA, to clear out what was described there as a backlog of violations, improve the time of processing violations (especially minor violations), and, generally speaking, establish stable workloads of enforcement cases. In particular, the Regional Entities’ significant reduction in their pre-2012 caseload by the end of the assessment period can be seen on Table 5.⁹⁶

| |
|--|
| Reduction in Pre-2012 Violations Caseload – Table 5 |
|--|

⁹⁶ As NERC reported in its 2014 budget proposal,

As of June 30, 2013, approximately 85% of the active non-CIP violations and 72% of the active CIP violations were discovered since January 1, 2012 (*i.e.*, were discovered in the preceding 18 months). At June 30, 2013, there were no active non-CIP violations that were discovered prior to January 1, 2010 and only 12 active non-CIP violations that were discovered in 2010. There were only 16 active violations that were discovered in 2009 and 91 active CIP violations that were discovered in 2010. Further, for the 12 months ended June 30, 2013, the number of violations dismissed or filed with the Commission exceeded the number of new violations opened by 680 violations.

Request for Acceptance of 2013 Business Plans and Budgets of NERC and Regional Entities and for Approval of Proposed Assessments to Fund Budgets, Docket No. RR13-9-000 (submitted on August 23, 2013), at p. 104.

| | Total violations open at the end of 2011 | Total violations open at the end of 2011 still open at end of 2013 | Percentage of Reduction |
|--------------|---|---|--------------------------------|
| FRCC | 95 | 0 | 100% |
| MRO | 151 | 14 | 93% |
| NPCC | 221 | 0 | 100% |
| RFC | 429 | 21 ⁹⁷ | 95% |
| SERC | 575 | 25 | 96% |
| SPPRE | 233 | 6 | 97.4% |
| TRE | 283 | 0 ⁹⁸ | 100% |
| WECC | 65 | 0 | 100% |

The Regional Entities accomplished these objectives in the first instance by gaining more experience, expanding their enforcement staffs, increasing their outreach to registered entities, and focusing on improved efficiency. They also accomplished this by working with Commission staff, NERC, and the stakeholders in the development of the CEI, in particular the Administrative Citation NOPs, the SNOPs, and the FFTs.⁹⁹ As mentioned above, in 2012 and 2013, respectively, the use of SNOPs represented 48% and 43% of the total number of violations and possible violations submitted to the Commission. For the same years, the use of FFTs represented 38% and 43% of the total number of violations and possible violations processed by the Regional Entities.¹⁰⁰ Moreover, for violations and possible violations discovered after January 1, 2012 and filed by September 30, 2013, the average processing time for SNOPs and FFTs was 10.7 months and 7.4 months, respectively.¹⁰¹ As the Commission can appreciate from

⁹⁷ This number excludes Federal entity violations which are on hold due to legal issues.

⁹⁸ This number excludes one case involving two violations that is on appeal.

⁹⁹ The Regional Entities also credit the registered entities in the improvement in the processing of violations, namely that as they also gained experience through compliance and enforcement activities, they obtained a better understanding of how to comply with the standards and thereby were able to facilitate both activities.

¹⁰⁰ See Key Compliance Metrics and Trends, <http://www.nerc.com/gov/bot/BOTCC/Compliance%20Committee%202013/Presentations%20--%20February%205,%202014.pdf>, at slide 10 (last accessed on February 11, 2014). For the period July 1, 2012 to June 28, 2013, this breaks down by region as follows:

| | <u>WEC</u> | <u>TRE</u> | <u>SPP</u> | <u>SERC</u> | <u>RFC</u> | <u>NPCC</u> | <u>MRO</u> | <u>FRCC</u> |
|------|------------|------------|------------|-------------|------------|-------------|------------|-------------|
| FFT | 25% | 54% | 44% | 43% | 41% | 60% | 57% | 45% |
| SNOP | 37% | 23% | 28% | 38% | 28% | 39% | 39% | 40% |
| NOP | 38% | 23% | 28% | 19% | 32% | 1% | 4% | 15% |

¹⁰¹ See Key Compliance and Enforcement Metrics and Trends, http://www.nerc.com/gov/bot/BOTCC/Compliance%20Committee%202013/CC_Presentations_Nov_2013_Complete.pdf, at slide 5 (last accessed on February 11, 2014).

the management of its own enforcement cases, as reported in its Enforcement staffs’ annual reports, this represents a very respectable and acceptable time to process violations of the law.

At the same time as they were working to reduce their pre-2012 caseload and otherwise improve their processing of violations of the mandatory reliability standards, the Regional Entities endeavored to strictly oversee the completion of plans to mitigate those violations, because, axiomatically, timely mitigation is imperative for BPS reliability. Toward the end of the assessment period, they were able to improve the average times of two major milestones to less than a year, or significantly less than a year—the time from discovery of the violation to the registered entity’s submittal of mitigation activities and the time from the discovery of a violation to the registered entity’s completion of mitigation activities. This can be seen by Regional Entity for September 2012-September 2013 on Table 6.

| Average Times for Submittal and Completion of Mitigation Plans – Table 6 | | |
|---|---|--|
| | Average time from discovery of a violation to the registered entity’s submittal of mitigating activities | Average time from discovery of a violation to the registered entity’s completion of mitigating activities |
| FRCC | 5.6 months | 10.2 months |
| MRO | 5 months | 9 months |
| NPCC | 3 months | 3.4 months |
| RFC | 5.6 months | 6.4 months |
| SERC | 11 months | 9 months |
| SPPRE | 6.4 months | 10.2 months |
| TRE | 8 months | 6 months |
| WECC | 4.6 months | 5.6 months |

The Regional Entities achieved another 2009 enforcement goal during the assessment period by compiling and sharing with each other and the reliability community “Lessons Learned” from their enforcement proceedings. Accordingly, they were able to improve their own operations and help the registered entities to understand better how to comply with the mandatory standards. They did this by: (1) creating webpages;¹⁰² (2) producing training videos;¹⁰³ (3) issuing newsletters with information on frequently violated standards and violation processing metrics;¹⁰⁴ (4) publishing cases and dismissal notes;¹⁰⁵ (5) developing and sharing

¹⁰² See, e.g., <http://www.texasre.org/StakeholderOutreach/LessonsLearned/Pages/Default.aspx> (last accessed on February 14, 2014); <http://www.serc1.org/Documents/Compliance/Statistics%20and%20Lessons%20Learned/2012/SERC%20Lessons%20Learned%20July%202012.pdf> (last accessed on February 14, 2014).

¹⁰³ See, e.g., <http://vimeopro.com/sppre/basics> (last accessed on February 14, 2014).

¹⁰⁴ See, e.g., <https://rfirst.org/Pages/Newsletter.aspx> (last accessed on February 14, 2014).

compliance guidance statements;¹⁰⁶ (6) compiling other relevant written materials such as FAQs;¹⁰⁷ (7) holding frequent compliance calls with registered entities; (8) conducting numerous workshops, seminars, conferences, webinars, and open forums;¹⁰⁸ (9) including detailed discussions in their compliance committee meetings; and (10) participating in trade and other industry conferences and conventions. Indeed, in the last three years of the assessment period (2011-2013), the Regional Entities' workshops and equivalent training programs attracted more than 30,000 attendees.¹⁰⁹

Critical in the Regional Entities' enforcement activities is their use of information management tools. During the assessment period, they all changed or significantly improved or enhanced those tools. They did not, however, use the same tools (and there was no single, integrated compliance information system approach in place for them and NERC). Rather, they used one of two different integrated systems to manage compliance information received from registered entities. Five of the Regional Entities (RFC, MRO, SPP RE, TRE, and WECC) used the web-based Compliance Data Management System (webCDMS), and three of the Regional Entities (SERC, NPCC, and FRCC) used the Compliance Issue Tracking System ("CITS").¹¹⁰ NERC used the Compliance Reporting and Tracking System ("CRATS") to aggregate regional compliance data from webCDMS and CITS. While each system has its advantages, NERC and the Regional Entities plan to look to the feasibility of a common platform in the near future.

¹⁰⁵ See, e.g.,

http://www.midwestreliability.org/02_compliance/Enforcement%20Case%20Notes/2013%20Case%20Notes/MRO%20Case%20Notes%202nd%20Quarter%202013.pdf (last accessed on February 14, 2014).

¹⁰⁶ See, e.g.,

<https://www.npcc.org/Compliance/Compliance%20Guidance%20Statements/Forms/Public%20List.aspx> (last accessed on February 11, 2014).

¹⁰⁷ See, e.g., <https://www.frcc.com/FAQ/default.aspx> (last accessed on February 11, 2014).

¹⁰⁸ See, e.g., <http://www.wecc.biz/Training/Pages/default.aspx> (last accessed on February 11, 2014).

¹⁰⁹ This broke down by region as follows: FRCC (2,176), MRO (1,219), NPCC (1,650), RFC (1,260), SERC (4,019), SPP RE (2,451), TRE (2,924), and WECC (14,658). WECC had almost half of the attendees because it held routine open WebEx calls with pre-set agendas with the time dedicated for questions and answers.

¹¹⁰ The Regions also used a variety of other programs, such as SharePoint document management system and MK Insight materials repository system.

Hearings and Appeals

From the inception of the CMEP, the Regional Entities recognized the importance of providing sufficient process to registered entities which allegedly violated the mandatory Reliability Standards. Indeed, the Commission stressed more than once that the Regional Entities must have procedures in place to enable a registered entity to be heard in a trial-type hearing, and that NERC must have procedures in place to allow a registered entity to appeal a regional decision to the NERC BOT and ultimately to the Commission.¹¹¹ Accordingly, the ERO Enterprise spent considerable time during the assessment period in developing and refining the *Hearing Procedures* laid out in Attachment 2 to NERC ROP **Appendix 4C**, and each Regional Entity issued its own CMEP hearing procedures, either incorporating or adopting by reference the procedures in Attachment 2. Many of the Regional Entities also provided training on the hearing procedures, including conducting a mock hearing, for their staffs, hearing bodies, or stakeholders.

Toward the end of the assessment period, with active participation by the Regional Entities, NERC proposed changes to *Hearing Procedures*, which the Commission approved on December 20, 2012.¹¹² Among other things, the Commission agreed with NERC's proposal to allow third-party interventions under a strict standard, namely that the intervenor must have a direct and substantial interest in the outcome of the alleged violation, proposed penalty or sanction, mitigation plan, or remedial action directive.¹¹³ The Regional Entities agree that the codification of this standard will facilitate the resolution of enforcement proceedings, especially in those regions with RTOs or ISOs, where a third-party may be allocated all or a portion of a penalty and where the Commission's objective of getting to the "root cause" of the violation is critical to such allocation.¹¹⁴

¹¹¹ See, e.g., *North American Electric Reliability Corporation, et al.*, Order Accepting ERO Compliance Filing, Accepting ERO/Regional Entity Delegation Agreements, and Accepting Regional Entity 2007 Business Plans, 119 FERC ¶ 61,060 (2007), at PP 134-165; *North American Electric Reliability Corporation, et al.*, Order Addressing Revised Delegation Agreements, 122 FERC ¶ 61,245, at PP 74-138, *order on compliance filing*, 125 FERC ¶ 61,330 (2008), at PP 58-60.

¹¹² See *North American Electric Reliability Corporation*, Order Conditionally Approving Revisions to North American Electric Reliability Corporation Rules of Procedure, 141 FERC ¶ 61,241 (2012), at PP 108-110.

¹¹³ *Id.* P 110. See also *Monongahela Power Co., et al.*, 135 FERC ¶ 61,226 (2011) (authorizing FirstEnergy to intervene in an RFC hearing).

¹¹⁴ See generally *Reliability Standard Compliance and Enforcement in Regions with Regional Transmission Organizations or Independent System Operators*, Order Providing Guidance on Recovery of Reliability Penalty Costs by Regional Transmission Organizations and Independent System Operators, 122 FERC ¶ 61,247 (2008); see also *PJM Interconnection, L.L.C.*, Order Accepting Tariff Revisions and Requiring Compliance Filing, 124 FERC ¶ 61,260 (2008) and

Even though all of the Regional Entities established hearing procedures and organized their resources to accommodate hearings, just three of them conducted a total of only five hearings during the assessment period.¹¹⁵ RFC conducted one regular hearing and one fast-tracked hearing, both of which were ultimately resolved by settlement. SPP RE conducted two regular hearings, one of which is pending resolution in the U.S. Court of Appeals for the D.C. Circuit,¹¹⁶ and one for which a settlement was pending before the NERC BOTCC as of December 31, 2013. TRE conducted one hearing, at the end of which its board of directors issued a confidential decision, in January 2013, and submitted the matter to the NERC Board where it was pending as of December 31, 2013. At this time, in light of the relatively little activity under the current ROP, the Regional Entities believe that they should obtain more experience with hearings and appeals before any significant changes are made to Attachment 2.¹¹⁷

Additional Statutory Functions

The 2009 JRESA identified four other functions which are primarily the ERO’s responsibility but which require the active involvement, cooperation, and assistance of the Regional Entities—Reliability Assessment, Event Analysis, Situation Awareness, and Critical Infrastructure Protection.¹¹⁸ In regard to Reliability Assessment, Event Analysis, and Situation Awareness, NERC and some industry members expressed concerns about the Regional Entities’

Midwest Independent Transmission Operator, Inc., Order Conditionally Accepting Proposed Tariff Revisions, 128 FERC ¶ 61,229 (2009).

¹¹⁵ The Regional Entities also received very few complaints and conducted very few investigations (as that term is defined in the CMEP) during the assessment period as follows:

| | <u>FRCC</u> | <u>MRO</u> | <u>NPCC</u> | <u>RFC</u> | <u>SERC</u> | <u>SPP</u> | <u>TRE</u> | <u>WECC</u> |
|----------------|-------------|------------|-------------|------------|-------------|------------|------------|-------------|
| Complaints | 2 | 1 | 6 | 4 | 4 | 1 | 3 | 0 |
| Investigations | 0 | 3 | 3 | 3 | 3 | 3 | 3* | 1 |

*One of TRE’s investigations involved the 2011 Winter Event that led to a FERC/NERC staff report. See <http://www.ferc.gov/legal/staff-reports/08-16-11-report.pdf>.

¹¹⁶ See *Southwestern Power Administration, et al. v. FERC*, No. 13-1033 (D.C. Cir. Feb. 15, 2013).

¹¹⁷ Notably, the Commission approved a major change to the TRE hearing procedures in August 2013, allowing TRE to change its hearing process, which previously provided for the Texas Public Utility Commission to serve as the hearing body, to be the same as used by the other seven regions. See *North American Electric Reliability Corporation*, Delegated Letter Order, Docket No. RR13-7-000 (August 19, 2013).

¹¹⁸ See 2009 JRESA, at pp. 32-33.

performance. In regard to Critical Infrastructure Protection, the Regional Entities noted a concern they had. As now demonstrated, during the assessment period, the Regional Entities successfully took steps to address and otherwise allay the concerns of NERC and the industry members, and had its own concern satisfactorily addressed as well.¹¹⁹

Reliability Assessment

FPA Section 215(g), 16 U.S.C. § 824o(g), provides that “[t]he ERO shall conduct periodic assessments of the reliability and adequacy of the bulk-power system in North America.” Section 39.11 of the Commission’s regulations, 18 C.F.R. § 39.11 (2013), additionally directs the ERO to conduct such assessments and provide reports to the Commission and other designated entities. Accordingly, NERC prepares Long-Term Reliability Assessments annually, Summer and Winter Assessments, and Special Assessments as needed. To this end, as can be gleaned from the *NERC Reliability Assessment Guidebook* (Version 3.1), NERC relies heavily on the Regional Entities to prepare these reports.¹²⁰ Indeed, as anticipated in the 2009 JRESA, the finalization of this Guidebook during the assessment period adequately responded to the issues raised during the preparation of the Regions’ first performance assessment.¹²¹

Event Analysis

In the 2009 JRESA, the Regional Entities agreed with industry members that work needed to be done on the process of timely conducting, and disseminating information gathered from, event analyses performed by NERC and the Regional Entities.¹²² Without question, the

¹¹⁹ Additionally, as budget matters were discussed at various places in the 2009 JRESA, this section concludes with a brief overview of Regional business plans and budget activities during the assessment period.

¹²⁰ *See* http://www.nerc.com/pa/RAPA/rg/ReliabilityGuidelines/Reliability_Assess_Guidebook_3_1Final.pdf (last accessed on February 11, 2014).

¹²¹ Concerns at that time included data checking and validation, process and procedures, stakeholder/member involvement, and overall quality and timeliness.

¹²² *The Report on Outages and Curtailments During the Southwest Cold Weather Event of February 1-5, 2011, Causes and Recommendations* (August 2011) (“2011 Southwest Cold Weather Event”) neatly summarizes the event analysis process:

Registered entities are required to report the occurrence of defined bulk power system disturbances and unusual occurrences to the appropriate Regional Entity and to NERC. The Regional Entity and/or NERC in turn undertakes various levels of analysis to determine the causes of the events, assure tracking of corrective actions to prevent recurrence, gather information needed to assess compliance, and provide lessons learned to the industry. The event analysis process also provides input for

ERO Enterprise made tremendous strides during assessment period to address these concerns and otherwise improve the very critical reliability function of analyzing events and distributing Lessons Learned to the entire reliability community. For their part, the Regional Entities significantly contributed to this effort by helping to organize and actively participating in the voluntary ERO event analysis program.

By way of background, following the creation of the NERC Event Analysis Working Group (“EAWG”) and two industry trials in 2010, NERC approved an industry-wide event analysis program in February 2012, and revised it in 2013.¹²³ This voluntary program recognizes the need to establish an appropriate level of review for the events which occur on the BPS based on their varying levels of significance, while still providing otherwise unrealized lessons to be learned from both major and minor occurrences. To complete this effort, the registered entity, the Regional Entity, and NERC staff collaborate to prepare an event analysis report, identify root cause and contributing causes, perform a formal “cause-coding” analysis, and publish Lessons Learned gathered from the disturbance.¹²⁴ The process also encourages registered entities to establish a liaison between their internal event analysis and compliance functions for development of a registered entity compliance self-assessment report separate from the event analysis report. During the assessment period, this integration of industry engagement and the collaborative review of disturbances greatly improved the effectiveness, consistency, and timeliness of event analyses performed by NERC and the Regional Entities.

The following shows the progress made by the voluntary ERO event analysis program, developed by NERC, the Regional Entities, and stakeholders. Between October 2010 and December 31, 2013, registered entities submitted 469 event reports through the program, two-thirds of which were classified as Category 1.¹²⁵ Generally, the registered entities were very

training and education, reliability trend analysis efforts and Reliability Standards development, all of which support continued reliability improvement.

<http://www.ferc.gov/legal/staff-reports/08-16-11-report.pdf>, at p. 23.

¹²³ See

http://www.nerc.com/pa/rrm/ea/EA%20Program%20Document%20Library/Final_ERO_EA_Process_V2.1.pdf (last accessed on February 11, 2014). The EAWG eventually transitioned to the NERC Event Analysis Subcommittee.

¹²⁴ “Cause coding” is intended to provide a structured measurable and continuously improvable approach to rationally characterize the causes of reportable events so that the resulting information might be applied to develop actionable BPS risk reduction knowledge. See http://www.nerc.com/pa/rrm/ea/EA%20Program%20Document%20Library/NERC_Cause_Code_Assignment_Process_February_2013.pdf (last accessed on February 11, 2014), at p. 3; see also http://www.nerc.com/pa/rrm/ea/EA%20Program%20Document%20Library/Cause%20Analysis%20Methods%20for%20NERC,%20Regional%20Entities,%20and%20Registered%20Entities_09202011_rev1.pdf (last accessed on February 11, 2014).

¹²⁵ A Category 1 event includes, among other things, an unexpected outage, contrary to design, of three or more BPS elements caused by a common disturbance. See generally *Electric*

supportive of the process and worked with the Regional Entities’ staffs to improve the quality of the reports, even providing subject matter experts to participate in calls to ensure that the reports were completely understood to more effectively assign categories and cause codes. The Regional Entities’ staffs, in turn, were fully committed to the success of the Lessons Learned aspect of the program, and attempted to keep the registered entities up to date on the program and to help develop meaningful Lessons Learned. As is well known, during the assessment period, the two most notable event analyses were performed by NERC and FERC staffs with respect to the 2011 Southwest Cold Weather Event and the 2011 Arizona-Southern California Outages.¹²⁶ In both matters, the reports provided valuable information and recommendations that were closely examined by the other Regional Entities for application in their areas.¹²⁷

Situation Awareness

The 2009 JRESA touched briefly on Situation Awareness, and took note that NERC and the Regional Entities were actively participating with FERC to enhance situation awareness by having Reliability Coordinators provide near-real-time operating information for their respective footprints to the Commission, NERC and the Regional Entities in order to permit the Commission to “measure the health” of the Interconnections and to monitor parameters which might warn of a developing crisis. The Regional Entities cautioned in 2009 that the communication protocols should be followed in order to prevent this effort from exposing system operators to distracting inquiries during emergency situations. Since then, as now

Reliability Organization Event Analysis Process, Appendix E: Categorization of Events (February 2012) at http://www.nerc.com/pa/rrm/ea/EA%20Program%20Document%20Library/ERO_Event_Analysis_Process_Document_Version_1_Feb_2012.pdf (last accessed on February 11, 2014). There was only one Category 5 event during the assessment period—Hurricane Sandy in 2012.

The events covered by the reports break down by Regional Entity as follows:

| <u>FRCC</u> | <u>MRO</u> | <u>NPCC</u> | <u>RFC</u> | <u>SERC</u> | <u>SPP</u> | <u>TRE</u> | <u>WECC</u> |
|-------------|------------|-------------|------------|-------------|------------|------------|-------------|
| 25 | 41 | 69 | 47 | 42 | 13 | 69 | 163 |

¹²⁶ See note 122 and *Arizona-Southern California Outages on September 8, 2011, Causes and Recommendations* (April 2012) (“2011 Arizona-Southern California Outages”) <http://www.ferc.gov/legal/staff-reports/04-27-2012-ferc-nerc-report.pdf>

¹²⁷ For example, in light of the recommendations in the Arizona-Southern California Outages report, SPP RE staff conducted a survey of entities regarding operational planning and real-time situational awareness, and worked with the SPP RTO and the SPP Event Analysis Working Group to craft training materials. In addition, the SPP RTO implemented a daily benchmark process of the “next day” models to validate load forecasting and generation dispatch assumptions as well as voltage performance. Also in consideration of the recommendations in that report, WECC launched an initiative to improve modeling of remedial action schemes and relays.

explained, the efforts underway in 2009 were largely successful and the Regional Entities' concerns were satisfactorily addressed.

During the assessment period, FERC, NERC, and Regional Entity staffs worked together to develop a near-real time situation awareness visualization tool called SAFNR ("Situation Awareness for FERC, NERC, and the Regional Entities"). SAFNR Version 1 was implemented in June 2009. SAFNR Version 2, which provides enhanced situation awareness with increased trending capability, was completed in late 2012. As contemplated in the 2009 JRESA, SAFNR calls for U.S. Reliability Coordinators to provide system conditions via the internet to FERC, NERC, and the Regional Entities thereby allowing them to monitor continuously operating conditions and emerging reliability events on the BPS. In addition to the near-real time monitoring capabilities of SAFNR, the Reliability Coordinators send situation awareness reports every morning to the Commission, NERC, and the Regions. These reports include an overview of weather conditions, transmission line and generation outages, and operating reserves. Furthermore, the Regional Entities participate in weekly situation awareness and event analysis conference calls with NERC. From the Regional Entities' perspective, the combination of SAFNR, the daily situation awareness reports, and the weekly calls with the ERO, give them a good overview of what is happening on the BES. And, of course, they are in regular communication with the registered entities within their footprints, in particular the Reliability Coordinators, and provide those entities with the means to contact them or receive pertinent information from them at all times with respect to any incidents or events on the grid.¹²⁸

Critical Infrastructure Protection

The 2009 JRESA posited only one issue with respect to CIP, namely that the Commission should approve a pending proposal to amend the NERC ROP to provide that any Technical Feasibility Exception ("TFE") requests (from the coverage of the CIP Reliability Standards) be submitted in the first instance to the Regional Entities, rather than to NERC.¹²⁹ Early in the assessment period, the Commission approved the proposed amendment, thus mooting the issue raised in 2009.¹³⁰ More recently, in September 2013, the Commission

¹²⁸ For example, WECC established a web portal to allow BAs and TOPs access to actual RC real-time state estimator, contingency analysis, and other situational awareness-enhancing tools. NPCC introduced the *Emergency Preparedness Conference Call Procedures* to enable the RCs in its footprint, and, as circumstances may require, their counterparts in neighboring Regional Entities, to rapidly communicate the status of current operating conditions, facilitate the procurement of assistance during emergency conditions, and identify potential physical or cyber threats to the system.

¹²⁹ TFE requests primarily arise with respect to long-life equipment in place that is not readily compatible with a modern environment where cyber security issues are a concern. See *Mandatory Reliability Standards for Critical Infrastructure Protection*, Order No. 706, 122 FERC ¶ 61,040 (2008), at P 180.

¹³⁰ See *North American Electric Reliability Corporation*, Order Approving Technical Feasibility Exception Procedures and Ordering Compliance Filing, 130 FERC ¶ 61,050 (2010).

approved what NERC described as the first comprehensive review of the TFE process since it was originally developed and approved.¹³¹ The Commission explained that NERC and the Regional Entities had processed by that time over 3,800 TFE requests in the past three years, including over 1,300 TFE requests in 2011, experience that supported NERC's proposal to streamline the process for submitting, reviewing, and approving or disapproving TFE requests, and for modifying approved TFEs.¹³² The Regional Entities are pleased that the Commission approved NERC's proposed amendments, which will help reduce TFE processing times while maintaining the integrity of the CIP mandatory Reliability Standards.

In addition, during the assessment period, the Regional Entities significantly expanded the number and the expertise of their staffs, in particular their auditors, to verify compliance with the CIP mandatory Reliability Standards. They uniformly hired personnel with relevant credentials and experience. For example, SPP RE's audit team (as of mid-2013) had over 94 years of information technology, cyber security, and IT audit experience, including 52 years of experience in the electricity sector, and FRCC required (as of mid-2013), as a condition of employment, five years of experience in cyber security practices, information technology, auditing practices, implementation of NERC Reliability Standards, or other equivalent experience. Moreover, by the end of the assessment period, many of the Regional Entities' employees held active certifications recognized by the U.S. Department of Defense Directive 8570 (e.g., Certified Information Systems Auditor ("CISA"), Certified Information Systems Security Specialists ("CISSP"), Certified Ethical Hacker ("CEH"), and Network +). They also sought out personnel who understood energy management systems ("EMS") and supervisory control and data acquisition ("SCADA") systems and several of them augmented their staffs' expertise with contractors who held similar credentials and experience.

Needless to say, the Regional Entities recognize the incredibly important role that cyber security plays in the fulfillment of their statutory responsibilities.¹³³ Accordingly, during the assessment period, they uniformly expended considerable resources and effort to organize their critical infrastructure protection programs and to enforce the mandatory CIP Reliability Standards. Several also initiated on-site visits at their registered entities to assess their physical security, to discuss with those entities the intricacies of complying with the CIP Reliability Standards, and to explore best industry practices with respect to cyber security. In addition, the Regional Entities improved their own technology to be able to handle the transport and storage of the especially sensitive information that they collect in CIP compliance audits and investigations.

¹³¹ See *North American Electric Reliability Corporation*, Order Approving Revisions to Electric Reliability Organization's Rules of Procedure and Directing Compliance Filing, 144 FERC ¶ 61,180 (2013), *order on compliance* (Letter Order January 30, 2104).

¹³² *Id.* P 12.

¹³³ See 16 U.S.C. §§ 824o(a)(3)(4).

Finally, during the assessment period, Regional Entities participated in two NERC Grid Security Exercises (“GridEx”), which use best practices from the Department of Homeland Security, the Federal Emergency Management Agency, and the National Institute of Standards and Technology. Six Regional Entities (MRO, NPCC, RFC, SERC, TRE, and WECC) joined 70 industry and government organizations in the 2011 GridEx, on November 16-17, 2011, and six Regional Entities (FRCC, MRO, NPCC, RFC, SERC, and TRE) joined more than 200 industry and government organizations, either as full participants or as observers, in the 2013 GridEx on November 13-14, 2013. The 2011 GridEx was designed to validate the readiness of the Electricity Sub-sector to respond to a cyber-security incident, strengthen registered entities’ crisis response functions, and provide input for internal security program improvements. Overall, the exercise was widely regarded across industry and government as a critical imperative in preparing the BPS for a disruptive cyber event.¹³⁴ The 2013 GridEx gave participants the opportunity to check the readiness of their crisis action plans through a simulated security exercise to self-assess response and recovery capabilities, and to adjust actions and plans as needed, while communicating with industry and government information sharing organizations.¹³⁵

Budget

The 2009 JRESA mentioned various budget matters but did not include a separate section on the topic. The significant progress made in this area during the assessment period by the Regional Entities under NERC leadership calls for at least a brief discussion here. Also, as related generally in the Introduction and specifically by each Regional Entity in Appendix C, the Regional Entities are required by FPA Section 215 to establish rules that “allocate equitably reasonable dues, fees, and other charges among end users for all activities,” an obligation that obviously necessitates that they function under a business plan and a budget. The Regional Entities first approached these budget responsibilities during the assessment period by developing, in collaboration with NERC, and proposing annual business plans and budgets, in accordance with Commission orders, ERO rules, and NERC business planning and budgeting policies and instructions. For this purpose, they used NERC forms for business plan and budget submittal and adhered to NERC’s schedule for preparation of the business plan and budget and related financial statements. They likewise followed NERC’s prescribed system of accounts (except to the extent that NERC permitted a departure from the prescribed system of accounts).

The Regional Entities made significant progress in the development and submission of their annual business plans and budgets partly as a result of their active participation in the

¹³⁴ See *2011 NERC Grid Security Exercise, After Action Report* (March 2012) at <http://www.nerc.com/pa/CI/CIOutreach/Documents/NERC%20GridEx%20AAR%2016Mar2012%20Final.pdf>.

¹³⁵ See <http://www.nerc.com/news/Pages/NERC-Completes-Second-Grid-Security-Exercise.aspx> (last accessed November 27, 2013). The Regional Entities were also represented at the “tabletop” of executives from government, industry, and NERC, which took place after the 2013 exercise.

Regional Entity Budget Group (“REBG”), which transitioned during the assessment period to the ERO Finance Group (“EROFG”). This group reviewed templates, budget processes, schedules and deadlines, account classifications, financial reporting, and accounting changes. Members of the group were able to share information concerning benefits, salaries, policies, and procedures that are used in the day-to-day accounting activities in the regions. The Regional Entities also took advantage of the opportunity to preview their preliminary annual budgets for Commission staff, and receive feedback generally and with respect to staffing needs and extraordinary items. They further worked with NERC to develop long term resource and financial planning, and to formulate a set of “common assumptions,” which helped to clarify expectations. As a consequence of the concerted efforts made by NERC, the Regional Entities, and the EROFG, the regional budget process significantly improved during the assessment period, progressing from a level of some uncertainty to a level of considerable predictability regarding needed resources and anticipated expenses.¹³⁶

CONCLUSION

The ERO Enterprise significantly matured during the assessment period, building on the foundation of the first three years of the program in which the ERO and the Regional Entities had to set up and organize their operations to implement a sweeping new set of Federal laws, regulations, policies and practices under the oversight of the Commission. Those first three years were truly a time of learning and adjusting to the new paradigm. The next five years, the current assessment period, were a time to learn from experience and explore ways to improve, refine, and stabilize the program. The Regional Entities successfully contributed to those objectives in several ways. They worked more closely and productively with the ERO and with each other. They reached out to and trained their registered entities and other stakeholders. They actively participated in FERC proceedings to keep the Commission informed and to help craft orders and policies that appropriately advance reliability. They continuously examined ways to be more efficient and effective in exercising their compliance enforcement authority and to better gauge the risk that noncompliance posed to reliability. Finally, at all times, they met their statutory obligations to be impartial, develop reasonable and technically sound standards, enforce those standards with due process, operate within sound business plans and budgets, coordinate their efforts in North America, where applicable, and function under Delegation Agreements that promote effective and efficient administration of BPS reliability.

¹³⁶ An excellent overview of the progress made by the ERO Enterprise during the last year of the assessment period in preparing the Regional Entities’ 2014 Business Plans and Budgets can be found in NERC’s Request for Acceptance of 2014 Business Plans and Budgets of NERC and Regional Entities and for Approval of Proposed Assessments to Fund Budgets, Docket No. RR13-9-000 (submitted on August 23, 2013), at pp. 24-30. *See also North American Electric Reliability Corporation, Order on 2014 Business Plan and Budget of the North American Electric Reliability Corporation and Ordering Compliance Filing, 145 FERC ¶ 61,097 (2013).*

Appendix A Description of Regional Entities

A Regional Entity is an organization that has been delegated certain statutory functions of the Electric Reliability Organization (ERO). The ERO and each Regional Entity consummate the delegation through the execution of a Delegation Agreement, which must be approved by the Federal Energy Regulatory Commission (Commission or FERC) in the U.S. By entering into such an agreement, the Regional Entity becomes subject to the jurisdiction of the FERC and the rules of procedure of the ERO.

In July 2006, when the Commission certified the North American Electric Reliability Corporation as the ERO, it also accepted NERC's proposal to delegate certain ERO functions to designated Regional Entities, as well as NERC's proposed *pro forma* Delegation Agreement.¹³⁷ In April 2007, NERC entered into separate Delegation Agreements with eight Regional Entities, through which NERC delegated certain ERO functions. Specifically, NERC delegated authority to the Regional Entities to audit, investigate, and otherwise ensure that users, owners, and operators of the BPS comply with NERC's mandatory Reliability Standards, subject to ERO oversight.¹³⁸ Further, the Delegation Agreements addressed: (1) Regional Reliability Standards development; (2) registration of entities that must comply with Reliability Standards; and (3) other services supporting NERC's functions, including reliability assessments, event analysis, and training and education. In October 2010, the Commission approved a revised *pro forma* Delegation Agreement, and revised Delegation Agreements between NERC and each of the eight Regional Entities.¹³⁹ Subsequently, the Commission also approved other changes to specific Delegation Agreements.¹⁴⁰

As shown in Figure 1, the existing eight Regional Entities provide full geographic coverage for the jurisdictional scope of NERC as the international ERO.

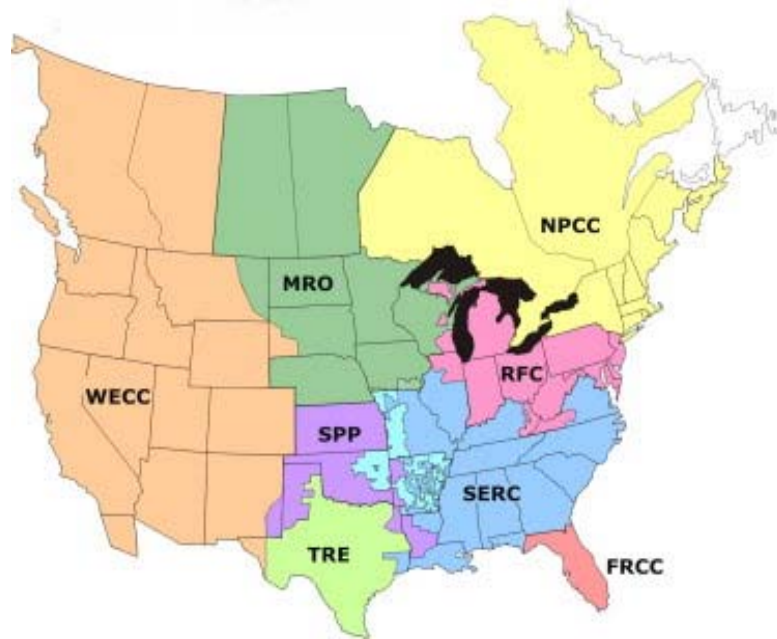
¹³⁷ See *North American Electric Reliability Corporation*, Order Certifying North American Electric Reliability Corporation as the Electric Reliability Organization and Ordering Compliance Filing, 116 FERC ¶ 61,062, *order on reh'g*, 117 FERC ¶ 61,126 (2006).

¹³⁸ See *North American Electric Reliability Corp.*, 119 FERC ¶ 61,060, *order on reh'g*, 120 FERC ¶ 61,260 (2007).

¹³⁹ See *North American Electric Reliability Corporation*, 133 FERC ¶ 61,061 (2010), *order on reh'g*, 134 FERC ¶ 61,179, *order on compliance filing*, 137 FERC ¶ 61,028 (2011).

¹⁴⁰ See, e.g., Delegated Letter Orders in Docket Nos. RR13-7-000 (Aug. 19, 2013) (TRE), RR13-5-000 (June 12, 2013) (MRO), RR12-12-000 (Oct. 24, 2012) (RFC), RR12-4-000 (June 12, 2012) (FRCC), and RR12-2-000 (March 1, 2012) (WECC).

Figure 1 — Map of Regional Entities within NERC



Each of the Regional Entities is briefly described below.

Florida Reliability Coordinating Council, Inc. (FRCC) was formed in 1996. Its sole purpose is to ensure and enhance the reliability and adequacy of the BPS in Florida. Since becoming a Regional Entity, FRCC has made significant changes in its governance and organizational structure. FRCC amended its Bylaws to create two membership divisions — Regional Entity Division (statutory functions) and Member Services Division (non-statutory functions), added a new General Sector to its membership sectors, added new employees strictly dedicated to the compliance and standards functions, and made changes in its organizational reporting structure. All staff members are independent of registered entities, and the organization is governed by a balanced stakeholder board. FRCC has also implemented internal controls in its accounting procedures to ensure there is no cross subsidization of funds between statutory and non-statutory activities.

Midwest Reliability Organization (MRO) was formed from the former Mid-Continent Area Power Pool ("MAPP") Regional council and a portion of Mid-America Interpool Network ("MAIN") as a new corporation for the purpose of becoming a Regional Entity under the Energy Policy Act of 2005 and the Bilateral Principles. The Region spans eight states and two Canadian provinces. MRO's bylaws provide for members from the following industry sectors: municipal utilities, cooperatives, investor-owned utilities, federal power marketing agency, Canadian Crown Corporations, and independent power producers. MRO's bylaws also allow for adjunct members that are not eligible to belong to an industry sector and have a material interest in reliability issues in the MRO region. Membership is at no cost. MRO is independent of all BPS owners, operators, and users, and has no shared employees with any third party. MRO performs only responsibilities delegated from the ERO and similar functions in the Canadian provinces of Saskatchewan and Manitoba. MRO's board of directors ("MRO Board") represents a hybrid

governance structure with both independent and stakeholder directors. The stakeholder directors represent the industry sectors noted above; two independent directors are elected by the entire membership. MRO's hybrid board is structured so that no two sectors can control a vote. The MRO Board has adopted procedures to ensure that it carries out its responsibilities in a non-discriminatory manner, free of conflicts.

Northeast Power Coordinating Council, Inc. (NPCC) was established as the voluntary, international regional reliability organization for Northeastern North America in January 1966. NPCC is a not-for-profit corporation with a Regional Entity division that performs the statutory functions delegated by NERC and a Criteria Services division that establishes, monitors, and enforces compliance with regionally-specific criteria. The NPCC geographic region includes the State of New York and the six New England states as well as the Canadian provinces of Ontario, Québec and the Maritime provinces of New Brunswick and Nova Scotia. Overall, NPCC covers an area of nearly 1.2 million square miles, populated by more than 55 million people. In total, from a NEL perspective, NPCC is approximately 45% U.S. and 55% Canadian. With regard to Canada, approximately 70% of Canadian NEL is within the NPCC region. NPCC's board of directors consists of seven stakeholder voting sectors that each consist of a maximum of two directors per sector, an independent sector consisting of two independent directors, an independent board chair with voting rights to preclude board deadlocks, and the President and CEO. Within NPCC, no two sectors can control and no one sector can block action.

ReliabilityFirst Corporation (RFC) was formed from parts of the former East Central Area Reliability Council ("ECAR"), MAIN, and the Mid-Atlantic Area Council ("MAAC") Regional reliability councils on January 1, 2006. The organization was specifically designed to address changes required by the Energy Policy Act of 2005 and to support the ERO in a self-regulating model by which the industry participants establish their own standards and independent Regional Entities determine compliance to those standards. The organization was modified from top to bottom compared to the legacy reliability councils it replaced, and exists solely to serve as a FERC-approved Regional Entity performing only those functions delegated to it by NERC as the ERO. All ReliabilityFirst staff are independent of registered entities, the organization is governed by a hybrid board of directors, which includes both independent and balanced industry sector directors, and the organization is funded (through the ERO) by all load-serving entities in the footprint as opposed to members (membership is free.)

SERC Reliability Corporation (SERC) was incorporated in April 2005, replacing the Regional reliability council previously in existence since 1969. The new organization was redesigned to meet Section 215 of the FPA and FERC criteria for delegating statutory authorities and responsibilities. SERC's scope includes only statutory functions delegated by NERC. The organization does not perform any registered entity functions and has no business affiliations with any registered entities. SERC adopted new bylaws, approved by FERC in April 2007, that provide for a balanced stakeholder board with seven sectors. All SERC staff are independent of registered entities. The organization is funded through the ERO. Membership is free and open to all owners, operators, and users in the SERC Region.

Southwest Power Pool Regional Entity (SPP or SPP RE) has made fundamental governance and organizational changes necessary to carry out its delegated responsibilities. In

response to the Energy Policy Act of 2005, SPP, Inc., created a new department to perform all compliance activities over SPP registered entities. SPP RE began engaging NERC to lead SPP, Inc. audits in 2007. In April 2007, FERC approved changes to the SPP, Inc. Bylaws creating three independent trustees to manage all SPP RE delegated activities. These trustees, initially elected in June 2007, are required to be independent of SPP, Inc. members and customers, and registered entities in the region. In March 2009, SPP RE hired a General Manager, reporting directly to the three independent trustees, to oversee the execution of the Regional Entity strategic direction and direct the day-to-day operations, including all compliance and enforcement activities. The General Manager oversees only delegated statutory functions. All reporting relationships between SPP RE employees and SPP, Inc. employees have been terminated.

Texas Reliability Entity, Inc. (Texas RE or TRE) is a non-profit Texas corporation that was formed to serve as the Regional Entity for the Electric Reliability Council of Texas, Inc. (“ERCOT”) region, and to preserve and enhance reliability in the region. Effective July 1, 2010, Texas RE took over the duties of the previous Regional Entity, the Texas Regional Entity, an independent division of ERCOT. Texas RE also performs non-statutory activities as the Reliability Monitor for the ERCOT region pursuant to its July 1, 2010, agreement with the Public Utility Commission of Texas (“PUCT”) and ERCOT (the ISO in the region). As Reliability Monitor, Texas RE monitors and reports to the PUCT regarding market participants’ compliance with electric reliability-related ERCOT Protocols, Operating Guides, and Texas rules (“ERCOT Regional Rules”). The ERCOT region is the geographic area located within the state of Texas that operates under the jurisdiction of the PUCT and is not synchronously interconnected with any electric utilities operating outside of Texas. The ERCOT region includes approximately 85 percent of Texas load and 75 percent of the Texas land area.

Western Electricity Coordinating Council (WECC) is the successor to the Western Systems Coordinating Council (“WSCC”), which was formed in 1967. WECC, established in April 2002, continues to be responsible for promoting and coordinating electric system reliability among industry stakeholders as had been done by WSCC since its formation. On July 20, 2006, pursuant to Section 215 of the FPA, NERC was certified as the ERO in the U.S. Included in this certification was a provision for the ERO to delegate authority for the creation and enforcement reliability to Regional Entities such as WECC. WECC is geographically the largest and most diverse of the eight Regional Entities that have Delegation Agreements with NERC. WECC's service territory extends from Canada to Mexico. It includes the provinces of Alberta and British Columbia, the northern portion of Baja California, Mexico, and all or portions of the 14 Western states between. Due to the size and diverse characteristics of the region, WECC and its members face unique challenges in coordinating the day-to-day interconnected system operation and the long-range planning needed to provide reliable electric service across nearly 1.8 million square miles. Membership in WECC is open to all entities with an interest in the operation of the BPS in the Western Interconnection. All meetings are open and anyone may participate in WECC’s standards development process.

On June 27, 2013, the WECC board of directors (“WECC Board”) approved the bifurcation of the company into a Regional Entity (WECC) and a Reliability Coordination Company (“Peak Reliability”). This decision—which is the culmination of a year of work by

various WECC board committees, staff, WECC members, and WECC stakeholders—signals a major landmark in the history of the organization. Under this new structure the Reliability Coordinator and Interchange Authority functions in the Western Interconnection will become a separate company from WECC. When established, Peak Reliability will provide core and other associated reliability coordination services within the Western Interconnection. As anticipated, the Commission approved the relevant documents by the end of December 2013; however, as there were outstanding compliance filings, the bifurcation was not finalized during the assessment period. Nevertheless, WECC and Peak Reliability began operating as separate entities in many respects by that time.

Appendix B
Regional Entity Responses to Specific Concerns Raised in the Commission’s
September 16, 2010 Order on the Three-Year ERO Performance Assessment

In the order on the Electric Reliability Organization’s Three-Year Performance Assessment (“2010 Order”), the Commission discussed several specific concerns regarding Regional Entity activities including: (1) compliance monitoring and enforcement issues concerning all Regional Entities; (2) NERC’s evaluation of each Regional Entity compliance program; (3) SPP independence; and (4) WECC’s voting structure.¹⁴¹ The first topic has been addressed throughout the 2014 JRESA. The other three region-specific topics are addressed below (italicized paragraphs come from the 2010 Order).

NERC’s Evaluation of Each Regional Entity

222. With respect to FRCC, NERC states that FRCC needs to improve its timeliness in: (1) reporting alleged violations to NERC; (2) issuing notices of alleged violation; (3) confirming violations and issuing notices of confirmed violation or entering into settlement agreements; and (4) obtaining Board of Trustees Compliance Committee approval of confirmed violations. NERC relates that FRCC recently has increased its compliance program staffing and, as of the Performance Assessment filing date, had the second lowest number of registered functions per full-time equivalent (FTE) committed to compliance of any Regional Entity.

The FRCC improved its timeliness in all aspects of the compliance and enforcement processes during the assessment period. Notices of alleged violations, notices of confirmed violations and settlements were handled by the FRCC Compliance Enforcement staff. In January 2010, FRCC created a new position of Manager of Compliance Enforcement, promoted a Senior Auditor to that position, and added two new enforcement positions, an Enforcement Specialist and a Compliance Legal Assistant. The Enforcement specialist position was filled in January 2010, and the Legal Assistant was filled in May 2010. Subsequently, the FRCC added two more enforcement positions, both CIP Enforcement Specialists. With the increased enforcement staff, the FRCC worked steadily to improve all of its processes. Additionally, FRCC developed internal processes and goals to support and facilitate the processing of alleged violations, as follows:

- Created enforcement processing checklists;
- Developed violation and mitigation plan responsibility flowcharts;
- Developed enforcement procedures;
- Created annual success plan goals for enforcement team members;
- Implemented departmental caseload goal;
- Developed internal enforcement processing metrics;
- Collaborated with other Regional Entities in a Consortium Users Group (“CUG”) to improve data base management tool;
- Automated database reporting tools which improved efficiency;

¹⁴¹ *North American Electric Reliability Corporation, et al.*, 132 FERC ¶ 61,217 (2010) at PP 198-244.

- Implemented a secure vault system for registered entity CIP data, which eliminated onsite reviews; and
- Compiled with NERC requests to complete processing of all violations through 2011 to NERC goals.

223. *NERC views MRO as an effective Regional Entity. NERC indicates that MRO should improve by providing accurate statements of fact for each violation and assess penalties according to the facts of each situation. NERC has concerns about several of MRO's compliance processes, which NERC has not yet reviewed or approved. NERC states that although these methods may be effective, they are not consistent with NERC practices and could lead to inconsistency with other regions.*

NERC's 2009 assessment alluded to two situations which occurred in that year. The first involved the issuance by FERC of a formal notice extending the time for consideration of a NOP (NP09-21-000), in which FERC requested additional information and clarification of certain facts. While MRO was the first of the Regional Entities to receive such a formal notice, similar notices were subsequently issued to all of the Regional Entities. In some instances, the Commission issued multiple requests to the same Region. In only one instance, during the assessment period, did the Commission undertake its own review of a regional enforcement determination (WECC decision in Turlock, FERC Docket No. NP10-18-000), which was ultimately affirmed. MRO has not received any other formal requests from FERC for additional information and clarification.

Also in 2009, the NERC BOTCC remanded an enforcement action because MRO characterized a self-certification as a self-report in its determination. This was a simple administrative error, which MRO appreciates being found by NERC. Subsequently, MRO worked with NERC staff to develop a process whereby NERC staff works with Regional Entity staff to ensure agreement with or clarification of discrepancies prior to presenting enforcement actions to the BOTCC for approval. At the time, the MRO self-certification process was a manual process, which then required MRO compliance staff to enter the information into the data management system ("CDMS"). In this instance, MRO compliance staff entered the self-certification into the CDMS application as a self-report without indicating that the possible violation was actually identified through the self-certification process. This was the only instance where such an error occurred and it did not change the enforcement determination.

Finally, MRO believes that NERC's concerns about several of MRO's compliance processes, which NERC stated may be effective, were due to NERC's misunderstanding MRO's practices at the time. Shortly before the submission of the 2009 JRESA, MRO adopted its three-step process for activities within the CMEP: Compliance Monitoring, Risk Assessment and Mitigation, and Enforcement, each performed by its own personnel within MRO. Compliance Monitoring staff conducts audits and spot checks of compliance with Reliability Standards by registered entities. Risk Assessment and Mitigation undertakes an independent review of the facts and circumstances surrounding each violation discovered by Compliance Monitoring, and determines whether sufficient evidence supports each possible violation. Risk Assessment and Mitigation works with the registered entity to develop an effective mitigation plan in the event that a violation is confirmed. Confirmed violations move to the Enforcement department staff,

who review recommendations made by Risk Assessment and Mitigation staff, verify all relevant facts, and evaluate appropriate enforcement actions. The factual review conducted by Risk Assessment and Mitigation and Enforcement staff is intended to ensure a consistent, accurate application of the NERC reliability standards. The three-step process also provides for segregation of duties, establishing independence among those making the findings, those assessing risk, and those determining and negotiating penalties and sanctions. MRO believes that this process provides a high level of assurance that determinations are accurate, fair and non-discriminatory.

224. *NERC views NPCC as effective in that it is processing and completing identified violations in a timely manner. However, NERC is concerned that NPCC's low level of alleged violations per registered reliability function may indicate that NPCC is not identifying all violations that are occurring. NERC points out that, among the Regional Entities, NPCC had the second highest number of FTEs committed to the compliance program and the highest ratio of registered functions per compliance FTE as of the Performance Assessment filing date. NERC states that it will continue to work with NPCC to improve its process for compliance violation investigations.*

NPCC continues to have a low level of alleged violations per registered reliability function; however, the ratio is in line with several of the other Regional Entities. NPCC credits in part its low level of alleged violations per registered reliability function to its thorough outreach and communication both on an individual basis and through workshops and other forums with the registered entities within its Region. Such outreach assists the registered entities in their compliance activities and enhances reliability. In addition, by the end of the assessment period, while NPCC had the lowest number of FTEs committed to the compliance program and the highest ratio of registered functions per compliance FTE, it supplemented its compliance program with independent contractors that perform many of the compliance duties. In this manner, NPCC has been able to build a very cost effective compliance program. NPCC welcomes ERO-wide collaboration on improvements to the process for compliance violation investigations and other process related issues, and is actively involved in RAI-related projects, including running “pilots” on analyzing registered entities’ internal controls, the auditor check list and workbook, and the transition from CIP version 3 to version 5.

225. *NERC and its outside auditing firm independently audited RFC's compliance program and found no material deficiencies. NERC observes that RFC was the first Regional Entity to receive approval from the NERC Board of Trustees Compliance Committee for a notice of penalty that imposed a non-zero dollar penalty. NERC notes that RFC does need to find ways to increase its efficiency with respect to conducting enforcement activities.*

Since 2009, ReliabilityFirst has taken several steps to increase its efficiency with respect to conducting enforcement activities.

First, ReliabilityFirst has internal violation processing goals that are tied to its overall corporate goals. Second, enforcement staff members hold regular meetings to discuss their plans to meet these violation processing goals. At these meetings, enforcement staff members provide projected timeframes for the resolution of their matters, and are held accountable to those

timeframes. Third, ReliabilityFirst has held formal and informal meetings to better focus enforcement staff on how to tailor their fact gathering efforts and resolving documents to only relevant information. As a result, enforcement staff became more efficient at resolving violations in a shorter amount of time. Fourth, ReliabilityFirst has focused its efforts on those violations that pose the greatest risk to reliability, and expedited its processing of lesser risk violations via the FFT process. To date, ReliabilityFirst has processed approximately 330 FFTs. (Even prior to the FFT process, ReliabilityFirst followed an internal “fast track” process, where it expedited the processing of minimal risk violations in a separate internal process from its other violations.)

ReliabilityFirst’s efforts to increase its efficiency in the enforcement process were successful, and to date, ReliabilityFirst has processed over 1,400 alleged violations through NERC and the Commission. The volume of compliance work at ReliabilityFirst has increased significantly since the 2009 self-assessment,¹⁴² but ReliabilityFirst has nevertheless become more efficient at processing violations. As a result, ReliabilityFirst has not only kept up with its caseload, but has simultaneously refined its approach to better focus its efforts on high risk violations and ensuring that major reliability enhancements result from their corresponding enforcement actions. ReliabilityFirst staff’s focus on high risk violations is fundamental to regulatory effectiveness as it is critical to prevent staff at the Regional Entities from spending unnecessary amounts of time on minimal risk issues, so they can focus on the high risk issues that are critical to reliability.

*226. NERC views **SERC** as an effective Regional Entity. NERC audited SERC’s compliance program and did not find any material deficiencies, but urges SERC to improve on its timeliness in issuing notices of alleged violation. NERC notes that SERC continues to use industry volunteer subject matter experts in addition to its own staff on compliance audits.*

SERC made significant progress during the assessment period to address the concerns raised in 2009. For example, in order to improve violation processing cycle time, SERC staff developed a comprehensive plan that included increasing productivity, improving process and tools, and reviewing staffing levels. This plan was unanimously approved by the SERC Board Executive Committee.¹⁴³ Furthermore, SERC implemented process improvements in order to

¹⁴² In 2009, ReliabilityFirst received 169 new violations, and in 2010, this number jumped to 453 violations. In 2011, ReliabilityFirst received 514 violations, in 2012, ReliabilityFirst received 549 violations, and as of August 9, 2013, ReliabilityFirst received 520 violations.

¹⁴³ In 2011, SERC removed some collateral duties from Enforcement staff to ensure a focus on violation processing and reduced the ancillary meetings attended by Enforcement staff by 50%. In 2011, SERC developed a corporate metric focused on improving violation processing time, increasing the average number of determinations completed per full-time equivalent (FTE) from 1.4 determinations per month to 4 determinations per month. In 2012, SERC developed a corporate metric focused on improving violation processing to continue its work towards achieving a 12 month violation processing cycle time for Planning and Operating issues. In 2013, SERC developed a corporate metric focused on improving CIP violation processing to continue its work towards achieving a 12-month violation processing cycle time while

streamline the enforcement process and ensure that SERC has the necessary information to conduct a thorough and timely assessment. These improvements included automation of notification and letters, increased use of requests for information, seminars and outreach, simplified review steps for violation processing, continued use of streamlined enforcement processing (FFT and SNOP), and expanded capabilities for access to CIP evidence and data.

In addition to the increased focus on productivity and process improvements, SERC also has worked to implement organizational efficiencies. To this end, SERC restructured Enforcement staff after a review of other regional structures. Enforcement now reports directly to the Vice President and Chief Program Officer, which removes a redundant reporting structure and serves to elevate Enforcement in the organization, given its priority at SERC. SERC has also reviewed its staffing levels and has increased the number of Enforcement staff focused on CIP issues based on the increase in CIP possible violations reported to the region.

As a final matter, with respect to SERC's use of volunteer industry subject matter experts, during the assessment period, the Commission reviewed SERC's use of volunteer industry subject matter experts ("ISMEs") on compliance audits as part of its audit of SERC (FERC Docket No. FA12-6-000). FERC found that SERC's use of ISMEs was consistent with the NERC ROP, but did recommend that SERC: (1) revise its process, procedures, and controls regarding ISME participation in compliance activities and ensure SERC has an adequate and detailed set of policies governing ISMEs' participation in compliance activities; and (2) ensure greater awareness of SERC's ongoing training and education programs and use the feedback from ISME participation in compliance activities to better focus these outreach programs. SERC has committed to implement the recommendations contained in the FERC audit report.

227. As of the filing date of the Performance Assessment, NERC views SPP Regional Entity as less effective in administering its compliance program than some other Regional Entities. NERC commends SPP Regional Entity for its ability to accurately identify high risk violations, but is concerned about SPP Regional Entity's ability to process alleged violations to completion in a timely manner and its situational awareness capabilities. NERC notes that SPP Regional Entity has been unaware of events that occurred within its footprint, while NERC and the Commission were aware of those events. NERC states that among the Regional Entities, SPP Regional Entity stands eighth in FTEs committed to the compliance program and second in the number of registered functions per compliance FTE.

SPP RE has significantly reduced the amount of time it takes to process alleged violations to completion. Prior to January 1, 2009, SPP RE's average time to process alleged violations to completion was 24 months, compared to 9.2 months (as of June 30, 2013). The reduction is due to a number of factors, including developing internal Enforcement procedures, streamlining

maintaining a 12 month or less violation processing cycle time for Planning and Operating issues. In addition, SERC provides an ongoing interface and training for Enforcement, legal, and audit staff to allow for discussion of Lessons Learned and feedback to improve violation assessments and risk statements.

internal Enforcement processing procedures, and increasing the Enforcement staff.¹⁴⁴ SPP RE staff members have also taken several steps to increase their awareness of system events within the Region. These steps include SPP RE staff's registering to receive RCIS information and NERC Alerts, and their receiving and reviewing the SPP RTO Daily Operations Report, the NERC Situational Awareness Morning Report, and the NERC BPS Awareness Daily Report. In addition, SPP RE participates on weekly situational awareness calls with NERC staff, and has increased its outreach through workshops, webinars, newsletters, and personal communication to encourage reporting of events.

228. *NERC rates TRE as an effective Regional Entity, commending TRE for focusing on identifying higher risk violations and noting that TRE excels in processing alleged violations through completion. NERC does have questions about a contrast between TRE's high percentage of "failure to perform" violations and low number of violations TRE has recommended for a non-zero dollar penalty. NERC states that it will continue to explore these concerns with TRE.*

In 2007 and 2008, Texas RE recommended zero-dollar penalties in most cases because the Reliability Standards were new and registered entities were still learning how to comply with them. In 2009, in an effort to deter noncompliance, Texas RE began recommending more non-zero dollar penalties for "failure to perform" violations. However, in 2010 Texas RE implemented the Administrative Citation NOP process and by 2012 Texas RE adopted the FFT program. Using the Administrative Citation process and FFT processes, Texas RE stopped recommending monetary penalties for issues involving "failure to perform" if the issues presented low risk to reliability and had been mitigated.

231. *NERC states that WECC is "one of the less effective Regional Entities" to date, but notes that WECC made significant progress in the spring of 2009, particularly with respect to processing a backlog of violations. NERC points out that although, as of the Performance Assessment filing date, WECC had the highest level of FTEs committed to the compliance program among the Regional Entities, WECC had the fourth highest ratio of registered functions to compliance FTEs. NERC notes that, due to the violations processing backlog, WECC cancelled all compliance audits scheduled for the fourth quarter of 2008 without coordinating with NERC. According to NERC, WECC also took several other unilateral actions, including issuing compliance bulletins containing Reliability Standards interpretations and/or guidance. NERC indicates that it will continue to work with WECC to resolve these issues. NERC also suggests that WECC create stronger separation between its compliance encouragement efforts and its enforcement activities, examine its staffing levels and compliance processes and stay focused on processing violations to completion. (Footnote omitted.)*

WECC has thoughtfully and thoroughly addressed each of the areas of concern identified in the Three Year Assessment and the 2010 Order. First, WECC cleared all of its pre-2012 violations caseload by December 31, 2013. As reported to the NERC Board in September 2013,

¹⁴⁴ Since January 1, 2009, SPP RE has increased its Enforcement staff from one full-time employee (FTE) to ten FTEs and one part-time employee, and has steadily decreased the number of registered functions per compliance FTE to 11.62 (2013 figure).

WECC has a caseload index of 8.3 months, ranking third among the Regional Entities.¹⁴⁵ Second, WECC completed all audits contemplated in its annual Implementation Plans. Specifically, during the assessment period, WECC conducted 598 audits and 62 spot checks. The number of audits increased from 90 in 2009 to 165 in 2013, an increase of 83 percent. Third, WECC developed and maintains a highly qualified Compliance staff, which increased from 31 to 57 during the assessment period. To further improve its compliance capabilities, in 2013, WECC launched an audit tracking system to assure timely audit completion and document integrity. WECC's internal metric for providing final audit reports to registered entities is 60 days after the close of the audit, a goal which was met 97 percent of the time. Fourth, WECC enhanced, streamlined and documented all of its Enforcement processes, an effort aided by using dedicated subject matter experts and tools such as FFT and expedited settlement agreements. As a result, by the end of the assessment period, WECC was able to process violations from intake through filing with NERC in less than five months, on average. Fifth, WECC successfully implemented new IT solutions and systems, and provided extensive training to registered entities on the new systems. Sixth, WECC expanded and enhanced its compliance encouragement and outreach efforts while ensuring "adequate separation between compliance encouragement efforts and its enforcement activities." This was accomplished in part by personnel changes and strengthening the role of the director of stakeholder outreach. Finally, WECC worked collaboratively with the other Regions and NERC to bring forward the Omnibus proposal; proposed Rules of Procedure changes to streamline TFE processing; developed new Registration system tools; and actively participated in several ongoing NERC IT projects, lending expertise and practical experience.

SPP Independence

In the 2010 Order, the Commission laid out its initial concerns about the possible conflicts of interest between SPP RE and SPP RTO, and emphasized the heavy burden on SPP RE to demonstrate a strong separation of functions between the two organizations.¹⁴⁶ As a consequence, the Commission had required NERC to provide an appropriate discussion of SPP RE's bylaws in its first performance assessment. In response to NERC's submission, the Commission generally found that SPP RE had achieved sufficient separation from SPP RTO, citing in particular SPP RE's efforts to ensure that its standards development process was not unduly influenced by the RTO.¹⁴⁷ While the Commission's analysis in the 2010 Order does not necessarily require a further response at this time, SPP RE would like to point out that the Commission's second audit of SPP RE, which was finalized in 2011, reinforced the adequacy of

¹⁴⁵ The caseload index refers to a NERC metric that computes the number of months that it takes to clear the violations that are either in the Region's inventory, NERC's inventory, or the ERO's inventory based upon the respective average monthly processing rate over the preceding 12-month period. This metric is used to evaluate the efficiency of processing violations over time.

¹⁴⁶ See 132 FERC ¶ 61,217 (2010), at P 232.

¹⁴⁷ See *id.* PP 237-241.

Regional Entity's separation from the RTO.¹⁴⁸ Among other things, the second audit report described how SPP RE's General Manager is the primary contact between NERC and SPP RE, with responsibility for administering SPP RE's programs under the Delegation Agreement. The report also described how SPP RE is governed by three independent trustees who operate separately from the SPP RTO board of directors, and that SPP RE trustees have autonomy over decisions in fund allocation and approval of SPP RE's budget, as well as oversight of SPP RE decisions on regional Reliability Standards, compliance enforcement actions, and penalties. In addition, as the report set out, SPP RE's organizational structure makes it independent from the RTO in its performance of CMEP functions while linking with shared resources to use their expertise when performing delegated functions outside of the CMEP. Finally, the report detailed how SPP RE has reduced its reliance on shared staff and increased the number of full-time employees since January 1, 2009.¹⁴⁹

WECC Voting Structure

In the 2010 Order, the Commission took note of some initial concerns that NERC had regarding the effectiveness of WECC's stakeholder voting structure, but that those concerns had been largely allayed by changes to WECC's bylaws and its process for developing and approving regional Reliability Standards.¹⁵⁰ WECC continues to improve its regional Reliability Standards development process. For example, on March 1, 2012, the Commission approved WECC's revised *Reliability Standards Development Procedures*, which call for voting by eligible members of the WECC Ballot Body rather than by a lead Standing Committee of WECC. In addition, WECC has developed a web-based system for balloting, and make all the proceedings of the standards drafting teams available using WECC's website. Available information includes notification of meetings, team meeting agenda and minutes, draft and final documents and supporting documents. Finally, WECC strives for continuous improvement and is always open to feedback from the various committees, standards drafting teams, and stakeholders at large.

¹⁴⁸ See generally *Audit of Regional Entity Operations at Southwest Power Pool (SPP) for Compliance with its Bylaws, Delegation Agreement, Membership Agreement, and its Independence as an Regional Entity*, Final Audit Report, Delegated Order (October 5, 2011).

¹⁴⁹ See *id.*, at pp. 5-7.

¹⁵⁰ See 132 FERC ¶ 61,217 (2010), at P 243.

Appendix C
Regional Entities' Satisfaction of Statutory and Regulatory Criteria

During the 2009-2014 assessment period, all eight Regional Entities continued to satisfy the three sets of criteria set out in Section 215(e)(4) of the FPA, 16 U.S.C. § 824o (e)(4), as reiterated in Section 39.8 of the Commission's regulations, 18 C.F.R. § 39.8 (2013), to maintain the authority delegated to them by the ERO, as approved by the Commission, to propose and enforce mandatory Reliability Standards. The three sets of criteria are:

1. The Regional Entity is governed by an independent board, a balanced stakeholder board or a combination independent and balanced stakeholder board.
2. The Regional Entity meets the requirements otherwise applicable to the ERO in Section 215(c)(1) and (2) of the FPA, 16 U.S.C. § 824o(c)(1)(2), namely that it (a) has the ability to develop and enforce reliability standards that provide for an adequate level of reliability of the bulk-power system; and (b) has established rules that (i) assure its independence of the users and owners and operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors and balanced decision-making in any ERO committee or subordinate organization structure, (ii) allocate equitably reasonable dues, fees, and other charges among end users for all activities, (iii) provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties, (iv) provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties, and (v) provide for taking appropriate steps to gain recognition in Canada and Mexico,
3. The Regional Entity operates under a Delegation Agreement that promotes effective and efficient administration of bulk-power system reliability.

Specifically, the eight Regional Entities continued to satisfy the statutory and regulatory criteria for their delegated authority as follows:

Florida Reliability Coordinating Council (FRCC)

1. **FRCC “is governed by an independent board, a balanced stakeholder board or a combination independent and balanced stakeholder board.”** The FRCC board of directors (“FRCC Board”) is a balanced stakeholder board. The FRCC Board has a minimum of sixteen (16) members, who are allocated among the Region's six sectors, and the CEO. The sector representation is as follows: three directors from the Suppliers Sector, two directors from the Non-Investor Owned Utility Wholesale Sector, two directors from the Load Serving Entity Sector (one Municipal and one Cooperative), three directors from the Generating Load Serving Entity Sector, three directors from the Investor Owned Utility Sector, and two directors from the General Sector. FRCC's CEO is an ex-officio non-voting director. Directors are elected by their sector and serve two-year terms.
2. **FRCC meets the requirements of Federal Power Act Section 215 (c)(1)(2), because:**

- a. FRCC is able to develop and enforce reliability standards that provide for an adequate level of reliability of the bulk power system.** The FRCC has a RRSDP that is based on the set of common attributes that provide for an open, balanced, fair, transparent and inclusive process. During the assessment period, FRCC placed two standards development projects on hold awaiting the completion of NERC standards development projects, and terminated one project as NERC's continent-wide standard was determined to be sufficient for FRCC reliability needs. Finally, FRCC's Registered Ballot Body and Board approved one project, which was nevertheless held in abeyance while the adequacy of the NERC continent-wide standard was evaluated, and will be withdrawn if the NERC standard is determined to be sufficient for FRCC's needs. FRCC prefers the development of continent-wide standards, but will follow its RRSDP should a need arise for a more stringent standard or a standard to cover an area that NERC standards do not.

Compliance monitoring and enforcement of Reliability Standards is carried out by FRCC compliance staff which grew during the assessment period. FRCC enforcement staff began reporting directly to the Vice President and Executive Director of Standards and Compliance in 2012, while the monitoring staff continued to report to the FRCC Director of Compliance. FRCC implemented this separation to provide more independence in enforcement decisions.

FRCC took additional steps to enforce reliability standards and provide an adequate level of reliability for the BPS. For example, its Compliance staff developed approximately 30 detailed internal procedures for all aspects of the compliance process, which were regularly reviewed and updated. These procedures helped promote consistent and effective application of its internal procedures and ensured that it met the obligations in the NERC ROP. In addition, FRCC upgraded its compliance portal application in 2012, to provide needed enhancements to protect security of the application and data held within the application along with providing some desired improvements in the use of many of its components.

FRCC improved its enforcement caseload processing during the assessment period, and also experienced a reduction of new violations in the last two years of that period. FRCC attributes the reduction in new violations in part to increased understanding of the registered entities in what the requirements mean and what their compliance expectations are. In addition to this reduction, FRCC worked hard to streamline its enforcement activities to utilize the available processes and were able to reduce its caseload index to approximately 6.5.

- b. FRCC has established rules that:**
- i. Assure its independence of the users and owners and operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors and balanced decision-making in any ERO committee or subordinate organization structure.** During the assessment period, FRCC implemented an Annual Employee Recital and Disclosures, which includes a copy of the FRCC Conflict of Interest Policy and a process

where each employee signs a Conflict of Interest Questionnaire, a Disclosure Statement of Stock Ownership of FRCC Member Companies and a Non-Disclosure Acknowledgement. As previously described, the governance of the FRCC is performed by a balanced stakeholder board, which assures fair stakeholder representation while also practicing balanced decision making where no one sector can block or no two sectors can pass any decision.

- ii. **Allocate equitably reasonable dues, fees, and other charges among end users for all activities.** The funding for the FRCC Regional Entity Division is allocated among the FRCC Load Serving Entities through a formula which is based on NEL. Each entity reports, on an annual basis, the NEL for the previous year. After the FRCC reviews this information, it is provided to NERC as part of the business plan and budget development process. The FRCC develops an annual budget each year, which is based on common assumptions that have been developed collaboratively by NERC and the eight Regional Entities, and which provides for the resources to carry out all of its delegated functions. The budget and accompanying LSE assessments are approved by the FRCC Board, the NERC Board, and the Commission.
- iii. **Provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties.** The FRCC has adopted the NERC CMEP, **Appendix 4C** to the NERC ROP. This is the primary document that the FRCC uses to provide fair and impartial procedures for enforcement. With respect to the calculation of penalties, the FRCC consistently uses the penalty calculator tool provided by NERC in order to provide a consistent application of the penalty and sanctions guidelines. In addition, the FRCC Board and their alternates are required to sign a Code of Conduct that obligates each of them to act in the best interest of FRCC and refrain from involvement in any situation where there is an actual or potential conflict of interest. In addition, since the FRCC Board is a balanced stakeholder board, FRCC does not allow members of the board to participate directly in settlement discussions with FRCC on behalf of their registered entities to avoid any conflict of interest or undue influence situation.
- iv. **Provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties.** FRCC has a RRSDP that is based on the required set of common attributes that provide for an open, balanced, fair, transparent and inclusive process. The process has the following characteristics:
 - Due Process—Any entity that is directly and materially affected by the reliability of the FRCC BPS has a right to participate in this process.
 - Openness—Participation is open to any entity that is directly and materially affected by the reliability of the FRCC BPS. Participation

is not conditional upon membership in the FRCC. All FRCC RRS DP meetings will be open and noticed on the FRCC website.

- **Balance**–The FRCC RRS DP process shall have a balance of interests and shall not be dominated by any two interest categories and no single interest category shall be able to defeat a matter.

The FRCC also provides reasonable notice and opportunity for public comment in its compliance monitoring and enforcement activities as required by the CMEP and the NERC Rules of Procedure.

- v. **Provide for taking appropriate steps to gain recognition in Canada and Mexico.** This criterion is not applicable to the FRCC region.

3. **FRCC operates under a delegation agreement that promotes effective and efficient administration of bulk-power system reliability.** On June 12, 2012, the Commission approved the amended and restated FRCC Delegation Agreement which incorporated benefits of NERC’s and FRCC’s mutual experience and Lessons Learned while operating under the predecessor agreement. The revised Delegation Agreement provides for more efficient and effective execution of responsibilities that promote the reliability of the BES. These responsibilities include: development and proposal of Reliability Standards, enforcement of compliance with Reliability Standards, certification of BPS entities, registration of owners, operators and users of the BPS, reliability assessment and performance analysis, event analysis and reliability improvement, training and education and situation awareness and infrastructure security.

Midwest Reliability Organization (MRO)

1. **MRO “is governed by an independent board, a balanced stakeholder board or a combination independent and balanced stakeholder board.”** During most of the assessment period, MRO was governed by a balanced stakeholder board. On June 25, 2012, the Commission approved MRO’s proposal to change from a balanced stakeholder board to a combination independent and balanced stakeholder board. MRO’s two independent board members were elected for terms beginning January 2013; they bring cyber and data security expertise to the MRO Board’s set of executive and technical skills and expertise.
2. **MRO meets the requirements of Section 215 (c)(1)(2) of the Federal Power Act, because:**
 - a. **MRO is able to develop and enforce reliability standards that provide for an adequate level of reliability of the bulk power system.** MRO supports the development of continent-wide standards to maintain the reliable operations of the BES as opposed to regional Reliability Standards, particularly in the Eastern Interconnection, and decided during the assessment period to forego the development of regional standards. Nevertheless, MRO has a RRS DP manual, which is found in Exhibit C to its Delegation Agreement with NERC, and a stakeholder Standards Committee comprised of subject matter experts in the event there was a need for a regional Reliability Standard in the future.

MRO also has the requisite staff both in terms of number of people and expertise, and adequate processes and procedures, to enforce the operating and CIP Reliability Standards. Notably, during the assessment period, MRO split the CMEP function into three distinct steps with their own assigned personnel—Compliance Monitoring, Risk Assessment and Mitigation, and Enforcement. Compliance monitoring staff conducts audits and spot checks of compliance with reliability standards by registered entities. Risk Assessment and Mitigation undertakes an independent review of the facts and circumstances that surround each violation discovered by Compliance Monitoring, and determines whether sufficient evidence supports each possible violation. Risk Assessment and Mitigation also works with the registered entity to develop an effective and comprehensive mitigation plan in the event that a violation is confirmed. Confirmed violations move to the Enforcement department staff, who review recommendations made by Risk Assessment and Mitigation staff, verify all relevant facts, and evaluate appropriate enforcement actions.

The factual review conducted by Risk Assessment and Mitigation and Enforcement staff is intended to ensure a consistent, accurate application of the NERC reliability standards. The three-step process also provides for segregation of duties, establishing independence among those making the findings, those assessing risk, and those determining and negotiating penalties and sanctions. As a result of this approach, registered entities in the MRO region accept responsibility in 90% of all violations and settlements are reserved only for the more complicated compliance matters (thus, expediting less serious violations and lowering administrative costs).

b. MRO has established rules that:

- i. Assure its independence of the users and owners and operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors and balanced decision-making in any ERO committee or subordinate organization structure.** In particular, MRO assures the independence of the users and owners and operators of the BPS by establishing processes and procedures for the conduct of its work. For example, by having a three-step process to implement the CMEP, MRO assures that its internal work is subjected to review and validation. MRO also has specific policies that prevent stakeholder conflicts of interest and prevent stakeholders from participating in its CMEP work. In addition, all MRO members elect the two independent directors; the remaining directors are elected by his or her sector.

- ii. Allocate equitably reasonable dues, fees, and other charges among end users for all activities.** MRO's funding requirements are equitably allocated in a manner similar to the one used by the other Regional Entities. Each year, MRO develops an annual business plan and budget that describes in detail the resources MRO needs to carry out its delegated functions. The annual business plan and budget is reviewed and approved by the MRO Board and then submitted to NERC and ultimately filed with the Commission for

approval. Assessments are made to MRO's Load Serving Entities through a formula which is based on NEL. MRO does not charge additional fees to be a member or to participate in its training. The annual business plan and budget as well as annual audits by independent auditors and periodic audits by FERC help ensure that MRO's expenses and assessments to end users are reasonable.

- iii. **Provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties.** To ensure fair and impartial procedures, as described above, MRO has implemented a three-step approach to fulfill its delegated responsibilities under the CMEP. MRO Compliance Monitoring staff conducts compliance monitoring activities, including audits, self-certifications, and spot checks. Risk and Mitigation staff is responsible for scoping MRO's compliance monitoring work under the RAI. Risk and Mitigation staff also works with the Entity to develop a thorough, comprehensive, and effective mitigation plan, not only to resolve the concern but to prevent recurrence of the noncompliance. MRO Enforcement staff completes the process by reviewing any recommendations from MRO Risk Assessment and Mitigation staff, verifying that all relevant facts have been gathered, and evaluating the possible violation for the appropriate enforcement action.

There are many factors which may affect a penalty determination. MRO does not utilize the penalty calculator/SIV tool for most minimal risk concerns, as those violations are currently resolved through the FFT process and under RAI, they will be primarily resolved as compliance exceptions outside the enforcement process. The penalty calculator/SIV tool is used as a resource for violations that pose greater risk. As a result of the extensive risk assessment conducted by MRO Risk Assessment and Mitigation staff, Enforcement is able to make fair, accurate and reasonable enforcement decisions scaled on the risk posed by an individual violation – the greater the risk, the greater the penalty and scrutiny of review and approval.

In addition MRO has policies and procedures to avoid conflicts of interest in its CMEP work. Those policies and procedures provide:

- (1) No MRO director or member of MRO committees may participate in any way in compliance violation investigations, compliance audits, reports, sanction determinations, or other matters within the CMEP.
- (2) An MRO director or member of an MRO committee may engage in actions on behalf of his or her employer regarding a compliance monitoring and enforcement matter undertaken by MRO; however, that director or member of an MRO committee must recuse himself or herself from any board or committee decisions, meetings, and actions related to that compliance monitoring and enforcement matter. Potential concerns about the participation of a MRO director or member of an MRO committee are brought to the attention of the President and CEO who will

seek an appropriate resolution of the matter with the advice and counsel of the independent directors.

- iv. **Provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties.** MRO does not have any regional Reliability Standards and does not anticipate developing any regional Reliability Standards because of its strong support for continent wide, or at least interconnection wide, standards. Nevertheless, MRO has a RRSDP manual which has been approved by NERC and FERC. This RRSDP manual is based on the set of common attributes that provide for an open, balanced, fair, transparent and inclusive process, and includes specific provisions relating to the process for the opportunity to comment and be heard.
- v. **Provide for taking appropriate steps to gain recognition in Canada.** MRO operates under provincial Manitoba regulations which were adopted in 2012.¹⁵¹ Prior to the adoption of regulations, MRO had a memorandum of understanding with Manitoba Hydro.

During the assessment period, MRO also had a memorandum of understanding with Saskatchewan Power Corporation and NERC governing MRO's work in Saskatchewan, Canada.

3. **MRO operates under a delegation agreement that promotes effective and efficient administration of bulk-power system reliability.** MRO has adopted principles associated with the theory of a “Highly Reliable” organization in its approach to its delegated responsibilities, an approach that has positioned MRO and its registered entities to move to the risk based approach contemplated by the RAI. These principles recognize risk, and emphasize self-monitoring with strong corrective action programs. The approach has fostered greater engagement with registered entities to solve technical problems and resulted in a corporate theme—clarity, assurance, and results (“CAR”). Clarity sets clear expectations for registered entities on the technical requirements of the standards. Assurance measures performance against these key requisites. Results can be seen in improved reliability. For example, MRO leveraged the technical expertise of subject matter experts on stakeholder-led committees to develop application guides for NERC standards that provide clear expectations of compliance. While these application guides are not authoritative, they provide much needed direction on compliance requirements. As a result, MRO has seen a measurable drop in the frequency and severity levels of violations in higher risk standards, beginning with the most violated standard several years ago, PRC-005-8.

Additionally, during the assessment period, an MRO stakeholder-led committee developed an internal controls and procedures framework for use by registered entities to strengthen their internal compliance programs. These types of guidelines provide the necessary clarity

¹⁵¹ See <https://web2.gov.mb.ca/laws/regs/pdf/h190-025.12.pdf>.

to industry to assure that key reliability requirements are met. This has now become part of a pilot project under RAI.

Registered entities, too, need to provide “assurance” to MRO staff that they understand the requirements and have established sustainable management practices to detect, correct, report, and prevent problems. For example, MRO staff sampled self-reported violations from 2013. In 90% of these violations, the registered entity’s assessment of risk matched MRO’s staff assessment of risk. When registered entities and MRO staff view risk the same way and accept responsibility, they have greater day-to-day, sustainable assurance.

Northeastern Power Coordinating Council (NPCC)

1. **NPCC “is governed by an independent board, a balanced stakeholder board or a combination independent and balanced stakeholder board.”** On October 17, 2011, the Commission approved NPCC’s proposal to change its board to a hybrid (combination independent and balanced stakeholder) board. That change became effective on January 1, 2012. NPCC’s board of directors consists of seven stakeholder voting sectors that each consist of a maximum of two directors per sector, an independent sector consisting of two independent directors, an independent board chair with voting rights to preclude board deadlocks, and the President and CEO. Within NPCC, no two sectors can control and no one sector can block action.
2. **NPCC meets the requirements of Section 215(c)(1)(2) of the Federal Power Act, because:**
 - a. **NPCC is able to develop and enforce reliability standards that provide for an adequate level of reliability of the bulk power system.** NPCC has developed a RRS DP that provides the design-basis approach to a consensus building process by which NPCC may develop regional Reliability Standards and regional variances to be proposed to the ERO for adoption, under delegated authority by the FERC and the Canadian provincial regulatory and/or governmental authorities. This procedure contains common attributes that provide for an adequate level of reliability to provide for an open, balanced, fair, transparent, and inclusive standards development process. NPCC’s RRS DP sets forth the structure for developing reliability standards that provide for an adequate level of reliability.

Illustratively, during the assessment period, NPCC developed a Disturbance Monitoring Regional Reliability Standard, PRC-002-NPCC-01, to ensure that adequate disturbance data is available to facilitate BES event analyses. The Reliability Standard addresses a specific recommendation from the *August 14, 2003 Blackout Final NERC Report - Conclusions and Recommendations* (July 13, 2004) regarding the use of time-synchronized data recorders.¹⁵² Substantively, the Reliability Standard outlines the basic requirements for the type, location and capability of equipment to be placed on the power system to enable the analysis of grid disturbances effectively and efficiently. The Reliability Standard is intended to

¹⁵² See <http://www.nerc.com/pa/rrm/ea/Pages/Blackout-August-2003.aspx>.

fill the reliability gap related to disturbance monitoring and reporting by establishing enforceable disturbance monitoring and reporting requirements for the NPCC region.

Compliance and enforcement activities are carried out by the NPCC compliance staff and are independent of all users, owners and operators of the international BPS and from the hearing officer. Compliance and enforcement activities are governed in the U.. by the Delegation Agreement between NERC and NPCC, delegating portions of NERC's authority as the ERO to NPCC. In addition, pursuant to an agreement between NPCC and WECC that was approved by the Commission, NPCC assumed responsibility for the CMEP with respect to the WECC RC function and the WECC IA function from January 1, 2012 through the end of the assessment period.

Examples of NPCC's efforts to monitor compliance with, and enforcement of, the reliability standards include its use of extensive pre-audit data collection and pre-audit conference calls with the registered entities. NPCC staff thoroughly reviews the first round of data submittals, and via questions, routinely collects a second round of data from the registered entity before the audit is performed. From these pre-audit activities, NPCC is able to conduct a more targeted audit. This results in an efficient and effective audit for both NPCC and the registered entity. This efficiency also permits the auditors to drill down into other areas and to make recommendations to the registered entity for enhanced reliability performance. In addition, during the assessment period, developed an enforcement dashboard, highlighting the regional caseload index and the status of mitigation plans associated with high risk violations among other compliance parameters. The enforcement dashboard is an informational tool to both management and to the industry.

NPCC amended its hearing procedures to provide for a Hearing Body comprised of an independent hearing officer and two independent directors. As a result of the amendments, the hearing body will always be comprised of independent members and will not have stakeholder members to assure enforcement of reliability standards provides for an adequate level of reliability.

b. NPCC has established rules that:

- i. Assure its independence of the users and owners and operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors and balanced decision-making in any ERO committee or subordinate organization structure.** The rules and procedures contained in the Delegation Agreement, ROP, Amended and Restated NPCC Bylaws and other NPCC committee governance documents assure the independence of the users and owners and operators of the BPS while assuring fair stakeholder representation and balanced decision-making at the same time. Fair stakeholder representation and participation is assured by NPCC's committees, subcommittees, task forces and other groups as the board of directors may deem appropriate. Industry technical experts from within the membership also provide valuable input to the board through various working groups and task forces as well as the committees.

- ii. **Allocate equitably reasonable dues, fees, and other charges among end users for all activities.** The allocation of dues, fees, and other charges by NPCC is governed by Article XIII of its Bylaws. Funding of Regional Entity division activities are undertaken pursuant to Section 215 of the FPA in accordance with the funding provisions and procedures of that law and related FERC regulations and orders. The NPCC board of directors approves the annual Business plan and Budget in time for submission to the ERO and to FERC for approval. NPCC funds reliability activities in Canadian Provinces pursuant to the mechanisms established by the applicable Canadian provincial regulatory authority. Budgets for the costs of reliability activities are allocated equitably based on the NEL and other relevant factors consistent with applicable law, the Delegation Agreement, and any agreements with Canadian provincial authorities. NPCC members are not assessed an annual membership fee. For NPCC's Criteria Services division, which establish and monitor regional-specific non-statutory criteria, Full Members that perform the Balancing Authority function are assessed and pay based upon a NEL. Special assessments for Criteria Services may be separately budgeted to Full Members that perform the Balancing Authority function or upon Full Members with Full Members' consent.
- iii. **Provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties.** The NERC ROP is the primary document that NPCC uses to provide fair and impartial procedures for enforcement. Additionally, NPCC has in place Conflict of Interest Guidelines that require each NPCC director, officer, and employee to avoid and refrain from involvement in situation where there is an actual conflict of interest, disclose any actual or potential conflicts of interest that may arise, recuse himself or herself from participation in any action involving an actual or potential conflict of interest, and refrain from voting on any actions where there is an actual or potential conflict of interest. In addition, NPCC's Code of Conduct, which applies to its officers, board of directors, employees, and all participants of NPCC committees, task forces, and working groups, requires each individual to recognize conflicts of interest that may arise and to take steps to disclose such conflicts of interest and to refrain from voting and/or influencing others with respect to such conflicts of interest. With respect to penalties, NPCC consistently uses the penalty calculator tool for consistency in penalty calculation determinations
- iv. **Provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties.** NPCC follows a RRSDP that provides that participation in the development of a regional Reliability Standard shall be open to all organizations that are directly and materially affected by the NPCC BPS reliability, that there shall be no undue financial barriers to participation, that participation shall not be conditioned upon

membership in NPCC or unreasonably restricted on the basis of technical qualifications or other such requirements. Meetings of drafting teams are open to the NPCC members and others.

Compliance and enforcement activities are carried out by the NPCC compliance staff and are independent of all users, owners and operators of the international BPS and from the hearing officer. Compliance and enforcement activities are governed in the U.S. by the Delegation Agreement between NERC and NPCC, delegating portions of NERC's authority as the ERO to NPCC. NPCC's hearing procedures provide for a hearing body comprised of an independent hearing officer and two independent directors.

- v. **Provide for taking appropriate steps to gain recognition in Canada and Mexico.** NPCC has MOUs in place with the Northeastern Canadian provinces (New Brunswick, Nova Scotia, Ontario, and Quebec). At the end of the assessment period, NPCC was in the process of updating and revising MOUs to respond to recent Canadian legislative and regulatory changes and initiatives.
3. **NPCC operates under a delegation agreement that promotes effective and efficient administration of bulk-power system reliability.** Effective January 1, 2012, NPCC executed an amended and restated Delegation Agreement, which delegated to NPCC certain activities pursuant to section 215 of the FPA. These delegated activities include certification of BPS Entities, registration of owners, operators, and users of the BPS as responsible for compliance with requirements of Reliability Standards, developing assessments of the reliability of the BPS, developing and maintaining, and collecting data in support of the development and maintenance of, reliability performance metrics and assessments of risks to the reliable operation of the BPS, conducting and coordinating event analysis, providing training and education to registered entities, and gathering and assessing situation awareness information. NERC has also delegated NPCC the authority to propose Reliability Standards, regional variances, or modifications thereof to NERC and to develop regional Reliability Standards. In summary, the Delegation Agreement promotes the effective and efficient administration of the BPS by clearly identifying the delegation of authority provided to NPCC.

ReliabilityFirst Corporation (RFC)

1. **RFC “is governed by an independent board, a balanced stakeholder board or a combination independent and balanced stakeholder board.”** RFC is governed by a combination independent and balanced stakeholder board, which consists of 14 directors: three are independent directors, three are at-large directors elected by all the industry sectors voting together as a single class, and eight are elected by their industry sectors (suppliers elect two directors, transmission companies elect two directors, RTOs elect one director, small LSEs elect one director, medium LSEs elect one director, and large LSEs elect one director).

2. **RFC met the requirements of Section 215 (c)(1) (2) of the Federal Power Act, because:**
- a. **RFC is able to develop and enforce reliability standards that provide for an adequate level of reliability of the bulk power system.** Although RFC no longer develops regional Reliability Standards in order to avoid duplication with the NERC continent-wide Reliability Standards, RFC has adopted a RRSDP, and has otherwise proved its ability to develop regional Reliability Standards, as illustrated by its development of RFC's BAL-502-RFC-02 (Planning Resource Adequacy Analysis, Assessment and Documentation), which was approved by the Commission on March 17, 2011.

RFC has sufficient staff with the requisite expertise to conduct compliance audits, investigations, spot checks, and other compliance reviews, and to enforce Reliability Standards as demonstrated in part by its performing over 290 audits and over 200 spot checks during the assessment period, and ensuring the mitigation of over 1,400 alleged violations of those standards. These enforcement activities have resulted in tangible improvements to the reliability of the BPS. To enhance its risk-determination process in enforcement, RFC developed a "Risk-Harm" process which, among other things, provided for technical experts to answer a series of questions about the risk and harm posed by each violation using a common scale to ascertain a quantified risk assessment for each violation. Additionally, for serious violations of the NERC Reliability Standards, RFC works with registered entities to implement substantial "above and beyond" activities to enhance reliability on their system and on the BPS.

- b. **RFC has established rules that:**
 - i. **Assure its independence of the users and owners and operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors and balanced decision-making in any ERO committee or subordinate organization structure.** As described earlier, RFC is governed by a combination independent and balanced stakeholder board. Pursuant to RFC's bylaws, no two industry sectors can control any RFC decision and no single industry sector can veto any RFC decision. This hybrid board structure assures RFC's independence, while still assuring fair stakeholder representation and balanced decision-making. To further assure RFC's independence of the users, owners and operators of the BPS, RFC has the following protections in place:
 - First, RFC adopted the NERC CMEP, **Appendix 4C** to the NERC ROP, which provides fair and impartial procedures for the monitoring and enforcement of Reliability Standards.
 - Second, all RFC employees and contractors sign and must adhere to Non-Disclosure and Confidentiality Agreements and Conflict of Interest forms, and RFC employees, contractors, and directors are governed by the RFC Conflict of Interest Policy, the RFC Code of

Business Conduct and Ethics, and Section 1500 of the NERC Rules of Procedure.

- Third, to ensure the independence of its staff and eliminate any potential conflicts of interest, RFC does not allow stakeholder participation in its compliance or enforcement activities (*i.e.*, a registered entity staff member may not be on an RFC audit or compliance investigation team).
 - Fourth, RFC does not allow its industry sector directors to participate in settlement discussions with RFC on behalf of their registered entity.
- ii. **Allocate equitably reasonable dues, fees, and other charges among end users for all activities.** The funding for RFC’s activities is equitably allocated among its end users and recovered through a formula based on NEL. Each year, RFC develops an annual business plan and budget, which describes the adequate resources needed for RFC to carry out its delegated functions. The annual business plan and budget and the assessments to the end users must be approved by the Commission. The annual business plan and budget process, the Commission’s approval of the assessments, and periodic financial audits by the Commission all ensure that RFC’s expenses and assessments to end users are reasonable.
- iii. **Provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties.** RFC has adopted the NERC CMEP, **Appendix 4C** to the NERC ROP, which provides fair and impartial procedures for the enforcement of Reliability Standards within RFC’s geographic boundaries. Additionally, RFC maintains the RFC Conflict of Interest Policy and the RFC Code of Business Conduct and Ethics to ensure the integrity and independence of its compliance and enforcement staff. To assess fair, impartial, and consistent penalties, RFC follows the *Sanction Guidelines*, as set out in ROP **Appendix 4B**.
- iv. **Provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties.** Although RFC no longer develops Regional Reliability Standards, RFC’s RRS DP provides for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in the development of reliability standards.

The RRS DP includes public notice and a comment period for any proposed standard, due consideration of those public comments, and a ballot of interested stakeholders. Participation in the standards development process is open to all entities that are directly and materially affected by reliability in the RFC region, and there are no undue financial barriers to participation. The standards development process is balanced: it may not be dominated by any

two interest categories, and no single interest category shall be able to defeat a matter.

RFC provides for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in its CMEP activities. A registered entity has the right to receive notice when it is placed on the NCR, and may appeal their registration to NERC and to the Commission.

The CMEP requires RFC to provide notice to a registered entity when it determines that the registered entity has violated a Reliability Standard, and the registered entity has an opportunity to respond. If a registered entity wishes to contest an alleged violation of a Reliability Standard or a penalty, it may request and receive a hearing, and may appeal the hearing decision to NERC. A registered entity also has the right to request a hearing to contest a twice-rejected mitigation plan or a remedial action directive.

At the conclusion of an enforcement matter, NERC publicly files a NOP with the Commission, which promotes openness and the opportunity for public comment. The ERO balances the interest in openness with the concern for the security of critical infrastructure information, and as such, all sensitive critical infrastructure information is redacted from all public NOP filings.

- v. **Provide for taking appropriate steps to gain recognition in Canada and Mexico.** This criterion is not applicable to RFC, as its geographic boundaries do not include any portion of Canada or Mexico.
3. **RFC operates under a delegation agreement that promotes effective and efficient administration of bulk-power system reliability.** Effective January 1, 2011, RFC executed an amended and restated regional Delegation Agreement with NERC, which delegated to RFC certain activities pursuant to FPA Section 215. These delegated activities include: certification of BPS entities; registration of owners, operators, and users of the BPS responsible for compliance with the requirements of Reliability Standards; reliability assessment and performance analysis; event analysis and reliability improvement; training and education; situational awareness and infrastructure security; the development and proposal of Reliability Standards to NERC; monitoring of compliance with Reliability Standards; and enforcement of compliance with Reliability Standards. These delegated activities are necessary for the effective administration of BPS reliability. RFC only performs those activities delegated to it under the Delegation Agreement. This ensures that RFC is not distracted by any other activities, and in turn promotes the efficiency and effectiveness of the corporation's efforts to improve reliability.

SERC Reliability Corporation (SERC)

1. **SERC “is governed by an independent board, a balanced stakeholder board or a combination independent and balanced stakeholder board.”** SERC is governed by a balanced stakeholder board. Stakeholders are classified by the SERC Board Executive

Committee in one of seven sectors (investor-owned utility sector, federal/state sector, cooperative sector, municipal sector, marketer sector, merchant electricity generator sector, and ISO-RTO sector). SERC's bylaws establish voting rules that ensure that no two sectors are able to approve a decision and that no one sector can veto a decision.

2. **SERC met the requirements of Section 215 (c)(1)(2) of the Federal Power Act, because:**
 - a. **SERC is able to develop and enforce reliability standards that provide for an adequate level of reliability of the bulk power system.**

Standards: The SERC RRS DP defines the process for the development, revision, reaffirmation, and withdrawal of regional Reliability Standards. The SERC RRS DP requires any proposed regional Reliability Standard to be more stringent than a continent-wide Reliability Standard, whether the regional Reliability Standard addresses matters that the continent-wide Reliability Standard does not or the regional Reliability Standard is necessitated by a physical difference in the BPS within the SERC region. SERC regional Reliability Standards are required to provide for as much uniformity as possible with continent-wide reliability standards. Proposed SERC regional reliability standards are subject to approval by NERC and FERC prior to becoming mandatory and enforceable within the SERC region.

SERC has one FERC-approved regional Reliability Standard, PRC-006-SERC-01, which addresses automatic underfrequency load shedding requirements. SERC currently is not developing any additional Regional Reliability Standards because the continent-wide NERC Reliability Standards are presently adequate for the SERC region. SERC also participates in the NERC Standards Committee, hosts biannual meetings of the SERC Standards Committee, and hosts specific commenting sessions for NERC Standards Projects as NERC requests comments, all of which involve the discussion of proposed changes to NERC Reliability Standards.

Compliance: SERC's authority to monitor reliability standards is based on the authority granted in its Delegation Agreement with NERC. SERC has the expertise on staff to conduct compliance audits, investigations, spot checks and other compliance reviews for the Operating, Planning, and CIP Reliability Standards. SERC develops and posts an annual CMEP implementation plan that is complementary to the NERC CMEP, but also addresses reliability issues specific to the SERC region. SERC builds upon the NERC actively monitored list and incorporates additional Standards or Requirements that relate to the SERC Region's BES. SERC utilizes off-site and on-site audits, spot checks, and other compliance monitoring methods to assess registered entity compliance with NERC Reliability Standards. Compliance prepares detailed reports on each audit and makes recommendations to Enforcement about possible violations of NERC Reliability Standards.

Enforcement: Over the past five years, SERC has demonstrated its ability to enforce Reliability Standards by processing approximately 800 alleged violations originating from audits, spot checks, self-certifications, complaints, self-reports, and compliance

investigations following the requirements of the CMEP and NERC ROP. Enforcement staff conducts a thorough assessment of all possible violations to determine whether there is a sufficient basis to allege a violation. If a sufficient basis exists, Enforcement staff determines the complete scope of the violation and the actual and potential risk to the reliability of the BPS. Enforcement staff reviews the registered entity's mitigating activities to ensure that the entity corrects the noncompliance and prevents recurrence. Enforcement staff also participates in settlement negotiations with the registered entity. If a registered entity challenges the findings of the violation and/or penalty, Enforcement staff would prosecute the case before the Board Compliance Committee, which acts as SERC's hearing body. SERC's processing of possible violations has improved because of increased resources and improved tools such as FFT and the SNOP filing mechanisms.

b. SERC has established rules that:

- i. **Assure its independence of the users and owners and operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors and balanced decision-making in any ERO committee or subordinate organization structure.** SERC's bylaws allow each SERC member company to appoint a director to SERC's board. The SERC Board Executive Committee is made up of 12 sector representatives from among the directors. All directors, alternate directors, and board committee representatives are required to comply with SERC's Standards of Conduct policy that prohibits participation in decisions that could pose a conflict of interest.

SERC's bylaws establish voting rules that ensure that no two sectors are able to approve a decision and that no one sector can veto a decision. These voting rules assure SERC's independence of the users, owners, and operators of the BPS. In addition, SERC has adopted the NERC CMEP, **Appendix 4C** to the NERC ROP, which provides fair and impartial procedures for the monitoring and enforcement of Reliability Standards. In addition, SERC employees and contractors sign non-disclosure and confidentiality agreements and conflict of interest forms.

- ii. **Allocate equitably reasonable dues, fees, and other charges among end users for all activities.** SERC develops a budget annually that will accomplish all delegated duties. The budget is reviewed and approved by SERC's board before going to NERC and FERC. The budget is paid by all registered entities based on their proportionate share, based on the NEL. Pursuant to Section 202 of the NERC ROP, NEL is the net generation of an electric system plus energy received from others less energy delivered to others through interchange. It includes system losses but excludes energy required for the storage of energy at energy storage facilities. Each entity reports the energy generated on an annual basis for the previous year. After verification by SERC, this data is provided to NERC. NERC produces an allocation of the budgets to each appropriate region.

- iii. **Provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties.** SERC has adopted without exception the NERC CMEP, **Appendix 4C** to the NERC ROP, and the associated *Sanction Guidelines*, ROP **Appendix 4B**, which provide fair and impartial procedures for the enforcement of Reliability Standards within the SERC region. SERC maintains a Conflict of Interest Policy to ensure the integrity and independence of its compliance and enforcement staff. To ensure consistency and remain fair, unbiased and balanced in assessing penalties, SERC follows the *Sanction Guidelines* of NERC, utilizes the NERC Penalty Tool to develop a proposed penalty, and compares the proposed penalty with similarly situated violations that have been filed with and approved by FERC. All proposed penalties are reviewed and approved by a technical peer group, legal counsel, the director of enforcement, and the SERC chief executive officer or vice president.
- iv. **Provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and other exercising its duties.** The SERC RRSDP requires SERC to provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in development reliability standards.

SERC provides for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in its CMEP activities. A registered entity has the right to receive notice when it is placed on the NCR, and may appeal its registration to NERC and to the Commission.

The CMEP requires SERC to provide notice to a registered entity when it determines that the Registered Entity has violated a Reliability Standard, and the registered entity has an opportunity to respond. If a registered entity wishes to contest an alleged violation of a Reliability Standard or a penalty, it may request and receive a hearing, and may appeal the hearing decision to NERC. A registered entity also has the right to request a hearing to contest a twice-rejected mitigation plan or a remedial action directive.

At the conclusion of an enforcement matter, NERC publicly files a Notice of Penalty with the Commission, which promotes openness and the opportunity for public comment. The ERO balances the interest in openness with the concern for the security of critical infrastructure information, and as such, all sensitive critical infrastructure information is redacted from all public Notice of Penalty filings.

- v. **Provide for taking appropriate steps to gain recognition in Canada and Mexico.** The SERC Region does not extend into any part of Canada or

Mexico. Thus SERC has no need to establish rules that provide for taking appropriate steps to gain recognition in Canada or Mexico.

3. **SERC operates under a delegation agreement that promotes effective and efficient administration of bulk-power system reliability.** On January 1, 2011, SERC executed an amended and restated regional Delegation Agreement with NERC, which delegated to SERC certain activities pursuant to Section 215 of the FPA. FERC approved this Delegation Agreement on June 12, 2012. These delegated activities include: certification of BPS entities; registration of owners, operators, and users of the BPS responsible for compliance with the requirements of Reliability Standards; reliability assessment and performance analysis; event analysis and reliability improvement; training and education; situational awareness and infrastructure security; the development and proposal of Reliability Standards to NERC; monitoring of compliance with Reliability Standards; and enforcement of compliance with Reliability Standards. These delegated activities are necessary for the effective administration of BPS reliability. SERC only performs those activities delegated to it under the Delegation Agreement.

Southwest Power Pool RE (SPP RE)

1. **SPP RE “is governed by an independent board, a balanced stakeholder board or a combination independent and balanced stakeholder board.”** SPP RE is governed by three independent Regional Entity trustees. These trustees have autonomy over decisions in fund allocation and SPP RE budget approval, as well as oversight of SPP RE decisions on regional standards, compliance enforcement actions, and penalties. SPP RE's General Manager reports directly to the SPP RE trustees. Only the trustees and certain SPP RE staff members have authority to make compliance and enforcement decisions.
2. **SPP RE met the requirements of Section 215 (c)(1)(2) of the Federal Power Act, because:**
 - a. **SPP RE is able to develop and enforce reliability standards that provide for an adequate level of reliability of the bulk power system.** SPP RE is not actively developing any reliability standards at this time; however, it does have a RRSDP if the need for such standards were to arise.¹⁵³ The RRSDP allows for a fair and open process for adoption, approval, revision, reaffirmation, and deletion of a regional Reliability Standard. Due process is the key to ensuring that the Reliability Standards are developed in an environment that is equitable, accessible and responsive to the requirements of all interested and affected parties. SPP RE supports development of continent-wide Reliability Standards at NERC and any regional Reliability Standard developed by SPP RE will go beyond, add detail to, or cover matters not addressed in the NERC Reliability Standards.

¹⁵³ *SPP RE Regional Reliability Standards Development Process Manual* (SPP RRSDP Manual), Version 0 became effective October 2, 2007. A Petition (in Docket No. RR-14-000) to update the SPP RRSDP Manual was filed by NERC with FERC on December 20, 2013. A 10-day comment period ended on January 10, 2014 with no comments being received.

Moreover, SPP RE is able to enforce reliability standards by the implementation of the CMEP. Illustratively, during the assessment period, SPP RE experienced a dramatic reduction in the average time to process violations to completion, a dramatic increase of self-reported violations, a dramatic reduction in average time for issuance of final on-site compliance audit reports, and a dramatic reduction in average time for issuance of a Notice of Possible Violation (“NPV”). Specifically, prior to January 1, 2009, SPP RE’s average time to process alleged violations to completion was 24 months, compared to 9.2 months during 2013. In 2009, only 3.1 % of incoming possible violations came from either self-reports or self-certifications, compared to 68.4% in 2013. In 2008, the average time to issue a final on-site compliance audit report to registered entities was 152 days, compared to 54 days during 2013. Prior to January 1, 2009, the average days for SPP RE to issue an NPV was 20.5 days, compared to 3.6 days in 2013.

b. SPP RE has established rules that:

- i. **Assure its independence of the users and owners and operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors and balanced decision-making in any ERO committee or subordinate organization structure.** SPP, Inc. is governed by an independent board of directors and has an extensive organizational group structure comprised of stakeholders that represent the membership’s diversity. SPP, Inc.’s Bylaws provide for fair stakeholder representation and balanced decision-making. SPP RE does not have a separate committee structure or Bylaws; however, it is an independent unit of SPP, Inc. and reports to its Regional Entity Trustees (“SPP RE Trustees”). In addition, SPP RE’s employees are subject to Standards of Conduct, its employees and contractors are screened for conflicts of interest, and its compliance monitoring teams must agree to maintain strictly the confidentiality of their auditing efforts.
- ii. **Allocate equitably reasonable dues, fees, and other charges among end users for all activities.** SPP RE follows the Common Assumptions developed by NERC and the Regional Entities to guide its budget projections. As such, SPP RE allocates projected statutory costs to end users via an annual assessment fee based on the SPP RE’s registered entity’s NEL. At the end of each budget cycle, a reserve balance is determined by taking the difference between the monies collected from end users through the assessment fee and the statutory costs incurred. This reserve balance is then used to offset the next year’s funding requirement in addition to any penalty monies received during a twelve-month period. The annual assessment fee is adjusted at the beginning of each budget year (January 1).
- iii. **Provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties.** The following, generally describes the steps the SPP RE Enforcement Attorneys follow for penalty determinations, which are outlined in SPP RE’s internal processes and procedures:

Step 1: Utilizing the NERC Penalty Determination Framework Tool (“Penalty Tool”), the Enforcement Attorney determines a suggested penalty amount for the violation. **Note:** Although not procedurally codified, once the SPP RE Enforcement Attorney member has calculated a preliminary penalty via the Penalty Tool, the Enforcement Attorney compares the proposed penalty (when possible) with similarly situated previous violations that have been filed and subsequently approved by FERC. Furthermore, Enforcement attorneys implement guidance from *Sanction Guidelines*, ROP **Appendix 4B**, the NERC CMEP, ROP **Appendix 4C**, and FERC orders as to how the Enforcement attorneys should assess factors such as load loss and repeat/similar/affiliate violation history.

Step 2: The Enforcement Attorney submits its proposed penalty amount, the Penalty Tool, NAVAPs and/or settlement documents, and any other information relevant to the proposed penalty to the Sanctions Review Team (“SRT”), which consists of the SPP RE General Manager, the Manager of Enforcement, and the Director of Compliance.

Step 3: The SRT reviews the information presented by the Enforcement Attorney and collectively either approves the proposed penalty amount or determines the appropriate penalty amount for the violation or violations. **Note:** Penalties in excess of \$250,000 are required by procedure to receive additional approval of the SPP RE Trustees.

- iv. **Provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties.** The SPP RE RRS DP manual includes steps for a fair and open standards process that is open to all regional stakeholders. Any entity within the SPP RE or SPP RTO region has a right to participate by: a) expressing a position and its basis; b) having that position considered; c) voting through a segment-weighted balanced process; and d) having the right to appeal.
 - v. **Provide for taking appropriate steps to gain recognition in Canada and Mexico.** This criterion does not apply to SPP RE.
3. **SPP RE operates under a delegation agreement that promotes effective and efficient administration of bulk-power system reliability.** The Delegation Agreement between SPP RE and NERC grants SPP RE the authority to carry out certain statutory activities, including Certification of BPS entities; registration of owners, operators, and user of the BPS as responsible for compliance with requirements of Reliability Standards; Reliability Assessment and Performance Analysis; Event Analysis and Reliability Improvement; Training and Education; and Situational Awareness and Infrastructure Security. This delegation of authority has promoted the effective and efficient administration of the BPS. Through its delegated authority from NERC, SPP RE has successfully implemented the NERC CMEP, and is working with NERC and the other Regional Entities to improve both the effectiveness and efficiency of the program. As evidence of the success of the early

program, SPP RE's region successfully navigated nine consecutive quarters without a reportable vegetation contact.

SPP RE has also, in combination with the other Regional Entities and NERC, greatly enhanced the functionality of the electronic tool (webCDMS), used by registered entities to report compliance issues. Enhancements to webCDMS have allowed both the Regional and registered entities to realize efficiency gains through the automation of processes such as self-reports, self-certifications, submission of mitigation plans, exchange of mitigation information, mis-operations reporting, analysis of prior violations, and violation processing in general. Furthermore, the SPP RE compliance audit teams utilize a risk-based assessment to determine the scope of the compliance audit, and adjust the scope of compliance audits based on violation history and the particular risk presented by certain registered functions. To further improve the effectiveness and efficiency of the program going forward, SPP RE is working with NERC and the other Regional Entities to shift the focus of the ERO Enterprise to those areas of the BPS that present the greatest risk to reliability. To that extent, SPP RE is an active participant in the RAI process.

In addition, since January 1, 2009, SPP RE has steadily increased its outreach efforts. SPP RE has held annual workshops since 2009 and attendance has increased each year. SPP RE staff has made incremental improvements to the workshops, such as inviting more guest speakers from outside the SPP RE footprint including FERC Commissioners, NERC Board members, and Department of Homeland Security staff, adding break-out sessions to give registered entities a smaller setting to ask questions and voice concerns, and refining both advance and on-site preparations to ensure the workshops run smoothly and on-time. In 2011, workshop attendees began providing feedback via evaluation forms following the workshops; feedback has generally been very favorable. In 2011, SPP RE began publishing monthly newsletters and implemented an e-news format that is easily readable on handheld devices. In 2012, SPP RE created a video training webpage and began filming and publically posting training videos in-house and at workshops. The feedback from the training videos has been generally positive and benefits not only registered entities in the SPP RE footprint, but registered entities across all Regional Entities.

Texas Reliability Entity (TRE or Texas RE)

1. **TRE “is governed by an independent board, a balanced stakeholder board or a combination independent and balanced stakeholder board.”** Texas RE currently has a combination independent and balanced stakeholder board. From 2007 to 2010, the Regional Entity for the ERCOT region was Texas Regional Entity, an independent division of the Electric Reliability Council of Texas, Inc. (ERCOT, the ISO for the region). During that time, Texas RE shared the same board of directors as ERCOT ISO. To ensure that the Regional Entity would remain independent from all registered entities, including ERCOT, a new Texas non-profit corporation called Texas Reliability Entity, Inc. (Texas RE), was formed to take over the functions as Regional Entity effective July 1, 2010. As part of this process, Texas RE separated its board of directors from ERCOT ISO. Texas RE is now governed by a combination independent and balanced stakeholder board consisting of nine members: four independent directors, two industry-affiliated

directors, the Texas RE CEO, and two ex-officio non-voting directors (the Public Utility Commission of Texas Chairman or delegate, and the Public Counsel from the Office of Public Utility Counsel). The independent directors are elected by Texas RE membership to serve staggered three-year terms. The two-industry-affiliated directors may not be from the same market sector and may not concurrently serve on the ERCOT ISO board of directors.

2. **TRE met the requirements of Section 215 (c)(1) (2) of the Federal Power Act, because:**
 - a. **TRE is able to develop and enforce reliability standards that provide for an adequate level of reliability of the bulk power system.** Texas RE follows the requirements as defined by the NERC ROP, including the CMEP, and by the Delegation Agreement with NERC, including TRE's current RRS DP manual, and has used these documents to develop standards and to audit and enforce compliance with the standards.

Standards Development: Texas RE participates in the NERC Standards Committee and develops, comments and votes on Reliability Standards. Texas RE also hosts quarterly meetings of the Reliability Standards Committee (RSC) and twice-monthly meetings of the NERC Standards Review Subcommittee (NSRS). Changes and proposed changes to NERC Reliability Standards are discussed in these forums. Texas RE created one major regional Reliability Standard (BAL-001-TRE) and several minor regional Reliability Standards (CIP-001 regional variance and IRO-0006-TRE) designed to improve reliability. The major regional Reliability Standard, BAL-001-TRE, was designed to maintain Interconnection steady-state frequency within defined limits in the ERCOT region. It requires individual generation facilities to operate with properly configured governors in service to meet frequency response performance requirements.

Compliance: Between January 1, 2009 and December 31, 2013, Texas RE successfully completed more than 260 audits of registered entities for compliance with Reliability Standards. Texas RE uses the complete list of NERC-approved actively monitored Reliability Standards and Requirements as the minimum audit scope. Audit staff also investigates possible violations of the Reliability Standards arising from BPS disturbances, outages, self-reports, and complaints. Texas RE requires all Compliance employees, not just the auditors, to complete NERC scheduled basic training classes for auditors so that all employees have an understanding of the significance of the auditing process. In addition, Texas RE has developed a robust CIP compliance and audit program. All current CIP auditors have earned Department of Defense 8570 recognized certifications (e.g., CISSP, CEH, CISA, and Network+).

Enforcement: In addition to the auditing program, Texas RE has implemented a separate Enforcement program with a dedicated staff. The Enforcement group processes alleged violations originating from audits, spot checks, self-certifications, complaints, and self-reports. This includes managing settlement negotiations, supporting legal staff in contested case hearings, and reviewing and

approving mitigation plans. Texas RE has been successful in streamlining the Enforcement process since 2009 by implementing a new webCDMS data management system and implementing new processes such as the FFT program.

- b. TRE has established rules that:**
- i. Assure its independence of the users and owners and operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors and balanced decision-making in any ERO committee or subordinate organization structure.** Texas RE has adopted bylaws to assure its independence from industry while assuring fair stakeholder representation in selection of its directors and balanced decision-making in its committees. Its bylaws first provide that Texas RE membership is voluntary and open to any entity that is a user, owner or operator of the ERCOT region BPS that registers as a member with Texas RE and complies with Texas RE bylaws. In addition to the structure of the board described earlier, independent directors and members of their immediate families or households may not: (1) have current or recent status (within the past two years) as a director, officer or employee of an ERCOT region NERC registered entity or ERCOT region electric Market Participant, or (2) have direct business relationships, other than as customers, with any NERC registered entity or ERCOT region electric Market Participant. The industry-affiliated directors are selected annually by the Texas RE Member Representatives Committee and each must come from a different Texas RE membership sector: System Coordination and Planning, Transmission and Distribution, Cooperative, Municipal Utility, Generation, or Load-Serving and Marketing. The Texas RE bylaws prohibit an entity from belonging to any two membership sectors, and require the board of directors and any of its committees to operate using balanced decision-making.
 - ii. Allocate equitably reasonable dues, fees, and other charges among end users for all activities.** Texas RE bylaws and its Delegation Agreement with NERC provide that it will allocate equitably reasonable dues, fees, and other charges among end users for its statutory activities. Each year Texas RE produces a draft budget using templates provided by NERC, and posts the draft on its website for public comment. The budget includes the costs necessary to perform Texas RE's statutory functions under the Delegation Agreement with NERC and any expected income, such as membership fees. The budget is reviewed for reasonableness by the Texas RE Member Representatives Committee and approved by the Texas RE board of directors, NERC and FERC. Pursuant to Exhibit E to its Delegation Agreement, assessments to fund Texas RE delegated functions and related activities are allocated to all load-serving entities in the region on the basis of NEL. Penalty monies received by Texas RE are applied as a general offset to its budget requirements for the subsequent fiscal year.

- iii. **Provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties.** Texas RE has adopted and implemented the CMEP in accordance with its Delegation Agreement with NERC. Texas RE is committed to five guiding principles: (1) independence; (2) ethics and integrity; (3) inclusiveness; (4) fairness and openness; and (5) organizational effectiveness and efficiency. Texas RE strives to be fair, unbiased and balanced in its enforcement actions and imposition of penalties, and its internal procedures incorporate these concepts. After a possible violation is found by the Compliance group, the violation is reviewed and verified by a member of the Enforcement group. Penalties are calculated using the NERC *Sanction Guidelines* and are reviewed in relation to similar penalties assessed in this and other regions. In addition, all penalties are reviewed by the Director of Enforcement prior to issuance.

Texas RE also has implemented policies and procedures to ensure its employees act with independence, ethics, integrity, fairness, and openness. All Texas RE employees and contractors must annually sign an Ethics Agreement which requires them to conduct Texas RE business with total objectivity and to avoid situations in which his or her personal or financial interests conflict or appear to conflict with the interests of Texas RE. A “Conflict of Interest” arises when: (1) the personal, financial, or other interest of a Texas RE employee is significantly affected or may reasonably appear to be affected by the employee’s actions or decisions in the employee’s capacity at Texas RE; or (2) the action of any employee is in any way detrimental to the best interests of Texas RE. Financial interest includes any ownership, investment, or compensation interest by the employee or a member of the employee’s household, and specifically includes any direct or indirect remuneration, as well as gifts or favors which are not insubstantial. An employee must immediately inform the Texas RE legal department if a Conflict of Interest or even the appearance of a Conflict of Interest might exist, to allow Texas RE management to evaluate the situation. After full disclosure by the employee, Texas RE management may agree to conditions that appropriately limit any potential influence from a Conflict of Interest.

Texas RE also follows the CMEP requirement to provide biographies of all potential audit team members to registered entities prior to a Compliance engagement and provide opportunity for entities to object to use of any employee where a potential Conflict of Interest exists. At the end of each audit, registered entities are also provided a questionnaire which allows them to directly report to NERC any concerns they have with fairness, openness, or objectivity with respect to how Texas RE conducted the audit. In addition, Texas RE has implemented a Compliance Hotline to allow anyone to report (anonymously if desired)

any noncompliance by a registered entity and any ethics complaints they have concerning Texas RE.

- iv. **Provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties.** As part of its Delegation Agreement, Texas RE has adopted and follows a RRS DP designed to provide for reasonable notice and opportunity for public comment, due process, and balancing of interests. The RRS DP requires that proposed Reliability Standards must be drafted by a standards drafting team and be posted publicly, and it requires a public comment period prior to any vote on the standard by Texas RE membership.

Texas RE also conducts its general operations in a manner that is transparent to the public. As required by its bylaws, it posts public notices of its board and committee meetings on its public website and posts meeting materials, including draft budgets, for public review prior to the meetings. The Texas RE public website includes training materials, useful Compliance information, and the contact information for key Texas RE personnel.

Texas RE also provides due process to registered entities seeking to contest a violation, penalty or sanction. Texas RE adheres to the NERC ROP and CMEP, which require Regional Entities to provide registered entities reasonable notice of possible violations, the ability to contest a violation or penalty or sanction, and the ability to appeal such matters to the NERC Compliance Committee and FERC. In August 2013, FERC approved Texas RE's request to begin using the same hearing procedures as are used by the other seven Regional Entities.

- v. **Provide for taking appropriate steps to gain recognition in Canada and Mexico.** This criterion is not applicable to Texas RE.
3. **TRE operates under a delegation agreement that promotes effective and efficient administration of bulk-power system reliability.** Under its Delegation Agreement with NERC, Texas RE has promoted effective and efficient administration of the BES in the ERCOT region. Texas RE has worked with industry to create a major regional Reliability Standard (BAL-001-TRE) and several minor regional Reliability Standards (CIP-001 regional variance and IRO-006-TRE) designed to improve reliability in the ERCOT region. The major regional Reliability Standard requires individual generation facilities to operate with properly configured governors in service to meet frequency response performance requirements. Texas RE also has successfully implemented the CMEP in the region, performing more than 260 audits since January 2009 and developing a robust CIP audit program. Since 2009, Texas RE has streamlined its Enforcement processing by implementing the webCDMS data management system in 2011 and implementing the FFT program to more quickly process lower risk violations. From

2010 to 2012, Texas RE also worked in cooperation with NERC, the other regions and industry to develop an events analysis program in which registered entities report their performance during system events and develop Lessons Learned to be shared with the industry. Early in the program, when Texas faced rotating outages during the 2011 Southwest Cold Weather Event, Texas RE used the framework the events analysis program provided to quickly collect and analyze information from the event and to disseminate it to FERC, NERC, and the industry.

Western Electricity Coordinating Council (WECC)

1. **WECC “is governed by an independent board, a balanced stakeholder board or a combination independent and balanced stakeholder board.”** Since its creation, WECC has been governed by a hybrid board of directors including both non-affiliated directors and a balanced group of stakeholder directors as envisioned by the FPA Section 215(e)(4), 16 U.S.C., 824o(e)(4) (2005). However, on June 27, 2013, the WECC Board approved the bifurcation of the company into a Regional Entity (WECC) and a Reliability Coordination Company, Peak Reliability. This decision—the culmination of a year of work by various WECC board committees, staff, WECC members, and WECC stakeholders—signals a major landmark in the history of the organization. Under this new structure the Reliability Coordinator and Interchange Authority functions in the Western Interconnection will become a separate company from WECC. When established, Peak Reliability will provide core and other associated reliability coordination services within the Western Interconnection. As anticipated, the Commission approved the relevant documents by the end of December 2013; however, as there were outstanding compliance filings, the bifurcation was not finalized during the assessment period.¹⁵⁴ Nevertheless, WECC and Peak Reliability began operating as separate entities in many respects by that time.
2. **WECC met the requirements of Section 215 (c)(1) (2) of the Federal Power Act, because:**
 - a. **WECC is able to develop and enforce reliability standards that provide for an adequate level of reliability of the bulk power system.** WECC’s authority to enforce reliability standards is based on the authority granted in its Delegation Agreement with NERC. FERC’s approval of the Delegation Agreement conferred authority to WECC to manage and enforce compliance with FERC-approved reliability standards and to apply penalties up to the extent of FERC’s civil penalty authority. Additionally, WECC develops Regional Criteria and practices to improve the functioning and efficiency of the Western Interconnection. This combination provides a forum for addressing system-wide issues and an oversight role to promote reliable operation of the Western Interconnection.

WECC also demonstrated its ability to enforce reliability standards during the assessment period, by successfully clearing its backlog of Enforcement work;

¹⁵⁴ The Commission accepted the compliance filings on February 12, 2014. *See North American Electric Reliability Corporation; Western Electricity Coordinating Council*, 146 FERC ¶ 61,092 (2014).

completing all audits contemplated in its annual Implementation Plans; developing and maintained highly qualified Compliance staff; enhancing, streamlining and documenting all the Enforcement processes; successfully implementing new IT solutions and systems; and expanding and enhancing its compliance encouragement and Outreach efforts. Furthermore, WECC worked collaboratively with the other regions and NERC to bring forward the Omnibus proposal; proposed Rules of Procedure changes to streamline TFE processing; developed new Registration system tools; and, actively participated in several ongoing NERC IT projects, lending expertise and practical experience.

b. WECC has established rules that:

- i. Assure its independence of the users and owners and operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors and balanced decision-making in any ERO committee or subordinate organization structure.** WECC currently has a hybrid board comprised of member class directors and non-affiliated (independent) directors, who are subject to Standards of Conduct set out in WECC's By-Law. This ensures that member/stakeholder views are well-represented and that board decisions are ultimately made fairly and in the best interests of WECC as a whole. Effective January 1, 2014, WECC transitioned to an all independent director board. Accordingly, directors are directly elected by the WECC membership and members are represented on a newly created Member Advisory Committee that has direct access to the WECC Board to provide advice and recommendations regarding WECC policy and proposed board decisions. In addition, WECC staff members, and representatives from WECC member entities, routinely participate in ERO and ERO Enterprise committees and work groups.
- ii. Allocate equitably reasonable dues, fees, and other charges among end users for all activities.** The allocation of dues, fees and other charges is governed by Section 12.1 of the WECC Bylaws - Funding of Reliability Activities. WECC funds all activities undertaken pursuant to Section 215 of the FPA in accordance with the funding provisions and procedures of that law and related FERC regulations and orders. The WECC Board approves the annual Business Plan and Budget in time for submission to the ERO and to FERC for approval. WECC funds reliability activities undertaken pursuant to any agreements with appropriate Canadian or Mexican authorities in accordance with the provisions of those agreements. In adopting budgets for the costs of reliability activities, the WECC Board seeks an equitable allocation based upon the NEL and other relevant factors consistent with applicable law, the Delegation Agreement and any international reliability agreements. To the extent that WECC elects to fund any activities not eligible for funding pursuant to Sections 12.1.1 and 12.1.2, it does so through the use of service fees, charges or dues applicable to the persons or entities that voluntarily participate in such activities.

- iii. **Provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties.** WECC's Delegation Agreement with NERC is based on the NERC *pro forma* Delegation Agreement and has been reviewed and approved by FERC. As required, WECC develops an Annual CMEP Implementation Plan, which identifies the NERC Reliability Standards on the actively monitored list as well as the compliance monitoring methods that will be used to enforce those standards. The plan is submitted to NERC for approval. Additionally, WECC has developed and documented all formal processes and procedures relating to enforcement activities, including penalties. In this regard, WECC uses the NERC *Sanction Guidelines* as a framework for assessing fair and reasonable penalties, and considers all facts associated with the registered entity and the alleged violation. Individuals responsible for assessing, recommending, or negotiating penalties are not otherwise involved in compliance monitoring or discovery of violations. In other words, WECC specifically segregates the duties associated with violation discovery or review and violation disposition and penalty assessment. Furthermore, WECC has a layered review approach to penalties, including non-monetary ones. Specifically, the Manager of Enforcement Policy reviews all penalties and communicates with the Director of Enforcement, who then reviews and, as appropriate, approves them. WECC management reviews these processes and procedures bi-annually. Finally, WECC's enforcement staff receives regular training on all aspects of their duties to ensure consistency of application. This training is delivered in weekly staff meetings as well as at formal training sessions held at least annually.
- iv. **Provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties.** WECC uses the FERC-approved *WECC Reliability Standards Development Procedures* to develop regional Reliability Standards along with regional criteria and regional business practices. These procedures assure that the documents will be developed in a fair and open manner with contribution and review by subject matter experts and that all affected parties will have the chance to comment and vote on the documents. Illustratively, proposed standards are drafted by a standards drafting team, publicly posted, and subject to a mandatory public comment period prior to any vote.

In regard to the exercise of its other duties, WECC posts on its website notices of, and agendas and materials for, board and committee meetings. WECC also adheres to the NERC ROP and the CMEP processes, which provide due process protections to registered entities with respect to compliance obligations and enforcement of standards violations. Accordingly, registered entities are provided reasonable notice of possible violations, and the right to contest a violation, penalty or sanction, and to appeal the Regional Entity's

decisions to the NERC Board of Trustees Compliance Committee, and the Commission.

- v. **Provide for taking appropriate steps to gain recognition in Canada and Mexico.** WECC has negotiated various agreements with the applicable governmental authorities for British Columbia, Canada, Alberta, Canada, and Baja, Mexico, the three international areas included in the Western Grid, as detailed below:

British Columbia:

Under the Administration Agreement (dated October 8, 2009) between the British Columbia Utilities Commission (“BCUC”) and the WECC, WECC acts as the administrator for the BCUC in carrying out certain activities relating to the Mandatory Reliability Standards program in British Columbia (“BC”). Working under this agreement, WECC monitors compliance to the standards adopted in BC. WECC receives and reviews self-reports, self-certifications, and periodic data submittals; conducts audits; and reviews mitigation plans and other such activities. At the BCUC’s request, WECC has set up a separate webCDMS portal, an electronic system to collect compliance data, dedicated to BCUC and its entities.

Alberta:

WECC acts as the Compliance Monitor for the Alberta Market Surveillance Administrator (“Alberta MSA”), under the Services Agreement (dated April 30, 2010) between the Alberta MSA and WECC, in carrying out certain activities related to Alberta Reliability Standards, specific to the Alberta Electric System Operator (“AESO”), in Alberta, Canada. WECC operates under the Services Agreement with the MSA, and as contemplated in the membership and operating agreement (“MOA”) (dated September 23, 2008) with the AESO.

Mexico:

Under the MOA (dated December 31, 2010) between Comisión Federal de Electricidad (“CFE”) and WECC, WECC acts as CFE’s compliance monitor for certain activities in Baja California, Mexico, monitoring compliance with its mandatory Reliability Standards. The agreement between CFE and WECC requires that WECC not disclose any confidential data to anyone other than CFE. Any request from NERC or FERC to WECC for data relating to WECC activities in Mexico is directed to CFE. The CFE/WECC annual Implementation Plan, based on WECC’s recommendations and after consultation with the Area de Control Baja California (“ACBC”), CFE’s compliance program administrator, includes a list of actively monitored standards, a description of the monitoring methods WECC uses for designated entities, and the

compliance audit timeline. As with BC, the Alberta MSA, and the AESO, WECC set up a separate webCDMS portal for use by CFE.

In summary, WECC does not have enforcement or registration authority for any of the international jurisdictions within the Western Interconnection. WECC provides monitoring, reviews mitigation plans and completed mitigation plans, and assessment recommendations with respect to alleged violations.

3. WECC operates under a delegation agreement that promotes effective and efficient administration of bulk-power system reliability. WECC assures the reliability and efficient administration of the Western Interconnection through a variety of activities authorized under its Delegation Agreement. To start with, during the assessment period, WECC continued to develop regional Reliability Standards, in large part due to its unique situation among the Regional Entities. Indeed, WECC has developed the most regional Reliability Standards because of a mandatory program it had in place prior to the approval of NERC as the ERO and the delegation to WECC. Under this program (called the Reliability Management System), WECC is required to translate existing reliability criteria into regional mandatory standards. As a consequence, whereas all of the other Regional Entities have a total of seven regional Reliability Standards, WECC alone has a total of eight.¹⁵⁵

WECC likewise promoted effective and efficient administration of the BPS in the Western Interconnection during the assessment period through its implementation of NERC's CMEP approved by the Commission. Illustratively, WECC successfully cleared its backlog of Enforcement work; completed all audits contemplated in its annual Implementation Plans; developed and maintained a highly qualified Compliance staff; enhanced, streamlined and documented all the Enforcement processes; successfully implemented new IT solutions and systems; and expanded and enhanced its compliance encouragement and outreach efforts. Furthermore, WECC worked collaboratively with the other regions and NERC to bring forward the Omnibus proposal; proposed ROP changes to streamline TFE processing; developed new Registration system tools; and, actively participated in several ongoing NERC IT projects, lending expertise and practical experience.

As a separate matter with respect to the administration of the Western Interconnection, during the assessment period, WECC managed a comprehensive planning database, provided guidance on the analysis and modeling of the transmission system, and developed scenario studies of system performance to establish operating policies and limits, and regional transmission planning. In addition, WECC performed annual assessments of 10-year loads and resources in the Western Interconnection and created a 10-year coordinated plan of system growth. WECC also provided information to NERC for their annual summer and

¹⁵⁵ These include **FAC-501-WECC-1** (Transmission Maintenance); **VAR-002-WECC-1** (Automatic Voltage Regulators); **VAR-501-WECC-1** (Power System Stabilizer); **PRC-004-WECC-1** (Protection System and Remedial Action Scheme Misoperation); **IRO-006-WECC-1** (Qualified Transfer Path Unscheduled Flow Relief); **BAL-004-WECC-01** (Automatic Time Error Correction); **TOP-007-WECC-1** (System Operating Limits); **BAL-002-WECC-2** (Contingence Reserve) (replacing BAL-STD-002-2).

winter assessments of the reliability of the BPS. Beginning in 2012, WECC produced an annual State of the Interconnection Report to provide WECC's members and stakeholders with an independent assessment of data collected annually in the Western Interconnection. The goal was to develop reasonable measurements that would identify reliability trends in the Interconnection.