

Owen E. MacBride  
(312) 258-5680  
Email: [omacbride@schiffhardin.com](mailto:omacbride@schiffhardin.com)

*Tel.:* 312.258.5500  
*Fax:* 312.258.5700

[www.schiffhardin.com](http://www.schiffhardin.com)

December 11, 2009

**VIA ELECTRONIC FILING**

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

**Re: North American Electric Reliability Corporation  
Docket No. RR09-9-000, RR07-14-004 and RR08-6-004  
Compliance Filing of the North American Electric Reliability Corporation  
In Response to October 15, 2009 Order on 2010 Business Plans and Budgets**

Dear Ms. Bose:

The North American Electric Reliability Corporation (NERC) hereby submits the "Compliance Filing of the North American Electric Reliability Corporation in Response to October 15, 2009 Order on 2010 Business Plans and Budgets."

NERC's filing consists of: (1) this transmittal letter, (2) the narrative text of this filing, and (3) Attachments 1, 2 and 3, all of which are submitted in a single pdf file.

Please contact the undersigned if you have any questions concerning this filing.

Respectfully submitted,

/s/ Owen E. MacBride  
Owen E. MacBride

Attorney for North American Electric  
Reliability Corporation



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### ATTACHMENTS:

**Attachment 1:** Excerpts from loan documentation for NERC’s bank line of credit, showing covenants.

**Attachment 2:** NERC month-end cash balances, January 2008 – November 2009.

**Attachment 3:** Expanded Table 6 of NPCC 2010 Business Plan and Budget.

## **I. INTRODUCTION**

The North American Electric Reliability Corporation (“NERC”) respectfully submits this filing in compliance with the Commission’s Order issued October 15, 2009 in these dockets.<sup>1</sup> The 2010 ERO Budget Order conditionally accepted the 2010 Business Plans and Budgets of NERC, as the Electric Reliability Organization (“ERO”), the eight Regional Entities<sup>2</sup>, and the Western Interconnection Regional Advisory Body (“WIRAB”).<sup>3</sup> The 2010 ERO Budget Order also specified certain compliance items to be filed by NERC within 60 days (*i.e.*, by December 14, 2009)<sup>4</sup>; a compliance item to be filed by NERC by November 20, 2009<sup>5</sup>; certain periodic status reports to be filed by NERC on the development of procedures for processing technical feasibility exceptions (“TFE”) to certain requirements of NERC Critical Infrastructure Protection (“CIP”) standards<sup>6</sup>; and certain information to be included in the ERO and Regional Entity

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<sup>1</sup> *North American Electric Reliability Corporation, Order Conditionally Accepting 2010 Business Plan and Budget of the North American Electric Reliability Corporation and Ordering Compliance Filings*, 129 FERC ¶ 61,040 (2009) (“2010 ERO Budget Order”).

<sup>2</sup> The eight Regional Entities are the Florida Reliability Coordinating Council (“FRCC”), Midwest Reliability Organization (“MRO”), Northeast Power Coordinating Council, Inc. (“NPCC”), ReliabilityFirst Corporation (“ReliabilityFirst”), SERC Reliability Corporation (“SERC”), Southwest Power Pool Regional Entity (“SPP RE”), Texas Regional Entity, a Division of Electric Reliability Council of Texas (“ERCOT”) (“Texas RE”), and Western Electricity Coordinating Council (“WECC”).

<sup>3</sup> The 2010 Business Plans and Budgets of NERC and the Regional Entities and related materials, filed on August 22, 2009, are collectively referred to herein as the “2010 Business Plan and Budget Filing.”

<sup>4</sup> 2010 ERO Budget Order at PP 25, 30, 31, 32, 33, 40, 42, 43, 44, 45, 46, 48, 50, and 52.

<sup>5</sup> 2010 ERO Budget Order at P 64. This item, *Informational Filing of the North American Electric Reliability Corporation in Response to Paragraph 64 of the October 15, 2009 Order on 2010 Business Plans and Budgets*, was timely filed on November 20, 2009 in this docket.

<sup>6</sup> 2010 ERO Budget Order at P 36.

business plan and budget filings for 2011.<sup>7</sup> This filing addresses the compliance items the Commission directed to be filed by December 14, 2009 (*see* §III) and also reports on the development of procedures for processing TFEs (*see* §IV).

## **II. NOTICES AND COMMUNICATIONS**

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

David N. Cook\*  
Vice President and General Counsel  
Michael Walker  
Chief Financial and Administrative Officer  
North American Electric Reliability  
Corporation  
116-390 Village Boulevard  
Princeton, NJ 08540-5721  
(609) 452-8060  
(609) 452-9550 – facsimile  
[david.cook@nerc.net](mailto:david.cook@nerc.net)

\*Persons to be included on the  
Commission’s official service list.

Owen E. MacBride\*  
Debra Ann Palmer  
Schiff Hardin LLP  
1666 K Street, N.W., Suite 300  
Washington, DC 20036-4390  
(202) 778-6400  
(202) 778-6460 – facsimile  
[omacbride@schiffhardin.com](mailto:omacbride@schiffhardin.com)  
[dpalmer@schiffhardin.com](mailto:dpalmer@schiffhardin.com)

Rebecca J. Michael, Assistant General Counsel  
North American Electric Reliability Corporation  
1120 G Street, N.W., Suite 990  
Washington, D.C. 2005-3801  
(202) 393-3998  
(202) 393-3995 – facsimile  
[Rebecca.michael@nerc.net](mailto:Rebecca.michael@nerc.net)

## **III. RESPONSES TO 2010 ERO BUDGET ORDER – COMPLIANCE ITEMS DUE DECEMBER 14, 2009**

### **A. NERC Business Plan and Budget**

#### **1. Working Capital Reserves**

#### **2010 ERO Budget Order, P 25:**

With respect to [its] line of credit, NERC does not indicate whether there are restrictions or conditions placed on this line of credit agreement and under what circumstances funds from the line of credit may not be available for NERC to draw on. To better understand NERC’s proposal, the Commission directs NERC to submit a compliance filing within 60 days of the issuance of this order, identifying applicable restrictions or conditions placed on the revolving line of credit. Further, we note that a draft of the NERC 2010 budget included funding for a

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<sup>7</sup> 2010 ERO Budget Order at P 24.

working capital reserve but such funding was later deleted.<sup>25</sup> NERC should explain its rationale for removing working capital reserves from its 2010 budget and business plan.

<sup>25</sup> NERC Application, Attachment 2 (NEC Business Plan and Budget) at 78 n.2; NERC Finance and Audit Committee, *Overview of the 2010 Preliminary Business Plan and Budget* at 6, 12 (May 5, 2009), available at [http://www.nerc.com/docs/bot/finance/2010\\_BPB\\_Draft1.pdf](http://www.nerc.com/docs/bot/finance/2010_BPB_Draft1.pdf).

**NERC Response:**

Advances under NERC's line of credit may be used for working capital or other general purposes. In order to remain eligible to draw advances under the line of credit, NERC must comply with certain customary affirmative and negative covenants set forth in the loan documents which were executed in connection with obtaining the line of credit. These covenants include periodic reporting of certain financial information (financial reporting covenants); maintaining compliance with financial covenants based on minimum net assets and coverage ratio (financial covenants); and complying with certain restrictions on incurrence of liens, indebtedness, liquidations, acquisitions, distributions, and indebtedness or loans to third parties other than in the ordinary course of business (negative covenants). The text of these covenants is provided in **Attachment 1**.

With respect to the decision to reduce the level of funding for the Working Capital Reserve in the final 2010 Business Plan and Budget from the amount included in an earlier draft of the Business Plan and Budget,<sup>8</sup> NERC management did not believe (and the NERC Board agreed with this view) that it was necessary or efficient at this time to include an additional component in the 2010 assessments to generate additional working capital, in light of the specifics of NERC's situation for 2010. This decision was based on several factors.

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<sup>8</sup> The draft Budget included a component of \$1,393,496 for funding the Working Capital Reserve. The final, approved 2010 Budget includes a component of \$469,043 to eliminate the projected deficit in the Working Capital Reserve.

First, due to the timing of billing and collecting assessments, NERC typically has significant month-end cash balances throughout the year. NERC's assessments are billed on a quarterly basis, with payments due in January, April, July and October, in all Regions except WECC, and are billed on an annual basis in WECC with assessment payments for the entire year due in January. Therefore, NERC generally receives its revenues in "lumpy" amounts in advance of the incurrence of its expenses. Further, a significant portion of NERC's expenses are incurred in relatively constant and foreseeable amounts on a month-to-month basis (*e.g.*, Personnel Expenses, base Office Rent, Insurance, and IT-related and communications costs) and do not fluctuate greatly throughout the year; and NERC has not tended to have significant, unbudgeted, unexpected one-time expenditures.<sup>9</sup> **Attachment 2** provides historic information on NERC's month-end cash balances from January 2008 through November 2009, and illustrates that the month-end cash balances have always been significantly positive, thereby providing a source for payment of unexpected expenses and to manage month-to-month cash flow variations that might arise.

Second, as noted, NERC maintains a \$4 million line of credit with a major financial institution for working capital purposes. The \$4 million line of credit provides an additional, significant resource for managing short-term cash flow fluctuations that may occur.

Third, stakeholders expressed concern over the overall increase in NERC's 2010 budget and assessments over 2009 indicated in posted drafts and summaries of the 2010 budget, and NERC's management and its Board were appropriately attentive to those concerns, and sought to reduce the final 2010 budget in areas where reductions could be made from the draft budgets

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<sup>9</sup> In contrast, Regional Entities may be more likely than NERC to encounter events necessitating significant, unexpected expenditures during the course of a year, such as one or more significant system events that may require resource-intensive investigations, or a hearing with a registered entity over a disputed alleged violation or proposed penalty.

without risking impairing NERC's operations or its ability to carry out its statutory mission.<sup>10</sup> In light of the schedule for receipt of assessment payments, the consistent experience of positive month-end cash balances, and the availability of the \$4 million line of credit, elimination of an assessment component to maintain a positive Working Capital Reserve during 2010 was one of those areas. Instead, NERC plans to manage its 2010 cash flow needs with available funds and to make temporary draws on its line of credit, if necessary due to short-term fluctuations in cash-flow requirements.

However, if, and to the extent that, NERC has unbudgeted, unanticipated resource needs during 2010 which it is not capable of funding with existing resources, NERC has the ability to request Board and Commission approval of an appropriate amendment to its 2010 Business Plan and Budget and assessments, as provided for in its Bylaws and the Commission's regulations.<sup>11</sup> Further, as noted above, the decision not to provide greater funding for Working Capital Reserve in the 2010 budget and assessments was based on NERC's specific anticipated circumstances for 2010. Based on the expected factors and circumstances for 2011 and future years, NERC may determine it to be necessary to request greater funding for Working Capital Reserve in future years' budgets. NERC expects this to be a year-by-year analysis and decision.

## **2. Compliance Monitoring and Enforcement**

### **2010 ERO Budget Order, P 30:**

NERC's Application appears to contain certain discrepancies with respect to the number of new expected compliance violation investigations and compliance inquiries in 2010. NERC's Business Plan states that "NERC will continue to lead approximately 10 Compliance Violation Investigations and 40 Compliance Inquiries" in 2010.<sup>30</sup> Elsewhere, the Application indicates that

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<sup>10</sup> See Attachment 12, "Discussion of Comments Received During Development of NERC's Proposed 2010 Business Plan and Budget," to the 2010 Business Plan and Budget Filing.

<sup>11</sup> NERC Bylaws, Article XIII, sections 5 and 6; 18 C.F.R. §39.4(d).

NERC assumes for budget development that NERC will conduct 12 compliance violation investigations and 24 new compliance inquiries in 2010.<sup>31</sup> The Commission is concerned that NERC may not have sufficient staff to complete 10 new compliance violation investigations and 40 new compliance inquiries in a timely manner.<sup>32</sup> Accordingly, the Commission directs NERC to clarify these figures in a compliance filing within 60 days and discuss whether it has adequate funding to conduct the anticipated number of compliance violation investigations and compliance inquiries.

<sup>30</sup> NERC Application, Attachment 2 (NERC Business Plan and Budget) at 23.

<sup>31</sup> *Id.*, Appendix 1, at 1.

<sup>32</sup> In Order No. 672, the Commission expressed its expectation that the ERO would have a compliance program that incorporates proactive enforcement audits and investigations of alleged violations. Such a program would provide “rigorous” audits of compliance with the Reliability Standards. *See* Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 45, P 463 (citing 18 C.F.R. § 39.7(a)).

#### **NERC Response:**

Based on the current and recent Compliance Violation Investigation (“CVI”) case load as an indicator of the CVI case load in 2010, NERC currently expects to open or assume the lead on a total of 15 to 20 CVIs in 2010. Additionally, NERC’s caseload of Compliance Inquiries (“CIQ”) indicates that on average five new CIQs are opened each month, which leads to a current projection of 60 new CIQs during 2010. The current projections of CVIs and CIQs for 2010 are higher than the estimates in mid-2009 when the 2010 Business Plan and Budget was being developed. However, the currently projected numbers of CVIs and CIQs are estimates and there is no certainty that the projected numbers of CVIs and CIQs will in fact need to be initiated in 2010 – in contrast, for example, to compliance activities that have greater certainty of occurring as planned, such as scheduled compliance audits and spot checks.

NERC remains cognizant of the resource demands on CVI teams to conduct and complete CVIs and CIQs, and disseminate lessons learned to the industry in a timely manner, given the increasing caseload, intensive scrutiny required to ensure quality, and the size of the current and budgeted CVI staffs at NERC and the Regional Entities. Publishing lessons learned

from CVIs and CIQs in a timely manner is essential to improving reliability. In its 2010 Business Plan and Budget, NERC provided for two additional FTE compliance violation investigators in 2010, as well as four additional FTEs in the Compliance Program to support backlog reduction efforts (*i.e.*, to speed up review and publication of compliance enforcement actions, whether resulting from CVIs or other compliance monitoring processes), and three additional FTEs (including two attorneys) in Legal and Regulatory to support the increasing compliance and regulatory workload.<sup>12</sup>

NERC also plans on the following steps to address the resources needed to meet the currently projected CVI and CIQ workloads with the currently budgeted level of resources and staffing: (1) reduce the number of on-site investigators where possible; (2) use contract experts to assist where practicable and within existing budget resources; and (3) make maximum use of the Regional Entity investigators. It is also critical to establish firmer limits on collaboration relating to open CVIs in order to close out CVIs at an acceptable level of quality, and then turn the completed CVIs over to the enforcement sections within the Regional Entities and NERC for processing and ultimate disposition of possible violations of reliability standards. NERC and the Regional Entities currently are in the initial stages of the renegotiation of the Delegation Agreements and related Rules of Procedure (“ROP”). NERC expects to achieve improvements in CVI processes through revisions to the Delegation Agreements and related ROP sections, as well as in the annual Business Plan and Budget process.

Finally, as mentioned in this compliance filing with respect to other resource and staffing issues, if it develops that NERC’s approved 2010 Budget is insufficient to carry out its statutory responsibilities as the ERO within appropriate parameters of timeliness and quality, NERC has

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<sup>12</sup> NERC 2010 Business Plan and Budget (Attachment 2 to the 2010 Business Plan and Budget Filing), at 25 and 60.

the ability to request Board and Commission approval for a supplemental or amended budget and assessments for 2010, as provided for in the NERC Bylaws and the Commission's regulations.<sup>13</sup>

**2010 ERO Budget Order, P 31:**

In addition, NERC assumes that "Regional Entities will collectively review approximately 50-60 events of interest and 12-15 compliance violation investigations," and "the number of reviews and [compliance violation investigations] will vary by region and each region will have a unique set of assumptions that collectively will approximate these gross estimates."<sup>33</sup> However, it is not apparent whether the Regional Entities provide funding based on this assumption in their budget proposals. The Commission directs NERC and the Regional Entities to address in a compliance filing within 60 days how each Regional Entity utilized this assumption in developing its budget and whether each Regional Entity has adequate funding to support the anticipated number of event reviews and compliance violation investigations.

<sup>33</sup> NERC Application, Attachment 2 (NERC Business Plan and Budget), Appendix 1, at 2.

**NERC Response:**

The specific projections of approximately 50-60 events of interest to be reviewed, and approximately 12-15 CVIs to be conducted, by the Regional Entities in 2010 are not roll-ups of individual Regional Entity estimates, but rather were developed by NERC based on current and recent case loads. NERC staff projected the number of events for 2010 to be comparable to the number in 2009. Analysis of 2009 data showed that approximately five events or disturbances per month on the bulk power system are reviewed by the NERC Event Analysis group; this resulted in an overall projection of 50 to 60 events of interest for 2010. However, the numbers of events and disturbances per Regional Entity vary, and the data are not predictive at the individual Regional Entity level. The projection of 12 to 15 CVIs for 2010 was based on the list of currently active (at the time of budget preparation) CVIs at the Regional Entities. While the number of CVIs in each Region is also not predictive at the Regional Entity level, the overall

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<sup>13</sup> NERC Bylaws, Article XIII, sections 5 and 6; 18 C.F.R. §39.4(d).

number was considered to be a conservatively high estimate of the number of new CVIs in 2010, since some of the CVIs on the currently active list were initiated prior to 2009.

The following paragraphs summarize the assumptions made by each Regional Entity in developing its 2010 Business Plan and Budget with respect to the numbers of events to be reviewed and CVIs to be conducted in 2010.

**FRCC.** FRCC did not budget any costs specifically for CVIs for 2010. Because the FRCC (Member Services Division) is the registered entity performing the Reliability Coordinator function in the FRCC Region, it is unlikely that any event that would require the initiation of a CVI would not involve FRCC. As a result, FRCC believes any CVIs or other investigations of such events could not be conducted by FRCC but rather would need to be conducted by NERC. Therefore, FRCC did not budget any resources for CVIs in 2010.

**MRO.** In developing its 2010 Business Plan and Budget, MRO assumed six incidents that would warrant either an Event Analysis or a CVI (referred to as “incident inquiry reviews”). This was the same assumption used in developing MRO’s 2009 Business Plan and Budget. MRO assumed that CVIs would be conducted primarily by NERC, with support from MRO staff as requested.

**NPCC.** In developing its 2010 Business Plan and Budget, NPCC estimated that three CVIs would be conducted.<sup>14</sup> NPCC’s 2010 Business Plan and Budget reflects that NPCC will retain two consultants to assist with CVIs and non-CIP compliance audits.<sup>15</sup> Funding for additional contractor resources that would be needed to conduct any additional CVIs would need

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<sup>14</sup> NPCC 2010 Business Plan and Budget (Attachment 5 to the 2010 Business Plan and Budget Filing), at 10.

<sup>15</sup> NPCC 2010 Business Plan and Budget (Attachment 5 to the 2010 Business Plan and Budget Filing), at 28.

to come from NPCC's operating cash balances. NPCC did not specifically estimate the number of reviews of "events of interest" or CIQs that could be conducted in 2010, instead assuming that these activities are a normal part of the overall compliance monitoring and reliability assessment efforts.

**ReliabilityFirst.** For planning and budgeting purposes, ReliabilityFirst considers CVIs to be a normal part of its overall compliance audit and investigation activities; however, in developing its 2010 Business Plan and Budget, ReliabilityFirst conducted a manpower analysis in which it estimated (among other compliance activities) that 5 CVIs will be performed in 2010.<sup>16</sup> For 2010, ReliabilityFirst has budgeted two additional FTEs in the Compliance Audit Team (which is responsible for conducting CVIs and other event investigations) in its Compliance Program, specifically due to the expectation to perform an increasing number of CVIs and CIQ.<sup>17</sup>

**SERC.** In developing its 2010 Business Plan and Budget, SERC assumed 4 CVIs would need to be conducted in 2010. All costs related to this projected number of CVIs are accounted for using current staffing.

**SPP RE** did not use a specific number of events or CVIs in developing its 2010 Business Plan and Budget. SPP RE assigned 0.5 FTEs and a nominal amount of contractor fees to this effort as part of its Reliability Assessment and Performance Analysis budget.

**Texas RE.** In developing its 2010 Business Plan and Budget, Texas RE budgeted that 80 events would be reported to it, resulting in 20 detailed analyses of incidents, system disturbances

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<sup>16</sup> ReliabilityFirst 2010 Business Plan and Budget (Attachment 6 to the 2010 Business Plan and Budget Filing), at 11 (Table 1).

<sup>17</sup> ReliabilityFirst 2010 Business Plan and Budget (Attachment 6 to the 2010 Business Plan and Budget Filing), at 32.

and events, and two CVIs being conducted.<sup>18</sup> In its 2010 Business Plan and Budget, Texas RE added one FTE to its Compliance Enforcement group (which is responsible for conducting CVIs and analyses of incidents, system disturbances and events) in its Compliance Program.<sup>19</sup>

**WECC.** In its 2010 Business Plan and Budget, WECC did not specifically identify a projected number of CVIs and other investigations in 2010. WECC assumes that CVIs and other investigations are a normal part of its overall compliance audit and investigation activities. WECC did budget a substantial increase in its Compliance Program staffing for 2010, increasing staffing from 30 FTEs in the 2009 budget to 50 FTEs in the 2010 Business Plan and Budget.<sup>20</sup>

Most of the Regional Entities have not organized and budgeted their Compliance Program staffs in such a way that specific personnel are dedicated to conducting CVIs, CIQs and event analyses. (As noted above, *ReliabilityFirst* and Texas RE are two exceptions to this statement, and each of them has budgeted additional resources for 2010 in its Compliance Program team or group responsible for conducting CVIs and incident analyses and investigations.) However, all of the Regional Entities have budgeted increases in personnel, contractor and/or other resources for their Compliance Programs for 2010, and for a number of the Regional Entities, these budgeted increases in Compliance Program resources are very substantial.<sup>21</sup> Overall, both NERC and the Regional Entities believe the Regional Entities have

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<sup>18</sup> Texas RE 2010 Business Plan and Budget (Attachment 9 to the 2010 Business Plan and Budget Filing), at 17.

<sup>19</sup> Texas RE 2010 Business Plan and Budget (Attachment 9 to the 2010 Business Plan and Budget Filing), at 17.

<sup>20</sup> WECC 2010 Business Plan and Budget (Attachment 10 to the 2010 Business Plan and Budget Filing), at 14.

<sup>21</sup> The Regional Entities' increases in Compliance Program staffing and other resources in their 2010 Business Plans and Budgets were summarized in NERC's discussion of the highlights of

budgeted sufficient personnel, contractor and other resources in their Compliance Programs for 2010 to adequately cover the projected CMEP workloads, including CVIs and other event and incident investigations and analyses.

**2010 ERO Budget Order, P 32:**

NERC has budgeted \$500,000 for “software development in support of implementing the Compliance Reporting, Analysis, and Tracking System”; however, NERC’s Application fails to provide a timeline for development of this project or any additional details. Accordingly, the Commission directs NERC to provide in its compliance filing a timeline on the development of the Compliance Reporting, Analysis, and Tracking System.

**NERC Response:**

The Compliance Reporting Analysis Tracking System (“CRATS”) provides an enterprise solution to re-engineer the compliance processes for managing violations. There are four critical modules that will comprise the base of the CRATS software: Standards, Registration, Violations, and Reporting. The current timeline for the phased deployment of the software to the production (*i.e.*, operational) environment is as follows: both the Standards and Registration modules are in the operational environment; the Violations and Reporting modules are in the testing environment and will be deployed to the operational environment by December 18, 2009. The most significant aspect of this process is the transfer and validation of data from the eight Regional Entities to the NERC database in each phase. NERC will need to parallel the new report development with the old report development until data is confirmed and reports are validated; this will continue into 2010 and be complete in the first quarter of 2010. Debugging, maintenance and sustainment will continue into 2010.

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the Regional Entities’ 2010 Business Plans and Budgets, at pages 55-67 of the narrative portion of the 2010 Business Plan and Budget Filing.

The original deliverables of the CRATS software development project were two-fold: (1) to replace the Excel workbook method of reporting compliance violations to NERC with a more robust, secure method; and (2) to introduce improved, flexible reporting features to support the needs of the NERC Board of Trustees Compliance Committee. Additional deliverables include the integration of registration and certification data processes and information, and the integration of the standards development processes and information. Workflow development will codify the processes and procedures in coding to facilitate the efficient tracking of the process.

Subsequent enhancements for CRATS, planned for the first half of 2010, and the budget estimate for each enhancement, include the following: development of major modules for critical infrastructure protection and TFE reporting (\$70,000); a major module for the NERC Compliance Audit Group that will link to the standards module (\$70,000); and increased analysis and report generating capabilities (\$50,000). In addition, \$100,000 was budgeted for basic maintenance, debugging and finalization of the Violations and Reporting module during the first half of 2010. Enhancements planned for the second half of 2010 include integration of the penalty and sanctions guideline tool (\$70,000); integration of two currently separate data bases used in the NERC Enforcement and Mitigation Group (\$70,000); integration of the Investigations Group data bases (\$25,000); and integration of a document management system (\$45,000). These individual budget estimates, which are expected to be refined as NERC obtains pricing from the software developer based on finalized scopes of work, total to the \$500,000 budget amount referred to in P 32 of the 2010 ERO Budget Order. Because NERC is still developing final scopes of work for these projects and does not yet have final pricing from the

developer, it does not yet have more specific timelines and schedules for the individual projects, beyond targeting them for the first half or the second half of 2010.

**2010 ERO Budget Order, P 33:**

Finally, NERC provides metrics listing the number of budgeted Critical Infrastructure Protection (CIP) audits for each Regional Entity in Attachment 15 of its Application. The Commission notes that the Regional Entities Texas RE and SERC have planned to conduct cyber security audits on less than three percent of the Registered Entities within their respective footprints, while the other Regional Entities have elected to audit substantially more, with an average of 12 percent coverage.<sup>34</sup> We are concerned by the low level of budgeted compliance activity relating to cyber security within Texas RE and SERC. Therefore, we direct NERC, in its compliance filing, to discuss the adequacy of the CIP audit levels planned by Texas RE and SERC and whether additional auditing, and 2010 funding for such auditing, is appropriate.

<sup>34</sup> *See id.*, Attachment 15 at 3. FRCC will conduct 8 CIP audits for 70 entities resulting in 11.4% coverage; MRO will conduct 20 CIP audits for 116 entities resulting in 17.2% coverage; NPCC will conduct 24 CIP audits for 268 entities resulting in 9.0% coverage; ReliabilityFirst will conduct 31 CIP audits for 358 entities resulting in 8.7% coverage; SPP RE will conduct 10 CIP audits for 115 entities resulting in 8.7% coverage; SERC will conduct 6 CIP audits for 226 entities resulting in 2.7% coverage; Texas RE will conduct one CIP audit for 216 entities resulting in 0.5% coverage; and WECC will conduct 131 CIP audits for 470 entities resulting in 27.9% coverage.

**NERC-SERC-Texas RE Response:**

Audits and spot checks for compliance with requirements of standards CIP-002 through CIP-009 are conducted on registered entities based on their required compliance status under the NERC “(Revised) Implementation Plan for Cyber Security Standards CIP-002-1 Through CIP-009-1”<sup>22</sup> (“CIP Implementation Plan”). The percentages calculated by the Commission in footnote 34 of the 2010 ERO Budget Order are based on the total numbers of registered entities in each Region, not on the numbers of registered entities in each Region that are required to be “Compliant” or “Auditably Compliant” with the requirements of the CIP standards during 2010 under the CIP Implementation Plan. Under the CIP Implementation Plan, “Table 1” entities and “Table 2” entities were required to be “Compliant” or “Auditably Compliant” with the

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<sup>22</sup> Available at [http://www.nerc.com/files/Guidance\\_on\\_CIP\\_Standards.pdf](http://www.nerc.com/files/Guidance_on_CIP_Standards.pdf).

requirements of CIP-002 through CIP-009 by June 30, 2009, and are required to be “Auditably Compliant” with these requirements by June 30, 2010.<sup>23</sup> In contrast, “Table 3” entities are not required to be “Compliant” with most requirements of CIP-002 through CIP-009 until December 31, 2009, and are not required to be “Auditably Compliant” until December 31, 2010.<sup>24</sup>

In recognition of the CIP Implementation Plan, NERC’s annual CMEP Implementation Plans for 2009 and 2010 require the Regional Entities to conduct mandatory spot checks of Table 1 entities for compliance with the requirements of CIP-002 through CIP-009. Moreover, with respect to audits for compliance with the CIP standards, it is expected that Regional Entities will generally audit a registered entity for compliance with CIP standards with which the registered entity is required to be “Auditably Compliant” as part of the registered entity’s regularly-scheduled compliance audit (*i.e.*, on a three- or six-year cycle, as applicable), rather than through a special compliance audit focused solely on CIP standards.

With respect to SERC, although SERC has 226 registered entities, it has only 30 “Table 1” entities that are currently required to be “Compliant” or “Auditably Compliant” with the CIP standards under the CIP Implementation Plan. SERC expects that audits or spot checks of all the “Table 1” entities will be completed by July 2010; SERC performed spot checks on four of the Table 1 entities in 2008 and on 17 Table 1 entities in 2009, and the remaining nine Table 1 entities are scheduled to be completed in 2010. In 2010, SERC will conduct six stand-alone CIP audits, while the CIP audits for the remaining three registered entities will be conducted as part

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<sup>23</sup> “Table 1” entities are those Balancing Authorities and Transmission Operators that self-certified under Urgent Action 1200 and Reliability Coordinators. “Table 2” entities are Transmission Providers, those Balancing Authorities and Transmission Operators not required to Self-Certify to Urgent Action 1200, NERC, and Regional Entities.

<sup>24</sup> “Table 3” entities are Interchange Authorities, Transmission Owners, Generator Owners, Generator Operators, and Load-Serving Entities.

of a larger compliance audit. After these initial spot checks and compliance audits of the “Table 1” entities are conducted, SERC expects to include monitoring of compliance with CIP-002 through CIP-009 as part of its normal compliance monitoring of registered entities.

“Table 2” entities are required to be “Auditably Compliant” with 13 requirements of CIP standards beginning in July 2010. Auditing of “Table 2” entities for compliance with requirements of CIP standards will be conducted as part of the regularly-scheduled compliance audits for these registered entities. Based on SERC’s long-range audit plan and the 2010 detailed audit schedule, only one or two such audits will occur in the second half of 2010.

In SERC’s data reported for Attachment 15 of the 2010 Business Plan and Budget filing, if compliance with CIP standards was being audited in conjunction with an audit of other standards, that audit was not reported in two statistics (*i.e.*, in both number of compliance audits and number of CIP audits); rather, the audit was included in SERC’s count of small, medium or large compliance audits.

Based on the information detailed in the preceding three paragraphs, NERC is satisfied that SERC is providing appropriate compliance monitoring coverage in 2009 and 2010 of registered entities that are subject to the requirements of CIP-002 through CIP-009, in accordance with the provisions of the CIP Implementation Plan and the NERC annual CMEP Implementation Plans.

Texas RE has a single “Table 1” entity, the ERCOT ISO, which is registered as the sole Transmission Operator, Balancing Authority and Reliability Coordinator in the ERCOT region. Texas RE scheduled a spot check of ERCOT ISO in 2009 covering the 13 CIP standards requirements initially applicable to “Table 1” entities. Therefore, Texas RE does not plan additional mandatory spot checks in 2010 of ERCOT ISO’s compliance with these 13 CIP

standards requirements. Texas RE has budgeted for approximately six possible event-driven spot checks of “Table 3” entities (which under the CIP Implementation Plan are required to be “Compliant” with most of the CIP standards requirements by December 31, 2009) in the latter half of 2010. In addition, Texas RE’s budget also provides for a planned audit of ERCOT ISO’s compliance with 28 additional requirements of CIP-002 through CIP-009 after June 30, 2010, when “Table 1” entities are required to be Auditably Compliant with these requirements under the CIP Implementation Plan (this is the one audit referred to in footnote 34 of the 2010 ERO Budget Order). As with SERC, after these initial spot checks and compliance audits are conducted, Texas RE expects to include monitoring of compliance with CIP-002 through CIP-009 as part of its normal compliance monitoring of registered entities. Based on the foregoing information, NERC is also satisfied that Texas RE is providing appropriate compliance monitoring coverage in 2009 and 2010 of registered entities that are subject to the requirements of CIP-002 through CIP-009, in accordance with the provisions of the CIP Implementation Plan and the NERC annual CMEP Implementation Plans.

## **B. Regional Entity Business Plans and Budgets**

### **1. Elimination of Operator Training Programs**

#### **2010 ERO Budget Order, PP 39-40:**

39. MRO proposes to end its existing in-house operator training program for 2010.<sup>41</sup> The MRO budget for this program area reflects a decrease in expenses of \$177,675. MRO explains that it will utilize a third party to accomplish the NERC training objectives for Registered Entities in the MRO Region.

<sup>41</sup> *Id.*, Attachment 4 (MRO Business Plan and Budget) at 13.

40. Due to the critical role that Regional Entity training programs fill in assuring safe and effective systems operations, the Commission is concerned that MRO’s proposed level of funding and activities for 2010 may be inadequate. The Commission directs NERC and MRO to provide additional information on the measures MRO has taken to utilize a third party for certifying operators. NERC and MRO should also address how MRO will maintain NERC’s “CEH training requirements” for recertification of current Bulk-Power System operators, which

had required (1) 32 hours of emergency operations training annually; (2) 30 hours of NERC Reliability Standards training every three years; and (3) 30 hours of other training, including the use of a simulator every three years as indicated in the 2009 MRO business plan and budget.

**NERC-MRO Response:**

With respect to the statement in P 40 that “The Commission directs NERC and MRO to provide additional information on the measures MRO has taken to utilize a third party for certifying operators,” MRO does not have, and has not had, any responsibility for certification of system operators. Certification of operators is and has been a function performed solely by NERC. NERC and MRO are unaware of a basis for the implication in P 40 that MRO has had any responsibility for certifying operators.

With respect to system operator training, prior to preparing its 2009 budget, MRO agreed to implement a system operator training and tracking program developed by a registered entity in the MRO region. This program provided access for system operators to take on-line operator training modules which utilized coursework provided through specific agreements between MRO and training vendors. It also tracked the training that was completed and provided a billing mechanism. Costs for this program were included in MRO’s 2009 budget.<sup>25</sup>

As MRO began to implement this program, it realized that significant ongoing resources would be required to fully implement and maintain it. Further, other entities within the MRO region provide ample training opportunities for system operators to acquire needed continuing education hours, and MRO recognized that it would be competing with these entities. (NERC-approved operator training providers in the MRO region include Bismarck State College, Iowa State University, Midwest ISO (MISO-001), the Western Area Power Administration’s Electric Power Training Center, and many others.) While the costs of the MRO training program would

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<sup>25</sup> See MRO 2009 Business Plan and Budget (Attachment 4 to NERC’s 2009 Business Plan and Budget filing), at 33.

be recoverable from users, MRO did not believe it would be adding value in providing training information that is readily available from other providers. In addition, many registered entities already have mechanisms to track the training that has been completed by their operators. Therefore, MRO returned the training and tracking program to its developer; and in the preparation of the 2010 MRO budget, all costs associated with this budget account were eliminated.

If MRO determines in the future that there are inadequate training programs for operators in its region, MRO would, subject to stakeholder requests and comments, reconsider this activity as a budget item in a future submission to NERC and the Commission. At this time, MRO believes there are adequate training options available within its region, and providing another option may have diminishing returns to the user community.

## **2. SPP RE**

### **2010 ERO Budget Order, P 42:**

The Commission notes that SPP RE's 2009 Budget filing included a training program overview consisting of: two system operations conferences; two regional restoration drills; eight sub-regional restoration drills; 24 regional emergency operations net conferences; and three train-the-trainer sessions. With the elimination of these program elements, the Commission is concerned whether operator competency and performance will be maintained and measured on an ongoing basis within SPP RE's footprint. The Commission directs NERC and SPP RE to provide a further explanation on the de-funding of its Training, Education, and Operator Certification Program, explaining why the program was de-funded and how comparable training services are provided in the SPP region in absence of training programs and drills provided by the Regional Entity.

### **NERC-SPP RE Response:**

While SPP RE did not include significant training costs in its 2010 Business Plan and Budget, SPP, Inc. will continue to provide the level of training it has performed in the past, and in fact, will increase those offerings in 2010, as shown in the table below. Registered Entities within the SPP RE region may participate in these classes on a per-course fee basis.

**2009 Courses and 2010 Courses  
Offered by SPP, Inc.**

2009	2010
<ul style="list-style-type: none"> <li>• 21 Net Conferences</li> <li>• 6 Regional Emergency Operations Classroom Sessions</li> <li>• 8 Sub-regional Restoration Drills</li> <li>• 2 Regional Restoration Drills</li> <li>• 3 System Operations Conferences</li> <li>• 3 x 12-hour Train-the-Trainer Sessions</li> </ul>	<ul style="list-style-type: none"> <li>• 28 Net Conferences</li> <li>• 6 Regional Emergency Operations Classroom Sessions</li> <li>• 8 Sub-regional Restoration Drills</li> <li>• 2 Regional Restoration Drills</li> <li>• 4 System Operations Conferences</li> <li>• 2 x 24-hour Train-the-Trainer Sessions</li> </ul>

Prior to the creation of Regional Entities, SPP, Inc. was a Regional Reliability Organization (“RRO”). As a RRO, SPP, Inc. provided training and education programs to its members. After the SPP Regional Entity was formed and until the hiring of the SPP RE General Manager, the SPP Training Department reported to the SPP executive overseeing Regional Entity functions other than compliance and enforcement. When the SPP RE General Manager was hired, the SPP Training Department continued to report to the same SPP executive since the overwhelming majority of training participants are SPP members.

In preparing the SPP RE 2010 Business Plan and Budget, the SPP RE General Manager reviewed the other Regional Entities’ budgets and learned that, for most of them, their training budgets were largely composed of compliance workshops. To recognize the cost drivers of the SPP training program and to be more consistent with most other Regional Entities’ budgets, SPP RE removed the costs associated with Training, Education and Operator certification from its budget, except for the costs of compliance workshops.

Accordingly, SPP will continue to do its part to ensure that “...operator competency and performance will be maintained and measured on an ongoing basis within SPP RE’s footprint.”

### 3. Discrepancies in FTE and Budget Amounts

#### 2010 ERO Budget Order, P 43:

**SPP RE.** In its explanations of variances, SPP RE describes an increase in operating expenses of \$24,000 under “Consultants and Contracts,” driven by studies to be performed in support of regional standard development.<sup>43</sup> Elsewhere in its filing, however, SPP RE describes the variance of \$24,000 in contractor costs due to a Reliability Standards voting tool software.<sup>44</sup> The Commission directs SPP RE to submit a clarification on whether the \$24,000 is for a software system or performance of studies.

<sup>43</sup> *Id.*, Attachment 8 (SPP RE Business Plan and Budget) at 10.

<sup>44</sup> *Id.*, Attachment 8 (SPP RE Business Plan and Budget), Table B-4.

#### NERC-SPP RE Response:

The \$24,000 budget item is for regional reliability standards voting tool software.

#### 2010 ERO Budget Order, P 44:

**Texas RE.** Texas RE identifies an increase of 7.59 total FTEs for its Compliance Monitoring and Enforcement and Organization Registration and Certification Program.<sup>45</sup> However, elsewhere Texas RE states regarding this same program, “[p]ersonnel costs are increasing \$1,155K for 2010 due to increasing staff by 6.00 (5.55 FTEs Statutory, .45 FTEs Non-statutory) in this area to enhance functional performance.”<sup>46</sup> The Commission directs NERC and Texas RE to submit a clarification of this discrepancy in the proposed increase of FTEs in the Compliance Monitoring and Enforcement and Organization Registration and Certification Program.

<sup>45</sup> *Id.*, Attachment 9 (Texas RE Business Plan and Budget) at 13.

<sup>46</sup> *Id.* at 24.

#### NERC-Texas RE Response:

Texas RE reflected in the Compliance Monitoring and Enforcement and Organization Registration and Certification Program resource requirements table on page 13 of its 2010 Business Plan and Budget that it is budgeting 21.74 FTEs for 2010. This is an increase of 7.59 FTEs when compared to the 2009 Business Plan and Budget count of FTEs for this program. In its detailed explanation of variances on page 24 of its 2010 Business Plan and Budget, Texas RE stated:

Personnel costs are increasing \$1,155K for 2010 due to increasing staff by 6.00 (5.55 FTEs Statutory, .45 FTEs Non-statutory) in this area to enhance functional performance (improved response times and increased effectiveness); as well as providing the resources required by the TFE evaluation process. Also, there are additional management, legal and project personnel costs that are associated with these functions that are also reflected in the total FTEs (as reported on table 2 of Section B) for these programs.

In Texas RE's written variance explanations on page 24 of its 2010 Business Plan and Budget, Texas RE implied that the balance of the increase in FTEs in its Compliance Monitoring and Enforcement and Organization Registration and Certification Program of 2.04 statutory FTE's (the difference between 7.59 FTEs and 5.55 FTEs) was for management, legal, and project personnel. Texas RE acknowledges that the increase of 2.04 FTEs for management, legal and project personnel was not clearly described. When the 2.04 FTEs are added to the budgeted FTE increases in enforcement, audit, organization registration, and for TFE staff, which were identified as 5.55 statutory FTEs, the resulting total FTE increase is shown to be 7.59 FTEs for 2010, which matches the total FTE variance shown on the table on page 13 of Texas RE's 2010 Business Plan and Budget.

**2010 ERO Budget Order, P 45:**

**WECC.** Regarding its Compliance Monitoring and Enforcement and Organization Registration and Certification Program, WECC states that salary expenses will increase by \$1.79 million, primarily due to the addition of 20 FTEs.<sup>47</sup> Elsewhere, WECC states that travel expenses will increase by \$73,000 due to the addition of 21 FTEs. Accordingly, NERC and WECC must identify in the compliance filing the correct increase of FTEs in the Compliance Monitoring and Enforcement and Organization Registration and Certification Program.

<sup>47</sup> *Id.*, Attachment 10 (WECC Business Plan and Budget) at 21.

**NERC-WECC Response:**

WECC has budgeted an overall increase of 21 FTEs in its Compliance Monitoring and Enforcement and Organization Registration and Certification Program, consisting of an increase of 21 FTEs in the CMEP staff and a decrease of one FTE in the Hearings staff. The decrease of

one FTE in the Hearings staff is shown in the table on page 22 of the WECC 2010 Business Plan and Budget. The increase of \$73,000 budgeted for Travel Expense in the Compliance Monitoring and Enforcement and Organization Registration and Certification Program is based on the increase of 21 FTEs in the CMEP staff.

**2010 ERO Budget Order, P 46:**

**MRO.** MRO indicates an increase of 3.6 FTEs in its Compliance Monitoring and Enforcement and Organization Registration and Certification Program.<sup>48</sup> However, elsewhere MRO states “[t]he overall FTE count for compliance and enforcement does not increase from 2009 to 2010.”<sup>49</sup> NERC and MRO must explain this apparent discrepancy in the compliance filing.

<sup>48</sup> *Id.*, Attachment 4 (MRO Business Plan and Budget) at 21.

<sup>49</sup> *Id.* at 29.

**NERC-MRO Response:**

MRO’s overall twelve-month average FTE count for its Compliance Program does increase from 2009 to 2010; however, in the text cited by the Commission from page 21 of the MRO 2010 Business Plan & Budget, MRO was referring to the fact that the projected number of FTEs at the end of 2009 (which has increased throughout the year) will be the same as the budgeted number of FTEs for 2010. Therefore, the Personnel Expenses account for 2010 will increase when compared with the 2009 budget due to the expenses associated with the full year of Personnel Expenses for this number of FTEs in 2010 as compared to 2009.

**4. SPP Regional Entity Line of Credit**

**2010 ERO Budget Order, PP 47-48:**

47. In its proposed 2010 business plan and budget, SPP RE proposes to eliminate its working capital reserve, stating that it intends to rely on operating cash balances and access to Southwest Power Pool, Inc.’s (SPP Inc.) line of credit to fund any potential shortfalls throughout the year.<sup>50</sup>

<sup>50</sup> The Commission authorized SPP, Inc.’s issuance of unsecured promissory notes in an aggregate amount not to exceed \$50 million. *Sw. Power Pool, Inc.*, 120 FERC ¶ 61,160, at P 2 (2007).

48. Similar to our discussion above with regard to the ERO's reliance on a line of credit, we emphasize the importance of maintaining a working capital reserve as an appropriate method to plan for unforeseen, significant capital expenditures. Further, with regard to SPP RE as a "hybrid" Regional Entity, we have the additional concern that reliance on the line of credit established by SPP, Inc. may compromise the independence of SPP RE. NERC and SPP RE do not indicate whether SPP Inc. places any restrictions or conditions on SPP RE's ability to draw on this line of credit agreement, and under what circumstances funds from the line of credit may not be available.<sup>51</sup> For example, it is not clear whether SPP RE is limited in the amount of funds it may use under this line of credit and under what terms. In order to adequately evaluate this proposal, the Commission directs NERC and SPP RE to submit a compliance filing within 60 days of the issuance of this order, identifying applicable restrictions or conditions placed on SPP RE's access to the revolving line of credit.

<sup>51</sup> We note that SPP Inc. must ensure that SPP RE has the resources SPP RE determines to be needed to accomplish the Regional Entity functions. *N. Am. Elec. Reliability Corp.*, 128 FERC ¶ 61,244, at P 11 (2009); *see also Sw. Power Pool, Inc.*, 120 FERC ¶ 61,045, at 61,369 (2008) (Attachment A; Audit Report) (stating "the involvement of RTO management in [Regional Entity] budgeting and spending decisions undermines the independence of the [Regional Entity] and its ability to fulfill its functions").

#### **NERC-SPP RE Response:**

SPP, Inc. as the legal entity, is the signatory to the line of credit; however, there are no restrictions on the ability to access the line of credit to support SPP RE activities, beyond those requirements set forth in the terms and conditions of the line of credit and associated loan documentation governing SPP, Inc.'s ability generally to draw on the line of credit. While SPP RE's annual proposed assessments must be calculated to be sufficient to cover its approved budgeted expenditures for statutory activities,<sup>26</sup> SPP, Inc., as signatory to the Delegation Agreement, is obligated to have a funding system that includes reasonable reserve funding for unforeseen and extraordinary expenses and other contingencies with respect to the delegated

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<sup>26</sup> Section 1 of Exhibit E to the NERC-SPP Amended and Restated Delegation Agreement. Further, as required by Section 5 of Exhibit E to the Delegation Agreement, the quarterly assessment collections are deposited "into an account established solely to receive and hold funding received from NERC pursuant to SPP's performance of statutory activities under the Delegation Agreement."

functions and related activities.<sup>27</sup> SPP, Inc. manages all its liquidity sources, including its operating cash balances and its line of credit, to ensure sufficient liquidity to meet its obligations under Section 8(f) as well as SPP, Inc.'s liquidity requirements unrelated to the delegated functions.

NERC and SPP RE note that although P 47 of the 2010 ERO Budget Order states that “In its proposed 2010 business plan and budget, SPP RE proposes to *eliminate* its working capital reserve, stating that it intends to rely on operating cash balances and access to [SPP Inc.’s] line of credit to fund any shortfalls throughout the year” (emphasis added), SPP RE’s approved 2009 Business Plan and Budget did not provide for a working capital reserve. In Table 5 on page 61 of its 2009 Business Plan and Budget (Attachment 8 to the NERC 2009 Business Plan and Budget filing), SPP RE stated: “SPP RE does not require a working capital reserve in that on a cash basis SPP is able to fund shortfalls in its statutory (Regional Entity) funding through its operating cash balances, and also has access to liquidity through a bank credit facility.” NERC and SPP RE provided additional information on the SPP Inc. bank line of credit and operating cash balances in NERC’s December 15, 2008 compliance filing<sup>28</sup> to P 55 of the Commission’s October 16, 2008 Order on the 2009 Business Plans and Budgets.<sup>29</sup>

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<sup>27</sup> Section 8(f) of the NERC-SPP Amended and Restated Delegation Agreement.

<sup>28</sup> *Compliance Filing of the North American Electric Reliability Corporation in Response to October 16, 2008 Order on 2009 Business Plans and Budgets*, filed December 15, 2008 in Docket Nos. RR08-6-002 and RR07-14-003.

<sup>29</sup> *Order Conditionally Accepting 2009 Business Plan and Budget of the North American Electric Reliability Corporation and Ordering Compliance Filings*, 125 FERC ¶ 61,056 (2008).

## 5. NPCC Cost Allocation Methodology

### 2010 ERO Budget Order, PP 49-50

49. NERC and NPCC state that, for purposes of determining the assessment to recover NPCC's statutory funding requirement, costs are allocated among the balancing authority areas within NPCC: New York, New England, Ontario, Québec, New Brunswick and Nova Scotia. In accordance with NPCC's cost allocation method, 55 percent of all costs for NPCC's Compliance Monitoring and Enforcement and Organization Registration and Certification Program (Compliance Program) are allocated between the balancing authority areas in the United States and Canada on a net energy for load basis. NPCC states that it allocates the remaining 45 percent of the Compliance Program costs using an audit-based methodology. According to NERC and NPCC, the portion of costs allocated to the U.S. using the audit-based methodology is then allocated between the New York and New England balancing authority areas based on net energy for load.<sup>52</sup>

<sup>52</sup> As NERC and NPCC note, the Commission required NPCC to allocate all costs within the U.S. portion of NPCC based on net energy for load. NERC Application, Transmittal Letter, at 59 (citing *N. Am. Elec. Reliability Corp.*, 127 FERC ¶ 61,307 (2009)).

50. Table 6 of NPCC's 2010 business plan and budget provides detailed information regarding cost allocation for the NPCC Compliance Program. It is unclear from this table that, for the "remaining" 45 percent of the Compliance Program (as described above), NPCC used the net energy for load methodology to allocate compliance costs in the U.S. portion of the region. In particular, Column D-2 of Table 6 suggests that NPCC applied an audit-based allocation methodology throughout the entire NPCC region. Accordingly, the Commission directs NERC and NPCC to submit in the compliance filing an explanation of Table 6 and the application of net energy for load in allocating Compliance Program costs within the U.S. portion of the NPCC region. Specifically, the explanation should include the 2010 net energy for load calculations and allocations to load serving entities (or designees) for the Compliance Program assessments.<sup>53</sup>

<sup>53</sup> The Commission recommends a table similar to Appendix 2-A and Appendix 2-B of Attachment 2 (NERC Business Plan and Budget) of the NERC Application.

### NERC-NPCC Response:

In order to reflect and respect the international membership and nature of the NPCC and the differing compliance responsibilities and authorities within the U.S. and Canadian portions of the NPCC Region, the implementation and attendant costs of portions of the compliance program differ among the areas within the Region. Within the U.S. portion of NPCC all costs attributable to statutory functions performed by NPCC, including all compliance functions, are assessed

based on a NEL allocation. Within the Canadian portion of NPCC those costs attributable to compliance functions performed by NPCC on behalf of Provincial governmental and/or regulatory authorities are allocated consistent with the unique Memoranda of Understanding or Agreements that have been entered into for those provinces.

To address these different compliance regimes, NPCC developed a composite cost allocation methodology that allocates compliance costs on a fair and equitable basis within the Region. As an initial step of that methodology, 55% of all costs, direct and indirect, related to the NPCC Compliance Monitoring and Enforcement Program are shared on a net-energy-for-load basis by all participants (both U.S. and Canadian entities) in the Region. The remaining 45% of the costs of the NPCC CMEP are apportioned between U.S. and Canadian areas of the NPCC Region, and among the Canadian Provinces, using an audit-based methodology.

The audit-based methodology incorporates relative costs based on categories of compliance audits which are reflective of their size and complexity, as well as the differing compliance program implementation models that are utilized in NPCC due to the international nature of the Region. As an example, the provincial governments of both Ontario and New Brunswick have designated independent entities within their respective provinces to perform compliance and enforcement activities on their internal market participants, which therefore excludes these provinces from assessment of the remaining 45% of NPCC's compliance costs.

The portion of the remaining 45% allocated to the U.S. portion of NPCC is calculated using the audit-based methodology, and this amount is then allocated between the New York and New England balancing authority areas based on their relative NEL. Columns C-2 and D-2 of Table 6 from page 78 of the 2010 NPCC Business Plan and Budget have been expanded in **Attachment 3** to clarify NPCC's methodology and document NPCC's adherence to FERC's

*Order on Compliance Filing* issued July 16, 2009.<sup>30</sup> Specifically: (1) the 2008 NEL for New England and New York are 131,749,000 MWh and 165,613,000 MWh, respectively (*see* Column B-1), for a total of 297,362,000 MWh for the U.S. portion of NPCC;<sup>31</sup> (2) based on the 2008 NEL figures, New England has 44.30593% and New York has 55.69407% of the total NEL for the U.S. portion of the NPCC region (*see* Column C-1(a)); (3) the portion of the 45% of the NPCC CMEP costs for 2010 allocated using the audit-based methodology that is allocated to the U.S. portion of NPCC is \$2,636,048 (*see* Column D-2); and (4) based on the relative NEL of New England and New York, New England is allocated \$1,167,925 of the \$2,636,048 (*i.e.*, \$2,636,048 times 0.4430593 = \$1,167,925) and New York is allocated \$1,468,122 of the \$2,636,048 (*i.e.*, \$2,636,048 times 0.5569407 = \$1,468,122).

### **C. Other Matters – Determination of Critical Assets**

#### **2010 ERO Budget Order, P 52:**

With most entities becoming auditably compliant under Reliability Standard CIP-002-1 at the end of the second quarter of 2010 or the end of the fourth quarter of 2010,<sup>57</sup> the Commission is concerned about the lack of information provided in NERC's business plan and budget regarding critical asset identification. The Regional Entity review of responsible entities' determination of critical assets will likely be a resource intensive part of each Regional Entity's compliance program. The 2010 business plans and budgets, however, do not provide any indication regarding the dedication of resources for this new activity. Accordingly, the Commission directs the ERO to include in its compliance filing a discussion of the plans and resources being allocated to ensure that adequate resources are available for the ERO and Regional Entities to review critical asset determinations.

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<sup>30</sup> 128 FERC ¶ 61,025, at P 41.

<sup>31</sup> Based on the established NERC methodology for calculating assessments, NEL data for the second calendar year preceding the budget year is used to allocate the NERC and Regional Entity funding requirements for the budget year to load-serving entities, for purposes of calculating assessments, as it is the most recent year for which NEL data is available at the time the budgets and assessments are being prepared for filing with the Commission. *See* 2010 Business Plan and Budget Filing, narrative at p. 9; *Order Conditionally Accepting 2007 Business Plan and Budget of the North American Electric Reliability Corporation, Approving Assessments to Fund Budgets and Ordering Compliance Filings*, 117 FERC ¶ 61,091 (2006), at PP 143-151.

<sup>57</sup> *Mandatory Reliability Standards for Critical Infrastructure Protection*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,620, at P 42 (2007); *see also* NERC Filing, Exhibit B (Implementation Plan for Cyber Security Standards), Docket No. RM06-22-000 (Aug. 28, 2006).

**NERC Response:**

NERC standard CIP-002-1, Requirements R1 and R2, contains the requirement that registered entities determine their critical assets using a risk-based assessment methodology. Currently, critical asset determination is being monitored in several ways. First, pursuant to the Commission's Order No. 706,<sup>32</sup> NERC and the Regional Entities have conducted semi-annual self-certifications of registered entities under the CIP standards. In connection with the July 2009 self-certification, NERC and the Regional Entities included additional survey questions to facilitate an analysis of not only what entities are complying with the CIP standards but also what types of transmission and generation assets are being identified as critical assets. Second, as noted in the response to P 33, above, the NERC annual CMEP Implementation Plans for 2009 and 2010 require the Regional Entities to undertake, by the end of 2010, spot checks and audits of compliance with CIP-002 through CIP-009 by "Table 1" entities under the NERC CIP Implementation Plan."<sup>33</sup> Finally, for all other registered entities, the Regional Entities will monitor compliance with CIP-002 using all the compliance monitoring methods available under the uniform CMEP, but primarily through scheduled compliance audits. In general, registered entities' identification of critical assets (*i.e.*, their compliance with CIP-002 Requirements R1 and R2) will be monitored through scheduled spot checks and compliance audits covering

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<sup>32</sup> *Mandatory Reliability Standards for Critical Infrastructure Protection*, Order No. 706, 122 FERC ¶ 61,040 (2008).

<sup>33</sup> "Table 1" entities are those Balancing Authorities and Transmission Operators that self-certified under Urgent Action 1200 and Reliability Coordinators. *See* the CIP Implementation Plan, available at [http://www.nerc.com/files/Guidance\\_on\\_CIP\\_Standards.pdf](http://www.nerc.com/files/Guidance_on_CIP_Standards.pdf).

compliance with the CIP standards, not through separate monitoring activities targeted specifically at the registered entity's identification of critical assets. This means that registered entities will, in general, be audited for compliance with CIP-002 Requirements R1 and R2 in accordance with their applicable audit cycles of every three years for Balancing Authorities, Reliability Coordinators and Transmission Operators and every six years for other registered entities.

The following paragraphs describe the plans of the individual Regional Entities for reviewing registered entities' critical asset determinations in 2010, and the resources the individual Regional Entities have budgeted to support these activities.

### **FRCC**

FRCC plans to review registered entities' identification of critical assets pursuant to CIP-002 Requirement 1 as part of its scheduled CIP spot checks and compliance audits of registered entities. As stated in its 2010 Business Plan and Budget, FRCC expects to complete one CIP on-site compliance audit and seven on-site CIP spot checks in 2010.<sup>34</sup> FRCC hired an experienced CIP auditor in July 2009 who will lead FRCC's CIP compliance audits and spot checks of registered entities during 2009. FRCC also has an approved position for a second CIP auditor and IT specialist that will be filled in the first quarter of 2010. Overall, FRCC budgeted three additional Compliance Program personnel for 2010, primarily due to the increased numbers of on-site CIP audits and spot checks.<sup>35</sup> FRCC believes that these resources will be sufficient for

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<sup>34</sup> FRCC 2010 Business Plan and Budget (Attachment 3 to the 2010 Business Plan and Budget Filing) at 14.

<sup>35</sup> FRCC 2010 Business Plan and Budget (Attachment 3 to the 2010 Business Plan and Budget Filing) at 17.

2010. FRCC will evaluate the need for additional CIP audit resources for future years as part of its 2011 budget development process.

### **MRO**

MRO conducted self-certifications of registered entities for compliance with standards CIP-002 through CIP-009 in July 2008, January 2009 and July 2010, and will conduct another self-certification in January 2010, consistent with NERC's directive to perform self-certifications each January and July until 2011. Additionally, in accordance with the NERC CMEP Implementation Plan, compliance assessments are to be conducted of the "Table 1" entities for the CIP Standards requirements with which these entities must be "Auditably Compliant"; these assessments were to begin in July 2009 and be completed by year-end 2010. MRO has a total of 26 "Table 1" and "Table 2" entities. MRO began performing CIP compliance spot checks in August 2009 and is scheduled to perform a total of 26 CIP compliance spot checks by December 2010, which will cover all "Table 1" and "Table 2" entities in the MRO region. The scope of the spot checks will include the 13 CIP requirements with which these entities must be "Auditably Compliant" as of July 2009, moving to all 41 CIP requirements with which these entities must be "Auditably Compliant" by July 2010. Further, using the ongoing scheduled compliance audits, MRO also plans to review the critical asset identification methodologies and documentation of risk-based assessments performed, for all registered entities that claim to have no critical cyber assets. Beginning in January 2011, MRO will utilize the ongoing three-year and six-year compliance audit schedules on a going-forward basis for conducting audits of compliance with all applicable reliability standards including CIP standards. MRO added three CIP auditors with applicable expertise to its compliance audit team earlier in 2009. MRO will continue to review

the need to add additional staff to support its responsibilities for monitoring compliance with the CIP standards.

### **NPCC**

NPCC will review registered entities' risk-based critical asset identification methodologies during schedule audits and spot checks of compliance with the CIP standards. NPCC plans to perform approximately 24 on-site expanded-scope CIP audits of registered Transmission Owners in 2010, in accordance with the NERC CIP Implementation Plan, in addition to the regularly-scheduled compliance audits.<sup>36</sup> For 2010, NPCC budgeted to add a CIP Compliance Engineer (one FTE), as well as other personnel and contractor resources, in its Compliance Program.<sup>37</sup> The addition of the CIP Compliance Engineer brings NPCC's dedicated CIP resources to 3 FTEs in 2010 to cover its array of CIP activities, both audit and non-audit.<sup>38</sup>

### **ReliabilityFirst**

ReliabilityFirst intends to review registered entities' application of their risk-based assessment methodologies and identification of critical assets as part of the scheduled spot checks and audits for compliance with the requirements of CIP standards, not as a separate activity. During 2009, ReliabilityFirst has 12 registered entities required to be "Compliant" with 13 CIP requirements; for 2010, in accordance with the NERC CIP Implementation Plan, ReliabilityFirst will have 41 registered entities required to be "compliant" with 41 CIP

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<sup>36</sup> NPCC 2010 Business Plan and Budget (Attachment 5 to the 2010 Business Plan and Budget filing), at 11.

<sup>37</sup> NPCC 2010 Business Plan and Budget (Attachment 5 to the 2010 Business Plan and Budget filing), at 11.

<sup>38</sup> NPCC 2010 Business Plan and Budget (Attachment 5 to the 2010 Business Plan and Budget filing), at 49.

requirements.<sup>39</sup> With the monitoring and auditing of CIP requirements going from 13 to 41 requirements from 2009 to 2010, and with the expectation that many more registered entities will be identified as having critical assets that are subject to the CIP standards, ReliabilityFirst budgeted two additional FTEs for 2010 in its Compliance Program, with the requisite subject matter expertise, to be directly assigned to the CIP area.<sup>40</sup> The staffing levels included in ReliabilityFirst's 2010 budget include additional staff that ReliabilityFirst believes is necessary to carry out compliance monitoring activities with respect to the CIP standards; however, ReliabilityFirst will continue to review the adequacy of its staffing for CIP compliance monitoring and enforcement activities. Additionally, ReliabilityFirst believes that registered entities' identification of their critical assets can be evaluated with the assistance of members of the ReliabilityFirst technical staff who do not have CIP-specific expertise.

### **SERC**

SERC has 3.5 FTEs dedicated to CIP compliance in 2010. This staffing reflects the addition of a CIP auditor for 2010, due to the fact that in 2010, the number of required CIP audits and spot checks will increase, and will be conducted on-site.<sup>41</sup> The critical asset identification methodologies pursuant to CIP-002 of "Table 1" and "Table 2" registered entities will be validated primarily through scheduled audits and spot checks in the latter part of 2010, using the 3.5 FTEs. SERC has also contacted selected registered entities that have indicated they have no critical cyber assets, in order to validate the basis for these conclusions.

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<sup>39</sup> ReliabilityFirst 2010 Business Plan and Budget (Attachment 6 to the 2010 Business Plan and Budget Filing), at 11.

<sup>40</sup> ReliabilityFirst 2010 Business Plan and Budget (Attachment 6 to the 2010 Business Plan and Budget Filing), at 30.

<sup>41</sup> SERC 2010 Business Plan and Budget (Attachment 7 to the 2010 Business Plan and Budget filing), at 18.

## **SPP RE**

SPP RE also plans to evaluate the critical asset identification methodologies used by registered entities as part of scheduled spot checks and compliance audits in 2009 and 2010. During 2009, SPP RE has completed spot checks of the CIP-002 Requirement 1 risk-based assessment methodologies of all “Table 1” and “Table 2” registered entities in the SPP RE, and it expects to complete such reviews for all “Table 3” registered entities by the end of 2009. Full spot checks will have been completed for seven “Table 1” registered entities covering the 13 requirements of CIP standards with which “Table 1” registered entities are required to be “Auditably Compliant” by July 2009. In 2010, SPP RE plans to complete full spot checks of the 13 requirements of CIP standards for all eleven remaining “Table 1” and “Table 2” registered entities (several of these reviews will be conducted coincident with scheduled compliance audits). Ten of the spot checks are scheduled to be conducted prior to June 30, 2010, and the remaining spot check is scheduled (coincident with a compliance audit) for September 2010. Additionally, those “Table 3” entities identified as being at risk of non-compliance as a result of the risk-based assessment methodology review conducted in 2009 will be subject to spot checks on compliance with all requirements of CIP-002, during the second half of 2010. These CIP-002 follow-on spot checks are expected to be performed off-site using two-person teams.

For on-site spot checks of compliance with CIP requirements, SPP RE plans to expand its spot check teams from three to four members to permit in-depth review of the registered entity’s critical asset identification. SPP RE will also engage the shared staff of the SPP RTO Engineering Department as necessary to assist in confirming the registered entity’s analysis or to provide engineering analysis support.

SPP RE's staffing in 2010 for the above-described activities, as approved in its 2010 Business Plan and Budget, include four additional SPP RE FTEs for CIP activities, two FTE-equivalent contractors for CIP activities, and 0.5 FTE of Engineering support from SPP RTO shared staff for CIP activities.

### **Texas RE**

Texas RE also plans to evaluate the risk-based assessment methodologies and critical asset identifications of registered entities as part of its audits and spot checks for compliance with CIP standards requirements. Texas RE has 2.10 FTEs budgeted in 2010 dedicated to compliance monitoring and enforcement activities for the CIP standards. (Texas RE also has 3.0 FTEs budgeted to process requests for TFEs to CIP standards requirements.) Texas RE has one "Table 1" registered entity, and therefore plans to conduct one standalone CIP compliance audit of this registered entity in 2010. Additionally, Texas RE has budgeted for approximately six possible event-driven spot checks of "Table 3" registered entities (which under the CIP Implementation Plan are required to be "Compliant" with most of the CIP standards requirements by December 31, 2009) in the latter half of 2010.

### **WECC**

WECC has planned for approximately 26 CIP audits in 2010.<sup>42</sup> Further, beginning in July 2010, based on the CIP Implementation Plan, the number of CIP requirements that will be subject to spot checks will increase from 13 to 41. Based on guidance from NERC, WECC

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<sup>42</sup> See WECC 2010 Business Plan and Budget (Attachment 10 to the 2010 Business Plan and Budget Filing) at 18.

expects the level of effort required for CIP spot checks to approximate the effort required for a compliance audit.<sup>43</sup>

WECC originally budgeted five FTE contractors in 2010 specifically for compliance monitoring and enforcement activities for CIP standards, including reviews of risk-based assessment methodologies and critical asset identification under CIP-002. Other staff positions in WECC's Compliance Department were designated as auditors, but not specifically designated for CIP-related activities.<sup>44</sup> However, as the dimensions of the CIP-related workload have become more clearly defined, WECC determined that some of its audit staff should focus on CIP work as needed. Currently, WECC has six of its staff auditors devoted to CIP-related activities. With the above-described resources, WECC's Compliance Department believes its resources will be sufficient for the known scope of CIP work planned for 2010. WECC will, however, continue to evaluate its CIP-related workload and the sufficiency of its staffing.

\* \* \* \* \*

NERC is considering several improvements to the CIP standards to facilitate better identification of critical assets. First, under the Version 1 CIP standards, the identification of new critical assets under CIP-002-1 requires immediate compliance with the remaining CIP standards, with the possibility of a violation if such immediate compliance cannot be established. Because this provision was viewed as a disincentive for identification of new critical assets, the Version 2 CIP standards, which become effective April 1, 2010, incorporate a new implementation plan that will afford registered entities additional time under certain conditions

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<sup>43</sup> WECC 2010 Business Plan and Budget (Attachment 10 to the 2010 Business Plan and Budget Filing) at 19.

<sup>44</sup> WECC's budgeted Compliance Program staffing for 2010 is 50 FTEs, which is a significant increase of 20 FTEs over its 2009 budgeted Compliance Program staffing. WECC 2010 Business Plan and Budget (Attachment 10 to the 2010 Business Plan and Budget filing), at 14.

to come into full compliance with the CIP Standards with respect to newly-identified critical assets. The Commission approved this implementation plan when it approved the Version 2 CIP standards.<sup>45</sup>

Another area of improvement for CIP-002 that is under consideration is to revise the standard to provide more specificity with respect to the criteria for identification of critical assets. Currently the standard only requires registered entities to “identify and document a risk-based assessment methodology to use to identify its Critical Assets” (Requirement R1) and to “develop a list of its identified Critical Assets determined through an annual application of the risk-based assessment methodology” (Requirement R2). While Requirement R1 identifies assets that should be considered in the “risk-based assessment methodology,” there are no directions or guidance in the standard as to what are the appropriate components of an acceptable “risk-based assessment methodology.” Currently, a standard drafting team is working on a further revision to CIP-002 to facilitate more transparent criteria for identification of critical assets. The objective of these revisions to CIP-002 is to provide specific guidance for registered entities in the development and application of a “risk-based assessment methodology” and the identification of critical assets, and to make registered entities’ identification of critical assets more readily auditable by Regional Entities, thereby allowing Regional Entities to review critical asset determinations more efficiently with fewer resources.

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<sup>45</sup> *Order Approving Revised Reliability Standards for Critical Infrastructure Protection and Requiring Compliance Filing*, 128 FERC ¶ 61,291 (2009).

#### **IV. RESPONSES TO 2010 ERO BUDGET ORDER – PROCESSING TECHNICAL FEASIBILITY EXCEPTIONS**

##### **2010 ERO Budget Order, PP 35-36:**

35. In its Budget Application, NERC states that it is currently working with the Regional Entities and industry stakeholders to develop uniform procedures for processing “technical feasibility exceptions.” NERC indicates that the uniform procedures will have the Regional Entities process technical feasibility exceptions, with NERC providing oversight and guidance. In its Budget Application, NERC states that it does not plan to hire additional staff or consultants to provide such oversight, but notes that four of the Regional Entities—MRO, ReliabilityFirst, SPP RE, and Texas RE—have incorporated this expense into their 2010 budget proposals. Other Regional Entities have not budgeted funds or FTEs for this particular task. They indicate that they may seek supplemental funding during the year if necessary to support this program.<sup>38</sup> Other Regional Entities indicate that they can implement the program with current budget and staff levels.<sup>39</sup>

<sup>38</sup> NERC Application, Attachment 5 (NPCC Business Plan and Budget) at 23; *id.*, Attachment 7 (SERC Business Plan and Budget) at 15.

<sup>39</sup> *Id.*, Attachment 3 (FRCC Business Plan and Budget) at 14-15; *id.*, Attachment 10 (WECC Business Plan and Budget) at 16.

36. As indicated in the proposed business plans and budgets, the details of how Regional Entities plan to process technical feasibility exceptions continue to evolve. We are concerned that, once the ERO develops the procedure and the Regional Entities implement the process of reviewing technical feasibility exceptions, Regional Entities may not have budgeted adequate funding of this potential labor-intensive activity. It is premature for the Commission to rule on the adequacy of the ERO and Regional Entity funding of this activity at this time. The Commission, however, directs the ERO to provide status reports, every three months from the date of this order, regarding the development of uniform procedures for processing technical feasibility exceptions; and, within 90 days after implementation of the activity by the Regional Entities, an evaluation of the adequacy of ERO and Regional Entity resources for implementing this activity.

##### **NERC Response:**

On October 29, 2009, NERC filed a petition with the Commission requesting approval of new Section 412, “Requests for Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Reliability Standards,” to the NERC ROP, and new Appendix 4D, “Procedure for Requesting and Receiving Technical Feasibility Exceptions to NERC Critical Infrastructure Protection Standards,” to the ROP. Section 412 and Appendix 4D provide a set of conditions or

criteria that a responsible entity must follow when relying on the technical feasibility exception contained in specific requirements of certain NERC CIP standards. NERC's Petition requests that the Commission issue an Order approving proposed Section 412 and Appendix 4D by on or about January 21, 2010. NERC's Petition is currently the subject of Docket No. RR10-1-000. Previously, on October 12, 2009, NERC announced that the Regional Entity would begin accepting TFE requests from registered entities pursuant to a set of posted "Interim TFE Rules," which are essentially the same as proposed Appendix 4D that is pending before the Commission in Docket No. RR10-1-000.<sup>46</sup>

Because NERC has filed for Commission approval a proposed uniform procedure for processing TFEs, and the proposed procedure is now the subject of a separate Commission docket, NERC requests that in its Order on this compliance filing, the Commission state that NERC is no longer required "to provide status reports, every three months from the date of [the 2010 ERO Budget Order], regarding the development of uniform procedures for processing technical feasibility exceptions," as specified in P 36 of the 2010 ERO Budget Order. NERC will file a report on or before January 11, 2010 (*i.e.*, 90 days after October 12, 2010), providing "an evaluation of the adequacy of ERO and Regional Entity resources for implementing" the processing of TFEs, as also specified in P 36 of the 2010 ERO Budget Order.

## **V. CONCLUSION**

The North American Electric Reliability Corporation respectfully requests that the Commission accept this filing and Attachments as compliance with PP 25, 30, 31, 32, 33, 40, 42, 43, 44, 45, 46, 48, 50, and 52, and partial compliance with P 36, of the 2010 ERO Budget Order. NERC also requests that the Commission state in its Order on this compliance filing that NERC

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<sup>46</sup> See NERC Compliance Process Bulletin #2009-007 v1.2, posted at [http://www.nerc.com/files/2009-007\\_Public\\_Notice-V1.2.pdf](http://www.nerc.com/files/2009-007_Public_Notice-V1.2.pdf).

is no longer required “to provide status reports, every three months from the date of [the 2010 ERO Budget Order], regarding the development of uniform procedures for processing technical feasibility exceptions,” as specified in P 36 of the 2010 ERO Budget Order.

Respectfully submitted,

/s/ David N. Cook

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

/s/ Owen E. MacBride

Owen E. MacBride  
Debra Ann Palmer  
Schiff Hardin LLP  
1666 K Street, N.W., Suite 300  
Washington, DC 20036-4390  
(202) 778-6400  
(202) 778-6460 – facsimile  
[omacbride@schiffhardin.com](mailto:omacbride@schiffhardin.com)  
[dpalmer@schiffhardin.com](mailto:dpalmer@schiffhardin.com)

Rebecca J. Michael, Assistant General Counsel  
North American Electric Reliability Corporation  
1120 G Street, N.W., Suite 990  
Washington, D.C. 2005-3801  
(202) 393-3998  
(202) 393-3995 – facsimile  
[Rebecca.michael@nerc.net](mailto:Rebecca.michael@nerc.net)

**CERTIFICATE OF SERVICE**

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

Dated at Chicago, Illinois this 11th day of December, 2009.

/s/ Owen E. MacBride  
Owen E. MacBride

*Attorney for North American Electric  
Reliability Corporation*

**ATTACHMENT 1**

**EXCERPTS FROM LOAN DOCUMENTATION  
FOR NERC'S LINE OF CREDIT,  
SHOWING COVENANTS**

EXHIBIT A  
TO LETTER AGREEMENT  
DATED FEBRUARY 23, 2007

**A. FINANCIAL REPORTING COVENANTS:**

(1) The Borrower will deliver to the Bank:

(a) Financial Statements for its fiscal year, within 130 days after fiscal year end, audited and certified without qualification by a certified public accountant acceptable to the Bank.

(b) Financial Statements for each 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> fiscal quarter, within 60 days after the quarter end, together with year-to-date and comparative figures for the corresponding periods of the prior year, certified as true and correct by its chief financial officer.

(c) With each delivery of Financial Statements, a certificate of the Borrower's chief financial officer as to the Borrower's compliance with the financial covenants set forth below, if any, for the period then ended and whether any Event of Default exists, and, if so, the nature thereof and the corrective measures the Borrower proposes to take. This certificate shall set forth all detailed calculations necessary to demonstrate such compliance.

(d) The Borrower will deliver to the Bank within 30 days following the close of each fiscal quarter or within 30 days following the close of each month if so requested by the Bank, the Borrower's detailed schedule of accounts receivable aging analysis.

(e) The Borrower will deliver a Borrowing Base Certificate to the Bank within 30 days following the close of each fiscal quarter or otherwise, 30 days following the close of each month during which there is an outstanding balance under the Line of Credit and prior to seeking any borrowing if the borrowing is to occur at a time when a borrowing base certificate has not already been submitted from the most recent prior month.

**"Financial Statements"** means the balance sheet and statements of income and cash flows prepared in accordance with generally accepted accounting principles in effect from time to time ("GAAP") applied on a consistent basis (subject in the case of interim statements to normal year-end adjustments).

In the event that any financial information submitted to the Bank has been prepared by an outside accountant, Borrower shall use commercially reasonable efforts to have said accountant furnish a statement in writing signed by the accountant disclosing that the accountant is aware that the information prepared by the accountant would be submitted to and relied upon by the Bank in connection with the Bank's determination to grant or continue credit.

**B. FINANCIAL COVENANTS:**

(1) The Borrower will maintain at all times Minimum Net Assets of \$700,000.00 tested annually.

(2) The Borrower will maintain at all times a minimum Interest Coverage ratio of 3.0 to 1, tested annually.

As used herein:

“**Interest Coverage**” means earnings before interest and tax expenses divided by interest expense.

“**Minimum Net Assets**” means total assets minus intangible assets minus total liabilities.

All of the above financial covenants shall be computed and determined in accordance with GAAP applied on a consistent basis (subject to normal year-end adjustments).

**C. NEGATIVE COVENANTS:**

(1) The Borrower will not create, assume, incur or suffer to exist any mortgage, pledge, encumbrance, security interest, lien or charge of any kind upon any of its property, now owned or hereafter acquired, or acquire or agree to acquire any kind of property under conditional sales or other title retention agreements; provided, however, that the foregoing restrictions shall not prevent the Borrower from:

(a) incurring liens for taxes, assessments or governmental charges or levies which shall not at the time be due and payable or can thereafter be paid without penalty or are being contested in good faith by appropriate proceedings diligently conducted and with respect to which it has created adequate reserves;

(b) making pledges or deposits to secure obligations under workers' compensation laws or similar legislation;

(c) granting liens or security interests in favor of the Bank; or

(d) granting liens relating to purchase money financings of personal property or entering into leases in the ordinary course of business.

(2) The Borrower will not create, incur, guarantee, endorse (except endorsements in the course of collection), assume or suffer to exist any indebtedness, except:

(a) indebtedness to the Bank;

North American Electric Reliability Corporation

(b) open account trade debt incurred in the ordinary course of business and not past due;

(c) indebtedness relating to purchase money financings and leases referenced in clause 1(d) above; or

(d) indebtedness relating to real estate leases now or hereafter entered into by Borrower in the ordinary course of business.

(3) The Borrower will not liquidate, or dissolve, or merge or consolidate with any person, firm, corporation or other entity, or sell, lease, transfer or otherwise dispose of all or any substantial part of its property or assets, whether now owned or hereafter acquired.

(4) The Borrower will not make acquisitions of all or substantially all of the property or assets of any person, firm, corporation or other entity.

(5) The Borrower will not declare or pay any dividends on or make any distribution with respect to any class of its equity, or purchase, redeem, retire or otherwise acquire any of its equity.

(6) The Borrower will not make or have outstanding any loans or advances to or otherwise extend credit to any person, firm, corporation or other entity, except in the ordinary course of business.

**ATTACHMENT 2**

**NERC MONTH-END CASH BALANCES,  
JANUARY 2008 — NOVEMBER 2009**

**North American Electric Reliability Corporation**

**Month-Ending Cash Balances**

(Net of Restricted Compensating Balance)

	<u>2009</u>	<u>2008</u>
January	9,904,409	5,523,112
February	6,947,120	3,775,501
March	14,647,912	9,432,990
April	5,381,624	4,224,360
May	4,430,226	3,384,778
June	14,414,445	10,634,351
July	5,660,226	4,290,569
August	4,762,988	3,443,444
September	10,453,208	9,279,717
October	14,261,007 <sup>1</sup>	2,631,219
November	13,368,426 <sup>1</sup>	2,102,840
December		13,372,672

<sup>1</sup> Includes \$10M in penalty monies restricted until 2011

**ATTACHMENT 3**

**EXPANDED TABLE 6 OF  
NPCC 2010 BUSINESS PLAN AND BUDGET**



**Expanded Table 6**

**NPCC 2010 Regional Entity (RE)  
and Criteria Services (CS) Divisional Funding Information  
Compliance Allocation: CORC Direct and Indirect**

At their June 30, 2009 meeting, the NPCC Board of Directors approved a 2010 Budget for the RE Division of \$11,500,439, which includes total CORC program costs of \$6,198,595.

<b>A-1</b>	<b>B-1</b>	<b>B-1a.</b>	<b>C-1</b>	<b>C-1a.</b>	<b>D-1</b>	<b>E-1</b>
NPCC Balancing Authorities (LSE Designees)	2008 Total NPCC NEL (MWh)	2008 NPCC US NEL (MWh)	2008 NEL % of Total NPCC	2008 NEL % of NPCC U.S.	2010 <sup>1</sup> NPCC RE Division Minus CORC Program	2010 NPCC CS Division
New England	131,749,000	131,749,000	19.91595%	44.30593%	1,055,913	228,133
New York	165,613,000	165,613,000	25.03503%	55.69407%	1,327,318	286,771
Ontario	148,676,000		22.47474%		1,191,575	257,443
Québec	188,799,000		28.53996%		1,513,144	326,919
New Brunswick	14,149,000		2.13885%		113,398	24,500
Nova Scotia	12,539,000		1.89547%		100,495	21,712
<b>Total</b>	<b>661,525,000</b>	<b>297,362,000</b>	<b>100.00000%</b>	<b>100.00000%</b>	<b>\$5,301,844</b>	<b>\$1,145,478</b>

**2010 CORC**

<b>A-2</b>	<b>B-2</b>	<b>C-2</b>			<b>D-2</b>		<b>E-2</b>	<b>F-2</b>	<b>G-2</b>
Balancing Authorities (LSE Designees)	2010 <sup>2</sup> NEL Based 55% CORC Program	2010 <sup>3</sup> Allocation Methodologies			2010 <sup>4</sup> 45% CORC Program		2010 Total CORC Program	2010 RE Division Total Funding (D-1 plus E-2)	2010 NPCC Total Funding (E-1 plus F-2)
		a	b	c	a	b			
		Total NPCC Audit Based	U.S. NEL Based	Canada Audit Based	U.S. NEL Based	Canada Audit Based			
New England	678,980	64.88062%	41.87062%		1,167,925		1,846,906	2,902,818	3,130,951
New York	853,501	29.62280%	52.63280%		1,468,122		2,321,623	3,648,942	3,935,712
Ontario	766,215	0.00000%		0.00000%		0	766,215	1,957,790	2,215,233
Québec	972,992	3.66191%		3.66191%		102,144	1,075,136	2,588,281	2,915,200
New Brunswick	72,918	0.00000%		0.00000%		0	72,918	186,316	210,816
Nova Scotia	64,621	1.83467%		1.83467%		51,176	115,797	216,291	238,004
<b>Total</b>	<b>\$3,409,227</b>	<b>100.00000%</b>	<b>94.50341%*</b>	<b>5.49659%*</b>	<b>\$2,636,048</b>	<b>\$153,320</b>	<b>\$6,198,595</b>	<b>\$11,500,439</b>	<b>\$12,645,916</b>

\*

Portions of the remaining 45% attributable to U.S. and Canadian NPCC. The Canadian costs are allocated utilizing the audit based methodology. The portion of the 94.50341% attributable to U.S. NPCC is allocated between the New York and New England balancing authority areas based on their respective net energy for load (NEL) as shown in Columns B-1a. and C-1a. The ratios in C-1a. are applied to the 94.50341% of U.S. audit costs to obtain the percentages (Column C-2 b) which are then applied to the 45% of CORC costs.

<sup>1</sup> Consistent with NERC's Policy on Allocation of Certain Compliance and Enforcement Costs, the NPCC Board approved Allocation Methodologies for Certain NPCC Compliance Program Area Costs Assessed to Non-U.S. Entities.

<sup>2</sup> Regional NEL based funding represents 55% of CORC Program, while 45% of CORC Program totaling some \$2,789,368 is allocated using an audit based methodology for Canadian Balancing Authorities and an NEL based methodology for US Balancing Authorities for 2010.

<sup>3</sup> Audit based allocation uses Compliance Registry Data registrants as of June 12, 2009.

<sup>4</sup> Allocation adjustment of \$626,903 and \$59,660 identified as NPCC CORC costs duplicative of Ontario and New Brunswick Compliance and Enforcement Programs, respectively.